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**PUBLIC NOTICE**

Notice is Hereby Given that the Tooele City Council & the Tooele City Redevelopment Agency of Tooele City will meet in a Work Session, on Wednesday, August 7, 2019 at the hour of 5:00 p.m. The Meeting will be Held at the Tooele City Hall Large Conference Room, located at 90 North Main Street, Tooele, Utah.

**1. Open City Council Meeting**

**2. Roll Call**

**3. Discussion:**

- **Disaster Scenario Off-Site Training/Council Availability Discussion**
- **Enterprise Fund Transfer**  
Presented by Glenn Caldwell
- **Resolution 2019-58** A Resolution of the Tooele City Council Adopting the Certified Tax Rate for Fiscal Year 2019-2020  
Presented by Glenn Caldwell
- **Resolution 2019-57** A Resolution of the Tooele City Council Adopting the Final Budget for Tooele City Fiscal Year 2019-2020
- **Resolution 2019-55** A Resolution of the Tooele City Council Approving Insurance Coverage for Insurance Period 2019-2020  
Presented by Michelle Pitt
- **Ordinance 2019-19** An Ordinance of Tooele City Adopting an Updated Purchasing Policy and Procedure  
Presented by Michelle Pitt
- **Ordinance 2019-18** An Ordinance of the Tooele City Council Amending the Tooele City Zoning Map for Property in the Lexington Greens at Overlake Development Located Near 600 West 1200 North  
Presented by Jim Bolser
- **Resolution 2019-59** A Resolution of the Tooele City Council Approving a Contract with Impact Contractors Inc. for the Demolition of the Obsolete Waste Water Treatment Facility  
Presented by Steve Evans
- **Resolution 2019-60** A Resolution of the Tooele City Council Authorizing the Mayor to Sign a Contract with Broken Arrow Construction for the Droubay Road Storm Drain Project (Vine Street to Smelter Road)  
Presented by Paul Hansen

- **Resolution 2019-56** A Resolution of the Tooele City Council Approving and Ratifying a Settlement Agreement and Mutual Release with Aposhian Sod Farms, Inc.  
Presented by Ted Barnes

**4. Close Meeting**

- Litigation and Property Acquisition

**5. Adjourn**

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Michelle Y. Pitt  
Tooele City Recorder

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 435-843-2113 or [michellep@tooelecity.org](mailto:michellep@tooelecity.org), Prior to the Meeting.

**TOOELE CITY CORPORATION**

**RESOLUTION 2019-58**

**A RESOLUTION OF THE TOOELE CITY COUNCIL ADOPTING THE CERTIFIED TAX RATE FOR FISCAL YEAR 2019-2020.**

WHEREAS, Utah Code §10-6-133 requires cities to set by ordinance or resolution the real and personal property tax levy, or certified tax rate, for various municipal purposes; and,

WHEREAS, the certified tax rate has been calculated to be 0.003024 for Fiscal Year 2019-2020 (compared to 0.003334 for Fiscal Year 2018-2019, 0.001938 for Fiscal Year 2017-2018, 0.002030 for Fiscal Year 2016-2017, 0.002203 for Fiscal Year 2015-2016, 0.002310 for Fiscal Year 2014-2015, and 0.002520 for Fiscal Year 2013-2014); and,

WHEREAS, following the truth-in-taxation process, the City Council has determined to maintain the Fiscal Year 2018-2019 certified tax rate of 0.003334 for Fiscal Year 2019-2020; and,

WHEREAS, the City Council conducted a duly-noticed public hearing on August 7, 2019:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Tooele City real and personal property tax levy, or certified tax rate, is hereby set at 0.003334 for Fiscal Year 2019-2020.

This Resolution shall become effective on the date of passage by authority of the Tooele City Charter.

Passed this \_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(For)

(Against)

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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

S E A L

Approved as to form:

\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney



**TOOELE CITY CORPORATION**

**RESOLUTION 2019-57**

**A RESOLUTION OF THE TOOELE CITY COUNCIL ADOPTING THE FINAL BUDGET FOR TOOELE CITY FOR FISCAL YEAR 2019-2020.**

WHEREAS, the Tooele City Council adopted the budget officer's tentative budget for fiscal year 2019-2020 on May 1, 2019, and established June 19, 2019, as the date for a public hearing for the final budget, as required by U.C.A. Chapter 10-6; and,

WHEREAS, the City Council convened a public hearing on June 19, 2019, as required by U.C.A. §10-6-114; and,

WHEREAS, the City Council adopted a new tentative budget for fiscal year 2019-2020 on June 19, 2019, based on the proposed tax rate, and established August 7, 2019, as the date for a truth-in-taxation public hearing; and,

WHEREAS, the City Council is required to adopt the final budget pursuant to U.C.A. §10-6-118 by either June 30 or August 17, as applicable; and,

WHEREAS, the fiscal year 2019-2020 budget adoption process has followed the requirements of Utah Code Title 10, Chapter 6; and,

WHEREAS, the Tooele City Council now desires to adopt a final budget for fiscal year 2019-2020;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOOELE CITY COUNCIL that the Tooele City final budget for fiscal year 2019-2020 is hereby adopted, and hereby directs the budget officer to certify the budget and to file the budget with the state auditor within 30 days of the date of this Resolution.

This Resolution shall be effective immediately upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

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_____	_____
_____	_____
_____	_____
_____	_____

ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(For)

(Against)

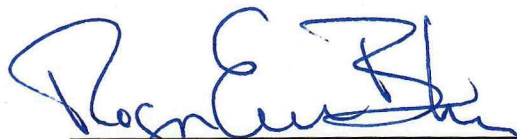
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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

SEAL

Approved as to form:

  
\_\_\_\_\_  
Roger Evans Baker, City Attorney

**TOOELE CITY CORPORATION**

**RESOLUTION 2019-55**

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING INSURANCE COVERAGE FOR INSURANCE PERIOD 2019-2020.**

WHEREAS, Tooele City employs a comprehensive risk management strategy, including safety and sensitivity training, repair or removal of damaged equipment, risk inventories, risk management and safety policies, and insurance, the purpose of which strategy is to avoid harm to persons and property and to decrease claims against the general funds of Tooele City; and,

WHEREAS, the City Administration solicited insurance proposals for the August 1, 2018, through July 30, 2019, insurance period (“2018-2019 Insurance Period”) from three insurance brokers and providers, namely the Utah Local Governments Trust (“Trust”), Moreton & Company and Trident/Argonaut Insurance (“Moreton”), and Olympus Insurance and Travelers (“Olympus”);

WHEREAS, the Trust proposed a 2018-2019 Insurance Period premium of \$182,175, compared to Olympus’ \$207,781 and Moreton’s \$225,669; and,

WHEREAS, the City Administration carefully studied and evaluated the respective proposals, coverages, deductibles, and premiums, and selected the Trust’s proposal, with a premium savings of \$76,288 from Moreton’s 2017-2018 Insurance Period proposal and of \$43,494 from Moreton’s 2018-2019 Insurance Period proposal; and,

WHEREAS, the Trust’s proposal included a \$1,000 deductible for general liability claims, compared to \$10,000 or \$15,000 (depending on the type of claim) with Moreton and Olympus; and,

WHEREAS, for the 2019-2020 insurance period, as part of the Trust’s commitment to hold rates for at least three years, and the City’s commitment to maintain Trust coverage for three years, the Trust’s liability premium will remain at \$121,690, with slight increases in the automobile insurance premium (\$8,120.17) and the property insurance premium (\$53,469.55) to account for additional fleet vehicles and buildings, for a total premium of \$183,279.72:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the combined property, auto, and casualty insurance premium of the Utah Local Governments Trust is hereby approved, with a 2019-2020 insurance period package premium of \$183,279.72, and that the Mayor is hereby authorized to sign all documents necessary to implement the coverage.

This Resolution shall become effective immediately upon passage by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

**TOOELE CITY CORPORATION**

**ORDINANCE 2019-19**

**AN ORDINANCE OF TOOELE CITY ADOPTING AN UPDATED PURCHASING POLICY AND PROCEDURE.**

WHEREAS, Utah Code §10-6-122 requires that all city purchases and encumbrances be made by a duly authorized purchasing agent pursuant to a purchasing policy established by city ordinance or resolution; and,

WHEREAS, Tooele City Code §1-14-3 and §1-22-2 contain the same requirement as UCA §10-6-122; and,

WHEREAS, Utah Code §11-39-103 contains procurement requirements specific to public building projects and public works projects; and,

WHEREAS, Utah Code §72-6-108 contains procurement requirements specific to Class C road projects; and,

WHEREAS, Utah Code §10-7-20.5 contains procurement restrictions specific to retaining architects and engineers; and,

WHEREAS, Utah Code Chapter 63G-6a contains the Utah Procurement Code; and,

WHEREAS, Utah Code §10-7-86 authorizes, but does not require, municipalities to adopt the Utah Procurement code; and,

WHEREAS, Part 24 of the Utah Procurement Code (Unlawful Conduct and Penalties) applies to all municipalities irrespective of whether they have adopted the Utah Procurement code; and,

WHEREAS, the Tooele City Council approved Resolution 1993-21 on July 7, 1993, adopting a Purchasing Policy, Guidelines, and Procedure Manual for Tooele City Corporation (the "1993 Manual"); and,

WHEREAS, with the passage of time and changes to markets, economies, and government procedures, the City Administration recommends the adoption of an updated Purchasing Policy, Guidelines, and Procedures (the "Procedure") for Tooele City, attached as Exhibit A; and,

WHEREAS, adopting the Procedure is in the best interest of Tooele City inasmuch as the Procedure will allow Tooele City to continue operating a purchasing system in compliance with Utah law, Tooele City law, and sound fiscal management:



NOW, THEREFORE, BE IT ORDAINED BY THE TOOEELE CITY COUNCIL that the Procedure attached as Exhibit A is hereby adopted as the purchasing policy and procedure for Tooele City.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, and welfare of Tooele City and its residents and businesses and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

SEAL

Approved as to Form:



\_\_\_\_\_  
Roger Evans Baker, City Attorney



## Exhibit A

# Tooele City Purchasing Policy, Guidelines, and Procedures (2019)

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TOOELE CITY CORPORATION  
PURCHASING POLICY, GUIDELINES,  
AND PROCEDURES  
June 19, 2019

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# **PURCHASING POLICY, GUIDELINES, AND PROCEDURES**

## **SECTION I**

### **1. PURPOSE**

The purpose of this PURCHASING POLICY, GUIDELINES, AND PROCEDURE (hereinafter the "Procedure") include the following:

- a. To implement the mandated purchasing regulations of the Utah Code.
- b. To establish responsibility and provide detailed procedures for the department heads (users), the City Recorder (hereinafter the "Purchasing Agent"), the Finance Department (Fiscal), City officials, and other City employees involved in purchasing goods and services for Tooele City.

### **2. GENERAL INFORMATION**

- a. As directed by the Mayor and the City Council through the ordinance adopting this Procedure, this Procedure is the prescribed method and means of purchasing goods and services on behalf of Tooele City.
- b. The City has implemented centralized purchasing where all responsibilities related to purchasing are centralized in a single purchasing software system.

### **3. SCOPE**

This Procedure applies to all Tooele City employees and City officials who in the course of their duties must obtain goods or services to successfully accomplish their assigned tasks.

### **4. RESPONSIBILITY**

It is incumbent upon all who have been delegated responsibility for budget preparation and expenditure authorization to comply with this Procedure and adhere to the Tooele City policies promulgated by the Mayor and City Council as contained in this Procedure.

### **5. PURCHASING AGENT AUTHORITY DEFINED**

- a. The Purchasing Agent shall administer the purchasing policy, procedure, and guidelines provided by this Procedure. By the statutes referenced herein and by other applicable laws, the Purchasing Agent shall perform the duties and have



the power and authority to approve Purchase Orders for all departments of Tooele City.

b. All rights, powers, authority, and duties relating to the approval of Purchase Orders for goods or services, and the management, control, sale, and disposal thereof, regardless of the source of funding, are hereby assigned to the Purchasing Agent.

c. The Purchasing Agent may delegate authority granted under this Procedure as deemed necessary.

## 6. STATUTORY AUTHORITY

This Procedure is enacted under authority of Tooele City Charter Section 1 (Grant of Powers), Tooele City Code Sections 1-14-3 (Purchasing Procedures), 1-22-2 (Purchases and Sales by Established Procedures), Utah Code Section 10-7-86 (Municipality may adopt Utah Procurement Code . . . ) and Chapter 63G-6a (Utah Procurement Code), each as amended.

## SECTION II

### 1. POLICY AND GENERAL GUIDELINES

a. The policy of Tooele City Corporation shall be to abide by and implement the purchasing regulations set forth in the Utah Code in respect to the procurement of goods or services, except as modified by this Procedure.

b. General guidelines:

(1) No purchase shall be made and no encumbrance shall be incurred for the benefit of Tooele City, except pursuant to this Procedure and Utah law.

(2) No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance have been budgeted in the budget line item, are available, and the appropriate City officials as herein provided approve the purchase. Exceeding budgeted line items is strongly discouraged, however, if a purchase must be made which will exceed available funds in a budget line item it will require approval from the Mayor and Council as a budget adjustment, unless it is less than 3%, or less than \$1,000, and there are funds available in the total departmental budget.

(3) The department head will be responsible to make sure all funds are available in the budgeted line item of the budget prior to purchase or encumbrance, and if not, will obtain approval from the Mayor and City Council to make the necessary budget adjustments.

(4) No official, department head, or employee of the City shall purchase for the City any goods or services, and no check or other method of payment shall be honored except pursuant to this Procedure.

(5) All departments shall submit to the Purchasing Agent detailed Purchase Requisitions for their requirement of goods and services.

(6) Whenever the requesting department head and the Purchasing Agent concur that a particular product, based on experience with that product, is superior and surpasses competing products in terms of quality, serviceability, and longevity, such product may be purchased notwithstanding the fact that a competing product could be purchased at less cost.

(7) Nothing contained in this Procedure shall be interpreted or construed to preclude the Purchasing Agent from joining with other units of government (City, County, State, or Federal) in cooperative purchasing plans when it can be shown the City will benefit by the savings of such cooperative purchasing.

(8) Whenever any purchase or encumbrance is made with State or Federal funds and the applicable State or Federal law or regulations governing the use of those funds are in conflict with this Procedure to the extent that following the provisions of this Procedure might jeopardize the use of those funds or the obtaining of future such funds, the City shall follow the applicable State or Federal laws and regulations.

(9) With specific reference to Section 10-6-138 of UCA 1953, as amended, the City Recorder, functioning as both City Recorder and Purchasing Agent, may sign as either the City Recorder or the Purchasing Agent contracts made on behalf of Tooele City. There will be no need for two signatures from the same person to meet this provision. The City Recorder shall maintain a properly indexed record of all contracts.

(10) Purchases in an amount more than \$1,000, but less than \$20,000 shall be approved by the Purchasing Agent and Mayor.

(11) All contracts for goods or services where the amount to be paid by the City is \$20,000 or more shall be approved by Resolution of the City Council.



(12) All contracts for goods and services shall be signed by the Mayor, attested by the City Recorder, and approved as to form by the City Attorney.

2. VENDORS

a. Vendors providing goods and/or services shall be on the City's vendor list.

b. To add a new vendor to the City's vendor list, department heads, or designees, shall direct vendors to provide a current and signed W-9 and a Utah Retirement Systems Post-Employment/Post-Retirement Restrictions Act Certificate & Release (See Attachment "B") to Accounts Payable. The new vendor, if approved, will then be added to the City's vendor list, and assigned a vendor number.

3. SERVICES

a. Contracts for services where the amount to be paid by the City is less than \$5,000 may be awarded without the need for bid quotations or proposals. A written contract other than the Purchase Order may be used, but is not required.

b. Contracts for services where the amount to be paid by the City is \$5,000 or more shall require a written contract. The Agreement attached as Exhibit A may be used for this purpose.

c. Contracts for services where the amount to be paid by the City is less than \$20,000 shall be approved and authorized by the Mayor.

d. Contracts for services where the amount to be paid by the City is at least \$5,000 but less than \$20,000 shall be awarded only after three informal bid quotations or competitive bid proposals have been requested and received by the Purchasing Agent or department head.

e. Contracts for services where the amount to be paid by the City is \$20,000 or more shall be considered only after competitive bid proposals have been requested and received, and shall be approved and authorized by the City Council.

g. The bid requirements of this Section II shall not apply to contracts for architectural, engineering, legal, or other professional or personal services. These types of services shall be negotiated for on the basis of demonstrated competence and qualification and at fair and reasonable prices as agreeable to both parties.

h. Contracts for architect or engineering services are restricted by Utah Code Section 10-7-20.5, as amended.



i. With the approval of the Mayor and the Purchasing Agent, the requirements of bidding shall not apply when services can be reasonably purchased only from a single or sole source. If the contract for service is \$20,000 or more, even from a single or sole source, it shall be approved and authorized by the City Council.

j. Once a contract has been approved through the process outlined above, individual invoices do not need to be brought before the Council for approval even if they exceed \$20,000, but change orders exceeding \$20,000 shall be approved and authorized by the City Council.

k. Contracts for services such as worker's compensation, health and dental insurance, short-term disability, general liability insurance, and other services may not need to be bid out every year, upon approval of the Mayor.

#### 4. GOODS

a. Purchase Requisitions for goods when the estimated cost is over \$1,000 and less than \$20,000, shall be processed and approved by the Purchasing Agent. These purchases require final approval from the Mayor.

b. Purchases of goods where the amount to be paid by the City is at least \$5,000 but less than \$20,000 shall be awarded only after three informal bid quotations or competitive bid proposals have been requested and received by the department head. If the purchase of said goods is an ongoing purchase, the informal bid process need only be done once.

c. Purchases made through the cooperative purchasing contracts administered by the State Divisions of Purchasing satisfies the bidding requirement, and no further bids are required.

d. Purchases of goods where the amount to be paid by the City is \$20,000 or more shall be approved and authorized by the City Council before the purchase is made. If, in the case of an emergency, the purchase is made before Council approval, the Invoice shall be ratified by the Council at their next scheduled meeting.

#### 5. USE OF PETTY CASH FUNDS

a. Petty cash funds are funds to be used for incidental purchases, or emergency purchases that are less than \$50.

b. A written receipt, a store-issued receipt, or a pre-authorization form shall be given at the time of disbursement of funds. The receipt shall be signed, and an account line item assigned by the employee requesting the funds.

c. Petty cash shall be under lock and key at all times.

d. When requesting to replenish petty cash, a Petty Cash Log shall be filled out, balancing the starting cash, money disbursed, and ending cash. The log shall be signed by the representative and department head.

e. The amount of petty cash or cash for the cash box shall be no more than \$250 at any time.

#### 6. USE OF CITY PURCHASING, CREDIT OR CHARGE CARDS, AND LINES OF CREDIT

a. Credit cards are issued in rare instance to approved individuals when no other form of payment can be used. These cards must be authorized by the Mayor, and the Purchasing Agent shall maintain a list of approved cards in the City's name.

b. Purchasing cards allow City employees to purchase goods through a charge account at a specific place of business. The Purchasing Agent shall maintain a list of purchasing cards.

c. Open lines of credit allow City employees to purchase goods with various vendors who do not issue a purchasing card, on an approved charge account at the place of business.

d. Credit cards may only be used when a vendor does not offer payment with a purchase order, a purchasing card, open line of credit, or when a vendor will only be used for a one time purchase.

e. Receipts must be submitted for purchases using credit cards, charge cards, or open lines of credit, and must not avoid or bypass City purchasing or payment procedures.

f. No personal expenses may be made on any City credit card, purchasing card or open line of credit, under any circumstances.

g. Employees to whom credit cards are issued are responsible for the security of the card and the transactions made with the card. The card is issued in the employee's name and it will be assumed that any purchases made with the card will have been made by the cardholder, or by department heads authorized to use the card. Credit card holders must immediately report any lost or stolen card and/or account information to the Finance Director and the Mayor.

h. Assigned card holders must report any fraudulent charges or any discrepancies on the statement within 30 days to the Finance Director.



i. If an item which has been purchased with a purchasing card, credit or charge card, or through a line of credit is returned to the place of business, the place of business shall credit the City's account, or issue credit towards the City's card. Employees are not to receive cash, instore credit, or gift cards for returned items.

## 7. PURCHASES NOT REQUIRING BIDS

a. Purchases costing less than \$5,000 in total. (Purchases shall not be artificially divided so as to constitute a small purchase under this section),

b. Goods that can be reasonably purchased only from a single or sole source,

c. Purchases made through the cooperative purchasing contracts administered by the State Divisions of Purchasing,

d. Purchases to repair and maintain equipment owned by the City which may be more economically and efficiently added to, repaired, or maintained, in the judgment of the Purchasing Agent or department head, by a particular person or firm,

e. Purchases for equipment which by reason of special training on the part of City employees and/or when known inventory and availability of replacement parts would make the purchase more compatible with existing equipment already owned by the City,

f. Exchanges of goods between the City and any other entity whereby the cost would be below the market cost from vendors.

## 8. CONSTRUCTION OF PUBLIC IMPROVEMENTS

a. Contracts for building improvements and public works projects are the responsibility of the Mayor, or designee, and are governed by the procurement provisions of Utah Code Chapter 11-39, as amended.

b. Contracts for improvements to public streets are governed by the procurement provisions of Utah Code Chapter 72-6, as amended.

c. The Mayor is authorized to approve extra work or change orders in an amount not to exceed \$20,000, or 10% of the contract when it can be justified by the contractor, agreed to by the Public Works Director or City Engineer after specifications review, and is in the best interest of the City.

d. All construction contracts will have Performance and Payment Bonds established in an amount determined by the Public Works Director or City Engineer necessary to protect the best interests of the City.

e. Department heads, when contemplating making new improvements, shall cause plans and specifications for, and an estimate of, the cost of the improvement to be made by the City Engineer, or outside qualified design professionals. If the estimated cost is less than \$20,000, the Mayor may approve the improvement without calling for sealed bid proposals.

f. If the estimated cost of the proposed improvement exceeds \$20,000, the project shall be competitively bid and approved by the City Council.

g. The City will cause publication of notice at least twice in a newspaper of general circulation published in Tooele City, or as otherwise required by Utah law. The City Recorder will cause the notice to be posted on the State Public Notice webpage.

h. All notices calling for bids shall state, "Tooele City reserves the right to reject any and/or all bids presented." This rejection right includes any formal bid and/or sealed competitive bids with or without cause. If all bids are rejected and the governing body determines to make the improvement, the City shall advertise anew pursuant to this Procedure.

i. All construction contracts shall be in writing. Construction contracts for public improvements costing less than \$20,000 may use the Agreement attached as Exhibit A. Construction contracts for public improvements costing \$20,000 or more shall use more detailed industry standard construction contracts prepared by the contractor, Public Works Director, or City Engineer.

## 9. QUALIFICATION OF BIDDERS AND SUPPLIERS

a. When appropriate, as determined by the Purchasing Agent and the department head, in consultation with the City Attorney, a bidder, supplier, or contractor may be required to prequalify for providing certain types of goods or services. To determine the capability and responsibility of these providers certain predetermined responsibility factors must be considered, which shall include the following:

(1) Availability of the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability of the bidder, supplier, or contractor to meet contractual requirements.



- (2) A satisfactory record of performance, in the discretion of the Purchasing Agent and department head.
- (3) A satisfactory record of integrity, in the discretion of the Purchasing Agent and department head.
- (4) Legal qualifications to contract with Tooele City Corporation.
- (5) Whether all necessary information has been supplied in connection with the inquiry concerning responsibility, in the discretion of the Purchasing Agent.

b. The bidder, supplier, or contractor shall supply all information requested by the City concerning their responsibility. If such information is not supplied, the City may make the determination based on available information or may find the bidder, supplier, or contractor non-responsive and/or not responsible.

### SECTION III

#### 1. PURCHASING AGENT RESPONSIBILITIES

The Purchasing Agent shall have the following duties and responsibilities:

- a. Establish the Purchase Order Register to facilitate the recording of all Purchase Order numbers. Each Purchase Order will be consecutively numbered. A Purchase Order number will be assigned to every purchase.
- b. Upon receipt of a Purchase Requisition, the Purchasing Agent shall evaluate and edit to his/her satisfaction to insure the Requisition is complete and accurate. If additional information is needed, the Purchasing Agent will request it from the originating department. Once the information is complete, the approval of the Purchase Order may proceed.
- c. The Purchasing Agent, on receipt of a Purchase Requisition requesting establishment of a "Blanket Purchase Order", will issue a Purchase Order, as an agreement with a specific vendor authorizing the purchase of multiple low-dollar value items without the need for subsequent Purchase Orders being issued.
- d. The Purchasing Agent shall insure that all documents are attached to, or provided as part of entering into, all written contracts, including the Agreement attached as Exhibit A, such as, Certificate of Liability Insurance, Certificate of Workers Compensation Insurance, Business License, vendor tax identification information, etc., as applicable.

e. When bids are required, the Purchasing Agent shall prepare a Public Notice inviting prospective suppliers to submit a bid. The Public Notice will include:

- (1) Description of the services or items to be purchased.
- (2) Instructions concerning the location and acquisition of bidding documents.
- (3) Date, time, and place of the opening of formal sealed bids.

f. The Purchasing Agent shall disseminate the Public Notice in the following manner:

- (1) Post at City Hall.
- (2) Publish at least two (2) times in a local newspaper of general circulation, or as otherwise required by law.
- (3) Publish on the City website.
- (4) Publish on the State Public Notice website.

g. When goods are deemed surplus, outdated, or no longer needed by a department, and are valued at \$100 or more, the Purchasing Agent will recommend the transfer or disposal of the goods. If the Purchasing Agent is recommending disposal, he/she will present a list of all goods valued at \$100 or more to the City Council for approval of disposal. Reference Utah Code Chapters 24-3 and 77-24a, each as amended, and Tooele City's Disposal of Technology-Related Equipment Procedure.

h. Have signature authority for payroll and bank accounts.

i. Establish and maintain an indexed record of all contracts, with required attachments.

j. Ensure insurance liability and workers compensation certificates are valid and current for City contracts.

## 2. DEPARTMENT HEAD RESPONSIBILITIES

a. The department head, or designee, shall initiate and complete the electronic Purchase Requisition process.



b. Department heads whose activities generate substantial requirements for miscellaneous items may initiate a Purchase Requisition requesting the establishment of a "Blanket Purchase Order". Such Purchase Orders may be used when frequent purchases of miscellaneous items are made from a single vendor. The request may not exceed \$1,000, unless the request is for recurring monthly charges for the same goods, i.e.: gasoline or fuel charges, public notices, monthly contracts, etc. In those instances, the Blanket Purchase Order may not exceed \$15,000. The department head is responsible to keep records of all miscellaneous items purchased and will submit all receipts to the Finance Department. The invoice or receipt should include the Blanket Purchase Order number, date, line item, amount, and the department head's signature.

c. Blanket Purchase Order procedures will not be used when the cost of goods will exceed \$200, with the exception of recurring monthly charges. In such cases the department head will submit a properly executed Purchase Requisition to the Purchasing Agent.

d. Purchase Requisitions for goods with a total estimated price of less than \$1,000 may be made at the department head's discretion, and all bidding may be dispensed with for these low-dollar value open market purchases. Purchase Requests from department heads without "Blanket Purchase Order" authority will be processed by the submission of a Purchase Requisition, and approved by the Purchasing Agent.

e. The department head, originating a Purchase Requisition that requires either informal or formal bidding procedures, will be responsible for the development and preparation of detailed bid specifications for the goods or services. Department heads will respond expeditiously to any request from the Purchasing Agent for additional information once the purchasing process has started.

f. Purchase requests for goods, when the estimated cost is over \$5,000 and less than \$20,000, may be processed by the department head by telephone or electronic solicitation in the open market. Open market purchases whenever possible, shall be based on three price quotations from prospective vendors, and it will be at the department head's discretion that the solicitation for bids may be by telephone, online search, written request, or published notice. Open market purchases, irrespective of type of solicitation, will be awarded to the lowest responsible responsive bidder. (Refer to Section II.3.f. for a list of possible exemptions.)

g. Purchase requests for goods, when the estimated cost is \$20,000 or more, shall be put out for public bid. The department head will cause publication of notice at least twice in a newspaper of general circulation published in Tooele City. The notice will also be posted on the City website and the State Public Notice webpage. (Refer to Attachment "C" for samples of bid documents.)



h. Purchase requests for information systems equipment are to be made only after consulting with the City's Information Systems (I.S.) Department. The I.S. Department will make recommendations to the department head, and, after receiving a budget line item from the department head, will request a Purchase Order and make the purchase.

Note: The Tooele City Police Department and Tooele City Library will consult with their I.S. staff and follow the process outlined in this subsection.

- i. The department head, when receiving goods, will check the goods for condition and quantity.
- j. The department head will ensure that funds are available in budgeted line items of the budget for all purchases. If funds are not available, department will obtain approval from the Mayor and City Council to make necessary budget adjustments (see #3, Page 3).

k. Reimbursement for expenses related to travel and training, or for purchases of goods made by employees using their own funds, shall be submitted on the Tooele City Expense Reimbursement Report and signed by the employee and department head. Department head requests for reimbursement must be approved and signed by the Mayor. The City Council and Mayor's requests for reimbursement must be approved and signed by the City Council Chairperson. The signed Reimbursement Requests shall be entered as a Purchasing Requisition, approved by the Purchasing Agent, assigned a Purchase Order number, and then submitted for payment. Purchases made by employees using their own funds or credit card for goods relating to City business shall also be submitted on the Tooele City Expense Reimbursement Report, signed by the employee, department head, and the Mayor. Receipts are required. (Refer to Tooele City Policies and Procedures Section 34 for procedure of submitting Reimbursement Requests.)

### 3. FINANCE DEPARTMENT RESPONSIBILITIES

a. The Finance Director shall cause to be maintained under his/her direction the general books for each fund of Tooele City and all subsidiary records related thereto.

b. The Finance Director, or designee, shall examine all invoices and payment demands against Tooele City. Checks will not be prepared unless the examination proves the existence of appropriate documentation in the form of completed Purchase Requisitions, Purchase Orders, and invoices to the Finance Director's satisfaction.

c. Accounts Payable will maintain the City's vendor list. When a department requests new vendors be added to the City's vendor list, Accounts Payable will obtain the necessary information and forms from the department making the request.

d. Accounts Payable, on receipt of the Purchase Orders, may be assured that the Purchase Order has been used to initiate and control a purchase and that all necessary approvals have been secured by the Purchasing Agent and department heads during the Purchase Requisition process.

e. Accounts Payable, on receipt of the Purchase Order, will place the copy in a Finance Department file to await receipt of supporting documents. This will enable Accounts Payable to clear the Purchase Order for payment.

f. Accounts Payable, on receipt of an invoice, will match the demands for payment to the approved Purchase Orders and will generate checks. Accounts Payable shall edit Purchase Requisition amounts, up to a maximum of \$25.00, when there are small differences between the quoted amount and the amount invoiced.

g. Accounts Payable will attach the appropriate documentation to the checks, and deliver for signature. The checks are to have two signatures, from those authorized to sign. In order to maintain a check and balance, the checks shall not be signed by Accounts Payable or by any payee of a check.

h. Exceptions to the Purchase Order process:

The Finance Director, in consultation with the Purchasing Agent, may disregard the Purchase Order process and authorize direct payments for ongoing City commitments such as utility bills, insurance premium payments, bond debt-service payments, payment agreements, payroll related expenses, lease payments, gasoline and diesel invoices, or other similar payments.

## SECTION IV

### 1. FAILURE TO COMPLY

Failure to comply with the guidelines established may result in disciplinary action, up to and including termination of employment and, where applicable, criminal prosecution.



## SECTION V

### 1. DEFINITIONS

a. The terms used in this procedure shall have the following meanings:

(1) Blanket Purchase Order means an agreement with a specific vendor that authorizes the purchase of items over a period less than a year with reconciliation of purchases and payment to the vendor on a monthly basis. Use of this type of Purchase Order is restricted to the purchase of repetitively used items of low value.

(2) Bidding means the procedure used to solicit quotations on price and delivery from suppliers of services, supplies, material, or equipment and contracts for public improvement.

(3) Business means any corporation, partnership, individual, sole proprietor, company, or any other properly licensed legal entity engaged in the sales of goods and services.

(4) Change Order means a written order directing a change to the contract.

(5) Charge Card means a card from a place of business for the purchase of goods with an account that must be paid when a receipt is issued. For example, the City has charge cards for local businesses such as Home Depot and Wal-Mart.

(6) City Official means employees, as defined below, as well as authorized volunteers who have purchasing responsibilities for the City.

(7) Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine repair, operation, or maintenance of existing structures, buildings, or real property. Construction is a type of service.

(8) Contract means all types of City agreements, regardless of what their title is, used for the purchase of goods or services. The term includes awards and notices of award, contracts of fixed price and cost plus a fixed fee, incentive agreements, contracts providing issuance of job or task orders, leases, letter contracts, letter extensions to existing contracts or agreements and Purchase Orders with contractors. The term includes supplemental agreements with respect to any of the foregoing.

(9) Contractor means any person or business having a contract with Tooele City Corporation.

(10) Credit Card means a small plastic card issued by a bank, business, etc., allowing the holder to purchase goods or services on credit.

(11) Department Head means the appointed director of each of the several administrative departments. The term Department Head includes authorized designees.

(12) Employee means an individual drawing a salary or wage from Tooele City, whether elected or not, and any part-time individual performing services for the City.

(13) Goods means supplies, materials, equipment, wares, merchandise, and similar items.

(14) Governing Body means the Tooele City Council.

(15) Line of Credit means an arrangement between a business and the City that allows purchases of goods, with an established maximum balance. An example is the line of credit at the local grocery store, Maceys.

(16) Miscellaneous Items means goods of a low-dollar value, such as expendable, minor nonexpendable, and consumable items.

(17) Person means any individual, business, committee, club, or other organization or group of individuals.

(18) Public Property means any item of real or personal property owned by the City.

(19) Purchasing means the buying, procurement, renting, leasing, acquisition, or otherwise obtaining any supplies, material, equipment, services, or construction. It also includes all functions that pertain to the obtaining of any public property including the description or requirement, selection and solicitation of sources, preparation and award to contract, and all phases of the contract administration.

(20) Purchasing Agent means the City Recorder.

(21) Purchase Order or Order means a document, with a specific number assigned, that is generated after a Purchase Requisition or Requisition has



been entered in the purchasing system. It requires approval by the Purchasing Agent; and Mayor and City Council, when applicable.

(22) Purchase Requisition or Requisition means a request that may include the technical description of the requested items(s), delivery schedule, transportation, criteria for evaluation of the vendors, suggested sources of supply, and other information available to the requesting department that may help the Purchasing Agent make written determinations and findings required by this procedure.

(23) Services mean the furnishing of labor, time, and effort, by a person, not involving the delivery of a specific end product. The term may include the furnishing of reports, which are incidental to the required performance in providing the requested services. Services includes construction.

**ATTACHMENT "A"**



**AGREEMENT**

TOOELE CITY CORPORATION, a municipal corporation of the State of Utah, (hereinafter "City"), and [NAME] of [ADDRESS], a(n) [individual/company type], (hereinafter "Contractor") enter into this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date").

Now, therefore, in consideration of the promises contained in this Agreement, the City and the Contractor agree to the following:

1. Services (Scope of Work). The Contractor shall provide the following services to the City:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
2. Disclaimer of Right of Control. Contractor shall perform its duties competently. The City disclaims any right to control the Contractor's performance of the Services.
  
3. Compensation.
  - a. Rate. The City shall pay the Contractor the sum of \$\_\_\_\_\_ for fully performing the Services, pursuant to invoice.
  - b. Total Cost Contract. This Agreement is a (Total Cost Contract.) The contract Rate includes all costs and expenses associated with the provision of the Services.
  - c. No Benefits. The parties specifically agree that as an independent contractor, Contractor neither claims nor is entitled to benefits accorded City employees.
  
4. Term of Agreement. Contractor shall fully perform the Services by [DATE].
  
5. Termination. The City may terminate this Agreement at any time. Should the City terminate this Agreement prior to the Services being fully performed, the City shall pay for those Services performed.
  
6. Indemnification and Insurance.
  - a. Contractor Liability Insurance. Contractor shall obtain and maintain liability insurance in the amount of at least \$250,000.
  - b. Contractor Indemnification. Contractor shall indemnify and hold the City and its agents harmless from all claims of liability for injury or damage caused by any act or omission of Contractor or its agents in performance of this Agreement.
  - c. Contractor Workers Compensation Insurance. Contractor shall purchase and maintain workers compensation insurance for all of its employees. If Contractor is a sole

proprietor, Contractor shall purchase and maintain workers compensation insurance or obtain an exclusion from Workers Compensation Fund of Utah.

- d. Evidence of Contractor Insurance. Contractor shall provide written evidence of liability insurance and workers compensation insurance or exclusion to the City within ten (10) days of the Effective Date. The City will not make any payments under this Agreement until it receives from Contractor the evidence of insurance.
  - e. Status Verification Indemnification. Contractor shall indemnify and hold the City and its agents harmless from all claims resulting from any violation of immigration status verification obligations contained in U.C.A. §63G-11-103 et seq.
  - f. Post-Retirement Release. Contractor shall release the City from all claims related to any alleged violation of State of Utah post-retirement employment rules, and shall complete and return to the City the attached certification and release.
7. Business License. Contractor shall obtain a Tooele City business license as required by Tooele City Code §5-1-1 et seq.
  8. Complete Agreement. This Agreement is the only agreement or understanding between the parties, and may be modified or amended only by a written document signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

TOOELE CITY CORPORATION

CONTRACTOR

\_\_\_\_\_  
Debra E. Winn, Tooele City Mayor

\_\_\_\_\_  
Signature  
Print Name/Title: \_\_\_\_\_  
\_\_\_\_\_

Attest:

\_\_\_\_\_  
Michelle Y. Pitt, Tooele City Recorder

SEAL

Approved as to form:

\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

(Revised 05/24/2017)



**ATTACHMENT "B"**



**UTAH RETIREMENT SYSTEMS  
POST-EMPLOYMENT/POST-RETIREMENT  
RESTRICTIONS ACT CERTIFICATION &  
RELEASE**

Tooele City is a Utah Retirement System (URS) participating agency. As a participating agency, post-retirement employment/vendor/contractor rules apply. Post-retirement employment means returning to work either on our payroll or as a vendor/contractor for a URS participating employer following your retirement date with the Utah Retirement Systems. Different standards apply depending on whether you return to work within one year or after one year from your retirement date with URS.

You must separate from employment (including part-time and vendor/contractor arrangements) with any participating employer for one year following your retirement date with URS, unless eligible exclusions apply.

You are responsible for understanding post-retirement employment rules and ensuring there is no violation of such rules by providing services to Tooele City Corporation. **If you have any questions, call the URS office at 801-366-7770 or 800-695-4877 before you begin any work for or provide any services to Tooele City.**

**CHECK APPLICABLE BOX:**

- Contractor (a sole proprietor) certifies that he or she is NOT a Utah State Retirement Systems (URS) retiree and acknowledges that should he/she retire from the URS system in the future, he/she assumes all responsibility for compliance with post-retirement reemployment restrictions, notifications, and/or penalties that may occur at any time in the future.
- Contractor (on behalf of a partnership, LLC, company, or corporation) certifies that NO officer or principal is a Utah State Retirement Systems (URS) retiree and acknowledges that should he/she retire from the URS system in the future, he/she assumes all responsibility for compliance with post-retirement reemployment restrictions, notifications, and/or penalties that may occur at any time in the future.
- Contractor certifies that following contractor(s), officer(s) or principal(s) of the business ARE Utah State Retirement Systems (URS) retiree(s). Contractor further certifies that the URS office has been properly notified of post-retirement reemployment of such individuals. Contractor assumes all responsibility for compliance with post-retirement reemployment restrictions, notifications, and or/penalties that may occur at any time in the future if found to be in violation. URS Retirees:

Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

[State law requires that the City, through Human Resources, provide such information to URS.]

As a condition of doing business with Tooele City, you hereby accept responsibility and waive all claims of joint liability against Tooele City for any violations of the URS post-retirement re-employment/vendor/contractor rules.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

**ATTACHMENT "C"**

**SAMPLE OF  
INVITATION TO BID  
(NOT SEALED)**

Tooele City  
90 North Main  
Tooele, Utah 84074

Notice is hereby given that Tooele City Corporation Parks and Recreation Department (OWNER) will accept bids for (list service such as: lawn manicure services, to include mowing and edging, for Smelter Park (800 E. Smelter Road) and Settler's Park (44 W. 500 S.)).

Bids will be received by OWNER located at 90 N. Main St., Tooele, Utah 84074 until (time and dated, such as: 5:00 p.m. on Friday, March 11, 2016).

All communication relative to this project shall be directed to the Parks and Recreation Maintenance Supervisor, 435-843-2143.

The OWNER reserves the right to reject any or all bids; or to accept or reject the whole or any part of any bid; to award schedules separately or together to contractors, or to waive any informality or technicality in any bid in the best interest of the City. Only bids giving a firm quotation properly signed will be accepted.



**TOOELE CITY CORPORATION**

**ORDINANCE 2019-18**

**AN ORDINANCE OF THE TOOELE CITY COUNCIL AMENDING THE TOOELE CITY ZONING MAP FOR PROPERTY IN THE LEXINGTON GREENS AT OVERLAKE DEVELOPMENT LOCATED NEAR 600 WEST 1200 NORTH.**

WHEREAS, Utah Code §10-9a-401, *et seq.*, requires and provides for the adoption of a “comprehensive, long-range plan” (hereinafter the “General Plan”) by each Utah city and town, which General Plan contemplates and provides direction for (a) “present and future needs of the community” and (b) “growth and development of all or any part of the land within the municipality”; and,

WHEREAS, the Tooele City General Plan includes various elements, including water, sewer, transportation, and land use. The Tooele City Council adopted the Land Use Element of the Tooele City General Plan, after duly-noticed public hearings, by Ordinance 1998-39, on December 16, 1998, by a vote of 5-0; and,

WHEREAS, the Land Use Element (hereinafter the “Land Use Plan”) of the General Plan establishes Tooele City’s general land use policies, which have been adopted by Ordinance 1998-39 as a Tooele City ordinance, and which set forth appropriate Use Designations for land in Tooele City (e.g., residential, commercial, industrial, open space); and,

WHEREAS, the Land Use Plan reflects the findings of Tooele City’s elected officials regarding the appropriate range, placement, and configuration of land uses within the City, which findings are based in part upon the recommendations of land use and planning professionals, Planning Commission recommendations, public comment, and other relevant considerations; and,

WHEREAS, Utah Code §10-9a-501, *et seq.*, provides for the enactment of “land use [i.e., zoning] ordinances and a zoning map” that constitute a portion of the City’s regulations (hereinafter “Zoning”) for land use and development, establishing order and standards under which land may be developed in Tooele City; and,

WHEREAS, a fundamental purpose of the Land Use Plan is to guide and inform the recommendations of the Planning Commission and the decisions of the City Council about the Zoning designations assigned to land within the City (e.g., R1-10 residential, neighborhood commercial (NC), light industrial (LI)); and,

WHEREAS, the property subject to the original and revised rezone petitions is subject to that certain Settlement Agreement dated August 6, 2014, which provided, in relevant part, that the property owners and Tooele City would work together to develop an amendment to the Land Use Element of the Tooele City General Plan to designate areas intended for residential and other uses, which amendment would be the basis for approval of land use applications, including rezone petitions, for the property (see Section 9); and,



WHEREAS, on February 4, 2015, the City Council approved Ordinance 2015-04, an ordinance of the Tooele City Council amending the Tooele City General Plan Lane Use Element and Land Use Map, and assigning base zoning for the Overlake properties, which ordinance identified an Area A comprised of approximately 1,696 acres of residential property in which a broad range of zoning districts could be considered, from the highest density residential zoning district (HDR, allowing up to 16 dwelling units to the acre) to the lowest-density residential district (MU-160, requiring a 160-acre lot), and anything in between, and in which the base zoning or holding zone for the residential areas was established to be the R1-7 single-family zoning district; and,

WHEREAS, Ordinance 2015-04 contemplated that the City would work with property owners to approve appropriate zoning classifications to accommodate the specific land uses requested by owners as contemplated in the Land Use Plan amendment approved by the ordinance; and,

WHEREAS, by the Tooele City Charter (Section 2-02), Utah Code (Chapter 10-3b Part 2), and the Tooele City Code (Section 1-5-2), the City Council exercises all legislative policy-making powers and functions of the City, which include land use policy, both in the General Plan and Zoning ordinances, under which the authority the City Council exercises the exclusive prerogative of deciding which land use decisions are in the best interest of Tooele City, utilizing the reasonably debatable legal standard established for legislative decision-making; and,

WHEREAS, this Ordinance establishes the legislative land use policy of the City Council regarding the zoning designations for the subject property as being in the best interest of Tooele City because it affords a reasonable, flexible, and generous use of residential land while minimizing, to the extent possible, the adverse impacts of relatively high density development on transportation, water distribution, and sewer collection systems; and,

WHEREAS, the City has received an application for Zoning amendments for properties located near 600 West 1200 North, as shown in the attached **Exhibit A**; and,

WHEREAS, on June 12, 2019, the Planning Commission convened a duly noticed public hearing, accepted written and verbal comment, and voted to forward its recommendation to the City Council (see Planning Commission minutes attached as **Exhibit B**); and,

WHEREAS, on \_\_\_\_\_, the City Council convened a duly-advertised public hearing:

NOW, THEREFORE, BE IT ORDAINED BY THE TOOEELE CITY COUNCIL that:

1. this Ordinance and the zoning amendments proposed therein are in the best interest of the City in that it will bring an increased variety of housing types and styles for those in various stages of life and is consistent with the desires of the affected property owners], and are consistent with the General Plan and Land Use Plan; and,

2. the Zoning Map is hereby amended for the property located near 600 West 1200 North as illustrated in **Exhibit A**, attached.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective immediately upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

TOOELE CITY COUNCIL

(For)

(Against)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

_____	_____
-------	-------

ATTEST:

\_\_\_\_\_  
Sharon Dawson, City Recorder

SEAL

Approved as to Form:

\_\_\_\_\_  
Roger Baker, Tooele City Attorney



**Exhibit A**

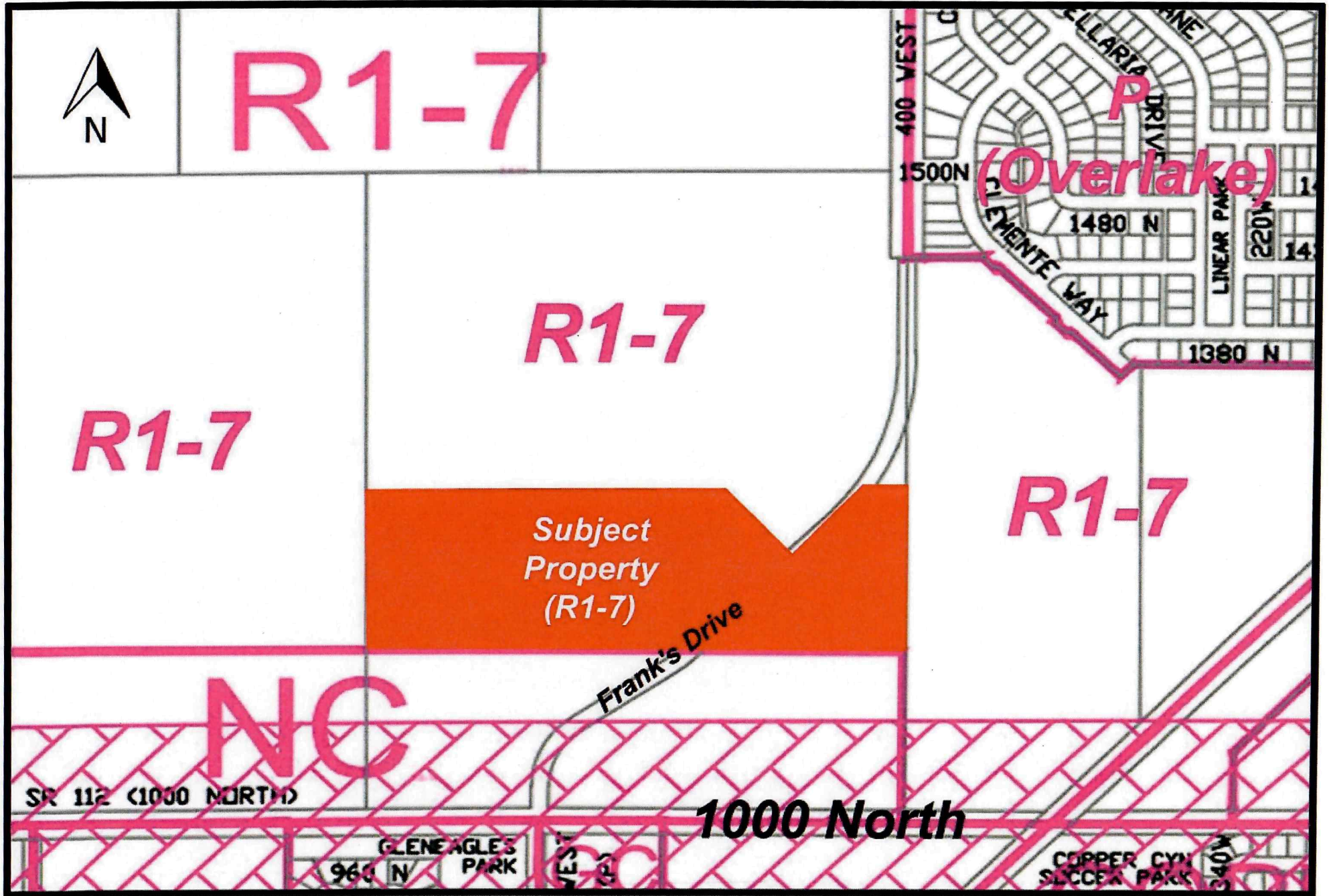
**Application for Zoning Amendment**

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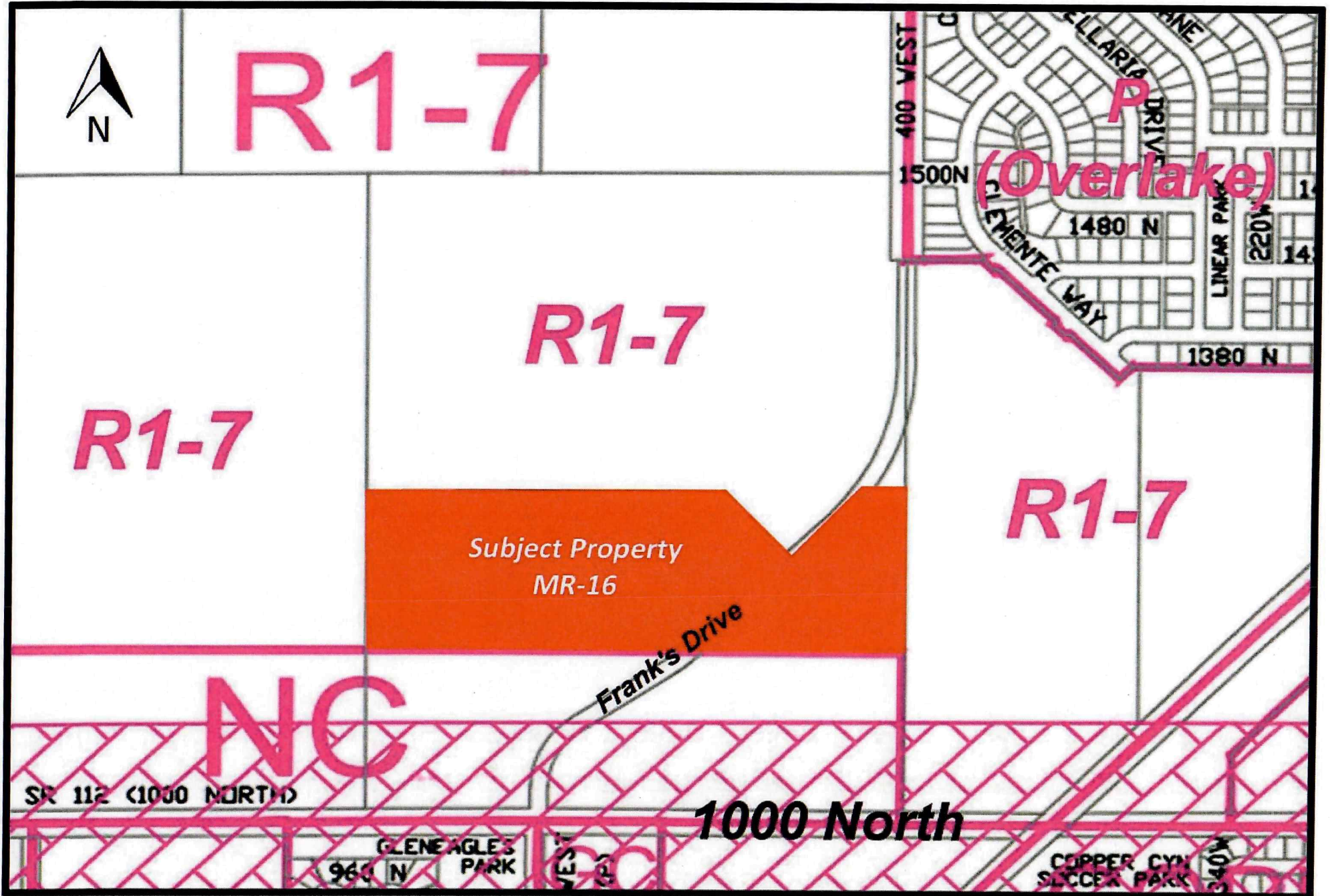
# Lexington Greens Zoning Map Amendment



Current Zoning



# Lexington Greens Zoning Map Amendment



**Proposed Zoning**



## **Exhibit B**

### **Planning Commission Minutes**

**STAFF REPORT**

June 3, 2019

**To:** Tooele City Planning Commission  
Business Date: June 12, 2019

**From:** Planning Division  
Community Development Department

**Prepared By:** Andrew Aagard, City Planner / Zoning Administrator

**Re: Lexington Greens – Zoning Map Amendment Request**

Application No.: P19-379  
Applicant: Charles Akerlow, representing Zenith Tooele, LLC  
Project Location: Approximately 600 West 1200 North  
Zoning: R1-7 Residential Zone  
Acreage: 32.26 Acres (Approximately 1,405,245 ft<sup>2</sup>)  
Request: Request for approval of a Zoning Map Amendment in the R1-7 Residential zone regarding reassignment of the subject properties to the MR-16 Multi-Family Residential zoning district.

**BACKGROUND**

This application is a request for approval of a Zoning Map Amendment for approximately 32.26 acres located, at approximately 600 West 1200 North. The property is currently zoned R1-7 Residential. The applicant is requesting that a Zoning Map Amendment to the MR-16 Multi-Family Residential zone be approved to allow development of the currently vacant site as townhouses, cottage homes, senior living homes and apartment units.

**ANALYSIS**

*General Plan and Zoning.* The Land Use Map of the General Plan calls for the Residential land use designation for the subject property. The property has been assigned the R1-7 Residential zoning classification, supporting approximately one dwelling unit units per acre. The purpose of the MR-16 (HDR) zone is to “provide an environment and opportunities for high density residential uses, including single family detached and attached residential units, apartments, condominiums and townhouses.” Typical uses include multi-family dwellings in appropriate locations within the City. Also allowed are parks, open space areas, pedestrian pathways, trails and walkways, utility facilities and public service uses required to meet the needs of the citizens of the City.” The R1-7 Residential zoning designation is identified by the General Plan as a preferred zoning classification for the Residential land use designation. Properties to the north, east and west of the subject property are zoned R1-7 Residential. Property to the south of the subject property has a zoning classification of NC Neighborhood Commercial. Mapping pertinent to the subject request can be found in Exhibit “A” to this report.

The R1-7 Residential zone that permits single-family and two-family dwellings. It limits density to approximately 5 units per acre and is Tooele City’s most dense single-family zone. The R1-7 zone does not permit multi-family dwellings such as three and four family dwellings, apartments, townhomes, etc. As the property is currently zoned and considering 20% of the property for public infrastructure, the property could yield approximately 130 residential dwelling units.

The MR-16 Multi-Family Residential zone is almost the exact opposite of the R1-7 Residential zone. Permitted within this zone are three family dwellings and greater. Townhouses, condominiums, apartments and other multi-family dwellings are permitted up to a maximum density of 16 dwelling units per acre. The MR-16 zone prohibits single-family dwellings. If the property is rezoned to MR-16 and considering 20% of the property for public infrastructure, the property could yield approximately 400 residential dwelling units.

Site Plan Layout. The applicant has provided a concept plan that demonstrates how they would like to divide the property into various housing developments and the number of units and acres associated with that housing type. This map is included for reference purposes only and does not guarantee that the developer will yield the number of units indicated as road dedication, storm water management basins, open space requirements, parking requirements and other issues may cause some variations in unit numbers.

Criteria For Approval. The criteria for review and potential approval of a Zoning Map Amendment request is found in Sections 7-1A-7 of the Tooele City Code. This section depicts the standard of review for such requests as:

- (1) No amendment to the Zoning Ordinance or Zoning Districts Map may be recommended by the Planning Commission or approved by the City Council unless such amendment or conditions thereto are consistent with the General Plan. In considering a Zoning Ordinance or Zoning Districts Map amendment, the applicant shall identify, and the City Staff, Planning Commission, and City Council may consider, the following factors, among others:
  - (a) The effect of the proposed amendment on the character of the surrounding area.
  - (b) Consistency with the goals and policies of the General Plan and the General Plan Land Use Map.
  - (c) Consistency and compatibility with the General Plan Land Use Map for adjoining and nearby properties.
  - (d) The suitability of the properties for the uses proposed viz. a. viz. the suitability of the properties for the uses identified by the General Plan.
  - (e) Whether a change in the uses allowed for the affected properties will unduly affect the uses or proposed uses for adjoining and nearby properties.
  - (f) The overall community benefit of the proposed amendment.

## **REVIEWS**

Planning Division Review. The Tooele City Planning Division has completed their review of the Zoning Map Amendment submission and has issued the following findings:

1. Development of the property in the R1-7 Residential zone could yield approximately 130 new residential dwelling units after accounting for 20% of the property for public infrastructure.
2. Development of the property in the MR-16 Multi-Family Residential zone could yield approximately 400 new residential dwelling units after accounting for 20% of the property for public infrastructure.
3. There are significant differences between the R1-7 and MR-16 zoning districts pertaining to uses and density.
4. The Planning Commission should consider maximum density that the proposed zone could yield when making their recommendation. Although the attached plans



demonstrate this applicant's proposals for the property, the property could be sold, plans abandoned and future development plans could increase density beyond what the current applicant is proposing.

*Noticing.* The applicant has expressed their desire to rezone the subject property and do so in a manner which is compliant with the City Code. As such, notice has been properly issued in the manner outlined in the City and State Codes.

### **STAFF RECOMMENDATION**

Staff recommends the Planning Commission carefully weigh this request for a Zoning Map Amendment according to the appropriate tenets of the Utah State Code and the Tooele City Code, particularly Section 7-1A-7(1) and render a decision in the best interest of the community with any conditions deemed appropriate and based on specific findings to address the necessary criteria for making such decisions.

Potential topics for findings that the Commission should consider in rendering a decision:

1. The effect of the proposed application on the character of the surrounding area.
2. The degree to which the proposed application is consistent with the intent, goals, and objectives of any applicable master plan.
3. The degree to which the proposed application is consistent with the intent, goals, and objectives of the Tooele City General Plan.
4. The degree to which the proposed application is consistent with the requirements and provisions of the Tooele City Code.
5. The suitability of the properties for the uses proposed.
6. The degree to which the proposed application will or will not be deleterious to the health, safety, and general welfare of the general public or the residents of adjacent properties.
7. The degree to which the proposed application conforms to the general aesthetic and physical development of the area.
8. Whether a change in the uses allowed for the affected properties will unduly affect the uses or proposed uses for adjoining and nearby properties.
9. The overall community benefit of the proposed amendment.
10. Whether or not public services in the area are adequate to support the subject development.
11. Other findings the Commission deems appropriate to base their decision upon for the proposed application.

### **MODEL MOTIONS**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Lexington Greens Zoning Map Amendment Request by Zenith Tooele, LLC to reassign the subject property to the MR-16 Multi-Family Residential zoning district, application number P19-379, based on the findings listed in the Staff Report dated June 3, 2019:”

1. List any additional findings and conditions...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Lexington Greens Zoning Map Amendment Request by Zenith Tooele, LLC to reassign the subject property to the MR-16 Multi-Family Residential zoning district, application number P19-379, based on the following findings:”

1. List any findings...



**EXHIBIT A**  
**MAPPING PERTINENT TO THE LEXINGTON GREENS ZONING MAP**  
**AMENDMENT**

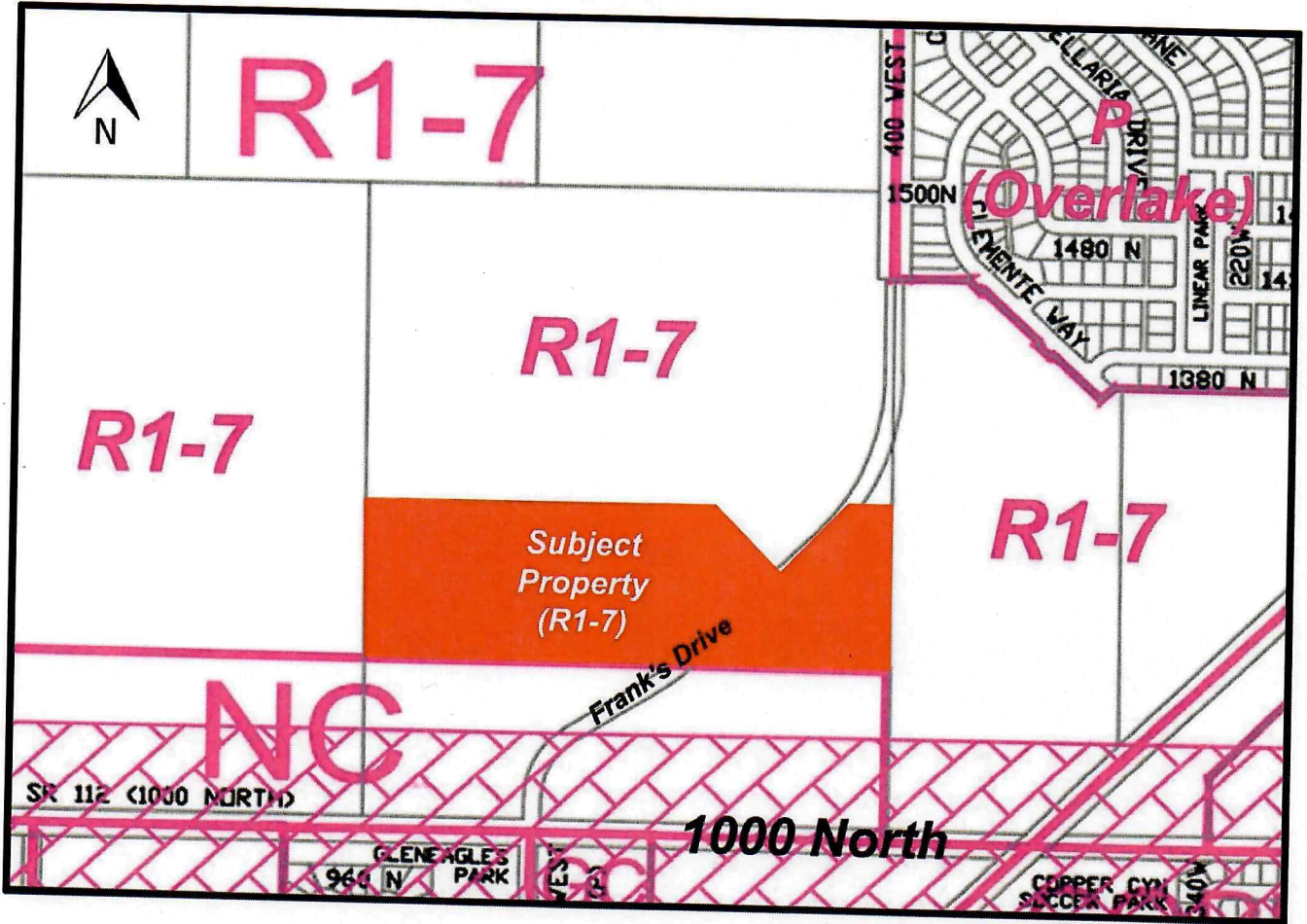
**Lexington Greens Zoning Map Amendment**



**Aerial View**



Lexington Greens Zoning Map Amendment



Current Zoning

**EXHIBIT B**

**APPLICANT SUBMITTED INFORMATION**

Zoning, General Plan, & Master Plan  
Map Amendment Application

Community Development Department  
90 North Main Street, Tooele, UT 84074  
(435) 843-2132 Fax (435) 843-2139  
[www.tooelecity.org](http://www.tooelecity.org)



*Notice:* The applicant must submit copies of the map amendment proposal to be reviewed by the City in accordance with the terms of the Tooele City Code. Once plans for a map amendment proposal are submitted, the plans are subject to compliance reviews by the various city departments and may be returned to the applicant for revision if the plans are found to be inconsistent with the requirements of the City Code and all other applicable City ordinances. All submitted map amendment proposals shall be reviewed in accordance with the Tooele City Code. Submission of a map amendment proposal in no way guarantees placement of the application on any particular agenda of any City reviewing body. It is strongly advised that all applications be submitted well in advance of any anticipated deadlines.

Project Information			
Date of Submission: 5/22/19	Current Map Designation: ?	Proposed Map Designation: ?	Parcel #(s): P19-379
Project Name: Lexington Greens		Acres: 32.26	
Project Address: 600 W 1200 N, Tooele City, Utah.			
Proposed for Amendment: <input type="checkbox"/> Ordinance <input type="checkbox"/> General Plan <input checked="" type="checkbox"/> Master Plan: 1 <u>Rezone</u>			
Brief Project Summary: Change zone from R1-7 to <del>HR</del> MF-16			
Property Owner(s): Zenith Tooele LLC		Applicant(s): Zenith Tooele LLC	
Address: 2040 Murray-Holladay Rd		Address: 2040 Murray-Holladay Rd	
City: Salt Lake City	State: UT	City: Salt Lake City	State: UT
Zip: 84117		Zip: 84117	
Phone: 801-913-5959		Phone: 801-913-5959	
Contact Person: Chuck Akerlow		Address: 2040 Murray-Holladay Rd	
Phone: 801-913-5959		City: Salt Lake City	State: UT
Cellular: Same		Zip: 84117	
Fax:		Email: charles@zenithpartners.org	

\*The application you are submitting will become a public record pursuant to the provisions of the Utah State Government Records Access and Management Act (GRAMA). You are asked to furnish the information on this form for the purpose of identification and to expedite the processing of your request. This information will be used only so far as necessary for completing the transaction. If you decide not to supply the requested information, you should be aware that your application may take a longer time or may be impossible to complete. If you are an "at-risk government employee" as defined in *Utah Code Ann.* § 63-2-302.5, please inform the city employee accepting this information. Tooele City does not currently share your private, controlled or protected information with any other person or government entity.

**Note to Applicant:**

Zoning and map designations are made by ordinance. Any change of zoning or map designation is an amendment the ordinance establishing that map for which the procedures are established by city and state law. Since the procedures must be followed precisely, the time for amending the map may vary from as little as 2½ months to 6 months or more depending on the size and complexity of the application and the timing.

For Office Use Only			
Received By: CA	Date Received: 5/22/19	Fees: 4,226	App #: 00348504

AD



ZONING, GENERAL PLAN, & MASTER PLAN MAP  
AMENDMENT APPLICATION

**LEXINGTON GREENS RE-ZONE APPLICATION**

1. Currently the present zoning of the subject property is R1-7. **It is requested that the Subject Property be re-zoned HDR—High Density Residential.**
2. The proposed zoning is consistent with the current land use designation because of the following:

This Subject Property is part of the Overlake properties which are governed by a Settlement Agreement dated August 14, 2014 by and between the City of Tooele and the Overlake Developers. That Agreement provided that the “City agrees and acknowledges that this Agreement shall vest in the Developer Parties, as owners of the Overlake Properties, and their permitted assigns, the right to construct a maximum of 4800 residential units (the actual number to be determined by the Developer Parties) on the Overlake Properties in varying densities including single-family, multi-family, apartments and mixed uses in appropriate areas as determined in the General Plan amendment to be adopted” by the City Council. On February 4, 2015, the Tooele City Council adopted Ordinance 2015-04 named An Ordinance of the Tooele City Council, Amending the Tooele City General Plan Land Use Element and Land Use Map, and Assigning Base Zoning, for the Overlake Properties. Attached to the Ordinance was an Exhibit called “Overlake Draft Land Use Designations.” Among the many provisions of the Ordinance, it provided that changes to the zoning could be made in Area “A” which is where the Subject Property is located. The Ordinance stated that “the official Tooele City Zoning Map hereby assigns Area “A” to the R1-7 zone to permit development thereon or to act as a holding zone until such time as specific development plans are submitted to the City that vary from the R1-7 zone. . .” One of the zones permitted in this area was HDR.

We believe that now is the time to review an alteration to this plan and provide for some density housing to serve Tooele City’s workforce housing needs while providing a “transition zone” between single family and general commercial.

3. The proposed zoning is similar or compatible to the current zoning in the surrounding area because the surrounding area is also governed by the same Ordinance 2015-04 as is the Applicant's property. Owners and developers of the surrounding properties have elected to deliver single-family lots only and have not proposed alternative housing for those who desire a difference living design.
  
4. The proposed zoning is suitable for the existing uses of the subject property(s). The Subject Property abuts a General Commercial zone. Good sensible planning would suggest that a developer not back up a single-family subdivision to a General Commercial zone. Instead a transition through alternative housing is a better way to plan and layout a master planned community such as Lexington Greens. The requested zoning change will permit the following types of uses:
  - a) Townhouse at 12 units to the acre
  - b) Cottage Homes at 8 units to the acre
  - c) Senior Living Homes at 5 to the acre
  - d) Apartments at 20 units to the acre

The enclosed plan contemplates 78 SFR Cottage Homes, 108 Town Homes, 26 Senior Living Homes and 142 Apartment Units plus walking trails and small parks. The overall density is 11.8 units per acre which is much lower than that allowed in the HDR zone. In addition, this zoning and subsequent master plan will provide at least three different housing types. This plan will also provide more residents in the area to provide a reason for the development of the General Commercial zone.

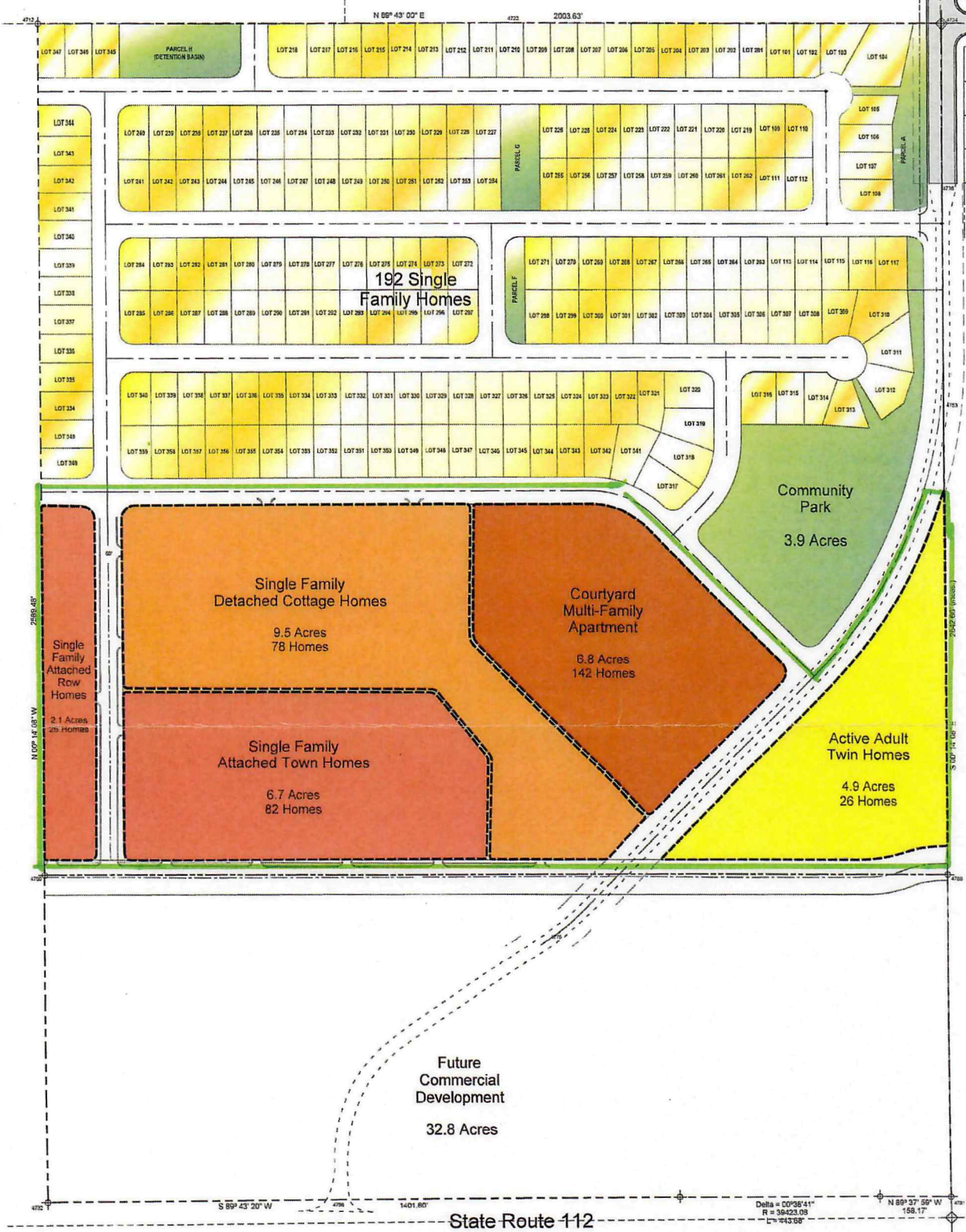
5. The proposed zoning promotes the goals and objectives of Tooele City. As recorded in the Moderate-Income Housing Plan Tooele City—2018 Tooele City demonstrates its openness to a variety of housing types. The document summarizes the Community Sentiment as follows: "The consensus of the hearings was for a balanced mix of housing styles which would permit residents to select from single family homes, condominiums, townhomes, apartments, mobile homes and senior housing." The Plan goes on to say that "Tooele City does not regularly change zoning on its own, however, the Land Use Element requires a balance and diverse mix of residential housing units and lot sizes and each rezone request should comply with the requirements of the City's Land Use Element."

This proposed zoning request at Lexington Greens is in conformity with City goals and objectives as reflected in the Moderate-Income Housing Plan and in the Settlement Agreement and Ordinance 2015-04. It meets the sentiments of the residents of the City of Tooele as expressed in the Moderate-Income Housing Plan and reflects the best of land use planning principles by providing an orderly transition from single family to commercial land uses.



The information depicted on this plan is preliminary in nature and is subject to modification and revision. All land uses, acreage calculations, density calculations, lot sizes, road widths and locations of various components of the plan are based on preliminary data, topography boundaries and design parameters. This drawing is not intended for engineering or construction purposes.

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Tully Design



Concept 6.1  
**Lexington Greens  
at Overlake**  
Tooele, Utah

546 Total Dwelling Units
192 SFR Lots @ 7K
78 SFR Cottage Lots
26 Active Adult Twin Homes
108 Town / Row Homes
142 Courtyard Units
4.3 Acre Community Use
86.4 Gross Acres
6.3 Units/ Acre

North arrow pointing up.

Scale bar: 0' to 400'.

April 25, 2019 ©

Zenith Development logo.

Tully Design logo: Landscape Architecture, Community Design, Land Planning.

Small text: Salt Lake City, Utah (and) 804001



**TOOELE CITY CORPORATION**

**RESOLUTION 2019-59**

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING A CONTRACT WITH IMPACT CONTRACTORS INC. FOR THE DEMOLITION OF THE OBSOLETE WASTE WATER TREATMENT FACILITY.**

WHEREAS, Tooele City has a waste water treatment facility which is obsolete and no longer suitable for use within the city sanitary sewer and water reclamation systems; and,

WHEREAS, this obsolete waste water treatment facility is an attractive nuisance and poses a significant potential safety risk to trespass, vandalism, and injury; and,

WHEREAS, the City Administration intent is to abandon several of the existing structures at the obsolete waste water treatment facility in place by demolishing the structures and covering the demolished concrete, block, and rebar debris with soil; and,

WHEREAS, because there will be insufficient below ground storage for all debris, surplus concrete, block, and rebar material will be removed and disposed of off site; and,

WHEREAS, the City solicited public bids for demolition of the obsolete waste water treatment facility in accordance with the procedures of §11-39-101 *et seq.* and §72-6-108, Utah Code Annotated, as amended; and,

WHEREAS, Impact Contractors Inc. has submitted a cost proposal of Sixty-Four Thousand Nine Hundred Seventy-Five Dollars (\$64,975.00), which is the lowest responsible responsive bid. This bid amount includes demolition and offsite disposal of up to 1,000 tons of surplus concrete, block, and rebar materials. A copy of the Bid Tabulation is attached as Exhibit A, and the form contract is attached as Exhibit B:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Mayor is hereby authorized to sign a contract (Exhibit B) with Impact Contractors Inc. for Demolition of the Obsolete Waste Water Treatment Facility for a sum not to exceed Sixty-Four Thousand Nine Hundred Seventy-Five Dollars (\$64,975.00), plus an additional Three Thousand Two Hundred Fifty Dollars (\$3,250.00) contingency (5%), which may be used as necessary for changed conditions at the discretion of the Mayor.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

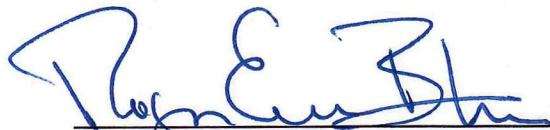
  
\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

EXHIBIT A

Bid Tabulation





**Bid Tabulation**  
**Demolition of Obsolete Waste Water Treatment Plant**  
**Bid Opening Date: July 30, 2019**

	Demolition WWTP	Offsite Disposal		Total Cost of Demolition and Removal of Deck and Walls
		Unit Price	*Offsite Disposal	
Impact Contractors Inc	\$49,975.00	\$15.00	\$15,000.00	\$64,975.00
VanCon Inc.	\$275,600.00	\$200.00	\$200,000.00	\$475,600.00

\* Based upon estimated 1,000 tons surplus concrete and rebar

**EXHIBIT B**

**Agreement**

**DOCUMENT 00 52 00**

**AGREEMENT**

**PART 1 GENERAL**

**1.1 CONTRACTOR**

- A. Name: Impact Contractors Inc.
- B. Address: 555 South Iron Rose Place, Salt Lake City, Utah 84104
- C. Telephone number: (801) 973-7777
- D. Facsimile number: (801) 973-0051

**1.2 OWNER**

- A. The name of the OWNER is Tooele City Corporation

**1.3 CONSTRUCTION CONTRACT**

- A. The Demolition Contract is known as

**Demolition of Obsolete Waste Water Treatment Facility**

**1.4 ENGINEER**

- A. Paul Hansen Associates, L.L.C. is the OWNER's representative and agent for this Construction Contract who has the rights, authority and duties assigned to the ENGINEER in the Contract Documents.

**PART 2 TIME AND MONEY CONSIDERATIONS**

**2.1 CONTRACT PRICE**

- A. The Contract Price includes the cost of the Work specified in the Contract Documents, plus the cost of all bonds, insurance, permits, fees, and all charges, expenses or assessments of whatever kind or character.
- B. The Schedules of Prices awarded from the Bid Schedule are as follows.
  - 1. Base Bid.
  - 2. \_\_\_\_\_
  - 3. \_\_\_\_\_



4. \_\_\_\_\_

- C. An Agreement Supplement [  ] is, [  ] is not attached to this Agreement.
- D. Based upon the above awarded schedules and the Agreement Supplement (if any), the Contract Price awarded is: Sixty Four Thousand Nine Hundred Seventy Five Dollars (\$64,975.00). (This price is based upon the base bid demolition amount of \$49,975 and a maximum of \$15,000 to be used for off site hauling and disposal of surplus concrete, block and rebar, as directed by the Owner.)

## 2.2 CONTRACT TIME

- A. The Work shall be completed by December 31, 2019.

## 2.3 PUNCH LIST TIME

- A. The Work will be complete and ready for final payment within 5 days after the date CONTRACTOR receives ENGINEER's Final Inspection Punch List unless exemptions of specific items are granted by ENGINEER in writing or an exception has been specified in the Contract Documents.
- B. Permitting the CONTRACTOR to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the OWNER of any of OWNER's rights under this Agreement.

## 2.4 LIQUIDATED DAMAGES

- A. Time is the essence of the Contract Documents. CONTRACTOR agrees that OWNER will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Part 12 of the General Conditions. CONTRACTOR and OWNER agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late completion, CONTRACTOR agrees to pay the following sums to the OWNER as liquidated damages and not as a penalty.
- 1. Late Contract Time Completion:**  
Five Hundred dollars and 00 cents (\$ 500.00 ) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in Article 14.5 of the General Conditions.
  - 2. Late Punch List Time Completion:** 50% of the amount specified for Late Contract Time Completion for each day or part thereof if the Work remains incomplete after the Punch List Time. The Punch List shall be considered

delivered on the date it is transmitted by facsimile, hand delivery or received by the CONTRACTOR by certified mail.

3. **Interruption of Public Services:** No interruption of public services shall be caused by CONTRACTOR, its agents or employees, without the ENGINEER's prior written approval. OWNER and CONTRACTOR agree that in the event OWNER suffers damages from such interruption, the amount of liquidated damages stipulated below shall not be deemed to be a limitation upon OWNER's right to recover the full amount of such damages.

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof of any utility interruption caused by the CONTRACTOR without the ENGINEER's prior written authorization.

- C. **Survey Monuments:** No land survey monument shall be disturbed or moved until ENGINEER has been properly notified and the ENGINEER's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that CONTRACTOR will pay as liquidated damages the sum of (\$500.00) to cover such damage and expense.
- D. **Deduct Damages from Moneys Owed CONTRACTOR:** OWNER shall be entitled to deduct and retain liquidated damages out of any money which may be due or become due the CONTRACTOR. To the extent that the liquidated damages exceed any amounts that would otherwise be due the CONTRACTOR, the CONTRACTOR shall be liable for such amounts and shall return such excess to the OWNER.

### **PART 3 EXECUTION**

#### **3.1 EFFECTIVE DATE**

- A. OWNER and CONTRACTOR execute this Agreement and declare it in effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

#### **3.2 CONTRACTOR'S SUBSCRIPTION AND ACKNOWLEDGMENT**

- A. CONTRACTOR's signature: \_\_\_\_\_
- B. Please print name here: \_\_\_\_\_
- C. Title: \_\_\_\_\_
- D. CONTRACTOR's Utah license number: \_\_\_\_\_







**TOOELE CITY CORPORATION**

**RESOLUTION 2019-60**

**A RESOLUTION OF THE TOOELE CITY COUNCIL AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH BROKEN ARROW CONSTRUCTION FOR THE DROUBAY ROAD STORM DRAIN PROJECT (VINE STREET TO SMELTER ROAD).**

WHEREAS, during heavy storm events, Tooele City experiences significant storm water flows along the intersection of 820 East and Vine Street and Droubay Road between Vine Street and Smelter Road, which result in street flooding and related traffic impairment; and,

WHEREAS, the City Administration proposes a project to install storm water infrastructure extending from the intersection of 820 East and Vine Street, running north along Droubay Road between Vine Street and Smelter Road (the Project); and,

WHEREAS, Tooele City has enacted a Storm Water Utility Fee, and created a storm water enterprise fund funded by that Fee, for the purpose of mitigating storm water conveyance within City limits, and has collected sufficient funds to pay for the Project; and,

WHEREAS, the City accepted public bids for construction of the Project in accordance with the procedures of §11-39-101 *et seq.*, Utah Code Annotated, as amended; and,

WHEREAS, Broken Arrow Construction has submitted a cost proposal of Six Hundred Nine Thousand Five Hundred Fifty-Three Dollars and Seventeen Cents (\$609,553.17) for completion of the Project and is the lowest responsive responsible bidder. A copy of the Bid Tabulation is attached as Exhibit A, and the form contract is attached as Exhibit B:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Mayor is hereby authorized to sign a contract (Exhibit B) with Broken Arrow Construction for construction of the Droubay Storm Drain Project (Vine Street to Smelter Road) for a sum not to exceed Six Hundred Nine Thousand Five Hundred Fifty-Three Dollars and Seventeen Cents (\$609,553.17) , plus an additional Thirty Thousand Five Hundred Fifty Dollars (\$30,500.00) contingency (5%), which may be used as necessary for changed conditions at the discretion of the Mayor.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

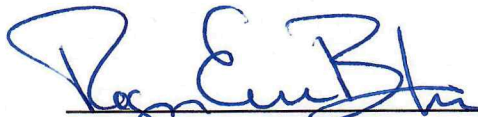
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

SEAL

Approved as to Form:

  
\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

**EXHIBIT A**

**Bid Tabulation**





**BID TABULATION**  
 2019 Droubay Storm Drain Project (Vine Street to Smelter Road)  
 Bid Opening Date: July 30, 2019

Item No.	Description	Estimated Quantity	Unit	Broken Arrow Const.		Stapp Construction		England Construction	
				Unit Price	Total	Unit Price	Total	Unit Price	Total
<b>GENERAL</b>									
1	Mobilization	1	LS	\$42,166.67	\$42,166.67	\$110,000.00	\$110,000.00	\$185,000.00	\$185,000.00
2	Construction Layout	1	LS	\$843.33	\$843.33	\$8,000.00	\$8,000.00	\$7,500.00	\$7,500.00
<b>DEMOLITION</b>									
3	Demolition and Disposal of Existing Storm Drain Pipe and Manhole	1	LS	\$8,697.44	\$8,697.44	\$2,500.00	\$2,500.00	\$7,500.00	\$7,500.00
4	Demolition and Disposal of Existing Concrete Vault	1	LS	\$4,318.57	\$4,318.57	\$2,500.00	\$2,500.00	\$9,000.00	\$9,000.00
<b>STORM DRAIN</b>									
5	Core Existing Storm Drain Box Culvert	1	LS	\$1,573.88	\$1,573.88	\$2,000.00	\$2,000.00	\$1,700.00	\$1,700.00
6	Furnish Concrete Collar Around 24" Storm Drain at Box Culvert	1	LS	\$1,227.82	\$1,227.82	\$5,500.00	\$5,500.00	\$550.00	\$550.00
7	Furnish and Install 15" Dia. NRCP Storm Drain Pipe	45	LF	\$50.52	\$2,273.40	\$70.00	\$3,150.00	\$105.00	\$4,725.00
8	Furnish and Install 24" Dia. RCP Storm Drain Pipe	3,750	LF	\$65.67	\$246,262.50	\$85.00	\$318,750.00	\$125.00	\$468,750.00
9	Furnish and Install 4' Dia. Storm Drain Manhole	7	EA	\$3,646.95	\$25,528.65	\$4,800.00	\$33,600.00	\$4,800.00	\$33,600.00
10	Furnish and Install 5' Dia. Storm Drain Manhole	8	EA	\$4,210.17	\$33,681.36	\$5,500.00	\$44,000.00	\$5,600.00	\$44,800.00



**BID TABULATION**  
 2019 Droubay Storm Drain Project (Vine Street to Smelter Road)  
 Bid Opening Date: July 30, 2019

	tion	Estimated Quantity	Unit	Broken Arrow Const.		Stapp Construction		England Construction	
				Unit Price	Total	Unit Price	Total	Unit Price	Total
<b>CULINARY WATER</b>									
11	Loop Existing Secondary Water Main	2	EA	\$4,881.30	\$9,762.60	\$8,500.00	\$17,000.00	\$5,800.00	\$11,600.00
12	Loop Existing Culinary Water Main	7	EA	\$4,927.85	\$34,494.95	\$8,800.00	\$61,600.00	\$6,200.00	\$43,400.00
<b>ROADWAY / CONCRETE</b>									
13	Roadway Asphalt Repair	34,000	SF	\$5.75	\$195,500.00	\$6.00	\$204,000.00	\$5.25	\$178,500.00
14	Cart Path / Trail Asphalt Repair	200	SF	\$16.11	\$3,222.00	\$15.00	\$3,000.00	\$10.00	\$2,000.00
<b>Total</b>				\$609,553.17		\$815,600.00		\$998,625.00	
<b>COMMENTS</b>				Total price adjusted in favor of unit price Bid Item No. 12					

# EXHIBIT B

## Contract



**DOCUMENT 00 52 00**

**AGREEMENT**

**PART 1 GENERAL**

**1.1 CONTRACTOR**

- A. Name: Broken Arrow, Inc.
- B. Address: 8960 Clinton Landing Road, Lake Point, Utah 84074
- C. Telephone number: (801) 355-0527
- D. Facsimile number: (801) 252-7501

**1.2 OWNER**

- A. The name of the OWNER is Tooele City Corporation

**1.3 CONSTRUCTION CONTRACT**

- A. The Construction Contract is known as

**Droubay Storm Drain Project  
(Vine Street to Smelter Road)**

**1.4 ENGINEER**

- A. Paul Hansen Associates, L.L.C. is the OWNER's representative and agent for this Construction Contract who has the rights, authority and duties assigned to the ENGINEER in the Contract Documents.

**PART 2 TIME AND MONEY CONSIDERATIONS**

**2.1 CONTRACT PRICE**

- A. The Contract Price includes the cost of the Work specified in the Contract Documents, plus the cost of all bonds, insurance, permits, fees, and all charges, expenses or assessments of whatever kind or character.

B. The Schedules of Prices awarded from the Bid Schedule are as follows.

1. Base Bid.

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

C. An Agreement Supplement [  ] is, [  ] is not attached to this Agreement.

D. Based upon the above awarded schedules and the Agreement Supplement (if any), the Contract Price awarded is: Six Hundred Nine Thousand Five Hundred Fifty Three Dollars and Seventeen Cents (\$609,553.17).

## 2.2 CONTRACT TIME

A. Substantial Completion of the Work shall occur within 60 calendar days of the date of the Notice to Proceed. Final completion shall occur within 75 calendar days of the date of the Notice to Proceed.

B. Any time specified in work sequences in the Summary of Work shall be a part of the Contract Time. \_\_\_\_\_

## 2.3 PUNCH LIST TIME

A. The Work will be complete and ready for final payment within 5 days after the date CONTRACTOR receives ENGINEER's Final Inspection Punch List unless exemptions of specific items are granted by ENGINEER in writing or an exception has been specified in the Contract Documents.

B. Permitting the CONTRACTOR to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the OWNER of any of OWNER's rights under this Agreement.

## 2.4 LIQUIDATED DAMAGES

A. Time is the essence of the Contract Documents. CONTRACTOR agrees that OWNER will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Part 12 of the General Conditions. CONTRACTOR and OWNER agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late



completion, CONTRACTOR agrees to pay the following sums to the OWNER as liquidated damages and not as a penalty.

1. **Late Contract Time Completion:**

Five Hundred dollars and 00 cents (\$ 500.00 ) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in Article 14.5 of the General Conditions.

2. **Late Punch List Time Completion:** 50% of the amount specified for Late Contract Time Completion for each day or part thereof if the Work remains incomplete after the Punch List Time. The Punch List shall be considered delivered on the date it is transmitted by facsimile, hand delivery or received by the CONTRACTOR by certified mail.

3. **Interruption of Public Services:** No interruption of public services shall be caused by CONTRACTOR, its agents or employees, without the ENGINEER's prior written approval. OWNER and CONTRACTOR agree that in the event OWNER suffers damages from such interruption, the amount of liquidated damages stipulated below shall not be deemed to be a limitation upon OWNER's right to recover the full amount of such damages.

Five Hundred dollars and 00 cents (\$ 500.00) for each day or part thereof of any utility interruption caused by the CONTRACTOR without the ENGINEER's prior written authorization.

4. **Survey Monuments:** No land survey monument shall be disturbed or moved until ENGINEER has been properly notified and the ENGINEER's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that CONTRACTOR will pay as liquidated damages the sum of (\$500.00) to cover such damage and expense.

5. **Deduct Damages from Moneys Owed CONTRACTOR:** OWNER shall be entitled to deduct and retain liquidated damages out of any money which may be due or become due the CONTRACTOR. To the extent that the liquidated damages exceed any amounts that would otherwise be due the CONTRACTOR, the CONTRACTOR shall be liable for such amounts and shall return such excess to the OWNER.





ATTEST:

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Michelle Y. Pitt  
Tooele City Recorder

S E A L

APPROVED AS TO FORM

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Roger Evans Baker  
Tooele City Attorney

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**TOOELE CITY CORPORATION**

**RESOLUTION 2019-56**

**A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AND RATIFYING A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH APOSHIAN SOD FARMS, INC.**

WHEREAS, Tooele City and Aposhian Sod Farms, Inc. ("Aposhian") entered into the Vernon Ranch Management Agreement and Grazing Lease on July 1, 1998, under which Tooele City leased certain real property to Aposhian; and,

WHEREAS, the Lease Agreement was terminated without cause as of May 18, 2013, pursuant to Tooele City's one-hundred and twenty (120) days' notice given on January 18, 2013; and,

WHEREAS, certain disputes arose between the Parties, and on May 8, 2013, Tooele City filed an action against Aposhian in the Third Judicial District Court of Tooele County, State of Utah, Case No. 130300780 (the "Lawsuit"); and,

WHEREAS, the Lawsuit was tried to a jury in December 2016, and tried a second time to the bench in December 2018, resulting in a final judgment under which the District Court declared that Tooele City is obligated to pay Aposhian the total sum of \$1,128,513.65 (the "Judgment"); and,

WHEREAS, the Parties have both appealed the Judgment, which appeal has been pending before the Utah Court of Appeals, Case No. 20190464 (the "Appeal"); and,

WHEREAS, on or about May 22, 2019, Tooele City made a payment to Aposhian toward satisfaction of the obligation represented by the Judgment in the amount of \$112,851.37 (the "May Payment"); and,

WHEREAS, the Parties desire to resolve their claims and disputes by executing a Settlement Agreement and Mutual Release, all on the terms and conditions thereof; and,

WHEREAS, on July 23, 2019, the Parties mediated a resolution to the Lawsuit and the Appeal, as shown in the executed Settlement Agreement and Mutual Release attached as Exhibit A:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Settlement Agreement and Mutual Release with Aposhian Sod Farms, Inc., is hereby approved and ratified, and that the Mayor is hereby authorized to take all actions necessary to fulfill its terms.

This Resolution shall become effective immediately upon passage by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY COUNCIL

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

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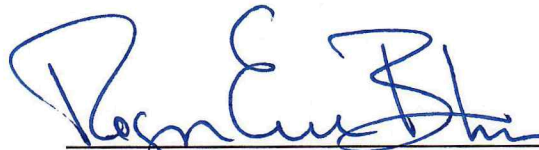
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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

  
\_\_\_\_\_  
Roger Evans Baker, Tooele City Attorney

## **Exhibit A**

### **Settlement Agreement and Mutual Release**



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "*Settlement Agreement*"), effective as of the 23rd day of July, 2019, is entered into by and between Tooele City Corporation ("*Tooele City*") and Aposhian Sod Farms, Inc. ("*Aposhian*"). Tooele City and Aposhian are sometimes referred to hereinafter as the "*Parties*" and each is a "*Party*" to this Settlement Agreement.

### RECITALS

WHEREAS, Tooele City and Aposhian entered into the Vernon Ranch Management Agreement and Grazing Lease (the "*Lease Agreement*") on July 1, 1998, under which Tooele City leased certain real property to Aposhian (the "*Property*").

WHEREAS, the Lease Agreement was terminated without cause as of May 18, 2013 pursuant to Tooele City's one-hundred and twenty (120) days' notice given on January 18, 2013.

WHEREAS, certain disputes arose between the Parties, and on May 8, 2013, Tooele City filed an action against Aposhian in the Third Judicial District Court of Tooele County, State of Utah, Case No. 130300780 (the "*Lawsuit*").

WHEREAS, the Lawsuit was tried to a jury in December 2016 and tried a second time to the bench in December 2018, resulting in a final judgment under which the district court declared that Tooele City is obligated to pay Aposhian the total sum of \$1,128,513.65 under the terms of the Lease Agreement (the "*Judgment*").

WHEREAS, the Parties have both appealed the Judgment, which appeal is currently pending before the Utah Court of Appeals, Case No. 20190464 (the "*Appeal*").

WHEREAS, on or about May 22, 2019, Tooele City made a payment to Aposhian toward satisfaction of the obligation represented by the Judgment in the amount of \$112,851.37 (the "*May Payment*").

WHEREAS, the Parties desire to resolve their claims and disputes by executing and delivering this Agreement, all on the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT

The Parties hereby agree and stipulate as follows:

1. **Payment Obligations.** To satisfy the Parties' disputes, including the Judgment and Appeal, Tooele City agrees that Aposhian is entitled to a total payment amount of \$840,000, which amount shall include the May Payment. Within five (5) business days after the execution



of this Settlement Agreement by both Parties, and formal approval of this Settlement Agreement by the Tooele City Council sitting in open session, Tooele City will pay Aposhian a one-time, lump sum payment of Seven-Hundred Twenty-Seven Thousand, One-Hundred Forty-Eight and 63/100 United States Dollars (\$727,148.63) (the "**Settlement Payment**"). Tooele City agrees present this Settlement Agreement at the next open session of the City Council, which is currently expected to be August 7, 2019. The Settlement Payment shall in the form of a check payable to BTJD, LLC or be wired to counsel for Aposhian:

Beneficiary: BTJD, LLC

Bank: Key Bank

Bank Address: 36 S State St. Suite 2609, Salt Lake City, UT 84111

ABA #: 124000737

Account #: 445010052030

2. **Dismissal of Lawsuit.** Promptly upon delivery of the Settlement Payment, the Parties shall cause their counsel to cooperate in stipulating to the dismissal of the Appeal and the Lawsuit with prejudice, each Party to bear its own attorneys' fees and costs.

3. **Release of Claims.**

3.1. **Definition of Claims.** For purposes of this Settlement Agreement, the term "**Claims**" is defined as any and all claims, administrative complaints, demands, actions, causes of action, debts, liabilities, obligations, damages and losses of every kind and nature whatsoever, whether at law or in equity, known or unknown, suspected or unsuspected, fixed or contingent that exist as of the date of this Settlement Agreement that relate or arise out of the Lease Agreement, the Property, the Lawsuit, the Judgment, or the Appeal, including Claims that were or could have been asserted in the Lawsuit against the Parties or any of their officers or employees. Notwithstanding the foregoing definition, Claims shall not include the obligations and liabilities set forth in this Settlement Agreement.

3.2. **General Release by Tooele City.** Effective upon the execution of this Settlement Agreement by both Parties, Tooele City hereby waives, releases, remises, and discharges any Claims it may have against Aposhian.

3.3. **General Release by Aposhian.** Effective upon the execution of this Settlement Agreement by both Parties, Aposhian hereby waives, releases, remises, and discharges any Claims it may have against Tooele City.

3.4. **Nonassignment of Claims.** Each Party represents and warrants that any Claims it may have against any other Party and its officers, directors, members, managers, representatives, agents, affiliates, assigns and successors have not been transferred to any person or entity whatsoever, and that it has the full right and power to grant, execute and deliver the full and complete release contained herein.

4. **Entire Agreement; Amendment.** The Parties warrant that no promise, inducement or agreement not expressed herein has been made to them in connection with this Settlement Agreement. This Settlement Agreement contains the entire agreement between the Parties.



This Settlement Agreement may not be modified, changed or altered in any way except in a writing signed by the Parties or their authorized representatives, which sets forth the change(s) to be made, and the intent of the Parties to modify or amend this Settlement Agreement.

5. **Governing Law; Attorneys' Fees.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the principles of conflicts of laws. By executing this Settlement Agreement, all parties hereto agree to submit to the exclusive jurisdiction and venue of the courts of the State of Utah, sitting without a jury, whether state courts or federal courts located in the State of Utah. The parties hereto agree not to bring any action in any court of law located outside the State of Utah. If any term or provision of this Settlement Agreement shall be determined to be illegal or unenforceable, all other terms and provisions hereof shall nevertheless remain effective and shall be in force to the fullest extent permitted by applicable law. The successful Party to any action arising in connection with the enforcement of this Settlement Agreement shall be awarded its costs and reasonable attorneys' fees.

6. **Assignment/Successors.** This Settlement Agreement shall inure to and bind the successors, assigns, heirs, devisees, executors, administrators, and personal representatives of the respective Parties hereto.

7. **Third Parties.** Except as is otherwise expressly provided for herein, each of the Parties understands, acknowledges and agrees that no rights or interests whatsoever are given by this Settlement Agreement to a Party not a Party to this Settlement Agreement. This Settlement Agreement shall not in any way alter, affect, waive or release any claim or cause of action which any of the Parties to this Settlement Agreement may have against any person or entity other than the Parties released pursuant to this Settlement Agreement.

8. **Counterparts.** This Settlement Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same Settlement Agreement. Facsimile signatures in one or more counterparts of this Settlement Agreement shall be binding. All signatures shall be deemed effective as of the date first written above.

9. **Interpretation and Drafting Presumptions.** Unless the context requires otherwise, all words used in this Settlement Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular and all words in any gender shall extend to and include all genders. Each of the Parties understands, acknowledges and agrees that each of the Parties hereto has contributed to the drafting of this Settlement Agreement, and no provision hereof shall be construed against any Party hereto as being the draftsman thereof. This Settlement Agreement shall therefore be construed without regard to any presumption or other rule requiring construction against the Party causing the Settlement Agreement to be drafted. If any words or phrases in this Settlement Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Settlement Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Settlement Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken




out or otherwise eliminated. Captions in this Settlement Agreement are for convenience only and are not intended to affect any provisions of this Settlement Agreement.

10. **Further Assurances: Cooperation of Parties.** The Parties hereto agree to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents or instruments reasonably requested by any other Party in order to complete the transactions contemplated hereby and to effectuate the terms, conditions, covenants, provisions, intents and purposes of this Settlement Agreement.


11. **Authorization to Settle.** Each Party represents and warrants that, subject to the terms of Paragraph 1, above, it is authorized and has the right to surrender, compromise, settle and cancel the claims, demands, choses in action and causes of action covered by the terms of this Settlement Agreement, and all parts thereof.

IN WITNESS WHEREOF, each Party hereto has caused this Settlement Agreement to be executed in its name by a duly authorized officer or representative as of the date first above written. Each Party has signed below of his own free will and accord.

TOOELE CITY CORPORATION

By:   
Print Name: Debra F Winn  
Title: Mayor

APOSHIAN SOD FARMS, INC.

By:   
Print Name: Lawrence Aposhian  
Title: Pres