

PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Council and the Tooele City Redevelopment Agency will meet in a Work Meeting, on Wednesday, September 21, 2022, at 5:30 p.m. The Meeting will be Held in the Tooele City Hall Council Chambers, Located at 90 North Main Street, Tooele, Utah.

We encourage you to join the City Council meeting electronically by visiting the **Tooele City YouTube Channel**, at <https://tinyurl.com/ykjpjx4z> or by going to YouTube.com and searching "Tooele City Channel".

*****Notice – Tooele City is no longer broadcasting meetings via Facebook Live*****

AGENDA

1. **Open City Council Meeting**
2. **Roll Call**
3. **Mayor's Report**
4. **Council Members' Report**
5. **Discussion Items**
 - a. **Resolution 2022-71** a Resolution of the Tooele City Council Approving the Canyon Springs Annexation Agreement
Presented by Roger Baker, City Attorney
 - b. **Re-Inspection Fees**
Presented by Roger Baker, City Attorney
 - c. **Reuse Water Plan**
Presented by Jamie Grandpre, Public Works Director
 - d. **Pool Fees**
Presented by Darwin Cook, Parks & Recreation Director
 - e. **Resolution 2022-86** a Resolution of the Tooele City Council Approving an Agreement with Broken Arrow for the Construction of Park and Trail Facilities at England Acres Park
Presented by Darwin Cook, Parks & Recreation Director
6. **Closed Meeting**
~ Litigation, Property Acquisition, and/or Personnel
7. **Adjourn**

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 435-843-2111 Or Michelllep@Tooelecity.Org, Prior To The Meeting.

TOOELE CITY CORPORATION

RESOLUTION 2022-71

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING THE CANYON SPRINGS ANNEXATION AGREEMENT.

WHEREAS, by application dated November 16, 2020, petition sponsor Howard Schmidt (the "Petitioner"), filed with Tooele City an Annexation Application (aka "Petition") for the annexation of 61.16 acres of land (the Canyon Springs property) into Tooele City; and,

WHEREAS, on September 1, 2021, the City Council approved Resolution 2021-18, accepting the Petition for further consideration; and,

WHEREAS, Tooele City Code §7-24-3 requires every annexation to be preceded by an annexation agreement setting forth the terms and conditions governing the annexation; and,

WHEREAS, the proposed annexation agreement is attached as Exhibit A:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Canyon Springs Annexation Agreement attached hereto as Exhibit A is hereby approved and that the Mayor is hereby authorized to sign the same.

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 _____, 2022.

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, City Attorney

Exhibit A

Canyon Springs Annexation Agreement

Contact:
Tooele City Recorder
90 North Main
Tooele, UT 84074
(435) 843-2113

Affected Parcel(s): 03-032-0-0014

CANYON SPRINGS ANNEXATION AGREEMENT

TOOELE EAST LLC (“**Petitioner**”), a Utah limited liability company, and TOOELE CITY CORPORATION (“**Tooele**”), a Utah municipality and political subdivision of the State of Utah, and a Utah charter city (collectively the “**Parties**”), hereby make and enter into this Canyon Springs Annexation Agreement (“**Agreement**”) in connection with and to govern the annexation of the 61.16-acre Canyon Springs property (“**Property**”).

RECITALS

A. Petitioner owns the Property, which consists of approximately 61.16 contiguous acres of real property adjacent to and contiguous with Tooele (see illustration attached as **Exhibit A**).

B. Petitioner submitted a Petition for Annexation (“**Petition**”) on November 16, 2020, seeking annexation of the Property into Tooele.

C. Petitioner desires, and Tooele consents to, the annexation of the Property into Tooele’s corporate limits, subject to the terms and conditions of this Agreement.

D. The City Council of Tooele finds that the annexation: (i) will serve the best interests of Tooele and the welfare of its inhabitants; (ii) is consistent with Tooele’s Annexation Policy Plan; (iii) will not create islands or peninsulas of unincorporated territory; and, (iv) will not be annexed for the sole purpose of acquiring municipal revenue.

E. Petitioner plans, and Tooele desires, quality residential development upon the Property, while at the same time creating public benefits and amenities on, and associated with, the Property. Future development on the Property is referred to herein as **Canyon Springs**, irrespective of the final development name and configuration.

F. Tooele City Code (TCC) Section 7-24-3 requires an annexation agreement as a condition of every annexation approval, and Tooele desires to set forth Petitioner’s obligations concerning the annexation of the Property.

G. On September 1, 2021, the City Council of Tooele approved Resolution 2021-18, accepting the Petition for further consideration.

H. Petitioner has provided to Tooele, at Tooele's request and at Petitioner's cost, analyses of the impacts of Canyon Springs upon Tooele's utility systems, including culinary water, sanitary sewer, storm water drainage, and fiscal and tax. Tooele requested, but did not receive, analyses of the impact of Canyon Springs upon Tooele's transportation and parks and recreation facilities or police and fire response. Tooele's Mayor has provided to the City Council additional and rebuttal information.

I. On June 22, 2022, the Petition was presented to the Tooele Planning Commission, which recommended approval of the annexation by a vote of 6-1.

J. Tooele's approval of the annexation of the Property is the consideration for Petitioner's performance of the obligations set forth in this Agreement, and Tooele has no further obligations under this Agreement.

K. The City Council of Tooele, acting pursuant to its statutory authority under Utah law, with its authority as a Utah charter city, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, regulations, and policies, and, in the exercise of its legislative authority and discretion, has chosen to approve this Agreement.

AGREEMENT

Now, therefore, in consideration of the mutual covenants, conditions, and terms of this Agreement, as set forth herein, Petitioner and Tooele hereby agree as follows:

1. **Effective Date.** This Agreement shall take effect upon the City Council's approval by at least a two-thirds (2/3) majority vote of an ordinance annexing the Property into Tooele's corporate limits, and this Agreement shall not take effect otherwise. Tooele shall have no obligation in law or equity to sign the approved annexation plat until after Petitioner has executed this Agreement.
2. **Land Use and Zoning.** Upon completion of the annexation of the Property into Tooele, the Property will possess the MDR (medium density residential) land use designation and the R1-8 zoning designation, and Petitioner agrees to these designations.
3. **No Vested Rights.** This Agreement shall not confer upon any party or parcel any land use entitlements or vested rights.
4. **Dwelling Unit Cap.** The Canyon Springs development shall not exceed 172 dwelling units.
5. **Petitioner's Obligations.** Petitioner shall perform the following obligations in consideration for Tooele approving the annexation of the Property.

- a. **Land Use Approvals.** Petitioner shall comply with all applicable Tooele laws and regulations, current as of the date of any complete land use application (e.g., subdivision plat), as a condition of land use approvals for the Property.
- b. **Dedications.** Petitioner shall dedicate and convey to Tooele all public roads, infrastructure easements, and access easements as are shown upon approved subdivision final plats, site plans, building permits, and construction drawings for land uses approved on the Property.
- c. **Water Rights.** Petitioner shall comply with TCC Chapter 7-26 regarding the conveyance of water rights for Canyon Springs, and agrees to the lawfulness of the water rights exaction. The water rights for a final subdivision phase shall be conveyed prior to approval of the plat for that phase.
- d. **Culinary Water Improvements.** Petitioner shall construct and install, at Petitioner's cost, all culinary water project improvements and system improvements required by Tooele for all Canyon Springs land use approvals. Petitioner shall follow all the recommendations of that Memorandum re "Canyon Springs Annexation Drinking Water System Review" dated April 21, 2022, by Hansen Allen & Luce, Inc. A summary of the recommendations is attached as **Exhibit B**. Inasmuch as any system improvements necessary for Canyon Springs are not included in Tooele City's current water impact fee facilities plan or impact fee analysis, Petitioner shall not be eligible for, and shall have no right to receive, impact fee credits or reimbursements for the water system improvements.
- e. **Sanitary Sewer Improvements.** Petitioner shall construct and install, at Petitioner's cost, all sanitary sewer project improvements and system improvements required by Tooele for all Canyon Springs land use approvals. Petitioner shall follow all the recommendations of that Memorandum re "Canyon Springs Annexation – Wastewater Review" dated April 26, 2022, by Hansen Allen & Luce, Inc. A summary of the recommendations is attached as **Exhibit C**. Petitioner shall not be eligible for, and shall have no right to receive, impact fee credits or reimbursements for the sewer system improvements.
- f. **Storm Water Improvements.** Petitioner shall construct and install, at Petitioner's cost, all storm water project improvements and system improvements required by Tooele for all Canyon Springs land use approvals. Petitioner shall follow all the recommendations of that Memorandum re "Canyon Springs – Drainage Review" dated April 21, 2022, by Hansen Allen & Luce, Inc. A summary of the recommendations is attached as **Exhibit D**. Notwithstanding the above, all storm water detention facilities shall be designed to be multi-functional, i.e., landscaped and improved with recreation facilities, and approved in writing by both the Public Works Director and the Parks and Recreation Director of Tooele. Storm water detention facilities shall not be eligible for reimbursement or credit from parks and recreation impact fees, and Petitioner waives all rights it might otherwise have to parks and recreation impact fee reimbursements or

credits for landscape and recreation facilities and improvements designed as part of the multi-functional storm water detention facilities.

- g. **Parks Facilities.** Petitioner shall not be required to construct any public park facilities in Canyon Springs. Canyon Springs building permits shall include the payment of park and recreation impact fees.
- h. **Parks Monetary Contribution.** Petitioner shall pay to Tooele a voluntary contribution in the sum of \$250,000 to be used by Tooele on improvements at the England Acres regional park facility, or for other parks and recreation improvements, facilities, and programs, in Tooele's sole discretion. This payment is part of the consideration for the Property's annexation, does not address the specific parks and recreation impacts of Canyon Springs on the City, and shall not entitle Petitioner to a reimbursement or credit from parks and recreation impact fees paid with Canyon Springs building permits. Petitioner waives any right to impact fee credits for the park monetary contribution. Making the first one-half of this payment shall be a condition precedent to Tooele's approval of a Canyon Springs first subdivision final plat . Making the second one-half of this payment shall be a condition precedent to Tooele's approval of a second Canyon Springs subdivision final plat.
- i. **Trail.** Petitioner shall acquire and convey (or cause the acquisition and conveyance) to Tooele County, at no cost to Tooele or Tooele County, the trail parcel illustrated on **Exhibit E**. Petitioner shall construct a trail on the trail parcel, to Tooele County standards, at no cost to Tooele or Tooele County, and shall convey the completed trail to Tooele County by legal instrument acceptable to Tooele County, e.g., deed or bill of sale. The trail shall be maintained at no cost to Tooele. The trail shall include a ten-foot-wide asphalt trail and at least three paved connections to dedicated public rights-of-way within Canyon Springs. The trail shall be available for general public use, which shall be expressly acknowledged in the trail parcel deed to Tooele County. Conveyance of the trail parcel to Tooele County shall be a condition precedent to Tooele's approval of a first Canyon Springs subdivision final plat. Full improvement of the trail, to Tooele County standards, and a conveyance of the trail improvements to Tooele County, shall be a condition precedent to Tooele's approval of either a second Canyon Springs subdivision final plat, or a first Canyon Springs subdivision plat that creates more than 50 residential lots.
- j. **Single-family Design Standards.** All Canyon Springs dwellings shall comply with Tooele's single-family design standards as codified in TCC Chapter 7-11b of the Tooele City Code, irrespective of the limitations in UCA 10-9a-530, each as amended. For the limited purpose of this Section 5.j., and for no other purpose, this Agreement shall be considered a development agreement, as defined in UCA 10-9a-103, as amended. In the alternative, Tooele and Petitioner may negotiate and execute an, separate from this Agreement, to adopt a different Canyon Springs single-family dwelling design standard. If an alternative design standard agreement has not been executed prior to Petitioner's land use application for a first final subdivision phase, then TCC Chapter 7-11b shall apply in perpetuity to Canyon Springs.

- k. **Affordable Housing Contribution.** As consideration for the annexation of the Property, Petitioner agrees to pay to Tooele a voluntary contribution of \$250,000 for affordable housing purposes, which may include, in Tooele's discretion, reimbursing Tooele for impact fee waivers approved for the Tooele County Housing Authority's eligible affordable housing units. Making the first one-half of this payment shall be a condition precedent to Tooele's approval of a first Canyon Springs subdivision final plat. Making the second one-half of this payment shall be a condition precedent to Tooele's approval of a second Canyon Springs subdivision final plat.

6. **General Terms and Conditions.**

- a. **Binding Effect and Assignment.** Petitioner may convey all or part of the Property to one or more purchasers. Petitioner shall remain responsible for all Petitioner's obligations under this Agreement unless all of the obligations are assigned at one time to a third party. No assignment of this Agreement and its Petitioner obligations shall be valid without Tooele's prior written consent. Tooele shall not unreasonably withhold its consent after Petitioner demonstrates that the assignee possesses the financial means to fulfill all of Petitioner's obligations under this Agreement. Any assignment must be accomplished by an assumption and assignment agreement, upon which Tooele's consenting signature is necessary for effectiveness of the assignment.
- b. **State and Federal Law.** Petitioner agrees that the obligations imposed by this Agreement comply with local, state, and federal law. The Parties agree that if any provision of this Agreement should be or become, in its performance, non-compliant with state or federal law, or should be declared invalid by a court, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law or the order of the court, as the case may be, and the balance of this Agreement shall remain in full force and effect.
- c. **Recitals.** The above recitals are incorporated into and made a part of this Agreement.
- d. **Exhibits.** All Exhibits referred to herein are incorporated into and made a part of this Agreement.
- e. **Headings.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, interpretation, or construction of any of the terms and provisions of this Agreement or the intent hereof.
- f. **No Third-Party Rights.** This Agreement does not create any joint venture, partnership, joint undertaking, or joint business arrangement between Petitioner and Tooele. Notwithstanding the Trail provision in Section 5.i., above, this Agreement does not create any rights or benefits in or to third parties.
- g. **No Waiver.** The failure by Tooele to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or

remedy consequent upon Petitioner's failure to perform thereof, shall not constitute a waiver by Tooele of any such failure to perform or of any other covenant, agreement, term, or condition.

- h. **Integration.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature.
- i. **Amendment.** This Agreement may be modified only by a subsequent writing duly executed and approved by the Parties hereto.
- j. **Mutual Participation in Document Preparation.** Each party has participated materially in the negotiation and preparation of this Agreement and any related items. In the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, both Parties will be deemed to have jointly drafted this document, and the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.
- k. **Applicable Law.** Utah law shall govern this Agreement and its construction.
- l. **Venue.** Venue shall be the Third District Court, Tooele Department.
- m. **Court Costs and Attorneys Fees.** In the event of any legal action between the Parties, arising out of or related to this Agreement, the prevailing Party shall be entitled to recover costs and reasonable attorneys' fees.
- n. **Limitation of Remedies.** Petitioner's sole and exclusive remedy for any non-performance or breach of Tooele's express or implied covenants of this Agreement is declaratory relief construing this Agreement's rights and obligations and specific performance of this Agreement. Under no circumstances shall Tooele City Corporation or its agents be liable to Petitioner or Petitioner's successors-in-interest for any monetary damages, including, but not limited to, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages.
- o. **No Jury Trial.** To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this Agreement.
- p. **Dispute Resolution.** Tooele and Petitioner recognize and agree that it is in their mutual interest to attempt to informally resolve any disputes that may arise with respect to the interpretation of this Agreement, including as it applies to future Canyon Springs land use applications. In furtherance of that mutual interest, the Parties agree to the following dispute resolution provisions.

- i. Meet and Confer. In an attempt to resolve the issues or concerns in an expeditious and efficient manner, the Parties shall meet promptly after any Party makes a written objection to the other Party regarding any Party's performance under this Agreement.
- ii. Non-Binding Mediation. If the Parties are unable to resolve a disagreement under the Meet and Confer provision, they shall appoint a mutually acceptable mediator with knowledge of the subject matter in dispute. If the parties are unable to agree on a single acceptable mediator, they shall each appoint their own representative. These two appointees shall, between them, choose the single mediator. Petitioner and Tooele shall each pay an equal portion of the fees of the chosen mediator. The chosen mediator shall review the positions of the Parties regarding the issues in dispute and promptly attempt to mediate the conflict. If the Parties are unable to reach agreement, the mediator shall notify the Parties in writing of the resolution that the mediator proposes. The mediator's proposal shall not be binding on the Parties.
- iii. All Rights Reserved. If resolution under the Non-binding Mediation provision fails or is rejected by any Party, the Parties may pursue any and all legal and equitable remedies available except as limited under this Agreement, including specifically the Limitation of Remedies provision in Section 6.o., above.
- q. **Notices**. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

Tooele City Corporation
Attention: Mayor
90 North Main
Tooele, UT 84074

Tooele East, LLC
Attention: Howard Schmidt
9300 South Redwood Road
West Jordan, UT 84088

A Party may change its address by giving written notice to the other Party in accordance with this provision.

- 7. **Binding Authority**. By executing this Agreement, the signatories represent and affirm that they are authorized so to do, and that their respective signatures shall have binding force upon them and upon the Parties represented by each.
- 8. **Recordation**. This Agreement shall be recorded in the office of the Tooele County Recorder.

(Signature page follows.)

SIGNED:

TOOELE CITY CORPORATION

Debra E. Winn, Mayor

ATTEST:

APPROVED AS TO FORM

City Recorder

City Attorney

TOOELE EAST LLC

Howard Schmidt, Managing Member

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

Before me, a notary public, appeared Debra E. Winn, who did affirm to me that she is the Mayor of Tooele City Corporation and that she did execute the foregoing Annexation Agreement with due authority on behalf of Tooele City Corporation this ____ day of _____, 2022.

Notary Public
Residing in Tooele County, Utah

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

Before me, a notary public, appeared Howard Schmidt, who did affirm to me that he is the Managing Member of Tooele East LLC, and that he did execute the foregoing Annexation Agreement on behalf of Tooele East LLC with due authority this ____ day of _____, 2022.

Notary Public
Residing in Tooele County, Utah

Exhibit A

Illustration of the Property

Exhibit B

Summary of Binding Culinary Water System Recommendations

Exhibit C

Summary of Binding Sanitary Sewer System Recommendations

Exhibit D

Summary of Binding Storm Water System Recommendations

Exhibit E

Illustration of Trail Parcel

TOOELE CITY CORPORATION

RESOLUTION 2022-86

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH BROKEN ARROW FOR THE CONSTRUCTION OF PARK AND TRAIL FACILITIES AT ENGLAND ACRES PARK.

WHEREAS, Tooele City owns and operates an approximately 25-acre public park called England Acres, and has developed several phases of the park, with significant acreage yet to be developed due to the high costs of park facility design and improvement and inflation; and,

WHEREAS, the City is ready to develop additional park and trail facilities at England Acres, and has retained the landscape architecture firm of MHTN to design the facilities; and,

WHEREAS, the City solicited public bids for development of the England Acres park and trail facilities in accordance with the City's procurement policies and procedures, as well as the procedures and requirements of UCA §11-39-101 *et seq.*; and,

WHEREAS, Broken Arrow Inc. was the lowest responsible responsive bidder, with a total cost proposal of \$2,245,245.78 (see the Bid Tabulation attached as Exhibit A), and, based on the City's experience with Broken Arrow and its capabilities, the City Administration recommends that Broken Arrow be awarded the contract:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL the City Council hereby approves an agreement (attached as Exhibit B) with Broken Arrow in the amount of \$2,245,245.78 for development of the England Acres park and trail facilities.

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 _____, 2022.

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

England Acres Park and Trail, Bid Results September 8, 2022

Contractor	Schedule A	Schedule B	Total Schedule A & B
England Construction	\$1,502,035.00	\$1,300,584.00	\$2,802,619.00
VanCon Inc.	\$1,770,375.00	\$1,188,625.00	\$2,959,000.00
Broken Arrow	\$1,183,360.13	\$1,061,885.65	\$2,245,245.78
Stratton & Bratt	\$1,811,395.90	\$1,072,867.80	\$2,884,263.70

Exhibit B

Agreement: Broken Arrow

DOCUMENT 00 52 00

AGREEMENT

PART 1 GENERAL

1.1 CONTRACTOR

- A. Name: Broken Arrow Inc.
- B. Address: 8960 Clinton Landing Road, Lakepoint, Utah 84074
- C. Telephone number: (801) 355-0527
- D. Facsimile number: (801) 282-5701
- E. E-Mail: dcummings@brokenarrowusa.com

1.2 OWNER

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

1.3 CONSTRUCTION CONTRACT

- A. The Construction Contract is known as

Tooele England Acres Park and Trail

1.4 ENGINEER

- A. Darwin Cook, Parks and Recreation Director, 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: Two Million Two Hundred Forty Five Thousand Two Hundred Forty Five Dollars and Seventy Eight Cents (\$2,245,245.78).

2.2 CONTRACT TIME

- A. The project shall be **50% complete** (*as measured by value of the Contract*) by **December 15, 2022**.
- B. The project shall be **substantially complete** by **April 30, 2023**.
- C. The project shall be **fully complete** by **May 15, 2023**.

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:

Michelle Y. Pitt
Tooele City Recorder

S E A L

APPROVED AS TO FORM

Roger Evans Baker
Tooele City Attorney

END OF DOCUMENT

THIS PAGE LEFT BLANK INTENTIONALLY

England Acres Park & Trail Bidder Selection Criteria Scoring

		Responsiveness	Organization Construction Team	Experience	Bid Price	Approach to Project	Total Points
		Possible points	5	15	25	40	15
Contractor							
1	England Construction	2	12	15	32	0	61
2	VanCon	5	13	23	30	15	86
3	Broken Arrow	5	11	22	40	10	88
4	Stratton & Bratt	5	12	21	31	13	82

Scored By:

Darwin Cook
 Jacob Clegg
 Vince Olcott
 Albert Severe

Tooele City Parks & Recreation
 Ensign Engineering
 MHTN
 MHTN

Scoring Reviewed By:

Paul Hansen

Tooele City Engineer