Meetings of the City Council of Clearfield City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207 as amended. In such circumstances, contact will be established and maintained via electronic means and the meetings will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

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

6:00 P.M. WORK SESSION
Discussion on the Development Agreement with Clearfield Station Apartments, LLC, located at Approximately 1250 South State Street
Discussion on an Intersection Improvements Agreement with TGC Clearfield Station Apartments, LLC (“TGC”) located at Approximately 1250 South State Street
Discussion on a Reimbursement Agreement for Project Improvements with Clearfield Station Apartments, LLC, located at Approximately 1250 South State Street
Discussion on the 2016 Municipal Wastewater Planning Program Report
Discussion on Establishing a Clearfield City Youth Advisory Commission

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

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

6:30 P.M. - SPECIAL SESSION
CALL TO ORDER: Mayor Shepherd

PUBLIC HEARING:
1. PUBLIC HEARING TO CONSIDER A REZONE OF A PORTION OF THE PROPERTY LOCATED AT APPROXIMATELY 1250 SOUTH STATE STREET (TIN: 12-066-0137) FROM COMMERCIAL (C-2) AND MANUFACTURING (M-1) TO RESIDENTIAL MULTI-FAMILY, WITH A SPECIAL PURPOSE OVERLAY (R-3-SP) - CONTINUED

BACKGROUND: The Thackeray Garn Company (TGC) Clearfield Station Apartments, LLC, is developing a portion of the Clearfield Station property located at approximately 1250 South State.
The project requires a zone change for 9.76 acres of the property from Commercial (C-2) and Manufacturing (M-1) to Residential Multi-Family, with a Special Purpose Overlay (R-3-SP) to facilitate the development of the project. This public hearing is being continued from a previous special session held on Tuesday, February 21, 2017. The start time for the public hearing may be slightly delayed to allow the City Council adequate time to conclude portions of the work session noted above.

RECOMMENDATION: Receive public comment and close the public hearing.

SCHEDULED ITEMS:

2. CONSIDER APPROVAL OF ORDINANCE 2017-03 REZONING A PORTION OF THE PROPERTY LOCATED AT APPROXIMATELY 1250 SOUTH STATE STREET (TIN: 12-066-0137) FROM COMMERCIAL (C-2) AND MANUFACTURING (M-1) TO RESIDENTIAL MULTI-FAMILY WITH A SPECIAL PURPOSE OVERLAY (R-3-SP), AUTHORIZING THE ASSOCIATED DEVELOPMENT AGREEMENT WITH CLEARFIELD STATION APARTMENTS, LLC, AND, AUTHORIZING THE INTERSECTION IMPROVEMENTS AGREEMENT WITH TGC CLEARFIELD STATION APARTMENTS, LLC (“TGC”)

BACKGROUND: The Clearfield Station Apartments project consists of 216 apartments in nine buildings (24 units per building), plus a clubhouse. The development was previously considered Phase 1-B of the now invalid Clearfield Station Master Development Plan. Land use approvals for this project (plat, zoning, and site plan) are either already complete or in progress. Allowing the limited project to move forward frees up the remainder of the Clearfield Station property for other uses.

Also, the original Master Development Plan for Clearfield Station included the reconfiguration of 1000 East, creating two new intersections with State Street. Since those intersections will not be constructed at this point, the purpose of the Intersection Improvements Agreement is to establish The Thackeray Garn Company’s (“TGC’s”) responsibility for sharing in the cost of those future intersections. TGC’s proportionate share, based on its percentage of the total Clearfield Station acreage, is 13.96 percent. The agreement also includes provisions for the possibility that other funding (State funds and/or tax increment) may cover some or all of the cost of the improvements, as well as the possibility that alternative improvements may be decided upon, eliminating the need for the two new intersections.

RECOMMENDATION: Approve Ordinance 2017-03 rezoning a portion of the property located at approximately 1250 South State Street (TIN: 12-066-0137) from Commercial (C-2) and Manufacturing (M-1) to Residential Multi-family with a Special Purpose Overlay (R-3-SP), authorize the associated development agreement with Clearfield Station Apartments, LLC, authorize the Intersection Improvements Agreement with TGC Clearfield Station Apartments, LLC (“TGC”); and, authorize the Mayor’s signature to any necessary documents.
3. CONSIDER APPROVAL OF THE REIMBURSEMENT AGREEMENT FOR PROJECT IMPROVEMENTS WITH CLEARFIELD STATION APARTMENTS, LLC, PROVIDING FOR A PARTIAL REIMBURSEMENT OF INFRASTRUCTURE COSTS THAT MAY BENEFIT FUTURE DEVELOPERS

BACKGROUND: Part of the Clearfield Station Apartments project is the construction of Boxcar Drive (on the west side) and Express Drive (on the south side), with certain water, sewer, and storm drain lines within those rights-of-way. Because those improvements may also benefit future developers on the other side of the street, the agreement provides the developer with the opportunity to be reimbursed for a portion of its costs when that future development occurs.

RECOMMENDATION: Approve the Reimbursement Agreement for Project Improvements with Clearfield Station Apartments, LLC, and authorize the Mayor’s signature to any necessary documents.

4. CONSIDER APPROVAL OF RESOLUTION 2017R-04 AFFIRMING THE CITY COUNCIL REVIEWED THE 2016 MUNICIPAL WASTEWATER PLANNING PROGRAM REPORT FOR CLEARFIELD CITY

BACKGROUND: Utah Department of Environmental Quality has asked the City Council to review and consider Clearfield’s Municipal Wastewater Planning Program Report for 2016. This resolution affirms the Council reviewed and considered the report.

RECOMMENDATION: Approve Resolution 2017R-04 affirming that the City Council reviewed and considered the Municipal Wastewater Planning Program Report for Clearfield City and authorize the Mayor’s signature to any necessary documents.

**COUNCIL MEETING ADJOURN**

Dated this 3rd day of March, 2017.

/s/Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the ‘Americans with Disabilities Act’ provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.
TO: Mayor Shepherd, City Council and Executive Staff
FROM: Scott A. Hess, MPA
Contract City Planner
scottahess@gmail.com, (801) 643-3337

MEETING DATE: Tuesday, March 7, 2017 (Council Special Session)

SUBJECT: Public Hearing, Discussion and Possible Action on RZN 1701-0001, a request by Mike Christensen, on behalf of The Thackeray Garn Company for a Rezone of Property from Manufacturing (M-1) to Residential Multi-Family, with a special overlay (R-3-SP) on approximately 9.76 acres located on a portion of property at 1250 S. States Street (TIN: 12-066-0137)

RECOMMENDATIONS
Move to approve as conditioned RZN 1701-0001, a request by Mike Christensen, on behalf of The Thackeray Garn Company for a Rezone of Property from Manufacturing (M-1) to Residential Multi-Family, with a special overlay (R-3-SP) on approximately 9.76 acres located on a portion of property at 1250 S. States Street (TIN: 12-066-0137), based on discussion and findings in the Staff Report.

PLANNING COMMISSION
At the Planning Commission meeting on Wednesday, February 1, 2017, the Commission reviewed the application and recommended approval, to the Council, based on conditions included in the staff report.

PROJECT SUMMARY

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<td>Land Use Classification</td>
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ANALYSIS

A portion of the property located at 1250 S. State was granted conditional approval of a rezone from C-2 Commercial and M-1 Manufacturing to MU Mixed-Use by the Clearfield City Council on March 11, 2014. The conditions of approval for the rezone included the approval of a Master Development Plan (MDP) and the execution of a Master Development Agreement (MDA). Due to the desires of Clearfield City, Thackeray Garn Company, and Utah Transit Authority, the MDP and MDA will not be executed and have since expired. The failure to execute those two required documents reverts the zoning on the property to its original C-2 Commercial and M-1 Manufacturing zones.

In order to facilitate the development of Phase 1B of the Thackeray Garn Company’s “Clearfield Station” site plan, the developer is requesting a rezone from C-2 Commercial and M-1 Manufacturing to R-3 Residential Multi-Family, with a special overlay (R-3-SP) on approximately 9.76 acres. It is the desire of all parties to move forward with the Clearfield Station housing project as it was formerly approved with no substantive changes to the project.

A rezone to R-3-SP will allow the developer to continue with the project as it was formerly approved, but through a slightly different approval mechanism. The rezone request to R-3 falls under the review procedures in City Code 11-6-3 which states, “The planning commission may recommend adoption of the proposed zoning map amendment when it finds that the proposed amendment is in accordance with the general plan and map, or that changed conditions make the proposed amendment necessary to fulfill the purposes of this title.” The rezone request to SP would be considered under the review procedures in City Code 11-12C-3 which states, “Application for a Special Purposes Zone designation shall be reviewed and approved according to the provisions of Chapter 4 (Conditional Use Permits). The rezone request for a Special Purposes Overlay zone further requires a “Contract” (Development Agreement) between the City and Developer.

On page 9 of Clearfield City’s General Plan, there is a recommendation that no new parcels of land be re-zoned to Special Purposes SP Zone. Staff feels that this particular request is unique to the circumstances, which necessitated this request, and that the City is at low risk of this rezone setting precedence that will impact future rezone requests or approvals. The General Plan is an advisory document, and as such the Planning Commission and City Council have discretion to make land use decisions that meet the intent of the General Plan without following it as compulsory.

Staff feels that the request meets the intent of City Code 11-6-3 due to the ‘changed conditions’ between the City, Developer, and UTA at the current time. It is in all parties’ best interest to move forward with the multi-family housing project as proposed in order to secure future development opportunities on this key piece of property within Clearfield City. Further, staff has reviewed the request for rezone against the requirements of City Code Chapter 4 Conditional Use Permit, and feels that the required Development Agreement will satisfy 11-4-3C(1) establishing that this multi-family project will be ‘equivalent to a permitted use’ within the standard R-3 zone and does not include any impacts from the project that would not otherwise exist under a similar conforming project developed under the R-3 standards.

DEVELOPMENT AGREEMENT

The Development Agreement will address those items of the R-3 zone that the Clearfield Station Phase 1B housing project does not conform with. Those may include, but not necessarily limited to: density, parking ratio and design, landscaping, and architectural design standards.

Due to the former approvals being granted under the requirements of the Mixed-Use MU zone, the City and Developer spent a large amount of time developing the MDP and MDA documents. Those two documents met the intent and desire of Clearfield City at the time the rezone to MU was approved, and as such, staff feels that the elements of those two documents still serve the best interest of the City. The
MDA and MDP will substantially inform the creation of a Development Agreement that is proposed for review by the Clearfield City Council.

**Public Comment**
No additional public comment has been received outside of the previous public hearings.

**FINDINGS**

**Zoning Map Amendment**
Clearfield Land Use Ordinance Section 11-6-3 establishes the following findings the Planning Commission shall make to approve Zoning Map Amendments. The findings and staff’s evaluation are outlined below:

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<td>1) The proposed amendment is in accordance with the General Plan and Map; or</td>
<td>RZN 1701-0001 is consistent with multiple Land Use Guidelines of the General Plan as follows: #8 The developer has demonstrated that adequate infrastructure exists to meet the needs of the increased density; #11 development near high capacity transit reduces travel distances and provides options for residents to make daily trips via transit;</td>
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<tr>
<td>2) Changed conditions make the proposed amendment necessary to fulfill the purposes</td>
<td>Desires of Clearfield City, the developer, and Utah Transit Authority have changed which requires a new approach to entitle this project as it was proposed under former approvals. In the interest of all parties, staff recommends approval of the rezone as requested.</td>
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<td>of this Title.</td>
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**ATTACHMENTS**

1. Developer’s Rezone request letter dated January 19, 2017
CLEARFIELD CITY ORDINANCE 2017-03

AN ORDINANCE CONDITIONALLY REZONING A PORTION OF THE PROPERTY LOCATED AT APPROXIMATELY 1250 SOUTH STATE (TIN’S: 12-066-0137) IN CLEARFIELD, DAVIS COUNTY, UTAH, FROM COMMERCIAL (C-2) AND MANUFACTURING (M-1) TO RESIDENTIAL MULTI-FAMILY WITH A SPECIAL PURPOSE OVERLAY (R-3-SP), APPROVING THE ASSOCIATED DEVELOPMENT AGREEMENT WITH CLEARFIELD STATION APARTMENTS, LLC, AND THE INTERSECTION IMPROVEMENTS AGREEMENT WITH TGC CLEARFIELD STATION APARTMENTS, LLC; AND, AMENDING THE CLEARFIELD CITY ZONING MAP ACCORDINGLY.

PREAMBLE: This Ordinance conditionally rezones a portion of the property located at approximately 1250 South State Street (TIN’s: 12-066-0137) in Clearfield, Davis County, Utah, from (MU) Mixed-Use to Residential Multi-family, with a Special Purpose Overlay (R-3-SP), approves the associated Development Agreement with Clearfield Station Apartments, LLC, approves the Intersection Improvements Agreement with TGC Clearfield Station Apartments, LLC, and upon satisfaction of conditions precedent as set forth below, will amend the City’s Zoning Map to reflect those changes.

WHEREAS, pursuant to an application received by a local developer and subject to conditions precedent as set forth below, City staff is recommending changes in the zoning for properties located within the City in order to assure that those properties are zoned appropriately and best reflect the City’s planning efforts as set forth in the City’s Land Use Ordinance and General Plan; and

WHEREAS, the property located at 1250 South State Street was granted conditional approval of a rezone from Commercial (C-2) and Manufacturing (M-1) to Mixed-Use (MU) by the City Council in March of 2014; and,

WHEREAS, the conditions for the approval of a rezone from Commercial (C-2) and Manufacturing (M-1) to Mixed-Use (MU) by the City Council were never executed and have expired; and,

WHEREAS, the desires of Clearfield City, the developer and Utah Transit Authority (UTA) have changed, requiring a new approach to entitle the project as it was proposed under former approvals; and

WHEREAS, after a public hearing on the matter, the Clearfield City Planning Commission recommended to the Clearfield City Council that the proposed rezoning be approved; and

WHEREAS, the Clearfield City Council received and reviewed the proposed zoning changes recommended by the Clearfield City Planning Commission; and

WHEREAS, following proper notice, the City Council held a public hearing on the matter and allowed public comment thereon; and
WHEREAS, after the public hearing, the City Council carefully considered any comments made during the public hearing as well as the Planning Commission’s recommendations regarding the proposed rezoning; and

WHEREAS, following its public deliberation, the City Council has determined that upon satisfaction of certain conditions precedent, as set forth below, the zoning changes herein are in the best interests of Clearfield City and its residents and that said rezoning will most effectively implement the City’s planning efforts;

NOW, THEREFORE, be it ordained by the Clearfield City Council that:

Section 1. Zoning Changes: Subject to the approval and execution of the Development Agreement with Clearfield Station Apartments, LLC, (a copy of which is attached hereto as Exhibit “A”) and the Intersection Improvements Agreement with TGC Clearfield Station Apartments, LLC (“TGC”) (a copy of which is attached hereto as Exhibit “B”), by all parties thereto, the zoning for the following properties will be changed as follows:

A portion of the property located at approximately 1250 South State Street (TIN’s: 12-066-0137) in Clearfield, Davis County, Utah, from (C-2) Commercial and (M-1) Manufacturing to (R-3-SP) Residential Multi-family with a Special Purpose Overlay, more specifically described in Exhibit ‘C’ Legal Description.

Section 2. Amendments to Zoning Map: Upon receipt by Clearfield City of the fully executed Development Agreement with Clearfield Station Apartments, LLC, and the Intersection Improvements Agreement with TGC Clearfield Station Apartments, LLC (“TGC”) as approved by the City Council, the Clearfield City Zoning Map shall be amended to reflect the changes in zoning outlined in Section 1 above and the City’s Development Services Manager is hereby directed to have a new Zoning Map prepared showing said rezoning.

Section 3. Effective Date: This Ordinance shall become effective immediately upon its passage and posting in three public places within Clearfield City; however, the actual rezoning of the properties which is conditionally approved herein remains subject to satisfaction of the enumerated conditions precedent (full execution of the Development Agreement with Clearfield Station Apartments, LLC, and the Intersection Improvements Agreement with TGC Clearfield Station Apartments, LLC (“TGC”) before said rezoning takes effect.
Dated this 7th day of March, 2017, at the regularly scheduled meeting of the Clearfield City Council.

CLEARFIELD CITY CORPORATION

___________________________________
Mark R. Shepherd, Mayor

ATTEST

_________________________________
Nancy R. Dean, City Recorder

VOTE OF THE COUNCIL

AYE:

NAY:
EXHIBIT “A”

DEVELOPMENT AGREEMENT
EXHIBIT “B”

INTERSECTION IMPROVEMENTS AGREEMENT
EXHIBIT “c”

LEGAL DESCRIPTION
DEVELOPMENT AGREEMENT
FOR THE
CLEARFIELD STATION APARTMENTS

CLEARFIELD, UTAH

DATED: March ____, 2017
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DEVELOPMENT AGREEMENT
FOR THE
CLEARFIELD STATION APARTMENTS
CLEARFIELD, UTAH

DATED: March ___, 2017

THIS DEVELOPMENT AGREEMENT ("DA") is made and entered as of the ____ day of March, 2017, by and between Clearfield City, a Utah municipal corporation and political subdivision of the State of Utah ("City"), and Clearfield Station Apartments, LLC, a Utah limited liability company ("Developer"). This DA concerns a multifamily project known as "Clearfield Station Apartments". The City and Developer are sometimes collectively referred to in this DA as the “Parties”.

RECITALS

A. Developer is, or will be, the owner of that certain real property, comprising approximately 9.8 acres, located at or near 1250 State Street, in Clearfield, Davis County, Utah, as more particularly described in Exhibit “A” (the “Property”).

B. Developer desires to develop the Property in accordance with this DA.

C. The City desires that Developer develop the Property in accordance with this DA.

D. Development of the Property pursuant to this DA will require that the City rezone the
Property to “R-3” with “S-P Overlay Zone” ("the R-3, S-P Zone"), which zoning classification requires any development to be implemented through a Development Agreement.

E. Developer is willing to design and construct the Project (defined below) in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City’s general plan, zoning and development regulations.

F. The City is willing to grant Developer vested rights in and to the development and use of the Property as more fully set forth in this DA in order to promote the City’s goals and objectives.

G. Development of the Project pursuant to this DA is acknowledged by the Parties to be consistent with the Municipal Land Use, Development, and Management Act ("the Act"), and the City’s land use ordinance as set forth in Title 11 of the Clearfield City Code, and to operate to the benefit of the City, Developer, and the general public.

H. The City Council has reviewed this DA and determined that, subject to the satisfaction of the conditions precedent set forth in Section 3 of this DA, it is consistent with the Act, the City Code and the R-3, S-P Zone.

I. The Parties acknowledge that development of the Property pursuant to this DA will result in significant planning, economic and fiscal benefits to the City and its residents by, among other things, increasing revenues to the City based on improvements to be constructed on the Property.

J. Developer and the City have cooperated in the preparation of this DA.

K. The Parties desire to enter into this DA to specify the rights and responsibilities of the Developer to develop the Project, and the rights and responsibilities of the City to approve and regulate the development of the Project, and to provide certain City services for the benefit of the
The Parties understand and intend that this DA is a “development agreement” within the meaning of and entered into pursuant to the terms of the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. Incorporation. The foregoing Recitals and Exhibits “A” – “E” are hereby incorporated into this DA and by this reference, made a part hereof.

1.2. Definitions. As used in this DA, the words and phrases specified below shall have the following meanings:

1.2.1. Act means the Municipal Land Use, Development, and Management Act, as set forth in Title 10, Chapter 9a of the Utah Code as amended.

1.2.2. Building Permit means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, Project Infrastructure, or any off-site infrastructure.

1.2.3. City Code means the Clearfield City Code, including its land use regulations adopted pursuant to the Act and other applicable laws and ordinances.

1.2.4. City Consultants means those outside consultants employed by the City in various specialized disciplines such as, but not limited to, land use planning, traffic, hydrology, legal or drainage for reviewing certain aspects of the development of the Project.
1.2.5. **City Laws** means the ordinances, policies, standards and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters, including but not limited to the City Code, that have been and may be adopted in the future.

1.2.6. **Council** means the elected City Council of the City.

1.2.7. **DA** means this Development Agreement including all of its Exhibits.

1.2.8. **Default** means a material breach of this DA.

1.2.9. **Developer** means Clearfield Station Apartments, LLC.

1.2.10. **Development Application** means an application to the City for development of the Project including a Site Plan, a Building Permit or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.11. **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition to development activity pursuant to the Utah Impact Fees Act, subject to any adjustments or reimbursements as specifically set forth in this DA.

1.2.12. **Notice** means any notice to or from any party to this DA that is either required or permitted to be given to another party.

1.2.13. **Project** means the development to be constructed on the Property pursuant to this DA with the associated public and private facilities, intended uses, densities, and all of the other aspects approved as part of this DA including its Exhibits.

1.2.14. **Project Infrastructure** means those items of public or private infrastructure, at the minimum level of service required by the City under then current, applicable standards (except to the extent of any conflicts between applicable City
standards and the Supplemental Development Standards, in which case the Supplemental Development Standards shall control; however, if the Supplemental Development Standards do not specifically address an infrastructure issue, then the City standards shall be applied), which are a condition of the approval of a Development Application because they are necessary for development of the Property, such as local roads, utilities, sidewalks, curb and gutter located on or around the Property, as mutually agreed upon by the Parties, general descriptions of which are set forth in Exhibit “C”.

1.2.15. **Property** means the real property subject to this DA as more fully described in Exhibit "A".

1.2.16. **Residential Dwelling Unit** means a dwelling intended to be occupied for residential living purposes; each separate unit in a multi-family apartment building constitutes one Residential Dwelling Unit.

1.2.17. **Short Term Rental** means the use, occupancy, rent or lease, for direct or indirect remuneration, of a Residential Dwelling Unit for an effective term of less than thirty (30) days (specifically excepting and allowing a term of less than 30 days only if such term coincides with the period of a regular calendar month; for example 28 days for the month of February).

1.2.18. **Site Plan** means the “site plan” as contemplated and required in the City Code with respect to the Property, reflecting the location, design and configuration of development and improvements thereon.

1.2.19. **Supplemental Development Standards** means a set of standards approved by the City as set forth in Exhibit “B” and the City Laws controlling certain aspects of the design and construction of the development of the Property including but
not limited to setbacks, building sizes, height limitations, parking and signage, and design and construction standards for buildings, roadways and infrastructure. The Parties acknowledge and agree that the standards set forth in this DA with regard to right-of-way widths differ from corresponding standards set forth in the City Laws. The Parties further acknowledge and agree that notwithstanding anything to the contrary in this DA, with regard to right-of-way widths, pavement widths, and any other design standard directly related to or affected by right-of-way width, the standards set forth in this DA shall control.

1.2.20. **Total Approved Residential Units** means the development on the Property of not more than a total of Two Hundred Sixteen (216) Residential Dwelling Units.

2. **Effect of this DA.** The City Council is authorized to enter into development agreements with any person or entity and may require such for any rezoning or development for the purposes set forth in the City’s land use ordinance. This DA shall be the sole agreement between the parties for the development of the Property, other than any agreements governing tax increment participation in an approved community development area pursuant to state law.

3. **Conditions Precedent to the Efficacy of this Agreement.** As conditions precedent to the obligations of the Parties herein, this DA is contingent upon and shall only become effective at such time, and in the event that all of the following have occurred:

   (i) the Clearfield City Council, in the independent exercise of its legislative discretion, elects to approve the rezoning of the Property on which the Project is proposed as designated on Exhibit “A” attached hereto to the R-3, S-P Zone designation, following all necessary public hearings required for the approval of
such rezoning and this DA. This DA is not intended to and does not bind the City Council in the independent exercise of its legislative discretion with respect to the proposed rezoning of the Property; and

(ii) all approvals and entitlements (including, without limitation, subdivision plat, site plan and building permits) required in connection with development and construction of the Project shall have been fully and finally granted, issued or otherwise provided on or before March 15, 2017.

4. Development of the Project. Development of the Project shall be in accordance with this DA and City Laws, except to the extent of any City Laws which are inconsistent with the terms, standards and provisions of this DA. The Project shall include no more than 216 Residential Dwelling Units.

4.1. Financing. The City acknowledges that Developer intends to obtain one or more loans and/or other financing in connection with the development of all or a portion of the Project, and the City agrees to cooperate with Developer in providing such documents or other information as may be reasonably requested by Developer or a lender in connection with any such financing.

5. Development of Residential Dwelling Units.

5.1. Total Approved Residential Units. Developer shall be entitled to develop no more than the Total Approved Residential Units. All Residential Dwelling Units shall be sold or leased at market rates without any subsidies. No Residential Dwelling Unit shall be leased as a Short Term Rental.
6. **Zoning and Vested Rights.**

   **6.1. Vested Rights Granted by Approval of this DA.** Subject to the conditions precedent as set forth in Section 3 above, Developer shall have the vested right to develop and construct the Project on the Property, with the uses, densities and other characteristics of the Project in accordance with the R-3, S-P Zone, the Total Approved Residential Units, and the Supplemental Development Standards, subject to compliance with the terms and conditions of this DA as well as applicable City Laws, except as otherwise specifically provided in this DA.

7. **Term of Agreement.** The term of this DA shall be for three (3) years from its effective date, unless earlier terminated or modified by written agreement of the parties, and except to the extent otherwise specifically provided in this DA.

8. **Public Improvements.**

   **8.1 Utilities and Project Infrastructure.** The Parties understand and agree that Developer shall have the right and the obligation and has willingly accepted the responsibility to construct and install or cause to be constructed and installed prior to the expiration of the term of this Agreement, at Developer’s own expense and at no cost to the City, all portions of the Project Infrastructure, whether public or private, necessary for the Project, subject to and in accordance with the terms of this DA. Although the Parties understand and agree that the City is not responsible for, or expected to share in any of the costs to construct and install either the public or private Project Infrastructure within the Project, certain Project Infrastructure which is built to City standards (except to the extent of any conflicts between applicable City standards and the Supplemental Development Standards, in which the case the Supplemental Development Standards shall control; however, if the Supplemental Development Standards do not specifically address an infrastructure issue, then the City standards shall be applied) and deemed public by
the Parties shall be dedicated to the City in connection with the Project and thereafter be under the control of the City.

8.2 **Sanitary Sewer Lift Station.** Developer shall install or cause to be installed a sanitary sewer lift station on the Property sufficient to meet the requirements of the Project and City Laws. Ongoing maintenance of said lift station shall be the responsibility of the Developer or any succeeding owner of the Project. The Parties understand and agree that the City shall neither own nor maintain any such lift station, and that any such lift station shall provide service only with respect to sewage originating within the Project. Furthermore, the foregoing maintenance obligations of Developer with respect to any installed lift station shall survive the term/expiration of this DA. The City shall be responsible for all maintenance (excluding repairs during any warranty period) in connection with gravity-flow sanitary sewer facilities which it has inspected, approved and accepted as public facilities. All such gravity-flow sanitary sewer facilities which are located outside of the Property shall be public facilities. Upon inspection, approval, and the expiration of any warranty periods as set forth in the City Laws, the City shall accept the dedication of and maintain (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) all such off-site gravity-flow sanitary sewer facilities.

8.3 **Municipal Utility Systems.**

8.3.1 **Culinary Water.** The Parties understand and agree that Developer shall, at Developer’s own expense, install the necessary Project Infrastructure to extend the City’s culinary water system throughout the Project. Developer shall be responsible for all applicable construction, connection, permit and Impact Fees associated with said water connections within the Project. Moreover, the City shall not be responsible for any costs
associated with making said connections. In addition, the Parties understand and agree that Developer shall also be responsible for installing all Project Infrastructure necessary for each individual water connection for the various buildings, open spaces, etc., throughout the Project. Upon inspection, approval, and the expiration of any warranty periods as set forth in the City Laws, the City shall accept the dedication of and maintain (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) all ‘Public’ (as defined below) culinary water facilities within the Project. As part of this Agreement, Developer agrees that any culinary water improvements constructed in connection with the Project, which are intended to be publicly owned and accepted by the City, shall be constructed according to typical City standards. Attached hereto as Exhibit “D-2” is a culinary water plan (the “Culinary Water Plan”) generally depicting the various culinary water improvements anticipated to be constructed in connection with the Project. The Culinary Water Plan is a general depiction only, showing approximate locations. It is provided for the purpose of designating which improvements are to be public and which are to be private. Final locations shall be determined upon approval of an applicable Development Application. The Parties acknowledge and agree that the culinary water improvements identified on Exhibit “D-2” as ‘Public’ shall be dedicated to the City, and owned and maintained (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) by the City following satisfactory inspection, approval, and acceptance by the City after the expiration of any warranty periods. The improvements identified thereon as ‘Private’ shall remain privately owned and maintained. The Parties acknowledge and
agree that water lines and other improvements which extend from a water meter to a
particular building or other end use shall be and remain private, and the City shall neither
own nor maintain such lines and improvements.

8.3.2. Sanitary Sewer. The Parties understand and agree that Developer shall, at
Developer’s own expense, install the necessary Project Infrastructure to extend the City’s
sanitary sewer collection system throughout the Project. The Parties acknowledge and
agree that the City does not act as a sanitary sewer treatment provider (North Davis
Sewer District provides sewer treatment facilities in the area). Developer shall be
responsible for all applicable construction, connection, permit and Impact Fees associated
with said sewer connections within the Project. Moreover, the City shall not be
responsible for any costs associated with making said connections. In addition, the
Parties understand and agree that Developer shall also be responsible for installing all
Project Infrastructure necessary for each individual sewer connection for the various
buildings throughout the Project. Upon inspection, approval, and the expiration of any
warranty periods as set forth in the City Laws, the City shall accept the dedication of and
maintain (routine maintenance shall commence following the City’s satisfactory
“intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code)
all ‘Public’ (as defined below) sanitary sewer facilities within the Project. As part of this
Agreement, Developer agrees that any sanitary sewer improvements constructed in
connection with the Project, whether intended to be publicly owned and accepted by the
City, or intended to be privately owned, shall be constructed according to typical City
standards. Attached hereto as Exhibit “D-3” is a sanitary sewer plan (the “Sanitary Sewer
Plan”) generally depicting the various sanitary sewer improvements anticipated to be
constructed in connection with the Project. The Sanitary Sewer Plan is a general
depiction only, showing approximate locations. It is provided for the purpose of
designating which improvements are to be public and which are to be private. Final
locations shall be determined upon approval of an applicable Development Application.
The Parties acknowledge and agree that the sanitary sewer improvements identified on
Exhibit “D-3” as ‘Public’ shall be dedicated to the City, and owned and maintained
(routine maintenance shall commence following the City’s satisfactory “intermediate
inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) by the City
following satisfactory inspection, approval and acceptance by the City after the expiration
of any warranty periods. The improvements identified thereon as ‘Private’ shall remain
privately owned and maintained.

8.3.3. Storm Drainage. The Parties understand and agree that Developer shall, at
Developer’s own expense, install the necessary Project Infrastructure to extend the City’s
storm drainage system throughout the Project. Developer shall be responsible for all
applicable construction, connection, permit and Impact Fees associated with said storm
drain connections within the Project. Moreover, the City shall not be responsible for any
costs associated with making said connections. In addition, the Parties understand and
agree that Developer shall also be responsible for installing all Project Infrastructure
necessary for each individual storm drain connection for the various buildings, open
spaces, etc. throughout the Project. Upon inspection, approval, and the expiration of any
warranty periods as set forth in the City Laws, the City shall accept the dedication of and
maintain (routine maintenance shall commence following the City’s satisfactory
“intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code)
all ‘Public’ (as defined below) storm drainage facilities (except as otherwise provided in this DA) within the Project. As part of this Agreement, Developer agrees that any storm drainage improvements constructed in connection with the Project, whether intended to be publicly owned and accepted by the City, or intended to be privately owned, shall be constructed according to typical City standards. Attached hereto as Exhibit “D-4” is a storm drainage plan (the “Storm Drainage Plan”) generally depicting the various storm drainage improvements anticipated to be constructed in connection with the Project. The Storm Drainage Plan is a general depiction only, showing approximate locations. It is provided for the purpose of designating which improvements are to be public and which are to be private. Final locations shall be determined upon approval of an applicable Development Application. The Parties acknowledge and agree that the storm drainage improvements identified on Exhibit “D-4” as ‘Public’ shall be dedicated to the City, and owned and maintained (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) by the City following satisfactory inspection, approval and acceptance by the City after the expiration of any warranty periods. The improvements identified thereon as ‘Private’ shall remain privately owned and maintained.

8.4. Restrictions on Certificates of Occupancy. No certificate of occupancy shall be issued by the City and no occupancy shall be permitted, with respect to any particular building, unless all applicable items of Project Infrastructure specifically required with respect to such building pursuant to this DA are installed in accordance with this DA, the City Laws and approved by the City Engineer and City Attorney, except landscaping, for which an escrow account or bond will be allowed to be established pursuant to City Laws for landscaping.
improvements. The City and Developer acknowledge and agree that certificates of occupancy for one or more building(s) may be available prior to the time that all Project Infrastructure for the entire Project is completed. To the extent that the Project Infrastructure is complete with respect to the particular building for which such certificate(s) of occupancy are requested, the certificate(s) may be issued. However, in no case shall the final residential building receive its certificate of occupancy until all Project Infrastructure for the entire Project is completed (with the exception of landscaping improvements, for which an escrow account or bond will be allowed as previously stated).

8.5. Project Infrastructure Improvements. Developer’s obligations with respect to Project Infrastructure improvements shall be subject to the applicable City Laws.

8.6. Public Services Provided by City. Subject to compliance with Developer’s obligations as set forth in this DA regarding the construction of public improvements, the City shall provide all of the standard municipal services to the Project, including, but not limited to, culinary water, sanitary sewer collection, storm drainage, public safety facilities and services and police services, at the same levels of service and on the same terms as are generally provided by the City to and for the benefit of the City’s other similarly situated residents, institutions and businesses. The Parties acknowledge and agree that the City does not provide fire protection/suppression services or emergency medical services (such services are provided by the North Davis Fire District).


9.1. Public and Private Roads. The Parties understand and agree that Developer shall, at Developer’s own expense, install the necessary Project Infrastructure to provide transportation and circulation facilities within the Project. The City shall cooperate with Developer in providing
such facilities (which shall be limited to those set forth in Section 9.1.1 and in Exhibit D-1) to the Project in connection with the City’s existing roads and transportation facilities. Upon inspection, approval and the expiration of any warranty periods as set forth in the City Laws, the City shall accept the dedication of and maintain (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) all ‘Public’ (as defined below) roads within the Project. As part of this Agreement, Developer agrees that any roads constructed in connection with the Project, whether intended to be publicly owned and accepted by the City, or intended to be privately owned, shall be constructed according to typical City standards and as set forth in this DA, except with regard to right-of-way widths, pavement widths, and any other design standard directly related to or affected by right-of-way width, which shall be as set forth in the Supplemental Development Standards. Attached hereto as Exhibit “D-1” is a street plan (the “Proposed Street Plan”) generally depicting the various streets and roadways anticipated to be constructed by Developer in connection with the Project. The Proposed Street Plan is a general depiction only, showing approximate locations. It is provided for the purpose of designating which streets are to be public and which are to be private. Final locations shall be determined upon approval of an applicable Development Application. The Parties acknowledge and agree that the roads identified on Exhibit “D-1” as ‘Public’ shall be dedicated to the City, and thereafter (following inspection, approval and the expiration of any warranty periods as set forth in the City Laws) owned and maintained (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) by the City, including culinary water, sanitary sewer and storm drain facilities within or under such roads, except as otherwise provided in this DA. The roads identified thereon as ‘Private’ shall remain privately
owned and maintained. Maintenance of storm drain systems within or under ‘Private’ roads shall be the responsibility of Developer and/or future property owners within the Project. The City shall be responsible for maintenance of culinary water and sanitary sewer systems within or under ‘Private’ roads, except as otherwise agreed by the Parties. Developer shall grant to the City such easements within ‘Private’ roads as may be reasonably necessary in connection with the City’s obligations to maintain culinary water and sanitary sewer systems within such roads. The Parties acknowledge and agree that the standards set forth in this DA with regard to right-of-way widths differ from corresponding standards set forth in the City Laws. The Parties further acknowledge and agree that notwithstanding anything to the contrary in this DA, with regard to right-of-way widths, and pavement widths, the standards set forth in this DA shall control.

9.1.1 Perimeter Roads. As shown on Exhibit “D-1”, Boxcar Drive and Express Drive are Public roads that are to be constructed along the western and southern boundaries of the Property. Boxcar Drive and Express Drive will provide access to the Property, and to the properties located to the west (adjacent to Boxcar Drive) and to the south (adjacent to Express Drive) of the Property, at such time as those adjacent properties are developed. Notwithstanding anything to the contrary herein, and as shall be more particularly set forth in the approved construction drawings, Developer shall not be obligated to construct curb, gutter, sidewalk or landscaping improvements along the western side of Boxcar Drive, nor along the southern side of Express Drive.

9.1.2 Reimbursement for Perimeter Roads. City and Developer shall, prior to closing on Developer’s purchase of the Property, enter into a reimbursement agreement directing and authorizing the City to collect from those property owners and developers that front along Boxcar Drive and Express Drive (collectively, “the Perimeter Roads”) a
payment, to be collected at the time of development of such frontage property, in order to reimburse Developer a proportional share of its construction expenses in connection with the Perimeter Roads, including construction of public utilities within the Perimeter Roads. Developer shall be eligible to receive reimbursement for its construction costs for the Perimeter Roads from funds actually received by the City from (i) the owners and developers of property with frontage along the Perimeter Roads pursuant to aforementioned reimbursement agreement, and/or (ii) such other sources of funds as may be approved by the City, as reimbursement for Developer’s previously installed improvements.

10. **Open Space, Parks and Trails.** The Parties understand and agree that Developer shall, at Developer’s own expense, install the necessary Project Infrastructure to provide open space and trails within the Project, and as generally depicted and described in this DA. The City shall cooperate with Developer in providing such facilities. Developer shall be responsible for all applicable construction, permit and Impact Fees associated with said open space and trails within the Project. Except as otherwise specifically provided in this DA, all open space and trails within the Project shall be privately owned and maintained, and the City shall neither own nor maintain the same. The Parties acknowledge and agree that any and all open space located between travel lanes within any public road or public right of way shall, following satisfactory inspection, approval and expiration of any warranty period, be owned and maintained (routine maintenance shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code) by the City. Open space shall consist of meaningful areas that promote the goals and objectives of Developer and City, but shall not include roads (but shall include landscaped areas within rights-of-way) or parking lots.
11. **Other Landscaping Requirements.** A landscaping buffer shall be required and installed by Developer at Developer’s sole cost and expense along all State Street frontages consistent with the Supplemental Development Standards. All parking lots visible from State Street must be screened.

12. **Payment of Fees.** Except as otherwise specifically provided in this DA, Developer shall pay to the City all fees (including, but not limited to, plan review fees, Impact Fees, hookup fees and inspection fees) as are applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule – but not applicable only to the Property) and which are adopted pursuant to State law, in amounts specified in the City Laws.

12.1 **Impact Fees.** The Parties acknowledge and agree that in consideration of the infrastructure improvements to be provided by Developer for the Project, Developer shall receive, at a minimum, the Impact Fee adjustments and/or reimbursements set forth on the attached Exhibit “E”, and that those Impact Fees calculations and figures as set forth in Exhibit “E” have been agreed upon by the Parties and are not subject to further legal challenge or dispute by the Parties. The Parties acknowledge and agree that Developer shall be entitled to a reimbursement of Parks Impact Fees in an amount that is equal to the additional costs incurred by Developer in providing trail improvements (including sidewalks, pathways, etc.) which exceed typical City standards on the main trail from State Street along the northern boundary of the Project. The design and scope of said enhancements which exceed City standards shall be subject to the City’s approval, which shall not be unreasonably withheld, conditioned or delayed. Within thirty (30) days after receipt of an itemized invoice from Developer together with copies of receipts or other documentation evidencing such additional costs (in excess of what would be incurred to provide improvements under typical City standards), the City shall reimburse
Developer for all such additional costs. Unless said reimbursement amounts submitted by Developer are disputed by the City in a written notice to Developer given during such 30-day reimbursement period setting forth the reason(s) for said dispute, if such reimbursement is not paid in full within the time required, interest shall accrue on any unpaid balance at the rate of eight percent (8%) annually until paid. Except as otherwise specifically provided herein, Developer does not waive any right, whether pursuant to statute or otherwise, to challenge any Impact Fee charged, or sought to be charged, by the City.

13. **Construction Standards and Requirements.**

13.1 **Building Permits.** No buildings or other structures shall be constructed within the Project without Developer first obtaining a building permit therefor.

13.2 **City and Other Governmental Agency Permits.** Before beginning construction or development of any buildings, structures or other work or improvements upon any portion of the Property, Developer shall, at its expense, secure, or cause to be secured, any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. Upon satisfactorily meeting all pertinent requirements as set forth in this DA and City Laws, the City agrees to grant to Developer those permits and approvals necessary to permit the Developer to implement and complete the development of the Project. The City shall reasonably cooperate with Developer in seeking to secure such permits from other governmental entities.

13.3 **Inspection by City.** Notwithstanding the City’s established construction standards, City acknowledges and agrees that, except as otherwise specifically provided in the last sentence of this Section 13.3, continuous direct observation by a city inspector or city engineer will not be a requirement with respect to construction of improvements at the Project, and Developer shall have the right to perform and continue its construction work. However, the
City shall have the right, upon giving written notice thereof to Developer setting forth its reasonable concerns, to require continuous inspection with respect to any particular construction work relating to such concerns.


14.1 Notice. If Developer or the City is believed to be in Default for failing to perform its respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide written Notice to the party that is believed to be in Default.

14.2 Contents of the Notice of Default. The Notice of Default shall:

14.2.1 Claim of Default. Specify the claimed event of Default;

14.2.2 Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this DA that is claimed to be in Default;

14.2.3 Specify Materiality. Identify why the Default is claimed to be material;

and

14.2.4 Optional Proposed Cure. If elected by the party delivering the Notice of Default, in its discretion, the Notice of Default may propose a method and period of time for curing the Default, which period of time shall be not more than sixty (60) days.

14.3 Meet and Confer. Upon the issuance of a Notice of Default the Parties shall engage in a “Meet and Confer” process, which means that the Parties and/or their representatives shall meet together in person (or by telephone if meeting in person is not reasonably possible in a timely manner) to discuss the claimed Default and shall attempt, in good faith, to reach a mutually acceptable resolution.

14.4 Remedies. If the Parties are not able to resolve the Default through the “Meet and
Confer” process then the parties may pursue any and all remedies available at law and/or in equity.

14.5 Emergency Defaults. Anything in this DA notwithstanding, if the Council finds on the record that a Default materially impairs a compelling, countervailing interest of the City involving the public health or safety, and that any delays in remedying such a Default would also impair a compelling, countervailing interest of the City involving the public health or safety, then the City may pursue the remedies of Section 14.4 without the requirements of Section 14.3. The City shall give Notice to Developer of any public meeting at which an emergency Default is to be considered and Developer shall be allowed to address the Council at that meeting regarding the claimed emergency Default.

14.6 Extended Cure Period. If any Default cannot be reasonably cured within sixty (60) days then such cure period may be extended by the non-defaulting party so long as the defaulting party is pursuing a cure with reasonable diligence.

14.7 Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

15. Notices. All notices required or permitted under this DA shall be given in writing by certified mail, postage prepaid; or personally; or by nationally-recognized overnight courier service to the following addresses; or by email to the following email addresses provided the recipient replies to provide confirmation of receipt:

To Developer:

Clearfield Station Apartments, LLC
Attn: Mike Christensen
748 West Heritage Park Blvd., Ste. 203
Layton, UT 84041
mike@thackeraygarn.com
With a copy to:

Dean Smith, Attorney  
c/o The Thackeray Garn Company, LLC  
1165 E. Wilmington Ave., Ste. 275  
Salt Lake City, UT 84106  
deans@jtcompany.com

To the City:  

Clearfield City Corporation  
Attn: City Recorder  
55 S. State St.  
Clearfield, UT 84015  
nancy.dean@clearfieldcity.org

With a copy to:  

Clearfield City Attorney  
55 S. State St., Suite 332  
Clearfield, UT 84015  
stuart.williams@clearfieldcity.org

15.1. Effectiveness of Notice. Except as otherwise provided in this DA, each Notice shall be effective and shall be deemed given upon actual receipt, if personally delivered; when transmitted if delivered by email; one (1) business day following deposit with a nationally-recognized overnight courier that provides a receipt; or on the third (3rd) day following deposit in the United State mail in the manner described above. Any party may change its address for Notice under this DA by giving written Notice to the other party in accordance with the provisions of this Section.

16. Entire Agreement/Amendment. This DA, and all Exhibits thereto, is the entire agreement between the Parties regarding the subject matter included herein and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties. Any amendment to this DA shall be recorded against the Property.

17. Headings. The captions used in this DA are for convenience only and are not intended to be substantive provisions or evidences of intent.

18. No Third Party Rights/No Joint Venture. This DA does not create a joint venture relationship, partnership or agency relationship between the City and Developer. Further, the
parties do not intend this DA to create any third-party beneficiary rights. The parties acknowledge that this DA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property, except as otherwise specifically provided in this DA.

19. **Assignability.** The rights and responsibilities of Developer under this DA may be assigned in whole or in part by Developer with the consent of the City as provided herein, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary herein, Developer shall have the right to assign its rights under this DA to any “Affiliate” of Developer without obtaining the City’s consent therefor. As used in this Section 19, “Affiliate” shall mean any person or entity controlling, controlled by or under common control with Developer (as used herein “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies and decision-making of such person or entity, through the ownership of voting interests).

19.1 **Notice.** Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

19.2 **Assignee Bound by this DA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this DA as a condition precedent to the effectiveness of the assignment.

20. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.
21. **Severability.** If any provision of this DA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this DA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this DA shall remain in full force and affect.

22. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; inability to obtain reasonable financing in the event of significant changes in the credit markets, acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

23. **Time is of the Essence.** Time is of the essence to this DA and every right or responsibility shall be performed within the times specified.

24. **Mutual Drafting.** Each party has participated in negotiating and drafting this DA and therefore no provision of this DA shall be construed for or against either party based on which party drafted any particular portion of this DA.

25. **Applicable Law.** This DA is entered into in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah’s choice of law rules.

26. **Venue.** Any action to enforce this DA shall be brought only in the Second Judicial District Court for the State of Utah, Farmington Department.

27. **Recordation and Running with the Land.** This DA shall be recorded against the Property in the real property records of Davis County. This DA shall be deemed to run with the land and
shall be deemed binding upon the Parties, and all of their successors and assigns.

28. **Authority/Good Standing.**

   (a) Developer represents and warrants to the City that (i) Developer is duly formed and validly existing under the laws of Utah and is qualified to do business in the State of Utah; (ii) the individuals executing this DA on behalf of Developer are duly authorized and empowered to bind Developer; and (iii) this DA is valid, binding and enforceable against Developer in accordance with its terms.

   (b) City represents and warrants to Developer that (i) City is a Utah municipal corporation; (ii) City has power and authority pursuant to enabling legislation, the Act, City Laws, and the City Code, to enter into and be bound by this DA; (iii) the individual(s) executing this DA on behalf of City are duly authorized and empowered to bind the City; and (iv) this DA is valid, binding and enforceable against the City in accordance with its terms.

   [Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have executed this DA by and through their respective, duly authorized representatives as of the day and year first herein above written.

CLEARFIELD CITY, a municipal corporation

Attest: By: ___________________________

Mark R. Shepherd, Mayor

City Recorder Approved as to Form:

__________________________
City Attorney

CLEARFIELD STATION APARTMENTS, LLC
a Utah limited liability company

By: Its Manager
TGC Clearfield Station Apartments, LLC
a Utah limited liability company

By: ____________________________
John R. Thackeray, Manager

By: ____________________________
Michael R. Christensen, Manager
ACKNOWLEDGMENT

STATE OF UTAH

COUNTY OF ________________

The foregoing instrument was acknowledged before me this _____ day of March, 2017, by John R. Thackeray, the Manager of TGC Clearfield Station Apartments, LLC, the Manager of CLEARFIELD STATION APARTMENTS, LLC, a Utah limited liability company.

______________________________
NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF UTAH

COUNTY OF ________________

The foregoing instrument was acknowledged before me this _____ day of March, 2017, by Michael R. Christensen, the Manager of TGC Clearfield Station Apartments, LLC, the Manager of CLEARFIELD STATION APARTMENTS, LLC, a Utah limited liability company.

______________________________
NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF UTAH

COUNTY OF ________________

The foregoing instrument was acknowledged before me this _____ day of March, 2017, by ______________________________, the __________________ of CLEARFIELD CITY, a municipal corporation.

______________________________
NOTARY PUBLIC
## TABLE OF EXHIBITS

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<td>Legal Description of Property</td>
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<tr>
<td>&quot;B&quot;</td>
<td>Supplemental Development Standards</td>
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<td>&quot;C&quot;</td>
<td>Project Infrastructure</td>
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<tr>
<td>&quot;D-1&quot;</td>
<td>Street Plan</td>
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<tr>
<td>&quot;D-2&quot;</td>
<td>Culinary Water Plan</td>
</tr>
<tr>
<td>&quot;D-3&quot;</td>
<td>Sanitary Sewer Plan</td>
</tr>
<tr>
<td>&quot;D-4&quot;</td>
<td>Storm Drainage Plan</td>
</tr>
<tr>
<td>&quot;E&quot;</td>
<td>Impact Fees</td>
</tr>
</tbody>
</table>
Exhibit “A”

Legal Description of Property

PARCEL 1:
LOT 1B-1 AND LOT 1B-2, CLEARFIELD STATION TOD PHASE 1, ACCORDING TO THE
OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE DAVIS
COUNTY RECORDER.

PARCEL 2:
PARCEL 1 IS TOGETHER WITH THE FOLLOWING WHISTLE AND GRAND PRIVATE
DRIVES, AS CREATED ON THAT CERTAIN SUBDIVISION PLAT RECORDED MARCH
___, 2017 AS ENTRY NO. ______________ IN BOOK ______ AT PAGE ______.

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 12, TOWNSHIP 4
NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AS MARKED BY A
DAVIS COUNTY SURVEY BRASS CAP (SAID EAST QUARTER CORNER BEING
NORTH 00°05'19" EAST 2636.71 FEET ALONG THE SECTION LINE FROM THE
SOUTHEAST CORNER OF SAID SECTION 12 WHICH IS WITNESSED BY TWO
RECOVERED HIGHWAY BRASS CAP RIGHT-OF-WAY MONUMENTS AS SHOWN ON
THE TIE SHEET FOR SAID SOUTHEAST CORNER AS FILED ON PAGE 671 OF TIE
SHEETS AT THE DAVIS COUNTY SURVEYOR'S OFFICE, SAID SECTION LINE BEING
THE BASIS OF BEARINGS FOR THE HEREIN DESCRIBED PROPERTY) , SAID EAST
QUARTER CORNER ALSO BEING SOUTH 89°54'00" EAST 2649.24 FEET FROM THE
CENTER OF SAID SECTION 12 AS SHOWN ON RECORD OF SURVEY (ROS) MAP NO.
5703 PREPARED BY MOUNTAIN WEST SURVEYING & MAPPING, INC. AND FILED IN
THE DAVIS COUNTY SURVEYOR'S OFFICE; THENCE NORTH 89°54'00" WEST 812.86
FEET ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 12 AND
SOUTH 540.48 FEET TO A POINT ON THE EAST RIGHT OF WAY OF THE BOX CAR
DRIVE (A PUBLIC ROAD) AND THE TRUE POINT OF BEGINNING AND RUNNING
THENCE SOUTH 00°06'58" WEST 67.00 FEET ALONG SAID BOX CAR DRIVE RIGHT
OF WAY; THENCE SOUTH 89°53'02" EAST 403.39 FEET; THENCE SOUTH 00°06'58"
WEST 99.00 FEET; THENCE NORTH 89°53'02" WEST 7.00 FEET; THENCE SOUTH
0°06'58" WEST 198.71 FEET TO A POINT BEING ON THE NORTH RIGHT OF WAY OF
THE EXPRESS DRIVE (A PUBLIC ROAD); THENCE SOUTH 89°53'02" EAST 63.00 FEET
ALONG SAID EXPRESS DRIVE RIGHT OF WAY; THENCE NORTH 0°06'58" EAST
211.02 FEET; THENCE SOUTH 89°54'56" EAST 2.00 FEET; THENCE NORTH 0°06'58"
EAST 82.69 FEET; THENCE NORTHWESTERLY 111.53 FEET ALONG A 71.00 FOOT
RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°00'00" AND A
LONG CHORD OF NORTH 44°53'02" WEST 100.41 FEET; THENCE NORTH 89°53'02"
WEST 390.39 FEET TO THE POINT OF BEGINNING.
Exhibit “B”

Supplemental Development Standards

[See Attached]

The attached design standards were initially created to apply with respect to the development of a much larger multi-use, master-planned project. For purposes of this Agreement, the attached design standards shall only apply to the Clearfield Station Apartments Project, and any and all references in the attached design standards to a master plan or to uses or properties that are separate from or unrelated to the Project, including maps or drawings to the extent that such maps or drawings depict matters that are separate from or unrelated to the Project, shall have no force or effect.
Exhibit “C”

Project Infrastructure

[See Attached]
Exhibit “D-1”

Street Plan

[See Attached]
Exhibit “D-2”

Culinary Water Plan

[See Attached]
Exhibit “D-3”

Sanitary Sewer Plan

[See Attached]
Exhibit “D-4”

Storm Drainage Plan

[See Attached]
Exhibit “E”

Impact Fees

[See Attached]
CLEARFIELD STATION APARTMENTS
INTERSECTION IMPROVEMENTS AGREEMENT

This Clearfield Station Apartments Intersection Improvements Agreement (“Agreement”) is entered into effective as of the _____ day of March, 2017, by and between TGC CLEARFIELD STATION APARTMENTS, LLC, a Utah limited liability company (“TGC”), and CLEARFIELD CITY, a Utah municipal corporation and political subdivision of the State of Utah (“City”). As used herein, TGC and City may be referred to collectively as the “Parties.”

RECITALS

WHEREAS, City and Clearfield Station Apartments, LLC, a Utah limited liability company (“Developer”), have entered or will enter into that certain Development Agreement for the Clearfield Station Apartments dated March ____ , 2017 (the “DA”), regarding the development of that certain real property, comprising approximately 9.8 acres, in Clearfield, Utah (the “Property”), as such Property is more particularly described in the DA, as a multi-family apartment project (the “Project”); and

WHEREAS, TGC is the Manager and a Member of Developer holding the majority of the membership interests in the Developer; and

WHEREAS, the Parties acknowledge that certain intersection improvements at (i) the intersection of State Street and Station Boulevard, and (ii) the intersection of State Street and 1000 East Street (collectively, the “Intersection Improvements”), may be constructed by the City, another developer, or another third party (as applicable, the “Responsible party”), at some future time; and,

WHEREAS, the anticipated Intersection Improvements are generally depicted and/or described on Exhibit “A” attached hereto and incorporated herein; and

WHEREAS, the Parties acknowledge that the Intersection Improvements are anticipated to provide a benefit to the Project and surrounding properties, and that a proportionate share of the cost of such Intersection Improvements, if constructed, should be reimbursed; and

WHEREAS, under the terms and conditions of the secured financing that Developer will obtain for the Project, Developer is unable to undertake the obligation to reimburse a proportionate share of the costs of such Intersection Improvements, as such costs are not currently capable of determination, but TGC is willing to assume such obligation as it will benefit from the development of the Project; and

WHEREAS, City and TGC desire to enter into this Agreement to set forth the terms and conditions by which TGC shall be responsible for reimbursement of a proportionate share of the costs associated with the Intersection Improvements which would otherwise be allocated to the Project, as more particularly described herein; and
WHEREAS, TGC has anticipated that the Clearfield City Community Development and Renewal Agency ("CDRA") will enter into an agreement with the Developer which will provide to the Developer some real property tax reimbursements, which reimbursement funds could be used, among other things, to offset some portion of the obligations which TGC will undertake according to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement and are made a part hereof.

2. Tax Increment Financing Agreement. City and TGC shall use their best efforts to cause CDRA and Developer to enter into a final written agreement (the “TIF Participation Agreement”) prior to August 1, 2017 (the “Final Date”), providing reimbursement to Developer from tax increment monies for its actual costs in installing certain improvements in connection with the Project, as shall be more particularly described in such TIF Participation Agreement. The maximum reimbursement amount shall be capped at the lesser of (i) the Developer’s actual costs in installing such improvements; or (ii) the tax increment actually received by the CDRA from the Property, less 5% for administrative purposes.

3. Cooperation Regarding Rights from Third Parties. The City acknowledges and agrees that (i) TGC on behalf of the Developer, may seek to secure easements or other rights from third parties in connection with certain off-site improvements for the benefit of the City and/or Project, which may include, but are not limited to, access drives and utilities, and (ii) the City shall reasonably cooperate with TGC in its efforts, if any, to obtain such easements or other rights associated therewith.

4. TGC’s Proportionate Share. The Parties agree that the properties reasonably anticipated to benefit from the construction and installation of the Intersection Improvements are those properties identified in the attached Exhibit “B” (the “Benefitted Properties”), comprising a total of approximately 70.2 acres. Project’s “Proportionate Share” shall be 13.96% (calculated as the ratio of 9.8/70.2). TGC’s “Maximum Reimbursement Amount” shall be $____________.

5. Actual Costs and Reimbursement Payments. As used herein, “Actual Costs” means all costs actually incurred or expended by the Responsible Party to construct or install the Intersection Improvements, specifically excluding costs related to water, sewer, storm water or any other utilities, but including land acquisition and the cost of materials, as well as costs and fees for general contractors, engineers, surveyors, construction management and inspection, and other similar or related costs. Within sixty (60) days after (i) the Intersection Improvements have been fully installed, inspected, and approved by the City, (ii) the Intersection Improvements have been dedicated to the City by lawful conveyance through plat, deed or other method acceptable to the City; and (iii) the Responsible Party has

Commented [JA1]: Waiting to receive the calculation of this amount from TGC.
submitted documentation (which may include receipts, checks, vouchers, bills, statements, bid documents, change orders, payment documents, and other similar information) to TGC evidencing the Actual Costs of constructing the Intersection Improvements, TGC shall pay the Project’s Proportionate Share of such costs as a reimbursement payment to the Responsible Party, however in no event shall TGC be obligated to pay more, in aggregate, than the Maximum Reimbursement Amount. Nothing herein shall obligate the Developer to pay the Project’s Proportionate Share of such costs, but should the Developer elect to make such payment, it may do so in full or partial satisfaction of the obligation of TGC. Notwithstanding anything to the contrary herein, in the event that Developer and CDRA fail to enter into the TIF Participation Agreement on or before the Final Date, TGC and Developer shall have no obligation to reimburse the Project’s Proportionate Share of costs or any other costs incurred by any party in connection with the Intersection Improvements.

6. **Transportation Funding Bill.** TGC, individually and on behalf of the Developer, shall use good faith, diligent efforts to cause the State of Utah to enact a transportation funding bill providing funds for, among other things, reimbursement of certain infrastructure costs in connection with the overall Clearfield Station project, including the Project (the “State Funding Bill”). If such a State Funding Bill is enacted, (i) a portion of such funds shall be paid to Developer as reimbursement for all costs incurred by Developer in constructing any of the infrastructure improvements identified in Exhibit “C” attached hereto, and (ii) TGC’s reimbursement obligations under Section 5 of this Agreement shall be reduced by the amount of such funds that are available for reimbursement of the Intersection Improvements costs. Notwithstanding anything to the contrary herein, if (i) the State Funding Bill is enacted, and (ii) the funds from the State Funding Bill are not used for construction of the Intersection Improvements to the fullest available extent, then Developer shall have no obligation to reimburse the Project’s Proportionate Share of costs or any other costs incurred by any party in connection with the Intersection Improvements.

7. **Alternative/Modification to Intersection Improvements.** In the event of any material alteration or modification of all or any portion of the Intersection Improvements as set forth on Exhibit “A” attached hereto, Developer shall have the right to advise and consult with respect thereto, and to review all plans, designs and cost estimates (including contractor bids) in connection therewith. On the condition that Developer consents to or otherwise approves of such alterations or modifications in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such altered or modified Intersection Improvements shall be deemed Intersection Improvements for all purposes under this Agreement, and all of the terms and conditions of this Agreement shall continue in full force and effect with respect to the same. The parties acknowledge that Actual Costs in connection with any such altered or modified Intersection Improvements are expected to be significantly less than if the original Intersection Improvements were pursued.

8. **Term of Agreement.** This Agreement shall terminate at such time as the total reimbursement paid to the Responsible Party reaches the TGC’s Maximum Reimbursement Amount set forth herein, or ten (10) years after the date of this Agreement, whichever occurs first.
9. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to reimbursement by TGC of the Project’s Proportionate Share of costs for the Intersection Improvements and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the Parties with regard to such reimbursements.

10. **Binding Effect.** This Agreement shall be binding upon the Parties hereto and their respective officers, managers, employees, representatives, agents, members, successors, and assigns.

11. **Validity and Severability.** If any section, clause, or portion of this Agreement is declared invalid by a court of competent jurisdiction for any reason, the remainder shall not be affected thereby and shall remain in full force and effect.

12. **Amendment.** This Agreement may be amended only in a writing signed by the Parties hereto.

13. **Controlling Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Utah. Venue shall be in Davis County, Utah.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the day and year first hereinabove written.

**CLEARFIELD CITY**

a municipal corporation

Attest: 

By: ____________________________

Mark R. Shepherd, Mayor

City Recorder

Approved as to Form:

__________________________

City Attorney

**TGC CLEARFIELD STATION APARTMENTS, LLC**

a Utah limited liability company

By: ____________________________

John R. Thackeray, Manager

By: ____________________________

Michael R. Christensen, Manager
EXHIBIT “A”

Intersection Improvements
EXHIBIT “B”

List of Benefitted Properties
EXHIBIT “C”

Eligible Infrastructure Improvements
REIMBURSEMENT AGREEMENT
FOR PROJECT IMPROVEMENTS

This Reimbursement Agreement for Project Improvements ("Agreement") is entered into effective as of the _____ day of _____________, 2017, by and between CLEARFIELD STATION APARTMENTS, LLC, a Utah limited liability company ("Developer"), and CLEARFIELD CITY, a Utah municipal corporation and political subdivision of the State of Utah ("City"). As used herein, Developer and City may be referred to collectively as the "Parties".

RECITALS

WHEREAS, Developer and City have entered into that certain Development Agreement for the Clearfield Station Apartments dated ________________, 2017 (the "DA"), regarding the development of that certain real property, comprising approximately 9.8 acres, in Clearfield, Davis County, Utah (the "Property"), as such Property is more particularly described in the DA; and

WHEREAS, pursuant to the DA, Developer has certain obligations with respect to the construction of Boxcar Drive and Express Drive (the "Two Streets"), which are public streets located adjacent to the boundaries of the Property; and,

WHEREAS, the Parties agree that the Two Streets will provide a benefit to the developers of property that fronts along the Two Streets (the "Benefitted Properties"), and that a proportionate share of the cost of the Two Streets should be allocated to the developers of the Benefitted Properties; and

WHEREAS, Developer desires to be reimbursed for a proportionate share of its costs associated with the construction of the Two Streets by the developers of the Benefitted Properties, none of whom are currently participating in the cost of such improvements; and

WHEREAS, pursuant to the DA, City and Developer agreed to enter into a reimbursement agreement directing and authorizing the City to collect from the developers of the Benefitted Properties a payment, to be collected at the time of development of any of such Benefitted Properties, in order to provide reimbursement for an equitable portion of construction expenses in connection with the Two Streets; and

WHEREAS, City and Developer desire to enter into this Agreement to set forth the terms and conditions by which Developer may be reimbursed for a proportionate share of its costs associated with the construction of the Two Streets.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:
1. **Incorporation of Recitals.** The foregoing Recitals are hereby incorporated into this Agreement and are made a part hereof.

2. **Developer’s Obligations.**

   a. Developer shall, in accordance with and subject to the terms and conditions of the DA, construct and install or cause to be constructed and installed the improvements comprising the Two Streets, as such improvements are generally described in the Boxcar and Express Street Improvements Drawing dated __________, attached hereto as Exhibit “A” and incorporated herein, including all water, sewer, storm and other public utilities shown therein (all such improvements are collectively referred to herein as the “Improvements”).

   b. Following satisfactory inspection, approval, and the expiration of any warranty periods, Developer shall dedicate the Improvements to the City, in a form reasonably acceptable to the City.

   c. Developer understands and agrees that the Improvements will not be reimbursable unless they are approved by the City in accordance with the DA.

3. **Cost Allocation and Collection from Developers of the Benefitted Properties for Improvements.**

   a. The Parties agree that the properties reasonably anticipated to benefit from the construction and installation of the Improvements are limited to those properties identified in the attached Exhibit “B” (the “Benefitted Properties”), and cost allocation and collection shall be limited to only the Benefitted Properties and their developers.

   b. The City shall allocate costs to the developers of the Benefitted Properties in an equitable manner based on each Benefitted Property’s proportionate share of street frontage along the Two Streets, parcel size, connection (or lack thereof) to the public utilities within the Two Streets, or other relevant factors as determined by the City. Real properties which do not either have street frontage along or immediate access to the Two Streets, or to any public utilities within the Two Streets, will not be considered as Benefitted Properties and shall have no obligation to participate in or provide any reimbursement pursuant to this Agreement. The total costs to be allocated to the developers of the Benefitted Properties shall be the Developer’s Maximum Reimbursement Amount (defined below).

   c. To the extent allowed by law, the City shall require the developers of the Benefitted Properties that seek City approval to develop, subdivide or build, to pay to the City their appropriate share of allocated costs pursuant to this Agreement, as a condition of any development, substation, conditional use, site plan or other similar approval and which payment shall be made prior to or at the time of issuance of any building permit, with respect to the Benefitted Properties.

4. **Reimbursement Payments.**
a. Within thirty (30) days after collection of any allocated costs from the developers of the Benefitted Properties as set forth herein, the City shall pay such collected amounts (subject to the provisions set forth in Section 5 below) as a reimbursement payment to Developer, until the Developer’s Maximum Reimbursement Amount has been paid in full. Notwithstanding anything in this Agreement to the contrary, the City shall have no obligation to make any reimbursement payment to Developer until such funds are actually received by City. The parties acknowledge, understand and agree that the City is not directly responsible or liable for any reimbursement payment to Developer, other than to require reimbursement as set forth in this Agreement and to account for sums received as set forth in this Agreement.

b. No reimbursement shall be due to Developer until:

i) The applicable Improvements have been fully installed by Developer and thereafter inspected, and approved by the City, and the Improvements have been dedicated by Developer to the City by lawful conveyance through plat, deed or other method acceptable to the City; and

ii) Developer has submitted the documentation required by this Agreement evidencing Developer’s Actual Costs of the Improvements.

c. Developer agrees to accept those funds collected by the City pursuant to this Agreement as full and final payment under this Agreement after the City has made reasonable, good faith efforts to allocate such costs of Improvements to the Benefitted Properties and to thereafter collect such funds as set forth in this Agreement. Further, Developer agrees to hold the City harmless for any allocated costs which are not collected, provided the City has made reasonable, good faith efforts to allocate such costs, condition development of the Benefitted Properties upon payment of such costs, and to thereafter collect such allocated costs as set forth in this Agreement.

d. Notwithstanding anything to the contrary herein, City and Developer acknowledge and agree that Developer may be reimbursed for all or a portion of Developer’s Actual Costs (defined below) from (i) the Clearfield City Community Development and Renewal Agency (the “CDRA”), pursuant to a tax increment financing agreement which may be entered into between Developer and the CDRA, and/or (ii) the State of Utah, pursuant to a transportation funding bill (or similar title) which may be enacted providing funds for reimbursement of certain infrastructure costs in connection with the Clearfield Station project, including the Property. The aggregate amount of reimbursement to Developer, including amounts paid under the terms of this Agreement and amounts paid from the additional sources identified in (i) and (ii) of this Section 4.d, shall not exceed Developer’s Actual Costs. Reimbursement from the additional funding sources identified in (i) and (ii) of this Section 4.d shall not reduce the City’s reimbursement obligations under this Agreement, except to the extent that the aggregate amount paid to Developer would exceed Developer’s Actual Costs (in other words, if funds from the sources identified in (i) and (ii) of this Section 4.d are less than Developer’s Actual Costs, the City shall be obligated, under the terms of this Agreement, to reimburse Developer for the remaining unreimbursed portion of Developer’s Actual Costs).
5. **Reimbursement Amount.**

a. **Maximum Reimbursement.**

i) The “Developer’s Maximum Reimbursement Amount” for the Improvements shall be that amount which is equal to (a) fifty percent (50%) of the Developer’s Actual Costs related to the streets (including asphalt and road base, but specifically excluding curb, gutter, sidewalk and any other improvements adjacent to the asphalt portion of the streets, and excluding on-street parking), and (b) fifty percent (50%) of Developer’s Actual Costs for public utility improvements (including water, sewer, storm water and other public utility costs).

ii) “Developer’s Actual Costs” means all costs actually incurred or expended by Developer to construct or install the street Improvements (with water, sewer, storm water and other public utilities as specified in Exhibit “A”), including but not limited to the cost of materials, as well as costs and fees for general contractors, engineers, surveyors, construction management and inspection, and other similar or related costs, but not including the value of land dedicated as right-of-way.

iii) “Developer’s Responsibility” means that amount which is equal to Developer’s Actual Costs less Developer’s Maximum Reimbursement Amount.

iv) Developer shall provide to the City documentation, reasonably acceptable to the City, demonstrating Developer’s Actual Costs. Documentation may include: receipts, checks, vouchers, bills, statements, bid documents, change orders, payment documents, and any other similar information.

b. **Interest.** No interest shall accrue on the amount of the reimbursement which may be due Developer, and no interest shall be paid to Developer by the City or any other person on any amounts due under this Agreement.

6. **Ownership of Improvements.** The City shall become the owner of the Improvements, including lands and rights-of-way dedicated to the City upon: (i) completion of construction of the Improvements by Developer, subject to Developer’s obligation to repair or replace Improvements during applicable warranty periods; and (ii) satisfactory inspection, approval and written acceptance of the Improvements by the City. The City will assume responsibility for all maintenance, repair and replacement of the Improvements once they are completed by Developer and initially accepted by the City, following a satisfactory intermediate inspection and subject to any applicable warranty periods. Routine maintenance by the City shall commence following the City’s satisfactory “intermediate inspection” as set forth in Title 12, Chapter 9 of the Clearfield City Code.

7. **Term of Agreement.** This Agreement shall terminate at such time as the total reimbursement paid to Developer reaches the Developer’s Maximum Reimbursement Amount set forth herein, or twenty (20) years after the City’s final (if there are more than one) written acceptance of the Improvements, whichever occurs first. The Developer specifically agrees to
accept the funds in fact collected by the City during the term of this Agreement as full and final payment under this Agreement and to hold the City harmless for any of the allocated costs which aren’t collected, provided the City as performed its obligations pursuant to the terms of this Agreement.

8. Effect of Agreement. Nothing in this Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal, State or local laws, ordinances, regulations, or standards.

9. Assignment. Neither party may assign this Agreement, nor any of its provisions, terms or conditions to any other party, individual or entity without assigning the rights as well as the responsibilities and without the prior written consent of the other party to this Agreement. After acceptance of the Improvements by the City and expiration of all applicable warranty periods, nothing herein shall preclude Developer from assigning its rights to reimbursement upon notice to City.

10. No Third-Party Rights. This Agreement does not confer any rights or benefits to third parties.

11. Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties with respect to reimbursement to Developer for the Improvements and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the Parties with regard to such reimbursements.

12. Binding Effect. This Agreement shall be binding upon the Parties hereto and their respective officers, managers, employees, representatives, agents, members, successors, and assigns.

13. Validity and Severability. If any section, clause, or portion of this Agreement is declared invalid by a court of competent jurisdiction for any reason, the remainder shall not be affected thereby and shall remain in full force and effect.

14. Amendment. This Agreement may be amended only in a writing signed by the Parties hereto.

15. Controlling Law, Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Utah. Venue shall be in Davis County, Utah.

16. Representations.

(a) City represents and warrants to Developer that (i) City has power and authority to enter into and be bound by this Agreement; (ii) the individual(s) executing this Agreement on behalf of City are duly authorized and empowered to bind the City; and (iii) this Agreement is valid, binding and enforceable against the City in accordance with its terms.
(b) Developer represents and warrants to City that (i) Developer is duly formed and validly existing under the laws of Utah and is qualified to do business in the State of Utah; (ii) the individuals executing this Agreement on behalf of Developer are duly authorized and empowered to bind Developer; and (iii) this Agreement is valid, binding and enforceable against Developer in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first hereinabove written.

CLEARFIELD CITY
a municipal corporation

Attest:

By: ____________________________
Mark R. Shepherd, Mayor

________________________________
City Recorder

Approved as to Form:

________________________________
City Attorney

CLEARFIELD STATION APARTMENTS, LLC
a Utah limited liability company

By: Its Manager
    TGC Clearfield Station Apartments, LLC
    a Utah limited liability company

By: ____________________________
    John R. Thackeray, Manager

By: ____________________________
    Michael R. Christensen, Manager
ACKNOWLEDGMENT

STATE OF UTAH )

: ss.

COUNTY OF ________________ )

The foregoing instrument was acknowledged before me this _____ day of
____________________, 2017, by John R. Thackeray, the Manager of TGC Clearfield Station
Apartments, LLC, the Manager of CLEARFIELD STATION APARTMENTS, LLC, a Utah
limited liability company.

________________________________________

NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF UTAH )

: ss.

COUNTY OF ________________ )

The foregoing instrument was acknowledged before me this _____ day of
____________________, 2017, by Michael R. Christensen, the Manager of TGC Clearfield Station
Apartments, LLC, the Manager of CLEARFIELD STATION APARTMENTS, LLC, a Utah
limited liability company.

________________________________________

NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF UTAH )

: ss.

COUNTY OF ________________ )

The foregoing instrument was acknowledged before me this _____ day of
____________________, 2017, by Mark R. Shepherd, the Mayor of CLEARFIELD CITY, a Utah
municipal corporation.

________________________________________

NOTARY PUBLIC
EXHIBIT “A”

Boxcar and Express Street Improvement Drawing
EXHIBIT “B”

List of Benefitted Properties
Clearfield City Youth Advisory Commission

Fill out this form completely. Turn it into the Clearfield City Office, 55 South State Street by April 1, 2017 at 5:00 pm. Late applications will not be considered. Please attach letter of recommendation at least from a school teacher or official. Must be a resident of Clearfield City. Must be at least in the ninth (9th) grade and not yet a graduate of high school during the term of office. The term runs from May 1, 2018 to March 30, 2018.

Name_______________________________________________ Age____ Current Grade___________
School_____________________________________________________________________________
Address______________________________________________________________________________ Clearfield, Utah
Home Phone____________________________ Email________________________
Cell Phone_________________________________ Can you send or receive texts?________________
Parent(s) Name(s)_____________________________________________________________________

List all extra-curricular activities that you would be participating in during your term, including all sports, clubs, jobs, offices, dance teams, etc.

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

List past experiences, positions held, qualities, abilities and skills you have acquired that would help you contribute to the Youth Advisory Commission.

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Why do you want to be a part of the Youth Advisory Commission and what do you expect to learn?

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Requirements to remain on the Clearfield City Youth Advisory Commission:

1. Remain a resident of Clearfield City during the term of office.
2. Attend at least 75 percent of all Youth City Council meetings and activities.
3. Fulfill the responsibilities of the office held.
4. Set a proper example for the youth of the community.

Signature_____________________________________________ Date________________________
Parent’s Signature______________________________________ Date _______________________

Thank you for your willingness to serve our community!!!

Return to the Clearfield City Office 55 South State Street, Clearfield Utah 84015 attention: TBD or via email at TBD. You will be notified of the date for your interview with Youth Council Advisors.
CLEARFIELD CITY RESOLUTION 2017R-04

A RESOLUTION AFFIRMING THE CLEARFIELD CITY COUNCIL REVIEWED AND CONSIDERED CLEARFIELD’S MUNICIPAL WASTEWATER PLANNING PROGRAM REPORT AND DIRECTING THAT SAID REPORT BE SUBMITTED TO UTAH’S DEPARTMENT OF ENVIRONMENTAL QUALITY

WHEREAS, as part of Utah’s Wastewater Planning Program, each year the State’s Department of Environmental Quality (“DEQ”) requests each municipality which generates wastewater to submit a “Self-Assessment Report” for the municipality to the DEQ’s Division of Water Quality; and

WHEREAS, the Clearfield Public Works Department has prepared the City’s annual Self-Assessment Report for the 2016 calendar year regarding Clearfield’s Municipal Wastewater Planning Program; and

WHEREAS, the DEQ asks that the City Council affirm to the Division of Water Quality and the Water Quality Board that the Council reviewed the Municipal Wastewater Planning Program Report and submit said affirmation via resolution along with the report; and

WHEREAS, the City Council reviewed and considered Clearfield’s Municipal Wastewater Planning Program Report for the 2016 calendar year (attached as Exhibit “A”);

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

1) the Council hereby affirms it reviewed and considered the City’s Municipal Wastewater Planning Program Report for 2016; and

2) City staff is hereby directed to submit said report together with this Resolution to the DEQ’s Division of Water Quality and the Water Quality Board.

PASSED AND ADOPTED this 7th day of March, 2017.

ATTEST: ____________________________________________________________

Nancy R. Dean, City Recorder

MARK R. SHEPHERD, Mayor

VOTE OF THE COUNCIL

AYE: ____________________________________________________________

NAY: ____________________________________________________________
STATE OF UTAH

MUNICIPAL WASTEWATER PLANNING PROGRAM

SELF-ASSESSMENT REPORT

FOR

CLEARFIELD CITY

2016
Municipal Wastewater Planning Program (MWPP)  
Financial Evaluation Section for 2016

Owner Name: CLEARFIELD CITY

Name and Title of Contact Person:  
Mark Baird  
Wastewater Manager

Phone: 801-525-4418

E-mail: mark.baird@clearfieldcity.org

SUBMIT BY APRIL 15, 2017

Electronic submission: http://deq.utah.gov/ProgramsServices/services/submissions/index.htm

or

Mail to: MWPP - Department of Environmental Quality  
Division of Water Quality  
195 North 1950 West  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870  
Phone: (801) 536-4300
NOTE: This questionnaire has been compiled for your benefit by a state sponsored task force comprised of representatives of local government and service districts. It is designed to assist you in making an evaluation of your wastewater system and financial planning. If you received financial assistance from the Water Quality Board, annual submission of this report is a condition of that assistance. Please answer questions as accurately as possible to give you the best evaluation of your facility. If you need assistance please call John Mackey, Utah Division of Water Quality: (801) 536-4300.

I. Definitions: The following terms and definitions may help you complete the worksheets and questionnaire:

**User Charge (UC)** - A fee established for one or more class(es) of users of the wastewater collection and treatment facilities that generate revenues to pay for costs of the system.

**Operation and Maintenance Expense** - Expenditures incurred for materials, labor, utilities, and other items necessary for managing and maintaining the facility to achieve or maintain the capacity and performance for which it was designed and constructed.

**Repair and Replacement Cost** - Expenditures incurred during the useful life of the treatment works for obtaining and installing equipment, accessories, and/or appurtenances necessary to maintain the existing capacity and the performance for which the facility was designed and constructed.

**Capital Needs** - Cost to construct, upgrade or improve the facility.

**Capital Improvement Reserve Account** - A reserve established to accumulate funds for construction and/or replacement of treatment facilities, collection lines or other capital improvement needs.

**Reserve for Debt Service** - A reserve for bond repayment as may be defined in accordance with terms of a bond indenture.

**Current Debt Service** - Interest and principal costs for debt payable this year.

**Repair and Replacement Sinking Fund** - A fund to accumulate funds for repairs and maintenance to fixed assets not normally included in operation expenses and for replacement costs (defined above).
Part I: OPERATION AND MAINTENANCE

Complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Points Earned</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are revenues sufficient to cover operation, maintenance, and repair &amp; replacement (OM&amp;R) costs <strong>at this time?</strong></td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Are the projected revenues sufficient to cover operation, maintenance, and repair &amp; replacement (OM&amp;R) costs for the <strong>next five years?</strong></td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Does the facility have sufficient staff to ensure proper OM&amp;R?</td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Has a dedicated sinking fund been established to provide for repair &amp; replacement costs?</td>
<td>YES = 0 points NO = 25 points</td>
<td>25</td>
</tr>
<tr>
<td>Is the repair &amp; replacement sinking fund adequate to meet anticipated needs?</td>
<td>YES = 0 points NO = 25 points</td>
<td>25</td>
</tr>
<tr>
<td>What was the average User Charge fee for 2016?</td>
<td>$1,666 per month</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL PART I =</strong></td>
<td></td>
<td>50</td>
</tr>
</tbody>
</table>

Part II: CAPITAL IMPROVEMENTS

Complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Points Earned</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are present revenues collected sufficient to cover all costs and provide funding for capital improvements?</td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Are projected funding sources sufficient to cover all projected capital improvement costs for the <strong>next five years?</strong></td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Are projected funding sources sufficient to cover all projected capital improvement costs for the <strong>next ten years?</strong></td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Are projected funding sources sufficient to cover all projected capital improvement costs for the <strong>next twenty years?</strong></td>
<td>YES = 0 points NO = 25 points</td>
<td>25</td>
</tr>
<tr>
<td>Has a dedicated sinking fund been established to provide for future capital improvements?</td>
<td>YES = 0 points NO = 25 points</td>
<td>25</td>
</tr>
<tr>
<td><strong>TOTAL PART II =</strong></td>
<td></td>
<td>50</td>
</tr>
</tbody>
</table>
Part III: GENERAL QUESTIONS

Complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Points Earned</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the wastewater treatment fund a separate enterprise fund/account or district?</td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Are you collecting 95% or more of your sewer billings?</td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Is there a review, at least annually, of user fees?</td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
<tr>
<td>Are bond reserve requirements being met if applicable?</td>
<td>YES = 0 points NO = 25 points</td>
<td>0</td>
</tr>
</tbody>
</table>

TOTAL PART III = 0

Part IV: PROJECTED NEEDS

Estimate as best you can the following:

<table>
<thead>
<tr>
<th>Cost of projected capital improvements (in thousands)</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1.04 mill</td>
<td>$833K</td>
<td>$456k</td>
<td>$598K</td>
<td>$898K</td>
<td></td>
</tr>
</tbody>
</table>

Point Summation

Fill in the point totals from Parts I through III in the blanks provided in the Points column. Add the numbers to determine the MWPP point total that reflects your present financial position for meeting your wastewater needs.

<table>
<thead>
<tr>
<th>Part</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>50</td>
</tr>
<tr>
<td>II</td>
<td>50</td>
</tr>
<tr>
<td>III</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>
Municipal Wastewater Planning Program (MWPP)
Collection System Section

Owner Name: CLEARFIELD CITY

Name and Title of Contact Person:

Mark Baird
Wastewater Manager

Phone: 801-525-4418

E-mail: mark.baird@clearfieldcity.org

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Division of Water Quality
195 North 1950 West
P.O. Box 144870
Salt Lake City, Utah 84114-4870
Phone: (801) 536-4300

Form completed by:

Kelsey Johnson
May Receive Continuing Education Units (CEUs)
Part I: SYSTEM AGE

A. What year was your collection system first constructed (approximately)?
   Year 1930

B. What is the oldest part of your present system?
   Oldest part 75 years

Part II: BYPASSES

A. Please complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Number</th>
<th>Points Earned</th>
<th>Total Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>How many days last year was there a bypass, overflow or basement flooding</td>
<td>0</td>
<td>0 times = 0 points</td>
<td>0</td>
</tr>
<tr>
<td>by untreated wastewater in the system due to rain or snowmelt?</td>
<td></td>
<td>1 time = 5 points</td>
<td></td>
</tr>
<tr>
<td>How many days last year was there a bypass, overflow or basement flooding</td>
<td>2</td>
<td>0 times = 0 points</td>
<td>2</td>
</tr>
<tr>
<td>by untreated wastewater due to equipment failure?</td>
<td></td>
<td>1 time = 5 points</td>
<td></td>
</tr>
<tr>
<td>(except plugged laterals)</td>
<td></td>
<td>2 times = 10 points</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 times = 15 points</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 times = 20 points</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 or more = 25 points</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL PART II = 2

B. The Utah Sewer Management Program defines two classes of sanitary sewer overflows (SSOs). Below include the number of SSOs that occurred in 2016.

*Class 1* - a Significant SSO means a SSO or backup that is not caused by a private lateral obstruction or problem that:

(a) affects more than five private structures;
(b) affects one or more public, commercial or industrial structure(s);
(c) may result in a public health risk to the general public;
(d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or
(e) discharges to Waters of the state.
Part II: BYPASSES (cont.)

Class 2 – a Non-Significant SSO means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.

Number of Class 1 SSOs in Calendar year 2016 1

Number of Class 2 SSOs in Calendar year 2016 1

C. Please indicate what caused the SSO(s) in B. If needed attach the additional information to this report.

Caused by the facility across the street dumping silverware down the sewer at 350 S Main

Water main was significant enough to fill the sewage system with mud in 15-20 homes near 2200 S 525 E.

D. Please specify whether the SSOs were caused by contract or tributary community, etc.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Part III: NEW DEVELOPMENT

A. Please complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Points Earned</th>
<th>Total Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has an industry or other development moved into the community or expanded production in the past two years, such that either flow or wastewater loadings to the sewerage system were significantly increased (10–20%)?</td>
<td>No = 0 points, Yes = 10 points</td>
<td>10</td>
</tr>
<tr>
<td>Are there any major new developments (industrial, commercial, or residential) anticipated in the next 2 - 3 years, such that either flow or BOD₅ loadings to the sewerage system could significantly increase (25%)?</td>
<td>No = 0 points, Yes = 10 points</td>
<td>10</td>
</tr>
</tbody>
</table>

TOTAL PART III = 20

Part III: NEW DEVELOPMENT (cont.)

B. Approximate number of new residential sewer connections in the last year
   98 new residential connections

C. Approximate number of new commercial/industrial connections in the last year
   3 new commercial/industrial connections

D. Approximate number of new population serviced in the last year
   303,8 new people served

E. Total number of effective residential connections (ERC) served
   9,358 total ERC served
Part IV: OPERATOR CERTIFICATION

A. How many collection system operators are currently employed by your facility?
   
   3 collection system operators employed

B. You are required to have the chief direct responsible charge (DRC) operator(s) certified at COLLECTION III.
   
   What is the current grade of the collection DRC operator(s)? 3

C. What is/are the name(s) of your wastewater treatment DRC operator(s)?
   
   Mark Baird
   John Wallace

D. State of Utah Administrative Rules requires all operators, of public systems, considered to be in DRC to be appropriately certified. List all the operators in your system by their certification class. Attach additional pages if necessary.

   Not Certified: Nick Matsen, Nate Renna, Ty Worthen, Jose Carillo, Travis Terry, Dan Ross, Garrett Rollheiser
   Small Lagoons: 
   Collection I: 
   Collection II: 
   Collection III: Mark Baird, Thadd Layton
   Collection IV: John Wallace
Part IV: OPERATOR CERTIFICATION (cont.)

E. Please complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Points Earned</th>
<th>Total Points</th>
</tr>
</thead>
</table>
| Is/are your DRC operator(s) currently certified at the appropriate grade for this facility? (see C) | Yes = 0 points  
No = 50 points                                      | O                          |
| How many continuing education units has each of the DRC operator(s) completed over the last 3 years? | 3 or more = 0 points  
less than 3 = 10 points                                       | O                          |

TOTAL PART IV = O

Part V: FACILITY MAINTENANCE

A. Please complete the following table:

<table>
<thead>
<tr>
<th>Question</th>
<th>Points Earned</th>
<th>Total Points</th>
</tr>
</thead>
</table>
| Do you follow an annual preventative maintenance program?                 | Yes = 0 points  
No = 30 points                                      | O                          |
| Is it written?                                                            | Yes = 0 points  
No = 20 points                                      | O                          |
| Do you have a written emergency response plan?                           | Yes = 0 points  
No = 20 points                                      | O                          |
| Do you have an updated operations and maintenance manual                  | Yes = 0 points  
No = 20 points                                      | O                          |
| Do you have a written safety plan?                                        | Yes = 0 points  
No = 20 points                                      | O                          |

TOTAL PART V = O
Part VI: SSMP EVALUATION

A. Has your system completed its Sewer System Management Plan (SSMP)?
   No _____ Yes _______

B. If the SSMP has been completed, has the SSMP been public noticed?
   No _____ X _____ Yes (include date of public notice) ____________________________

C. Has the SSMP been approved by the permittee's governing body at a public meeting?
   No _____ X _____ Yes ______

D. During the annual assessment of the SSMP, were any adjustments needed based on the performance of the plan?
   No _____ X _____ Yes ______ If yes, what components of the plan were changed (i.e. line cleaning, CCTV inspections and manhole inspections and/or SSO events)? ________________________________

E. During 2016 was any part of the SSMP audited as part of the five year audit?
   No _____ X _____ Yes ______ If yes, what part of the SSMP was audited and were changes made to the SSMP as a result of the audit? ________________________________

F. Has your system completed its System Evaluation and Capacity Assurance Plan (SECAP) as defined by the Utah Sewer Management Program?
   No _____ X _____ Yes ______

The following are dates that the SSMP and SECAP are required to be completed, based on population. The SSMP and SECAP must be public noticed and approved by the permittee's governing body in order to be considered complete.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completion of SSMP</td>
<td>March 31, 2016</td>
</tr>
<tr>
<td>Completion of SECAP</td>
<td>September 30, 2017</td>
</tr>
</tbody>
</table>
Part VII: SUBJECTIVE EVALUATION

This section should be completed with the system operators.

A. Describe the physical condition of the sewer collection system: (lift stations, etc. included)

Overall, fair.

B. What sewerage system improvements does the community plan to have under consideration for the next 10 years?

Freeport 3rd Street, Freeport 2nd Street, 250 South, 250 North,
Sycamore Circle and 100 North, Freeport 3rd Street,
1000 West, 500 East, Birch Street, 700 East, 400 South,
775 North

C. Explain problems, other than plugging, that you have experienced over the last year

None

D. Is your community presently involved in formal planning for system expansion/upgrading? If so explain.

Yes, our Capital Facilities Plan.
Part VII: SUBJECTIVE EVALUATION (cont.)

G. Does the municipality/district pay for the continuing education expenses of operators?
   ALWAYS ☒ SOMETIMES _______ NO _______

   If they do, what percentage is paid?
   approximately 100 %

H. Is there a written policy regarding continuing education and training for wastewater operators?
   YES ☒ NO _______

I. Any additional comments? (Attach additional sheets if necessary.)
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
POINT SUMMATION

Fill in the point totals from Parts II through V in the blanks provided in the Points column. Add the numbers to determine the MWPP point total that your wastewater facility has generated for the past twelve months.

<table>
<thead>
<tr>
<th>Part</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>1</td>
</tr>
<tr>
<td>III</td>
<td>20</td>
</tr>
<tr>
<td>IV</td>
<td>0</td>
</tr>
<tr>
<td>V</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
</tr>
</tbody>
</table>

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature of Signatory Official

Date

Print Name of Signatory Official

Title

The signatory official is the person authorized to sign permit documents, per R317-8-3.4.