



SYRACUSE CITY

Syracuse City Council Special Meeting Agenda

July 31, 2018 – immediately following the City Council Work Session, which begins at 6:00 p.m.

City Council Conference Room

Municipal Building, 1979 W. 1900 S.

1. Meeting called to order.
2. Approval of minutes:
 - a. Work Session of June 12, 2018.
3. Public hearing – Authorize Administration to dispose of surplus property.
4. Authorize Administration to execute amendment to Land Lease Agreement with Crown Castle for cell tower located at 3550 West 700 South.
5. Proposed Resolution R18-24 authorizing the Mayor to execute a Purchase and Sale Agreement related to a parcel of property located in Clearfield, Utah.
6. Proposal to appoint Interim Community and Economic Development (CED) Department Director.
7. Adjourn.

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In compliance with the Americans Disabilities Act, persons needing auxiliary communicative aids and services for this meeting should contact the City Offices at 801-825-1477 at least 48 hours in advance of the meeting.

### CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the Syracuse City limits on this 26<sup>th</sup> day of July, 2018 at Syracuse City Hall on the City Hall Notice Board and at <http://www.syracuseut.com/>. A copy was also provided to the Standard-Examiner on July 26, 2018.

CASSIE Z. BROWN, MMC  
SYRACUSE CITY RECORDER



# CITY COUNCIL SPECIAL MEETING AGENDA

July 31, 2018

Agenda Item #2

Approval of Minutes.

***Factual Summation***

- Please see the draft minutes of the following meeting(s):
  - a. Work Session of June 12, 2018.
- Any question regarding this agenda item may be directed at Cassie Brown, City Recorder.

Minutes of the Syracuse City Council Work Session Meeting, June 12, 2018

Minutes of the Work Session meeting of the Syracuse City Council held on June 12, 2018 at 6:08 p.m., in the Council Work Session Room, 1979 West 1900 South, Syracuse City, Davis County, Utah.

Present: Councilmembers: Andrea Anderson  
Corinne N. Bolduc  
Dave Maughan  
Doug Peterson  
Jordan Savage

***DRAFT***

Mayor Mike Gailey  
City Manager Brody Bovero  
City Recorder Cassie Z. Brown

City Employees Present:  
Finance Director Steve Marshall  
City Attorney Paul Roberts  
Community and Economic Development (CED) Director Brigham Mellor  
Public Works Director Robert Whiteley  
Police Chief Garret Atkin  
Fire Chief Aaron Byington  
Parks and Recreation Director Kresta Robinson

The purpose of the Work Session was to receive public comments; engage in dialogue with Connection Publishing regarding the Syracuse Connection Magazine; review and discuss the draft version of the proposed noise ordinance; and review proposed text amendments for the Residential Planned Community (RPC) Zone.

Mayor Gailey deferred the Pledge of Allegiance and prayer/thought until the Council business meeting scheduled to begin at 7:00 p.m.

**Public comments**

There were no public comments.

**Discussion with Connection Publishing re: Syracuse Magazine.**

An administrative staff memo explained representatives from Connection Publishing committed to attend the meeting to receive feedback from the Council and discuss any issues the body has with the magazine.

City Manager Bovero recognized Ryan and Melissa Spelts, Owners of Connection Publishing, and invited the Council to express their concerns or questions in general regarding the Syracuse Connection Magazine. Councilmembers

1 raised issues such as the lack of articles or content that have been submitted by various community groups, such as the Youth  
2 City Council and Arts Council, with Mr. Spelts providing the Council with detailed instruction regarding the manner in  
3 which groups should submit their articles and the level of quality for content needed in order for it to be printed in the  
4 Magazine. The Council indicated they would also like each publication to include an article regarding the history of Syracuse  
5 and suggested that information be submitted by a long time resident or someone from the Syracuse Museum. There was then  
6 a high-level discussion regarding options for encouraging residents to read the publication and Councilmembers offered ideas  
7 for including language or logos on the cover of the magazine to clearly communicate that the magazine is the City's official  
8 publication. Councilmember Maughan asked that the editors be cautious in recycling articles from other cities as he caught an  
9 error in the most recent publication where another city was cited. Closing discussion centered on formatting of the  
10 publication and the thought behind the manner in which elected officials' names are listed in the magazine as it is currently  
11 not listed in alphabetical order.

12 Councilmembers thanked Mr. and Mrs. Spelts for the information provided and indicated they have received  
13 positive feedback from the community. Mr. Spelts invited the Council to provide him feedback via email or phone as they  
14 continue to hear from residents in the community or as they have ideas for opportunities for improving the publication.

15  
16 **Review/discussion of draft noise ordinance.**

17 A staff memo from City Attorney Roberts explained that in consultation with Councilmember Savage, the  
18 accompanying noise ordinance has been drafted (borrowing heavily from the West Valley City noise ordinance). The draft  
19 may change based upon Councilmember Savage's additional comments, between its appearance in the packet, the first  
20 reading, and the work session during which more extensive discussion will take place. The ordinance's primary target is  
21 disturbances during night-time hours; however, daytime noise that exceeds given limits can also be pursued as a violation.

22 **Specific noises during night-time hours**

23 A list of specific noises that are prohibited between 9:00 pm and 7:00 am are included in section 6.40.030. These  
24 are not measured using a sound device, but are unlawful if they are "plainly audible" at the property boundary. They must  
25 also persist for at least ten minutes. The list is extensive, and is subject to additions or subtractions, based upon the needs and  
26 concerns of our community. Certain sounds, such as construction work or loading operations, may be commenced at 6:00  
27 am. And snow-blowing is permitted beginning at 5:00 am. ATV's and snowmobiles being used for active agricultural

1 operations in the A-1 and R-1 zones are exempt. This could be broadened, if the Council would like. Indeed, everything  
2 listed could be specifically exempted.

3 Construction noises related to state highways are specially governed by state code. For highways with a speed limit  
4 above 55 mph, we have no power at all over night-time highway construction noise. For those below 55 mph, the state is  
5 required to engage in a balancing test. See [Utah Code Ann. § 72-6-112.5](#). If we disagree with the state's decision, then we  
6 may appeal that determination to UDOT's administrative law judge. But long-story short, we have no real power over  
7 UDOT's night-time construction activities.

#### 8 Decibel-specific provisions

9 Outside of the night-time hours, and in addition to it, specific sound pressure levels are unlawful in certain zones.  
10 The level is measured by the designation of the affected zone, rather than the zone generating the sound. Residential areas  
11 are subject to a 60 dB(A) limit during daytime hours, with a 50 dB(A) limit at night. This is measured at the property  
12 boundary of the affected property.

13 In cases where sound is measured, rather than audibly perceived, measurements are to be taken using equipment  
14 authorized by the City. We will not be amassing extensive scientific equipment or require a sound measurement to last two  
15 hours. The ordinance is meant to be applied in a common-sense manner.

#### 16 Exemptions, Fireworks, Animals

17 Exemptions for specific activities are included. This list may be expanded or contracted, as you desire.

18 Fireworks and animals are likely to be the two most common complaints. Fireworks are governed by state law. See  
19 [Utah Code Ann. § 53-7-225](#). And animal nuisances are established by County code. See [Davis County Code, chapter 6.16](#).  
20 While we could establish more specific animal noise restrictions, the draft does not specifically call those out.

#### 21 Permits & Waivers

22 Permits or waivers will be available from the City. Permits are available for temporary events that are not otherwise  
23 exempted, such as a carnival or festival on private property. The CED Director is permitted to impose appropriate  
24 restrictions on those events for the community. The draft puts this authority upon the CED Director due to the likelihood that  
25 such requests will not allow sufficient time to place the item on an agenda. Waivers would be long-term in nature and on the  
26 basis of undue hardship. Given the more permanent nature of such waivers, the draft proposes having the Council determine

whether to grant the waiver. If the Council would rather use the CED Director or another individual to make that decision, it is the council's prerogative.

### Punishments

Punishment for noise violations would be administratively pursued through a code enforcement notice of violation or criminal action. If a person or property owner has been convicted of a noise violation within one year, then the offense would be punishable as a Class C misdemeanor for subsequent offenses. Presumptive fines are called out in the ordinance, but we could also use the consolidated fee schedule, if you would prefer that method.

Mr. Roberts reviewed his staff memo and facilitated discussion among the Council regarding the implications of the regulations included in the draft noise ordinance; there was a focus on decibel measurements and the decibel reading of common noises, such as lawn mowers and a barking dog. The Council discussed the option of including in the ordinance a chart providing decibel readings for common noises, with Councilmember Savage noting that it is important to consider the point of measurement for the noise; if something as a measurement of 65 decibels, but it is two blocks away from the person complaining, it is not a true nuisance; but something occurring outside of a home that results in a 65-decibel reading inside the home would clearly be a nuisance.

Councilmember Bolduc stated that she would like the ordinance to include language exempting agricultural operations from the regulations of the ordinance.

Additional discussion centered on the curfew included in the ordinance and the ability of the City to enforce the ordinance with Police Chief Atkin providing his input regarding his concerns about the ability of his Department to enforce certain provisions. Mr. Roberts indicated that he, Councilmember Savage, and Chief Atkin can discuss those matters further and make any adjustments to the ordinance before submitting it to the Council for formal consideration. He indicated he will also make the changes recommended by the Council earlier in the discussion.

## **Proposed text amendments for the Residential Planned**

### **Community (RPC) zone.**

A staff memo from the Community and Economic Development (CED) Department explained that at the last Council meeting the concept plan that was presented – (which would effectively cover the Clark property {103 ac} at

approximately 3000 s 2400 west) – it was proposed RPC zoning would be the intended land use. That will require modifications to the zoning. This discussion item is to go over the parts of the ordinance that will need to be modified.

CED Director Mellor reviewed his staff memo and distributed a document to the Council that outlined the potential changes to the RPC zone section of the City's land use ordinance. He facilitated discussion among the Council regarding the implications of the potential changes and the Council expressed concerns about relaxing standards that would provide for increased density, reduced percentage of open space, reduced setbacks, driveway depths. There was also a discussion about the difference between common space and open space; the proposed amendments would require the developer to provide a defined amount of common park space within in or in close proximity to the development in order to serve as an amenity for the residents.

Mr. Mellor then noted that there is an item on the business meeting agenda tonight that will provide for additional discussion regarding the requests to open the General Plan and to consider potential amendments to the RPC zone.

The meeting adjourned at 6:58 p.m.

\_\_\_\_\_  
Mike Gailey  
Mayor

\_\_\_\_\_  
Cassie Z. Brown, MMC  
City Recorder

Date approved: \_\_\_\_\_



# COUNCIL AGENDA

July 31, 2018

## Agenda Item #3

Public Hearing: Authorize Administration to dispose of surplus equipment.

### *Factual Summation*

- The City's Arts Council, as well as the Public Works Department, have indicated they have surplus property to dispose of. Please review the lists of items to be disposed of:

### **PUBLIC WORKS:**

See attached document including a description, photograph, and reasoning for each item to be disposed of.

### **ARTS COUNCIL**

Yamaha piano being traded in towards the purchase of a new piano.

### *Staff Recommendation*

Authorize Administration to dispose of surplus property.



**2008 Fisher Storm Guard Snowplow with Minute Mount 2 Assembly and Fish Stick Controller**



## 1994 Ford Ten Wheeler, Diesel 6 cyl



- The block of the motor is rusting due to salt.
- Safety bar that holds the bed up when working under it has rusted off.
- Many electrical problems due to age and salt.
- Clutch and throw out bearing need replaced.
- (DOT) dump bed rusting through.
- (DOT) Inner rear axles need bearings and seals.
- (DOT) Multiple oil leaks that drip onto the exhaust.
- (DOT) Needs new wiring harness to the rear of the truck. Salt has deteriorated it substantially.
- (DOT) Deteriorating leaf springs and frame rails due to salt exposure.



2008 Fisher Pro Caster Salt Spreader



## 2006 Imagistics black and white Copier Model im5530



Rollers for three trays and top feed inoperable creating paper jam. Print drivers are outdated. Print quality is faded, even at darkest toner setting with new toner. Document scan light failure. Limited service support available.



# COUNCIL AGENDA

July 31, 2018

## Agenda Item #4

Authorize Administration to execute amendment to Land Lease Agreement with Crown Castle for cell tower located at 3550 West 700 South.

### *Factual Summation*

- Any questions about this agenda item may be directed at Admin. Services Director Stephen Marshall or City Manager Brody Bovero.
- Please review the following attachments:
  - a. Amendment to lease agreement

### *Background*

- The City originally entered into an agreement with T-Mobile on June 1, 2001 for the construction of a cell tower located at 3550 West 700 South. In return, the city receives a monthly cell tower lease payment of \$1768.25 per month.
- The Lease was taken over by Crown Castle in 2012. They are a cell tower site management company. They have requested an amendment to the contract to add a subtenant and for an extension on the term of the agreement for a 25-year extension. In return they have agreed to the following revised terms:
  - Base Rent will increase 15% upon execution of the lease amendment.
  - Base Rent will increase 3% each year after December 2022.
  - Additional Rent of \$500 per month will be added to the lease when subtenant equipment is installed.
  - No additional land is needed. They will work in the existing land easement.

### **Recommendation:**

Authorize Administration to execute Amendment to Land Lease Agreement with Crown Castle for the cell tower located at 3550 West 700 South.





**Crown Castle**

301 North Cattlemen Road, Ste 200  
Sarasota, FL 34232

Tel: 941.309-1614

Patricia.Dinning@CrownCastle.com

[www.crowncastle.com](http://www.crowncastle.com)

July 17, 2018

Sent via email to: [BBovero@syracuseut.com](mailto:BBovero@syracuseut.com); [SMarshall@syracuseut.com](mailto:SMarshall@syracuseut.com)

Phone: 801-614-9622

Brody Bovero  
City Manager &  
Stephen Marshall  
Finance Director  
Syracuse City Hall  
1979 West 1900 South  
Syracuse, UT 84075

Re: Business Unit # 828330  
Site Name: Syracuse Rock Creek  
Site Address: 3550 West 700 South

Current Lease: Land Lease Agreement by and between T-Mobile West Tower LLC, a Delaware limited liability company, by CCTMO LLC, a Delaware limited liability company, its Attorney in Fact ("Lessee") and Syracuse City, a Utah municipal corporation ("Lessor"), for a 1,600 square foot leased area upon which a cell tower has been erected.

Revised Lease terms:

1. The Lease currently provides for two (2) remaining five (5) year renewal terms. That Lease section will be amended to provide that the remaining term of the Lease will be extended, in addition to the above described renewal terms, by an additional five (5), five (5) year automatic renewal terms. The new final Lease expiration date will be November 30, 2057.
2. On the first day of the second full month following full execution of the Lease Amendment, the monthly rent shall increase by an amount equal to fifteen percent (15%) of the monthly rent in effect for the immediately preceding month.
3. Commencing on December 1, 2022 and every year thereafter (each an "Adjustment Date"), the monthly rent shall increase by an amount equal to three percent (3%) of the monthly rent in effect for the month immediately preceding the Adjustment Date. Such rent escalations shall replace any rent escalations currently in the Lease.

4. All other Lease terms will remain the unchanged.

Upon receipt of this document evidencing Lessor's acceptance of the revised Lease terms herein, Lessee shall submit these terms to its property committee. Upon approval by its property committee, Lessee shall prepare a Lease Amendment that incorporates the terms and conditions described in this document. In connection therewith, the parties acknowledge and agree that this document is intended to summarize the terms and conditions to be included in the Lease Amendment. Upon receipt of a satisfactory Lease Amendment, Lessor hereby agrees to execute the Lease Amendment without any unreasonable delay. Neither party will be bound by the terms set forth herein until the Lease Amendment is fully executed.

If this document accurately sets forth our understanding regarding the foregoing, please so indicate by signing and returning to Lessee by e-mail to [Patricia.Dinning@CrownCastle.com](mailto:Patricia.Dinning@CrownCastle.com).

Lessor:  
Syracuse City  
a Utah municipal corporation

\_\_\_\_\_

Dated\_\_\_\_\_

\_\_\_\_\_  
Print Name

Lessee:  
T-Mobile West Tower LLC,  
a Delaware limited liability company,

By: CCTMO LLC,  
Delaware limited liability company,  
its Attorney in Fact

\_\_\_\_\_  
Rhonda Lullo, Land Acquisition Manager

Dated:\_\_\_\_\_







# CITY COUNCIL BUSINESS MEETING

July 31, 2018

## **Agenda Item #5**

### **REAL ESTATE PURCHASE CONTRACT – WATER TANK PROPERTY**

The City has tendered an offer to Davis School District for the purchase of approximately 1.94 acres of land directly East of land currently owned by the City. Davis County School District has accepted the offer and has already executed the agreement.

The purchase price upon which we agreed was \$290,000. This will be coming out of utility funds, rather than our general fund.

The agreement is contingent upon receiving land use approvals from Clearfield City. The agreement calls for 90 days, with an option for an additional 90 days, upon request from Syracuse. A \$500 earnest money deposit is required upon execution of the agreement. If further extensions are required, then it would need to be arranged through an amendment to the agreement.

The conditions that need to be met prior to the City being obligated to purchase the property include: rezoning the property, obtaining a conditional use permit from Clearfield, and plat approval. The process for all three of those are already underway by the CED Department. DSD will be required to abandon any rail lines that run through the property and maintain access to the site via their existing road.

Questions regarding this agreement may be directed to Paul Roberts.

## **RESOLUTION R18-24**

### **A RESOLUTION OF THE SYRACUSE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AND SALE AGREEMENT RELATED TO A PARCEL OF PROPERTY LOCATED IN CLEARFIELD, UTAH.**

**WHEREAS**, the City is authorized to acquire land for public purposes, such as secondary and culinary water infrastructure; and

**WHEREAS**, the City Council finds that the acquisition of the residential property located near City-owned land in Clearfield, Utah, will be beneficial to the community and the City's infrastructure; and

**WHEREAS**, the City Council finds that the acquisition price is a fair representation of the property's value; and

**WHEREAS**, the Council finds that it is in the best interests of the City to authorize the Mayor to execute the purchase and sale agreement, and other documents which may be necessary in order to effect the land transfer.

### **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SYRACUSE CITY, STATE OF UTAH, AS FOLLOWS:**

**Section 1. Approval.** The Mayor is hereby authorized to execute the Purchase and Sale Agreement related to the parcel of land directly East of land currently owned by Syracuse City, in Clearfield, Utah, attached as "Exhibit A" and incorporated by reference, as well as all other documents necessary to complete the land acquisition.

**Section 2. Severability.** If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

**Section 3. Effective Date.** This Resolution shall become effective immediately.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SYRACUSE CITY, STATE OF UTAH, THIS 31<sup>th</sup> DAY OF JULY, 2018.**

**SYRACUSE CITY**

ATTEST:

\_\_\_\_\_  
Cassie Z. Brown, MMC  
City Recorder

By:\_\_\_\_\_  
Mike Gailey  
Mayor

Voting by the City Council:

|                        | “AYE” | “NAY” |
|------------------------|-------|-------|
| Councilmember Anderson | _____ | _____ |
| Councilmember Bolduc   | _____ | _____ |
| Councilmember Maughan  | _____ | _____ |
| Councilmember Peterson | _____ | _____ |
| Councilmember Savage   | _____ | _____ |

## **EXHIBIT “A”**

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_, by and between DAVIS SCHOOL DISTRICT, a political subdivision of the State of Utah ("Seller" or the "District") and SYRACUSE CITY, a political subdivision of the State of Utah, or its assigns ("Buyer" or the "City").

WHEREAS Seller owns approximately 1.941 acres of real property located in Clearfield City, State of Utah (the "Property") as more particularly described on attached Exhibit "A;" and

WHEREAS pursuant to the terms and conditions set forth herein, Seller desires to sell the Properties to Buyer and Buyer desires to purchase the Property from Seller,

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

1. Agreement to Sell.

(a) Seller hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from Seller pursuant to the terms and conditions contained herein. The Closing of Buyer's purchase shall occur as set forth in Section 8 below.

(b) For a period of ninety (90) days following the Execution of this Agreement (the "**Option Period**"), Buyer shall have the exclusive option to purchase the Property at the Purchase Price set forth in Section 2 below. Buyer shall deposit Earnest Money in accordance with Section 3 below. Extensions, if necessary, may be granted in accordance with the terms of this Agreement.

2. Purchase Price.

The purchase price for the Property shall be two-hundred ninety thousand dollars (\$290,000.00). The Earnest Money shall count toward the total purchase price.

3. Earnest Money Deposit. Within five (5) business days after full execution of this Agreement, Buyer shall deposit the sum of Five Hundred Dollars (\$500.00) as an earnest money deposit (the "**Earnest Money**") into escrow with \_\_\_\_\_ (the "**Title Company**"). The Earnest Money shall be deposited in an interest-bearing account with all interest accruing to the benefit of Buyer. At the Closing, the Earnest Money shall be applied to the total Purchase Price. Simultaneous with Buyer's deposit of the Earnest Money, Buyer shall deliver a fully executed copy of this Agreement to the Title Company. The Earnest Money together with any Additional Earnest Money (defined in Section 4(b) below) shall be fully

refundable to Buyer if Buyer terminates this Agreement prior to expiration of the Due Diligence Period or, if applicable, extended Due Diligence Period.

4. Due Diligence Period.

(a) Buyer shall have ninety (90) days from the execution date of this Agreement to: (i) rezone the property as PF (Public Facilities) zoning with the City of Clearfield, (ii) Obtain Conditional Use approval from Clearfield City for increased height for the planned water towers to be placed on the Property, (iii) Obtain plat approval from Clearfield City for the Property, and (iv) complete all soil, environmental, and title analyses it deems necessary to enter into the sale (the “**Due Diligence Period**”). Seller hereby grants Buyer, its employees, agents and prospective tenants and licensees access to the Properties for the purpose of conducting Buyer’s inspection, provided however, Buyer shall restore the Properties to their condition prior to such inspection activities, and provided further that Buyer shall indemnify and hold Seller harmless from any and all liability, claims or expenses arising out of or in any way related to such inspection activities. The foregoing indemnification shall survive Closing or termination of this Agreement. The Earnest Money shall become non-refundable to Buyer on the expiration of the original Due Diligence Period, but shall, at Closing, be applied to the total Purchase Price.

(b) Extension of Due Diligence Period. Buyer shall have the right to extend the Due Diligence Period for one (1) additional period of ninety (90) days. To exercise such right, Buyer shall, prior to expiration of the Due Diligence Period, provide written notice of the extension to Seller and deposit with the Title Company the sum of One Thousand Dollars (\$1,000.00) as “**Additional Earnest Money**”. In the event Buyer elects to terminate this Agreement prior to expiration of the extended Due Diligence Period, the Additional Earnest Money deposit shall be fully refundable to Buyer. If Buyer does not terminate the Agreement in accordance with this Section 4(b), unless otherwise released pursuant to the provisions of this Agreement, the Additional Earnest Money deposit shall become non-refundable to Buyer at the expiration on the later of the expiration of the extended Due Diligence Period, but shall be applied toward the total Purchase Price at Closing. Notwithstanding anything in this Agreement to the contrary, the Earnest Money deposit made under Section 3 shall be disbursed to Seller, and shall not be refunded to Buyer for any reason, immediately upon expiration of the initial Due Diligence Period, without regard to whether or not Buyer elects to extend the Due Diligence Period under this Section. If Buyer elects to extend the Due Diligence Period as provided in this subsection, and Buyer then terminates this Agreement during the extended Due Diligence Period, Buyer shall receive a refund of the Additional Earnest Money, but not the initial Earnest Money paid under Section 3 above.

(c) Additional Extensions. Upon written agreement of the parties, additional extensions may be granted. The length of those extensions, as well as required earnest money for them, shall be determined by the written agreement.

5. Conditions Precedent. The conditions precedent to Buyer’s and Seller’s respective obligations to participate in the Closing are as follows:



- (a) Buyer obtains rezoning of the Property to PF (Public Facilities) zoning by Clearfield City;
- (b) Buyer obtains approval of Conditional Use Permit by Clearfield City for an increased height on proposed water tower, to be placed on Property;
- (c) Buyer obtains plat approval by Clearfield City;
- (d) Seller obtains abandonment of the Freeport West Rail Line, which is located on the Property; and
- (e) Seller agrees to continue to allow the City access to parcel via an access road located on school property to the South of the Property (currently "F Street").

In the event any of the foregoing conditions cannot be satisfied on or before the expiration of the Due Diligence Period or the Extended Due Diligence Period, Buyer or Seller, as applicable, may elect to either: (a) terminate this Agreement by providing written notice thereof to the other party, in which case the Earnest Money and accrued interest shall be returned to the party entitled to it, or (b) waive such condition and proceed to Closing.

6. Seller's Representations and Warranties. Seller hereby represents and warrants as follows:

(a) Seller's Authority. Seller has full power and authority to execute, enter into and perform this Agreement and any person or entity executing this Agreement on behalf of Seller has the authority to execute the same. This Agreement and all documents to be executed pursuant hereto by Seller are and shall be binding upon and enforceable against Seller in accordance with their respective terms.

(b) Condemnation. To the best of Seller's actual knowledge, there is no existing, pending, contemplated, threatened or anticipated condemnation of any part of the Properties.

(c) Notice. To the best of Seller's actual knowledge, Seller has not received any actual notice, and does not have any knowledge, of any contemplated change in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, which would prevent, limit or impede Buyer's intended use of the Properties.

(d) Other Claims. To the best of Seller's actual knowledge, there are no actions, suits, claims, assessments or proceedings pending, or to the actual knowledge of Seller, threatened that could materially adversely affect the ownership of the Properties or Seller's ability to perform hereunder except as disclosed in this Agreement. Except as set forth herein and as shown on the title report, Seller has not granted any license, lease or other right relating to the use or possession of the Properties and during the term of this Agreement, Seller shall not grant or convey any easement, lease, license, permit or any other legal or beneficial interest in or to the Properties without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

(e) Risk of Loss. Seller shall bear the risk of loss to the Properties prior to any respective Closing.

For purposes of this Section 6, the term "Seller's actual knowledge" means the actual knowledge of Executive Director of the Seller as of the Effective Date, with no duty or obligation for additional inquiry or investigation.

7. Buyer's Representations and Warranties. Buyer hereby represents and warrants as follows:

(a) Corporate Status. Buyer is a municipal corporation and political subdivision of the State of Utah.

(b) Authority. Buyer has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Buyer pursuant to this Agreement, and all required actions and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Buyer are and shall be duly authorized to sign the same on Buyer's behalf and to bind Buyer thereto. This Agreement and all documents to be executed pursuant hereto by Buyer are and shall be binding upon and enforceable against Buyer in accordance with their respective terms.

(c) No Breaches. Buyer's obligations contemplated hereby and the execution, delivery and performance of this Agreement by Buyer will not result in a breach of, or constitute a default under any instrument or agreement to which Buyer is bound. Buyer's obligations and responsibilities hereunder are valid and binding obligations of Buyer.

8. Closing.

(a) Closing Dates. Within fifteen days following the expiration of the Due Diligence Period (as such may be extended pursuant to Section 4 above), the purchase and sale of the Property shall be closed at the Title Company on a date agreed upon by the parties (the "**Closing**"). At the Closing, Buyer and Seller shall deliver such written instructions to the Title Company as may be necessary to complete the transactions contemplated by this Agreement.

(b) At Closing, Seller shall deliver to Buyer a special warranty deed ("**Deed**") conveying good and marketable title to the Property, free and clear of all liens and encumbrances,



except for the Permitted Exceptions, matters shown on the records filed in the official records of Davis County, Utah, provided the records have not been modified after delivery to Buyer.

(c) Closing Costs. Buyer shall be responsible for the payment of the standard coverage premium for the issuance of the Title Policy and the cost of recording the Deed. Buyer shall pay applicable escrow fees. Any extraordinary closing costs, including but not limited to those costs associated with Buyer's investigation, approval or development of the Properties, or Buyer's requirements for additional title insurance coverage (such as extended coverage and endorsements) in excess of the standard coverage provided by Seller, shall be borne by Buyer.

(d) Possession. Possession of the Property shall be delivered to Buyer upon recordation of the Property Deed.

(e) Approval of Closing Documents. All closing documents to be furnished by Buyer or Seller pursuant to this Agreement shall be in form and substance reasonably acceptable to both Buyer and Seller.

9. Default. In the event Buyer defaults in any obligation hereunder and does not cure such default within five (5) days after receiving written notice thereof, Seller may elect as its sole remedy to terminate this Agreement and receive the Earnest Money and any Additional Earnest Money deposited as of such date together with interest accrued thereon as liquidated damages for Buyer's default. The parties further agree that this liquidated damages provision and the amounts set forth as liquidated damages represent a reasonable estimate of the value of the anticipated damages, losses, costs and expenses which would be incurred by Seller due to a breach of this Agreement by Buyer.

In the event Seller defaults in any obligation hereunder and does not cure such default within five (5) days after receiving written notice thereof, Buyer may elect as its sole remedies to (a) terminate this Agreement and receive the Earnest Money and any Additional Earnest Money deposited as of such date together with interest thereon, or (b) seek specific performance of this Agreement.

10. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Seller: \_\_\_\_\_

Davis School District

97 South 200 East  
Farmington, UT 84025

If to Buyer: Syracuse City  
Attention: City Manager  
1979 West 1900 South  
Syracuse, Utah 84075

11. Miscellaneous.

- (a) Time of Essence. Time is of the essence of this Agreement.
- (b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.
- (c) Amendment. This Agreement may be amended only in writing signed by both Buyer and Seller.
- (d) Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. In addition, the parties agree that facsimile and electronically generated signature pages shall be as valid as any signature pages bearing original signatures, provided, that upon the written request of either party, the other party shall provide counterparts containing original signatures.
- (e) Entire Agreement. Seller and Buyer agree that this Agreement states the entire agreement between the parties and that no promises, representations or agreements other than those herein contained have been made or relied upon.
- (f) No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.
- (g) Further Assurances. The parties each agree to perform, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.
- (h) Survival of Representations. The representations and warranties of Seller shall survive the Closing.
- (i) Governmental Immunity. The Parties recognize and acknowledge that each Party is covered by the *Governmental Immunity Act of Utah*, codified at Section 63G-7-101, et seq., *Utah Code Annotated*, as amended, and nothing herein is intended to waive or modify any and all rights, defenses or provisions provided therein. Officers and employees performing services pursuant to this Agreement shall be deemed officers and employees of the Party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such Party under the provisions of the *Utah Governmental*

*Immunity Act*. Each Party shall be responsible and shall defend the action of its own employees, negligent or otherwise, performed pursuant to the provisions of this Agreement.

(j) Approval. This Agreement shall be submitted to the authorized attorney for each Party for review and approval as to form in accordance with applicable provisions of Section 11-13-202.5, *Utah Code Annotated*, as amended. This Agreement shall be authorized and approved by resolution or ordinance of the legislative body of each Party in accordance with Section 11-13-202.5, *Utah Code Annotated*, as amended, and a duly executed original counterpart of this Agreement shall be filed with the keeper of records of each Party in accordance with Section 11-13-209, *Utah Code Annotated*, as amended.

12. Land Use Approvals. At any time during the term of this Agreement, Buyer may seek the rezoning and/or subdivision of the Property, including any and all permits, licenses and other land use approvals (both preliminary and final) required for the development of the Project (collectively, the "Land Use Approvals"). Seller shall reasonably cooperate with Buyer in obtaining the Land Use Approvals, which cooperation may include, but not be limited to, providing signatures on applications, providing information, data, and other reports in Seller's possession and control, and attending and testifying in favor of (or if permitted by the local authority, indicating by written correspondence that Seller has no objection to) such Land Use Approvals at meetings and hearings.

[Signature Page Follows]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date set forth above.

**SELLER:**

DAVIS COUNTY SCHOOL DISTRICT

a political subdivision of the State of Utah



John Robison

School Board President

Attest:

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Approved as to form and legality:



Attorney for Davis School District



**BUYER:**

SYRACUSE CITY

A political subdivision of Utah

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Mike Gailey

Mayor

Attest:

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Cassie Z. Brown, Recorder

Approved as to form and legality:

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Paul Roberts, Attorney for Syracuse City

**EXHIBIT "A"**

Legal Description of Property

## **Attachment A**

A part of the West half of Section 11, Township 4 North, Range 2 West, Salt Lake Base and Meridian, and being described as follows:

Beginning at a point being S.  $00^{\circ}28'16''$  W. 14.73 feet along the West line of said Section 11 and S.  $89^{\circ}31'44''$  E. 1618.43 feet from the West Quarter Corner of said Section 11; thence as follows:

N.  $18^{\circ}53'01''$  W. 667.30 feet along the grantors westerly boundary line to a brass cap; thence N.  $58^{\circ}20'47''$  E. 55.44 feet along the grantors northerly boundary line; thence along a line running parallel with and 10.00 feet perpendicularly westerly of the centerline of the railroad tracks the following two (2) courses: (1) S.  $31^{\circ}58'15''$  E. 130.37 feet; (2) S.  $31^{\circ}40'57''$  E. 520.41 feet; thence S.  $58^{\circ}20'30''$  W. 203.92 feet to the point of beginning.

Contains 1.941 acres in area, more or less.



# COUNCIL AGENDA

## July 31, 2018

### Agenda Item #6

### Appointment of Interim CED Director

#### ***Factual Summation***

- Any question regarding this agenda item may be directed to Mayor Michael Gailey, or City Manager Brody Bovero.
- The City's Personnel Policy provides for the appointment of interim positions when a vacancy occurs and an existing staff member is required to take on the duties of that vacant position.
- The CED Director position, which is a position appointed by the Mayor with the advice and consent of the Council, has been vacated.
- Mayor Gailey has selected Noah Steele to act as the Interim CED Director until the position is filled permanently.

#### ***Action Item***

- Vote on whether to give Council consent to the appointment of Noah Steele to the Interim CED Director position.