

# BOUNTIFUL CITY COUNCIL MEETING

## TUESDAY, May 22, 2018

### Work Session – 6:00 p.m.

### Regular Session - 7:00 p.m.

NOTICE IS HEREBY GIVEN that the City Council of Bountiful, Utah will hold its regular Council meeting at City Hall, 790 South 100 East, Bountiful, Utah, at the time and on the date given above. The public is invited to all meetings. Deliberations will occur in the meetings. Persons who are disabled as defined by the Americans With Disabilities Act may request an accommodation by contacting the Bountiful City Manager at 801.298.6140. Notification at least 24 hours prior to the meeting would be appreciated.

If you are not on the agenda, the Council will not be able to discuss your item of business until another meeting. For most items it is desirable for the Council to be informed of background information prior to consideration at a Council meeting. If you wish to have an item placed on the agenda, contact the Bountiful City Manager at 801.298.6140.

### AGENDA

#### 6:00 p.m. – Work Session

1. Truth-in-Taxation discussion – Mr. Gary Hill

#### 7:00 p.m. – Regular Session

1. Welcome, Pledge of Allegiance and Thought/Prayer
2. Public Comment - **If you wish to make a comment to the Council, please use the podium and clearly state your name and address, keeping your comments to a maximum of 2 minutes. Public comment is limited to no more than ten minutes per meeting. Please do not repeat positions already stated. Public comment is a time for the Council to receive new information and perspectives.**
3. Approve minutes of previous meeting: May 8, 2018 p. 3
4. Council Reports
5. Consider approval of: weekly expenditures > \$1,000 paid April 30 & May 7, 2018 p. 9
6. Consider approval of the proposed agricultural protection area at approximately 1280 North 400 East p. 13
  - a. Public Hearing
  - b. Action
7. Consider approval of a beer license for Corner 22 Food Mart, 2065 South Orchard Drive, Mantinder S. and Kiran Dosangh, applicants – Mr. Chad Wilkinson p. 41
8. Consider adoption of Resolution 2018-03 authorizing S. Ted Elder, City Treasurer and Galen D. Rasmussen, Assistant City Manager, as administrators of the City's PTIF accounts, and authorizing Gary R. Hill, City Manager, to sign the Public Entity Resolution on behalf of the Mayor and City Council – Mr. Galen Rasmussen p. 43
9. Consider approval of Resolution 2018-04 and authorizing the Mayor to sign for the Approval of Alternative Repowering for the IPP project – Mr. Allen Johnson p. 47
10. Consider approval of Resolution 2018-05 approving the Fifth Amendment to the Intermountain Power Agency Organization agreement – Mr. Allen Johnson p. 65
11. Consider approval of Resolution 2018-06 which approves the Power Sale Contract for the CFPPP and the budgeted plan of finance and authorizes the Mayor to sign the resolution – Mr. Allen Johnson p. 87
12. Adjourn

  
City Recorder



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Minutes of the  
BOUNTIFUL CITY COUNCIL

May 8, 2018 – 6:00 p.m.

Present: Mayor Randy Lewis  
Councilmembers Kendalyn Harris, Beth Holbrook, John Marc Knight,  
Chris Simonsen  
City Manager Gary Hill  
City Planner Chad Wilkinson  
City Engineer Paul Rowland  
Asst. City Manager Galen Rasmussen

Representative Ray Ward

Department Directors/Staff:

Police Chief Tom Ross  
Recording Secretary Nikki Dandurand

Excused: Councilmember Richard Higginson

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Official notice of the City Council Meeting was given by posting an agenda at City Hall and on the Bountiful City Website and the Utah Public Notice Website and by providing copies to the following newspapers of general circulation: Davis County Clipper and Standard Examiner.

**Work Session – 6:00 p.m.**  
**Planning Conference Room**

Mayor Lewis welcomed those in attendance and called the session to order at 6:05 p.m.

**NUCLEAR PROJECT PRIMER – MR. ALLEN JOHNSON**

Mr. Johnson presented a PowerPoint discussion outlining the design, installation and working mechanics of the new nuclear power plant under consideration by the Utah Associated Municipal Power Systems (UAMPS) organization of which Bountiful City is a member. Mr. Johnson and Mr. Gary Hill stated this project will, among other things, allow us to match current resources with the power load as close as possible and to sell off excess power. The City’s current base resource is locked in until 2025. Mr. Johnson asked the question how much will power be in 10, 20 or 30 years. Plans need to be put in place for that now. Mr. Hill stated that the contract to proceed with the project will be presented to the City Council next week.

**SOUTH DAVIS LIBRARY BRANCH DISCUSSION – MR. GARY HILL**

Mr. Hill stated that in 2016, the County approved a tax increase to rebuild/remodel libraries in Davis County. Bountiful City has approached the County with the offer to donate land by the new plaza area to relocate the current branch on. The Council indicated that South Davis County could use two branches, one in Bountiful and one in North Salt Lake. A smaller branch in Bountiful would be ok if it is a new building on the plaza. Councilman Knight was concerned because we have been at this point for some time. Mayor Lewis encouraged the Council to communicate with others in the

1 County and community. Mayor Lewis asked if the City can use Qualtrics to poll the residents. Most  
2 agreed that would be a valuable option. Mr. Hill said that moving the current branch north is a  
3 concern for the County because it is closer to the Centerville Branch, despite the fact that the plaza is  
4 only 600 yards further North. Mayor Lewis concluded that we need to move forward and not kick  
5 this item around anymore. Bountiful is the second largest city in the County. Qualtrics would be a  
6 good idea.

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9 **Regular Meeting – 7:03 p.m.**  
10 **City Council Chambers**

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12 Mayor Lewis called the meeting to order at 7:03 p.m. and welcomed those in attendance.  
13 Shay Smith, resident, led the Pledge of Allegiance; Rev. Jason Krause, Cross of Christ Lutheran  
14 Church, gave a prayer.

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16 **PUBLIC COMMENT**

- 17 • Joe Norve – 1946 S. 400 E. – concerned about the speeding traffic in the area

18  
19 **APPROVE MINUTES OF PREVIOUS MEETINGS:**

- 20 a. **City Council – April 10, 2018**  
21 b. **Public Safety budget committee - April 3, 2018**  
22 c. **Parks, Recreation and Arts budget committee - April 9, 2018**  
23 d. **Finance and Administration budget committee - April 10, 2018**  
24 e. **Power Fund budget committee - April 10, 2018**  
25 f. **Streets & Sanitation budget committee - April 12, 2018**  
26 g. **Water Fund budget committee - April 12, 2018**

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28 Mayor Lewis presented the minutes from the previous meetings. Councilwoman Harris  
29 moved to approve the minutes and Councilman Simonsen seconded the motion. Voting was  
30 unanimous with Councilpersons Harris, Holbrook, Knight and Simonsen voting “aye”.

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32 **BCYC REPORT**

33 Councilwoman Harris introduced Maria Jacobs, current BCYC Mayor, and Lucy Ward, next  
34 year’s parliamentarian. They both wished to thank the City Council for their support and also  
35 Councilwoman Harris for her help throughout the year. They are finishing up the school year and  
36 conducting interviews for new applicants this week. In two weeks they will have their final  
37 party/graffiti cleanup.

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39 **COUNCIL REPORTS**

40 Councilman Knight is excited for this time of year with the food trucks, farmers market and  
41 all the summer activities. Councilwoman Holbrook stated there is a bill on the fall ballot that needs  
42 our support, called the Our Schools Now Bill. This bill would increase the gas tax by ten cents, with  
43 70% going back to the schools and 30% to transportation. Councilman Simonsen announced Coats  
44 for Kids will be Father’s Day weekend and also Music in the Park will start soon. Councilwoman  
45 Harris announced Chalk Art will be downtown next week.

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3 **CONSIDER APPROVAL OF:**

- 4 a. **WEEKLY EXPENDITURES > \$1,000 PAID APRIL 2, 9, 16 & 23, 2018**  
5 b. **MARCH 2018 FINANCIAL REPORT**  
6

7 Mayor Lewis presented the expenditures/financial report and asked for a motion to approve.  
8 Councilman Simonsen moved to approve the weekly expenditures/reports and Councilwoman Harris  
9 seconded the motion. Voting was unanimous with Councilpersons Harris, Holbrook, Knight and  
10 Simonsen voting “aye”.  
11

12 **OUTSTANDING BOUNTIFUL & VIEWMONT HIGH SCHOOL STUDENT**  
13 **RECOGNITION – MAYOR RANDY LEWIS**

14 Mayor Lewis introduced the principals from Bountiful High School and Viewmont High  
15 School. Each Principal introduced students and teams to recognize the sports, academic, dance and  
16 other awards won throughout the year.  
17

18 **CONSIDER ADOPTION OF THE “CITY OF BOUNTIFUL, UTAH OPERATING &**  
19 **CAPITAL BUDGETS (WITH LONG-TERM CAPITAL PLAN, RATES AND FEES) FISCAL**  
20 **YEAR 2018-2019” AS THE CITY’S TENTATIVE BUDGET – MR. GALEN RASMUSSEN**

21 Mr. Rasmussen presented the tentative budget which is a combined document with fees,  
22 charges, long-term capital plan, referenced compensation schedules and URS certifications being  
23 presented for consideration of adoption as the tentative budget of the City, The tentative budget can  
24 be adjusted while it is open for review. Councilman Knight moved to approve the tentative budget  
25 and Councilwoman Holbrook seconded the motion. Voting was unanimous with Councilpersons  
26 Harris, Holbrook, Knight and Simonsen voting “aye”.  
27

28 **CONSIDER PRELIMINARY AND FINAL SUBDIVISION APPROVAL FOR CULVER’S**  
29 **COMMERCIAL SUBDIVISION LOCATED AT 620 N 500 W, MARK YOUNG**  
30 **REPRESENTING CG&S LLC, APPLICANT – MR. PAUL ROWLAND**

31 Mr. Rowland stated that the site plan was approved (which can act as the preliminary  
32 subdivision review) on February 13 of this year. The proposal is to divide the parcel into two  
33 commercial lots, which leaves 0.14 acres to be dedicated to the UDOT for access off of 500 West  
34 (Highway 89). UDOT imposed requirements for access and a cross access easement were reviewed  
35 and approved as part of the site approvals in February. Councilwoman Holbrook asked what the  
36 intentions are for the second lot. Mr. Rowland replied he is unsure, but it is zoned for commercial  
37 use. Councilwoman Holbrook made a motion to approve the preliminary and final subdivision and  
38 Councilwoman Harris seconded the motion. Voting was unanimous with Councilpersons Harris,  
39 Holbrook, Knight and Simonsen voting “aye”.  
40

41 **CONSIDER FINAL PLAT APPROVAL FOR STONE CREEK ESTATES SUBDIVISION**  
42 **PHASE I & II LOCATED AT 1600 EAST BOUNTIFUL BLVD , BROCK JOHNSTON,**  
43 **APPLICANT – MR. PAUL ROWLAND**

44 Rainey Homes is requesting final approval of Phase 1 and Phase 2 of the Stone Creek Estates  
45 Subdivision, which is an overall 50 lot subdivision of the vacant Keller property. The utilities need to  
46 be put in for the entire subdivision. The Bountiful City Planning Commission recommends final

1 approval of Stone Creek Estates Subdivision Phase 1 and Phase 2 plats with the conditions being met.  
2 Mr. Rowland stated this will be the first residential lot with 50 or more houses in 15 years.  
3 Councilwoman Holbrook confirmed there will be 25 homes in each phase and asked when the work  
4 will begin. Mr. Rowland expects the building permits to be issued later in the summer and then  
5 phase III will begin in approximately 18 months. Councilman Simonsen asked if any lots have been  
6 sold yet. Mr. Rowland said no, because the property needs to be recorded first, but there is a lot of  
7 interest. Councilwoman Holbrook made a motion approve the plat approval and Councilman Knight  
8 seconded the motion. Voting was unanimous with Councilpersons Harris, Holbrook, Knight and  
9 Simonsen voting “aye”.

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11 **CONSIDER APPROVAL OF THE PROPOSAL FROM SPADE EXCAVATING AND**  
12 **AWARD THE CONTRACT FOR THE 2018 WATER LINE PROJECTS AT THE UNIT**  
13 **PRICES SUBMITTED IN THE PROPOSAL – MR. PAUL ROWLAND**

14 Mr. Rowland stated that Mr. Lloyd Cheney has put together a plan to start replacing the water  
15 lines in the City. The first project will be to install a water line to the new Holbrook reservoir  
16 (currently under construction). Proposals were received from five contractors, three of which were  
17 first time bidders on Bountiful projects. The lowest price proposal was received from Spade  
18 Excavating of Draper, UT. Since Spade is a new, unknown contractor to the City, several of their  
19 city/utility district and developer references were contacted. Each reference gave positive,  
20 encouraging comments regarding Spade’s experience, qualifications and the quality of their work.  
21 Each contact (from both engineers and inspectors) indicated that the supervisory personnel were very  
22 conscientious about the approach to the work to be completed, followed directions well, and kept  
23 them informed as the work progressed. Mr. Rowland noted that labor and material costs have gone  
24 up significantly. An extension clause would allow the Contractor to continue the same type of work  
25 for two additional years. Councilwoman Holbrook made a motion to approve the proposal and  
26 Councilwoman Harris seconded the motion. Voting was unanimous with Councilpersons Harris,  
27 Holbrook, Knight and Simonsen voting “aye”.

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29 **CONSIDER APPROVAL OF THE PURCHASE OF A STANCIL 911 RECORDER IN THE**  
30 **AMOUNT OF \$30,070 – CHIEF TOM ROSS**

31 Chief Ross stated that the funding for this equipment has been approved in the FY 2018  
32 budget. The current recording equipment is 20 years old and has outlived its service life. During a  
33 recent repair, the repairman explained that the parts for the current model are becoming difficult to  
34 find and could delay the Department from getting back in service for an extended period of time. If  
35 the current equipment is not replaced soon, the risk of the recorder failing during critical calls where  
36 the ability to verify information and document activity places becomes greater and the communities  
37 the dispatch center serves are at risk. Stancil is the recording equipment that best fits the needs and is  
38 the same system being utilized by other dispatch centers in the area. This bid covers all installation  
39 and training costs. To ensure the bid received was competitive, a second quote was solicited from  
40 Goserco, also on the Utah State Bid contract, which came back higher. Councilwoman Harris made a  
41 motion to approve the purchase and Councilwoman Holbrook seconded the motion. Councilwoman  
42 Holbrook asked when this will be ordered and because this was in budget, is the training a one-time  
43 event. Chief Ross replied yes, the training is one-time and the order will be placed immediately.  
44 Voting was unanimous with Councilpersons Harris, Holbrook, Knight and Simonsen voting “aye”.

1 Councilman Simonsen announced a special luncheon this Thursday at the Joy Luck Club in  
2 honor of the Coats for Kids event.

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4 Mr. Gary Hill reminded the Council about the Truth in Taxation/ Homeless Shelter issue and  
5 when a meeting should be scheduled to discuss this. The council agreed to discuss it in the next work  
6 session.

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8 Chief Ross gave an update on the most recent crime in Bountiful involving a shooting. The  
9 video camera recorded everything in the store and the Chief supports the store owner's actions.

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11 Mayor Lewis asked for a motion to adjourn the regular session of City Council. Councilman  
12 Knight made a motion to adjourn the meeting, and Councilwoman Holbrook seconded the motion.  
13 The regular session of the City Council was adjourned at 8:19 p.m.

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*Mayor Randy Lewis*

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*City Recorder*





# City Council Staff Report

**Subject:** Expenditures for Invoices > \$1,000.00 paid  
April 30 & May 7, 2018

**Author:** Tyson Beck, Finance Director

**Department:** Finance

**Date:** May 22, 2018



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## **Background**

This report is prepared following the weekly accounts payable run. It includes payments for invoices hitting expense accounts equaling or exceeding \$1,000.00.

Payments for invoices affecting only revenue or balance sheet accounts are not included. Such payments include: those to acquire additions to inventories, salaries and wages, the remittance of payroll withholdings and taxes, employee benefits, utility deposits, construction retention, customer credit balance refunds, and performance bond refunds. Credit memos or return amounts are also not included.

## **Analysis**

Unless otherwise noted and approved in advance, all expenditures are included in the current budget. Answers to questions or further research can be provided upon request.

## **Department Review**

This report was prepared and reviewed by the Finance Department.

## **Significant Impacts**

None

## **Recommendation**

Council should review the attached expenditures.

## **Attachments**

Weekly report of expenses/expenditures for invoices equaling or exceeding \$1,000.00 paid April 30 & May 7, 2018.

**Expenditure Report for Invoices (limited to those outlined in staff report) >\$1,000.00  
Paid April 30, 2018**

<u>VENDOR</u>	<u>VENDOR NAME</u>	<u>DEPARTMENT</u>	<u>ACCOUNT</u>	<u>ACCOUNT DESCRIPTION</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>INVOICE</u>	<u>DESCRIPTION</u>
9790	APPRAISAL GROUP LLC	Water	51.5100.472120.	Reservoirs	5,950.00	202430	180404PT/JC	Appraisal Report for Bountiful City
1212	ASPLUNDH TREE EXPERT	Light & Power	53.5300.448632.	Distribution	4,674.80	202431	63L28718	Tree Trimming
1212	ASPLUNDH TREE EXPERT	Light & Power	53.5300.448632.	Distribution	5,140.40	202431	63L28818	Tree Trimming
9793	BIERER & ASSOC	Light & Power	53.5300.448636.	Special Equipment	11,882.00	202434	B041918-12	Wireless Phasing Testes
9219	BSN SPORTS LLC	Parks	10.4510.426000.	Bldg & Grnd Suppl & Maint	2,545.00	202445	902044311	Softball Fence
1507	BURT BROTHERS TIRE I	Liability Insurance	63.6300.451150.	Liability Claims/Deductible	1,537.99	202446	3-GS211685	Tire repair from vandalism to police cars
1540	CACHE VALLEY ELECTRI	Light & Power	53.5300.474710.	CIP 01 138KV Trans Substation	500,000.00	202448	12-205109	Demolition & Construction of Bountiful Substation
1615	CENTURYLINK	Police	10.4219.428000.	Telephone Expense	3,522.28	202451	04222018	Acct # 801-578-0401 452B
1716	CMT ENGINEERING LABO	Light & Power	53.5300.474710.	CIP 01 138KV Trans Substation	1,720.00	202453	71525	Project #010944 Bountiful 138 Substation
1815	CROFT POWER EQUIPMEN	Parks	10.4510.425000.	Equip Supplies & Maint	2,208.97	202456	88700	Mower & Oil
9791	DIVISION OF EMERGENC	Landfill	57.5700.461000.	Miscellaneous Expense	32,999.05	202462	04302018	Reimbursed Overpayment of FEMA Grant Fund from2011
2164	FERGUSON ENTERPRISES	Water	51.5100.448400.	Dist System Repair & Maint	1,084.44	202467	1053354	Gate Valves& Gaskets
5458	HANSEN, ALLEN & LUCE	Landfill	57.5700.431300.	Environmental Monitoring	4,701.78	202475	38145	Groundwater Sampling for 3/16-4/15,2018
8417	HANSON, ANNETTE	Legislative	10.4110.461000.	Miscellaneous Expense	1,631.02	202476	04302018	Reimbursed for crafts & supplies for CreeksidePark
2886	LAKEVIEW ROCK PRODUC	Water	51.5100.461300.	Street Opening Expense	2,462.14	202493	357527	Road Base
6096	LINKSOUL	Golf Course	55.5500.448240.	Items Purchased - Resale	1,725.70	202498	29653	Men's Golf Wear
9788	MAGLIN	Parks	45.4510.473100.	Improv Other Than Bldgs	52,980.00	202500	USIP-001661	Picnic Tables for Creekside
3200	MOUNTAIN WEST TRUCK	Streets	10.4410.425000.	Equip Supplies & Maint	1,297.10	202507	913947	Parts/ Fuel Tank & Insulator
9087	POWELL, MARK	Water	51.5100.472120.	Reservoirs	19,850.00	202514	04242018	Bountiful Water Tank Demo
9792	SMITH STEELWORKS LLC	Parks	10.4510.426000.	Bldg & Grnd Suppl & Maint	8,317.00	202529	1454	44 Gallon Flat Top Trash Receptacle w/Dome top
9168	TRAVELERS CASUALTY	Parks	45.4510.473100.	Improv Other Than Bldgs	7,834.49	202540	T006	Project #2017001// Creekside Park #15-106
9168	TRAVELERS CASUALTY	Parks	45.4510.473100.	Improv Other Than Bldgs	36,191.73	202540	T005	Project #2017001// Creekside Park #15-106
4341	UTAH ASSOCIATED MUNI	Light & Power	53.5300.448621.	Power Purch IPP	1,468.19	202544	04252018	April 2018 Payment for Power Resources
4341	UTAH ASSOCIATED MUNI	Light & Power	53.5300.448622.	Power Purch San Juan	192,187.29	202544	04252018	April 2018 Payment for Power Resources
4341	UTAH ASSOCIATED MUNI	Light & Power	53.5300.448620.	Power Purch CRSP	350,029.72	202544	04252018	April 2018 Payment for Power Resources
4341	UTAH ASSOCIATED MUNI	Light & Power	53.5300.448626.	Power Purch UAMPS (Pool, etc)	442,605.93	202544	04252018	April 2018 Payment for Power Resources
4387	UTAH LEAGUE OF CITIE	Legislative	10.4110.421000.	Books Subscr & Mmbrshp	26,293.38	202546	04162018	Membership Fees for FY 2018-2019
4402	UTAH SECTION PGA	Golf Course	55.5500.448220.	Pro Shop Misc Supplies	1,300.00	202547	18UTBOG004	Book of Golfr Marketing
4557	WESTECH FUEL EQUIPME	Streets	45.4410.473100.	Improv Other Than Bldgs	1,600.00	202557	0275907	D&F Tank Set up
<b>TOTAL:</b>					<u>\$ 1,725,740.40</u>			

**Expenditure Report for Invoices (limited to those outlined in staff report) >\$1,000.00  
Paid May 7, 2018**

<u>VENDOR</u>	<u>VENDOR NAME</u>	<u>DEPARTMENT</u>	<u>ACCOUNT</u>	<u>ACCOUNT DESCRIPTION</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>INVOICE</u>	<u>DESCRIPTION</u>
6652	BALLINGHAM GOLF & TU	Golf Course	55.5500.426000.	Bldg & Grnd Suppl & Maint	2,547.59	202567	20042	Unipar Sand
1393	BTS LANDSCAPING PROD	Landfill	57.5700.462400.	Contract Equipment	9,949.25	202569	112361	Tubgrinding at the Landfill
1707	CLEVELAND GOLF/SRIXO	Golf Course	55.5500.448240.	Items Purchased - Resale	1,932.77	202577	5331217	Golf Accessories
2164	FERGUSON ENTERPRISES	Water	51.5100.448400.	Dist Systm Repair & Maint	7,863.44	202591	1053674	Parts
2350	GREEN SOURCE, L.L.C.	Golf Course	55.5500.426000.	Bldg & Grnd Suppl & Maint	1,572.37	202595	13783	Sports Turf
2350	GREEN SOURCE, L.L.C.	Golf Course	55.5500.426000.	Bldg & Grnd Suppl & Maint	3,025.00	202595	13820	Sports Turf
2523	HONNEN EQUIPMENT COM	Cemetery	59.5900.426000.	Bldg & Grnd Suppl & Maint	1,554.81	202599	939342	Parts & Tools
5196	INTELLICHOICE, INC.	Police	10.4210.425500.	Terminal Maint & Queries	11,573.36	202600	1229032	2nd Year Annual License & Support Fee May-Dec 2018
2664	J & J NURSERY AND GA	Parks	10.4510.426000.	Bldg & Grnd Suppl & Maint	2,674.70	202601	249420	Trees
8137	LAKEVIEW ASPHALT PRO	Streets	10.4410.441200.	Road Matl Patch/ Class C	1,612.00	202604	2326	Patching
8137	LAKEVIEW ASPHALT PRO	Streets	10.4410.441200.	Road Matl Patch/ Class C	1,615.08	202604	2353	Patching
8137	LAKEVIEW ASPHALT PRO	Streets	10.4410.441200.	Road Matl Patch/ Class C	3,232.46	202604	2350	Patching
8137	LAKEVIEW ASPHALT PRO	Streets	10.4410.441200.	Road Matl Patch/ Class C	5,385.00	202604	2341	Patching
2987	M.C. GREEN & SONS IN	Storm Water	49.4900.473106.	New Storm Drains > 400'	1,644.60	202607	3770	Application #6 Storm Drain Project
6330	MGB+A INC	Parks	45.4510.473100.	Improv Other Than Bldgs	1,631.64	202608	2018-275	Project #15-106 // Creekside Park
3129	MILSOFT UTILITY SOLU	Light & Power	53.5300.429300.	Computer	1,445.20	202610	20182163	Over Flow Calls
3195	MOUNTAINLAND SUPPLY	Water	51.5100.448400.	Dist Systm Repair & Maint	11,875.32	202613	S102602343.001	Parts
5366	MUNDEN, TONYA	Engineering	10.4450.423000.	Travel & Training	2,296.34	202614	05032018	Reimbursed for Travel & Trainin// Munis Boston, MA
3293	NICKERSON CO INC	Water	51.5100.474500.	Machinery & Equipment	5,749.68	202617	J19452	Pump & Start Up
3549	PREMIER VEHICLE INST	Police	10.4210.425430.	Service & Parts	9,126.13	202626	26606	Vehicle Repair Serviced
3549	PREMIER VEHICLE INST	Liquor Control	10.4218.445100.	Public Safety Supplies	25,700.00	202626	26914	Police Equipment installation
5358	STOTZ EQUIPMENT	Parks	10.4510.425000.	Equip Supplies & Maint	10,477.75	202635	E03461	John Deere 960M Z960M Gas Midz Mower
4229	TOM RANDALL DIST. CO	Streets	10.4410.425000.	Equip Supplies & Maint	23,325.36	202638	0273569	Fuel
5305	UTAH TRANSIT AUTHORI	Streets	10.4410.473400.	Concrete Repairs	51,186.00	202644	709147	Per Tiger Project, ADA Ramps/ Cust #1478241
4450	VERIZON WIRELESS	Police	10.4210.425200.	Communication Equip Maint	1,480.67	202646	9805887083	Acct # 771440923-00001
9363	WIGEN WATER TECH	Water	51.5100.472100.	Buildings	25,449.00	202651	20505	Mueller Park Water Treatment Plant Project
<b>TOTAL:</b>					<u>\$ 225,925.52</u>			



# City Council Staff Report



**Subject:** Application for Agriculture Protection Area

**Property Addresses:** Approximately 1280 N 400 East

**Author:** Chad Wilkinson, Planning Director

**Department:** Planning

**Date:** May 22, 2018

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## **Background**

The applicants, Alan Bangerter and Randal Edwards, have requested the creation of an agriculture protection area for property located at approximately 1280 N. 400 East. The property is approximately 11.85 acres in size and is currently zoned R-4. Utah Code Title 17 Chapter 41 provides for a process by which the legislative body of a City or town may create an agricultural protection area. The process provides for coordination with the County including review and recommendation by a County appointed agriculture protection advisory board. The proposal is also required to be considered by the Planning Commission with a recommendation forwarded to the City Council.

## **Standard of Review**

State Code Section 17-41-305 provides criteria for evaluating a proposal for creation of an agriculture protection area. The criteria include the following:

- (1) whether or not the land is currently being used for agriculture production or for an industrial use, as the case may be;
- (2) whether or not the land is zoned for agriculture use or industrial use, as the case may be;
- (3) whether or not the land is viable for agriculture production or industrial use, as the case may be;
- (4) the extent and nature of existing or proposed farm improvements or the extent and nature of existing or proposed improvements to or expansion of the industrial use, as the case may be; and
- (5) (a) in the case of an agriculture protection area, anticipated trends in agricultural and technological conditions; or  
(b) in the case of an industrial protection area, anticipated trends in technological conditions applicable to the industrial use of the land in question.

## **Analysis:**

The Chas W. Bangerter and Son farm has been operating in Bountiful for over 100 years and continues to be a viable and productive farm. Development has occurred around the property and the farm is now hemmed in by residential development on all sides. The farm is one of a few remaining viable farm parcels in the City limits.

A review of the evaluation criteria provided in State law shows that the proposal is consistent with the intent of the agriculture protection area statute. The property is currently used for agriculture and the farm use has existed for decades. The Bangerter farm is an active participant in the Bountiful Farmer's Market and supports the recent trend for increased demand for locally grown produce. The one criterion that merits further discussion relates to the zoning of the property. The property is currently zoned R-4 (Single-family Residential) and the adoption of the agriculture protection area will not change the underlying zoning of the property. The City does not have an agricultural zoning designation at this time. The R-1 zoning district focused around the Val Verda area is the closest designation to an agriculture zone but is still primarily a single family zone that allows for limited farm animals and agricultural use. Although State Code lists existing zoning as a consideration, in this case, because the use has been operating for over 100 years, the agriculture use is considered to be a legal existing nonconforming use. Because of the preexisting nature of the use, the current zoning is not a limiting factor on the continued use of the ground for agricultural purposes as the use may continue in perpetuity as long as the agricultural use is not abandoned or discontinued for more than one year.

Notice of the proposal for an agriculture protection area was sent to all property owners within 1000 feet of the subject property. The City received a few comments in response to the notice all generally in support of the proposed protection area. A copy of these comments is attached to this report.

The proposal was considered by the Davis County Agriculture Protection advisory board on April 9, 2018. A copy of the minutes of that meeting is attached to this report. The advisory board unanimously recommended approval of the proposed Agriculture Protection Area.

The Bountiful Planning Commission reviewed the request at their April 17, 2018 meeting. A copy of the minutes of that meeting is attached to this report. The Commission unanimously recommended approval of the request.

### **Department Review**

This item has been reviewed by the City Planner and City Attorney.

### **Significant Impacts**

State law limits the land use authority of Cities pertaining to property within an agriculture protection area. As an example a City may not change the zoning designation or regulations affecting land within an agriculture protection area without written approval of all owners within the boundary of the agriculture protection area. In addition, the protection area requires additional procedures should the City wish to exercise eminent domain on the property. These impacts should be considered as the Planning Commission and City

Council review the application. State law also requires additional notice to appear on new subdivisions within 300 feet of an agriculture protection area. Since there are not any other properties within 300 feet of the property with significant development potential, this requirement is expected to have minimal impact

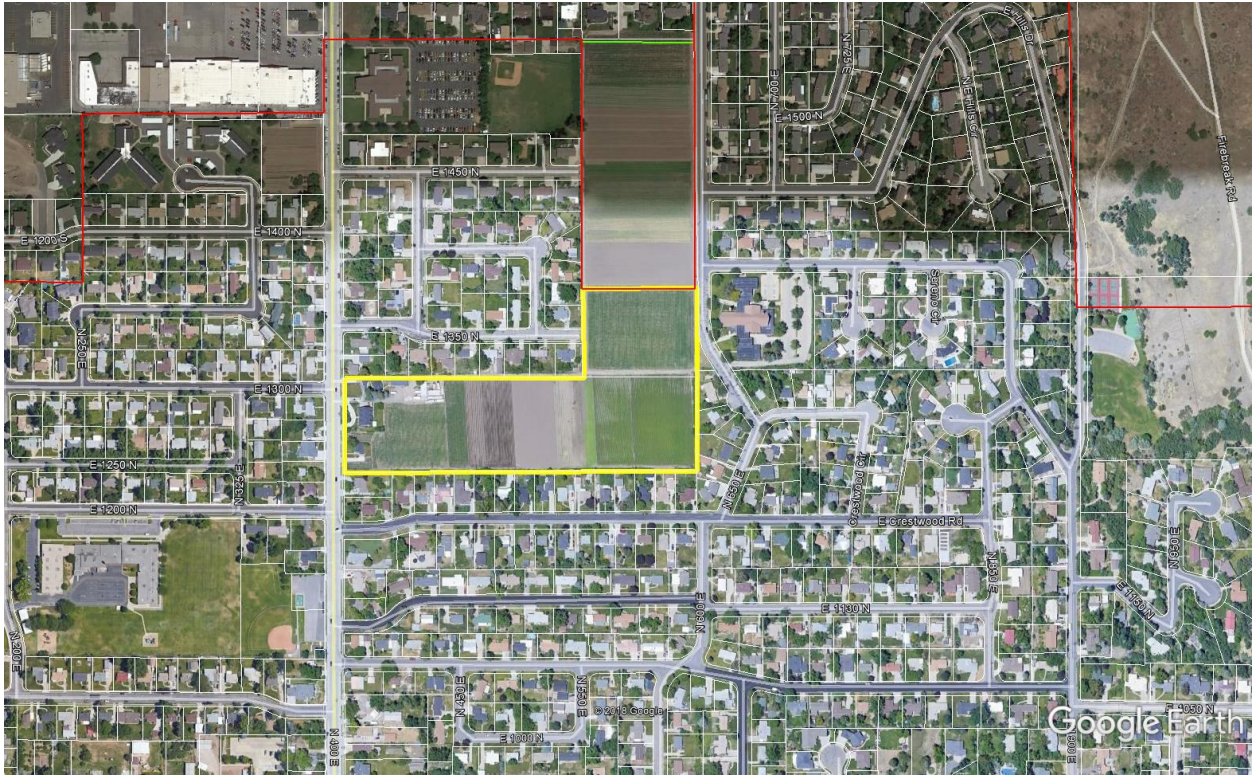
**Recommendation:**

The Planning Commission forwards a recommendation of approval to the City Council for the proposed agriculture protection area.

**Attachments**

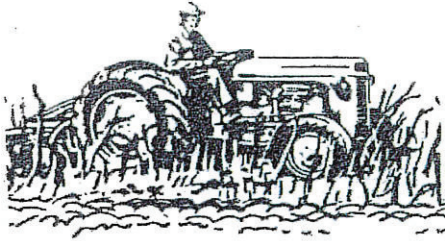
1. Aerial photo
2. Application Materials
3. Minutes From April 9, 2018 Agriculture Protection Advisory board meeting
4. Minutes from April 17, Planning Commission Meeting
5. Letters from adjoining property owners

# Aerial Photo





RECEIVED  
3/13/18  
pa



**CHAS. W. BANGERTER & SON, INC.**  
1304 North 400 East  
Bountiful, Utah 84010  
(801)295-3056  
(801)631-1374

**\*\*\*\*AMENDED PETITION\*\*\*\***

**PETITION: DESIGNATION AND APPROVAL OF AGRICULTURAL PROTECTION AREA WITHIN THE BOUNDARIES OF BOUNTIFUL MUNICIPALITY pursuant to UCA 17-41-202 et seq.**

March 8, 2018

Mayor Randy Lewis  
Bountiful City Council  
City Hall  
790 South 100 East  
Bountiful, UT 84010

Dear Mayor Lewis and City Council Members:

This petition was filed originally February 28, 2018. After communication with Bountiful City regarding the original acreage included in the petition, it was determined that a portion of the original acreage was located in unincorporated Davis County. I met with the Davis County Recorder about this issue (the plots were combined several years ago), we have done deed work and have separated the acreage (replacing 02-070-0085 with 02-070-0102 and 02-070-0103). The new deed indexes have been updated by the County Recorder, and we are resubmitting this Amended Petition to include all land currently located in the city of Bountiful. Again, by way of this Amended Petition, the Bangerter family farms requests that you protect our farmland in Bountiful

**OUR HISTORY IN BOUNTIFUL**

Bountiful City's history and roots rest in its legacy as the garden spot of Utah and was, at one time, an agricultural center renowned for raising livestock, grain, alfalfa, orchard crops, fruits and vegetables. Land in Bountiful (and throughout Davis County) has sustained many family farm operations, and continues to do so for a dwindling family of farmers who make a

living working the land, managing their crops, and distributing produce and farm goods to local markets, restaurants, businesses, and homes in Bountiful and elsewhere.

As urbanization of the corridor between the mountains and the Great Salt Lake has taken place in Davis County, there has also come the inevitable entrance of infrastructure, freeways/transportation upgrades, subdivisions, home building, and the expansion of commerce. Bountiful has not been immune from these changes. The street that was once known as Orchard Drive because, as its name says, was full of orchards, but is now just another residential street. And while some residents of Bountiful – the name of which embodies farming as central to its identity – pride themselves on this town retaining its rural feel and small-town atmosphere. Tragically, most traditional family farms have gone by the wayside in the wake of a push for development and residential homes, which have overtaken the rich and fertile arable soil for which Bountiful is known. Actual farm land in Bountiful is becoming more and more scarce; but farmland still exists and needs to be protected.

The Chas. W. Bangerter & Son family farms have been an active grower of produce in Bountiful and surrounding Davis County for well over 100 years (since 1902, in fact). We hire local employees every growing season. Many of Bountiful's businessmen got their first job working for us as teenagers during the summers. We pay out wages in excess of \$400,000 per year, which is a boon to the local economy. Bangerter Farms harvests and delivers the equivalent of two semi loads of fresh vegetables per day to local warehouses during our peak growing season. Our local production of high quality vegetables means that the cost, pollution and inconvenience of importing the equivalent amount of those vegetables from outside the state is avoided.

The Bangerter family farms has been affected by urbanization and development in different ways, including having a large portion of their family land "taken" for creation of the Legacy Parkway and Legacy Bike Trail. From what we have been able to gather, plans are afoot to "take" even more of Bangerter Farms' farm land, including a substantial portion of two lots in unincorporated Davis County, which currently produce a large percentage of Bangerter produce, for the planned new West Davis Corridor. Each foot of farm land lost will be gone forever as crop-producing acreage. The preservation of the remaining areas of farm land in Bountiful as well as Davis County is vital. Not only do we feel that we are losing ground – literally – but that a rich rural heritage is being paved over.

For this reason, the Bangerter family now asks you to protect our generations-old family business by utilizing existing laws to protect two plots of producing farmland ( Plat 02-070-0077/ 9.16 acres, and Plat 02-070-0103/ 2.695 acres), by approving and formally designating an Agricultural Protection Area within the boundaries of Bountiful City Municipality, as outlined below. Preservation of this plot of land will not only support the local economy and preserve Bountiful's legacy of farming, but will also protect our family's ability to remain a sustainable business for many generations to come.

The legislature of the State of Utah has set forth statutory protection for sustainable farmland, specifically to protect agricultural operations from encroachment of urban development. After inquiry with Bountiful City, we have been informed that, at present,

Bountiful City does not have formal procedure in place for designation of Agricultural Protection Areas pursuant to the mandates of UCA 17-41-202 *et seq.* (hereinafter referred to as “APA”). We are in the application process, under the APA, to protect all remaining farmland held by the Bangerter Farms family within Davis County, both incorporated and unincorporated. Please accept this communication as formal petition for designation and approval of Agricultural Protection Area within the boundaries of Bountiful Municipality.

### SUMMARY

We seek the designation and approval for creation of an Agricultural Protection Area, or an amendment to an existing Agricultural Protection Area within the incorporated boundaries of the City of Bountiful. This designation shall identify specific parcel(s) of property within the City of Bountiful, for a period of twenty (20) years, at the expiration of which a review is required under the statute for continued designation under the APA.

Creation of an Agricultural Protection Area is crucial to promote and encourage viability, development, sustainable local business, community employment, and ongoing continuity of agriculture within the City of Bountiful. Designation of an Agricultural Protection Area shall afford the landowners and farmers within the designated areas the highest priority use status, as envisioned by the Utah State Legislature.

Protection of farmland is a necessity for the city of Bountiful, its citizens, and its local businesses. Designation under the APA allows farmland owners to protect the integrity of viable farmland from non-farm encroachment and to minimize or eliminate detrimental impact on agriculture and local businesses.

## AGRICULTURE PROTECTION AREA APPLICATION

### 1. BOUNDARIES OF THE LAND PROPOSED TO BECOME PART OF THE AGRICULTURAL PROTECTION AREA

Please see attached boundary map with proposed APA designation area highlighted.  
(Attached hereto as Exhibit A)

### 2. LIMITS ON THE TYPES OF AGRICULTURE PRODUCTION TO BE ALLOWED WITHIN THE AGRICULTURAL PROTECTION AREA

There should be no limitation to the type of agricultural production allowed within the proposed Agricultural Protection Area. Currently, the farm production for Bangerter Farms includes beans, beets, sweet corn, peas, radishes, summer & winter squash, eggplant, jalapeno and other peppers, pumpkins, tomatoes, melons, cucumbers, green onions, bell peppers and other crops. This production may expand, based upon the needs and requests of the local population, local businesses, and local grocers who benefit from Bangerter Farms' production.

### 3. NAMES OF OWNERS OF RECORD OF THE LAND PROPOSED TO BE INCLUDED WITHIN THE AGRICULTURAL PROTECTION AREA

Applicant Information

Property Owner: Alan B. Bangerter and Diane F. Bangerter as Trustees of the Bangerter Family Trust

Address: 1290 North 400 East, Bountiful, UT 84010

Phone: 801-631-1374

E-mail Address: [alanbangerter@comcast.net](mailto:alanbangerter@comcast.net)

Applicant/Authorized Agent: Randall K Edwards and Jeanne D Marshall

Address: 188 North 100 West, Bountiful, UT 84010

Phone: 801-328-0300 Facsimile: 801-328-4822

E-mail Address: [randall@randallkedwards.com](mailto:randall@randallkedwards.com), [jeanne.d.marshall@gmail.com](mailto:jeanne.d.marshall@gmail.com)

### 4. IDENTIFICATION OF PARCEL(S); TAX PARCEL NUMBER; NUMBER OF ACRES

PARCEL ADDRESS	PARCEL TAX ID NUMBER	ACREAGE
Farm Address (Main Entrance): 1304 North 400 East Bountiful, UT 84010  Farm Land reaches from 400 to 600 East and 1250 to 1550 North	02-070-0077	9.16

<p>Bountiful, UT 84010</p> <p>Legal Description:</p> <p>BEG 1.52 CHAINS E &amp; 9.825 CHAINS N FR THE SW COR OF SEC 17-T2N-R1E, SLM, &amp; RUN TH N 4.875 CHAINS, TH E 18.47 CHAINS, TH S 5.05 CHAINS, TH W 18.47 CHAINS TO BEG. CONT. 9.16 ACRES. RESERVING A LIFE ESTATE TO CHARLES W BANGERTER AKA CHARLES BANGERTER. RESERVING A LIFE ESTATE TO ALAN B BANGERTER</p>		
<p>Farm Address (Main Entrance): 1304 North 400 East Bountiful, UT 84010</p> <p>Farm Land reaches from 400 to 600 East and 1250 to 1550 North Bountiful, UT 84010</p> <p>Legal Description:</p> <p>BEG AT NW COR OF HILLS NO 1, THE; SD PT IS 984.23 FT S &amp; 1330.90 FT E OF W 1/4 COR OF SEC 17-T2N-R1E, SLB&amp;M; TH N 0°15'20" W 509.50 FT; TH E 3.40 FT; TH S 509.50 FT; TH W 1.0 FT TO POB. CONT. 0.025 ACRES ALSO, BEG AT A PT 1158.59 FT S &amp; 1330.50 FT E FR W 1/4 COR OF SEC 17-T2N-R1E, SLB&amp;M; RUN TH N 174.36 FT; TH E 2.40 FT; TH S 174.36 FT; TH W 2.40 FT TO POB. CONT. 0.01 ACRES ALSO, BEG AT A PT S 89°47' E 104.3 FT &amp; N 970.2 FT FR THE SW COR OF SEC 17-T2N-R1E, SLB&amp;M; TH N 88°59' E 830.64 FT; TH N 294.9 FT TO THE N LINE OF BOUNTIFUL CITY; TH E 385.19 FT; TH S 305.25 FT; TH W 18.47 CHAINS TO THE POB. CONT. 2.66 ACRES TOTAL ACREAGE 2.695 ACRES</p>	<p>02-070-0103</p>	<p>2.695</p>

## SUPPORTING MATERIALS AND INFORMATION

### **I. HISTORY OF BANGERTER FARMS AND HISTORY OF DESIGNATED APA LAND**

Bangerter Farms has been in production in our family for six generations in Davis County. We are proud of our heritage, and continue to actively cultivate and farm our lands for the benefit of our family and community. We are truly a family business and intend to remain a viable and active part of our community for generations to come.

Nicklas Bangerter, my great grandfather, and a renowned farmer in Davis County, purchased some of the Bangerter family's current farm acreage in 1902. In fact, Plat 02-070-0077, the subject of this application, was one of the first pieces of property purchased by Nicklas, and has been farmed by the Bangerter family since that time. (Nicklas' total farm property included land on both sides of Pages Lane, all the way to 200 West from 300 East, and even entailed property where the J.A. Taylor Elementary School is located.) Nicklas owned the first grain thresher and one of the first automobiles in the area. In 1906, Nicklas' son, Orson N. Bangerter, my grandfather, married and build a home on some of that farm property, and started farming the land. Orson raised 12 children (10 boys) on the farm and was an active farmer and crop producer until his death in 1946. He called his operation Orson N. Bangerter and Sons.

My father, Charles W. Bangerter, was born on the family farm in 1918 and worked the farm continually for more than 80 years, until his death in 1999. "Charley" worked with his father, and then took over the farm when Orson died. Charley raised six children on the farm. He named his operation Chas. W. Bangerter and Sons. I, Alan Bangerter, (one of the sons), was born in 1951, and soon thereafter began learning the ropes of my family's legacy. In 1953, my family began to farm additional property in the area, first by purchasing the south section of the farm. We rented the north portion for years and then finally purchased it in approximately 1968. This added another 10.353 acres – what was identified as Plat 02-070-0085, a piece that has now been updated in the deed index to include a 2.695 acre plot in Bountiful City (02-070-0103), subject of this application, and another plot in unincorporated Davis County (02-070-0102) an additional land which the Bangerter Farms family has requested be protected under the APA through the County. These pieces of property have been consistently farmed by the Bangerter families for decades.

I farmed with my father my entire life, and we worked together diligently to expand our acreage, especially when we saw the urbanization and growth in the area. South Davis County is our home, and is land-locked from growth. Once developers began moving into the area, we realized we needed to do everything we could to protect not only our legacy and way of life, but also our ability to farm and maintain the ability to make a living wage and care for our growing families.

We incorporated our family farm business in 1973 and started Chas. W. Bangerter & Son, Inc., our current company. Of my six children, three are currently still working the farm lands with me. We are all partners in the current operation (Charles [named after his farmer grandfather], Nicklas [named after his farmer great-great grandfather], and Bryce). These three

children have 10 children between them, who, like past generations, all work the same farming property. Our families work full-time and are supported by our farming operation.

In 1972, my father and I decided to expand our farming operations to other places in Davis County. We began purchasing Farmington and unincorporated Davis County, first obtaining nine acres just south of the State Street overpass. Within a few years, we were able to purchase 21 more acres extending south from the first field – west of Interstate 15 and the railroad tracks; a total of 30 acres. We hoped to expand the family business in Davis County but, given the encroachment of urban development, good farmable property was becoming scarce. In 1988, we were able to purchase 46 acres from the Smoot family that was located further west in Farmington, just below 1100 West, between 500 South and 900 South. To our dismay, however, in 2000, we heard about the construction project for Legacy Parkway and were informed that the construction of the new roadway would require the “taking” of the first 30 acres of that rich and fertile farmland. We were then forced to begin the search for increasingly scarce farmland elsewhere. Negotiations with UDOT for the land did not provide acre-for-acre exchange for the property taken. Thus, when we lost our first 30 acres for Legacy Parkway, we were only able to find a 22.37 acre lot to replace it, part of which, I understand, is to be “taken” for the new corridor build. It seemed that we were being hemmed in by development on every side.

We can scarcely afford to lose more land, especially in light of the time, effort, money and sweat we have invested in making the small acreage we have productive. The designation of this property as an Agricultural Protected Area is in the best interest of this community, and specifically for the ongoing productivity and viability of our small family farm.

## **II. QUALITIES, CHARACTERISTICS, AND PROCESS FOR CREATING AND MAINTAINING VIABLE FARMLAND FOR GROWING PRODUCE**

### **A. Location**

As mentioned above, we run a small family operation in Davis County that provides produce for local businesses, which include the following:

- Mountain States Produce (Ogden, Utah) distributes Bangerter Farm produce to all Smith’s Food & Drug Stores in Utah.
- Associated Food Stores, delivered to and distributed from its distribution center in Farr West, Utah.
- Hartley’s Produce (Salt Lake City, Utah)
  - Utah WalMart Stores; and
  - Sysco Intermountain (restaurant supplier in Utah)
- Muir Copper Canyon Farms (Salt Lake City, Utah)
- A&Z Produce (North Salt Lake, Utah)
- Albertson’s Safeway Distribution Center (North Salt Lake, Utah)
- Winder Dairy (West Valley City, Utah)
- Eagle Eye Produce (Layton, Utah)
- KP Distribution LLC (Riverton, Utah)
- Craig Roberts Produce (Centerville, Utah)

- Bangerter Farm Vegetable Stand (Bountiful, Utah)
- Salt Lake Farmer's Market (Salt Lake City, Utah)
- Bountiful Farmer's Market (Bountiful, Utah)
- Mandarin Restaurant (Bountiful, Utah) and other local eateries

In order to maintain our family business, it is imperative we keep all of our properties within a 10 mile radiüs. Otherwise, it is not economically feasible keeping the business running and profitable. As referenced above, it is worth mentioning that in addition to our family, we hire over 100 local teenagers per season to help farm the land. This has been our practice for over 70 years. In order to maintain our farming operation, we must not only move heavy equipment from field to field, but also move employees.

#### B. Irrigation System and Water

It is necessary that there be water rights allocated to and associated with each plot of land we farm. In this area, most water rights are distributed through Weber Basin Water or one of its affiliates.

In order to farm land, our family has had to install multiple water delivery systems on our properties in bountiful and other properties in Davis County. This has been done at substantial time and expense to our family operation. In order to do so, we had to go through the process of having pipes installed underground throughout the property with corresponding faucet attachments above-ground. From these faucets, we then ditch-irrigate each crop using delivery hoses that are attached to precision "gated pipe," to best control the water through these faucets. Because over-watering is a cause for poor production, an adequate watering system is essential to apply the optimal amount of water. We utilize this watering system for several purposes, one of which is to ensure that water is directed where needed, and another of which is to facilitate tight control of water use for each furrow and crop. This watering system and method also conserves precious water resources.

#### C. Land Leveling

In order to grow sustainable crops and to facilitate the irrigation system, the farm land must be laser leveled with proper slope so that the water will flow correctly and efficiently. If there is too little slope, the water may not reach the bottom of the crop, causing loss of production. If there is too much slope, the water will run through the ditch too fast without proper soaking, also causing loss of production. Proper slope ensures that the crops obtain optimum soaking during the watering period.

#### D. Fertility of the Soil

It takes many years to build up a piece of land to ensure it will grow and produce at optimum capacity. This is not an instantaneous process, but requires years and years of investment and working the land. As mentioned above, the original piece of property purchased by our family, Plat 02-070-0077 has been actively farmed since 1902, and the rest of the property we want protected has been farmed for decades as well.



In order to ensure the fertility of the soil, we do annual soil testing and analysis of the soil. We use both organic manures and chemical fertilizers to cultivate the soil, build the fertility, and maintain the proper pH of the soil so that it will grow abundant vegetables of high quality. Our efforts in this regard have paid off; the soil is now at optimum productivity for vegetables.

In addition, we must remedy and control the weeds in the soil as well as the carry-over weed seed growing on the land. The adequate control of weeds is a large part of maintaining farmland and is part of our family's business formula for producing the highest quality vegetables in Davis County. It has taken years of constant hand weeding, hoeing, and cultivation in order to keep the current growth of weeds at an acceptable minimum.

#### E. Improvements

As with most plots of land used in farming vegetables, there are certain other improvements that must be done aside from the watering system, leveling, fertilization, and elimination of weeds. As a farming family, we must assess the land, often including removal of canals, trees, shrubs, and roadways. As part of the farming process and improvements to the land, we must designate roads to and from the fields where we will produce the vegetables to harvest, pack the vegetables, and then transport it from the fields. There is substantial planning that goes into each plot of land owned by our family farm. In addition, because our operations are "Food Safety Certified", there exists a need to keep out human and animal traffic. We are also required to utilize signage that helps to control outside influence that could be cause for food safety concern.

### III. **EVALUATION OF PROPOSED APA LAND**

Under Utah Code Ann. 17-41-305, the criteria to be applied in evaluating a proposal for the creation of an Agriculture Protection Area is as follows:

In evaluating a proposal and in determining whether or not to create or recommend the creation of an agriculture protection area or industrial protection area, the advisory committee, planning commission, and applicable legislative body shall apply the following criteria:

- (1) whether or not the land is currently being used for agriculture production;
- (2) whether or not the land is zoned for agriculture use;
- (3) whether or not the land is viable for agriculture production;
- (4) the extent and nature of existing or proposed farm improvements; and
- (5) anticipated trends in agricultural and technological conditions.

As outlined above, when these criteria are applied to the Bangerter Farms properties, it is clear that each meets all the requisites for designation of an Agriculture Protection Area. Our farm land:

- Is currently being used for agricultural production;
- Each plat is current on its Utah State Application for Assessment and Taxation of Agricultural Land;
- Each plat is designated as Irrigated Crop Land with the State of Utah;
- Is viable for agricultural production – and is producing currently;
- Has had major improvements done to it in order to make it a viable and producing plot for Bangerter Farms;
- Is a scarce commodity and resource and should be protected at all costs by Bountiful City Municipality. Given the growth of the community and continued development of the area, agricultural land is being depleted at record pace.

### CONCLUSION

We look forward to working with you in bringing about the Agriculture Protection Area for the land described above. We are proud to be part of the Bountiful community, continuing to carry out the rich and important tradition of farming here. We will, of course, provide any further help and support you need in order to make this vital designation.

Sincerely,

Chas. Bangerter & Sons, Inc.

By Alan Bangerter, President



received  
3-29-18

Margaret T. Hislop  
552 East 1450 North  
Bountiful, Ut 84010  
March 23, 2018

Bountiful City Council  
Bountiful Planning & Zoning Office  
Agriculture Protection Area  
Advisory Board  
790 South 100 East  
Bountiful, Ut 84010

Re: The proposal for the creation  
of an agriculture protection  
area on property located at  
approximately 1280 North  
400 East with a total area of  
approximately 11.86 acres.

I do totally recommend that you  
approve this proposal. I have lived  
at this residence for almost 51 years  
and to have all the wonderful vegetables  
they are growing — not only in the USA,  
or Utah, but our own county and  
community is tremendous. They have  
farmed wonderful produce through  
many years that has been food for  
thousands of families.  
cc: Alan Bengtson

Sincerely,  
Margaret Hislop

**MINUTES**  
**DAVIS CONSERVATION DISTRICT (DCD) MEETING**  
Regular Meeting, April 9, 2018  
Location, Kaysville Botanical Center, UT

**ATTENDANCE:**

Appointed Davis Conservation District  
Supervisor Representatives  
**DeVan Packs**, *Supervisor*  
**Jake Jacobson**, *Supervisor, Chairman*  
**Nile Carlson**, *Supervisor, Vice Chair*  
**Tyson Roberts**, *Supervisor/Treasurer*

Conservation Partners  
**Jenny Jo Cox**, *Natural Resource  
Conservation Services (NRCS)*  
**Shawn Olsen**, *Utah State  
University (USU) 4H  
Extension Agent*  
**Chet Fitzgerald**, *NRCS*

Department of Agriculture and Food (UDAF):  
**Loralie Cox**, *Resource Coordinator*

Conservation District Employees  
**Nikki Mortensen**, *District Clerk*

District Members Absent:  
**Rulon Fowers**, *Supervisor*  
**Joe Hill**, *Associate Member*

Members of the Public  
**Jeff Oyler**, *Davis County Planning Commission*  
**Charles Bangerter**, *Bangerter Farm*  
**Alan Bagerter**, *Bangerter Farm*  
**Jeanne Marshal**, *Attorney for the Bangerters*  
**David Petersen**, *Farmington City*  
**Eric Anderson**, *Farmington City*  
**Chad Wilkinson**, *Bountiful City*  
**Sterling Brown**, *Utah Farm Bureau Fed.*

**SUMMARY OF DISTRICT ACTION**

- |  |                 |
|--|-----------------|
| 1. <u>Ag. Protection Advisory Board Discussion</u> | <u>Page 2-4</u> |
| 2. <u>Minute Review</u>                            | <u>Page 4</u>   |
| 3. <u>Financials</u>                               | <u>Page 4</u>   |

- |                                     |                 |
|-------------------------------------|-----------------|
| 4. <u>NRCS</u>                      | <u>Page 4</u>   |
| 5. <u>USU</u>                       | <u>Page 4</u>   |
| 6. <u>UDAF</u>                      | <u>Page 4-5</u> |
| 7. <u>Calendar of Future Events</u> | <u>Page 5</u>   |

DAVIS CD MEETING - CALL TO ORDER

Davis Conservation District (DCD) Chair/Supervisor Jake Jacobson called the meeting to order at 12:04 pm.

AG. PROTECTION ADVISORY BOARD DISCUSSION

Davis County Planner, Jeff Oyler, reviewed the Staff Report from Davis County Planning Department with members present. The report addressed four ag. protection applications, but all parcels of land in question were owned by the Alan Bangerter farm. Jeff summarized the Bangerter farm's history as well as current processes. There have been no known objections to the Bangerter Farm's proposal submitted to the Davis County Planning Department. There have however, been several favorable submissions supporting the Bangerter Farm's ag protection application. Jeff reviewed the seven requirements necessary for the farm to receive the Ag. Protection Advisory Board's recommendation for protection under the Ag. Protection Act. The parcels of land are in separate cities and therefore will be reviewed in both Bountiful and Farmington for approval. An approximate, 5.5 acres of approximately 43.72 acres of property in Farmington, taxid#08-081-0066, is being impacted by the West Davis Highway. It has been proposed that this strip of land, approximately 5.5 acres, be withheld from the ag. protection application. A second parcel in Farmington, tax id #08-076-0010, is applying for ag. protection. There are three parcels in Bountiful, tax id#'s 02-070-0102, 02-070-0103, 02-070-0077, applying for ag. protection as well. The Advisory Board questioned the exclusion of the Farmington 5.5 acres from the application. Jeff explained that Utah Department of Transportation (UDOT) would most likely obtain the property through Eminent Domain if the acreage were included. It also may increase the approval potential for the other parcels to exclude the 5.5 acres. Davis County supports both the West Davis Highway and Agriculture. The commission may find approval easier if they could support both issues with their decision. Nile discussed an unofficial proposal that cut directly through the Bangerter property early on in the Highway's planning. The proposal was never discussed with the Bangerter farm. DeVan informed attendees that property was procured from Pack's farm as well as Bangerter's by UDOT for Legacy Highway. Tyson asked for a breakdown of unincorporated parcels into Davis County as well as incorporated. Davis County will have final approval on unincorporated parcels and Bountiful and Farmington cities will have final approval of the incorporated parcels. Tyson discussed the ag. protection easement on his farm. He asked how much weight the Ag. Advisory Board's

recommendation would actually carry. Jeff explained that ag. protection easements are relatively uncommon in Davis, but when one comes before the commission it is most often approved.

Chad Wilkinson from the Bountiful city planning department informed the Board there were no objections to the Bangerter farm application. He expected the recommended approvals for the parcels in Bountiful.

Farmington's Community Development Director, David Petersen, recounted Farmington's continued effort to protect open space and agriculture in Farmington. He discussed the succession of decisions which led to the current situation involving the city and Bangerter farm. Field Stone Homes purchased property in West Farmington which under city mandate required open space. Farmington city encouraged Field Stone Homes to put a park rather than homes next to a portion of land that ran along the West Davis Highway. In UDOT's revision of the highway they determined that the park would need to be eliminated to make room for the road. UDOT is legally obligated to replace the eliminated park with another; equally comparable and within the city limits. The suggested location for the park is in a section of Bangerter's farm.

Jeff informed the Advisory Board that the Davis County's Planning Commission intends to approve the Bangerter farm Ag. Protection Application.

Alan Bagerter discussed the generational succession of his farm. He would like to continue farming and pass that opportunity to his posterity. The farm supplies large warehouses in the state of Utah. If they lose acreage the Bangerter's will have to find acreage somewhere else to keep their production levels up and maintain contracts. The property in Farmington would be a devastating loss. DeVan noted the inequality between laws that protect ag. land and laws that protect parks and recreational property. Farm land is important to the community. Alan pointed out that there are communities trying to bring back farming and yet there is no action to protect the existing farms. Shawn feels the Bangerter farm meets all criteria requirements listed on the planning department's Staff Report. **DeVan motioned to recommend tax id#'s 08-081-006, 08-076-0010, 02-070-0102, 02-070-0103, 02-070-0077, for ag. protection easement approval, Nile second the motion. Tyson amended the motion to include after UDOT purchases what they need of the approximately 5.5 acre strip in Farmington, the remainder will be absorbed back into the farm, Nile second the motion, motion passed.** There will be a new tax number for the 5.5 parcel before it goes to the commissions for final approval. Alan emphasized that ag land cannot be recovered once lost. He would like to see his property continue in this legacy. Alan feels a strong support from the community which has been encouraging. Tyson wondered when the Bangerter's application would be reviewed. Farmington Planning Commission meets on April, 19<sup>th</sup> and the City council will review their affected areas on May 5. Bountiful Planning Commission meets April 17<sup>th</sup> and Bountiful City reviews on May 22.

Davis County Planning Commission will review the application on May 1<sup>st</sup>.

Shawn wondered if there were other properties in Farmington that could be utilized for a park. DeVan feels that the issue is more about location than available land options. Jake wondered if DeVan would represent the Board's opinion at the Farmington City review. DeVan is going to make his best effort to attend.

#### MINUTE REVIEW

The Davis Conservation District (DCD) Board read over the minutes from March, Nile motioned to accept, DeVan second the motion, motion passed.

#### FINANCIALS

An invoice was received in the amount of \$100 for the Soil Health Workshop. **Devan motion to pay the full amount, Nile second the motion, motion passed.**

Nikki will bring a proposed budget for next month's meeting, and the Board will review the scope of work.

#### NRCS

Chet Fitzgerald introduced himself as the area manager in the Ogden NRCS office. He announced Craig McKnight resignation and advised the board to direct any question to Jenny Jo until Craig's position could be filled. NRCS is currently working on contracts and hopes to be finished up by the first part of July.

#### USU EXTENSION

The Board discussed Water Fair and Ag. Field Day assignments.

#### UDAF

Loralie went over the new legislation in House Bill 130 and Senate Bill 170. She also discussed projections for population growth in Utah in the next 25 years. Development will happen primarily in the South.

Nile asked about the vote on the 11<sup>th</sup> for the UACD Board election. Each District needs to have a Supervisor available to vote. Jake said he would make arrangements to represent DCD's vote. The DCD Board needs to come up with some on the ground projects. DeVan wondered if the Board could purchase and release puncture vine weavles for several years within the County. Loralie said that would be something to consider. She will contact Brandon and discuss it as a need in the community. DeVan also proposed a 3 month calendar that promotes Ag and



Conservation Districts. Loralie will check to see if that would qualify as a project. The Board agreed, it would be a better option for next year. Nikki will make an agenda item to discuss projects at next month's meeting.

#### CALENDAR OF FUTURE EVENTS

1. Davis CD monthly meeting: May 24 at 9:00am at the Kaysville Botanical Center

ADJOURNMENT: Meeting adjourned at 2:01 pm.

EARL C. TINGEY

1286 SUNDANCE CIRCLE

BOUNTIFUL, UTAH 84010

(801) ~~298-9785~~ 631-6744

April 2, 2018

Bountiful City  
790 South 100 East  
Bountiful, Utah 84010

Dear Members of the City Council,

I support one hundred percent the attached proposal to create an agriculture protection area on the property at 128N 400E.

The property owner is an excellent steward of the land. The property is properly cared for, attractive and a benefit to the community.

The owner employses hundreds of local citizens and provides excellent quality produce for the local markets and economy.

Sincerely yours

Earl C. Tingey

April 3, 2018

Jeff Oyler  
Planning Manager

Dear Sir,

We find it disturbing that there is even a reason for a proposal for the creation of an agricultural protection area in what we know as the Bangerter Farm.

We have been residents of Centerville for 46 years and the farm existed long before we moved here. We love the fact that the farm is close by. We like the open space.

The fact that the Bangerter's have provided summer employment for children has been a great way to teach responsibility and money management. Our Children and grandchildren have worked on the farm as well as many neighborhood children and their friends.

We propose that farm remains in this neighborhood. We don't need any more houses and the increase in traffic.

Thank you for your consideration.

Mary Melton



Fred Melton



Cc: Bountiful City Planning and Zoning

**Bountiful City  
Planning Commission Minutes  
April 17, 2018  
6:30 P.M.**

Present: Chair – Sean Monson; Planning Commission Members – Jesse Bell, Jim Clark and Sharon Spratley; City Council Representation – Richard Higginson; Asst. City Attorney – Jake Fordham; City Planner – Chad Wilkinson; City Engineer – Paul Rowland; and Recording Secretary – Darlene Baetz

Excused: Planning Commission Member – Tom Smith and City Attorney – Clint Drake

**1. Welcome and Introductions.**

Chair Monson opened the meeting at 6:30 pm and welcomed all those present.

**2. Approval of the minutes for March 6, 2018.**

Von Hill made a motion to approve the minutes for March 6, 2018 as written.

Jim Clark seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Monson, and Spratley voting aye.

**3. Consider approval of the Findings of Fact for denial of a Variance to allow for a parking space within the required front yard. The property is located at 3457 S Bountiful Blvd, Ryan and Sandra Call, applicants.**

Jesse Bell made a motion to approve the Findings of Fact for denial of a Variance to allow for a parking space within the required front yard located at 3457 S Bountiful Blvd as written.

Von Hill seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Monson and Spratley voting aye.

Mr. Wilkinson informed the Commission members that we received an appeal from Mr. and Mrs. Call which will be scheduled with the Administrative Law Judge.

**4. Consider approval of the Findings of Fact for denial of a Variance to allow a third driveway. The property is located at 992 E 550 N, Kevin Menlove, applicant.**

Mr. Higginson asked for clarification about the third driveway coming to the City's attention. Mr. Wilkinson explained that this item was a result of code compliance.

Von Hill made a motion to approval of the Findings of Fact for denial of a Variance to allow a third driveway located at 992 E 550 N as written.

Jim Clark seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Monson and Spratley voting aye.

**5. Review of proposed Agriculture Protection Area for Bangerter Farms located at approximately 1280 N 400 East, Alan Bangerter and Randall Edwards, applicant.**

Alan and Diane Bangerter were present. Mr. Wilkinson presented the staff report.

The applicants, Alan Bangerter and Randal Edwards, have requested the creation of an agriculture protection area for property located at approximately 1280 N. 400 East. The property is approximately 11.85 acres in size and is currently zoned R-4. Utah Code Title 17 Chapter 41 provides for a process by which the legislative body of a City or town may create an agricultural protection area. The process provides for coordination with the County including review and recommendation by a County appointed agriculture protection advisory board. The proposal is also required to be considered by the Planning Commission with a recommendation forwarded to the City Council.

State Code Section 17-41-305 provides criteria for evaluating a proposal for creation of an agriculture protection area.

The Chas W. Bangerter and Son farm has been operating in Bountiful for over 100 years and continues to be a viable and productive farm. Development has occurred around the property and the farm is now hemmed in by residential development on all sides. The farm is one of a few remaining viable farm parcels in the City limits.

A review of the evaluation criteria provided in State law shows that the proposal is consistent with the intent of the agriculture protection area statute. The property is currently used for agriculture and the farm use has existed for decades. The Bangerter farm is an active participant in the Bountiful Farmer's Market and supports the recent trend for increased demand for locally grown produce. The one criterion that merits further discussion relates to the zoning of the property. The property is currently zoned R-4 (Single-family Residential) and the adoption of the agriculture protection area will not change the underlying zoning of the property. The City does not have an agricultural zoning designation at this time. The R-1 zoning district focused around the Val Verda area is the closest designation to an agriculture zone but is still primarily a single family zone that allows for limited farm animals and agricultural use. Although State Code lists existing zoning as a consideration, in this case, because the use has been operating for over 100 years, the agriculture use is considered to be a legal existing nonconforming use. Because of the preexisting nature of the use, the current zoning is not a limiting factor on the continued use of the ground for agricultural purposes as the use may continue in perpetuity as long as the agricultural use is not abandoned or discontinued for more than one year.

Notice of the proposal for an agriculture protection area was sent to all property owners within 1000 feet of the subject property. The City received a few comments in response to the notice all generally in support of the proposed protection area.

The proposal was considered by the Davis County Agriculture Protection advisory board on April 9 2018. The advisory board unanimously recommended approval of the proposed Agriculture Protection Area.

State law limits the land use authority of Cities pertaining to property within an agriculture protection area. As an example a City may not change the zoning designation or regulations affecting land within an agriculture protection area without written approval of all owners within the boundary of the agriculture protection area. In addition, the protection area requires additional procedures should the City wish to exercise eminent domain on the property. These impacts should be considered as the Planning Commission and City Council review the application. State law also requires additional notice to appear on new subdivisions within 300 feet of an agriculture protection area. Since there are not any other properties within 300 feet of the property with significant development potential, this requirement is expected to have minimal impact

It is recommended that the Planning Commission forward a recommendation of approval to the City Council for the proposed agriculture protection area.

Mr. Bangarter stated that this farm is a family business that supports 3 sons and their families who also want to continue to farm. The farm supports local stores and the food pantry with produce and employing over 100 youth. The land needs to be preserved to be able to continue farming.

Mr. Wilkinson stated that the process would be similar if the Bangarter Farms wanted to remove any of the Agriculture Protection Area.

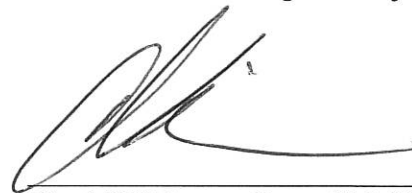
Von Hill made a motion that the Planning Commission forward to the City Council a recommendation of approval for an Agricultural Protection Area for Bangarter Farms located at 1280 N 400 East.

Sharon Spratley seconded the motion. Voting passed 6-0 with Bell, Clark, Higginson, Hill, Monson and Spratley voting aye.

**6. Planning Director's report, review of pending applications and miscellaneous business.**

1. Next Planning Commission meeting – May 1, 2018.

Chair Monson ascertained there were no other items to discuss. The meeting was adjourned at 6:58 p.m.



Chad Wilkinson, Bountiful City Planner

Friday, May 11, 2018



To: Bountiful City Planning & Zoning  
790 So. 100 East  
Bountiful, Utah 84010

From: Cheryl Ann Wood  
2853 So. Davis Blvd.  
Bountiful, Utah 84010

I received information about 2 hearings regarding the land that Alan Bangerter owns east of Orchard Drive from about 1300 North to about Pages Lane, and another parcel farther north as well. I was not and am not going to be able to attend either hearing, but want to give the City my input. I am hoping this will be an effective way to let you how I feel about this re-zoning issue.

I feel **very strongly** that the land Alan farms east of Orchard Drive should remain agricultural. His farm is always very well cared for, and he gives the young people he hires every summer to help him care for it the opportunity of a job. As more and more of the land in Bountiful gets subdivided and built on, there is less and less of a chance to have land that helps to provide the food we **need** and eat.

Both of the places Alan does his farming are of **great value** to the city, the county, and all of us that are able to go to his farms and purchase fresh produce.

I grew up living at 276 E. 1300 No. and have always enjoyed watching the farm as it is being worked. I have gone there in the harvest season to buy produce, and still do, even though I now live across town. I have admired the kids that have worked there, watching them be a part of helping grow the food we eat, and learning the value of work.

I still own that property on 1300 North, and my son Jeff Wood lives there with his son. They also would like to see the property remain zoned for agricultural use.

I hope you will take this letter and information into consideration as you make your decision.

Very Sincerely,

A handwritten signature in cursive script that reads "Cheryl Ann Wood". The ink is dark and the signature is fluid and legible.

Cheryl Ann Wood





# City Council Staff Report



**Subject:** Beer License – Corner 22 Food Mart  
**Address:** 2065 South Orchard Dr.  
**Author:** Chad Wilkinson, Darlene Baetz  
**Department:** Planning  
**Date:** May 22, 2018

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## Background

Corner 22 Food Mart, Mantinder S. and Kiran Dosangh, applicants, request a beer license for the property located at 2065 South Orchard Dr. As background, the applicants are new owners for this existing convenience store business. State and local law require a new license when ownership changes.

## Analysis

The Police Department and City Attorney have reviewed the proposed application and have not found any criminal record or other obstacle that would prevent approval of the application. As the applicants appear to be in good standing, and as the sale of beer is allowed in this location, Staff recommends approval of the requested Beer License.

## Department Review

City Planner, City Attorney, Police Department

## Recommended Action

Approve the Beer License for Corner 22 Food Mart, 2065 South Orchard Drive, Martinder S. and Kiran Dosangh, applicants.

## Significant Impacts

There are no significant impacts.

## Attachments

1. Application and Police approval

PAY TO THE ORDER OF  
US Bank 124302150  
FOR DEPOSIT ONLY  
Bountiful City  
153195096380  
009112-000006 05/09/2018 05:18PM  
300.00

CITY OF BOUNTIFUL  
790 S. 100 E.  
Bountiful, Utah 84010  
801-298-6190

BEER LICENSE APPLICATION FOR BOUNTIFUL, UTAH  
\$50.00 Filing Fee

- I (we) hereby submit this application for a Class A license to sell beer strictly within the terms of the Ordinance of Bountiful and the Liquor Control Act of Utah.
- Qualifications of Applicant: Each licensee must be over 21 years of age and a citizen of the United States or a resident alien or is otherwise lawfully residing within the United States.

I am (we are) of good moral character and have not been convicted of a felony or any violation of any law or ordinance relating to intoxicating liquors, or of drunken driving, or of keeping a gambling or disorderly house, or have not pleaded guilty to or have forfeited bail on a charge of having committed a felony or having violated any such law or ordinance. I am (we are) not a member of a partnership or corporation, applicant herein, of which any partner, director, or officer lacks any such qualifications.

I (we) have complied with the requirements, and possess the qualifications specified in the ordinances of Bountiful and the Liquor Control Act of Utah, and agree that if a license is issued that it shall be subject if revocation as provided by City Ordinances, and provisions of the Liquor Control Act of Utah.

- Name of Business HJD GAS AND FOOD INC  
Address of Business 2193 ORCHARD DR. BOUNTIFUL UT-84087  
Type of Business COMMENCE STATE

Owner's name, address, and birth date. If a corporation list all the officers and directors. Use additional sheet if necessary.

Name	Address	Birth date
<u>MANVINDER S. DOSANAH</u>	<u>6528 S. S20W</u>	<u>01/30/1988</u>
<u>KIRAN DOSANAH</u>	<u>MURRY-UT-84123</u>	<u>12/26/1988</u>

Respectfully Submitted:



Title \_\_\_\_\_  
Title \_\_\_\_\_  
Title \_\_\_\_\_  
Title \_\_\_\_\_

**BOUNTIFUL POLICE DEPT.  
RECORDS DIVISION**

**NO RECORD**

DATE 5/10/18 BY RS.



Clint Drake - 5-14<sup>42</sup>-18

Miscellaneous - 6040 - 2018  
009112-0006 Darlene ... 05/09/2018 05:12PM  
PLAN - Gen Miscellaneous Income (6040)  
Payment Amounts: 50.00  
Transaction Amounts: 50.00  
CREDIT-PLN: \*\*\*\*\*5313

# City Council Staff Report

**Subject:** Public Treasurer Investment Fund accounts  
**Author:** Galen D. Rasmussen, Assistant City Manager  
S. Ted Elder, City Treasurer  
**Department:** Executive & Treasury  
**Date:** May 22, 2018

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## **Background**

Most public entities in the state of Utah maintain accounts with the Public Treasurer's Investment Fund (PTIF) which is managed by the Utah State Treasurer's Office. Investment of funds is handled in accordance with the Utah Money Management Act which provides for professional investment management and independent oversight to help ensure safety, liquidity and a competitive yield on funds invested. Those authorized to transact business with the fund are typically the treasurer, finance director or other similarly situated individuals within the organization.

## **Analysis**

Bountiful City has maintained PTIF accounts with the State Treasurer's Office for well over 30 years. A new requirement of the State Treasurer's Office is to request the completion of a Public Entity Resolution Form which specifies the individuals who are authorized to administer the day-to-day activities of each public entity's PTIF accounts. The Public Entity Resolution Form provided by the State Treasurer's Office is included as Exhibit A to City Resolution 2018-03 which is attached. Currently, S. Ted Elder, City Treasurer and Galen D. Rasmussen, Assistant City Manager, administer the day-to-day aspects of the City's four PTIF accounts.

## **Department Review**

This staff report has been reviewed and approved by the City Attorney and City Manager.

## **Recommendation**

Staff recommends the City Council adopt Resolution 2018-03 to authorize S. Ted Elder, City Treasurer, and Galen D. Rasmussen, Assistant City Manager, as administrators of the City's PTIF accounts. It is further recommended that Gary R. Hill, City Manager, be authorized to sign the Public Entity Resolution (Exhibit A to City Resolution 2018-03) on behalf of the Mayor and City Council.

## **Significant Impacts**

None

## **Attachments**

- City Resolution 2018-03 with Exhibit A.



# BOUNTIFUL

## Bountiful City Resolution No. 2018-03

MAYOR  
Randy C. Lewis  
CITY COUNCIL  
Kendalyn Harris  
Richard Higginson  
Beth Holbrook  
John Marc Knight  
Chris R. Simonsen  
CITY MANAGER  
Gary R. Hill

**A Resolution certifying that S. Ted Elder, City Treasurer and Galen D. Rasmussen, Assistant City Manager are authorized to administer the City's Public Treasurer Investment Fund (PTIF) accounts with the State Treasurer's Office.**

**It is the Finding of the Bountiful City Council that:**

1. S. Ted Elder, City Treasurer and Galen D. Rasmussen, Assistant City Manager are authorized to accomplish the following actions with the City's PTIF accounts:
  - a. to add or delete users to access and/or transact with PTIF accounts;
  - b. to add, delete, or make changes to bank accounts tied to PTIF accounts;
  - c. to open or close PTIF accounts;
  - d. and to execute any necessary forms in connection with such changes on behalf of the City.
  
2. This authorization will be in effect until revoked in writing with the State Treasurer.

**Now, therefore, it is hereby resolved by the City Council of Bountiful, Utah:**

**Section 1.** The terms of this resolution are to be implemented administratively via the attached Public Entity Resolution form. Form to be signed by Gary R. Hill, City Manager, on behalf of the Mayor and City Council following adoption of this resolution (City Resolution 2018-03).

**Section 2.** This Resolution shall take effect immediately upon passage.

**Adopted by the City Council of Bountiful, Utah, this 22<sup>nd</sup> day of May, 2018.**

---

Randy C. Lewis, Mayor

ATTEST:

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Shawna Andrus, City Recorder

**EXHIBIT A**

**Public Entity Resolution Form**



**1. Certification of Authorized Individuals**

I, \_\_\_\_\_(Name) hereby certify that the following are authorized: to add or delete users to access and/or transact with PTIF accounts; to add, delete, or make changes to bank accounts tied to PTIF accounts; to open or close PTIF accounts; and to execute any necessary forms in connection with such changes on behalf of \_\_\_\_\_ (Name of Legal Entity). Please list at least two individuals.

Name	Title	Email	Signature(s)
_____	_____	_____	_____
_____	_____	_____	_____

The authority of the named individuals to act on behalf of \_\_\_\_\_ (Name of Legal Entity) shall remain in full force and effect until written revocation from \_\_\_\_\_ (Name of Legal Entity) is delivered to the Office of the State Treasurer.

**2. Signature of Authorization**

I, the undersigned, \_\_\_\_\_(Title) of the above named entity, do hereby certify that the forgoing is a true copy of a resolution adopted by the governing body for banking and investments of said entity on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at which a quorum was present and voted; that said resolution is now in full force and effect; and that the signatures as shown above are genuine.

Signature	Date	Printed Name	Title
_____	_____	_____	_____

STATE OF UTAH )  
 )  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (Name), as \_\_\_\_\_ (Title) of \_\_\_\_\_ (Name of Entity), proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)

Signature \_\_\_\_\_

# City Council Staff Report



**Subject:** IPP Alternative Repowering Approval  
Resolution # 2018-04  
**Author:** Allen Ray Johnson, Director  
**Department:** Light & Power  
**Date:** May 22, 2018

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## **Background**

We have discussed in previous City Council meetings the fact that the Intermountain Power Project (IPP), administered by the Intermountain Power Agency (IPA), is losing its California power purchasers in 2027 for all coal-generated electricity. However, the California entities are willing to continue as customers for natural gas-fired power. The solution, then, is to convert the IPP to a natural gas facility. On October 23, 2012, the City Council approved two of the necessary agreements, known as the Second Amendatory Power Sales Contract and the Fourth Amendment to the IPA Organization Agreement.

On April 12, 2016, the City approved and signed the necessary power sales contracts to continue in the project to build and operate a 1,200 MW gas powered project. The project size and design has changed enough from the contracts that we need to again approve the revised alternative repowering to meet the following description.

The Alternative Repowering shall include the construction and installation of two combined-cycle natural gas fired power blocks, each power block consisting of one gas turbine, a heat recovery steam generator train and a single steam turbine, with an approximate combined net generation capability of 840 MW, together with auxiliary equipment associated with such power blocks, where “net generation capability” means gross power generation less auxiliary load for generation and transmission support..

## **Analysis**

Bountiful City is currently a part owner of the IPP project and our share of the electrical power output has been used by the City as well as being laid off or reserved for possible future use (and until needed sold to California purchasers). It is an important element of the City’s power planning.

The existing plant was rated at 1,800 MW’s with the Cities share at 30 MW. The new gas fired plant is proposed to be built at 840 MW, so we will only see approximately 14 MWs. The Excess Power contract allows us to lay off the entire output from the plant to

the California purchasers with a one-year call back provision. This allows us to keep this power available should the City need or require the power in the future.

### **Department Review**

The Power Department Staff, City Attorney, and the City Manager have reviewed these contracts.

### **Significant Impacts**

Bountiful City has a share of 30 megawatts and has at times used up to 20 of that, which availability will be lost if the IPP contracts end in 2027. The ability to have 14 MW or more in reserve is a major benefit to the City and the continued operation of the Power Department.

### **Recommendation**

The Power Commission and Staff recommend that Council approves Resolution #2018-04 and authorizes the Mayor to sign for the Approval of Alternative Repowering for the IPP project.

### **Attachments**

Resolution #2018-04 Resolution Approving Alternative Repowering.



**RESOLUTION NO. 2018-04**

**APPROVAL OF ALTERNATIVE REPOWERING**

On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, at a duly noticed meeting of the Municipal Council of Bountiful, a Municipal Corporation (the “Council”), held on \_\_\_\_\_, 2018, the following Resolution was duly adopted:

WHEREAS, Intermountain Power Agency (“IPA”) financed, acquired, constructed and owns the Intermountain Power Project (as more particularly defined in the Power Sales Contract, the “Project”); and

WHEREAS, Bountiful, a Municipal Corporation (the “Municipality”) is a party with IPA to that certain Power Sales Contract dated September 28, 1978 (as amended from time to time, the “Power Sales Contract”), pursuant to which the Municipality acquired a portion of the capacity and output of the Project through June 15, 2027, as set forth in the Power Sales Contract (each term that is used but not otherwise defined in this Resolution has the meaning ascribed to such term in the Power Sales Contract); and

WHEREAS, the Municipality is also a party with IPA to a Renewal Power Sales Contract, dated January 16, 2017 (the “Renewal Power Sales Contract”), pursuant to which the Municipality acquired a portion of the capacity and output of the Project for a term subsequent to June 15, 2027, as set forth in the Renewal Power Sales Contract; and

WHEREAS, IPA is a party with parties other than the Municipality to power sales contracts that are substantially identical to the Power Sales Contract (such other power sales contracts, together with the Power Sales Contract, being, collectively, the “Power Sales Contracts” and such other parties, together with the Municipality, being, collectively, the “Purchasers”); and

WHEREAS, the Power Sales Contracts established the Intermountain Power Project Coordinating Committee (the “Coordinating Committee”) consisting of representatives of the Purchasers, including the Municipality; and

WHEREAS, IPA is a party with parties other than the Municipality to renewal power sales contracts that are substantially identical to the Renewal Power Sales Contract (such other renewal power sales contracts, together with the Renewal Power Sales Contract, being, collectively, the “Renewal Power Sales Contracts” and such other parties, together with the Municipality, being, collectively, the “Renewal Purchasers”); and

WHEREAS, the Renewal Power Sales Contracts established the Intermountain Power Project Renewal Contract Coordinating Committee (the “Renewal Contract Coordinating Committee”) consisting of representatives of the Renewal Purchasers; and

WHEREAS, Appendix C to the Power Sales Contracts contains a general description of the Project, which description will be revised from time to time to reflect changes to the Project during the term of the Power Sales Contracts; and

WHEREAS, Appendix C to the Renewal Power Sales Contracts contains a general description of the Project, which description will be revised from time to time to reflect changes to the Project during the term of the Renewal Power Sales Contracts; and

WHEREAS, the Project currently includes a two-unit coal-fired electric generating facility located in south central Utah together with associated transmission systems and related facilities; and

WHEREAS, IPA and the Purchasers entered into those certain Second Amendatory Power Sales Contracts dated December 8, 2015 (collectively, the “Second Amendatory Power Sales Contracts”), to amend the Power Sales Contracts to provide for, among other things, the Gas Repowering, which contemplates the construction of facilities for the generation of power at the Project using natural gas rather than coal; and

WHEREAS, Section 44.6 of the Power Sales Contracts provides that one or more modified versions of or alternatives to the Gas Repowering to provide for one or more sources of electric generation in addition to or in substitution, in whole or in part, for the Gas Repowering may be determined to provide increased benefits or to be otherwise advantageous for the Project (as more particularly defined in the Power Sales Contracts, an “Alternative Repowering”); and

WHEREAS, Section 44.6 of the Power Sales Contracts provides that, subject to satisfaction of various conditions, upon approval of an Alternative Repowering by the Coordinating Committee, the Renewal Contract Coordinating Committee and the IPA Board of Directors (the “IPA Board” and, together with the Coordinating Committee and the Renewal Contract Coordinating Committee, collectively, the “Project Governing Bodies”), as of the date of such approval, such Alternative Repowering (a) shall be effective, (b) shall replace any prior plan for repowering the Project, (c) shall constitute the source for electric generation for the Project, and (d) shall constitute a Capital Improvement approved by the Project Governing Bodies; and

WHEREAS, Section 44.1 of the Power Sales Contracts provides that upon the effectiveness of an Alternative Repowering (a) the term “Gas Repowering” (as used in the Power Sales Contracts) shall mean such Alternative Repowering, and (b) without the need for consent of the Purchasers (other than the affirmation, if any, of the Purchasers’ respective representatives that may be necessary for the Coordinating Committee or the Renewal Contract Coordinating Committee to take action to approve the revising of the Power Sales Contracts as described in Section 44.1 of the Power Sales Contracts), the Power Sales Contracts shall be revised to the extent determined by the Project Governing Bodies to be necessary to describe such Alternative Repowering as the source or sources of electric generation for the Project (the resulting revisions being, as more particularly defined in the Power Sales Contracts, the “Alternative Repowering Revisions”); and

WHEREAS, Section 14.6 of the Renewal Power Sales Contracts provides that as of the date of the approval of an Alternative Repowering by the Project Governing Bodies, (a) the term “Gas Repowering” (as used in the Renewal Power Sales Contracts) shall mean such Alternative Repowering, (b) such Alternative Repowering shall constitute the source for electric generation for the Project, (c) such Alternative Repowering shall replace any prior plan for repowering the

Project, (d) such Alternative Repowering shall constitute a Capital Improvement determined to be necessary or desirable by the Coordinating Committee and the Renewal Contract Coordinating Committee, and (e) without the need for consent of the Renewal Purchasers (other than the affirmation, if any, of such Renewal Purchasers' respective representatives that may be necessary for the Coordinating Committee or the Renewal Contract Coordinating Committee to take action to approve the revising of the Renewal Power Sales Contracts as described in Section 14.6 of the Renewal Power Sales Contracts), the Renewal Power Sales Contracts shall be revised to the extent determined by the Project Governing Bodies (simultaneous with or prior to the approval of such Alternative Repowering) to be necessary to describe such Alternative Repowering as the source or sources of electric generation for the Project (the resulting revisions being the "RPSC Alternative Repowering Revisions"); and

WHEREAS, IPA and representatives of the Purchasers (meeting as the Generation and Transmission Subcommittee of the Coordinating Committee (the "Subcommittee")) have concluded that based on developments since the execution of the Second Amendatory Power Sales Contracts, the Purchasers' demand will not support the design capacity of the Gas Repowering currently provided in the Power Sales Contracts; and

WHEREAS, the Subcommittee has concluded that instead of the Gas Repowering, as currently provided in the Power Sales Contracts, it is in the best interest of the Project to provide for a reduced design capacity and alternative design configuration; and

WHEREAS, at a meeting of the Subcommittee convened on February 12, 2018, the Subcommittee agreed by consensus to a general description of an Alternative Repowering providing for such reduced design capacity and alternative design configuration, which description is attached hereto as Appendix 1 (the "Alternative Repowering Description"); and

WHEREAS, based on the Alternative Repowering Description, the Los Angeles Department of Water and Power, as the Project Manager, has developed the Alternative Repowering Revisions which are attached hereto as Appendix 2 (the "Original Power Sales Contract Revisions"); and

WHEREAS, based on the Alternative Repowering Description, the Project Manager has developed a modification to the description of the Project in Appendix C to the Power Sales Contracts, which modification is attached hereto as Appendix 3 (the "PSC Appendix C Revisions"); and

WHEREAS, based on the Alternative Repowering Description, the Project Manager has developed a modification to the description of the Project in Appendix C to the Renewal Power Sales Contracts, which modification is attached hereto as Appendix 4 (the "RPSC Appendix C Revisions") and, together with the PSC Appendix C Revisions, collectively, the "Appendix C Revisions"; and

WHEREAS, the Project Manager has not proposed any RPSC Alternative Repowering Revisions; and

WHEREAS, the Coordinating Committee, by its Resolution No. CC-2018-001 adopted on March 13, 2018 (the "CC Resolution"), acknowledged the Alternative Repowering

Description, the Original Power Sales Contract Revisions and the PSC Appendix C Revisions, recommended that the Alternative Repowering Description, the Original Power Sales Contract Revisions and the PSC Appendix C Revisions be submitted to the Municipality in writing and directed Ted L. Olson, the Municipality's representative on the Coordinating Committee (the "CC Representative"), to seek any necessary approval from the Municipality in order for the CC Representative to vote in favor of approving the Alternative Repowering Description, the Original Power Sales Contract Revisions and the PSC Appendix C Revisions by June 30, 2018; and

WHEREAS, the Renewal Contract Coordinating Committee, by its Resolution No. RCCC-2018-001 adopted on March 13, 2018 (the "RCCC Resolution"), acknowledged the Alternative Repowering Description, the Original Power Sales Contract Revisions and the RPSC Appendix C Revisions, recommended that the Alternative Repowering Description, the Original Power Sales Contract Revisions and the RPSC Appendix C Revisions be submitted to the Municipality in writing and directed Allen R. Johnson, the Municipality's representative on the Renewal Contract Coordinating Committee (the "RCCC Representative"), to seek any necessary approval from the Municipality in order for the RCCC Representative to vote in favor of approving the Alternative Repowering Description, the Original Power Sales Contract Revisions and the RPSC Appendix C Revisions by June 30, 2018; and

WHEREAS, the IPA Board, by its Resolution No. IPA-2018-009 adopted March 13, 2018 (such resolution, together with the CC Resolution and the RCCC Resolution, being, collectively, the "Governing Body Resolutions"), acknowledged the Alternative Repowering Description, the Original Power Sales Contract Revisions, the PSC Appendix C Revisions and the RPSC Appendix C Revisions and directed that the Alternative Repowering Description, the Original Power Sales Contract Revisions and the applicable Appendix C Revisions be submitted to the Municipality in writing; and

WHEREAS, the Municipality has received a letter from IPA, dated March 23, 2018 (the "IPA Letter"), requesting that the Municipality obtain any approval necessary for the CC Representative and the RCCC Representative to approve the Alternative Repowering described in the Alternative Repowering Description, the Original Power Sales Contract Revisions (as Alternative Repowering Revisions) and the applicable Appendix C Revisions; and

WHEREAS, the Council has reviewed and discussed the Alternative Repowering Description, the Original Power Sales Contract Revisions, the PSC Appendix C Revisions and the IPA Letter; and

WHEREAS, the Council has also reviewed and discussed the RPSC Appendix C Revisions; and

WHEREAS, the Council desires to take action to support and facilitate the approval and completion of the Alternative Repowering described in the Alternative Repowering Description and the approval of the Original Power Sales Contract Revisions (as Alternative Repowering Revisions) and the applicable Appendix C Revisions.

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby:

1. Approves the Alternative Repowering consistent with the Alternative Repowering Description, the Original Power Sales Contract Revisions (as Alternative Repowering Revisions) and the PSC Appendix C Revisions; and

2. Authorizes the CC Representative (or any alternate, successor or designee of the CC Representative), as a member of the Coordinating Committee and the Renewal Contract Coordinating Committee, to vote and provide affirmation in favor of, and to take all other actions necessary to approve, the Alternative Repowering consistent with the Alternative Repowering Description, the Original Power Sales Contract Revisions (as Alternative Repowering Revisions) and the PSC Appendix C Revisions; and

BE IT FURTHER RESOLVED, that the Council hereby:

1. Approves the RPSC Appendix C Revisions; and

2. Authorizes the RCCC Representative (or any alternate, successor or designee of the RCCC Representative), as a member of the Renewal Contract Coordinating Committee, to vote and provide affirmation in favor of, and take all other actions necessary to approve, the Alternative Repowering consistent with the Alternative Repowering Description, the Original Power Sales Contract Revisions (as Alternative Repowering Revisions) and the RPSC Appendix C Revisions; and

BE IT FURTHER RESOLVED, that the Municipality's Mayor, the Municipality's Clerk/Recorder, the CC Representative, as a member of the Coordinating Committee, the RCCC Representative, as a member of the Renewal Contract Coordinating Committee, and the other officers, employees, representatives and agents of the Municipality, and their respective alternates, successors and designees (each of the foregoing being an "Authorized Person"), are hereby authorized and directed, on behalf of the Municipality, to take, or cause to be taken, all actions necessary to cause the effectiveness of or give effect to the Alternative Repowering consistent with the Alternative Repowering Description, the Original Power Sales Contract Revisions (as Alternative Repowering Revisions), the PSC Appendix C Revisions, the RPSC Appendix C Revisions and this Resolution, including, without limitation, executing and delivering, or causing to be executed and delivered, on behalf of the Municipality, the Alternative Repowering Certificate (Power Sales Contract) set forth on Exhibit A (as completed to reflect this Resolution) and the Alternative Repowering Certificate (Renewal Power Sales Contract) set forth on Exhibit B (as completed to reflect this Resolution), and all documents, certificates, instruments, notices, opinions and agreements that may be deemed by the Municipality's Mayor, the CC Representative or the RCCC Representative to be necessary, appropriate or desirable and performing all of the Municipality's obligations under and consummating all of the transactions contemplated by the Power Sales Contract, including, without limitation, after giving effect to the Alternative Repowering consistent with the Alternative Repowering Description and after giving effect to the Original Power Sales Contract Revisions, and all such actions previously taken by any Authorized Person are hereby approved, ratified and confirmed.

PASSED, APPROVED, AND SIGNED \_\_\_\_\_, 2018.

BOUNTIFUL, A MUNICIPAL  
CORPORATION

\_\_\_\_\_  
Randy C. Lewis, Mayor

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, Clerk/Recorder

## **APPENDIX 1**

### **Alternative Repowering Description**

The Alternative Repowering shall include the construction and installation of two combined-cycle natural gas fired power blocks, each power block consisting of one gas turbine, a heat recovery steam generator train and a single steam turbine, with an approximate combined net generation capability of 840 MW, together with auxiliary equipment associated with such power blocks, where “net generation capability” means gross power generation less auxiliary load for generation and transmission support.

## **APPENDIX 2**

### **Original Power Sales Contract Revisions**

A footnote will be added at the end of the first sentence of Section 44.6 of the Original Power Sales Contracts, to read as follows:

“The Alternative Repowering shall include the construction and installation of two combined-cycle natural gas fired power blocks, each power block consisting of one gas turbine, a heat recovery steam generator train and a single steam turbine, with an approximate combined net generation capability of 840 MW, together with auxiliary equipment associated with such power blocks, where ‘net generation capability’ means gross power generation less auxiliary load for generation and transmission support. For the avoidance of doubt, the foregoing shall be in lieu of the construction and installation of the two combined cycle power blocks and related equipment and facilities described in the first and third sentences of Section 44.1 of the Power Sales Contracts.”



### APPENDIX 3

#### Power Sale Contracts Appendix C Revisions

Section C.1.2 of Appendix C to the Power Sales Contracts is deleted in its entirety and replaced with the following:

- “C.1.2. Two coal-fueled steam electric generating units each with a nominal rating of 950 megawatts (the ‘Coal Units’), which Coal Units are to be replaced pursuant to a Major Capital Improvement consisting of the construction and installation of two combined-cycle natural gas fired power blocks, each power block consisting of one gas turbine, a heat recovery steam generator train and a single steam turbine, with an approximate combined net generation capability of 840 MW, where ‘net generation capability’ means gross power generation *less* auxiliary load for generation and transmission support.”

## **APPENDIX 4**

### **Renewal Power Sales Contracts Appendix C Revisions**

Section C.1.2 of Appendix C to the Renewal Power Sales Contracts is deleted in its entirety and replaced with the following:

“C.1.2. Two combined-cycle natural gas fired power blocks, each power block consisting of one gas turbine, a heat recovery steam generator train and a single steam turbine, with an approximate combined net generation capability of 840 MW, where ‘net generation capability’ means gross power generation *less* auxiliary load for generation and transmission support.”

**EXHIBIT A**

**[see attached]**

Alternative Repowering Certificate (Power Sales Contract)

Pursuant to Resolution No. \_\_\_\_\_ adopted by the Municipal Council of Bountiful, a Municipal Corporation (the “Municipality”) on \_\_\_\_\_, 2018 (the “Resolution”), I, Randy C. Lewis, as Mayor of the Municipality hereby certify that:

1. The Municipality is a party to that certain Power Sales Contract, dated September 28, 1978, with Intermountain Power Agency (as amended through the date of this certificate, the “Power Sales Contract”).

2. Ted L. Olson, being the individual representing the Municipality on the Intermountain Power Project Coordinating Committee, and Allen R. Johnson, being the individual representing the Municipality on the Intermountain Power Project Renewal Contract Coordinating Committee, are duly authorized to take all actions in such capacities to approve the Alternative Repowering (each term that is used but not otherwise defined in this certificate has the meaning ascribed to such term in the Resolution), consistent with the Alternative Repowering Description.

3. Pursuant to the provisions of the Power Sales Contract, upon the effectiveness of the Alternative Repowering consistent with the Alternative Repowering Description, such effectiveness will have the effect described in the Power Sales Contract, including, without limitation, the following:

a. the term “Gas Repowering” in the Power Sales Contracts will refer to the Alternative Repowering consistent with the Alternative Repowering Description;

b. the Power Sales Contract will be revised to give effect to and set forth the Original Power Sales Contract Revisions (as Alternative Repowering Revisions); and

c. as so revised, the Power Sales Contract will continue to be the legal, valid and binding obligation of the Municipality, enforceable against the Municipality in accordance with the terms of the Power Sales Contract.

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4. Pursuant to the terms of the Power Sales Contract, (a) the PSC Appendix C Revisions correctly describe the Project as of the effectiveness of the Alternative Repowering consistent with the Alternative Repowering Description; and (b) the Project Governing Bodies are authorized, without further action of the Municipality, to revise Appendix C to the Power Sales Contract in accordance with the terms of the Power Sales Contract.

Dated \_\_\_\_\_, 2018.

BOUNTIFUL, A MUNICIPAL  
CORPORATION

\_\_\_\_\_  
Randy C. Lewis, Mayor

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, Clerk/Recorder

**EXHIBIT B**

**[see attached]**

Alternative Repowering Certificate (Renewal Power Sales Contract)

Pursuant to Resolution No. \_\_\_\_\_ adopted by the Municipal Council of Bountiful, a Municipal Corporation (the “Municipality”) on \_\_\_\_\_, 2018 (the “Resolution”), I, Randy C. Lewis, as Mayor of the Municipality hereby certify that:

1. The Municipality is a party to that certain Renewal Power Sales Contract, dated January 16, 2017, with Intermountain Power Agency (as amended through the date of this certificate, the “Renewal Power Sales Contract”).

2. Allen R. Johnson, being the individual representing the Municipality on the Intermountain Power Project Renewal Contract Coordinating Committee is duly authorized to take all actions in such capacity to approve the Alternative Repowering (each term that is used but not otherwise defined in this certificate has the meaning ascribed to such term in the Resolution), consistent with the Alternative Repowering Description.

3. Pursuant to the provisions of the Renewal Power Sales Contract, upon the effectiveness of the Alternative Repowering consistent with the Alternative Repowering Description, such effectiveness will have the effect described in the Renewal Power Sales Contract.

4. The Renewal Power Sales Contract will continue to be the legal, valid and binding obligation of the Municipality, enforceable against the Municipality in accordance with the terms of the Renewal Power Sales Contract.

5. Pursuant to the terms of the Renewal Power Sales Contract, (a) the RPSC Appendix C Revisions correctly describe the Project as of the effectiveness of the Alternative Repowering, consistent with the Alternative Repowering Description; and (b) the Renewal Contract Coordinating Committee and the IPA Board are authorized, without further action of the Municipality, to revise Appendix C to the Renewal Power Sales Contract in accordance with the terms of the Renewal Power Sales Contracts.

Dated \_\_\_\_\_, 2018.

BOUNTIFUL, A MUNICIPAL  
CORPORATION

\_\_\_\_\_  
Randy C. Lewis, Mayor

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, Clerk/Recorder





# City Council Staff Report



**Subject:** Intermountain Power Project Fifth Amendment approval of Resolution #2018-05  
**Author:** Allen Ray Johnson  
**Department:** Power Department  
**Date:** May 22, 2018

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## **Background**

We have discussed in previous City Council meetings the fact that the Intermountain Power Project (IPP), administered by the Intermountain Power Agency (IPA).. There are several items that the IPA staff and board would like to get updated to match the current needs or concerns for the project. A quick summary of the revised items are as follows:

1. Clearly state that the project has the power and authority to develop a power project.
2. The IPA Board as to approve any assignment of shares or change in ownership. (would need a good reason to not approve)
3. Include a clear statement to include member rights and voting rights.
4. Would prohibit a board member to serve in a governing position on a another board which could create a conflict of interest.
5. Motion to remove a board member. The member would have the right to speak to the board and the member asking requesting the removal would have the ability to tell why they want to remove the board member.
6. How to handle board vacancy to match the current bylaws to fill vacant terms.
7. Cleary identify that voting members need to be a member city.
8. Indemnification of the board and officers during a law suit.
9. The Fiduciary Duties of the board members have been attached and are referenced in the agreement.
10. Cleary state that IPA and the IPA board is in charge of the project.
11. Include segments to protect Cities from items that they are not included in.
12. Disposition of Assets in 2027.

## **Analysis**

The Fifth Amendment has been approved by the IPA Board of Directors and has been reviewed by the City Attorney. These items are needed to keep the Organization Agreement up to date and to meet the Legal needs for the Project.

## **Department Review**

The Fifth Amendment has been reviewed by the Power Commission, City Attorney, City Manager, and the Power Department Staff.

**Significant Impacts**

The approval of the Fifth Amendment protects both the City, IPA, and the Board members in the future.

**Recommendation**

The Staff recommends the approval of resolution 2008-05 for the Approval of The Fifth Amendment to the Intermountain Power Agency Organization Agreement.

The recommendation of the Power Commission will be brought to the meeting on Tuesday evening.

**Attachments**

1. Resolution 2018-05, Approval of The Fifth Amendment To Intermountain Power Agency Organization Agreement.
2. Fifth Amendment to Intermountain Power Agency Organization Agreement.

**RESOLUTION NO. 2018-05**

**APPROVAL OF THE FIFTH AMENDMENT  
TO INTERMOUNTAIN POWER AGENCY ORGANIZATION AGREEMENT**

On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, at a meeting of the Municipal Council of Bountiful, a Municipal Corporation (the “Council”), held the \_\_\_\_ day of \_\_\_\_\_ 2018, the following Resolution was duly adopted:

WHEREAS, Bountiful, a Municipal Corporation (the “Municipality”) and certain other Utah municipalities (the “Members”) are parties to that certain Intermountain Power Agency Organization Agreement dated as of May 10, 1977 (as amended by that certain First Amendment to Intermountain Power Agency Organization Agreement dated February 1, 1983, that certain Second Amendment to Intermountain Power Agency Organization Agreement dated as of March 26, 1990, that certain Third Amendment to Intermountain Power Agency Organization Agreement dated as of January 21, 2003, and that certain Fourth Amendment to Intermountain Power Agency Organization Agreement dated as of November 26, 2013, the “Organization Agreement” and such amendments being, collectively, the “Prior Amendments”), pursuant to which Intermountain Power Agency (“IPA”) was organized and the existence of which has continued for, among other purposes, facilitating a joint and cooperative action of the Members to undertake and finance facilities to generate electricity to be known as the Intermountain Power Project (the “Project”); and

WHEREAS, at least two-thirds of the members of the IPA Board of Directors present and voting at a duly constituted meeting thereof have approved and recommended the amendment of the Organization Agreement as set forth in the Fifth Amendment to IPA Organization Agreement in the form set forth on Exhibit A attached hereto (as conformed for execution by the Municipality, the “Fifth Amendment”); and

WHEREAS, an amendment to the Organization Agreement may be effective only after the following have occurred (the date of the last to occur of the following being the “Effective Date”): (a) approval of such amendment by the affirmative vote of at least two-thirds of the members of the Board present and voting at a duly constituted meeting thereof; (b) receipt of the written approval of such amendment of not less than two-thirds of the Members following submittal of such amendment to governing bodies of the Members; (c) execution of such amendment by the authorized officers of such approving Members; and (d) filing of such amendment with the keeper of public records of each of the Members; and

WHEREAS, the IPA Board of Directors has submitted to the Council, and recommended that the Council approve, and the Council has reviewed and discussed the Fifth Amendment.

BE IT RESOLVED, that after due consideration and discussion, the Council hereby approves the Fifth Amendment; and

BE IT FURTHER RESOLVED, that the Council hereby approves and ratifies execution and delivery of, performance under and carrying out and consummation of the transactions contemplated by the Organization Agreement, as amended by the Prior Amendments, and as amended by, as of the Effective Date, the Fifth Amendment; and

BE IT FURTHER RESOLVED, that the Council hereby authorizes and directs the Municipality's Mayor (the "Mayor") and the Municipality's Clerk/Recorder (the "Clerk/Recorder") to execute and deliver the Fifth Amendment, to perform under the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, and carry out and consummate the transactions contemplated by the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, all on behalf of the Municipality and to take or cause to be taken such other action as may be necessary or desirable in order to make the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, effective and to perform under the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment including, without limitation, filing the Organization Agreement, the Prior Amendments and the executed Fifth Amendment with the keeper of public records of the Municipality; and

BE IT FURTHER RESOLVED, that the Council hereby approves of the dating of the Fifth Amendment as of the date determined by IPA to be the date on which the conditions to the effectiveness of the Fifth Amendment were satisfied; and

BE IT FURTHER RESOLVED, that the Mayor and the Clerk/Recorder are hereby authorized and directed to execute and deliver on behalf of Municipality such documents, certificates, instruments, notices, opinions and agreements as may be deemed by the Mayor to be necessary or appropriate to give effect to the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, and the provisions of the Resolution.

BOUNTIFUL, A MUNICIPAL  
CORPORATION

\_\_\_\_\_  
Randy C. Lewis, Mayor

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, Clerk/Recorder

Exhibit A

Fifth Amendment to Intermountain Power Agency Organization Agreement

[see attached]

**FIFTH AMENDMENT TO  
INTERMOUNTAIN POWER AGENCY  
ORGANIZATION AGREEMENT**

THIS FIFTH AMENDMENT TO INTERMOUNTAIN POWER AGENCY ORGANIZATION AGREEMENT, is entered into as of [\_\_\_\_\_, 2018], by and among the parties listed on Appendix A attached hereto (such parties being, individually, a “Member” and, collectively, the “Members”) (this “Fifth Amendment”).

Recitals

A. Pursuant to the provisions of Utah Laws of 1977, Chapter 47, Section 3, as amended, the Members have entered into that certain Intermountain Power Agency Organization Agreement dated as of May 10, 1977 as such agreement has been amended by the requisite number of the Members pursuant to that certain First Amendment to Intermountain Power Agency Organization Agreement dated as of February 1, 1983 (the “First Amendment”), that certain Second Amendment to Intermountain Power Agency Organization Agreement dated as of March 26, 1990 (the “Second Amendment”), that certain Third Amendment to Intermountain Power Agency Organization Agreement dated as of January 21, 2003 (the “Third Amendment”), and that certain Fourth Amendment to Intermountain Power Agency Organization Agreement dated as of November 26, 2013 (the “Fourth Amendment” and together with the First Amendment, the Second Amendment and the Third Amendment, collectively, the “Prior Amendments,” and such agreement, as amended by the Prior Amendments, being the “Original Organization Agreement”) resulting in the valid creation and continuation of the existence of Intermountain Power Agency (“IPA”), as a legal entity for purposes of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Act”).

B. The Board of Directors of IPA (the “Board of Directors”) has recommended that the Members amend the Original Organization Agreement to: (1) specify IPA’s authority to own, acquire, develop, finance, and/or operate the Project and Additional Facilities, including with respect to impacts of such, as permitted under the Act, and specify the Members’ rights with respect to the acquisition or development of Additional Facilities; (2) limit the ability of the Members to assign their membership in IPA without the prior written approval of the Board of Directors; (3) clarify the circumstances in which the termination of a Member’s power sales contract will terminate the membership of such Member; (4) prohibit the simultaneous service of a member of the Board of Directors on an executive committee of the board of directors or other governing body of another interlocal entity that is involved in the generation, production, sale, transmission, or distribution of electric power; (5) provide the opportunity for an individual who is the subject of a motion to be removed from the Board of Directors to be heard prior to the vote on such motion; (6) harmonize the provisions relating to vacancies on the Board of Directors with related provisions contained in IPA’s Bylaws (as defined below); (7) conform the Original Organization Agreement to the provisions of the Act by requiring that a majority of the Members must elect the members of the Board of Directors; (8) clarify the authority of the Board of Directors to indemnify, reimburse, and otherwise limit the liability of both the members of the

Board of Directors and officers of IPA consistent with the provisions of the Act; (9) specify the duties of the members of the Board of Directors; (10) provide expressly for the Board of Directors to determine the manner for financing the Project in the future; (11) permit the use of segments as authorized by the Act; (12) grant the Board of Directors certain authority to determine the capacity entitlement of each of the Members in the event of termination or dissolution of the Project; and (13) make minor technical changes to the Original Organization Agreement.

C. This Fifth Amendment does not jeopardize or adversely affect the existing contracts, notes, bonds or other evidence of indebtedness of IPA.

D. The Members desire and have determined that it is in their respective best interests to amend the Original Organization Agreement on the terms and conditions set forth below.

## Agreement

NOW THEREFORE, in consideration of the foregoing recitals (which are incorporated into and made a part of this Fifth Amendment and acknowledged to be true and correct) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members agree as follows:

1. **Amendment of Article 1.** The first paragraph of Article 1 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The purposes of this Agreement and of the political subdivision of the State of Utah created hereunder and of the joint or cooperative action of the parties to this Agreement are to: (1) own, acquire, develop, finance, and/or operate, or cause to be owned, acquired, developed, financed, and/or operated, a facility to generate and deliver electricity to be known as the Intermountain Power Project consisting of an electric generation facility located in south central Utah and other facilities relating thereto (as such project may be described from time to time by the Board of Directors, as defined in Article 5 below, the “Project”), including without limitation: (a) transmission and other facilities located within and without the State as necessary to satisfy IPA’s obligations pursuant to power sales contracts or transmission service agreements for the delivery to purchasers of energy from the Project or for the provision of capacity (including, without limitation, generation capacity and transmission capacity) in such facilities to the purchasers of such capacity; (b) facilities for the exploration, development, extraction, production, processing, delivery, transmission, transporting and storage of fuel or other sources of power generation for the Project or other inputs required for generating and delivering electric power; and (c) wells, reservoirs, and other facilities for the collection, storage and supply of water for the Project; (2) own, acquire, develop, finance, and/or operate, or cause to be owned, acquired, developed, financed, and/or operated, Additional Facilities (as hereinafter defined), if any; and (3) provide assistance to local communities in providing for facilities required for personnel involved with the construction, other development and operation of the Project and the Additional Facilities, if any, and assume responsibility for and alleviate impacts of the Project and/or the Additional Facilities and the construction, other development and operation of such, as permitted under applicable law. For purposes of this Agreement, (a) the term “acquire” means to acquire, purchase, lease, enter into common facilities or supply arrangements and/or otherwise obtain any ownership; (b) the term “develop” means to develop, undertake, study, plan, take other appropriate action as necessary or desirable to establish the legal, financial or technical feasibility of, determine participation in, engineer, design, construct, install, refurbish, enhance, modify, update, upgrade, improve, add, convert, redesign, reconstruct, restore, power, repower, retire, remediate, reclaim, replace, remove, demolish and/or decommission; (c) the term “operate” means to operate, maintain, repair, administer, manage, control and/or provide electrical service to; (d) the term “own” means to own, lease and/or otherwise hold any ownership, leasehold or



possessory interest or any other right to use, develop, operate or otherwise realize any benefit from; (e) the terms “acquisition,” “development,” “operation,” and “ownership” mean the nominal forms of acquire, develop, operate and own, respectively (as “acquire,” “develop,” “operate,” and “own” are defined, respectively, in this Agreement); and (f) the term “power sales contract” means, individually, each contract for the sale of power, capacity (including, without limitation, generation capacity and transmission capacity) and/or output with respect to which IPA is the seller, including without limitation, each power sales contract and each renewal power sales contract, as each such contract may be amended from time to time; provided that with respect to Additional Facilities that do not include generation capacity, such term also means the transmission service agreement or other agreement pursuant to which IPA sells entitlements in the capacity of such Additional Facilities.

2. **Amendment of Article 2.** Article 2 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

**ARTICLE 2**

**EFFECTIVE DATE AND ORIGINAL PARTIES**

This Agreement shall become effective on June 15, 1977. The parties to this Agreement are (such parties being referred to in this Agreement from time to time, individually, as a “Member” and, collectively, as the “Members”):

- |                                    |                               |
|------------------------------------|-------------------------------|
| Beaver City Corporation            | Lehi City Corporation         |
| Bountiful, a Municipal Corporation | City of Logan                 |
| City of Enterprise                 | Meadow Town Corporation       |
| Ephraim City Corporation           | Monroe City Corporation       |
| Fairview City Corporation          | Morgan City Corporation       |
| Fillmore City Corporation          | Mt. Pleasant City Corporation |
| Heber Light & Power Company        | Murray City Corporation       |
| Holden Town Corporation            | Oak City Town Corporation     |
| City of Hurricane                  | Parowan City Corporation      |
| Hyrum City Corporation             | Price Municipal Corporation   |
| Kanosh Town Corporation            | Spring City Corporation       |
| Kaysville City Corporation         |                               |

No Member may assign, directly or indirectly, such Member’s membership in IPA or any other right, title or interest in or to this Agreement (including without limitation, for collateral purposes) without (1) obtaining the prior written approval of the Board of Directors authorizing such assignment (the withholding of which approval shall have a rational basis), and (2) following receipt of such approval, if any, assigning simultaneously to the assignee approved by the Board of Directors all of such Member’s right, title and interest

in and to (a) this Agreement (including without limitation, such Member's membership in IPA), (b) each of such Member's power sales contracts in effect at the time of such assignment and as amended from time to time, subject to compliance with the provisions of such power sales contracts that govern the assignment of such power sales contracts, and (c) all other agreements relating to the Project and/or Additional Facilities to which such Member is a party and which are in effect at the time of such assignment, subject to compliance with the provisions of such agreements that govern the assignment of such agreements. Any attempt to assign any right, title or interest of a Member in or to this Agreement (including without limitation, such Member's membership in IPA) without such approval from the Board of Directors shall be void ab initio.

At any time following the termination of the last of a Member's power sales contracts previously remaining in effect with respect to such Member (the date as of such termination being, with respect to such Member, the "Contract Termination Date"), the Board of Directors may determine that such Member shall cease to be a party to this Agreement and shall cease to be a Member as of any date on or following such Member's Contract Termination Date as determined by the Board of Directors (the date as of which such Member shall cease to be a Member pursuant to such determination by the Board of Directors being, with respect to such Member, the "Membership Termination Date"). If the simultaneous expiration or earlier simultaneous termination of two or more power sales contracts would, but for the application of this sentence, result in the Membership Termination Date of all Remaining Members (as defined below), such expiration or termination shall not result in the Membership Termination Date of any of such Remaining Members. As of and from and after such Member's Membership Termination Date: (a) all such Member's right, title and interest in and to this Agreement shall be extinguished as of such Member's Membership Termination Date; (b) all other Members with respect to which a Membership Termination Date has not occurred (each, individually, a "Remaining Member" and, collectively, the "Remaining Members") shall constitute, collectively, one hundred percent of the members of IPA and the holders of one hundred percent of the right, title and interest in and to this Agreement; (c) for purposes of this Agreement, the term "Members" shall refer to all Remaining Members, as determined after giving effect to such Member's Membership Termination Date; and (d) without the need for any additional action, approval or consent, IPA shall be authorized to execute a modification of this Article 2 to reflect the termination of such Member's status as a Member. Notwithstanding the occurrence of a Member's Membership Termination Date, including without limitation, the termination of such Member's status as a Member, such Member shall continue to be liable for such Member's obligations to IPA under this Agreement that have accrued prior to such Member's Membership Termination Date.

3. **Amendment of Article 5.**

(a) The second paragraph of Article 5 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The business and affairs of IPA shall be governed, controlled, directed, managed, administered and regulated by a board of directors (the “Board of Directors”). The Board of Directors shall have such duties and powers, and may take any action, as may be necessary or desirable to accomplish the purposes set forth in this Agreement, except as may be contrary to the laws of the State of Utah or this Agreement. Without limiting the foregoing, (1) the Board of Directors shall exercise on behalf of IPA all of the powers of IPA provided by this Agreement or under the laws of the State of Utah; and (2) the Board of Directors may delegate any or all of the powers of IPA to one or more committees of the Board of Directors or one or more employees, agents or contractors of IPA and may authorize one or more of such committees, employees, agents, or contractors to act for and on behalf of IPA.

(b) The third paragraph of Article 5 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The Board of Directors shall be composed of seven persons (each, a “Director”), who shall, except as expressly provided otherwise in this Agreement, be elected by the representatives and shall serve staggered terms. For the initial term of office, one Director shall be elected for a term ending December 31, 1978, two Directors shall be elected for a term ending December 31, 1979, two Directors shall be elected for a term ending December 31, 1980, and two Directors shall be elected for a term ending December 31, 1981. Thereafter, Directors shall be elected for four-year terms and may be re-elected. To be eligible to serve as a Director, a person shall, at all times during which he holds the office of Director, be a representative and either: (a) reside within the boundaries of the Member that is represented by such representative; (b) receive electrical service at his principal residence from a municipal electric system owned by the Member that is represented by such representative; or (c) be employed by the Member that is represented by such representative on a basis such that it is reasonably expected that the representative will provide to such Member not less than 1,000 hours of paid service in each 12-month period. Unless otherwise approved by a majority of the Directors then serving on the Board, no Director may concurrently serve as a member of an executive committee (e.g., Chairman, Vice-Chairman, Secretary, or Treasurer) of the board of directors or other governing body of any interlocal entity (other than IPA, any Segment (as defined below), any Member of which such Director is a representative under this Agreement, any interlocal entity of which such Member is the sole member and any association of which IPA is a member), that is involved in any way with the generation, production, transmission, distribution or sale of electric power or that was formed as an association to advocate for or

represent electric power generators, producers, transmitters, distributors, sellers, purchasers or users of electric power. Any Director who, prior to the end of his term as a Director, ceases to qualify as a Director under any criteria set forth in this Agreement shall, upon and as of the date of a determination of the Board of Directors that he has ceased to so qualify, cease to be a Director and the directorship held by such Director shall become vacant. Any Director who is the subject of a motion to make such a determination shall be given an opportunity to be heard at the meeting of the Board of Directors at which such motion is made. Such opportunity to be heard shall be after the making of such motion but before the Board of Directors votes on such motion. Such a determination shall not be required in the event of a Director's resignation, removal by the representatives, death or incapacity.

(c) The fourth through seventh paragraphs of Article 5 of the Original Organization Agreement are hereby amended and restated in their entirety as follows:

At any duly called regular meeting or at any duly called special meeting of the representatives at which a quorum is present, any one or more of the Directors may be removed by two-thirds or more of the votes cast at such meeting and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the representatives shall be given an opportunity to be heard at the meeting at which such proposal is made. Such opportunity to be heard shall occur after the proposal is made but before the representatives take action on such proposal. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of the representatives called for such purpose. Any Director may resign from the Board of Directors at any time in the manner and with the effect provided in the Bylaws (as defined below).

A vacancy on the Board of Directors caused by the resignation, disqualification, removal, death or incapacity of a Director, or for any other cause whatsoever (such Director, subject to the following exceptions, being a "Former Director"), with the exception of a vacancy caused by the removal of a Director that is concurrently filled by the election of the representatives pursuant to this Agreement or a vacancy created by an increase in the number of Directors, shall be filled on an interim basis until the next succeeding annual meeting of IPA by a person elected by the Board of Directors at a meeting of the Board of Directors held within a reasonable time following the occurrence of such vacancy and otherwise in accordance with the Bylaws; provided, however, that if such next succeeding annual meeting occurs in the same year in which the Former Director's term of office as a Director expires, then the Director selected to fill such vacancy shall continue in office until the time specified in the Bylaws and any vacancy arising at such time shall be filled as provided in the Bylaws. Any vacant position filled by the Board of Directors shall again become vacant as of the next succeeding annual meeting of IPA, except as otherwise provided in the preceding sentence. In the case of a position becoming vacant at such next

succeeding annual meeting, such position shall, at such meeting, be filled for the balance of the unexpired term, if any, by the vote of the representatives. At all times, a majority of the Directors shall have been elected, appointed, or selected by Member representatives of Utah public agencies (as defined in the Act). Notwithstanding anything to the contrary in this Agreement, if the election by the Board of Directors of a person to fill a vacancy would result in less than a majority of the Directors then in office having been elected by the Member representatives of Utah public agencies, such vacancy shall be filled by election at an annual meeting or at a special meeting of the Member representatives of Utah public agencies called for such purpose. Any directorship to be filled by reason of an increase in the number of Directors shall be filled in the manner provided in the Bylaws.

The Board of Directors may adopt, and amend from time to time, bylaws (as adopted and amended, the “Bylaws”) and provide in agreements, policies or procedures consistent with the Bylaws, which Bylaws, agreements, policies and procedures, to the extent consistent with this Agreement or the laws of the State of Utah, may provide, among other things, as the Board of Directors shall determine from time to time, (i) rules governing regular meetings and special meetings of the representatives and of the Board of Directors; (ii) for the annual meeting of IPA, which shall be deemed a regular meeting of the representatives; (iii) quorum and voting requirements; (iv) for the establishment of offices; (v) for the indemnification of Directors and of officers of IPA (each, an “Officer”); (vi) for the limitation of liability of Directors and Officers to IPA or the Members or both; and (vii) for such other matters as the Board of Directors may determine.

Each Director and each Officer shall owe a fiduciary duty (as defined in the Act) to IPA. Each Director’s and each Officer’s fiduciary duty shall consist of the duties of such Director or such Officer under the Fiduciary Duty Policy of IPA adopted by the Board of Directors at any time and as amended from time to time; provided, however, that such Fiduciary Duty Policy, and any amendments thereto, shall become effective only upon approval of a majority of the votes cast at any duly called regular meeting or duly called special meeting of the representatives at which a quorum is present.

Notwithstanding any other provision of this Agreement but without limiting the authority granted to the Board of Directors in any other paragraph of this Article 5, (a) no Director or Officer shall be liable to IPA or any Member unless (i) the Director or the Officer breaches a fiduciary duty that the Director or the Officer owes to IPA or the Member, and (ii) such breach constitutes gross negligence, willful misconduct, or intentional infliction of harm on IPA or the Member; and (b) to the extent a Director or Officer would otherwise be liable under the foregoing clause (a), no Director or Officer shall be liable to IPA or any Member for any monetary damages, except to the extent of monetary damages arising out of: (i) a breach of the Director’s or Officer’s fiduciary duty; (ii) an intentional infliction of harm on IPA or the Member; (iii) improper financial

benefit; (iv) willful misconduct that constitutes an intentional violation of criminal law; or (v) any other circumstance or occurrence with respect to which, under applicable law as in effect from time to time, the limitation of a Director's or Officer's liability as provided in this paragraph is impermissible.

Neither anything in this Article 5 nor any action taken by or with respect to IPA, any Segment (as hereinafter defined), a Director or an Officer pursuant to Section 11-13-607 of the Act shall constitute a waiver of any immunity or defense available to or with respect to IPA, any Segment, a Director or an Officer under Title 63G, Chapter 7, the Governmental Immunity Act of Utah (or any successor statute) (the "Governmental Immunity Act"). Clauses (a) and (b) in the immediately preceding paragraph apply only to the extent that IPA, a Director or an Officer is otherwise subject to liability under the Governmental Immunity Act.

For purposes of this Article 5, the duties of any Director or Officer under this Agreement shall consist of the following: (a) any fiduciary duty; (b) any other duty expressly set forth in (i) this Agreement or the Bylaws, and (ii) any agreement between IPA and the Director or Officer; and (c) each duty that applies to IPA under Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act (or any successor statute).

4. **Amendment of Article 6.**

(a) Clause (1) of Article 6 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

(1) own, acquire, develop, finance, and/or operate, or cause to be owned, acquired, developed, financed, and/or operated, any facility or improvement of the Project or any Additional Facilities;

(b) The last sentence of Article 6 is hereby amended and restated in its entirety as follows:

To the extent not already provided in this Agreement, IPA shall have the power to sell, transfer, convey, lease, make available, develop and operate the Project, the Additional Facilities and/or any portion of or interest in either of the foregoing, as approved by the Board of Directors, including without limitation, to use, as approved by the Board of Directors, any fuel source or other input or technology to generate electric power at the Project.

5. **Amendment of Article 7.**

(a) The first sentence of the first paragraph of Article 7 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The Project, including without limitation, any ownership, acquisition, development, and/or operation of the Project, (1) was initially financed by the issuance of bonds, notes and other evidence of indebtedness of IPA, and (2) may from time to time, after such initial financing, be financed, as determined by the Board of Directors, by the issuance of bonds, notes, or other evidence of indebtedness of IPA payable from and secured by the revenues, income, rents and receipts derived or to be derived from the sale of capacity and energy and transmission service and other benefits of the Project, and other available funds of IPA pledged to secure such indebtedness, including without limitation, amounts paid to IPA under power sales contracts with respect to the Project, subject, however, to the application of such revenues, income, rents, receipts, and other funds to the purposes and on the terms and conditions set forth in the bond or note resolutions of IPA securing such bonds, notes, or other evidence of indebtedness and as required by the Act.

(b) The second through sixth paragraphs of Article 7 of the Original Organization Agreement are hereby amended and restated in their entirety as follows:

If IPA engages in an Additional Facilities Undertaking (as defined below), such Additional Facilities Undertaking may be financed by the issuance of bonds, notes, or other evidence of indebtedness of IPA payable from and secured by the revenues, income, rents and receipts derived or to be derived from the sale of capacity and energy and transmission service and other benefits attributable to such Additional Facilities Undertaking, and other available funds of or financing by IPA with respect to the Additional Facilities or interest pledged to secure such indebtedness, including without limitation, amounts paid to IPA under power sales contracts with respect to any ownership interest of IPA in the Additional Facilities, subject, however, to the application of such revenues, income, rents, receipts, and other funds to the purposes and on the terms and conditions set forth in the bond or note resolutions of IPA securing such bonds, notes, or other evidence of indebtedness and as required by the Act. IPA will, prior to the commencement of construction of Additional Facilities in which it will have an ownership interest (other than Leased Facilities, as defined below), enter into power sales contracts with respect to such Additional Facilities with one or more Qualified Purchasers (as defined below) for all of the planned capacity with respect to IPA's ownership interest in the Additional Facilities on such terms as will produce sufficient revenues, income, rents, receipts, and other funds to meet and pay all operating and maintenance expenses, debt service, and reserve requirements, and all other charges or liens whatsoever payable from the revenues, income, rents, receipts, and other funds with respect to IPA's ownership interest in the Additional Facilities. For purposes of this Agreement, (x) the term "Additional Facilities Undertaking" means the ownership, acquisition, development, and/or operation, or causing the ownership, acquisition, development, and/or operation, of one or more Additional Facilities, or any interest in such Additional Facilities; and (y) the term "Qualified Purchaser" means, with respect to any Additional Facilities, each public entity, including

without limitation, each party to this Agreement that desires to obtain any contractual rights with respect to such Additional Facilities, or private entities that may qualify as purchasers of capacity and energy from such Additional Facilities under the Act and any other applicable law. In connection with any Additional Facilities Undertaking or any similar activity, the Board of Directors may utilize any statutory authority now or hereafter enacted for the purpose of facilitating the separation or segmentation of one or more assets and/or the limitation or segmentation of one or more liabilities associated with such Additional Facilities Undertaking or similar activity and may take all actions permitted under law to effect and/or that relate to such separation, limitation and/or segmentation (each such separation, limitation or segmentation being a "Segment"). A Segment shall not be governed by this Agreement to the extent determined by the Board of Directors at the time the Segment is created and the governance, operation and all other matters related to a Segment shall be as set forth in the organizing resolution of the Segment.

The price to be paid for capacity and energy and transmission service and other benefits from the Project or any Additional Facilities Undertaking allocated to any purchaser, except the participating agencies within the State, shall include the amount necessary to provide for payments of the in lieu fee provided for in the Act with respect to the Project or such Additional Facilities Undertaking, respectively and as applicable.

No party to this Agreement shall be liable for any bond, note, indebtedness or other obligation incurred by IPA, nor liable for the indebtedness of any other party to this Agreement, nor liable for any indebtedness or other obligation with respect to the Project or any Additional Facilities Undertaking other than, with respect to the Project, the obligations of such party arising under each power sales contract to which it is a party with IPA for Project capacity or output or, with respect to any Additional Facilities, the obligations of such party under any power sales contract or any other contract it may enter into with IPA with respect to such Additional Facilities.

IPA shall annually adopt a budget for the ensuing year with respect to the Project which shall set forth in reasonable detail estimates of revenues and operating and maintenance expenses of the Project; debt service and reserve requirements, payments with respect to renewals and replacements for the Project and contingency reserves therefor; and such other items and matters as shall be required pursuant to its Project power sales contracts and Project bond resolution. Such budget shall be adopted and may be amended from time to time in the manner provided in such Project power sales contracts and Project bond resolution. If IPA acquires an ownership interest in any Additional Facilities, IPA shall annually adopt a separate budget for the ensuing year with respect to such ownership interest, which shall set forth in reasonable detail estimates of revenues and operating and maintenance expenses attributable to IPA's ownership interest in the Additional Facilities; debt service and reserve requirements, payments with



respect to renewals and replacements attributable to IPA's ownership interest in the Additional Facilities and contingency reserves therefor; and such other items and matters as shall be required pursuant to its Additional Facilities power sales contracts and Additional Facilities bond resolution(s). Such budget shall be adopted and may be amended from time to time in the manner provided in such Additional Facilities power sales contracts and Additional Facilities bond resolution(s).

IPA shall be authorized to accept payments-in-aid of construction or other development for any facility of the Project or Additional Facilities Undertaking and to enter into agreements with respect thereto. No such payments-in-aid of construction or other development or agreement with respect thereto shall change or otherwise affect IPA's ownership of such facility or any of its rights and obligations with respect to such facility and any such payments-in-aid of construction or other development or agreement with respect thereto shall be in compliance with all agreements relating to the Project or Additional Facilities Undertaking, as applicable.

6. **Amendment of Article 8.** Article 8 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

#### **ARTICLE 8**

##### **DISPOSITION OF ASSETS**

Upon termination of this Agreement pursuant to Article 3 hereof, the net assets, if any, of IPA shall be distributed pro rata among the Members in accordance with their respective capacity entitlements from the Project and Additional Facilities, if any, as most recently in effect prior to such termination. For purposes of this Article 8, the term capacity entitlement shall refer to a Member's generation entitlement share identified in each of such Member's power sales contracts in effect at the time of such termination. In the event of a dispute regarding the determination of a Member's capacity entitlement for purposes of this Article 8, such dispute shall be resolved as determined by the Board of Directors so long as such determination has a rational basis in the power sales contracts to which the Members and IPA are parties.

7. **Amendment of Article 14.** Article 14 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

#### **ARTICLE 14**

##### **ADDITIONAL FACILITIES AS SEPARATE PROJECTS**

IPA is hereby authorized to conduct studies, engage in planning and take such other appropriate action as shall be necessary or desirable to establish the legal, financial or technical feasibility of, and to determine participation in, one or

more additional generating units, which, together with the generating capacity of the Project, shall not cause IPA's ownership interest in generating facilities to exceed an aggregate of 4,000 megawatts (exclusive of any increases to the initial generating capacity of any generating unit resulting from technological advances, increases in efficiency or other causes and exclusive of any Leased Facilities), and related transmission, delivery and other facilities, if any, to be located at or connected to the site of the Project (such additional generating unit(s) and facilities are referred to in this Agreement as "Additional Facilities"). If any Additional Facilities are developed, IPA may acquire ownership of all or a portion of such Additional Facilities, which may be, among other types of interest, an undivided ownership interest of a specified percentage. IPA's ownership interest in any Additional Facilities shall constitute a separate project for all purposes unless otherwise determined by the Board of Directors. For purposes of this Agreement, the term "Leased Facilities" means a third party's generating unit in which IPA has a reversionary interest under a lease, a site agreement or similar agreement and any such generating unit that IPA obtains pursuant to such reversionary interest.

8. **Addition of Article 15.** The Original Organization Agreement is hereby amended by adding a new Article 15, as follows:

## **ARTICLE 15**

### **GENDER**

Whenever required by the context in this Agreement, the singular shall include the plural, the plural the singular, and one gender shall include all genders.

9. **Status of Organization Agreement.** Except as amended by this Fifth Amendment, the Original Organization Agreement shall remain in full force and effect and the Original Organization Agreement, as so amended, is hereby confirmed, and all findings and determinations heretofore made by each Member relating thereto are hereby ratified and confirmed. All Prior Amendments are hereby ratified and confirmed as being in full force and effect.

10. **Counterparts.** This Fifth Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which taken together shall constitute one instrument.

11. **Capitalized Terms.** All capitalized terms, not otherwise defined in this Fifth Amendment, shall have the meanings ascribed to them in the Original Organization Agreement.

12. **Authorized Attorney.** Each Member hereby represents and warrants that such Member has submitted this Fifth Amendment to the attorney authorized to represent such Member for review as to proper form and compliance with applicable law.

13. **Governing Law.** This Fifth Amendment is made pursuant to the laws of the State of Utah, including without limitation, the Act, and shall be construed and governed in accordance with such laws.

14. **Severability.** Should any part, term or provision of this Fifth Amendment be held by the courts to be illegal or in conflict with any law of the State of Utah, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

15. **Effective Date.** This Fifth Amendment shall become effective upon the satisfaction of the following conditions (and the date of the satisfaction of such conditions being the “Effective Date”): (a) approval by the affirmative vote of at least two-thirds of the members of the Board of Directors present and voting at a duly constituted meeting thereof; (b) receipt of the written approval of not less than two-thirds of the Members following submittal of this Fifth Amendment to governing bodies of the Members; (c) execution of this Fifth Amendment by the authorized officers of such approving Members; and (d) filing of this Fifth Amendment with the keeper of public records of each of the Members (the certification of such filing by any such Member constituting sufficient evidence of such filing by such Member).

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, BOUNTIFUL, A MUNICIPAL CORPORATION has caused this Fifth Amendment to be executed and attested by its proper officers, thereunto duly authorized, and its official seal to be affixed hereto, pursuant to a resolution of its governing body, which execution hereby constitutes written approval of this Fifth Amendment and certification that (a) this Fifth Amendment has been filed with the keeper of its public records and (b) upon the Effective Date of this Fifth Amendment, deems itself bound by this Fifth Amendment with all other Members.

BOUNTIFUL, A MUNICIPAL CORPORATION

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(Signature)

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(Title)

ATTEST:

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Clerk/Recorder

## Appendix A

### Members

Beaver City Corporation  
Bountiful, a Municipal  
Corporation  
City of Enterprise  
Ephraim City Corporation  
Fairview City Corporation  
Fillmore City Corporation  
Heber Light & Power Company  
Holden Town Corporation  
City of Hurricane  
Hyrum City Corporation  
Kanosh Town Corporation  
Kaysville City Corporation

Lehi City Corporation  
City of Logan  
  
Meadow Town Corporation  
Monroe City Corporation  
Morgan City Corporation  
Mt. Pleasant City Corporation  
Murray City Corporation  
Oak City Town Corporation  
Parowan City Corporation  
Price Municipal Corporation  
Spring City Corporation



# City Council Staff Report



**Subject:** Authorizing the City to approve Resolution #2018-06 and the Power Sales Contract for the UAMPS Carbon Free Power Project.

**Author:** Allen Ray Johnson

**Department:** Light & Power

**Date:** May 22, 2018

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## **Background**

We have been involved for several years working with UAMPS and NuScale to develop a Carbon Free Power Project (CFPP) as a zero carbon emitting power resource option. The CFPP is a Small Scale 600 MW Nuclear Reactor that will be located in Idaho on the Idaho National Laboratory Property located near Idaho Falls. The Department of Energy (DOE) has been a key partner in the development of the project. DOE is currently paying 50% of the cost to develop the National Regulatory Commission (NRC) license application for the project.

The UAMPS board has approved a Budget & Plan of Finance to limit the first year of the contract to \$6,000,000, or approximately \$100,000 to the City of Bountiful. The budgeted number could be increased if additional subscribers are found. The City would have the option to stay with the project, change entitlement shares, or drop out of the project at that time.

## **Analysis**

The Power Sales Contracts have been prepared by UAMPS along with the Project Management Committee along with legal review our City Attorney as well as others legal counsel. The decision to proceed with signing the Power Sales Contract is not a decision to construct the CFPP. This will allow the City to remain in the project with the following off ramps.

1. Licensing Phase One Interim period, approximately April 2019.
2. End of Licensing Phase One, approximately May 2020.
3. End of Licensing Phase Two, approximately June 2023, before the construction phase.

## **Department Review**

The Power Sales Contracts and the Resolutions, and have been reviewed by the Power Department, City Manager, and the City Attorney.

## **Significant Impacts**

The signing of the contracts will cost the City of Bountiful approximately \$100,000 to continue with the project through April 2019.

## **Recommendation**

Staff recommends that we approve the Power Sales Contract for the CFPP along with the budgeted plan of finance and to allow the Mayor to sign the attached Resolution #2018-06.

This item will be discussed at the Power Commission meeting Tuesday morning, and we will bring their recommendation to the City Council meeting that night

**Attachments**

Executive Summary of the Power Sales Contracts

Amended CFPP Budget Plan of Finance Approval Package

Resolution #2018-06

The actual Power Sales Contract is not included because they are hundreds of pages, but can be provided to anyone requesting them.



**EXECUTIVE SUMMARY OF  
CARBON FREE POWER PROJECT  
POWER SALES CONTRACTS**

OVERVIEW

The Power Sales Contracts for the Carbon Free Power Project are based upon the power sales contracts for UAMPS' other generating projects, and incorporate many of the same terms and provisions. New provisions have been added to address CFPP-specific items, including the management of and funding for the Development Work on the Project to the point in time when development is complete and the CFPP can move to construction.

The Power Sales Contracts have been drafted by UAMPS legal counsel under the supervision of the Project Management Committee, with additional legal review by the Legal Committee, which included PMC Representatives, city attorneys and outside counsel.

BASIC TERMS AND PROVISIONS

“Participants”: The power purchasers that participate in the Project under the Power Sales Contracts (PSCs) with UAMPS.

“Project” or “CFPP”: The Carbon Free Power Project.

“Entitlement Share”:

A specified percentage share of the output of the Project.

Passes through benefits and burdens of ownership of the Project:

Benefit: Specified share of Project Output at cost for the life of the Project,

Burden: Obligation to pay a percentage of all ownership, operating and decommissioning costs, including debt service and contract obligations on a “take-or pay” basis, and

Burden: Observing contract covenants and risk of Entitlement Share step-up.

PSC terms that support Project operations and financings include:

“Take-or-pay” payment obligation, the Participants are obligated to pay the amounts due under the PSCs regardless of whether the Project is completed, operable, operating, damaged, destroyed or terminated,

Payments made solely from each Participant's electric system revenues and as an operating expense of the Participant's electric system,

Rate covenant: Participant agrees to charge and collect rates for electric service that produce revenues sufficient to meet its payment obligations under the PSC and other obligations payable from such revenues, and

Step-up obligation, non-defaulting Participants can be required to take a portion of a defaulting Participant's Entitlement Share, subject to a maximum increase in the Entitlement Share over the term of the PSCs of 25%.

#### PROJECT MANAGEMENT COMMITTEE (PMC)

The Project Management Committee is established by the Power Sales Contracts and the UAMPS Joint Action Agreement. The PMC has complete and comprehensive decision-making authority over the Project and actions to be taken by UAMPS, including:

Approving the Budget and Plan of Finance and all revisions, updates and amendments to it

Approving the Development Agreement and all Project Agreements,

Reviewing the results of each run of the Economic Competitiveness Test,

Reviewing and authorizing all financings and Bond issues,

Reviewing and determining whether and when to submit the COLA,

Determining whether and when Completion of Development has occurred, including the feasibility of the Project, or whether the Project should be terminated or development be suspended, and

If the Project proceeds to the Construction and Operating Periods, supervising the construction and operation of the Project.

Certain decisions of the PMC are required to be made by a Super-Majority Vote (75% by number and Entitlement Share).

#### PROJECT PERIODS AND PHASES

Target Effective Date of PSCs is April 1, 2018 (PMC to determine).

Licensing Period: begins on Effective Date of PSCs and extends to Completion of Development, with two separate phases:

Phase 1: Effective Date to completion of Construction and Operating License Application (COLA), and

Phase 2: Submission of COLA to the NRC to the receipt of Construction and Operating License (COL) from the NRC and the PMC's determination that Completion of Development has occurred.

Construction Period: begins upon Completion of Development and continues through the construction of the Project to its Commercial Operation Date (COD).

Operating Period: COD to end of operating life of the Project.

Decommissioning Period: Project retirement to complete decommissioning.

#### DEVELOPMENT WORK DURING THE LICENSING PERIOD

The Development Work includes the following activities during the Licensing Period:

Estimating, design and engineering work under the Development Agreement with Fluor and NuScale, and analyzing each run of the Economic Competitiveness Test,

Completion of definitive Project Agreements, including the EPC contract, operating agreement, fuel, water supply and transmission agreements,

Contracting with prospective Participants, co-owners and third-party power purchasers to achieve full subscription for all Project Output,

Preparation, submission and processing of the COLA,

Obtaining all required permits and approvals for the Project, and

Updates to the Budget and Plan of Finance, finalization of all Project costs.

#### BUDGET AND PLAN OF FINANCE

The Budget and Plan of Finance for initial phase of the Licensing Period is approved by PMC and Participants' governing bodies at the same time as the PSCs are approved.

The Budget and Plan of Finance is updated and approved by the PMC and Participants' governing bodies before the second phase of the Licensing Period.

"Definitive" (*i.e.*, final and complete) Budget and Plan of Finance is approved by PMC as a part of its determination that Completion of Development has occurred.

Completion of Development would occur only if:

The NRC issues the COL,

UAMPS completes the negotiation of a final EPC contract for the construction of the Project, and

The PMC determines the CFPP to be feasible.

The contents of the Budget and Plan of Finance include:

The estimated total Development Costs to the Completion of Development,

The initial Budget and Plan of Finance and the updated Budget and Plan of Finance for the second phase of the Licensing Period, will include an estimate of and a cap on the Development Costs that can be incurred during each phase,

The estimated total Cost of Acquisition and Construction,

The estimated Commercial Operation Date,

A pro forma analysis of the expected costs of constructing, financing and operating the CFPP, including a target price for Project Output,

The proposed funding and financing arrangements for:

Development Costs during the Licensing Period, and

Cost of Acquisition and Construction during the Construction Period.

#### PARTICIPANT WITHDRAWAL/REDUCTION RIGHTS DURING THE LICENSING PERIOD

During the Licensing Period, Participants may withdraw from the Project or reduce their Entitlement Shares by action of their governing bodies:

If the PMC approves an amendment to the Budget and Plan of Finance that increases the maximum amount of Development Costs that may be incurred during either phase of the Licensing Period,

When the PMC approves the updated Budget and Plan of Finance for the second phase of the Licensing Period,

When the PMC approves the definitive Budget and Plan of Finance at the Completion of Development,

If withdrawals or Entitlement Share reductions by other Participants cause the Participant's share of Development Costs to increase, and

If the Participant's governing body determines to withdraw/reduce for any reason.

Participant withdrawal terms include:

Withdrawals are effective on the last day of then-current phase of the Licensing Period,

A withdrawing Participant has no liability for the repayment of its Entitlement Share of Development Costs incurred or financings undertaken after the effective date of its withdrawal, and

A withdrawing Participant remains liable for the repayment of its Entitlement Share of Development Costs incurred or financings undertaken before the effective date of its withdrawal:

Repayment must be made within 12 months after the effective date of a Participant's withdrawal

#### FINANCING FOR DEVELOPMENT COSTS DURING THE LICENSING PERIOD

Financing arrangements during the Licensing Period include:

Amounts available under cost-sharing agreements, grants, etc.,

Bank facilities, and

Bond anticipation notes.

PMC determines whether to finance all Development Costs or to bill Participants for some part of Development Costs.

Development Cost financings would be repaid with long-term Bonds issued by UAMPS after the Completion of Development has occurred.

If all development and construction costs are financed as presently expected, Participants would not be required to make payments for debt service until after the commercial operation date of the CFPP.

#### FINANCING FOR COST OF ACQUISITION AND CONSTRUCTION

After Completion of Development has occurred, a range of financing instruments are permitted under the PSCs to finance the Cost of Acquisition and Construction of the Project:

Bonds, both taxable and tax-exempt, with fixed or variable interest rates,

DOE-guaranteed loan:

Will not finance all of the Cost of Acquisition and Construction, and

The DOE-financed portion of the Project is required to be mortgaged to secure the guaranteed loan,

Commercial paper,

Bank facilities, and

Special Obligations payable from CFPP revenues other than payments made by the Participants under the PSCs.

Interest on all financings would be capitalized to the estimated commercial operation date of the Project.

The PMC determines the types, timing and amounts of all financings.

Bonds would be issued and loans would be secured under the Financing Documents.

#### LEGAL SUMMARY OF POWER SALES CONTRACTS

A detailed summary of the terms and provisions of the Power Sales Contracts has been provided to the Participants with this Executive Summary.

**Utah Associated Municipal Power Systems  
Carbon Free Power Project  
Amended Budget & Plan of Finance  
February 21, 2018**

This is an amended initial Budget and Plan of Finance pursuant to Section 601(c) of the Power Sales Contracts. The Project Management Committee has determined that to avoid exposing the Participants to a Net of Cost Share of \$67,343,086 in Licensing Period - 1st Phase to amend the 100% Cost to \$6,000,000 until additional subscription and/or funding become available. This amendment reduces the Net of Cost Share for Licensing Period - 1st Phase to \$1,500,000. The Project Management Committee is fully aware that this does not provide the funding to get to a completed Construction and Operating License Application. The intent of this amended initial Budget and Plan of Finance is to allow the Project to move into the Power Sales Contract phase while limiting the maximum out of pocket liability of any Participant to their Cost Share of \$1,500,000. This amendment equates to an option cost not to exceed \$10 per requested kilowatt with a floor of \$2.50 per requested kilowatt down from the Net of Cost Share of \$115 per requested kilowatt. This amendment is anticipated to fund the Project for one year at which time the Project Management Committee will either terminate the Project or amend the Budget and Plan of Finance to allow additional Development work to proceed. If the Project Management Committee elects to continue the Project, then, upon a second amended Budget and Plan of Finance being approved by the Project Management Committee, each Participant will be noticed of such increase in the Budget and Plan of Finance and will have the right to withdraw from the Project pursuant to Section 204(a)(ii).

This amended initial Budget and Plan of Finance pursuant to Section 601(c) of the Power Sales Contracts includes preliminary estimates of the information regarding the Carbon Free Power Project required by the Power Sales Contracts. This information is provided to assist prospective Participants in their evaluation of the Project in connection with their decisions to approve and execute the Power Sales Contracts. Except as indicated below, the cost estimates and time schedules set forth below are based on the information currently available to UAMPS, but are preliminary and subject to change. The estimates and schedules will be updated from time to time consistent with the provisions of the Power Sales Contracts.

**Section 601 (a)**

- (i) Development Costs incurred through 3/31/2017:

100% Cost	Net of Cost Share
\$3,069,943	\$839,369

Estimated Development Costs to the Completion of Development:

	<b>100% Cost</b>	<b>Net of Cost Share</b>
Interim Period (FY 2018)	\$ 1,527,026	\$ 872,360
Licensing Period – 1 <sup>st</sup> Phase (Max.)	\$6,000,000 <sup>1</sup>	\$1,500,000
Licensing Period – 1 <sup>st</sup> Phase (Max.)	83,499,764 <sup>2</sup>	65,843,086
Licensing Period – 2 <sup>nd</sup> Phase (Prelim.)	496,303,067	496,303,067
	<b>\$ 587,329,857</b>	<b>\$ 564,518,513</b>

(ii) Cost of Acquisition and Construction of the Initial Facilities (Preliminary Estimated Costs):

<b>Preliminary 100 % Cost</b>	<b>Preliminary Net of Cost Share</b>
\$4,237,666,633	\$4,212,624,715

(iii) CFPP Estimated Timeline for the Development & Construction of Initial Facilities:

	<b>Start</b>	<b>Finish</b>	<b># of Mos.</b>
Interim Period – FY 2018 (PSC Executed)	April 2017	March 2018	<b>12</b>
Licensing Period – 1 <sup>st</sup> Phase (COLA Submittal)	April 2018	May 2020	<b>26</b>
Licensing Period – 2 <sup>nd</sup> Phase (COLA Issued)	June 2020	June 2023	<b>37</b>
Construction Period (Commercial Operation Date)	July 2023	November 2026 <sup>3</sup>	<b>41</b>

(iv) Price Target (2017) Estimated range: \$45 to \$65 per MWh

(v) Proposed funding and financing arrangements – Licensing Period:

During the Licensing Period, no revenue will be generated from the Project and major assumptions related to construction, development, licensing, and Federal support will still be in flux. As a result, obtaining long-term funding from the general capital markets will most likely be cost prohibitive.

<sup>1</sup> This amount is the maximum amount of Development Costs that can be incurred during the first phase of the Licensing Period. Any increase in this amount requires an amendment to the Budget and Plan of Finance.

<sup>2</sup> This amount is remaining estimated amount required to finishing compiling Combined Construction and Operating License Application.

<sup>3</sup> The first module is anticipated to come online November 2026. All modules are anticipated to be online by September 2027, which will mark the Commercial Operation Date for the Project, as determined by the Project Management Committee.



Therefore, the first sources of capital for the Development Costs of the CFPP will be cash contributions such as monies provided through DOE and NuScale cost share agreements and the APPA DEED grant. Cost sharing will occur periodically as the annual capital program is implemented, and additional funding will need to be provided through bank borrowings in the form of a Bank Line of Credit. Throughout this phase, interest will be capitalized to minimize any need for cash outlays from Participants.

UAMPS will access the bank credit universe by soliciting proposals from a group of highly sophisticated banking institutions that understand the risk profile associated with extending short term loans to development-stage projects. The security for the bank loans will be the take-or-pay Power Sales Contracts between UAMPS and the Participants. UAMPS should be able to leverage its existing banking relationships and form new ones to create a syndicated bank line of credit (“LOC”) with favorable terms and sizing. The primary objective of the LOC will be to create low-cost interim financing for Development Costs that can be refinanced with long-term debt at the Completion of Development and the commencement of construction.

The financial products that are being considered during the Licensing Period of the Project would be as follows:

<b>Financial Products</b>	<b>Amount</b>	<b>Interest Rate</b>	<b>Term</b>
Bank Line of Credit	\$	TBD	Max Limit
Bond Anticipation Note		TBD	
DOE Cost share – COLA		N/A	N/A
DOE Cost Share – Additional		N/A	N/A
NuScale Cost Share – COLA		N/A	N/A
NuScale Cost Share – Additional		N/A	N/A
APPA Deed Grant	150,000	N/A	N/A
Capital Contributions – Participants		N/A	N/A
Other	\$		

This table will be updated from time to time during the Licensing Period.

**(vi) Proposed funding and financing arrangements – Construction Period:**

More certainty will be introduced for the Costs of Acquisition and Construction of the CFPP with the issuance of the COL, execution of a firm EPC Contract, and commencement of commercial operation of the nuclear power modules. While additional sources of capital will be available to UAMPS during this phase, fluctuating market conditions and construction risks will affect financing decisions.

During the Construction Period, the goal will be to minimize interest cost by utilizing different sources of funding at different times. At this point, the bank loans from the Licensing Period will likely be nearing maximum capacity and will need to be refinanced with long term debt. Once the LOC has been reimbursed with the proceeds of long term debt, the borrowing capacity under the LOC will be restored and will become accessible to UAMPS again as a stand-by source of funding.

As construction continues and the capital program increases, “cash” sources from cost sharing agreements and capital contributions from CFPP Participants will continue to be available, but UAMPS will need to access the general capital markets to complete funding. Market conditions will be assessed and ongoing capital needs will either first be funded through the revolving line of credit and then refinanced with long-term debt, or funded immediately with long-term debt. The objective will be to find a balance between reducing interest cost with short term rates from the line of credit, and locking in long term rates at attractive levels.

The primary source of long-term capital for the Costs of Acquisition and Construction of the CFPP will be fixed rate tax-exempt municipal bonds. However, depending on market conditions at the time of issuance, DOE Loan guarantees and variable rate debt will also be considered as part of an optimized portfolio of debt to reduce the overall interest cost of the CFPP.

The financial products that are being considered during this phase of the Project would be as follows:

<b>Financial Project</b>	<b>Amount</b>	<b>Interest Rate</b>	<b>Term</b>
Tax Exempt Municipal Bonds	\$	TBD	40 year
Variable Rate Demand Obligations		TBD	40 year
DOE Loan Guarantees		TBD	30 year
Bank Line of Credit		TBD	Max Limit
Bond Anticipation Note		TBD	LT Bond
Additional DOE Cost Share		N/A	N/A
Additional NuScale Cost Share		N/A	N/A
Capital Contributions		N/A	N/A
Other			

This table is anticipated to be completed at the time of Completion of Development and prior to the beginning of the Construction Period.

**(vii)** Other information as required by the Project Management Committee:

As the project moves forward, the preliminary numbers will be further refined and presented to the PMC for approval. The enclosed chart identifies the process for revising the Budget and Plan of Finance.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION AUTHORIZING AND APPROVING THE CARBON FREE POWER PROJECT POWER SALES CONTRACT WITH UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS; THE INITIAL BUDGET AND PLAN OF FINANCE FOR THE PROJECT; AND RELATED MATTERS.

\*\*\*\*\*        \*\*\*\*\*        \*\*\*\*\*

WHEREAS, the City of Bountiful, Utah (the "*Participant*") is a member of Utah Associated Municipal Power Systems ("*UAMPS*") pursuant to the provisions of the Utah Associated Municipal Power Systems Amended and Restated Agreement for Joint and Cooperative Action, as amended (the "*Joint Action Agreement*");

WHEREAS, one of the purposes of UAMPS under the Joint Action Agreement is the acquisition and construction of electric generating, transmission and related facilities in order to secure reliable, economic sources of electric power and energy for its members;

WHEREAS, UAMPS proposes to acquire and construct a nuclear generating facility plant known as the Carbon Free Power Project (the "*Project*") to be located at a site within the Idaho National Laboratory near the City of Idaho Falls, Idaho;

WHEREAS, the Governing Body has reviewed (or caused to be reviewed on its behalf) certain descriptions and summaries of the Project, the Power Sales Contract and the Project Agreements ("*Project Agreements*" and other capitalized terms used and not defined herein shall have the meanings assigned to them in the Power Sales Contract), and representatives of the Participant have participated in discussions and conferences with UAMPS and others regarding the Project and have received from UAMPS all requested information and materials necessary for the decision of the Governing Body to authorize and approve the Power Sales Contract;

WHEREAS, the Participant acknowledges that the obligation of the Participant to make the payments provided for in the Power Sales Contract will be a special obligation of the Participant and an operating expense of the Participant's electric system, payable from the revenues and other available funds of the electric system, and that the Participant shall be unconditionally obligated to make the payments required under the Power Sales Contract whether or not the Project or any portion thereof is acquired, constructed, completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output thereof for any reason whatsoever;

WHEREAS, the Governing Body has reviewed (or caused to be reviewed on its behalf) the initial Budget and Plan of Finance for the Project prepared by UAMPS setting forth, among other things, preliminary estimates of the Development Costs, Cost of Acquisition and Construction, the estimated timeline for the development and construction of the Project, the estimated target price range for Project output, and now desires to approve the initial Budget and Plan of Finance; and

WHEREAS, the Participant now desires to authorize and approve the Power Sales Contract;

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Bountiful, Utah, as follows:

*Section 1. Approval of Power Sales Contract and Budget and Plan of Finance; Entitlement Share.* (a) The Power Sales Contract, in substantially the form attached hereto as *Annex A*, is hereby authorized and approved, and the Mayor is hereby authorized, empowered and directed to execute and deliver the Power Sales Contract on behalf of the Participant, and the City Recorder is hereby authorized, empowered and directed to attest and countersign such execution and to affix the corporate seal of the Participant to the Power Sales Contract, with such changes to the Power Sales Contract from the form attached hereto as *Annex A* as shall be necessary to conform to the Participant's legal status, to complete the form of the Power Sales Contract or to correct any minor irregularities or ambiguities therein and as are approved by the Mayor, his execution thereof to constitute conclusive evidence of such approval.

(b) The initial Budget and Plan of Finance attached hereto as *Annex B* is hereby approved.

(c) An Entitlement Share representing up to 20,000 kW of capacity, as such capacity amount may be rounded upon the approval of the Project Management Committee and the Participant's Representative pursuant to the Power Sales Contract to provide a whole number of small modular reactors is hereby authorized and approved.

*Section 2. Participant's Representative.* (a) The appointment of Allen Johnson as the Participant's Representative to UAMPS and of \_\_\_\_\_ and \_\_\_\_\_ as alternate Representatives is hereby confirmed.

(b) Such Representative (or, in his or her absence, such alternate(s)) is hereby delegated full authority to (i) approve any appendix to the Pooling Agreement between UAMPS and the Participant that may be necessary or desirable in connection with the utilization of the Participant's Entitlement Share, and (ii) act on all matters that may come before the Project Management Committee established by the Power Sales Contract, and shall be responsible for reporting regularly to the Governing Body regarding the activities of the Project Management Committee; *provided that* the Representative shall not deliver a Notice of Withdrawal or a Notice of Reduction under the Power Sales Contract without prior consultation with, and prior approval from, the Governing Body.

*Section 3. Compliance with Tax Covenants.* The Participant agrees in the Power Sales Contract that it will apply all of the electric power and energy acquired under the Power Sales Contract to a Qualified Use and that it will not take or omit to take any action which could adversely affect the Tax Status of any Bond or Bonds theretofore issued or thereafter issuable by UAMPS. In furtherance of that agreement, the Governing Body of the Participant hereby agrees that it will observe and comply with such instructions as may be provided from time to time by UAMPS with respect to the Qualified Use of the electric power and energy acquired under the Power Sales Contract.

*Section 4. Further Authority.* (a) The Mayor and the City Recorder are hereby authorized, empowered and directed to (i) execute the Certificate of the Participant in substantially the form attached as *Exhibit III* to the Power Sales Contract and to deliver the same to UAMPS, and (ii) from time thereafter and upon the request of UAMPS, execute the Bring-Down Certificate of the Participant in substantially the form attached as *Exhibit IV* to the Power Sales Contract and to deliver the same to UAMPS.

(b) The Participant's legal counsel is hereby authorized, empowered and directed to (i) execute the Opinion of Counsel to the Participant in substantially the form attached as *Exhibit V* to the Power Sales Contract and to deliver the same to UAMPS, and (ii) from time thereafter and upon the request of UAMPS, execute the Bring-Down Opinion of Counsel to the Participant in substantially the form attached as *Exhibit VI* to the Power Sales Contract and to deliver the same to UAMPS.

*Section 5. Miscellaneous; Effective Date.* (a) This resolution shall be and remain irrevocable until the expiration or termination of the Power Sales Contract in accordance with its terms.

(b) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(c) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(d) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF BOUNTIFUL, UTAH

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

[SEAL]

**ANNEX A**

[Attach Power Sales Contract]

**ANNEX B**

[Attach Budget and Plan of Finance]