

**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
DECEMBER 2, 2014**

TITLE:	AGREEMENT – Consideration of a Dispatch Building Agreement between Eagle Mountain City and the Utah County Dispatch Special Service District.		
FISCAL IMPACT:			
APPLICANT:	Eagle Mountain City		
GENERAL PLAN DESIGNATION N/A	CURRENT ZONE N/A	ACREAGE N/A	COMMUNITY

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Public Notice Webpage

REQUIRED FINDINGS:

**Public Works Board
Recommendation**

Vote: N/A

Prepared By:
Ifo Pili
City Administrator

NOTES/COMMENTS:

RECOMMENDATION:

Staff recommends that the City Council approves the Dispatch Building agreement with the Utah County Dispatch Special Service District.

BACKGROUND:

The proposed agreement is for the construction of a new dispatch building to provide adequate dispatch services. The volume of calls has increased and it is necessary to build a new building to house dispatching equipment and personnel. Each government entity, that is a member of the District, will share in the construction costs. The building will be located in Spanish Fork.

DISPATCH BUILDING AGREEMENT

This Dispatch Building Agreement is made and entered into as of the ____ day of _____, 2014, by and between Utah County Dispatch Special Service District, a political subdivision organized and existing under the laws of the State of Utah (Districts) and Eagle Mountain City, a political subdivision of the State of Utah (the Participant).

RECITALS:

WHEREAS, District was organized under the Special Service District Act, Title 17D Chapter 1, Utah Code Annotated 1953, as amended, as a separate legal entity to provide dispatch services to public safety entities located in Utah County; and

WHEREAS, in order to provide adequate dispatch services, given the current volume of calls, District is now undertaking the acquisition and construction of a new building to house dispatching equipment and personnel located in Spanish Fork City, Utah (the Project); and

WHEREAS, the Members have previously financed, or are willing to finance, their respective shares of the Cost of Construction of the Project; and

WHEREAS, in order to enable District to have the funds to proceed with the project, it is necessary that each Member enter a Dispatch Building Agreement which constitutes the legal, valid, and binding obligation of each respective Member; and

WHEREAS, District and the Members are duly authorized under applicable provisions of law to execute, deliver, and perform this Agreement and their respective governing bodies having jurisdiction have taken all necessary actions and given all necessary approvals in order to constitute this Agreement a legal, valid, and binding obligation of the parties hereto; and

WHEREAS, the Board has determined that District would spend \$1,800,000.00 of reserved funds toward the completion of the Project;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained,

it is agreed by and between the parties hereto as follows:

Section 1. Definitions of Terms.

As used herein, the following terms shall have these meanings:

Annual Budget means the fiscal year budget adopted by District.

Authorized Officer of District means the Chairman, Vice-Chairman, Secretary, or Treasurer of the Board, or the Executive Director of District when authorized to perform specific acts or duties under the Agreements by resolution duly adopted by the Board.

Board means the Board of Trustees of District.

By-Laws means the duly adopted by-laws of District.

Capital Payment means any payment or payments made to District by a Member pursuant to Section 4 of this Agreement and designated as a Capital Payment for the Project.

Capital Payment Percentage means the percentage obtained by dividing (1) the sum of all Capital Payments made by or credited to the Member, by (2) the sum of all Estimated Project Costs as determined and allocated to such computation by District, all as more fully provided in Section 4 hereof. The Member's initial Capital Payment Percentage shall be calculated by District and set forth on Exhibit A attached hereto and incorporated herein by this reference.

Cost of Construction means all costs and expenses heretofore or hereafter paid or incurred by District in connection with the acquisition, construction, and installation of the Project and placing the same in service, including all expenses preliminary and incidental thereto, and the cost of planning, designing, acquiring, constructing, and placing in operation any facilities related to the Project, including land costs, less the amount of reserved funds being used by District to pay toward the cost of the Project. Cost of Construction shall further include, but shall not be limited to, the following:

- (1) working capital and reserve requirements of the Project, including reserves for those items set forth in the definition of Operation and Maintenance Costs, as may be

determined from time to time by District;

- (2) planning and development costs, engineering fees, contractors fees, fiduciaries fees, auditors and accountants fees, costs of obtaining governmental and regulatory permits, rulings, licenses and approvals, the cost of real property, labor, materials, equipment, supplies, training and testing costs, insurance premiums, legal, and financial advisory costs, administrative and general costs, and all other costs properly allocable to the initial acquisition of the Project and placing the same in operation;
- (3) all costs relating to litigation, claims, or judgments not otherwise covered by insurance and arising out of the acquisition, construction, or operation of the Project;
- (4) payment to District or any Member to reimburse advances or payments made or incurred for costs preliminary or incidental to the acquisition and construction of the Project;
- (5) legally required or permitted federal, state, and local taxes relating to the Project incurred during the period of the acquisition or construction thereof; and
- (6) all other costs incurred by District and properly allocable to the acquisition of the Project.

Date of Commercial Operation means the date on which the Project is capable of operating reliably and continuously.

Fiscal Year means a period commencing on July 1 of each calendar year and ending on June 30 of the next succeeding calendar year.

Facilities means the Dispatch Building and all facilities, structures, improvements and all real and personal property acquired or constructed by District as part of the Project.

Members means each government entity which is a member of District, as identified on Exhibit "A".

Member Representative means the individual appointed to the Board by the Member.

Project means the acquisition of an interest in real estate and construction, including equipping,

of a new building to house dispatching equipment and personnel.

Schedule of Members means the schedule of Members and their respective Capital Payment Percentages, attached hereto as Exhibit A, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

Section 2. Term of Contract

This Building Agreement shall become effective upon the execution of Building Agreements by District and by all Members listed in Exhibit A hereto, and shall, continue until the date on which the Project has been fully completed and paid for.

Section 3. Acquisition and Construction of Project

- (a) District shall use its best efforts to construct the Project to meet its needs and to keep the costs within budget.
- (b) The contracts are required to be executed by December 31, 2014 in order to timely acquire an interest in real property and complete construction of the Project. Failure of any Member to timely execute the contract shall cause the Board to review and exercise sanctions as authorized by the District by-laws and resolutions creating the District.

Section 4. Capital payments; Calculation of Capital Payment Percentage.

- (a) Participant may elect to make one or two Capital Payments.
 - (i) If Participant elects to make one Capital Payment, the estimated payment shall be due to District by June 30, 2015.
 - (ii) If participant elects to make two Capital Payments, the first payment, representing one-half of the estimated Capital Cost shall be due on or before June 30, 2015, and the balance, including any true up cost, if known, shall be due by December 31, 2015.

The governing body of Participant shall determine whether to make one or two Capital Payments.

Participant shall give notice to District of the determination of its decision to make one or two Capital

Payments by December 31, 2014. In the event that Participant does not notify District of the determination of its governing body by December 15, 2014, Participant shall be deemed to have elected to make two Capital Payments.

(b) Upon substantial completion of the construction of the Project, District will give notice to each of the Members of the anticipated Date of Commercial Operation of the Project. District shall prepare and submit to the Members a final accounting of the Cost of Construction and Capital Payments. To the extent that such final accounting statement discloses that additional amounts are owed by some or all of the Members, then District shall seek Board approval to pay the balance from the District's fund balance, if funds are available, and if not to submit a billing statement to such Members. Participant shall pay an amount equal to its share of the final Cost of Construction of the Project.

(c) In connection with each Capital Payment that may be made by Participant pursuant to this Section, Participant acknowledges and agrees with District that:

- (1) the sum of the Capital Payment Percentages of all Members shall equal 100%
- (2) District shall have absolute and exclusive authority to establish escrow arrangements governing the deposit and disbursement of each Capital Payment and to determine and calculate from time to time the Estimated Project Costs and the Member=s Capital Payment Percentage, and all such determinations and calculations by District shall be conclusive and binding upon Participant.

(d) Estimated Project Costs shall be determined by District in its sole discretion based upon the items of the Cost of Construction. The amount of Estimated Project Costs shall be determined from time to time so as to provide for a proportional allocation of the Cost of Construction.

(e) Participant acknowledges and agrees that the estimated amount of the Capital Payment to be made by Participant will be subject to adjustment to reflect the actual cost of the various items included in Estimated Project Costs.

(f) Participant acknowledges that once payment is made, it is non-refundable, even in the event Participant leaves the District.

Section 5. Construction Management.

Construction of the Project shall be managed by District with the advice of the Operations Board. It is the intention of the Members and District that they will exercise a high degree of cooperation in the construction of the Project.

DATED this ___ day of _____, 2014

UTAH VALLEY DISPATCH SPECIAL
SERVICE DISTRICT by:

David A. Oyler, Chair

Attest:

Deborah Mecham, Executive Director

EAGLE MOUNTAIN CITY by:

Chris Pengra, Mayor

Attest:

Fionnuala Kofoed, City Recorder

EXHIBIT A
SCHEDULE OF PARTICIPANTS 2015 FEE SHARE
PERCENTAGE AND ESTIMATED CAPITAL PAYMENT

MEMBERS	CAPITAL PAYMENT PERCENTAGE	ESTIMATED AMOUNT OF CAPITAL COST
Alpine City	2.72%	\$95,074
American Fork City	15.01%	\$525,455
City of Cedar Hills	1.78%	\$62,279
Cedar Fort	0.20%	\$7,151
Eagle Mountain	5.75%	\$201,118
Elk Ridge City	0.46%	\$16,203
Fairfield Town	0.10%	\$3,472
Genola City	0.30%	\$10,541
Goshen City	0.27%	\$9,546
Highland City	5.61%	\$196,397
Lehi City	17.39%	\$608,772
Payson City	8.11%	\$283,939
Salem City	2.34%	\$81,759
Santaquin City	3.49%	\$122,157
Saratoga Springs City	7.05%	\$246,874
Spanish Fork City	12.12%	\$424,340
Utah County	16.82%	\$588,830
Vineyard	0.24%	\$8,294
Woodland Hills	0.22%	\$7,798
Member Totals	99.98%	\$3,499,999