

**HEBER CITY CORPORATION**  
**75 North Main Street**  
**Heber City, Utah**  
**City Council Meeting**

**AMENDED**

**October 17, 2013**  
**7:00 p.m.**  
**Regular Meeting**

**TIME AND ORDER OF ITEMS ARE APPROXIMATE AND MAY BE CHANGED AS TIME PERMITS**

**Pledge of Allegiance:** Council Member Erik Rowland  
**Prayer/Thought:** Council Member Robert Patterson  
**Minutes for Approval:** October 3, 2013 Work and Regular Meetings

**OPEN PERIOD FOR PUBLIC COMMENT**

**APPOINTMENTS**

- (Tab 1)** Mayor's Recognition of Officer Xela Thomas for Outstanding Service
- (Tab 2)** John Zimmerman, Request to Have Heber City Pay His Water and Sewer Impact Fees for His Home Located at 1070 South Mill Road

**ACTION ITEMS**

- (Tab 3)** Resolution 2013-15, Consideration for Adoption of a Resolution Authorizing the Issuance and Sale of its Water Revenue Bonds, Series 2013 in the Aggregate Principal Amount of \$900,000 and Related Matters

**DISCUSSION/ACTION ITEMS**

Guy Haskell, Request for New Subdivision Plat Approval for Phase I (16 Lots) and Phase II (11 Lots) of the Swift Creek Subdivision and Associated Subdivision Agreement

**CLOSED SESSION AS NECESSARY – PURPOSE TO BE ANNOUNCED IN MOTION**

Ordinance 2006-05 allows Heber City Council Members to participate in meetings via telecommunications media.

In accordance with the Americans with Disabilities Act, those needing special accommodations during this meeting or who are non-English speaking should contact Michelle Kellogg at the Heber City Offices (435) 654-0757 at least eight hours prior to the meeting.

Posted on October 10, 2013, in the Heber City Municipal Building located at 75 North Main, Wasatch County Building, Wasatch County Community Development Building, Wasatch County Library, on the Heber City Website at [www.ci.heber.ut.us](http://www.ci.heber.ut.us), and on the Utah Public Notice Website at <http://pmn.utah.gov>. Notice provided to the Wasatch Wave on October 10, 2013.

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Chapter 3.14

Purchasing System

3.14.010	<u>System Adopted</u>
3.14.020	<u>Definitions</u>
3.14.030	<u>Administration</u>
3.14.040	<u>Bid Process</u>
3.14.050	<u>Choice of Bid Process</u>
3.14.060	<u>Awarding of Bids and RFP's</u>
3.14.070	<u>Exceptions to Bidding Requirements</u>
3.14.080	<u>Interlocal Agreements in Letting of Contracts for Commodities or Services</u>
3.14.090	<u>Disposal or Lease of Public Property</u>
3.14.100	<u>Penalties</u>

**3.14.010**      System Adopted

Pursuant to Utah Code Annotated §10-6-122, §10-7-20, §10-8-1, §10-8-2, and other pertinent provisions of the laws of the state of Utah, there is adopted and established a purchasing system for Heber City Corporation which shall be based on the following principles.

**3.14.020**      Definitions

Unless the context requires otherwise, the terms as used in this chapter, shall have the following meanings:

“**Adequate Appropriation Balance**” means sufficient fund balance which must exist in the line item appropriation in the approved budget against which the purchase order is to be charged.

“**Bidding**” means the procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipment and contractual services.

“**Bid Process**” means the process used by the City to solicit and award bids or contracts. Examples of bid processes used in this chapter include formal competitive bidding, competitive sealed proposals in lieu of bids and open market procedure.

“**Capital Improvements Projects**” means any construction which adds to or improves infrastructure or buildings of the City.

“**Construction**” means the process of building, renovating or demolishing any public structure or building, major developmental work, or landscaping of public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

“**Line Item Change Order**” means changes to the quantities of existing line items with unit pricing approved according to the purchasing system.

“**Local Bidder**” means a firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by, or pays business taxes in Wasatch County.

“**Professional Services**” means, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services.

“**Public Property**” Any item of real or personal property owned by the City.

“**Responsible Bid**” means an offer, submitted by a responsible bidder to furnish supplies, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other

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requirements included in the invitation for bids.

**“Lowest Responsible Bidder”** means a person or firm who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance. The lowest responsible bidder is a bidder who has submitted the lowest bid to furnish supplies or contractual services to the City, and who meets the standards set forth in this definition. The lowest responsible bidder's bid shall comply with the specifications, delivery terms and conditions, and other qualifications and requirements included in the invitation for bids, and shall be accompanied by any bonds required by the City or other applicable law. In determining the lowest responsible bidder, the City shall give primary emphasis to bid price, but may also consider the following items in addition to the actual bid price:

1. The ability, capacity, experience and skill of the bidder to perform the service required.
2. Whether the bidder can perform the contract or provide his or her services within the time specified.
3. The quality and performance of previous services by the bidder, either to the City or another entity.
4. Quality, availability and adaptability of the supplies or contractual services to the particular use required.
5. The ability of the bidder to provide future maintenance and service.
6. The number and scope of conditions attached to the bid or price quotation.
7. The maintenance history of the product, the parts and service costs of the product, existing inventory, mechanic's expertise, and ease of maintenance.
8. Whether the bidder maintains a licensed business location in Wasatch County.

All bidders shall furnish information and data requested by the City that will assist the City in determining whether or not a particular bidder is the "lowest responsible bidder".

**“Supplies, Materials and Equipment”** means any tangible and all articles of personal property or things which shall be furnished to or used by any City department or by any City employee in the performance of his or her duties. For purposes of brevity, supplies, materials and equipment shall hereafter be collectively referred to as "supplies".

**3.14.030 Administration**

The City Manager or his/her designee shall function as the chief procurement officer for the City. He/she shall administer the purchasing system provided by this chapter, shall perform the duties and have the powers concerning purchasing as follows:

- A. Administer and maintain the purchasing system;
- B. Recommend to the City such new or revised purchasing requirements as are deemed desirable and in conformance with other statutory requirements;
- C. Negotiate and recommend execution of contracts for the purchase of supplies, equipment and contractual services;
- D. Seek to obtain as full and open competition as possible on all purchases;
- E. Keep informed of current developments in the field of purchasing, i.e., prices, market conditions, new products, etc.;
- F. Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- G. Supervise the inspection of all supplies and equipment to assure conformance with specifications;
- H. Transfer surplus or unused supplies and equipment between departments as needed;
- I. Maintain a bidders' list, vendors' catalog file, and other records needed for the efficient

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operation of the purchasing system.

**3.14.040 Bid Process**

The City shall substantially comply with the following guidelines for the specific bid process used:

**A. Formal Competitive Bidding**

**1. Notice Inviting Bids Issued**

a. Notice includes a general description of the articles to be purchased or the work to be performed, the location where bid plans and specifications may be secured, and the time and place for opening bids.

b. The notice inviting bids shall be:

i. In cases involving building improvements or public works projects over the bid limit as defined in Utah Code Ann. § 11-39-101:

- Published in a newspaper of general circulation within the City at least five (5) days before the date of the opening of the bids and, at the discretion of the City, may be;
- Delivered to known responsible prospective bidders, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list.
- Post on an electronic bid page which is accessible to large numbers of potential bidders.

ii. In cases involving building improvements or public works projects less than the bid limit, or the purchase of any supplies, materials and equipment:

- City Performs the work itself, purchases off the State Bid, obtains a bid lower than the State Bid, or, at the discretion of the City, bid requests may be;
- Delivered to known responsible prospective bidders and/or suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list.
- Posted on an electronic bid page which is accessible to large numbers of potential bidders.

**2. State Bid List**

If there is a quotation for the item desired to be purchased on the State bid list, the City may invite prospective bidders to bid against the price quoted in the State bid list.

**3. Bid Procedure**

a. Sealed bids shall be submitted as designated in the notice.  
b. Bids shall be opened in public at the time and place stated in the notice.  
c. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

d. Bids submitted to the City shall be evaluated on the basis of compliance with specifications and other relevant criteria.

**4. Bid Award**

Bids shall be awarded or rejected as set forth in Section 3.14.060.

**B. Competitive Sealed Proposals in Lieu of Bids (RFP)** This bid process may only be used when the City Manager or designee determines that the use of formal competitive bidding is either impractical or not advantageous to the City, or for professional service contracts.

1. **Notice** shall be given by one or more of the following:

a. Solicitation through a request for proposals. Request are to be delivered to known responsible prospective bidders or suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list, and/or

b. Public notice of the request for proposals may be given by publication once in a newspaper, magazine or journal likely to give notice to qualified bidders or suppliers five (5) days prior

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to the date of bid opening.

c. Posting on an electronic bid page which is accessible to large numbers of potential bidders.

2. **Request for Proposals** The request for proposals shall state the general and pertinent information regarding the articles to be purchased or work to be performed and any evaluation factors.

3. **Opening of Proposals**

a. Proposals shall be opened so as to avoid disclosure of contents to competing bidders during the process of negotiation.

b. A register of proposals shall be maintained by the City for thirty (30) days after the contract award and shall be open for public inspection.

4. **Revision of Proposals**

a. As provided in the request for proposals, discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of the discussion is to assure full understanding of and responsiveness to the solicitation requirements.

b. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Any revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

c. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.

5. **Award of Proposal** Award shall be made to the responsible bidder whose proposal is determined to be the most advantageous to the City, taking into consideration price, the evaluation factors set forth in the request for proposals, and other criteria set forth herein. The City may further negotiate terms in order to comply with budgets, specific services/products sought, and other matters beneficial to the City. The award shall be in accordance with section 3.14.060.

**C. Open Market Procedure**

1. Supplies may be purchased through supplier accounts the City has opened with various vendors. Employees are encouraged to use sales events for those common supplies sold through various public vendors.

2. Purchases shall, whenever possible, be based on at least three (3) bids (price quotations) and shall be awarded to the lowest responsible bidder.

3. Bids (price quotations) shall be solicited from prospective vendors by written or oral request.

4. The City Manager or his/her designee may approve purchases on the open market.

**3.14.050 Choice of Bid Process**

Except as otherwise provided in this Chapter or by provisions of State or Federal law, purchases of supplies, services, or equipment shall follow one of the bid or RFP processes outlined below for the appropriate dollar amount. In cases where more than one alternative is listed as acceptable for a given dollar amount, any of the listed alternatives shall be acceptable. The City shall not incur any liability for choosing one alternative over another. The choices of bid process are as follows:

A. Purchases of supplies or services having an estimated value in excess of (\$50,000.00) shall be pursuant to one of the following procedures:

1. State bid.

2. Formal competitive bidding, without the requirement of publishing notice.

3. Competitive sealed proposals in lieu of bids.

B. Purchases of supplies or services having an estimated value of greater than five

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thousand dollars (\$5,000.00) but less than or equal to (\$50,000.00) shall be pursuant to one of the following procedures:

1. State bid.
2. Formal competitive bidding, without the requirement of publishing notice.
3. Competitive sealed proposals in lieu of bids.
4. Open market procedure.

C. Whenever the supplies or services have an estimated value of \$5,000.00 or less, all bid processes and price solicitation procedures may be dispensed with.

**3.14.060 Awarding of Bids and RFPs**

A. **Bids/Purchases in Relation to Budget** Except as otherwise required by law, building improvement or public works projects and supplies, services, and equipment, no more than the lesser of \$10,000.00 or 10% of the appropriation balance, and within the scope of the project, as budgeted by the City Council, may be accepted and awarded by the City Manager or designee. Bids which exceed the budgeted amounts by more than the lesser of \$10,000.00 or 10% of the appropriation balance must be approved and awarded by the City Council.

B. **Professional Services** Contracts for professional services in an estimated amount no more than the lesser of \$10,000.00 or 10% of the appropriation balance, and within the scope of or related to the project, as budgeted by the City Council, may be accepted and awarded by the City Manager or designee. Proposals which exceed the budgeted amounts by more than the lesser of \$10,000.00 or 10% of the appropriation balance must be approved and awarded by the City Council.

C. **Rejection of Bids** The City Council or the City Manager or his/her designee, or others authorized to accept and award bids may reject any and all bids presented, and may resolicit for bids as set forth in this Chapter. The City may proceed to do any work itself after rejecting all bids, by following the procedures set forth in Utah Code Ann. §11-39-103.

D. **Lowest Responsible Bidder** Except as otherwise allowed or required, the City shall award the contract or bid to the lowest responsible bidder.

E. **Negotiation of Bids** Where a bid exceeds available funds and time or economic considerations preclude resolicitation of work or purchase of a reduced scope or quantity, the City Manager or designee may negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible bidder, in order to bring the low bid within the amount of available funds.

F. **Tie Bids** If two (2) or more of the bids received are for the same total amount or list price, quality and service being equal, the City Manager or designee may negotiate with the bidders and obtain the best bid possible and/or give a preference to a local bidder.

G. **Local Bid Preference** For purchases under \$25,000 in total, local bidders will be allowed to match the low bid submitted by non-local providers as follows:

1. When a quotation or bid for supplies, equipment, services, or materials from a non-local provider (from outside Wasatch County) submitted in response to a quote invitation or bid request is the low bid price, AND there is a local bidder whose bid or quote is within ten (10%) percent of the lowest bid of the non-local bidder(s), the purchase shall be awarded to the local bidder provided he/she agrees to meet the low quote or bid of the lowest non-local bidder within 48 hours after notification.

2. In the event that more than one local bidder (within the boundaries of Wasatch County) shall notify Heber City of his/her willingness to meet the low quote or bid of the lowest non-local bidder, the purchase shall be awarded to the willing local bidder who was the lowest local bidder originally. If there are two or more equally low local bidders, then the local bidder to which the purchase is awarded shall be the local bidder whose original bid was first received by the City.

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H. **Single Bids** The City Manager or his/her designee may require a price or cost analysis if only one bid is received. The bidder may be required to furnish a detailed cost proposal, and the bid award shall be subject to subsequent negotiation.

I. **Bonds** Before entering a contract, the City shall have authority to require performance, payment, or other bonds in such amounts as deemed necessary to protect the interests of the City. The types and amounts of the bonds to be required shall be described in the notice inviting bids.

J. **Change orders** Change orders which increase the contract price in an amount of the lesser of \$10,000.00 or 10% of the contract amount may be approved by the City Manager or designee, as long as the overall project budget is not exceeded by more than the lesser of \$10,000.00 or 10% of the contract price, and provided further that the sum of all change orders does not increase the contract price by more than the lesser of \$10,000.00 or 10% of the contract amount. Line item change orders may be approved by the City Manager or designee as long as the overall project budget is not exceeded by more than the lesser of \$10,000.00 or 10% of the contract price.

**3.14.070 Exceptions to Bidding Requirements**

Unless otherwise required by State or Federal law, the bid process requirements set forth in section 3.14.050 do not apply in the following situations.

A. **Professional service contracts**

1. Professional services shall include, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services. Professional service contracts shall be awarded based on professional qualifications, service ability, cost of service, and other criteria deemed important by the City.

2. A professional services contract for the annual fiscal year financial audit shall only be awarded by the City Council. This contract may be awarded for multiple years. The performance of the auditing firm may be reviewed periodically to determine whether to continue the contract or put it back out to bid.

B. **Contracts Not Suited to Competitive Bidding** Contracts, which by their nature are not suited to award by competitive bidding, shall not be subject to the competitive bidding requirements of Section 3.14.040. These contracts include, but are not necessarily limited to:

1. Contracts for items which may only be purchased from a single or sole source.
2. Contracts for additions to and repairs and maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a particular person or firm.
3. Contracts for equipment which, by reason of the training of City personnel or the inventory of replacement parts maintained by the City, is more compatible with the existing equipment owned by the City.

C. **Auction, Closeout, Bankruptcy Sales** If the City Manager or designee determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, and if the City Manager or his/her designee finds that a purchase at any such auction or sale will be made at a cost below the market cost in the county, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this Chapter.

D. **Exchanges** Exchanges of supplies, material or equipment between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies.

E. **Projects Performed by City Employees** City employees may be used to complete City projects, provided that the City complies with State statutory requirements governing contracts for building improvements and public works projects.

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F. **State Bid List** The City may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office at the quoted price, without any solicitation or price quotation or invitation to bid. For such purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

G. **Utah Correctional Industries Division** Goods and services produced by the Utah Correctional Industries Division may be purchased from the Utah Correctional Industries Division without following any of the bidding requirements set forth herein.

H. **Emergency Purchases** Notwithstanding any other section of this Chapter, competitive bidding may be suspended in the event of an emergency when supplies, services, and/or contracts are needed immediately in order to respond to the emergency. A state of emergency must have been declared by the Mayor, City Manager, Public Safety Director, or Public Works Director, or their next in command if they are not available. In order to suspend competitive bidding, the emergency must require immediate action and/or response in order to protect the life, health, or safety of persons or property, or, in the event of an improvement bond forfeiture, the need to complete the bonded improvements in a certain time frame, given all factors, including weather considerations.

**3.14.080 Interlocal Agreements in Letting of Contracts for Commodities or Services**

The City shall have the power to enter into joint purchase agreements with any or all other public agencies within the state for the purchase of any commodity or service, whenever it is determined by the City Council to be in the best interest of the City.

**3.14.090 Disposal or Lease of Public Property**

A. No public property having an estimated value in excess of one hundred dollars (\$100.00) shall be disposed of or released to anyone other than the City, unless such property has been declared surplus by the City Manager or designee.

B. Whenever public property is surplus, unused, obsolete, unsuitable or otherwise no longer needed, the department head having control of such property shall notify the City Manager or designee. The City Manager or designee may notify other City departments of the availability of such property. The City Manager or designee shall supervise any transfer of such property to any other department. If no use can be made or can be expected to be made within the reasonably foreseeable future, the property shall be disposed of in accordance with this section.

C. The City Manager or designee shall prepare a listing of all City-owned property which s/he feels is no longer needed by the City and which can be declared surplus. After an item has been declared surplus, the property may be disposed of or leased. If an item has an estimated salvage value over five thousand dollars (\$5,000), the City Council shall approve its disposal. All disposals, leases and/or subleases of public property shall be made, in accordance with law, under the direction of the City Manager or designee.

D. Except as otherwise required by State law, boundary line agreements and deeds conveying unneeded portions of rights-of-way or easements may be executed without declaring the property surplus.

E. Before disposing of a significant parcel of real property, the City shall comply with the provisions of Utah Code Ann. 10-8-2(4). For purposes of this section, a significant parcel of real property is defined to be any parcel one acre or greater, or any parcel with a structure or structures upon it where the value of such improved real property is greater than \$500,000.00. Reasonable notice shall constitute posting the property thirty (30) days prior and publishing notice in a newspaper of local circulation fourteen (14) days prior to a public hearing concerning the disposition.

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**3.14.100 Penalties**

A. It is unlawful:

1. For any bidder or prospective bidder, or any employee or officer thereof, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to "rotate" bidding practices among competitors.

2. For any person to offer or to give to any elected official, officer or employee of the City or any member of his immediate family, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it could reasonably be intended to influence him/her or could reasonably be expected to influence him/her in his/her duties concerning the award of any contract or order of purchase, or for any elected official, officer or employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose.

3. For any elected official, officer or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure.

4. For any elected official, officer or employee to actively participate in the awarding of a contract from which s/he will directly benefit, without fully disclosing any interest s/he has therein.

5. For any elected official, officer or employee or other person to appropriate for personal or private use any item of public property.

6. To purchase supplies or equipment for the personal use of any elected official, officer or employee unless the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such official, officer or employee. Other personal purchases shall not be permitted and will be cause for disciplinary action.

B. The following contracts are, in the discretion of the City Manager, voidable:

1. Contracts which result from a conflict of interest under this Chapter or other applicable law.

2. Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any elected official, officer or employee.

C. A violation of this section by a City employee shall be cause for disciplinary action. A violation of this section by an elected official shall be malfeasance in office.

# Purchasing Policy

## ARTICLE 1 GENERAL PROVISIONS

- A. The underlying purposes of this policy are:
1. To ensure fair and equitable treatment of all persons who wish to, or do conduct business with Heber City.
  2. To provide for the greatest possible economy in City procurement activities.
  3. To foster effective broad-based competition within the free enterprise system to ensure that the City will receive the best possible service or product at the lowest possible price.
- B. Compliance – Exemptions from this policy.
1. This policy shall not prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with the law.
  2. When procurement involves the expenditure of federal assistance funds, the City shall comply with applicable federal law and regulations.
- C. Definitions.
1. “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
  2. “Change order” means a written order signed by the purchasing agent, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the purchasing agent to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
  3. “Contract” means any City agreement for the procurement or disposal of supplies, services, or construction.
  4. “Invitation for bids” means all documents, whether attached or incorporated by reference, used for soliciting bids.
  5. “Person” means any business, individual, union, committee, club, other organization, or group of individuals.

6. "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.
7. "Purchasing agent" means the person duly authorized by the governing body of the City to enter into and administer contracts and make written determinations with respect thereto.
8. "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.
9. "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

## ARTICLE 2 OFFICE OF THE PURCHASING AGENT

The governing body of the City shall appoint a Purchasing Agent. The Purchasing Agent shall be responsible to make procurements, solicit bids and proposals, enter into and administer contracts, and make written determinations for the City.

## ARTICLE 3 SOURCE SELECTION AND CONTRACT FORMATION – GENERAL PROVISIONS

- A. Purchases not requiring sealed bids.
  1. Purchases costing less than \$500 in total shall not require bids of any type. (Purchases shall not be artificially divided so as to constitute a small purchase under this section.)
  2. Purchases costing more than \$500 but less than \$5,000 in total shall require 2 to 3 telephone bids.
  3. Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing.
  4. Purchases made from a single-source provider.
  5. Purchases required during an emergency, i.e., an eminent threat to the public's health, welfare, or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to the resolution of the emergency.

B. Purchases requiring sealed bids.

1. Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this policy.
2. An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase description and all contractual terms and conditions applicable to the procurement. Public notice of the invitation for bids shall be given at least 14 days prior to the date set forth therein for the opening of bids. The notice may include publication in a newspaper of general circulation.
3. Any procurement in excess of \$25,000 shall require a legal notice in a local newspaper of general circulation.
4. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
5. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy.
6. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the purchasing agent.
7. The contract shall be awarded with reasonable promptness, by written notice, to the lowest bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

C. Cancellation and rejection of bids.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the City. The reasons shall be made part of the contract file.

D. Use of competitive sealed proposals in lieu of bids.

When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals are most appropriately used for professional service-type contracts.

1. Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least 14 days prior to the advertised date of the opening of the proposals.
2. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award.
3. The request for proposals shall state the relative importance of price and other evaluation factors.
4. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
5. Award shall be made to the person whose proposal is determined, in writing, to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

E. Architect-Engineer services are qualification-based procurements. Requests for such services should be publicly announced. Contracts should be negotiated by the City based on demonstrated competence at fair and reasonable prices. See section 63-56-42 through 44 of the Utah Code.

F. Determination of non-responsibility of bidder.

Determination of non-responsibility of a bidder or offeror shall be made in writing. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the purchasing division without prior written consent by the bidder or offeror.

G. Cost-plus-a-percentage-of-cost contracts prohibited.

Subject to the limitations of this section, any type of contract which will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

H. Required contract clauses.

1. The unilateral right of the City to order, in writing, changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work.
2. Variations occurring between estimated quantities of work in a contract and actual quantities.
3. Suspension of work ordered by the City.

#### ARTICLE 4 SPECIFICATIONS

All specifications shall seek to promote overall economy and best use for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. Where practical and reasonable, and within the scope of this article, Utah products shall be given preference.

#### ARTICLE 5 CHANGE ORDERS

- A. Change Orders requested under existing contracts, which are less than \$10,000.00, shall be awarded by the purchasing agent of the City, and are subject to approval by the City Manager and the affected City Department. When any change order under the amount of \$10,000.00 puts the contract over the approved budgeted amount set by the City Manager or City Council, then approval from the City Manager and affected department head must be obtained.
- B. Change orders in excess of \$10,000.00, which meet the following conditions, shall be awarded by the purchasing agent of the City and approved by the Mayor and City Manager.
  1. The total contract amount resulting from the change order is less than the budgeted amount approved by the City Council.
  2. The change order does not significantly change the original scope of work.

- C. All other Change Orders in excess of \$ 10,000.00, which do not meet the specifications listed above, shall be approved by the City Council. The sole exception shall be a circumstance in which waiting for the City Council's approval will create a potential claim for damages against the City. In such circumstances, the City Manager and the affected City Department authorizations shall be submitted to the City Council for ratification at its next regularly scheduled meeting.
- D. All Change Orders shall be brought to the attention of the City Council at the next Regularly scheduled City Council meeting.

ARTICLE 6  
APPEALS

- A. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the purchasing agent. An appeal shall be submitted in writing within 5 working days after the aggrieved person knows or should have known of the facts.\
- B. The purchasing agent shall promptly issue a written decision regarding any appeal, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the governing board.
- C. The City's governing board shall be the final appeal on the City level.
- D. All further appeals shall be handled as provided in section 63-56-58 through 64 of the Utah Code.

ARTICLE 7  
ETHICS IN PUBLIC CONTRACTING

- A. No person involved in making procurement decisions may have personal investments in any business entity which will create a substantial conflict between their private interests and their public duties.
- B. Any person involved in making procurement decisions is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the person's own use or the use or benefit of any other person or organization from any person or organization interested in selling to the City.

**From:** Mark Anderson <manderson@ci.heber.ut.us>  
**Sent:** Wednesday, October 16, 2013 6:06 PM  
**To:** 'David Phillips'; 'Robert Patterson'; amcdonald@ci.heber.ut.us; 'Benny Mergist'; 'Jeff Bradshaw'; erowland@ci.heber.ut.us  
**Cc:** 'Tony Kohler'; 'Bart Mumford'; 'Michelle Kellogg'; 'Amanda Anderson'  
**Subject:** FW: Swift Creek Subdivision Agreement and Plats  
**Attachments:** 13026AG SwiftCr SubAg 131016.pdf; cc-10-17-13-swift creek modified final-alk.docx; cc10172013.doc

Mayor & Council:

Attached is a modified agenda and staff reports for the Swift Creek Subdivision.

**Guy Haskell, Request for New Subdivision Plat Approval for Phase I (16 Lots) and Phase II (11 Lots) of the Swift Creek Subdivision and Associated Subdivision Agreement:** On Monday, Bart, Tony and I met with Guy Haskell to discuss changes that he wanted made to the Swift Creek subdivision agreement that was approved by the City Council at the last meeting. During the meeting Mr. Haskell indicated a desire to phase the subdivision which requires a new approval from the Council. As a result, attached you will find a copy of a new staff report, two new plats and a modified subdivision agreement. The most significant change to the subdivision agreement is the removal of the obligation for the developer to fence the western boundary of his property. The City development code does not require this, and Mr. Haskell has indicated that for financial reasons he is unwilling to erect the fence. We believe the amended subdivision agreement is agreeable to Mr. Haskell. Staff would recommend approval of the revised plats and associated subdivision agreement.

Mark

Mark K. Anderson  
Heber City Manager  
75 North Main  
Heber City, UT 84032  
phone 435-654-0757  
fax 435-654-2743

**HEBER CITY COUNCIL**

Staff report by: Anthony L. Kohler

Meeting Date: October 17, 2013

**Item: Swift Creek Final Subdivision**

The petitioner and staff have worked out some final changes to the development agreement approved by the Council in the last meeting. The fence is no longer required, as it is not a requirement of the ordinance. There is now a trail access dedication from the canal to the street on the plats. The development has been phased in 2 phases. The petitioner, City and WCWEP would all like the irrigation line moved, but the developer is analyzing whether resources are available to move the line. The right to farm language has been placed on the plat as approved by the Council. The FEMA Flood Plain will need to either be shown on the plat, or as preferred by the developer, a LOMAR process be completed to remove the lots from the FEMA Flood Plain. These issues have been detailed on the plats and the proposed development agreement.

**RECOMMENDATION**

Staff recommends final approval of the proposed 2 phases of Swift Creek and accompanying development agreement as consistent with applicable codes and recommendation of the Planning Commission.



SUBDIVISION AGREEMENT  
AND  
COVENANT RUNNING WITH THE LAND  
**(Swift Creek Subdivision - Phases 1 & 2)**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer".

WHEREAS, the petitioner has proposed the Swift Creek Subdivision, consisting of two phases and a total of 27 lots;

WHEREAS, the City annexed the property subject to certain conditions; and

WHEREAS, unique conditions exist resulting from the features on and around the property and the layout and design proposed by the developer; and

NOW, THEREFORE, the parties hereby agree as follows:

1. With respect to the attached Exhibits (the approved final subdivision plats), the developer shall, prior to recordation of each subdivision plat, transfer to the City all required water rights necessary for development of each phase, which shall include but not be limited to a total of 27.25 Acre-Feet of diversion water rights for the combined phases.
2. In Phase 1, a 75-foot strip of land underlying the Humbug Canal, and a master planned trail, must be dedicated to the City along with a dedicated 10-foot wide trail access to 820 East. Developer shall be responsible for constructing that portion of the 8-foot wide asphalt trail along the canal and access point through the development.
3. In Phase 1, Heber city will reimburse the Developer the cost of installing an 8 foot wide asphalt trail with roadbase and fabric along the Humbug Canal right of way and access point. Heber City will also reimburse Developer the cost of asphalt widening in 820 East and Old Mill Drive from 36-feet to 44-feet. Reimbursement is payable upon final acceptance and upon receiving invoices demonstrating the actual cost incurred by the developer to install the improvements.
4. In Phase 1, a temporary culdesac shall be constructed at the south end of 820 East. Developer will provide necessary temporary turn around easements dedicated to Heber City and escrow sufficient funds with the City to remove the temporary turn around and tie in the road when it is extended in the future.

5. Acceptance of Phase 1 of this subdivision is conditional upon offsite improvements. This subdivision will not be deemed complete until the applicable offsite reimbursement agreements with Sage Acres for water, sewer, and/or irrigation improvements have been satisfied.
6. In Phase 2, the final plat shall provide written notation as follows: "The retention area easement on Lot 13 accommodates storm drainage for the subdivision. Heber City has the right of access through this lot to maintain and repair said facilities. No cuts, fills, changes to topography, structures above or below ground; including but not limited to fences, decks, sheds, or footings of any kind, are allowed in the easements. Any obstacles erected within these easements will be removed at the current lot owner's expense. The owner of this lot is responsible for landscaping and irrigation of the area. Fences constructed around the easements shall contain a 12 foot wide gate to accommodate access by Heber City Corporation."
7. In Phase 1, the final plat shall note that Lots 10 and 11 are prohibited from establishing driveway access from 820 East.
8. In Phase 2, the final plat shall note that Lots 14 and 23 are prohibited from establishing driveway access from Old Mill Drive.
9. In Phase 2, the final plat shall show the location of any FEMA flood plain boundaries.
10. Developer shall provide City with a noxious weed control plan approved by the Wasatch County Weed Control Board prior to recording the subdivision plats and implement approved measures prior to project acceptance by the City.
11. All streets, utilities, and improvements will be constructed to property lines.
12. Public streets shall be dedicated to Heber City.
13. All aforementioned improvements shall consist of frontage improvements of curbs, sidewalks, pavements, inlets, and placing of monuments, as required and consistent with Heber City Standards, including but not limited to required subdivision improvement requirements.
14. Said improvement costs will be paid by the Developer, their assigns, transferees or successors as owners or developers. The Developer shall be obligated to disclose and notify in writing its immediate successors in ownership or developers of the requirements of this Agreement.

15. Developer shall execute a performance agreement and provide a cash bond or letter of credit acceptable to the City, guaranteeing the improvements related to subdivision.
16. The parties agree that the improvements will be required at the time of development, and that no building permits shall be issued thereto without the completion of said improvements.
17. Upon the full and complete performance of all of the terms and conditions of this Agreement by the Developer, their assigns, transferees or successors, and upon approval of the improvements, the City agrees to take over roads as shown on the filed map and those areas shown on the recorded subdivision plats as dedicated to the public, and maintain them as public works and public highways of the City without assessment for the construction of improvements as set out in the plans and specifications. Nothing contained here shall be construed in any way to render the City liable for any charges, costs, or debts for material, labor, or other expenses incurred in the making of these improvements.
18. In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.
19. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties.
20. Time is of the essence of this Agreement. In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement.
21. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.

IN WITNESS WHEREOF, the parties hereto have hereunto set their







*Before*



Before



After



After

