

**ORDINANCE NO. 2012-04**

**AN ORDINANCE ENACTING AND CODIFYING TITLE 3A OF THE FRUIT HEIGHTS MUNICIPAL CODE REGARDING APPOINTED OFFICES, DEPARTMENTS, BOARDS, COMMITTEES, PERSONNEL, GOVERNMENT RECORDS, AND PROCUREMENT, AND REPEALING CHAPTER 6, CHAPTER 7, CHAPTER 8, AND CHAPTER 9 OF THE EXISTING TITLE 1 OF THE FRUIT HEIGHTS MUNICIPAL CODE REGARDING SIMILAR PROVISIONS**

**WHEREAS**, the City Council has previously enacted code provisions regarding the officers, employees, property disposal, procurement, and records access and management, as more particularly set forth in Chapters 6-9 of the Fruit Heights Municipal Code; and

**WHEREAS**, the City Council desires to enact and codify updated and revised code provisions regarding appointed offices, departments, boards, committees, personnel, government records, and procurement, to be set forth in Title 3A of the Fruit Heights Municipal Code as more particularly set forth herein; and

**WHEREAS**, the City Council finds that the proposed revisions and updates to the Fruit Heights Municipal Code and the enactment and codification of Title 3A are in the best interest of the public to ensure that the City's ordinances are up to date and in compliance with applicable provisions of State law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FRUIT HEIGHTS CITY, STATE OF UTAH:**

**Section 1.** **Enactment and Codification.** Title 3A of the Fruit Heights Municipal Code regarding Administration is hereby enacted and codified to read in its entirety as more particularly set forth in **Exhibit "A,"** attached hereto and incorporated herein by this reference.

**Section 2.** **Repealer.** Title 1, Chapters 6-9, of the Fruit Heights Municipal Code are hereby repealed and replaced with the provisions of the new Title 3A as adopted herein.

**Section 3.** **General Repealer.** In addition to the specific ordinances repealed in accordance with Section 2, the enactment and codification of Title 3A shall be a repeal of all ordinances in conflict with the adopted and codified Ordinances, provided however, all ordinances in force prior to the adoption and codification shall continue in force after the adoption and codification for the purpose of all rights acquired, fines, penalties, forfeitures and liabilities incurred and actions therefor.

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**Section 4. Severability Clause.** If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all provisions, clauses and words of this Ordinance shall be severable. This Section shall become effective without codification.

**Section 5. Effective Date.** This Ordinance shall become effective upon publication or posting, or thirty (30) days after passage, whichever occurs first.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF FRUIT HEIGHTS CITY, STATE OF UTAH, THIS 19<sup>th</sup> DAY JUNE, 2012.**

**FRUIT HEIGHTS CITY**

By:   
Mayor Todd Stevenson

**ATTEST:**

  
Brandon Green, City Recorder

Voting by the City Council:

	“AYE”	“NAY”
Councilmember Anderson	<u>X</u>	_____
Councilmember Carroll	<u>X</u>	_____
Councilmember Hill	<u>X</u>	_____
Councilmember Hubrich	<u>X</u>	_____
Councilmember Moss	<u>X</u>	_____

**EXHIBIT "A"**

**TITLE 3A ADMINISTRATION**

## TITLE 3A

### ADMINISTRATION

CHAPTER 3A-01.	APPOINTED OFFICES
CHAPTER 3A-02.	DEPARTMENTS AND DIVISIONS
CHAPTER 3A-03.	BOARDS AND COMMITTEES
CHAPTER 3A-04.	PERSONNEL
CHAPTER 3A-05.	GOVERNMENT RECORDS
CHAPTER 3A-06.	PROCUREMENT

#### CHAPTER 3A-01. APPOINTED OFFICES

3A-01-010.	Appointed Offices.
3A-01-020.	Appointment and Removal.
3A-01-030.	Oath of Office.
3A-01-040.	Bond.
3A-01-050.	Salaries.
3A-04-055.	Utah Retirement System.
3A-01-060.	Transfer of Records.
3A-01-070.	Conflicts of Interest.
3A-01-080.	City Manager.
3A-01-090.	City Recorder.
3A-01-100.	City Treasurer.
3A-01-110.	City Attorney.
3A-01-120.	City Engineer.

#### 3A-01-010. Appointed Offices.

The City Council may create any appointed office deemed necessary for the government of the City and shall prescribe the powers and duties to be performed by appointed officials, including, but not limited to, the City Manager, City Recorder, City Treasurer, City Attorney, and City Engineer.

#### 3A-01-020. Appointment and Removal.

Appointed officers shall be appointed in accordance with the provisions of this Title and applicable provisions of *Utah Code Ann. §§ 10-3-901, et seq.*, as amended, regarding Appointed Officials. Except as otherwise provided herein regarding the appointment of the City Manager, the Mayor, with the advice and consent of the City Council, shall appoint and fill vacancies in all appointed offices provided by law or ordinance. Except as otherwise provided herein regarding the dismissal of the City Manager and unless otherwise provided by law, appointed officers shall serve at the pleasure of the City Council and may be removed with or without cause by a majority vote of the City Council. Unless sooner removed as provided herein, all appointed officers shall continue in office until their successors are appointed and qualified. The City Manager may provide written recommendation to the Mayor and City Council regarding the appointment or dismissal of any appointed officer.

#### 3A-01-030. Oath of Office.

(a) Required. Before entering on the duties of their respective offices, all appointed officers of the City shall take, subscribe and file the constitutional oath of office as set forth in Article IV, Section 10 of the Utah Constitution.

(b) Administered. The oath of office shall be administered by any judge, notary public, or the City Recorder.

(c) Filed. All oaths of office shall be filed with the City Recorder, except that of the City Recorder, which shall be filed with the City Treasurer pursuant to *Utah Code Ann.* § 52-1-4, as amended.

(d) Failure to Comply. No official act of any officer shall be invalid for the reason that he or she failed to take the oath of office.

**3A-01-040. Bond.**

(a) Required. The Treasurer shall be required to furnish a bond in accordance with the provisions set forth herein. All other appointed officers of the City may, by resolution or ordinance, be required to furnish a personal bond with good and sufficient sureties or corporate surety bond payable to the City in such sum as the resolution or ordinance may establish, conditioned for the faithful performance of the duties of their office and the payment of all monies received by such officers according to law, or such officers may be included within public employee blanket bonds at such amounts as may be determined by the City Council.

(b) Treasurer=s Bond. The City Treasurer=s bond shall be in the amount established by the State Money Management Council pursuant to *Utah Code Ann.* ' 51-7-15, as amended.

(c) Filed. All bonds shall be filed with the City Recorder, except the City Recorder's bond, if required, which shall be filed with the City Treasurer.

(d) Premium Charge. The premium charge by a corporate surety for any official bond shall be paid by the City.

(e) Additional Bonds. The City Council may at any time require further and additional bonds of any or all appointed officers of the City by resolution or ordinance.

**3A-01-050. Salaries.**

(a) Salary. Appointed officers shall receive such compensation for their services as the City Council may fix or amend by ordinance in accordance with notice and hearing requirements set forth in *Utah Code Ann.* ' 10-3A-818, as amended.

(b) Monthly Compensation. The compensation of municipal officers shall be paid at least monthly.

**3A-01-055. Utah Retirement System.**

For purposes of determining eligibility under the Utah Retirement System and provisions of the Utah State Retirement and Insurance Benefit Act, as set forth in Title 49 of the *Utah Code*, the City hereby certifies that any appointive officer position requiring less than forty (40) hours of work per week shall be considered a part-time appointive officer position. Unless otherwise provided by law, any appointive officer appointed for the first time to a part-time appointive officer position on or after July 1, 2011, shall not be eligible for participation in the Utah Retirement System.

**3A-01-060. Transfer of Records.**

Every officer of the City, upon expiration of his or her term for any cause whatsoever, shall within five (5) days after notification and request to do so, deliver to the City all books, property, keys, and records which are the property of the City.

**3A-01-070. Conflicts of Interest.**

All appointed officers of the City shall conduct themselves in an appropriate manner, including adherence to the conflict of interest provisions of the Utah Officers' and Employees' Ethics Act, set forth at *Utah Code Ann.* ' 10-3A-1301, *et seq.*, as amended, hereby adopted by reference as if fully set forth herein.

**3A-01-080. City Manager.**

(a) **Appointment.** The office of City Manager has been heretofore created and established under existing law and shall continue in force and effect as an appointed office of the City. The City Council shall appoint a qualified person to act as City Manager. Pursuant to *Utah Code Ann.* ' 10-3b-302, as amended, the Mayor shall have the right to vote in the appointment of the City Manager.

(b) **Term of Office and Severance Pay.** The City Manager shall serve at the pleasure of the City Council and may be terminated at any time with or without cause. Pursuant to *Utah Code Ann.* ' 10-3b-302, as amended, the Mayor shall have the right to vote in the dismissal of the City Manager. After the City Manager has been employed by the City for at least one (1) year, if the City Manager is removed thereafter without cause, the City shall pay to the City Manager six (6) months severance pay. The City Manager position is an at-will position and is exempt from the protections of *Utah Code Ann.* § 10-3-1105(1)(a), as amended. As such, the City Manager may be terminated with or without cause and shall not be entitled to due process appeal procedures as set forth in *Utah Code Ann.* § 10-3-1106, as amended.

(c) **Office.** The City Manager shall maintain an office in City Hall and shall spend such time in the performance of his or her duties as is necessary or as may be required from time to time by the City Council, but not less than forty (40) hours per week. The City Manager need not be a resident or qualified elector of the City, but should maintain his or her residence within a reasonable driving distance of the City.

(d) **Resignation.** Before voluntarily resigning from the position of City Manager, the City Manager shall give the City Council at least thirty (30) days notice in writing of his or her intent to resign.

(e) **Other Employment.** The City Manager shall not accept any outside employment in addition to employment by the City without prior annual written approval of the City Council.

(f) **Powers of Mayor Not Delegated.** The legislative and judicial powers or ceremonial functions of the Mayor, his or her position as chairman of the City Council, and any ex officio position he or she may hold, shall not be delegated to the City Manager. Any changes to the powers and duties of the Mayor, as delegated to the City Manager, shall comply with applicable provisions of *Utah Code Ann.* § 10-3b-303, as amended.

(g) **Duties.** The City Manager shall at all times be under the control and supervision of the City Council, and shall administer the day-to-day operations of the City and its services according to the policies and programs established by the City Council. The following duties and the authority to perform them are hereby delegated to the City Manager.

(1) **Appoint and Remove Employees.** Unless otherwise delegated to the Mayor for appointed offices and department heads, the City Manager shall have the authority to appoint, employ and remove employees as provided herein. The City Manager shall also be responsible for reviewing the status and performance of any employee being considered for discharge, transfer, or demotion from appointment or employment with the City. The City Manager may provide written recommendation to the Mayor and City Council regarding the appointment or dismissal of any appointed officer as provided in Section 3A-01-010.

(2) **Supervise Officers and Department Heads.** The City Manager shall provide direct supervision of and have direct responsibility over the offices of City Recorder, City Treasurer and Department Heads.

(3) Personnel Director. The City Manager shall be the personnel director, and as such shall be responsible for implementing and enforcing the Personnel Policies and Procedures of the City and providing recommendations to the City Council regarding the compensation plan for employees.

(4) Inventory Property. The City Manager should keep or cause to be kept a current inventory showing all real and personal property of the City and its location. The City Manager shall be responsible for the care and custody of all such property, including equipment, buildings, parks and all other City property which is not by law assigned to some other officer or body for care and control.

(5) Purchasing and Claims. The City Manager shall act as purchasing agent for the City, and as such shall implement and enforce all provisions of the ordinances of the City relating to purchasing.

(6) Council Meetings. The City Manager should attend all meetings of the City Council and may recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient.

(7) Budget Officer. The City Manager shall act as the budget officer for the City and shall perform or cause to be performed all of the duties of such office as set forth in the Utah Uniform Municipal Fiscal Procedures Act. The City Manager shall also ensure that all executive procedures and activities of the City are in compliance with such Act.

(8) Review Contracts. The City Manager shall review and make recommendations to the City Council concerning all proposed contracts to which the City may be a party, and shall see that the terms of any contract to which the City is a party are fully performed by all parties thereto.

(9) Propose Plans and Programs. The City Manager should propose plans and programs concerning the development, operation and needs of the City and submit such plans to the City Council to be approved and developed as policy.

(10) Implement Policy. The City Manager should implement all policy changes and directives of the Mayor and the City Council through regularly scheduled staff meetings.

(11) Management Controls. The City Manager should set performance standards and exercise managerial control to ensure that the City government is functioning in the most efficient and effective manner.

(12) Organization. The City Manager should recommend creation and organization of all necessary departments, divisions, bureaus and offices necessary for the government of the City to the City Council for its approval prior to implementation.

(13) Additional Duties. The City Manager shall have such other powers and shall perform such other duties and obligations as may be required of him or her by State law or by ordinance, resolution, or policy of the City Council.

### **3A-01-090. City Recorder.**

(a) Appointment. On or before the first Monday in February following a municipal election, the Mayor, with the advice and consent of the City Council, shall appoint a qualified person to the office of City Recorder. The City Recorder position is an at-will position and is exempt from the protections of *Utah Code Ann. § 10-3-1105(1)(a)*, as amended. As such, the City Recorder may be terminated with or without cause and shall not be entitled to due process appeal procedures as set forth in *Utah Code Ann. § 10-3-1106*, as amended.

(b) Office. The office of the City Recorder shall be located at City Hall or at some other place convenient thereto as the City Council may direct.

(c) City Auditor. The City Recorder shall be ex officio the City Auditor and shall perform the duties of such office; provided, the City may engage the services of an independent auditor to perform audit services for the City from time to time.

(d) Corporate Seal. The City Recorder shall keep the Corporate Seal. When certified by the City Recorder under the Corporate Seal, copies of all papers filed in the City Recorder's office and transcripts from all records of the City Council shall be admissible in all courts as originals.

(e) Meetings of City Council. The City Recorder, or his or her designee, shall attend the meetings and keep the record of the proceedings of the City Council.

(f) Actions of City Council. The City Recorder shall record all ordinances, resolutions, and regulations passed by the City Council.

(g) Contracts. The City Recorder shall countersign all contracts made on behalf of the City or to which the City is a party and shall maintain a properly indexed record of all such contracts.

(h) Fiscal Procedures. The City Recorder shall perform all required duties of the Uniform Fiscal Procedures Act for Utah Cities as set forth in *Utah Code Ann.* § 10-6-101, *et seq.*, as amended, or as may be delegated.

(i) Elections and Appointments. The City Recorder shall manage all municipal election procedures and requirements as provided in Title 20A of the *Utah Code Annotated*, as amended, and shall keep a record of all persons elected or appointed to any office within the City, including the date of appointment or election, term of office, date of death, resignation, or removal, and name of person appointed to fill any vacancy. Election duties may be performed by Davis County pursuant to agreement between the City and County.

(j) Records of the City. The City Recorder shall keep all of the books, records, accounts and documents of the City at the Recorder's Office. Such records shall be open for public inspection pursuant to the provisions of the Utah Government Records Access and Management Act.

(k) Warrants. In the event the City is without funds on deposit to pay any lawfully approved claims, the City Recorder shall draw and sign a warrant upon the City Treasurer for payment of the claim, pursuant to *Utah Code Ann.* § 10-6-140, as amended.

(l) Limitations. The City Recorder shall not serve as the City Treasurer.

(m) Additional Duties. The City Recorder shall perform such other and further duties as the City Council may provide by ordinance, resolution, regulation or directive.

### **3A-01-100. City Treasurer.**

(a) Appointment. On or before the first Monday in February following a municipal election, the Mayor, with the advice and consent of the City Council, shall appoint a qualified person to the office of City Treasurer. The City Treasurer position is an at-will position and is exempt from the protections of *Utah Code Ann.* § 10-3-1105(1)(a), as amended. As such, the City Treasurer may be terminated with or without cause and shall not be entitled to due process appeal procedures as set forth in *Utah Code Ann.* § 10-3-1106, as amended.

(b) Custodian. The City Treasurer shall be the custodian of all money, bonds, or other securities of the City.

(c) Collections. The City Treasurer shall collect and receive all monies payable to the City, including taxes, assessments, licenses, fines, forfeitures, service charges, fees and other revenues of the City. The City Treasurer shall keep an accurate account of all monies received hereunder and shall promptly deposit all such monies in the appropriate bank accounts of the City.

(d) Receipts. The City Treasurer shall give or cause to be given to every person paying money to the City Treasury, a receipt or other evidence of payment therefor, specifying the date of payment and the account paid. The City Treasurer shall file the duplicate of such receipt, a summary report, or other evidence of payment in the office of the City Recorder.

(e) Checks. The City Treasurer, or other person designated by the City Council, shall sign all checks prepared by the City and shall, prior to affixing said signature, determine or cause to be determined that sufficient funds are on deposit in the appropriate bank account of the City to honor such check.

(f) Warrants. In the absence of appropriate monies, the City Treasurer shall pay all warrants in the order in which presented and as money becomes available for payment thereof in the appropriate funds of the City. The City Treasurer shall note upon the back of each warrant presented the date of presentation and the date of payment, pursuant to *Utah Code Ann.* § 10-6-144, as amended.

(g) Special Assessments. All monies received by the City Treasurer on any special assessment shall be applied to the payment of the improvement for which the assessment was made.

(h) Accounting. The City Treasurer shall keep an accurate and detailed accounting of transactions, receipts, collections, disbursements and other matters within the Treasurer's charge as provided by State law or as the City may by ordinance or resolution direct.

(i) Limitations. The City Treasurer shall not serve as the City Recorder.

(j) Additional Duties. The City Treasurer shall perform such other and further duties as the City Council may provide by ordinance, resolution, regulation or directive.

### **3A-01-110. City Attorney.**

(a) Appointment. The City may contract with, retain, or appoint an attorney licensed to practice law in the State of Utah to the office of City Attorney to provide such legal assistance to the City as may be necessary. The City Attorney shall be appointed by the City Council. The City Attorney shall act as legal advisor to the City in all matters pertaining to contracts with or by the City or questions of legality arising out of any law, ordinance or otherwise, and shall advise all City officers in relation to their official duties.

(b) Criminal Prosecutor. The City may contract with, retain or appoint an attorney or attorneys licensed to practice law in the State of Utah for the performance of criminal prosecutorial legal services.

(c) At-Will Position. If the City hires or appoints a person to act as City Attorney or Criminal Prosecutor, such positions are deemed at-will positions and are exempt from the protections of *Utah Code Ann.* § 10-3-1105(1)(a), as amended. As such, any person hired or appointed to act as City Attorney or Criminal Prosecutor may be terminated with or without cause and shall not be entitled to due process appeal procedures as set forth in *Utah Code Ann.* § 10-3-1106, as amended.

(d) Conflict. Pursuant to authority set forth in *Utah Code Ann.* § 10-3A-928, as amended, the City may designate a city attorney from another municipality or a public prosecutor to prosecute a matter, in the court having jurisdiction over the matter, if the city attorney has a conflict of interest regarding the matter being prosecuted.

### **3A-01-120. City Engineer.**

(a) Appointment. The City may contract with, retain, or appoint an engineer licensed to practice engineering in the State of Utah to the office of City Engineer. The City Engineer shall be appointed by the Mayor with the advice and consent of the City Council. Any person appointed or retained as City Engineer shall be a registered professional engineer under Title 58, Chapter 22 of the *Utah Code*, as amended. If the City hires or appoints a person to act as City Engineer, such position is deemed an at-will position and is exempt from the protections of *Utah Code Ann.* § 10-3-1105(1)(a), as amended. As such, any person hired or appointed to act as the City Engineer may be terminated with or without cause and shall not be entitled to due process appeal procedures as set forth in *Utah Code Ann.* § 10-3-1106, as amended.

(b) Records. The City and/or the City Engineer shall maintain all maps, plans, plats, profiles, drawings, final estimates, specifications and contracts which in any way relate to the public improvements and engineering affairs of the City and the holder of such records shall ensure public accessibility to the same as required by law.

(c) Recording. The City Engineer shall record and file all drawings and documents pertaining to public lands and improvements of the City, and shall maintain such records and files in good condition allowing no alteration, mutilation or changes to be made. The recording or filing of any drawing or instrument with the City shall not conflict in any way with the recording or filing of the same in other offices of record.

(d) Fees. The City Engineer shall not record any drawings or instruments, file any papers or notices, furnish any copies, or render any service connected with his or her official duties, until the required fees for the same are paid or tendered as required by law or City ordinance.

(e) Seal. The City Engineer shall have a seal for his or her use, which seal shall be affixed to every certification approval.

(f) Additional Duties. The City Engineer shall perform such other and further duties as the City Council may provide by ordinance, resolution, regulation or directive.

## **CHAPTER 3A-02. DEPARTMENTS AND DIVISIONS**

- 3A-02-010. Departments.**
- 3A-02-020. Department Heads.**
- 3A-02-030. Public Works Department.**

### **3A-02-010. Departments.**

The City Council may create any department, division or section deemed necessary or appropriate for the administration of the City and shall prescribe by resolution or ordinance the organization, powers and duties of such departments, divisions or sections.

### **3A-02-020. Department Heads.**

The Mayor, with the advice and consent of the City Council, shall appoint a qualified person to direct and administer each department, to be known and referred to as <sup>A</sup>Department Heads.<sup>@</sup> The powers and duties of the Department Heads shall be prescribed by ordinances, resolutions, regulations and job descriptions approved and adopted by the City Council. Unless otherwise provided by law, Department Heads shall serve at the pleasure of the City Council and may be removed with or without cause by a majority vote of the City Council. Department Heads shall obtain annual written approval from the City Manager prior to accepting or pursuing employment outside his or her duties as a City Department Head. All Department Head positions described in this Chapter shall be deemed to constitute a "head of a municipal department" as such term is used in *Utah Code Ann.* § 10-3-1105, as amended. All Department Head positions are deemed at-will positions and are exempt from the protections of *Utah Code Ann.* § 10-3-1105(1)(a), as amended. As such, Department Heads may be terminated with or without cause and shall not be entitled to due process appeal procedures as set forth in *Utah Code Ann.* § 10-3-1106, as amended.

### **3A-02-030. Public Works Department.**

There is hereby created and established a Public Works Department within Fruit Heights City which shall be responsible for maintaining public properties of the City including, but not limited to, streets, parks, stormwater, drainage and water systems and facilities of the City. The City Manager may create, fill and manage superintendent positions within the Public Works Department to manage and operate various aspects and facilities within the Public Works Department.

**CHAPTER 3A-03. BOARDS AND COMMITTEES**

- 3A-03A-010. Boards and Committees.**
- 3A-03A-020. Governmental Immunity.**
- 3A-03A-030. Planning Commission.**
- 3A-03A-040. Board of Adjustment.**
- 3A-03A-050. Citizen Corps Council.**
- 3A-03A-060. Trails Committee.**

**3A-03A-010. Boards and Committees.**

The City Council may create any agencies, boards, bureaus, committees or commissions deemed necessary or appropriate for the administration of the City and shall prescribe by resolution or ordinance the organization, powers and duties of such bodies.

**3A-03A-020. Governmental Immunity.**

Members of any City board, committee or commission shall be deemed included in the definition of "employee" for purposes of the Utah Governmental Immunity Act as set forth in *Utah Code Ann. §§ 63G-7-101, et seq.*, as amended.

**3A-03A-030. Planning Commission.**

The City Council has previously created a Planning Commission to hear, decide and/or recommend planning and zoning matters, with such powers and duties as provided by law and applicable provisions of the City Zoning Ordinance.

**3A-03A-040. Board of Adjustment.**

The City Council has previously created the Board of Adjustment to hear and decide variances, appeals and other planning and zoning matters, with such powers and duties as provided by law and applicable provisions of the City Zoning Ordinance.

**3A-03A-050. Citizen Corps Council.**

The City has previously created the Citizen Corps Council, a local affiliate of the Utah Citizen Corps Council, as part of the Utah Commission on Volunteers chaired by the Lieutenant Governor, to act as an advisory committee to the City Council for the purpose of promoting community preparedness through communication, coordination and collaboration in emergency and disaster preparedness, response, and recovery through planning, training and exercise. The organization, powers and duties of the Citizen Corps Council shall be as set forth in the By-Laws and applicable governing documents regarding the Citizen Corps Council, as approved by the City Council.

**3A-03A-060. Trails Committee.**

(a) **Creation.** There is hereby created the Fruit Heights City Trails Committee to act as an advisory committee to the City Council to recommend and promote the establishment of public trails and related facilities, programs and policies to meet the recreational needs of the citizens of Fruit Heights City. The organization, powers and duties of the Trails Committee shall be as follows.

(b) **Members.**

(1) **Number.** The Committee shall be comprised of not more than seven (7) but no less than five (5) regular members who shall be appointed by the Mayor, with the advice and consent of the Council, and shall be residents of Fruit Heights.

(b) Term. The members shall be appointed to staggered terms of three (3) years, provided that members may be appointed to terms shorter than three (3) years when necessary to provide staggered terms. These terms are renewable.

(c) Removal. Members shall serve at the pleasure of the City Council and may be removed at any time with or without cause by action of the City Council.

(d) Vacancies. Vacancies on the Trails Committee occurring of any reason shall be filled by the Mayor, with the advice and consent of the City Council, in accordance with the procedures for appointment, for the unexpired term of such member.

(e) Compensation. Committee members shall receive no compensation for their services but may be reimbursed for reasonable expenses incurred in the performance of their duties.

(c) Organization and Procedure.

(1) Chairperson. The members of the Trails Committee shall appoint one of the members as chairperson. The chairperson shall serve for a term of one year, which term may be renewed. The chairperson shall oversee the proceedings and activities of the Committee.

(2) Rules. The Committee may adopt reasonable rules and regulations for governing the conduct of its business. Any such rules and regulations shall be approved by resolution of the City Council.

(3) Meetings. The Committee may hold meetings at such times as the Committee determines is necessary and as properly called with notice given to each Committee member. To the extent required by law, all meetings of the Committee shall comply with applicable provisions of the Utah Open Meetings Act, as set forth in *Utah Code Ann.* §§ 52-4-101, *et seq.*, as amended.

(d) Duties. It shall be the duty of the Committee to act in an advisory and voluntary capacity in the development of trails and related facilities for Fruit Heights City residents, including but not limited to the following:

(1) recommend to the City Council and the Planning Commission a Trails Master Plan;

(2) review and recommend appropriate changes and updates to the Trails Master Plan to the City Council and Planning Commission;

(3) recommend projects, legislation, policies, funding allocations, and other measures, programs, or activities for the development of trails, parkways and related recreation opportunities for the benefit of City residents;

(4) carry out projects, programs, or activities as directed by the City Council;

(5) initiate, sponsor and promote, as directed by the City Council, involvement, activities and contributions by the private sector for the development of trails and parkways for City residents; and

(6) provide input regarding present or future trails needs in the planning and approval process for development within the City in accordance with the Trails Master Plan.

## **CHAPTER 3A-04. PERSONNEL**

- 3A-04-010. Personnel Director.**
- 3A-04-020. Personnel Policies and Procedures.**
- 3A-04-030. Equal Opportunity Employer.**
- 3A-04-040. Employee Appeals.**
- 3A-04-045. Exclusions.**
- 3A-04-050. Employee Appeal Board.**
- 3A-04-060. Appeal Procedures.**
- 3A-04-070. Volunteers.**

### **3A-04-010. Personnel Director.**

The City Manager is hereby designated as the Personnel Director. As Personnel Director, the City Manager shall implement and maintain the provisions of this Chapter and perform other duties as required by ordinance, resolution or policy of the City Council.

### **3A-04-020. Personnel Policies and Procedures.**

The City may establish and adopt personnel policies and procedures consistent with the ordinances, laws, and regulations of the City, State and federal government for the administration, organization, operation, and conduct of its personnel.

### **3A-04-030. Equal Opportunity Employer.**

Fruit Heights City is an "Equal Opportunity Employer" and it is the policy of the City to comply with Federal and State equal employment opportunity laws and guidelines. It is the policy of the City to avoid discrimination in the hiring, employment, promotion or other employment practices with respect to its employees on the basis of race, color, religion, sex, national origin, political affiliation, age, pregnancy, childbirth or pregnancy-related condition, disability, genetic information, or status as a veteran, in accordance with applicable Federal and State laws.

### **3A-04-040. Employee Appeals.**

(a) Covered Employees. Except as provided in Section 3A-04-045, each employee of the City shall hold employment without limitation of time, being subject to discharge, suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided herein.

(b) Appeal of Final Decision. If an employee other than an employee excluded under Section 3A-04-045, is discharged, suspended without pay for more than two days, or involuntarily transferred from one position to another with less remuneration for any disciplinary reason, the employee may appeal the final decision to discharge, suspend without pay, or involuntarily transfer, to the Employee Appeal Board set forth in Section 3A-04-050 in accordance with and subject to the procedures set forth *Utah Code Ann.* 10-3-1106, as amended.

### **3A-04-045. Exclusions.**

Section 3A-04-040 does not apply to any officers, employees or positions described herein, which positions are deemed at-will and subject to termination with or without cause and without appeal rights pursuant to *Utah Code Ann.* 10-3-1105, as amended.

(a) Designated Positions. Section 3-04-040 does not apply to a person who holds a position or equivalent position described as follows:

- (1) a police chief
- (2) a deputy or assistant police chief;
- (3) a fire chief;
- (4) a deputy or assistant fire chief;
- (5) a head of a municipal department or division;
- (6) a superintendent;
- (7) a probationary or introductory employee;
- (8) a part-time employee;
- (9) seasonal, temporary or limited employees;
- (10) a person who works in the office of an elected official; or
- (11) a secretarial or administrative assistant support position that is specifically designated as a position to assist an elected official or the head or deputy head of a municipal department

(b) **Appointed Officers.** Section 3-04-040 does not apply to any person appointed to a position under Part 9, Appointed Officials and Their Duties, including, but not limited to, the City Manager, City Recorder, City Treasurer, City Engineer, City Attorney, Police Chief, and Fire Chief.

(c) **Layoffs and Reorganizations.** Section 3-04-040 does not apply to any employee who is discharged or involuntarily transferred to a position with less remuneration if the discharge or involuntary transfer is the result of a layoff, reduction in force, reorganization, or other non-disciplinary action.

(d) **Statutory Exclusion.** Section 3-04-040 does not apply to any officer, employee, or position that is excluded under and in accordance with the provisions of *Utah Code Ann.* § 10-3-1105(2), as amended.

**3A-04-050. Employee Appeal Board.**

(a) **Created.** There is hereby created an Employee Appeal Board as required by *Utah Code Ann.* § 10-3A-1106, as amended, to hear appeals of employees covered under Section 3A-04-040 who have been discharged, suspended for more than two days without pay, or involuntarily transferred to a position with less remuneration.

(b) **Members.** The governing body of the City shall constitute and serve as the Employee Appeal Board.

(c) **Limitation on Members.** No person may sit on the Employee Appeal Board who also sat in on a pre-disciplinary hearing of the appealing employee or who otherwise has a conflict of interest in the matter.

**3A-04-060. Appeal Procedures.**

(a) **Procedures.** Appeal hearings shall be filed and conducted in accordance with and subject to the time frames and procedures set forth *Utah Code Ann.* § 10-3A-1106, as amended, and applicable provisions of this Section.

(b) Rules of Procedure and Evidence. Appeal hearings shall be conducted with appropriate formality and decorum, so that the due process rights of the appellant are protected. The Utah rules of evidence and Utah rules of civil procedure should serve as guidelines, but need not be strictly followed or applied. Rules of evidence regarding foundation and hearsay need not be strictly applied; however, the Employee Appeal Board may determine how much weight to give to such evidence.

(c) Standard of Review. The Employee Appeal Board shall presume the action of the City or its officers which is the subject of the appeal is valid and uphold such action unless it is shown that such action was an abuse of discretion or was otherwise contrary to law. The burden of proof shall at all times remain with the employee making the appeal. It shall take an affirmative vote of three (3) board members to overturn the action which is the subject of the appeal.

(d) Appeal to Court. Any final action or order of the Employee Appeal Board may be reviewed by the Court of Appeals by filing with that court a petition for review in accordance with *Utah Code Ann.* § 10-3A-1106, as amended.

**3A-04-070. Volunteers.**

(a) Defined. A Volunteer means any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the City.

(b) Status. All volunteers of the City shall be subject to the provisions of the Volunteer Government Workers Act, as set forth in *Utah Code Ann.* ' ' 67-20-1, *et seq.*, as amended. A volunteer may not donate any service to the City unless and until the volunteer services are approved by the City Manager.

(c) Government Employee. Except as provided in *Utah Code Ann.* § 67-20-3, as amended, regarding volunteer safety officers, an approved volunteer is considered a government employee for purposes of:

(1) receiving workers= compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under Title 34A, Chapter 2, Workers= Compensation Act, and Chapter 3, Utah Occupational Disease Act, for any injury sustained while engaged in the performance of any authorized service for the City;

(2) the operation of motor vehicles or equipment if the volunteer is properly licensed and authorized to do so; and

(3) liability protection and indemnification normally afforded paid government employees.

(d) Expenses. Volunteers may receive reimbursement for transportation, meals, travel expenses, lodging, uniforms, and supplies, in the discretion of and when authorized and approved by the City.

## CHAPTER 3A-05. GOVERNMENT RECORDS

- 3A-05-010. Government Records.**
- 3A-05-015. Records Officer.**
- 3A-05-020. Retention Schedule.**
- 3A-05-030. Records Requests.**
- 3A-05-040. Fees.**
- 3A-05-050. Fee Waiver.**
- 3A-05-060. Appeal to City Manager.**
- 3A-05-070. Appeal to Records Committee or District Court.**

### **3A-05-010. Government Records.**

All government records of the City shall be maintained, classified and accessed in accordance with the Government Records Access and Management Act set forth at *Utah Code Ann. ' ' 63G-2-101, et seq.*, as amended.

### **3A-05-015. Records Officer.**

The City Recorder is hereby appointed as records officer of the City to work with the Utah Division of Archives and Records Service in the care, maintenance, scheduling, designation, classification, disposal, and preservation of City records. Pursuant to *Utah Code Ann. § 63G-2-108*, as amended, the records officer shall, on an annual basis, successfully complete online training and certification from the State Archives regarding government records access and management.

### **3A-05-020. Retention Schedule.**

All government records of the City shall be retained in accordance with the Utah Municipal General Records Retention Schedule, as created and retained by the Utah Division of Archives and Records Service, which is hereby adopted by reference as the Fruit Heights City Records Retention Schedule. The City may classify or reclassify a particular record, record series, or information in a record at any time, in accordance with applicable provisions of *Utah Code Ann. § 63G-2-307*, as amended.

### **3A-05-030. Records Requests.**

Any person requesting a record shall file a written Government Records Access and Management Request Form as provided by the City. Such request shall be submitted and processed in accordance with the Government Records Access and Management Act. All government records requests shall contain the requestor's name, mailing address, and daytime phone number, if available, and shall provide a description the record requested that identifies the record with reasonable specificity.

### **3A-05-040. Fees.**

The City may charge a reasonable fee to cover the City=s actual cost of providing a record. Fees for providing a record shall be adopted and set forth in the City=s Fee Schedule, which fees may be amended from time to time, and are adopted herein by reference. When the City compiles a record in a form other than that normally maintained by the City in response to a records request, the actual costs for compiling the record may include those costs set forth in *Utah Code Ann. ' 63G-2-203*, as amended. The City may require payment of past fees and future estimated fees before beginning to process a request if the fees are expected to exceed fifty dollars (\$50.00) or the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

### **3A-05-050. Fee Waiver.**

In accordance with *Utah Code Ann. ' 63G-2-203*, as amended, the City may fulfill a record request without charge when it determines that:

- (a) releasing the record primarily benefits the public rather than a person;
- (b) the individual requesting the record is the subject of the record, or an individual specified in *Utah Code Ann.* ' 63G-2-202(1) or (2) of the Act; or
- (c) the requester's legal rights are directly implicated by the information in the record and the requester is impecunious.

**3A-05-060. Appeal to City Manager.**

Any person aggrieved by the City's access determination made or fees imposed under this Chapter may appeal the determination within thirty (30) days to the City Manager by filing a written notice of appeal with the City Manager in accordance with the provisions set forth in *Utah Code Ann.* ' 63G-2-401, as amended. The notice of appeal shall contain the petitioner's name, mailing address, daytime phone number, and the relief sought. The notice of appeal should also contain a brief statement of facts, reasons, and legal authority in support of the appeal. The City Manager shall make a determination on the appeal within the time periods set forth in *Utah Code Ann.* ' 63G-2-401, as amended. The City Manager shall send written notice of his or her determination to all participants, including notice of any right to appeal in accordance with Section 3A-05-070.

**3A-05-070. Appeal to Records Committee or District Court.**

If the City Manager denies a records request under Section 3A-05-060, the requester may appeal the denial to the State Records Committee as provided in *Utah Code Ann.* § 63G-2-403, as amended, or petition for judicial review in district court as provided in *Utah Code Ann.* § 63G-2-404, as amended. Any person aggrieved by a determination of the City Manager under Section 3A-05-060, including persons who did not participate in the appeal proceedings before the City Manager, may appeal the determination to the State Records Committee as provided in *Utah Code Ann.* § 63G-2-402, as amended.

**CHAPTER 3A-06. PROCUREMENT**

- 3A-06-010. Compliance.**
- 3A-06-020. Definitions.**
- 3A-06-030. Purchasing Agent.**
- 3A-06-040. Budget Limitation.**
- 3A-06-050. Purchase Requisition.**
- 3A-06-060. Pre-Qualification.**
- 3A-06-070. Classification of Expenditures.**
- 3A-06-080. Formal Bidding Procedure.**
- 3A-06-090. Informal Bidding Procedure.**
- 3A-06-100. Additional Data.**
- 3A-06-110. Bonds.**
- 3A-06-120. Retention of Bids.**
- 3A-06-130. Restrictions on Architect or Engineering Services.**
- 3A-06-140. Use of Recycled Goods.**
- 3A-06-150. Disposal of Surplus Property.**
- 3A-06-160. Ethics.**
- 3A-06-170. Records.**
- 3A-06-180. Violations.**
- 3A-06-190. Appeals.**

**3A-06-010. Compliance.**

All expenditures of the City shall conform to the provisions of this Chapter and applicable provisions of State law including, but not limited to, the Uniform Fiscal Procedures Act set forth at *Utah Code Ann.* §§ 10-6-101, *et seq.*, as amended. Any expenditures of the City involving federal assistance funds shall comply with applicable federal laws and regulations. Any expenditure of the City involving the construction, maintenance or improvement project of a Class C road shall comply with applicable provisions of the State Transportation Code including but not limited to *Utah Code Ann.* §§ 72-6-108 and -109, as amended. Any expenditure of the City involving the construction or repair of a public building or structure, or a public works project, shall comply with applicable provisions of *Utah Code Ann.* §§ 11-39-101, *et seq.*, as amended, regarding building improvements and public works projects.

**3A-06-020. Definitions.**

As used in this Chapter, the following words shall mean:

(a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work. "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(b) "Person" means any individual, firm, partnership, trust, limited liability company, corporation, or other entity however designated.

(c) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction, and all functions that pertain to the obtaining of any supply, service, or construction, including the solicitation of sources, selection, award, and all phases of contract administration.

(d) "Professional Services" means the furnishing of services for auditing, banking, insurance, engineering, legal, architectural, and other forms of professional consulting.

(e) "Responsible Bidder" means a person who submits a bid to furnish supplies, services or construction for the City pursuant to and in accordance with the terms and conditions of this Chapter and who furnishes, when requested, sufficient information and data to prove his or her financial resources, production or service facilities, service reputation and experience are adequate to the satisfaction of the City.

(f) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. "Services" does not include employment agreements or collective bargaining agreements.

(g) "Supplies" means all property, including but not limited to equipment, materials, and printing. "Supplies" does not include real property or any interest therein.

**3A-06-030. Purchasing Agent.**

The City Manager is hereby designated as the Purchasing Agent for the City. The Purchasing Agent shall be subject to the direction and supervision of the City Council and shall have the powers and duties concerning procurement as established in this Chapter, including but not limited to:

(a) Administer and interpret the procurement system provided herein, in accordance with any rules and regulations established by the City;

(b) Procure or supervise the procurement of all supplies, services, and construction needed by the City, including preparation of specifications and negotiation of contracts connected therewith;

(c) Exercise general supervision and control over all inventories or supplies of the City and the inspection of and accounting for all such inventories or supplies;

(d) Prepare and maintain forms and reports as are reasonably necessary to the operation of this Chapter and other rules and regulations of the City;

(e) Keep generally informed of current developments in the field of procurement, including but not limited to, market conditions and new products; and

(f) Recommend to the City Council from time to time such new or revised procurement rules and regulations as are desirable and in conformance with other statutory requirements.

**3A-06-040. Budget Limitation.**

All expenditures or encumbrances made by the City for supplies, services or construction shall be made in accordance with the Uniform Fiscal Procedures Act for Utah Cities, set forth at *Utah Code Ann.* §§ 10-6-101, *et seq.*, as amended. Except as provided in said Act or herein, no expenditure or encumbrance shall be made for any supplies, services or construction for the City in excess of total appropriations in the budget, as adopted or subsequently amended.

**3A-06-050. Purchase Requisition.**

Before any order may be placed for the purchase of any supply, service or construction having a unit value in excess of \$3,000, a Purchase Requisition Form shall be submitted to the Purchasing Agent. The Purchasing Agent shall review all Purchase Requisitions and determine whether the expenditure

requested is for a City purpose, properly budgeted, and in compliance with City ordinances and State law. If the Purchasing Agent determines the expenditure requested complies with these requirements, he or she shall sign the Purchase Requisition and initiate the appropriate procedures set forth herein for procurement of the supply, service or construction. A Purchase Requisition shall not be required for service contracts entered into between the City and the contracting party specifying the cost of service.

**3A-06-060. Pre-Qualification.**

When determined necessary by the Purchasing Agent, contractors and/or suppliers may be pre-qualified for particular types of supplies, services and construction. In such cases, prospective contractors and/or suppliers will be required to demonstrate sufficient experience and capability to perform the project or work for which pre-qualification is required.

**3A-06-070. Classification of Expenditures.**

(a) Large Expenditures. Except as otherwise provided herein, any expenditure of the City of \$10,000 or more shall be referred to as a "large expenditure" and shall be made pursuant to formal bidding procedures set forth in Section 3A-06-080. No large expenditure shall be made without prior approval from the City Council.

(b) Small Expenditures. Except as otherwise provided herein, any expenditure of the City of less than \$10,000 shall be referred to as a "small expenditure" and may be made pursuant to formal bidding procedures set forth in Section 3A-06-080 or pursuant to informal bidding procedures set forth in Section 3A-06-090. Small expenditures may be made by the Purchasing Agent without prior approval from the City Council, but any such expenditure shall be reviewed by the City Council at its next regular meeting. It shall be unlawful to artificially divide a purchase or expenditure so as to constitute a small expenditure under this Section.

(c) Exempt Expenditures. The following expenditures of the City shall be referred to as "exempt expenditures" and may be made without formal or informal bidding procedures, but should be made with as much competition as practicable under the circumstances. The Purchasing Agent shall determine in writing that an expenditure falls within one of these exemptions, and shall maintain a record of all contracts made hereunder, including each supplier's name, the amount and type of contract, and the supplies, services, or construction procured. All exempt expenditures shall be reviewed by the City Council on at least a quarterly basis.

(1) Minor. Any expenditure amounting to less than \$3,000.00;

(2) Single Source. Any expenditure for goods or services which by their nature are not reasonably adapted to award by competitive bidding. These expenditures include, but are not limited to, goods or services which can only be purchased from a single source, contracts for additions to and repair and maintenance of equipment already owned by the City which may be more efficiently added to, repaired or maintained by a certain person or firm, and equipment which, by reason of the training of the personnel or an inventory of replacement parts is compatible with the existing equipment owned by the City.

(3) Professional Services. Any expenditure for professional services which by their nature are not reasonably adapted to award by competitive bidding. Such expenditures shall be awarded at the discretion of the City Council based on the City Council's evaluation of the professional qualifications, service ability, experience, cost of services and other applicable criteria.

(4) Emergency. Any expenditure made under the existence of an emergency condition threatening the public health, welfare, or safety.

(5) State Bidding. Any expenditure for which competitive bidding or price negotiation has already occurred on the State level.

(6) Interlocal Cooperation. Any expenditure made in conjunction with an agreement approved by resolution of the City Council between the City and another city or governmental entity.

(7) Special Sale. Any expenditure made in conjunction with any public auction, closeout sale, bankruptcy sale or other similar sale when the Purchasing Agent determines in writing that such purchase may be made at a cost below the market cost for the same or similar goods and such determination is reviewed and approved by the City Council.

(8) Exchanges. Any exchange of supplies, materials, property, or equipment between the City and any other public or private party made by mutual agreement of the respective parties.

### **3A-06-080. Formal Bidding Procedure.**

Except as otherwise provided herein, all large expenditures shall be made by written contract between the City and the lowest responsible bidder according to the following procedure:

(a) Specifications. Specifications shall be prepared by or under the direction of the Purchasing Agent. Specifications may be submitted to the City Council for review.

(b) Invitation for Bids. An invitation for bids shall be prepared by or under the direction of the Purchasing Agent which invitation shall:

(1) Describe the goods or services to be purchased or work to be performed;

(2) Set forth all contract terms, conditions and bond requirements applicable to the purchase or work;

(3) Set forth the criteria that will be used to evaluate the bid;

(4) State where plans, specifications and other information may be obtained;

(5) State the time and place of the bid opening; and

(6) Reserve for the City the right to reject any and all bids for any reason without liability.

(c) Notice. The invitation for bids shall be published at least twice in a newspaper of general circulation in the jurisdiction of the City at least five (5) days prior to the opening of bids. In the event there is no newspaper of general circulation printed or published within the jurisdiction of the City, the notice shall be posted at least five (5) days prior to the opening of bids in at least five (5) public places in the City which notice shall remain posted for at least three (3) days. Notice for public building improvements and public works projects shall also publish notice in accordance with Utah Code Ann. § 45-1-101, as amended, at least five (5) days before opening the bids.

(d) Amending Invitation. The invitation to bid may be amended, supplemented, or canceled at any time prior to the opening of bids when the Purchasing Agent determines that such action is in the best interest of the City. The reasons for the amendment or cancellation of the invitation shall be in writing and shall be made a part of the City's records.

(e) **Sealed Bids.** All bids shall be received by the City in sealed envelopes labeled "Bid for (item)" which shall not be opened prior to the time set for opening of the bids, except as provided in Subsection (f).

(f) **Correction of Bids.** The Purchasing Agent may permit correction or withdrawal of inadvertently erroneous bids in appropriate circumstances, provided that no changes in bid prices or other provisions of bids which are prejudicial to the interest of the City or fair competition shall be permitted. Any decision to permit the correction or withdrawal of bids shall be supported by a written determination prepared by the Purchasing Agent.

(g) **Opening Bids.** The bids shall be opened publicly by the Purchasing Agent in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(h) **Recording Bids.** The amount of each bid and the name of the bidder shall be read aloud as the bids are opened, and such information shall be recorded and open to public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

(i) **Evaluating Bids.** The bids shall be evaluated within a reasonable time by the Purchasing Agent to determine the lowest responsible bidder based upon the following objectively measurable criteria as set forth in the invitation for bids:

(1) **Price.** The total price of the bid.

(2) **Quality.** The overall quality of the goods or work to be provided and/or the ability, capacity and skill of the bidder to provide any services or work required.

(3) **Conditions.** The number and scope of any conditions or qualifications set forth in the bid.

(4) **Time.** The time limit within which the bidder can provide the goods, services or work.

(5) **Reputation.** The character, integrity, reputation, judgment, experience and efficiency of the bidder and the quality of previous goods, services or work obtained from the bidder.

(6) **Compliance.** The previous and existing compliance by the bidder with laws and ordinances relating to the goods, services or work.

(7) **Financial Resources.** The sufficiency of the financial resources and ability of the bidder to provide the goods, services or work.

(8) **Future Service.** The ability of the bidder to provide future maintenance and service and the local availability of parts, materials, etc.

(j) **Determination.** The Purchasing Agent shall determine the lowest responsible bidder and communicate such determination, in writing, to the City Council. The City Council may accept, reject, or modify the Purchasing Agent's determination and thereupon award the contract or reject any and all bids. All information relating to the selection of the lowest responsible bidder shall be retained by the City in accordance with the Utah Government Records Access and Management Act, as adopted by the City.

(k) **Cancellation and Rejection of Bids.** The City reserves the right to cancel an invitation for bids or to reject any or all bids for any reason. Such cancellation or rejection shall be in writing and shall be

made part of the City's records. In the event all bids are rejected and the City determines to make the improvement or purchase, it shall advertise anew as provided herein. If after twice advertising, no satisfactory bid is received, the City Council may proceed to negotiate or make the improvement or acquisition or enter such other agreements as it deems necessary or desirable.

(l) Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the City Council shall accept the lowest bid made by and after negotiation with the tie bidders after the time of the bid opening.

(m) Bonds. Prior to entering any contract hereunder, the City Council may require performance and payment bonds to be provided in such form and amounts as required by law and by the City Council as reasonably necessary to protect the best interest of the City.

(n) Responsibility of Bidder. The Purchasing Agent may request additional information with respect to the responsibility of a bidder. The unreasonable failure of a bidder to promptly supply information in connection with a request of the Purchasing Agent regarding responsibility may be grounds for a determination of nonresponsibility and/or nonresponsiveness of the bidder.

### **3A-06-090. Informal Bidding Procedure.**

Except as otherwise provided herein, all small expenditures of the City may be awarded to the lowest responsible bidder according to the formal bidding procedure set forth above or to the lowest responsible bidder according to the following procedure:

(a) Invitation of Bids. The Purchasing Agent shall invite bids from at least three (3) potential, responsible providers of the supplies, services or construction needed or desired. Such invitations may be made in writing or orally, including by telephone, and shall be made without unfair favoritism or bias. A record of all invitations and bids made hereunder shall be kept by the Purchasing Agent.

(b) Evaluation. The Purchasing Agent shall evaluate the bids to determine the lowest responsible bidder based upon the criteria set forth in Section 3A-06-080(i).

(c) Determination. The Purchasing Agent shall determine the lowest responsible bidder and award the contract to such bidder, unless otherwise directed by the City Council. All information relating to the bids obtained and the selection of the lowest responsible bidder shall be retained by the City in accordance with the Utah Government Records Access and Management Act, as adopted by the City.

### **3A-06-100. Additional Data.**

Any additional relevant data pertaining to the selected bidder shall be added to the Purchase Requisition or contract documents. If required by law, a written contract shall be entered into between the City and the selected bidder. Contracts involving construction work shall further provide for a bid security in the amount equal to at least five percent (5%) of the amount of the bid.

### **3A-06-110. Bonds.**

Prior to entering any contract under this Policy, the City may require performance and payment bonds to be provided in such form and amounts as required by law and by the City as reasonably necessary to protect the best interest of the City.

### **3A-06-120. Retention of Bids.**

Whenever the City is required by State law to receive bids for purchases, construction, repairs or any other purpose requiring the expenditure of funds, the City shall keep on file all bids received together with proof of advertisement by publication or otherwise, in accordance with *Utah Code Ann.* § 10-6-122, as amended.

**3A-06-130. Restrictions on Architect or Engineering Services.**

When the City elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process, the City may not award the contract for such services solicited to a higher education entity or any part of one, in accordance with and subject to the provisions of *Utah Code Ann.* § 10-7-20.5, as amended. When the City engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement, the City shall comply with applicable provisions of *Utah Code Ann.* § 10-7-86, as amended.

**3A-06-140. Use of Recycled Goods.**

The procurement officer or other person responsible for purchasing supplies for the City shall give recycled items consideration when inviting bids and purchasing supplies in accordance with applicable provisions of *Utah Code Ann.* § 10-7-87, as amended, and *Utah Code Ann.* § 11-37-101, as amended.

**3A-06-150. Disposal of Surplus Property.**

(a) For purposes of this Section, the following definitions shall apply:

(1) A *significant parcel of real property* shall mean a parcel of 1/4 acre or more in size or a parcel having a value of more than \$100,000 as determined by the City Council.

(2) A *Reasonable notice* shall mean publishing a notice of the proposed disposition and of a public hearing before the City Council to consider such disposition once in a newspaper of general circulation within the City.

(b) The City shall have the authority to sell, lease, convey and dispose of real and personal property for the benefit of the City as provided by *Utah Code Ann.* ' 10-8-2, as amended.

(c) Before the City may dispose of a significant parcel of real property, the City shall:

(1) Provide reasonable notice of the proposed disposition at least fourteen (14) days before a scheduled meeting at which the City will hear public comment; and

(2) Hold a meeting at which the City Council accepts public comment on the proposed disposition.

(d) All disposal, leases, or subleases of such property of the City other than a significant parcel of real property, shall be made, as nearly as possible, under the same conditions and limitations as required by City Ordinances and State law for the purchase or sale of property.

(e) The City Council may also authorize at its discretion and under such terms and conditions as it may deem desirable, fair and appropriate, considering intended use, property tax value, and the interests of the City, the sale of any surplus property, through public auction or other method designed to best serve the interests of City residents and produce a fair return; the trade or exchange of any surplus property; and the lease or sublease of any surplus property.

**3A-06-160. Ethics.**

(a) **Conflicts of Interest.** No officer or employee of the City may have a direct or indirect pecuniary interest in any contract entered into by the City and all officers and employees are required to comply with applicable provisions of State law regarding ethics including, but not limited to, the Utah Municipal Officers' and Employees' Ethics Act set forth at *Utah Code Ann.* § 10-3-1301, *et seq.*, as amended.

(b) **Collusion.** Any agreement or collusion among bidders or prospective bidders to bid a fixed price or to otherwise restrain competition shall render the bids of such bidders void.

(c) **Personal Use.** Any purchase of supplies or equipment by the City for the personal use of any officer or employee of the City is prohibited.

(d) **Violation.** Any violation of this Section by an officer or employee of the City shall be cause for disciplinary action, up to and including termination, in accordance with the disciplinary procedures of the City.

**3A-06-170. Records.**

All procurement records of the City shall be retained and disposed of in accordance with the Utah Government Records Access and Management Act, as adopted by the City.

**3A-06-180. Violations.**

Any purchase or contract executed in violation of the provisions of this Chapter or applicable State law shall be void as to the City, and any funds expended thereupon may be recovered by the City through appropriate action.

**3A-06-190. Appeals.**

(a) **Appeal.** Any person aggrieved of a determination of the Purchasing Agent or City Council in connection with the provisions of this Chapter may appeal the determination or action within ten (10) working days after the aggrieved person knows or should have known of the facts giving rise thereto by filing a written protest and the reasons therefor with the City Council. A protest with respect to an invitation for bids shall be submitted in writing prior to the opening of bids unless the aggrieved person did not know or could not have known of the facts giving rise to the protest prior to bid opening.

(b) Decision. The City Council shall promptly issue a written decision regarding any protest stating the reasons for the decision and informing the protestor of any right to judicial review as provided by law. A copy of the decision shall be provided to all parties.

(c) Settlement. The City Council shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.