



NIBLEY CITY COUNCIL MEETING AGENDA
Thursday, January 4, 2018 – 6:30 p.m.
Nibley City Hall 455 West 3200 South, Nibley, Utah

1. Opening Ceremonies (Councilmember Jacobsen)
2. Swearing-in Ceremony for Newly-elected Officials (City Recorder)
 - a. Mayor Shaun Dustin
 - b. Councilmember Kathryn Beus
 - c. Councilmember Norman Larsen
3. Recognition of outgoing Councilmember Bryan Hansen
4. Call to Order and Roll Call (Chair)
5. Approval of Minutes and Agenda (Chair)
6. Public Comment Period¹ (Chair)

7. Department Report from the Treasurer/Utility Manager

8. Discussion and Consideration of Resolution 18-01: A Resolution Adopting the Annual Meeting Schedule for the Nibley City Council (First Reading)

9. Discussion and Consideration of Ordinance 18-01 (Formerly Ordinance 17-14): An Ordinance Revising the Planning Commission Organization (Second Reading)

10. Discussion and Consideration of Appointments of Members to the Nibley City Planning Commission

11. Discussion and Consideration of an Amended Interlocal Agreement Creating a Regional Wastewater Treatment Rate Committee

12. Presentation regarding the Sewer Rate Study

13. Council and Staff Reports

Adjourn Meeting

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL (435) 752-0431 AS SOON AS POSSIBLE BEFORE THE MEETING.

¹ Public input is welcomed at all City Council Meetings. 15 minutes have been allotted to receive verbal public comment. Verbal comments shall be limited to 3 minutes per person. A sign-up sheet is available at the entrance to the Council Chambers starting 15 minutes prior to each council meeting and at the rostrum for the duration of the public comment period. Commenters shall identify themselves by name and address on the comment form and verbally for inclusion in the record. Comment will be taken in the order shown on the sign-up sheet. Written comment will also be accepted and entered into the record for the meeting if received prior to the conclusion of the meeting. Comments determined by the presiding officer to be in violation of Council meeting rules shall be ruled out of order.



**Nibley City Council
Agenda Report for
January 4, 2017**

Agenda Item #7

Description	Department Report from the Treasurer/Utility Manager
Department	Treasurer
Presenter	Michelle Jensen, Treasurer/Utility Manager
Recommendation	Receive the presentation and provide feedback to staff
Financial Impact	The City Treasurer is responsible for receiving and managing all city funds. Nibley's Treasurer is also responsible for all utility billing and accounts receivable.
Reviewed By	City Manager, Treasurer

Background

The City Treasurer/Utility Manager will provide a report to the City Council on accomplishments and goals related to the functions of the Treasurer/Utility Manager.

Agenda Item #8

Description	Discussion and Consideration of Resolution 18-01: A Resolution Adopting the Annual Meeting Schedule for the Nibley City Council (First Reading)
Department	City Council
Presenter	David Zook, City Manager
Recommendation	Make a motion to waive the second reading and adopt the annual schedule, with any proposed changes
Financial Impact	The City Council is required to meet at least once per month. More frequent meetings may incur additional staff costs.
Reviewed By	Mayor, City Manager

Background

State law requires that the City Council meet at least once per month and that it should adopt an annual schedule of those meetings at its first meeting of the year. The proposed schedule plans for two meetings per month, normally on the first and third Thursdays of each month. However, there are two proposed exceptions, as follows:

- A meeting is proposed for the 5th Thursday of March in lieu of having a meeting on the 1st Thursday of April due to the Cache County School District's spring break.
- A meeting is proposed for the 2nd Thursday of October in lieu of having a meeting on the 3rd Thursday of October due to the Cache County School District's fall (UEA) break.

The schedule presented to Council for adoption also proposes to move the meeting time to 6:00 p.m. rather than the usual 6:30 p.m.

Agenda Item # 9

Description	Discussion and Consideration of Ordinance 18-01 (Formerly Ordinance 17-14): An Ordinance Revising the Planning Commission Organization (Second Reading)
Department	Planning
Presenter	Shaun Dustin, Mayor and Stephen Nelson, City Planner
Findings	This action is a legislative action, not an administrative action. Therefore, the City Council has wide discretions on the item.
Financial Impact	The change would require the Planning Commission Chair or another member of the Commission to attend a City Council Meeting, which they would be compensated for. Commissioners are paid \$50 per meeting.
Recommendation	Review, make recommendations and make a motion to approve Ordinance 18-01.
Reviewed By	City Planner, City Manager and Mayor

Background

The following proposals would make a few changes to the role and organization of the Planning Commission.

1. Instead of the Planning Commission picking their own chairman and other officers, this power will revert to the Mayor to appoint these officers, with approval from the City Council.
2. The Planning Commission Chairman shall report “on a regular basis about the Planning Commission’s ongoing projects and goals.” The intent of this change is to provide for more accountability, integration and communication between the City Council and Planning Commission.

Proposed changes are denoted by strikethrough or underline in the proposed document.

The only change to the document from the first draft presented to the council is a change to denote that the Mayor will annually select a chairman, as was recommended by the Council at the first reading of the ordinance.

Also, during the first reading, the Council asked that the ordinance be presented to the Planning Commission for their input. The Commission reviewed the ordinance on December 13, 2017. Planning Commissioners had opinions ranging from a desire to leave the process as is to support for the change, but there were no strong opinions expressed in any direction. The Commission did not vote to make a formal recommendation in either direction either.

Agenda Item #10

Description	Discussion and Consideration of Appointments of Members to the Nibley City Planning Commission
Department	City Council/Planning
Presenter	Shaun Dustin, Mayor
Financial Impact	Vacancies on the Commission create salary savings because the adopted budget assumes full appointments and attendance.
Recommendation	Provide advice and consent on proposed appointments.
Reviewed By	Mayor, City Manager, City Planner

Background

If the Council adopts Ordinance 18-01, Mayor Dustin may propose a Planning Commission Chairman for the Council's approval. In addition, Mayor Dustin may propose new members to the Commission to fill upcoming vacancies. Commissioner Bill Green will complete his second 5-year term on February 5 and a vacancy will be created. Other Commissioners have indicated that they are likely to leave the Commission in the near future as well.

Agenda Item #11

Description	Discussion and Consideration of an Amended Interlocal Agreement Creating a Regional Wastewater Treatment Rate Committee
Department	City Council/Sewer Department
Presenter	David Zook, City Manager and Justin Maughan, Public Works Director
Financial Impact	Adoption of a new sewer rate will result in more revenue being collected by Nibley City. Logan City, which charges Nibley for wastewater treatment services, has adopted a resolution increasing treatment charges by 10% each year beginning this year and continuing for five years. This is expected to increase costs to Nibley City by approximately \$40,000 in the first year and by more than \$200,000 by the fifth year. If Nibley does not increase the sewer rate it charges residents, these increased costs will deplete sewer department reserve funds.
Recommendation	Receive the presentation and provide input to staff.
Reviewed By	Mayor, City Manager, Public Works Director, Utility Manager

Background

In 2013, Nibley City, hired Zions Bank's Municipal Finance Division to study Nibley's sewer rate structure and provide a recommendation on what the rate should be. During that study, it was determined that additional information was needed regarding sewer system facility needs before the study could be completed.

Nibley City engaged the service of JUB Engineers to complete a Sewer Master Plan and study capital facility needs. That plan was adopted by Nibley City in 2015. Although the plan provided the necessary facility information, the sewer rate study was not completed because Logan City was in the midst of modifying the rate it charges Nibley and other cities for wastewater treatment. It was determined that Nibley should wait until Logan provided new rate information before Nibley's sewer rate study was completed. Logan has since adopted a new rate structure, which includes increasing the wastewater treatment rate charged to Nibley and other cities by 10% per year for five consecutive years, commencing July 1, 2017. With this information, the sewer rate study was completed.

Staff will review the results of the study and present options to the Council for various rate scenarios. The recommendation from the study and from staff is that the rate should be increased. If the rate is not increased, the additional charges from Logan City will deplete Sewer

Department fund reserves and would eventually make the department insolvent. The amount by which the rate increases will determine whether or not fund balances increase and if the City will have funds available for future capital facilities needs.

Agenda Item #12

Description	Presentation regarding the Sewer Rate Study
Department	City Council/Sewer Department
Presenter	David Zook, City Manager
Financial Impact	This document governs the wastewater rate committee, which gives recommendations to the Logan Municipal Council for wastewater treatment rates charged to Nibley and other cities. The amended agreement does not change the sewer rates. Nibley City budgeted \$400,000 this year to pay for wastewater treatment costs.
Recommendation	Make a motion to approve the amended agreement and authorize Mayor Dustin to sign it on behalf of the City.
Reviewed By	Mayor, City Manager, City Attorney

Background

In 2015, Nibley City, along with the Cities of Smithfield, Hyde Park, North Logan, and Providence, entered into an interlocal agreement with Logan City to create a regional wastewater treatment rate committee. The role of that committee is to review treatment rates and make recommendations to the Logan Municipal Council

RESOLUTION 18-01

A RESOLUTION ADOPTING THE ANNUAL MEETING SCHEDULE FOR THE NIBLEY CITY COUNCIL

WHEREAS, the Open and Public Meetings Act, in section 52-4-202 (2) of the Utah Code, requires that a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule; and

WHEREAS, adopting an annual meeting schedule can make it easier for citizens to be involved in civic affairs by making them aware of normal City Council meeting times.

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

Regular meetings for the Nibley City Council shall be held according to the dates and times listed on the attached schedule at Nibley City Hall, which is located at 455 West 3200 South in Nibley.

BE IT FURTHER RESOLVED THAT:

The City Council may also call special or emergency meetings pursuant to the provisions of the Open and Public Meetings Act.

Dated this 4th day of January 2018

Shaun Dustin, Mayor

ATTEST

David Zook, City Recorder

The following is hereby adopted as the 2018 Nibley City Council meeting schedule.

The below meeting dates all fall on a Thursday and will begin at 6:00 p.m.

2018 City Council Meeting Dates
January 4
January 18
February 1
February 15
March 1
March 15
March 29
April 19
May 3
May 17
June 7
June 21
July 5
July 19
August 2
August 16
September 6
September 20
October 4
October 11
November 1
November 15
December 6
December 20

The normal schedule for Council meetings is for them to be held on the first and third Thursdays of each month. However, there are two exceptions, as follows:

- A meeting is proposed for the 5th Thursday of March in lieu of having a meeting on the 1st Thursday of April due to the Cache County School District's spring break.
- A meeting is proposed for the 2nd Thursday of October in lieu of having a meeting on the 3rd Thursday of October due to the Cache County School District's fall (UEA) break.

There may be circumstances that arise and cause a meeting to be cancelled or for a special or emergency meeting to be scheduled, pursuant to the provisions of the Open and Public Meetings Act. Notification will be made as soon as reasonably possible in the event of a cancellation or special/emergency meeting.

ORDINANCE 17-14

AN ORDINANCE REVISING THE PLANNING COMMISSION ORGANIZATION

WHEREAS, Nibley City's Planning Commission has been designated a land use authority by the Utah Land Use and Development Act and by Nibley City Ordinance; and

WHEREAS, Nibley City's Planning Commission plays a vital role in making recommendation and land use decisions; and

WHEREAS, Nibley City seeks to provide the best and most timely service it can to property owners and residents of the City; and

WHEREAS, the Mayor and City Council appoint and approve each member of the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL OF NIBLEY, UTAH THAT:

1. The attached ordinance, entitled, "An Ordinance Revising the Planning Commission Organization" is hereby adopted and Nibley City Code 2-1 shall be updated accordingly.
2. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
3. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
4. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS ____ DAY OF _____, 2017.

Shaun Dustin, Mayor

ATTEST:

David Zook, City Recorder

2-1 Planning Commission

- 2-1-1 Established
- 2-1-2 Terms Of Office
- 2-1-3 Organization
- 2-1-4 Powers And Duties

Amended by Ord. 16-01 on 3/3/2016

2-1-1 Established

- A. Membership: There is hereby created a planning commission of five (5) members, and one alternate. The Mayor, with advice and consent of the City Council, shall appoint all members and alternates to the Planning Commission. Members of the city council may not be appointed to the planning commission.
- B. Compensation: Members of the planning commission shall be compensated as determined by resolution of the city council.

2-1-2 Terms Of Office

The terms of the planning commission shall be staggered. Each member of the planning commission shall serve for a term of five (5) years and until his successor is appointed; provided, that the term of the first members shall be such that the terms of one member shall expire each year. Terms of members of the planning commission shall begin on or before the first Monday in February of each year. The city council may remove any member of the planning commission for cause and after a public hearing, if one is required. Vacancies shall be promptly filled in the same manner as the original appointment for the remainder of the unexpired term. The term of the alternate shall be the same as terms for regular members of the Planning Commission, which may result in the replacement of both a regular member and an alternate in certain years.s

2-1-3 Organization

~~A. Chairperson; Adoption Of Rules:- The Mayor members of the planning commission shall annually appoint from their own members a chairperson and such other officers as deemed necessary with advice and consent of the City Council, and shall adopt rules and regulations for their organization and for the transaction of business and the conduct of their proceedings.~~

~~A.B.~~ Adoption Of Rules: The members of the planning commission shall adopt rules and regulations for their organization and for the transaction of business and the conduct of their proceedings.

~~B.~~

Formatted: Indent: Left: 0.5", No bullets or

C. Reports To City Council: [The Planning Commission chair shall, at the request of the Mayor or City Council, give a report to the City Council on a regular basis about the Planning Commission's ongoing projects and goals. This report shall be in person and agendized on the City Council agenda. If the Planning Commission Chair is not able to attend the appointed meeting, the chairperson may assign another member of the Planning Commission or staff to report, or the chairperson may submit a written report.](#)

~~C.~~ Reports of official acts and recommendations of the planning commission shall be public and made by the chairperson in writing to the city council and shall indicate how each member of the planning commission voted with respect to such act or recommendation. Any member of the planning commission may also make a concurring or dissenting report or recommendation to the city council. The Planning Commission chair may designate staff to make such reports, written or oral, to the Nibley City Council.

- D. Meetings: The planning commission shall meet at least once each month and at such other times as the planning commission may determine.
- E. Quorum: Three (3) members of the planning commission shall constitute a quorum. Alternate members shall count towards the number for a quorum.
- F. Alternate: The Alternate member of the Planning Commission is encouraged to attend all Planning Commission meetings. Alternate members are encouraged to participate in the discussion of all meetings for which they are present, but shall only vote in the absence of a regular Commissioner.

Formatted: Indent: Left: 0.5", No bullets or

**AMENDED INTERLOCAL AGREEMENT
CREATING REGIONAL
WASTEWATER TREATMENT RATE COMMITTEE**

THIS AMENDED INTERLOCAL AGREEMENT CREATING REGIONAL WASTEWATER TREATMENT RATE COMMITTEE (this "Agreement") is made and entered into as of this ____ day of _____, ~~2015~~2017, by, between and among the following governmental entities located in Cache County, State of Utah:

THE CITY OF LOGAN, a municipal corporation of the State of Utah (hereinafter referred to as "LOGAN"),

THE CITY OF SMITHFIELD, a municipal corporation of the State of Utah (hereinafter referred to as "SMITHFIELD"),

THE CITY OF HYDE PARK, a municipal corporation of the State of Utah (hereinafter referred to as "HYDE PARK"),

THE CITY OF NORTH LOGAN, a municipal corporation of the State of Utah (hereinafter referred to as "NORTH LOGAN"),

THE CITY OF RIVER HEIGHTS, a municipal corporation of the State of Utah (hereinafter referred to as "RIVER HEIGHTS"),

THE CITY OF PROVIDENCE, a municipal corporation of the State of Utah (hereinafter referred to as "PROVIDENCE"), and

THE CITY OF NIBLEY, a municipal corporation of the State of Utah (hereinafter referred to as "NIBLEY").

This Agreement shall replace the original Interlocal Agreement creating the Regional Wastewater Treatment Rate Committee dated November 9th, 2015 and is amended for the sole purpose of adding the City of River Heights as a member.

The above listed entities are sometimes jointly referred to in this Agreement as "Parties," and individually as a "Party." SMITHFIELD, HYDE PARK, NORTH LOGAN, RIVER HEIGHTS, PROVIDENCE and NIBLEY are sometimes jointly referred to in this Agreement as the "Contributing Parties" and individually as a "Contributing Party."

RECITALS:

A. In the past, LOGAN has owned and operated a wastewater lagoon and treatment facility (the "Existing Facility") and has accepted wastewater from the Contributing Parties for treatment at the Existing Facility.

B. LOGAN anticipates that it will construct a new mechanical wastewater treatment facility (the "Treatment Facility") that will be owned and operated by LOGAN.

C. If LOGAN constructs the Treatment Facility, it anticipates that it will continue to accept wastewater from the Contributing Parties for treatment at the Treatment Facility.

D. The Parties understand that, consistent with the provisions of this Agreement, LOGAN will have the power and authority to impose User Charges upon the Contributing Parties that deliver wastewater to the Treatment Facility so as to cover their proportionate shares of the Operating Expenses of the Treatment Facility and also a Transfer Fee.

Formatted: Font color: Blue

Formatted: Font color: Green

E. The Parties desire to create a committee, with representation from each of the Parties, which will have authority to establish rates, within the parameters set forth in this Agreement, for the wastewater treatment services provided by LOGAN.

G. The Parties agree that this Agreement is entered into pursuant to the authority granted by the Utah Interlocal Cooperative Act, as set forth in Chapter 13, Title 11, Utah Code Annotated (1953, as amended).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereby agree as follows:

1. **Construction of Treatment Facility.** The Parties acknowledge that it is the present intention of LOGAN to construct the Treatment Facility estimated to be an 18 MGD facility, but actual size will be determined by the number of Contributing Parties who participate. It is understood and agreed that LOGAN may design the Treatment Facility with an operational capacity that is sufficient, in the reasonable judgment of LOGAN, to service the current and reasonably expected future treatment needs of the Parties. However, nothing in this Agreement shall be deemed to create an obligation of LOGAN to construct the Treatment Facility, and no Party shall have the right or power to compel LOGAN to construct the Treatment Facility.

2. **Term of Agreement.** The term of this Agreement shall commence as of the effective date of this Agreement, as set forth in the first paragraph of this Agreement, and shall continue for 30 years. It is the express intent of LOGAN to continue to provide effective and cost-efficient treatment of wastewater for the Contributing Parties for the useful life of the Treatment Facility. Therefore, this agreement may be extended in five year increments by mutual consent of the Parties.

Formatted: Font color: Dark Red

3. **Ownership of Wastewater Collection and Treatment Facilities.** The Parties agree as follows with respect to the ownership of the Treatment Facility and the wastewater collection systems of the Parties:

(a) LOGAN shall be the sole owner and operator of the Treatment Facility, and shall have the sole power and authority to operate and maintain the Treatment Facility.

This power and authority shall include, but not be limited to, the power and authority to hire managers, operators, mechanics, laboratory technicians and such other personnel as LOGAN deems necessary and appropriate for the operation and maintenance of the Treatment Facility. Nothing in this Agreement shall be deemed to give any of the Contributing Parties any ownership interest in the Treatment Facility or any right to operate or maintain the Treatment Facility.

(b) LOGAN shall be the sole owner and operator of its own wastewater collection and transmission facilities, and LOGAN shall be solely responsible for the operation, maintenance, and repair of its own wastewater collection and transmission facilities, and for the Operating expenses associated with these facilities.

(c) Each Contributing Party shall be the sole owner and operator of its own wastewater collection and transmission facilities up to the point where the Contributing Party's collection and transmission facilities connect with LOGAN's wastewater system. These points of connection are more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference. Each Contributing Party shall be solely responsible for the operation, maintenance and repair of its own wastewater collection and transmission facilities and for the collection related operating costs of delivering its wastewater. These may include shared costs between Contributing Parties and LOGAN that may vary for each facility (collection and transfer facilities such as lift stations and trunk lines).

(1) Each Party agrees that it will construct, maintain and operate its wastewater collection and transmission facilities in a manner that will comply with all applicable Federal and State rules and regulations, and that it will use and exercise due diligence in preventing surface and sub-surface water from entering into its collection and transmission facilities.

(2) If it is determined that a Contributing Party is responsible for a violation of LOGAN's operating permit relating to the Treatment Facility, that Contributing Party shall be responsible for the payment of any fees, penalties and remediation expenses incurred by LOGAN with respect to that violation.

(d) Nothing in this Agreement shall preclude a Contributing Party from entering into a separate agreement with LOGAN with respect to the construction, maintenance and operation of a facility that is a part of that Contributing Party's own collection and transmission facilities, including lift stations. However, no part of the cost of the construction or operation of those facilities shall be included in the costs of operation and maintenance of the Treatment Facility that is shared by the Parties pursuant to this Agreement.

4. **Obligation to Accept and Treat Wastewater.** As long as a Contributing Party is in compliance with the provisions of this Agreement and the Contributing Party's specific Sewer Treatment Agreement with Logan, LOGAN shall accept and treat at the Treatment Facility all of the wastewater delivered to the Treatment Facility by that Contributing Party. Treatment of wastewater at the Treatment

Formatted: Font color: Red

Facility shall be on a first come, first served basis among the Parties to this Agreement, up to, but collectively not exceeding the treatment capacity of the Treatment Facility.

5. **User Charges.** The Parties recognize and agree that, as sole owner and operator of the Treatment Facility and the issuer of the bonds described in this Section of this Agreement, LOGAN is legally obligated to pay, from revenues, the Operating Expenses relating to the Treatment Facility. The Parties agree that LOGAN has the right to impose User Charges. To ensure that User Charges are equitable, the fee charged to each Contributing Party in dollars per 1,000 gallons of treated wastewater shall be the same as the per 1,000 gallon fee charged by LOGAN for its estimated flow. The revenue paid into the Wastewater Treatment fund from LOGAN shall be the amount collected from its residential and commercial users based on the estimated per 1,000 gallon rate, while the amount collected from each Contributing Party shall be its measured flow in 1,000 gallons multiplied by the same rate. The Parties agree that the system has inflow and infiltration problems and the Rate Setting Committee may direct the consultant to develop alternative rate/flow schemes to better reflect the estimated inflow and infiltration.

The User Charges shall include Operations and Maintenance Expenses, bond debt service, Administration Expenses, and a Transfer Fee in connection with the treatment of wastewater at the Wastewater Facility as follows (Except that capital expenses shall not be duplicated through depreciation and again through debt service):

(a) **Operations and Maintenance Expenses.** The Operations and Maintenance Expenses of the Treatment Facility shall include the following elements:

(1) The actual costs of the operation and maintenance of the Treatment Facility, including, but not limited to, costs of maintenance and repair of equipment used in connection with the operation and permit compliance of the Treatment Facility, salaries and wages, health, hospitalization, pension and retirement expenses of employees of the Treatment Facility, fees for services, materials and supplies, rents, insurance expenses, fees and expenses paid for permits, legal, engineering, accounting and financial advisory services and other consulting and technical services, training of personnel, taxes, and other governmental charges imposed by any entity other than LOGAN, fuel costs, payments for the purchase of water for use in connection with the operation of the Treatment Facility, costs of utility services and other auxiliary services, and any other current expenses or obligations required to be paid by LOGAN in connection with the operation and maintenance of the Treatment Facility for treatment of the wastewater load, including I/I.

(2) The costs of repair and replacement of equipment and facilities at the Treatment Facility and the funding of reserves.

(3) Funding future capital replacement/improvement project reserves.

(4) The costs of closing and remediating the existing sewer lagoons as required by the applicable Federal, state, and/or county regulations. Costs associated with

Formatted: Font color: Dark Red

renovation of the sewer lagoons for other uses shall not be included.

(5) Other costs of transitioning from the lagoons to the new facility.

(b) Bond Debt Service. The Bond Debt Service shall mean and include the amounts payable by LOGAN with respect to the following revenue bonds.

(1) Debt Service coverage requirements, debt service reserve fund deposits, and other amounts payable by LOGAN with respect to \$3,355,000 in Revenue Bonds (as of 6/30/15) that have been issued by LOGAN and which relate to LOGAN's existing treatment facilities.

(2) Debt service payments, debt service reserve fund deposits, coverage requirements, and other amounts payable by LOGAN with respect to the revenue bonds that will be issued by LOGAN to provide funds with which to construct the Treatment Facility.

(c) Administrative Expenses. The Administrative expense shall be a reasonable allocation of costs incurred by LOGAN to support the operation of the Treatment Facility. The method of allocation shall be based on established accounting procedures and shall be the same as that used for other LOGAN departments.

(d) Transfer Fees. A Transfer Fee (calculated at 5.5% of estimated revenue) will be transferred from the Wastewater Enterprise Fund into the General Fund in accordance with Utah Law. The Transfer Fee is intended to compensate Logan City for the intangible risk and opportunity cost of providing wastewater treatment service to the contributing parties.

6. Creation of Rate Committee. There is hereby created a committee to be known as the "Regional Wastewater Treatment Rate Committee." Said committee is referred to in this Agreement as the "Rate Committee." The Rate Committee is formed by this Agreement pursuant to the provisions of Utah Code Annotated §11-13-101 et seq.

7. Authority and Action of Rate Committee. The rate committee shall meet at least once each year, but as often as needed to accomplish its purpose. The Committee shall:

(a) Confirm the votes allocated to the Members of the Rate Committee for that annual meeting pursuant to the procedure described in Section 11 of this Agreement.

(b) Yearly, elect the chair and other officers of the Rate Committee pursuant to Section 8(c) of this Agreement.

(c) Establish or modify bylaws as specified in Section 10 of this Agreement.

Formatted: Font color: Dark Red

Formatted: Font color: Dark Red

(d) Review the annual report prepared by LOGAN pursuant to Section 14 of this Agreement.

(e) Review LOGAN's explanation and accounting of Administration Expenses.

(f) As deemed necessary, select consultants to support User Rate analyses.

(g) Subject to the provisions of Section 5 of this Agreement the Rate Committee shall establish or reaffirm the Fiscal Year User Rate that will serve as the basis for monthly wastewater treatment bills charged to the Parties. The User Rate shall represent the unit cost of wastewater treatment by the Treatment Facility. User Charges will be calculated from the User Rate and the monthly Wastewater Loads of the Parties in order to ensure that each entity will pay its equitable share of wastewater treatment costs.

(h) At the request of a majority of the Contributing Parties, rates adopted by the Rate Committee shall be reviewed by an independent consultant selected by the Committee, as set forth in Section 11d, below. If the reviewer determines that the rates are not fair and equitable, the rates shall be revised to be fair and equitable prior to being imposed.

(i) Recommend the annual wastewater treatment operations budget to the Logan City Mayor.

Formatted: Font color: Dark Red

(j) Take such actions as are necessary or expedient to carry out the intention of this Agreement. However, the Rate Committee shall have no powers other than those granted to it under this Agreement.

8. **Committee Membership.** Each Party shall have the power to appoint one member of the Rate Committee for so long as it is delivering wastewater to the Treatment Facility. Each such member is referred to as a "Member" of the Rate Committee.

(a) The Member representing a Party shall be designated and appointed by the duly constituted governing body of that Party. Such Member shall serve at the pleasure of the governing body of that Party, and each Party shall have the right to remove and replace the representative Member of that Party at any time. Initial appointments shall be made within thirty (30) days of the date of this Agreement, and each Party shall give written notice to the other Parties of the identity of the representative Member of that Party.

(b) In the event of the removal and/or resignation, death or incapacity of any Member, the governing body of the Party who appointed that Member shall designate and appoint a new representative Member for that Party to fill the vacancy, and shall give written notice to the other Parties of the identity of the replacement Member who represents the Party on the Rate Committee. All Members shall continue to serve until their respective successors are appointed.

(c) The Rate Committee shall select a chair, a vice-chair and other officers from among the Members, who shall serve until their successors are duly selected by the Members. The Chair and Vice Chair of the Committee shall rotate on an annual basis between LOGAN and the Contributing Parties. The Director of LOGAN’s Environmental Department shall serve as the Secretary and as a technical advisor to the Rate Committee. The Secretary shall not have any votes with respect to actions taken or approved by the Rate Committee unless the Secretary is designated by LOGAN as its representative Member on the Rate Committee. The Secretary shall keep minutes of each regular and special meeting of the Rate committee and shall supply to each Member of the Rate Committee copies of those minutes as soon as reasonably possible after each such meeting.

9. **Meetings.** The Rate Committee shall meet as often as necessary to accomplish the business of the Committee. The annual meeting of the Rate Committee shall occur on the second Monday of January each year, or on such other date in a particular year as is determined by the Rate Committee. Any Member may call a special meeting of the Rate Committee at any time upon written notice to all of the Parties, which notice must be given not less than ten (10) days prior to the special meeting.

10. **Bylaws.** The Rate Committee shall establish bylaws, consistent with this Agreement, relating to the activities of the Parties in connection with this Agreement. Those bylaws shall be applied uniformly among all of the Parties.

11. **Voting.** Except as otherwise expressly provided in this Section, or otherwise in this Agreement, actions by the Rate Committee shall be on the basis of a majority of the weighted votes allocated to the Members of the Rate Committee. In each fiscal year, each Member of the Rate Committee shall be allotted a number of votes in each fiscal year proportional to the “wastewater revenue” paid to the Treatment Facility by the Party represented by that Member during the prior fiscal year, and the number of votes shall be adjusted each fiscal year. There will be a total of 1000 votes, and the number of each Party’s votes will be calculated as a percentage of Wastewater Revenue paid and multiplied by 1000. For purposes of vote allocation, the definition of “Wastewater Revenue” shall be determined by the Committee and may be revised. Until such time as Wastewater Revenue is defined and calculated for each Party, the percentage of annual revenue paid by each Party shall be the basis for apportioning the weighted votes of the Members of the Rate Committee.

Formatted: Font color: Dark Red

(a) **Weighted Votes.** Initially, the votes of the Members representing the Parties on the Rate Committee shall be allocated as follows, using ~~2014~~2016 revenue data:

Party	2014 2016	Proportional Contribution	Number of Votes for 2014 2016
LOGAN	\$4,080,289,216,157.2	66.75	667.665
SMITHFIELD	\$433,105	7.16	71.63
HYDE PARK	\$226,703	3.74	37.41
NORTH LOGAN	\$683,605	11.26	112.11
RIVER HEIGHTS	\$46,152	0.89	8.9
PROVIDENCE	\$436,297	7.16	71.68

Formatted Table
Formatted: Centered
Formatted: Centered
Formatted: Indent: Left: 0.38", Tab stops: 1.19", Right
Formatted: Indent: Left: 0.38", Tab stops: 1.19", Right
Formatted: Indent: Left: 0.38", Tab stops: 1.19", Right
Formatted: Indent: Left: 0.44", Tab stops: 1.19", Right
Formatted: Tab stops: 1.49", Right

NIBLEY	\$209,276	3.48	3438
TOTAL	\$6,339,319.12	100%	1,000

Formatted: Tab stops: 1.49", Right

(b) **Adjustment of Votes.** Each fiscal year, the number of votes allocated to each Member shall be adjusted. The number of votes allocated to each Party shall be based on the proportion to the total wastewater revenue paid to the Treatment Facility in the prior fiscal year by the Party represented by that Member, relative to the total wastewater revenue paid to the Treatment Facility by all of the Parties during that prior fiscal year.

(c) **Quorum.** Five (5) Members, who collectively represent Parties holding not less than sixty percent (60%) of the total votes, shall constitute a quorum for purposes of a meeting of the Rate Committee. No action may be taken by the Rate Committee except at a meeting at which a quorum is present.

(d) The selection of any consultant to provide services relating to the Rate Committee's authority shall require the vote of at least eighty percent (80%) of the Members of the Rate Setting Committee, including at least three of the Contributing Parties.

Formatted: Font color: Dark Red

12. **Separate Metering.** To determine the allocation of User Charges that are to be proportionately allocated among the Parties, Contributing Parties will have separate flow meters and appropriate monitoring equipment installed, calibrated, maintained, and controlled to determine accurate flow and Wastewater Load delivered to the Treatment Facility by each Party. User charges applied to Logan shall be based on estimated flows.

Formatted: Font color: Dark Red

(a) For purposes of this Agreement, Wastewater Load shall be defined by the Rate Committee.

(b) Wastewater Load will be measured monthly by LOGAN.

(c) The cost of installing calibrating, maintaining, and monitoring flow meters and associated equipment for measurement of the Participating Parties' wastewater contributions shall be a cost to the Contributing Parties.

Formatted: Font color: Red

(d) The flow meters and associated monitoring equipment shall be operated, calibrated and maintained by LOGAN in accordance with the equipment manufacturers' printed recommendations. The meters shall be periodically serviced at the Board's direction by an independent contractor approved by the Board.

13. **Wastewater Treatment Enterprise Fund.** Wastewater treatment User Charge amounts received from the Parties shall be deposited in the LOGAN Wastewater Treatment Enterprise Fund. It is acknowledged that a portion of the reserve funds in this account came from payments by the contributing parties. The Transfer Fee and the Administrative Expense portion will be transferred to Logan's general fund in accordance with Utah law. The only funds transferred from the Wastewater Enterprise Fund shall be the Administrative Expense and Transfer Fee specified in Sections 5c and 5d.

Formatted: Font color: Dark Red

14. **The Annual Report.** Before the next annual meeting of the Rate Committee, LOGAN shall supply to each of the Parties a written report containing the following information:

(a) An independent auditor's report and opinion on the accounting of the Operating Expenses and the reasonableness of the allocated administrative charges of the Treatment Facility incurred during the 12-month period ending on June 30.

(b) A report of the flow and Wastewater Load received from each of the Parties during the 12-month period.

(c) The current budget for the operation of the Treatment Facility.

(d) A detailed explanation and accounting of Administrative Expenses.

15. **Failure to Act by Rate Committee.** If the Rate Committee fails to exercise the rate-setting authority granted to it under this Agreement, LOGAN shall have the power and authority to set rates for treatment of wastewater at the Treatment Facility, after providing written notice to the Contributing Parties.

16. **Protection of Bond Covenants.** Nothing in this agreement shall limit the power of LOGAN to establish fees and charges for wastewater treatment services or to perform in a manner that will satisfy its bond covenants relating to all revenue bonds issued by LOGAN that are secured, in whole or in part, by LOGAN's wastewater collection and treatment system; provided, that the Contributing parties shall not be responsible for the payment of any operation and maintenance or debt service expenses for any bonds issued by LOGAN that do not relate to the wastewater treatment system.

17. **Withdrawal by a Contributing Party.** The Parties acknowledge that, if any Contributing Party were to disconnect from the Treatment Facility, that Contributing Party's share of the cost of the operation and maintenance of the Treatment Facility and the other amounts payable by the Parties would be shifted to the other Parties, potentially increasing the amounts payable by those other Parties. Disconnection from the Treatment Facility will be outlined in detail in each Party's specific Sewer Treatment Agreement with Logan. Therefore, the Parties hereby agree that:

(a) **Withdrawal Notice.** If a Contributing Party proposes to withdraw from participation in the Rate Setting Committee, it shall give written notice thereof to all of the other Parties.

(b) **Effective Date.** The effective date of a Contributing Party's disconnection from the Rate Setting Committee shall be the date indicated in the written notice, or if not specified shall be the date received by the Committee.

(c) In the event that a Contributing Party disconnects from the Treatment Facility, the Contributing Party's membership on the Rate Committee shall automatically terminate.

(d) The Parties acknowledge that early disconnection provisions and any equitable adjustments required in the event of early disconnection will be subject to additional conditions established in each Party's specific Sewer Treatment Agreement with LOGAN.

(e) Nothing in this section shall prevent the Parties from pursuing other remedies available to them by law.

18. **Representations of Parties.** Each Party hereby certifies, warrants and represents that (a) it has the power to enter into this Agreement and all necessary action of its city council to authorize the execution and delivery of this Agreement; and (b) this Agreement does not conflict with, and the execution and performance hereof by the Party, will not constitute a breach of or a default under any contract, lease, court order, administrative rule, regulation or law to which the Party or its properties or either of them are subject or by which it is bound.

19. **Default.** In the event any of any default in the performance of any obligation hereunder or any breach of any term hereunder by a ~~Non-Owner~~Contributing Party, the other Parties shall be entitled, in addition to any other remedy that may be available hereunder or under applicable law, to recover from the defaulting Party the costs incurred by those other Parties in enforcing their rights hereunder or in seeking damages for any breach hereof, including reasonable attorneys' fees, whether such costs are incurred by litigation or otherwise. The remedies available under this Section shall be cumulative and in addition to any other remedies which may be available hereunder or under applicable law, and no election by any Party to exercise, modify or waive any remedy on any occasion shall be deemed to be an election to exercise, modify or waive the same or any other remedy on any other occasion. In the event of a material breach by a Contributing Party of this Agreement, the breaching Contributing Party shall have its Rate Committee membership suspended until the breach is cured. The determination of a "material breach" and the cure of said breach shall be made by the Rate Committee minus the participation of the alleged breaching Contributing Party.

20. **Amendment of Agreement.** It is the intention of the Parties that, if the Parties determine that this Agreement should be amended, an attempt shall be made to reach a consensus with respect to that amendment. However, this Agreement may be amended by a vote of at least eighty percent (80%) of the votes of the Members of the Rate Committee, including at least three of the Contributing Parties; provided, however, that (a) no such amendment shall impose upon any Party the obligation to pay fees and charges or other amounts in excess of the amounts described in this Agreement (unless that Party agrees to those additional amounts), and (b) unless LOGAN agrees otherwise, no such amendment shall amend or modify the protection of LOGAN's bond covenants set forth in ~~Section~~Sections 5(b) and 16 of this Agreement.

21. **Assignment.** No Party shall have the authority to transfer or assign any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of all of the other Parties.

22. **Binding Effect.** This Agreement shall be binding upon each of the Parties hereto and their respective assigns and successors-in-interest.

23. **Severability.** It is hereby declared that all parts of this Agreement are severable, and if any section, paragraph, clause or provision of this Agreement shall, for any reason, be held to be invalid or ~~enforceable~~unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect the validity or enforceability of the remaining sections, paragraphs, clauses and provisions of this Agreement.

24. **Complete Agreement.** This Agreement constitutes the full and complete agreement by, between and among the Parties as to the matters covered hereby, and supersedes all prior oral or written agreements, representations, conversations and understandings of the Parties.

25. **Sewer Treatment Agreement.** This Agreement does not take the place of each Party's individual Sewer Treatment Agreement with Logan. However, each Party's individual agreement may not be contrary to what is in this Agreement.

26. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their duly authorized representatives on the date first above Written.

LOGAN CITY

By: _____
Mayor

Attest:

Approved as to form:

City Recorder

Attorney for Logan City

SMITHFIELD CITY

By: _____
Mayor

Attest:

City Recorder

Approved as to form:

Attorney for Smithfield City

HYDE PARK CITY

Attest:

By: _____
Mayor

Approved as to form:

City Recorder

Attorney for Hyde Park City
NORTH LOGAN CITY

Attest:

By: _____
Mayor

Approved as to form:

City Recorder

Attorney for North Logan City

RIVER HEIGHTS CITY

Attest:

By: _____
Mayor

Approved as to form:

City Recorder

Attorney for River Heights City

PROVIDENCE CITY

Attest:

By: _____
Mayor

City Recorder

Approved as to form:

Attorney for Providence City

NIBLEY CITY

Attest:

By: _____
Mayor

Approved as to form:

City Recorder

Attorney for Nibley City

