

RESOLUTION NO. R-07-2014

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH
APPROPRIATING A NONMONETARY CONTRIBUTION
TO THE PONY EXPRESS DAYS RODEO COMMITTEE**

WHEREAS, due to budgetary constraints and changes in City policy with respect to the Rodeo, Eagle Mountain City (the "City") has determined that the City does not want to be financially responsible for conducting the Rodeo in 2014; and

WHEREAS, to continue the Rodeo, certain residents in Eagle Mountain City have formed Pony Express Days Rodeo Committee, Inc. (the "Committee"), a non-profit entity, to conduct the Rodeo; and

WHEREAS, the Committee is a separate and distinct legal entity from the City; and

WHEREAS, the Eagle Mountain City Council ("Council") met in regular meeting on February 18, 2014, to discuss, among other things, appropriating a nonmonetary contribution to the Committee; and

WHEREAS, the appropriation of nonmonetary consideration requires, among other things, a study (as described below); and

WHEREAS, on or about February 28, 2014, a study ("Study") was completed by the City, setting forth an analysis and demonstrating the purpose for the appropriation to the Rodeo Committee pursuant to the requirements of Utah Code Ann. § 10-8-2. A copy of the Study is attached to this Ordinance as Exhibit A; and

WHEREAS, the Study was made available to the public beginning March 1, 2014; and

WHEREAS, on March 1, 2014, notice of a public hearing to consider the Appropriation was published in *The Salt Lake Tribune* and *Deseret News* and posted on the Utah Public Notice website; and

WHEREAS, on March 18, 2014, the Council held the requisite public hearing to receive public comments concerning the appropriation; and

WHEREAS, all interested persons in attendance at the public hearing were given the opportunity to be heard, and written comments were solicited; and

WHEREAS, the Council finds that based on the Study and comments at the public hearing, the following appropriations (collectively "Appropriation") which will not exceed the total amount of \$140,000.00, shall be made for the benefit of the Committee:

1. The Assignment and Addendum to Pony Express Days PRCA Rodeo, Eagle Mountain Utah Rodeo Contract, a copy of which is attached hereto as Exhibit B, which includes payment of the \$61,400.00 base payment and up to \$14,000.00 in prize money by the City.

2. Sheriff's Office and ambulance personnel during the rodeo.
3. Waiver of rodeo grounds rental fee.
4. Utility hookups, water, staff time and miscellaneous items to conduct the 2014 rodeo.

WHEREAS, the Appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, and convenience of the inhabitants of Eagle Mountain; and

WHEREAS, the Council finds that the Appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of Eagle Mountain. Such goals and objectives include, but are not limited to, economic development, job creation, and job preservation; and

WHEREAS, the Council finds that the net value received for the monetary contribution is equivalent and includes certain intangible benefits to Eagle Mountain, including, but not limited to, prosperity, moral well-being, comfort, and convenience to the inhabitants of Eagle Mountain and economic development, job creation, and job preservation in Eagle Mountain; and


WHEREAS, the Council finds that the nonmonetary contribution is less than 1% of the City's budget for the fiscal year ending June 30, 2014; and

WHEREAS, the Council finds that it has satisfied all of the requirements of Utah Code Ann. § 10-8-2 to appropriate a monetary contribution to make the Appropriation and make the nonmonetary contributions as described above.

NOW, THEREFORE, BE IT ORDAINED that the Council approves the Appropriation as a nonmonetary contribution to the Committee.


Adopted by the City Council of Eagle Mountain City this 18th day of March, 2014.

EAGLE MOUNTAIN CITY, UTAH

By: 

Christopher Pengra, Mayor

ATTEST:



Fionauala B. Kofoed, CMC
City Recorder



CERTIFICATION

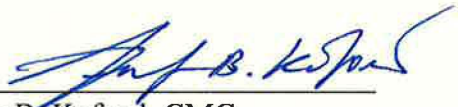
The above resolution was adopted by the City Council of Eagle Mountain City on the 18th day of March, 2014.

Those voting aye:

- Adam Bradley
- Donna Burnham
- Ryan Ireland
- Richard Steinkopf
- Tom Westmoreland

Those voting nay:

- Adam Bradley
- Donna Burnham
- Ryan Ireland
- Richard Steinkopf
- Tom Westmoreland



Fionnuala B. Kofoed, CMC
City Recorder

EXHIBIT A

ANALYSIS AND STUDY REGARDING APPROPRIATION OF FUNDS FOR THE PONY EXPRESS DAYS COMMITTEE

Purpose: This analysis is intended to provide the Eagle Mountain City Council with the information required by the UTAH CODE ANN. § 10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.

Study Criteria: UTAH CODE ANN. § 10-8-2(e) provides that: A study shall be performed before notice of the public hearing is given and shall be made available at the municipality for review by interested parties at least 14 days immediately prior to the public hearing, setting forth an analysis and demonstrating the purpose for the appropriation.

Key Elements of the Study: In making the study, the following factors shall be considered:

1. What identified benefit the municipality will receive in return for any money or resources appropriated;
2. The municipality's purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality; and
3. Whether the appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of the municipality in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures and property, and any other public purpose.

ANALYSIS

Introduction: Eagle Mountain City proposes to provide assistance to Pony Express Days Rodeo Committee, Inc., a non-profit corporation of the State of Utah (the "Non-Profit Committee"), for the purpose of appropriations conducting a rodeo at the Eagle Mountain City rodeo grounds in an amount not to exceed: \$140,000.00.

In 2010, Eagle Mountain City entered into a five year agreement with Powder River Rodeo, LLC (the "Agreement") to provide livestock and other services for a rodeo in Eagle Mountain City, and Eagle Mountain City has held a PRCA rodeo as part of the City's annual Pony Express Days event for the previous three (3) years. In accordance with the terms of the Agreement, Eagle Mountain City is obligated to pay \$61,400 for 2014. However, due to changes in City policy and personnel, and a change in the date for Pony Express Days, the City has determined that the City does not want to allocate additional funds or employee time to hold the rodeo in 2014.

In order to attempt to continue the rodeo, certain residents in Eagle Mountain City have formed a Non-Profit Committee to conduct the rodeo, and have requested that Eagle Mountain City assign

the funded Agreement to the Non-Profit Committee and provide other monetary and non-monetary assistance to the Non-Profit Committee for purpose of conducting the rodeo in 2014.

Description of Assistance and Cost to City: The City may provide the following assistance to the Non-Profit Committee:

1. Description of Assistance: Payment of \$61,400 for the base amount of the Agreement.

Cost to City: The cost to the City is \$61,400. However, the City may be obligated to pay the base cost of the Agreement for 2014 regardless of whether the City assigns the Agreement.

2. Description of Assistance: Payment of up to \$14,000 for rodeo prize money.

Cost to City: \$14,000

3. Description of Assistance: Sheriff's Office / ambulance personnel during event.

Cost to City: The cost to the City is \$0.00. However, there is an intangible cost due to the fact that the Sheriff's Office will have reduced service in other areas as a result of allocated staff and time for the rodeo.

4. Description of Assistance: Waiver of Rodeo Grounds Rental Fee

Cost to City: \$1,750

5. Description of Assistance: Utility Hookups, Water, Staff Time, Miscellaneous Items

Cost to City: \$3,000 (estimated)

6. Description of Assistance: Bleacher Rental

Cost to City: \$53,000

Benefit to City: The rodeo provides a valuable recreational and community activity in Eagle Mountain City and allows for the utilization of the City's rodeo grounds. The rodeo also attracts a large number of visitors to the City which creates opportunity to showcase the City to potential future residents and businesses that may consider relocating to Eagle Mountain City. The rodeo also serves to highlight the historic Pony Express Trail and to preserve and promote the equestrian culture and branding of Eagle Mountain City.

Conclusion and Required Finding: The appropriations are necessary and appropriate to accomplish the public purposes of Eagle Mountain City in the areas of economic development, job creation, job preservation, in order to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of Eagle Mountain City, and therefore Eagle Mountain City will receive adequate benefit in return for any money or resources appropriated.

EXHIBIT B

**ASSIGNMENT AND ADDENDUM TO
PONY EXPRESS DAYS PRCA RODEO,
EAGLE MOUNTAIN, UT RODEO CONTRACT**

This Assignment and Addendum to the Pony Express Days PRCA Rodeo, Eagle Mountain, UT Rodeo Contract (this "Assignment") is entered into between Eagle Mountain City a municipal corporation of the State of Utah (the "City"), Powder River Rodeo, LLC (the "Rodeo Company") and Pony Express Days Rodeo Committee, Inc., a non-profit corporation of the State of Utah (the "Non-Profit Committee"). The City, Rodeo Company and Non-Profit Committee shall be collectively referred to as the "Parties."

RECITALS

The Pony Express Days PRCA Rodeo, Eagle Mountain, UT Rodeo Contract, dated July 20, 2010 (the "Agreement") provides for the Rodeo Company to conduct a professional rodeo and slack performance (the "Rodeo") at the Pony Express Days celebration for the years 2011-2015.

In accordance with the Agreement, the City may be excused from performance of the Agreement if the City fails to budget the required funds and notifies Rodeo Company in writing by July 1 of that year.

The City failed to provide timely notice to Rodeo Company to terminate the Agreement with respect to the 2014 Rodeo, and is therefore obligated to honor the Agreement in 2014.

Due to budgetary constraints and changes in City policy with respect to the Rodeo, the City has determined that the City does not have adequate funding to conduct the Rodeo in 2014 and that the City will not allocate funds for the Agreement in the future.

In order to continue the Rodeo, certain residents in Eagle Mountain City have formed the Non-Profit Committee to conduct the Rodeo.

The Non-Profit Committee is a separate and distinct legal entity from the City and not associated with the City.

The City has agreed to rent the Rodeo grounds to the Committee, and to assign the Agreement to the Non-Profit Committee on the terms and conditions set forth herein.

Rodeo Company has agreed to the assignment on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. The Parties do hereby assign and transfer the Agreement from City to Non-Profit Committee subject to the following:

a. Non-Profit Committee shall be solely responsible for obligations of City listed as "Duties of City, paragraphs A-H" in the Agreement. Non-Profit Committee shall also be solely responsible for payment of the insurance listed as additional consideration the Agreement.

b. Rodeo Company agrees to include both City and Non-Profit Committee as named insureds with respect to the spectator liability insurance.

c. Notwithstanding the foregoing, City agrees to pay directly to Rodeo Company the \$61,400.00 base contact amount for calendar year 2014. City also agrees to pay fifty percent (50%) of the purses for the 2014 Rodeo, up to a maximum of \$14,000, if such events occur.

d. The parties agree that the Agreement shall terminate after the 2014 Rodeo is complete, and Non-Profit Committee and Rodeo Company may negotiate a new contract for future years.

2. Rodeo Company agrees that except for the payment set forth in paragraph 1.c., this Assignment shall relieve City of any and all past, present or future liability or obligations with the respect to the Agreement, including any obligations for payment in 2015.

3. The provisions of this Agreement are not severable, and should any provision hereof be deemed void, unenforceable or invalid, such provision shall affect the remainder of this Agreement, and shall provide grounds for dissolution of the Agreement at the option of the parties in the exclusive discretion of each of them.

4. Any waiver by any party hereto of any breach of any kind or character what so ever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

5. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

6. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

7. In the event of default on the part of any party to this Agreement, that party shall be liable for all costs and expenses incurred by the other parties in enforcing the provisions of this Agreement, whether or not legal action is instituted.

DATED this 19 day of March, 2014.



EAGLE MOUNTAIN CITY

ATTEST:

By:

Christopher Pengra, Mayor

Fionnuala B. Kofoed, City Recorder

APPROVED AS TO FORM

POWDER RIVER RODEO, LLC

BY:

CITY ATTORNEY

By: _____

Title: _____

PONY EXPRESS DAYS RODEO COMMITTEE, INC.

By:

Title:

6. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

7. In the event of default on the part of any party to this Agreement, that party shall be liable for all costs and expenses incurred by the other parties in enforcing the provisions of this Agreement, whether or not legal action is instituted.

DATED this 19 day of March, 2014.



ATTEST:

EAGLE MOUNTAIN CITY

By: [Signature]
Christopher Pengra, Mayor

[Signature]
Fionnuala B. Kofoed, City Recorder

APPROVED AS TO FORM

POWDER RIVER RODEO, LLC

BY: [Signature]
CITY ATTORNEY

By: [Signature]
Title: Member

PONY EXPRESS DAYS RODEO
COMMITTEE, INC.

By: _____
Title: _____