MINUTES OF A VINEYARD
REDEVELOPMENT AGENCY BOARD MEETING
City Hall, 240 East Gammon Road, Vineyard, Utah
November 15, 2017 – 7:30 PM

Present:
Boardmember Flake
Boardmember Fullmer
Boardmember Goodman
Boardmember Riley

Absent:
Chair Farnworth

Staff Present: City Manager Jacob McHargue, City Attorney David Church, Public Works Director/Engineer Don Overson, Community Development Director Morgan Brim, City Building Official George Reid and City Planner Elizabeth Hart

Others: Residents Chris Judd, Cristy Welsh, Teresa Goodman, David Lauret, Anthony Jenkins, and Bryce Brady, Gerald Anderson, Jeff Walker, and Stewart Park with Anderson Geneva, Rob Jolley with RRS Consulting

7:30 PM RDA SESSION

Boardmember Flake conducted this meeting.

Boardmember Flake opened the meeting at 7:30 PM. The invocation was given by Boardmember Riley.

CONSENT
a) Approval of the November 8, 2017 RDA Meeting Minutes

Boardmember Flake called for a motion.

Motion: BOARDMEMBER FULLMER MOVED TO APPROVE THE CONSENT ITEM. BOARDMEMBER GOODMAN SECONDED THE MOTION. BOARDMEMBERS FLAKE, FULLMER, GOODMAN, AND RILEY VOTED AYE. CHAIR FARNWORTH WAS ABSENT. MOTION CARRIED WITH ONE ABSENT.

BUSINESS ITEMS
2.1 DISCUSSION AND ACTION – Reimbursement Request for the Geneva East Side Property
Anderson Geneva is requesting reimbursement of the east side property Containment Area Management Unit (CAMU) Phase. The board will take appropriate action. *(This item was continued from the November 8, 2017 RDA meeting.)*

Boardmember Flake turned the time over to City Manager/Finance Director Jacob McHargue.

Mr. McHargue explained that since the last meeting staff had looked at different options. He added that he had looked at the whole project. He said that it was a cost-sharing solution that attributed 75% of the cost to Vineyard and 25% of the cost to Anderson Geneva. The land impact in the US Steel agreement was split two ways: land impact and a land credit. The land credit was the portion attributed to US Steel, and the land impact was the portion attributed to Anderson Geneva.

			Costsharing Plan			
			75%	25%		
			Vineyard Portion	Anderson Portion	Payment to Anderson	Reimbursement to Anderson
Westside	$ 5,750,000.00		$ 5,750,000.00			
Westside Land impact	$ 914,760.00		$ 686,070.00	$ 228,690.00	$ 686,070.00	
Westside Land Credit	$ (2,134,440.00)		$ (1,600,830.00)	$ (533,610.00)	$ (1,600,830.00)	
Eastside Land Credit	$ (3,859,764.00)		$ (2,894,823.00)	$ (964,941.00)	$ (2,894,823.00)	
Westside Repository Credit	$ (2,178,000.00)		$ (1,633,500.00)	$ (544,500.00)	$ (1,633,500.00)	
Site Prep Estimate	$ 8,500,000.00		$ 6,375,000.00	$ 2,125,000.00	$ 6,375,000.00	
TOSSA	$ 1,050,000.00		$ 787,500.00	$ 262,500.00	$ 787,500.00	
Intermediate Grading	$ 1,100,000.00		$ 825,000.00	$ 275,000.00	$ 825,000.00	
Final Grading (Estimate)	$ 5,400,000.00		$ 4,050,000.00	$ 1,350,000.00		$ 4,050,000.00
Excess Material (Estimate)	$ 15,000,000.00		$11,250,000.00	$ 3,750,000.00		$ 11,250,000.00
Eastside Land Impact	$ 321,996.00		$ 241,497.00	$ 80,499.00	$ 241,497.00	
	$ 29,864,552.00	$ -	$23,835,914.00	$ 6,028,638.00	$ 2,785,914.00	$ 15,300,000.00

Mr. McHargue stated that with this the RDA would be committing to $23,835,914, with $5.7 million being the west side portion that was approved previously. He explained that with the $23 million there was $6 million left over for the Anderson portion. He stated that it was important to note how the payments would go. Initially there would be a payment to Anderson Geneva for $2,785,914. He added that this was subject the site preparation costs, which could change. The payment would be made at the beginning and they would share in the two projects that were left over that Anderson Geneva would be preforming. He stated that it was important to note that they had an approved list of RDA projects. He said that there had been a discussion with Anderson Geneva about the projects. He explained that if his proposal was approved tonight the east side CAMU would bear a cost of $18,850,000 and the west side would have its own cost. All of the costs already approved from the 2017 bond totaled $36,719,000. Staff believed that the water tank and Main Street expansion were projects that had to come out of the 2017 bond for a total of $44 million and there was only $30 million in available funds from the bond. He stated that Anderson Geneva had mentioned that there might need to be an agreement where they pushed the east side ground water approval of $5 million and the east side concrete removal approval of $2.5 million off the 2017 bond to a future bond, if they were able to come to an agreement on the CAMU participation.

Mr. McHargue stated that this was the compromise he came up with and that Anderson Geneva was not willing to agree to. He felt that this fulfilled the RDA’s obligation in the budget the board had approved.

Boardmember Flake asked about the two east side approvals. Mr. McHargue explained that they were the concrete removal and ground water approvals, which were approved in 2016.

Boardmember Flake turned the time over to Gerald Anderson with Anderson Geneva.

Mr. Anderson stated that on the project list there were items in the budget that were never requested. He felt that this was a bad faith effort from Mr. McHargue on behalf of the city. He said that he had suggested at the last meeting that the board read the minutes that had been approved. They had line items that were specific as to what the approvals were. He felt that this continued to be a moving target from the city’s perspective. He said that they were going back to what they believed was approved. He also felt that Mr. McHargue had included things that were not likely to be funded. He felt that the city was taking credit for ground that they were getting from US Steel. He said that the site preparation was an $8.5 million cost and the

TOSSA was $1 million. He said that the Temporary Onsite Storage Area (TOSSA) was what they had been piling up from the cleanup and it needed to be moved. The intermediate grading, at a cost of $1.1 million, and the final grading at a cost of $5.4 million, were there requests that they had made as far as funding. He said that what was being proposed tonight was including excess material of $15 million and taking the ground preparation off of the list. He felt that this was a forced budget. He said that they had requested $16.5 million. He said that last week Councilmember Flake asked what if Anderson Geneva provided other unreimbursed expenses. He explained that Anderson Geneva had represented that they had between $22 and $23 million of environmental expenses that they had not requested reimbursement for. It was suggested that they make a request for about $8.5 million for the site preparation and $8 million for unreimbursed expenses for a total of $16.5 million. He said that they were willing to bring those items forward. He stated that the accounting that Mr. McHargue had put together did not work for Anderson Geneva. He said that the proposal was to give them $2.5 million to give to US Steel and the rest would be given to Anderson Geneva over a period of time and now Mr. McHargue said that the board would give them $2.7 million which was exactly what they had stated last week did not work for them. He said that they believed they were moving forward in good faith asking for the $16.5 million. He stated that some projects needed to be done sooner than others. He explained that US Steel would be hiring a project manager by the end of the year. They hoped to have a contractor working on the project by March, and noticeable construction by late spring or early summer of 2018.

Boardmember Flake asked for questions from the board.

Boardmember Riley quoted from a letter from Mr. Walker dated May 26, 2017. He said “while it has taken nearly three years to reach this point, any request for a specific payment or reimbursement would only come once a definitive contract has been reached and actual accrued expenses incurred.” Boardmember Riley asked when the contract had been finalized and submitted to the city for review. Mr. Anderson replied that the city had no review authority with the contract with US Steel. He stated that the board had approved a budget in June of 2016 and that Anderson Geneva met with US Steel two weeks later. He said that there were three items that they had problems with. One was compaction: US Steel was willing to fill the holes but not to the city’s requirements. They had an issue with liability. Anderson Geneva wanted US Steel to carry the liability. The third issue was lien rights and not allowing any of the subcontractors to lien the property. He said that because of the lien laws they would be allowed to tie up a lot of property and wanted US Steel to indemnify any of their subcontractors. He said that Anderson Geneva agreed to pay for the compaction of the holes that would be excavated, which was not included in the line items. They had to compromise on the other two issues as well. They were able to come up with an agreement in January or February of 2017 and sent a copy to the board. Jeff Walker with Anderson Geneva reiterated what Mr. Anderson had stated.

Boardmember Riley felt that there was a gap on the timelines. There was further discussion about the timeline of the contract.

Boardmember Riley stated that the document submitted in April of 2016 showed outside grading, which Anderson Geneva estimated at $10 million. He asked if that had been switched to final grading at $5.4 million. Mr. Walker replied in the affirmative. He explained that US Steel and Anderson Geneva had hired a professional company to do preliminary design work. He added that they were able to reduce the cost. He said that they negotiated a cap in the contract with US Steel so that the costs would not increase. Mr. Anderson added that he was also able to negotiate into the contract that if the costs were less, they would be able to benefit from the savings. He said that there were a couple of line items, and preliminary grading was one of them.

He said that Exhibit 6 in the US Steel contract was done around 2014. He explained how he was able to secure reimbursement from US Steel.

Councilmember Riley asked what they would end up getting for the $5.4 million. Mr. Anderson replied that it was the grading. He explained that US Steel wanted to use the best ground to build the CAMU on and had to agree on where to place it. He said that the original estimates on the cleanup would be around $400 million and they would be coming in around $100 million with their cost at $25 million. He said that the CAMU had to go on the northeast corner of the slag pile. He explained how the CAMU would be built and that it would be 45 feet high. He said that the final grading would put the ground back into a usable condition.

Councilmember Riley asked how much of the acreage would be usable. Mr. Anderson said that they thought the CAMU would be about 35 feet higher than Mill Road and they would be grading to meet Mill Road which would take about 175 acres. He added that some of the cleanup would go to Geneva Road and some to 800 North. The grading would grade everything from the CAMU to Mill Road.

Mr. Walker mentioned that earlier, the board was concerned about what the community would see with the CAMU. He said that Anderson Geneva had renderings done as to how they could mitigate the impact of the project on the community.

Councilmember Riley asked if they would get additional tax increment coming back to the RDA and if it would turn into additional industrial space. Mr. Anderson replied that in his opinion because of the type of use the location would not lend itself to retail use. He said that it would be cleaned up to an industrial use level. He felt that it would be about the size of the Eastlake development. He said that there was 3 million cubic yards of excess material on the site which they had been able to sell off. He said that their goal was to move about 400.000 yards a year. Their goal was to not seek assistance on moving the materials; they thought they could sell most of it.

Mr. Walker explained that when they made the initial application in 2016, one of the components that would facilitate an approval was to show the economic benefit/tax increment if the project was successfully funded. He further reviewed the application. There was further discussion about the impacted area. Mr. Anderson stated that they hoped they would not have to ask for the ground water reimbursement. He added that US Steel refused to fund the groundwater cleanup. He felt that once the contaminate was removed from the ground that the bugs in the ground would naturally diminish the materials. US Steel felt that the contaminants in the ground were continuing to recharge the ground water and once the contaminants were taken out it would diminish naturally, which would take a couple of years to see if that was occurring.

Mr. McHargue clarified that the application came in July of this year for $10,650,000. He said that they received a second request for the $5.4 million, which took the request to $16,050,000. He said that they had a debate at the last meeting about the land impact cost and what it meant to both parties. He said that his effort in coming up with the cost-sharing plan was not creative accounting and did not have anything to do with trying to find a way to take advantage of Anderson Geneva. He said that his attempt was to do what he believed the RDA had envisioned when they approved a budget. He said that he believed they always intended to have participation from the landowner and US Steel. He added that board approved a budget of $19,200,000. He looked at the cost-sharing plan to find a way to stay below the ‘not to exceed’ amount. He said that if they went to an 80/20 split, then the RDA’s participation in the CAMU would go to $19,300,000. He said that there was some room to increase the percentage to around

79%. Mr. Anderson stated that he believed that it was approved for the RDA to spend the $19 million and that it was not based on what Anderson Geneva's participation was. He felt that it was never envisioned that Anderson Geneva would spend $22 million and the RDA would budget $19 million and make them pay a percentage.

Councilmember Fullmer stated that she listened to the minutes and they said that they did require participation.

Councilmember Riley said that the letter that was sent to Anderson Geneva in June of 2016 stated that it was not the intent of the agency to fund the full cost of the remediation, rather, to assist with remediation in areas where remediation costs may be prohibitive. Further reimbursements would not be provided for moneys already spent. He said this letter came as a result of the letter that Anderson Geneva had sent to the city. He felt that the board had always intended that there was going to be some participation. He added that Anderson Geneva had stated that their books were open and those things were identified in their QuickBooks, which the city have never gone through nor had there been an outside source that had audited these books for the city. Mr. Anderson replied that Anderson Geneva sat down with Mr. McHargue and Mr. Church and offered to have them go through the books and they declined. He said that now staff had an issue with the land, the budget, etc. He felt that it was creative accounting when staff takes his credits and uses 75% of those credits towards their contribution side. He asked how the RDA could say that they contributed because they took Anderson Geneva's contribution and used it to offset the RDA's participation. He said that staff was including $15 million in cleanup they had not asked for. He said that he had told Mr. McHargue that they were probably not going to ask for that money. Mr. McHargue replied that he had an email from Anderson Geneva which stated that they reserved the right to request that money. Mr. Walker stated that it was to the $19.2 million because they knew that they had not captured compaction and that there might be some at the end of the project. They never said that $15 million was a hard cost. He complimented Mr. McHargue and then stated that he never saw the latest iteration of the proposal promoted by staff. He only saw a spreadsheet. He said that the thing that skewed the entire analysis was plugging in $15 million of unrequested money that was never part of the application and approval in 2016, was never part of the budgeting for the bond or part of the request after the bond was let, and was now included and subject to invoices.

Boardmember Fullmer asked if it was part of this project. Mr. Walker replied that it was not part of remediation request. Mr. Anderson replied that it was not requested because they did not feel that they were going to have to ask for it. He said that it was an accounting number that they had to go through with US Steel. He mentioned that one item that had not been brought up was that for every dollar used to clean up the site, US Steel was spending three. They had a 75% obligation and the city had no contractual rights to have US Steel do anything. He could have said, give us $20 million, and then not clean up the site.

Boardmember Fullmer thought that the RDA had something that stated that US Steel did something, the landowner did something, and the RDA did something. Mr. Church replied that it did not. He said that it was very clear in the RDA approval that the purpose of the RDA was, to assist those who had the legal obligation to remediate, to remediate over and above their legal obligation to do so. The landowners, US Steel and now Anderson Geneva, had a legal obligation to do the clean up on the property and remediate it. Mr. Anderson stated that it could be left the way it was. Mr. Church said that Mr. Hutchings had stated many times that if the RDA did not help that they would do the minimum, fence it, and walk from it. The purpose of the RDA was to add utility to this ground/project through the tax increment. He said that it was important to remember that the CAMU project was US Steel and Anderson Geneva's project. They were asking the RDA to participate in it and the board agreed to participate. He said that when they gave the board the contract with US Steel for the CAMU it did not require $19 million to get the CAMU done, but that was what Anderson Geneva was asking for. His point was that the board said that they would participate but they were not buying land. US Steel was giving Anderson Geneva credit for the land which staff had deducted originally. They came in with a new proposal that forgets the land issue and states that they would participate in the land purchase, come in under budget, and fund the RDA's obligation to the CAMU from the numbers that Anderson Geneva had given them, which included the $15 million. If they went with the US Steel contract that Anderson Geneva gave to the city then it would come in way under the $19.2 million. If they went with the original request, the RDA would be writing a check for Anderson Geneva's land impact which was not represented and approved in June of 2016. Mr. Walker felt that the argument had come full circle and because of what was discussed at last week's meeting, they would be willing, based on Boardmember Flake's suggestion that the RDA not pay for land, that they pay for actual reimbursable environmental costs. Mr. Church said that Mr. McHargue made a good faith suggestion. He said that the important thing to remember was that the RDA was being asked to participate in Anderson Geneva's project. It was not the RDA's obligation or project. He said that Mr. Anderson had stated that they would not do it. Mr. Anderson rebutted that Mr. Church had stated that they should not do the rail because it would benefit Anderson Geneva. He said that Mr. Church had said that if they would spend $100 million remediating this site if they would approve an RDA. He stated that the Taxing Entity said that the primary purpose was not to put in infrastructure for the city, but to help clean up the site. Mr. Church did no agree.

Boardmember Flake ended the discussion and called for a motion.

Mr. Walker commented that when people rely on them and enter into a contract that they are legally bound to perform under, that it was a detrimental reliance if they ended up not being able to rely on it. He emphasized to the board that there were consequences for having something get approved, having AG rely on it, having them enter into contracts with a public steel company, and then having to go back to the steel company and tell them that they were in trouble because they could not perform their side because their partner had changed the terms of the deal.

Motion: BOARDMEMBER FULLMER MOVED THAT THE RDA PARTICIPATE IN HELPING WITH THE ANDERSON GROUP'S PROJECT BY TAKING MR. MCHARGUE'S RECOMMENDATION AND MOVE FORWARD THAT WAY.

Boardmember Flake asked for clarification on the motion. Boardmember Fullmer amended her motion.

Amended Motion: BOARDMEMBER FULLMER MOVED TO APPROVE THE COST SHARING REIMBURSEMENT PLAN AS PRESENTED BY STAFF SUBJECT TO IT BEING PUT INTO A MUTUALLY AGREED UPON PARTICIPATION AGREEMENT THAT INCLUDES SUBSTANTIALLY THE FOLLOWING: A 75% 25% SPLIT, WITH THE RDA ASSUMING THE 75% PORTION. WITH THE UNDERSTANDING THAT THE EASTSIDE GROUND WATER APPROVAL OF $5,000,000 AND THE EASTSIDE CONCRETE APPROVAL OF $2,500,000 MAY NOT BE ABLE TO BE FUNDED FROM THE 2017 BOND PROCEEDS. BOARDMEMBER GOODMAN SECONDED THE MOTION. ROLL CALL WENT AS FOLLOWS: BOARDMEMBERS FLAKE, FULLMER, AND GOODMAN VOTED AYE. BOARDMEMBER RILEY ABSTAINED. CHAIR FARNWORTH WAS ABSENT. MOTION CARRIED WITH ONE ABSTENTION AND ONE ABSENT.

ADJOURNMENT

Boardmember Flake called for a motion to adjourn the meeting.

Motion: BOARDMEMBER GOODMAN MOVED TO ADJOURN THE MEETING AT 8:30 PM. BOARDMEMBER FULLMER SECONDED THE MOTION. BOARDMEMBERS FLAKE, FULLMER, GOODMAN, AND RILEY VOTED AYE. CHAIR FARNWORTH WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

MINUTES APPROVED ON: December 13, 2017

CERTIFIED CORRECT BY: /s/ Pamela Spencer
PAMELA SPENCER, CITY RECORDER