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December 15, 2022

Honorable Steve Ormond, Mayor
and Burley City Council Members
P.O. Box 1090
Burley, Idaho 83318

Re: Constitutional and Statutory Issues Regarding August 17,
2022 Development Agreement between the City of Burley, Lisa
Funk, LeRoy and Ronda Funk, Carol Fowler, DDBL Investors,
LLC, Garth and Patricia Heidel, and The Church of Jesus
Christ of Latter Day Saints

Dear Mayor Ormond and Council Members:

Jon Anderson, a resident and taxpayer of the City of
Burley, asked me to review the August 17, 2022 Development
Agreement referred to above. A Memorandum of Agreement, with
the Development Agreement attached, was recorded September 20,
2022 as Instrument No. 2022004202, Cassia County records. The
recorded Memorandum and exhibits consist of 74 pages.

The primary purpose of the Development Agreement appears to
be to extend water and sewer lines of the City of Burley to the
site of the new LDS Temple.

The projected cost of the project as of August 11, 2022 was
\$1,509,227. In addition to the City of Burley and the LDS
Church, five property owners are contributions to in the costs.
The estimated costs are to be shared as follows:

Parcel Owner		Cost
Garth & Patricia Heidel	\$	74,967.88
Leroy & Ronda Funk	\$	133,620.45
Lisa Funk	\$	172,609.86

Church of Jesus Christ of	\$	69,969.58
Latter Day Saints		
Carol Fowler Trust	\$	168,263.16
DDBL Investors LLC	\$	389,796.01
City of Burley	\$	500,000.00
TOTAL	\$	1,509,227.00

For the lines to be extended, the City has agreed to advance funds to extend the water and sewer lines through properties of two property owners. Other property owners are paying their shares now.

The City of Burley is to advance, \$743,231.04, for its own share and the shares of those private property owners who are not funding their shares now. That amount is subject to adjustment.

For the owners who are not paying their shares now, the agreement provides that when the properties for which the City advances funds are developed, the City will be reimbursed by those property owners. The funds are being advanced now. There is no deadline for repayment to the City. No interest will accrue on the obligations. The repayment obligations will expire if the properties of those owners are not developed within 30 years.

Jon Anderson served as Burley Mayor for 8 years and on the Burley City Council for 8 years. During that time, he heard Burley City attorneys repeatedly advise council members and patrons that taxpayer funds cannot be spent to benefit private projects. That advice was correct, but it appears to have been ignored in the present case.

Article 9, Section 5 of the Idaho Constitution provides as follows:

SECTARIAN APPROPRIATIONS PROHIBITED. Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever

be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose; provided, however, that a health facilities authority, as specifically authorized and empowered by law, may finance or refinance any private, not for profit, health facilities owned or operated by any church or sectarian religious society, through loans, leases, or other transactions.

Article 12 Section 4 of the Idaho Constitution provides as follows:

MUNICIPAL CORPORATIONS NOT TO LOAN CREDIT. No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, that cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes: provided, that any city or town contracting such indebtedness shall own its just proportion of the property thus created and receive from any income arising therefrom, its proportion to the whole amount so invested.

The Development Agreement violates both provisions of the Idaho Constitution by conferring substantial benefits on the LDS Church as well as property owners who serve loans from the city.

Jon Anderson has attended all of the City Council meetings since January of 2022. The details of the Development Agreement were not disclosed in open meetings. Minutes of the August 16, 2022 City Council meeting indicate that the Development Agreement was approved by a unanimous vote conditioned upon receiving the signed Development Agreement from all other parties. The obligations being undertaken by the City should have been openly debated in an open meeting, so the public would understand what was happening.

For all practical purposes, the extension of the water and sewer lines is a public works project of the city. Typically, cities require that developers pay the full cost of extending utility lines to the property being developed. To the best of our knowledge, the city had no current plan to extend water and sewer lines for development of its own property. The Development Agreement was clearly designed to benefit the Church.

Cities are created to provide services to their residents at or near cost. Cities are not created to generate profits nor develop property except for public purposes.

Cities are not to expend money for public works projects without complying with competitive bidding laws. Unless federal funds are involved, bidders for public works project and their sub-contractors have to be public works contractors licensed by the State of Idaho. Plans and specifications prepared by professionals are to be published and made available to all potential bidders.

The LDS Church is a tax-exempt organization. It is not public works contractor. For all practical purposes, the City has made the Church a general contractor on the project without allowing licensed public works contractors to bid the City's share of the project directly to the City under Idaho's competitive bidding laws. The City will not be in privity of contract with the contractors performing the work.

The city will not receive any direct financial benefit from the concessions it has made to the Church. The temple property is exempt from property taxes. The Church will not pay more than normal fees for the City services. The City will assume all costs of operation and maintenance of the water and sewer lines when they are completed.

This is a serious matter. Oaths of office appear to have been violated. This letter gives you the opportunity to present any justification you have for entering the Development Agreement and committing City resources to the project. If any assertions made in this letter are incorrect, we will be happy to make appropriate corrections. We are providing a copy to the local media, so the public will be aware of these issues and be aware of the City's response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Donald J. Chisholm". The signature is fluid and cursive, with a long horizontal stroke at the end.

Donald J. Chisholm

DJC/cmr

Cc: Jon Anderson