



CLEARFIELD CITY COUNCIL
AGENDA AND SUMMARY REPORT
September 17, 2024 - WORK SESSION

Meetings of the City Council of Clearfield City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207 as amended. In such circumstances, contact will be established and maintained via electronic means and the meetings will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

55 South State Street
Third Floor
Clearfield, Utah

6:00 P.M. WORK SESSION

Update on the Content and Direction of the Clearfield City Downtown Messaging Project

Discussion on Regulations for Accessory Dwelling Units in Clearfield City

Discussion on Appointing an Alternate Member to the Planning Commission

Discussion on the UDOT Master Agreement and Outside Engineering Agreement for the Future UTA Double Track Project Along Depot Street from 200 South to 350 South

*****ADJOURN THE CITY COUNCIL WORK SESSION*****

Posted September 11, 2024.

/s/Chersty Titensor, Deputy City Recorder

The City of Clearfield, in accordance with the 'Americans with Disabilities Act' provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 801-525-2714, giving her 48-hour notice.

The complete public notice is posted on the Utah Public Notice Website - www.utah.gov/pmn/, the Clearfield City Website - clearfield.city, and at Clearfield City Hall, 55 South State Street, Clearfield, UT 84015. To request a copy of the public notice or for additional inquiries please contact Nancy R. Dean at Clearfield City, nancy.dean@clearfieldcity.org & 801-525-2714



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Shaundra Rushton, Communications Manager
MEETING DATE: September 17, 2024
SUBJECT: Clearfield City Downtown Messaging

RECOMMENDED ACTION

To update the City Council on the content and direction of the downtown messaging project.

DESCRIPTION / BACKGROUND

The Communication Department has an allotted four council initiatives to focus on each year on top of their day-to-day responsibilities.

The four initiatives in FY24 were:

1. Support local businesses
2. **Management of outsourced branding projects**
3. Plane program
4. Bridge party

The Communication Manager is working on wrapping up initiative number two, "Management of Outsourced Branding Projects," so she can move on to the FY25 initiatives. There were two outsourced projects – a new city logo and downtown messaging. City Council finalized the new logo in June of 2024. The Communication Manager is now updating Council on the content and direction of the downtown messaging project. Below is a list of all the content created and key messages selected for downtown.

Downtown Messaging Content:

- Video explaining our revitalization process
- Key messaging points about downtown
- A timeline map of revitalization work
- A section about the two biggest projects on downtown
- A Frequently Asked Questions section
- A video of businesses sharing how they've benefited from the revitalization
- A video of apartment residents sharing how they've benefited from the revitalization



Downtown's Three Key Messages:

1. We did our homework - We conducted studies to determine the best locations for businesses, public parks, and housing options in our downtown area.
2. We created a plan - We established rules (or city code) that clearly defined what could be built, where it could be built, and how it should look.
3. Intentionally focused - City councils decided to focus revitalization efforts exclusively on the downtown corridor. Business spaces and multi-family housing would not be developed in suburban areas.

CORRESPONDING POLICY PRIORITIES

- Improving Clearfield's Image, Livability, and Economy

FISCAL IMPACT

This project was part of the "Outsourced Branding" initiative from the city council that totaled \$80,000 in the FY24 budget.

SCHEDULE / TIME CONSTRAINTS

The City Council did not select downtown branding as one of the four initiatives for FY 2025, so the communications department would like to wrap this up by the end of September to give time for the initiatives selected this fiscal year.



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Brad McIlrath, Senior Planner
MEETING DATE: Tuesday, September 17th, 2024
SUBJECT: Discussion on Regulations for Accessory Dwelling Units in Clearfield City

RECOMMENDED ACTION

Staff recommends that the Mayor and City Council review the attached materials and direct staff regarding the desire for the regulations for Accessory Dwelling Units in Clearfield.

DESCRIPTION / BACKGROUND

The Legislature continues to discuss housing and options to address the growing issue. One ongoing discussion to meet the needs across the state is the idea of Accessory Dwelling Units (ADUs) both internal and external. Staff continues to attend and participate in these discussions and is presenting information this evening regarding internal and external ADUs. In September of 2021, Clearfield City adopted an Internal Accessory Dwelling Unit (IADU) ordinance to comply with state code to allow (at a minimum) internal accessory dwelling units within residential zones. State code was subsequently updated during the 2023 legislative session to permit more IADUs within municipalities with less restrictive regulations. As such, Clearfield City's IADU ordinance needs an update to comply with state code. Along with the needed updates, new City Council members, and the ongoing discussions and analysis regarding a housing shortage, a discussion on ADUs in Clearfield City is imperative. In preparation for this discussion, staff has reviewed and summarized the ADU regulations of Clearfield, Syracuse, Layton, and Murray. A summary spreadsheet of key ADU regulations is attached to this report. Staff reviewed the regulations of Farmington City but omitted those regulations from the spreadsheet due to the complexity of that ordinance and applicability to Clearfield. Further discussion about those regulations could be arranged if that is the desire of the Mayor and Council to do so.

Attached to this report are also to reference documents provided by the Utah League of Cities & Towns and the Utah Land Use Institute; the former guide created in 2019, and the latter article created in March 2023. With these resources, staff looks forward to a healthy discussion to understand the options that are most appropriate for Clearfield City.

SCHEDULE/TIME CONSTRAINTS

There is not an imposed timeline or constraint that staff is working under. Following the discussion Staff will undertake the process for drafting of an updated ordinance to address state code requirements including any new regulations that may be recommended by the Council. A draft ordinance will be presented to the Planning Commission and City Council per the typical public process prior to adoption.

CORRESPONDING POLICY PRIORITIES

- ***Providing Quality Municipal Services***

A key tenant of this policy priority is 'continuous improvement through innovation.' Continued dialogue about the city's regulations and evaluation of potential changes supports this policy priority to be open and provide continuous improvement. This policy priority also addresses fiscal responsibility and having a 'well-planned...infrastructure.' Discussing the potential fiscal and infrastructure impacts of ADUs is further supported by this policy.

- ***Improving Clearfield's Image, Livability, and Economy***

The allowance of ADUs in a community has an impact on the city's image and directly impacts livability and as indirect benefits and challenges to the local economy. The city's livability can be enhanced by providing ADUs with appropriate regulation to maintain the single-family residential character of the community's stable and long-standing neighborhoods. Providing additional housing options in Clearfield can support the local economy with patrons of local businesses and sales tax generation through direct and online purchases. Property values are also increased with the greater value that is offered to the property owners and what can be done on a property.

ALTERNATIVES

Staff welcomes the discussion of alternatives not addressed in this report or the attachments. Full copies of the ADU regulations of the cities discussed can also be provided

FISCAL IMPACT

The proliferation of internal and external ADUs in Clearfield will have an increased demand on city utilities. Depending on the amount of ADUs created in the city, there may be a need to upsize and replace infrastructure to address this growth.

LIST OF ATTACHEMENTS

- Accessory Dwelling Unit Summary Chart
- Utah League of Cities & Towns ADU Guide for Local Governments – 2019
- Utah Urban Land Use Institute ADU Article – March 2023

Accessory Dwelling Units - Summary Chart

| City | Zoning | Owner Occupancy Required | Types of ADUs Permitted | Limit per Lot | Min. Lot Area | Setbacks & Height | Utilities or Impact Fees | # of Occupants | ADU Size | ADU Entrance | Exterior Design | Parking | Separate Living Areas Required | Address | Building Permit Required | Business License Required |
|---------------------------|--|---|-------------------------------|---------------|--|--|--|---|--|---|---|--|--|--|---|---------------------------|
| Clearfield | Single-Family Zones | Yes | Internal & Attached | 1 | 6,000 SF | Same as primary residence. | 1 meter | 1 person alone, or 2 related or unrelated adults and their children plus a temporary guest (less than 30 days in a year) | 50% or less of the total SF of the primary residence | Should be on side or rear. If below grade then may be on front but maintains SF character. | Similar to primary dwelling unit. | 1 additional off-street space. | Yes (eating, sleeping, & full bathroom) | Same as primary residence with Unit B. | For remodelling. | If it is a rental. |
| Syracuse | Single-Family Zones | Yes, with two exceptions: 1. Bonafide temporary absence of 3 years or less for military, temporary job assignment, sabbaticals, or voluntary service. 2. Owner placed in hospital, nursing home, assisted living facility that provides regular medical care. Excluding retirement facilities or communities. | Internal, Attached & Detached | 1 | Detached: 10,000 SF Internal or Attached: As required by zone. | Same as primary residence except for conversions of existing accessory structures (cannot increase nonconforming setbacks) or construction of detached ADU (meet accessory structure standards). | Separate connection not allowed for internal ADU. Lots with ADUs charged for two city utility connections. | May not exceed # allowed under "family" definition. | Internal & Attached: 50% of gross SF of principal dwelling. Detached: Not to exceed footprint of main dwelling or 1,500 SF, whichever is less. | Internal & Attached: From an existing entrance on street-facing façade. No new street-facing entrances may be added unless located 20 feet behind front façade of principal dwelling. Detached: May be along street-facing façade of detached ADU if located 20 feet behind front facade of principal dwelling. | Shall comply with exterior design standards for accessory buildings. | Studio & 1-Bedroom: 1 additional off-street space. Bedrooms: 2 additional off-street spaces. Parking may be tandem for accessory unit only when sufficient on-street parking is available and lot is not in a cul-de-sac. | Not specified. | Not specified. | Yes. Regardless of method of creation. | Not specified. |
| Layton | All Single-Family Zones | Yes. May be temporarily waived under these 3 conditions: 1. Bonafide temporary absence of 3 years or less for a job assignment, sabbatical, or voluntary service; 2. The dwelling was the owner's primary residence prior to the leave of 3 or less years; 3. The owner intends to make the primary or accessory dwelling their primary residence upon return. | Internal, Attached & Detached | 1 | 6,000 SF for detached ADUs | Internal & Attached: Same as the primary dwelling. Detached Single-Story: 16' roof height to peak. Min. side setback 5' and Min rear setback 10'. Corner side yard setback same as primary dwelling. Detached Two-Story: 25' roof height to peak. Min. side setback 10' and Min rear setback 20'. Corner side yard setback same as primary dwelling. | Same meter and utilities as primary dwelling. | 3 non-related individuals and an individual or single family related by blood, marriage, legal guardianship, fostership, or adoption. | Attached ADU: 50% | Subordinate to primary dwelling entrance. Must be located on side or rear of primary dwelling. | The primary dwelling with an <u>interior ADU</u> shall maintain SF appearance. <u>Attached ADUs</u> must appear as an extension and match the home. <u>Detached ADUs</u> shall be complimentary to primary dwellings architecture, etc. Min and max roof pitch established. | 1 parking space in addition to the primary dwelling. Must be on an approved driveway if in the front or side yard setback. | Interior access between the main dwelling and an internal or attached ADU must be maintained unless sufficient means of egress have been provided according to building & fire code standards. | Must share same address as primary dwelling. | Yes. For improvements to address building code and life safety or any remodeling. | Not specified. |
| Murray (Pending Adoption) | All zones that allow single-family dwellings as a permitted use. | Yes. | Attached & Detached | 1 | 10,000 SF for detached ADUs | Maximum height of 20' or the height of the primary dwelling, whichever is less. Setbacks: Rear of 10', side of 10', & corner side of 20'. | Separate meter not permitted. | Not specified. | 50% of the primary dwelling with maximum size of 1,000 SF. | Located to the side or rear of the principal residence. | Not specified. | 1 additional off-street space. Total of 3 off-street spaces required (2 for the primary dwelling and 1 for ADU) | Not specified. | Not specified. | Yes. For improvements to address building code and life safety or any remodeling. | Yes, if it is a rental. |

Notes:

All prohibit the individual ownership or sale of an ADU.

Approval processes vary from city to city.

All allow home occupations with no clientele.

All prohibit nightly/short-term rentals.

One Key to Housing

Accessory Dwelling Units

A Resource Guide for
Municipal Officials and Staff

ULCT UTAH LEAGUE OF
CITIES AND TOWNS

2019





*QUALITY HOUSING,
AFFORDABLE TO ALL RESIDENTS, IS KEY TO AN
ECONOMICALLY STRONG AND SECURE UTAH.
MANY PARTNERS HOLD DIFFERENT KEYS TO
THAT SUCCESS.*

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Who Holds the Keys to Housing Opportunities in our State?



Municipalities hold one key in providing housing.

As elected officials, you set the land use policies for your community. What gets built where and how? The state requires us all to follow the same noticing and processing procedures to enact ordinances but leaves the core policy decisions for land use choices up to the local legislative body. Municipalities hold the key to the development pattern in our communities through zoning. With great power over land use policy comes great responsibility. We lay the framework for others to build. These patterns and policies are shaped and reshaped over time. Zoning is for the future. Our land use patterns are not what they were 50 years ago or even 10 years ago.

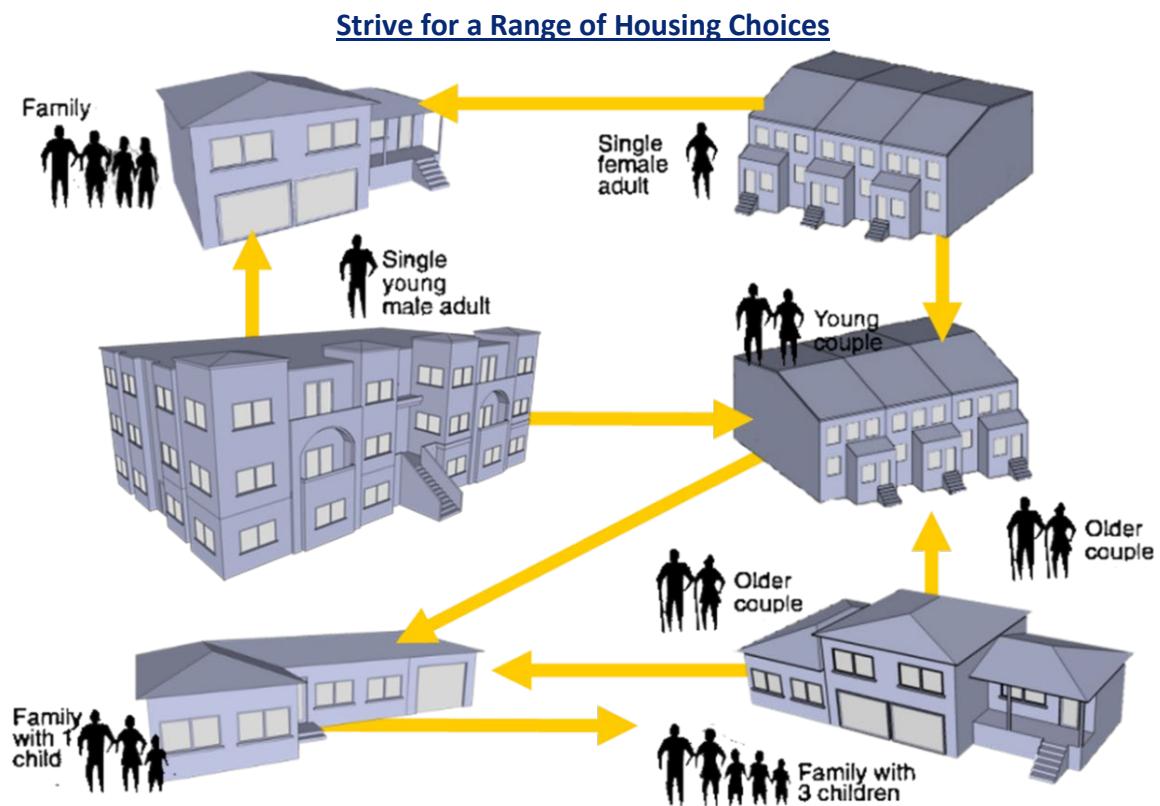
Utah has added almost 53,000 people to its population each year since 2000. This translates into nearly 16,700 households per year and is the equivalent of adding a city with the population of Taylorsville to our state each year! Zoning, like population growth, is not static. However, population growth is not the sole determinant of housing growth. Housing is also dependent upon industry and market factors. Cities play a part in the larger picture with our regulatory practices in land use.

Land use policies are unique to each jurisdiction and are influenced by objective and subjective factors such as:

- Quality of life: community character and lifestyle
- Availability and condition of infrastructure and transportation options
- Access to opportunity (jobs, education, and recreation)
- Population changes
- Topography/natural features, climate, and water availability/water rights
- Economic development and jobs
- Availability of city staff and resources
- Past experiences that shaped growth/future opportunities for growth

Our local actions on land use impact the region and the state. We need to think regionally even though we act locally. We are all connected and interdependent on a variety of influences and factors such as roads, transit, recreational opportunities, access to employment, access to schools, and the market cost of land, labor, and construction. Whether cities desire to or can provide a range of housing opportunities are shaped by these ever-changing variables. Housing policy is also rife with variables and different understandings of the basic concepts. What does “housing” mean to individuals? What does it mean to municipal leaders? What does it mean to state leaders? What does it mean to builders, realtors, bankers, and investors?

Housing, affordable housing, and housing affordability can mean many different things to different stakeholders, and there is certainly not one type or one style that fits every community. There is not a one-size-fits-all approach to housing policy because every community is unique. Most communities strive to provide a range of opportunities and options so that residents, including residents of various backgrounds and professions, can live there during all stages of life. What housing choices do families and residents have in your community?



Source: Wasatch Regional Front Council

WHY ACCESSORY DWELLING UNITS? Across the United States, communities are experiencing challenges in building the housing they need to maintain affordability and accommodate future growth. Accessory dwelling units (ADUs), or separate small dwellings embedded within single-family residential properties, are one effective solution due to their low cost and immediate feasibility, with homeowners building in their own backyards. In fact, researchers out of California suggest that such small-scale infill development could account for as much as half of new development capacity in coming decades (*McKinsey Global Institute, 2016*). Many cities and states have recently passed legislation easing zoning and permitting regulations for ADUs.

Converging Interests Require Collaboration & Cooperation

This guide intends to provide you with information on one strategy for additional housing development that may fit into the unique fabric of your community. Utilizing Accessory Dwelling Unit strategies may help you as you fulfill the state requirement for the five-year Moderate-Income Housing Plan (MIHP) for your municipality. Rome wasn't built in a day and a complete array of housing for our communities won't be either. You as municipal leaders have a great opportunity to shape how we accommodate the population growth we anticipate in our state over the coming decades.

Can you spot the entrance to this accessory unit in Lehi, UT?



"Lehi City officials approve apartment units in homes, with conditions"

A separate entrance to the basement of this new home build in Lehi gives the option for the homeowner to have an income generating apartment in the basement under the new city approved Accessory Dwelling Unit ordinance. |

Gina Halladay /Lehi Free Press October 2018

Accessory Dwelling Units

*One Word,
Many Forms...*

What are they?

According to AccessoryDwellings.org, An accessory dwelling unit (ADU) is a simple and old idea. It refers to the idea of having a second small dwelling right on the same grounds (or attached to) your regular single-family house, such as:

- an apartment over the garage
- a tiny house (on a foundation) in the backyard; or
- a basement apartment

In Utah under the Land Use Development and Management Act (LUDMA) the definition reads as:

"Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot. ([Utah Code § 10-9a-103 \(1\)](#))

Regardless of its physical form (backyard cottage, basement apartment, etc.), an ADU is legally part of the same property as the main home. It cannot be bought or sold separately, as a condominium or a dwelling on wheels might be. The owner of the ADU is the owner of the main home.

ADUs have been around for decades but are making a resurgence and gaining popularity across the country. Planners call them ADUs, but they're also known as granny flats, in-law units, secondary dwelling units, and mother-in-law units, to cite a few. ADUs can be tiny houses, but tiny houses aren't always ADUs. In fact, some communities in Utah are looking at subdivisions specifically made for tiny home living.

People build them for lots of reasons, but the most common goals are gaining income through rent and housing family members, such as aging parents, young couples and the like. In many communities you can get legal rental income from a permitted ADU, or, if you want, you can live in the ADU and rent out the other dwelling.

Flexibility in housing makes sense for environmental, lifestyle, and financial reasons. Though many people buy houses and live in them for decades, their actual needs change over time. Accessory dwelling units are now being built into new subdivisions to allow for flexibility in living situations as residents' needs change. The Daybreak development in South Jordan is one example.

The Utah State Legislature, through [Senate Bill 34](#) (2019), encourages communities to implement ADU ordinances that make sense for the local jurisdiction. It goes one more step and asks that if municipalities do choose to adopt an ADU ordinance that they make sure that the ordinance incentives ADU use and does not create barriers for residents, such as difficult or expensive permitting processes.

This guide will provide you with a summary of examples throughout the State, questions to consider if you implement an ADU ordinance, a look at potential barriers to implementation, and a list of nationwide resources.

Typical Regulations for ADUs In Utah

Local Choices

Common Outcomes

In reviewing codes across the state, we find some common themes for requirements in local Utah codes for enforcement, exceptions and incentives. Your city or town may find some of these concepts useful in your own ordinance.

Local requirements for allowing ADUs

- Owner occupancy (at least 6 months per year) of either the home or the ADU.
- Owner must sign an owner-occupancy covenant in order to construct or use an ADU.
- Occupancy limit for unrelated persons for both units.
- Limit one (1) ADU per owner occupied unit within single family zones.
- Limitation of ADU unit sizes (minimums/ maximums) based on lot sizes of a residential zone.
- Detached ADU setback/height restrictions.
- Separate entry door orientations for ADUs.
- Providing for additional parking stalls (see exception below)
- Minimum pervious surface requirements for entire property.
- Building & safety regulations for sleeping areas, kitchens, etc. for the use of ADUs.

Ordinance Enforcement for ADUs

- Receiving some type of official city approval for construction and use.
- Recordation of ADU covenants for the property.
- Removal of select features if ADU is abandoned.
- Establishing legalization for illegal ADU units or their removal.
- Requirements for submittal, approval, and permit issuance to establish ADUs.
- Process for tracking compliance.

Ordinance exceptions/incentives for ADUs

- Waiver of parking requirements based on proximity to mass transit, employment centers, or for historic preservation purposes.
- Exemptions or reductions of approval fees, building permit fees, or inspection fees.

- Loans, grants, or waivers if tied to affordability measures.
- Fewer regulations in commercial areas.
- Adjusting height and setbacks to accommodate detached structures.

Motivations

- The biggest single motivation to create an ADU, shown in studies nationwide, is extra income for the home owner.
- This is followed by the goal of housing a family member, helper, or other person close to the developer. The homeowner-developers often have plans to use the ADU as their life stages progress. For example, parents may move in to the ADU when the kids are grown and rent out the main house for income.
- The unit fits into the existing fabric of the community.

Barriers

- Financial: challenges of obtaining financing, paying for construction, or permitting fees.
- Design constraints: local requirements like setbacks, height limits, etc.
- Process barriers: Working through the planning and permitting process.
- Owner occupancy criteria can reduce flexibility.

Sample of Utah cities & counties with an ADU ordinance

| | | |
|--------------------|-----------------|----------------|
| Alpine | Mapleton | Sandy |
| Bluffdale | Moab | Salt Lake City |
| Bountiful | Millcreek | St. George |
| Brigham City | Murray | Springdale |
| Cedar Hills | North Salt Lake | Summit County |
| Centerfield | Park City | Taylorsville |
| Clinton | Payson | Tooele County |
| Cottonwood Heights | Ogden | Weber County |
| Draper | Orem | West Point |
| Eagle Mountain | Pleasant Grove | West Valley |
| Grand County | Pleasant View | Vineyard |
| Lehi | Providence | |
| Lindon | Provo | |
| Logan | Salem | |

Examples of ADUs in Utah

Types of ADUs

1. Dwelling created in a portion of an existing single-family home (e.g. basements, attics).
2. Dwelling created as a dedicated addition to an existing single-family home.
3. Dwelling created as a free-standing building (e.g. guest house, cottage, tiny home).
4. Dwelling created by converting the garage into livable space.
5. Dwelling purposely designed into the footprint of new construction.

Existing Home Renovation



ADU Guest House/Cottage



Garage Conversion



Dedicated ADU Additions



Integrated New Construction



Ordinance Considerations

Lay the Framework.



Ownership

Considerations:

A major decision for communities is to determine how they would like to handle the issue of managing ADUs. Is this simply a new “property right” for the owner who lives in the unit, who can manage the rental portion of his or her home; or is it reasonable to allow the entire home to be rented out, essentially as a duplex, where the owner does not live on the property? Communities have approached this issue in different ways. Some communities believe that a greater mix of housing types within a neighborhood creates healthier, more affordable communities. Other communities have concerns that have arisen from absentee landlords such as home or yard exterior maintenance or tenant problems. Regardless, your city leadership can create guidelines to achieve the right balance for your neighborhoods.

Community decision:

Decide which direction works best for your community. Remember that you can have different requirements for different zones. One blanket ordinance may not meet the variety in districts in your community. If a decision is made to require the owner to live on the property, then additional work is needed to assure that happens. Some communities have decided against this requirement simply because of the potential enforcement issue.

Ordinance options:

If a community decides the owner must live in the home, then consider enacting these ordinance requirements:

- An agreement/statement called a deed restriction, as part of the application, that the owner signs and is recorded, stating they will continue to live on the property if they continue to rent the second unit. Anyone that buys the home is subject to same deed restriction.
- An annual business license renewal requirement if applicable.

- An enforcement ordinance with penalties for non-compliance with the ownership requirement. This could just be a minor amendment to an existing penalty portion of your ordinances for zoning violations. It simply needs to be clear that the owner can be fined, and the unit discontinued, if non-compliance is found. Obviously, evicting one of the tenants is not an easy task and politically not favorable, but that would be the implication of this ordinance amendment.
- If a community decides to require the owner to live in one of the units, then there may be a need to allow for times when the owner may be away for an extended period of time, such as a new work assignment, a sabbatical, or a volunteer activity away from home. Some communities call this a Temporary Owner Absence Allowance. If you enact one just make sure it can turn into a good acronym. Planners love them!



Types

Considerations:

- Interior: Usually located in a basement or an attic or simply a part of the existing home. These are still semi-independent but probably share sewer, water, electricity and gas but need to have their own heating and each unit needs access to their circuit breaker panel. Most likely these are the least expensive to convert and perhaps the least obvious, from the adjacent street.
- Addition: These are add-ons to an existing home and are attached to the side or rear, generally. These may be semi-independent sharing everything with the existing home except heating and still need access to the circuit breaker panel which could be a separate panel just for the new unit. Unless well designed, additions in a side yard may be more visible than other options.
- Detached: These could be units over or behind a detached garage or home. Some communities allow a separate detached unit in the rear or side yard that still meets setbacks. Some communities allow “tiny” homes or small on-site “stick built” homes on a foundation in the side or rear yard. If these are built in the rear yard and still meet the

zoning ordinance setback requirements for the primary dwelling, they would not be visible from the street but may be visible for abutting neighbors just like a shed or barn. Some communities have reduced setbacks and to encourage these types of units.

Community decision:

The community decision is this: which types of ADUs should be allowed? The least visible neighborhood impact would be to allow the ADUs only within the existing dwelling. The most visual impact could be an attached or detached side yard ADU. In communities with large lots, detached units could fit in easily.

Ordinance options:

- Conduct a housing needs assessment to determine the current need and demand for rental units in general, and ADUs.
- Detail in zoning code regulations and standards that allow ADUs to be attached, detached, or both.



Size

Considerations:

Many communities set maximum and minimum sizes to assure that the new unit is subordinate or smaller than the main dwelling. The range in sizes varies considerably from one town to the next. Some base the maximum on lot size while most base it on the size of the existing home. If the community believes it should subordinate to the main dwelling, then it is often formula based like 25% or 30%. Some instead suggest a simple minimum like 300 square feet up to a maximum of 900 to 1200 square feet.

Some may combine the two. For example, the percentage formula calculates a number that is felt to be too small, like 200 square feet or too big like 2000 square feet, then the minimum size

or maximum size limit is used. In addition, some communities might restrict the number of bedrooms to one or two, in effect controlling the number of people allowed in the ADU.

Community decision:

The community decision is this: to set or not to set some sort of limit on size. If the community decides they want to limit the size then decisions about square footage, or a percentage, or both need to be made. Limiting the number bedrooms may be another means of getting at this issue.

Some communities may also want to control the number of people that live in the ADU. This suggests creating restrictions on the number of related people and then the possibly the number of unrelated people. The community's definition of a family may be a reference point for review and you should consult with your attorney for any federal laws surrounding this issue.

Ordinance Options:

- Determine where ADUs will be permitted and then determine the minimum lots size.



Appearance

Considerations:

Many communities are concerned about the appearance of the existing home. If there is an addition, does it need to blend with the existing building? Can the second unit have a door that faces the street? Essentially these design decisions are about the appearance from the street. For the different types of ADUs, you may have different design requirements or as a community the decision may be that we don't have concerns about the design.

Community decision:

The community decision is this: how much blending or compatibility shall we require? For basement and detached ADUs (maybe for the over the garage type, however), that does not seem like an issue. However, for ADUs in the form of additions in the side yard, the view from

the street becomes more important. If the community just want to avoid the “duplex look,” then the door location is the most important factor.

Ordinance options:

- Develop guidelines that govern the design and appearance of homes with ADUs to preserve the visual and single-family character of a neighborhood.

If the community wants address design, then here is a typical list of considerations:

- **Doors:** In an addition that is attached to the home in a side yard, can the doors face the street? Most neighborhood concerns about door location are based on trying not to have the “duplex” look, which, again, some communities are unconcerned about. An option could be to have the door, if it needs to face the street, be located below grade.
- **Architectural style:** Usually the suggestion is to require some consistency in architectural style. However, few communities have that for a regular addition to a single-family home, so is it reasonable to require that for an ADU? What if the existing home does not have a style that is desirable for enhancement with an addition?
- **Windows:** Some communities limit the location of or the number of windows if the proposed ADU is detached in the backyard and can be located closer to the side property lines than regular standards require. The idea behind this is to decrease the privacy issues that might arise with neighbors.
- **Materials:** If the intent is to fully blend a unit with the existing home, then detail the materials that are required. This is mostly an issue for side yard additions.
- **Storage container housing:** Currently there is growing interest in reusing shipping and/or storage containers for housing. These may provide a less expensive start to a dwelling unit, but they may have significant rehab costs including cleaning up whatever was stored in the container and building code requirements for habitation. Even though these may be in the backyard some design controls may be warranted, such as elimination of rust, dents, new color coordinated paint, windows, a deck, etc. The compatible materials discussion may make them unacceptable in some communities, even though they may help promote a more affordable option.
- **Mailboxes and addressing:** Two mailboxes may make sense but do raise some very minor appearance issues. Labeling the ADU as unit “B” but using the same address is important for emergency response times to prevent confusion about where the medical or fire issue is within the home. Separate addresses using the “B” concept is important.



Parking

Considerations:

A hot button! Most communities want to be assured that the additional unit has off street parking, but some realize that if you have three teenagers, you probably have a lot of on-street parking needed for a regular single-family home. Or your grown kids come back after finishing college and bring a couple of cars (and maybe grandkids) with them. The boomerang effect! Obviously, there is a debate about whether to require more off-street parking or to just “allow” it to be on-street.

Some communities waive any parking requirement if the unit is located within $\frac{1}{4}$ mile (sometimes up to $\frac{1}{2}$ mile) of a transit station. Stations are generally more than just a bus stop and usually include Frontrunner, TRAX, or Bus Rapid Transit fixed stations. However, if bus frequency is every 30 minutes or less, being close to a bus route could be a situation where communities could waive parking requirements.

Many ordinances base a parking requirement on the number of bedrooms, usually requiring one parking spot for a one bedroom and maybe 1.5 to 2 spaces for a two bedroom. Nationwide data shows that more than one space is generally not necessary. Some communities want them out of the front yard setback, which may become a difficult objective to achieve in a smaller lot.

Community decision:

First, decide if you are flexible enough to just allow the ADU occupants to park on the street. If the decision is to not allow on-street parking, then the next decision is how many parking spaces to require. Again, nationwide data shows that one extra space is generally enough. Be realistic and remember, try to be flexible!

Ordinance options:

Many Utah communities are adjusting their parking policies. See this North Salt Lake ordinance for one example of a community that has parking flexibility standards.

<https://www.nslc.org/DocumentCenter/View/1993/ADU-02282019>

After you enact any regulation see the results of how it works in practice and then you can always adjust accordingly.



Utilities

Considerations:

There are some communities that want the ADUs to be totally independent with their own sewer, water, gas, and electric, but most are not concerned that the units are fully independent. Fully independent utilities could lead to an eventual twin home (separately owned units) or make it easier to consider it a duplex. Building code does not require that the utilities be separate, just that the units are safe.

Community decision:

The community decision is whether to simply rely on the building code or consider allowing separate utilities.

Ordinance options:

- Draft clear standards in your ordinance as to the final decision.



Enactment & Citizen Participation

Considerations:

It is a good idea to start the process of creating an ADU ordinance with some sort of public engagement process or a committee composed of city residents, maybe some realtors, homebuilders and possibly City Council and Planning Commission members. Use this workbook as a tool to lead the discussions and as part of the local decision making is how to process an ADU. Look at other ordinances for ideas but make your regulations fit your community.

Community decision:

- Decide whether ADUs can be regulated as a permitted use, with an administrative review, or as a conditional use subject to public hearing.

The following suggestions address possible application processes for ADUs:

Home occupation with standards (Permitted Use):

With the many standards suggested by the ordinance sections described above, it seems logical that the use be a permitted use. Since it is operating via the home, it also makes sense to consider it as an amendment to the home occupation ordinance or create a separate ordinance but include the use under the home occupation category. Potential home occupations are expanding as trends in employment (such as more people working from home) are evolving across the nation and the uses allowed under that category are becoming more flexible.

There was a time where many communities outlawed construction contractors from using their home/property to conduct their business, but today that issue seems to be fading. New home occupations are showing up such as dog walking and pet boarding, which simply were not a factor ten years ago. Short term rentals were unheard of in the past but have become commonplace today.

Similar to how home occupations must be evaluated under state law, communities should focus on the actual impacts the ADU has, if any, on the neighborhood. If the community addresses the suggested sections above to minimize ADUs impacts, it may be difficult to ascertain that the unit is there. In that situation, the community establishes the right to have an ADU, sets standards to assure compatibility with the neighborhood, and then allows the use as an over the counter permitted use application.

Permitted Use:

Some communities prefer to handle some uses within a residential neighborhood as their own individual use classification. Even though it is clearly an occupation associated with a home, it could deserve a separate designation. This option would require you to define your standards, documents to be recorded, building permit requirements, inspections and any annual business license up front. This would be similar to standards that you may have, for example, for a single-family home permit. If non-owner occupied ADUs are allowed, this may be the preferred option.

Conditional Use:

Although Utah State Law does not require public hearings for conditional uses, many communities still choose to hold a hearing, usually based on “transparency” concerns. State Law sets a very high bar for denying conditional uses. The applicant must “mitigate” legitimate code concerns that are raised. Mitigate simply means reduce the impact of, not eliminate.

Holding public hearings where neighbors just want the city to say “no” is detrimental to the city’s perceived neutrality/transparency. Even with a raucous crowd suggesting denial, the city will most likely have to approve the use or risk litigation. The city needs factual objective input and not emotional opinions in the conditional use process. A conditional use process is an administrative decision by the city. It is a decision based on the standards in the ordinance and a property owner is entitled to the use if they meet the standards.

If the community decides to consider an ADU a conditional use, it is advisable to not mail out notice and hold public hearings for individual applications. The ordinance essentially addresses all the potential impacts and the neighborhood input will not usually have a factual basis, making for a difficult hearing. Accusations of “you have already made your mind up” are common in conditional use hearings and in a sense are correct, since the ordinance, which was previously approved, allows the ADU if it can meet the defined standards. The time for public input is when the city is considering the ordinance in the first place.

Ordinance options:

The community decision for processing an ADU should fall into one of the three options covered above. Zoning theory would suggest that if you have sufficient standards, then the use should be a permitted use under a home occupation use. Under state law, the planning

commission holds a public hearing and then forwards its recommendation to the city council. The council, in a public meeting, adopts, modifies or rejects the recommendation for the ordinance. Check your own regulations to see if you have added any processing steps and be sure to follow them!

Illegal Units

To be or not to be.

Most Utah communities have accessory units that may not meet your municipal ordinance.

What are some options for communities?

Amnesty? Time limits to comply? Fee waivers for upgrades for affordable rent limitations?

There is no magic bullet that has had easy success in Utah, but many communities have tried a variety of options.

From experience it appears that existing units that were illegal but now can become legal, will encounter a difficult, and potentially costly, building inspection process. Since the unit was built without a permit or before your city had an ordinance, it is obvious that there may be building code violations.

Hopefully the owner or their contractor knew what the correct construction was and followed through, but unfortunately that is not always the case. Most likely, to bring the unit into compliance will require some costs but will be legal and not potentially forced to remove or remodel the unit to become an integrated part of the single-family home again. That should provide enough incentive to improve the unit by bringing it up to code.

The community decision to address illegal units is about improving safety. To the best extent possible, achieving the resolution of life safety issues should be the community goal.

What do building officials look for?

All construction is subject to the state-adopted International Building Code. This is not just for illegal units; these requirements would be part of the building permit process for a new ADU.

The scope of an ADU inspection is generally left up to the discretion of the local inspector as only he or she will know the potential hazards and risk involved with any remodel that was done without the required periodic inspections. The building official will only know if there are issues by making the physical inspection of the premises.

If proper inspections had been performed, an inspector could be sure all water piping, gas piping, and electrical cables that were concealed behind walls were secured to prevent accidental puncture by nails and screws for wall hangings, curtain rods, etc. for the life of the home. Some hazards might be concealed between walls and in the ceilings. An inspector can require walls removed to allow for inspection, if there is something that is suspect.

The following is a typical list that an inspector might review:

- Evidence of gas line and/or water piping leaks.
- Internal structure. Sometimes the ADU construction removes existing walls which can lead to eventual partial collapse of a floor or roof overtime if an adequate beam is not installed.
- Is there an escape window of adequate size (minimum 5 square feet) in every bedroom?
- Are there smoke detectors and CO detectors installed where required?
- Are windows located in hazardous locations?
- Are there visible electrical wiring hazards?
- Are there enough electrical outlets?
- Have any gas appliances been added that could overwhelm the existing gas supply creating a carbon monoxide problem?
- Does each habitable room have sufficient heat?
- Have plumbing fixtures been installed in a way that could create health hazards or sewage back-up?
- Does every bathroom have a window or exhaust fan to prevent mold?
- Is the furnace or water heater located in a bedroom?
- Are the outside walls of the habitable rooms insulated?
- Will the addition of gas appliances overwhelm the gas meter?
- Will each tenant have ready access to shut off devices for heat, power, and water supply?
- Are the ceiling heights and projections appropriate?
- Does the unit have proper ingress and egress?



Most inspectors will help a homeowner by suggesting options to consider. An example might be that the owner changes the use of a bedroom that has no windows. They could change it to a study, an office, a TV room, but it could not remain a bedroom unless windows were installed. That same issue of devising options would occur in a bedroom that has a window smaller than 5 square feet, but maybe enlarging that window would be the best option (which will require an engineer's evaluation). Sprinkling the room would also be an option.

Another option to protect the municipality is to have the homeowner sign some sort of statement that provides guidance about the inspection limitations and owner liability, such as, "THIS INSPECTION IS LIMITED TO CONSTRUCTION AND POTENTIAL HAZARDS READILY VISIBLE WITHOUT THE REMOVAL OF CONSTRUCTION MATERIALS."

The community policy of limiting the inspections to more obvious visible problems is a good way to assure your illegal units will try to come in for a permit. Your obligation here is to be reasonably assured that the unit is safe. The community could be liable in the case of a fire or other disaster if inspections are lax.

Helpful Resources

National

A one-stop source about accessory dwelling units, multigenerational homes including a model code: <https://accessorydwellings.org/>

Nuts and Bolts - Technical Assistance Booklet for ADUs in California:
<http://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml#booklet>

Jumpstarting the market for ADUs:
http://ternercenter.berkeley.edu/uploads/ADU_report_4.18.pdf

Zoning for Garage Apartments:
<https://planning-org-uploaded-media.s3.amazonaws.com/publication/online/Zoning-Practice-2018-05.pdf>

Parking Reductions:
<https://www.smartcitiesdive.com/news/parking-guru-donald-shoup-has-3-new-recommendations-for-cities/522034/>

AARP - Aging In Place with Invisible Infill ADUs:
https://www.asaging.org/sites/default/files/files/AARP_Housing_DPinkston.pdf

American Planning Association - ADUs:
<https://www.planning.org/knowledgebase/accessorydwellings/>

Building an ADU – An online resource to everything you need to know
<http://www.buildinganadu.com/>

Local

A guide on how to build an ADU in Salt Lake City:

http://www.slcdocs.com/Planning/Guides/ADU_handbook.pdf

A survey by Spanish Fork to residents on how to better accommodate ADUs:

https://www.spanishfork.org/departments/community_development/planning/accessory_dwelling_units.php

How to Create an ADU on your property – Salem UT:

<https://www.cityofsalem.net/Pages/accessory-dwelling-unit-rules.aspx>

Salem UT Video for residents Accessory Dwelling Units, “Why we need them”

Councilor Steve McCoid 2017:

https://youtu.be/tLdzCy_3dEQ

North Salt Lake ADU application:

<https://www.nsldocs.org/DocumentCenter/View/1993/ADU-02282019>

The Ins and Outs of ADUs – Land Use Academy of Utah:

<https://luau.utah.gov/wp-content/uploads/sites/28/2018/09/ADU-Presentation-for-ULCT-sept-13-2018.pdf>

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working hard at the local level across Utah's communities to
plan for a range of housing choices for Utah residents.*

Utah League of Cities and Towns

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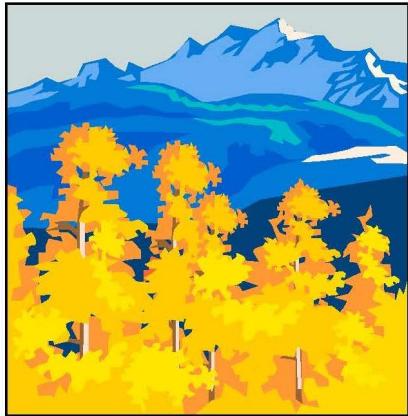
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THE UTAH LAND USE INSTITUTE

Accessory Dwelling Units

Utah Land Use Regulation Topical Series

Melanie Clark, Author

March 2023

Funding for these materials is provided by the Utah Department of Workforce Services, Division of Housing and Community Development. The Office of the Property Rights Ombudsman has also provided funding for this training program from the 1% surcharge on all building permits in the State of Utah. The Utah Land Use Institute deeply appreciates the ongoing support of the S. J. and Jessie E. Quinney Foundation and Salt Lake County as well.

ACCESSORY DWELLING UNITS

Author: Melanie R. Clark¹

Utah Land Use Institute²

March 2023

Introduction

Allowing property owners to provide a second living unit on the lot now occupied by a single family home is nothing new, but the details of how this is to be done has become a vital topic in current land use regulation. The chronic shortage of housing units for middle income individuals and families is causing many conversations about the options to address that shortage. Using existing lots for more housing solves a number of issues, and avoids the new streets, sewers, water lines and power sources that new subdivisions require.

The Utah Legislature has recently stepped in to encourage more use of “ADU’s”. This outline is meant to inform local decision makers as well as land use applicants and neighbors about the laws related to ADU’s. This outline concludes with considerations in making decisions related to ADU’s and tips for implementing ADU regulations.

Those reviewing this may also be interested to read Todd Sheeran’s summary of the law related to Short Term Rentals, found in this same series of topical summaries at the Land Use Library at utahlanduse.org. A video of a presentation of both subjects is also available there.

This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

I. Relevant Law

a. Background.

- i. New governing statutes were adopted in 2021. There is not yet any published case law interpreting these statutes.
- ii. Statutory limitations primarily relate to the way a municipality or county can regulate, restrict, or prohibit *internal* accessory dwelling units.³

b. Definitions.

- i. An “accessory dwelling unit” (frequently referred to as an “ADU”) is a livable unit that could be:

¹ Melanie Clark is a partner and Business Law Department attorney with Foley & Lardner LLP. Melanie is based in the Salt Lake City office where she is a member of the firm’s Real Estate Practice Group. Melanie’s practice focuses on advising on all aspects of large-scale real estate projects including acquisition and disposition of land, leasing, financing, and project development.

² The Office of the Property Rights Ombudsman has provided funding for this update from the 1% surcharge on all building permits in the State of Utah. Appreciation is also expressed to the Division of Housing and Community Development of the Department of Workforce Services for funding the project which produces these topical summaries of land use regulations. The Utah Land Use Institute also expresses continuing appreciation for the ongoing funding provided by the S. J. and Jessie E. Quinney Foundation and the Dentons Law Firm.

³ Utah Code Ann. §§ 10-9a-530 and 17-27a-526.

1. converted from existing space within a single-family home (e.g., a basement apartment),
2. an addition to a single-family home (typically on the side or back),
3. part of a separate building on the same lot as a single-family home (e.g., above a detached garage), or
4. a stand-alone building on the same lot as a single-family home (e.g., a tiny home in the backyard).⁴

- ii. An “internal accessory dwelling unit” is an accessory dwelling unit that is within the footprint of the primary detached dwelling unit (occupied as the primary residence of the owner) and created for the purpose of being offered for rent for 30 consecutive days or longer.⁵

- c. Moderate Income Housing. Only a couple of statutes apply broadly to all ADUs, these include:
 - i. The general plan for a county or municipality must include a moderate income housing element.⁶ The statute lists 24 different potential recommendations on implementing moderate income housing strategies. Two of these recommendations that *could* be included in the general plan are:
 1. allowing or reducing regulations for accessory dwelling units in residential zones and
 2. eliminating impact fees for non-internal accessory dwelling units.
 - ii. Municipalities and counties must submit annual moderate income housing reports. Starting in calendar year 2023 the report must include information on the number of accessory dwelling units for which a building permit or business license was issued.⁷

- d. Limitations on Regulation of Internal Accessory Dwelling Units.
 - i. In 2021 the State legislature imposed limits on how a municipality or county may regulate internal accessory dwelling units in residential zones. Any regulations adopted or contained in existing ordinances must be within the statutory allowances.
 - ii. One internal ADU in a primary detached dwelling generally must be a permitted use in any area zoned primarily for residential use and may not be restricted except as provided below.⁸
 - iii. A municipality or county may not impose a requirement governing:
 1. the size of the internal ADU in relation to the primary dwelling;
 2. the total lot size (except requiring a minimum lot of 6,000 square feet); or
 3. street frontage.

- e. Permitted Restrictions on Internal Accessory Dwelling Units.⁹
 - i. A municipality or county may:

⁴ Utah Code Ann. §§ 10-9a-103 and 17-27a-103.

⁵ Utah Code Ann. §§ 10-9a-511.5, 10-9a-530, 17-27a-510.5, and 17-27a-526.

⁶ Utah Code Ann. §§ 10-9a-403 and 17-27a-403.

⁷ Utah Code Ann. §§ 10-9a-408 and 17-27a-408.

⁸ Utah Code Ann. §§ 10-9a-530(2) and 17-27a-526(2).

⁹ Utah Code Ann. §§ 10-9a-530(4) and 17-27a-526(4).

1. prohibit installation of a separate utility meter for the internal ADU;
2. require that the ADU be designed so that the appearance of the primary dwelling unit doesn't change.
3. Require one additional on-site parking space for the ADU, unless four or more spaces are already required.
4. Require replacement of any parking spaces lost if an ADU is constructed in what was previously a garage or carport.
5. Require the owner to obtain a license for renting the ADU.
6. Prohibit renting the ADU for fewer than 30 consecutive days.
7. Prohibit rental if the primary dwelling unit is not occupied as the owner's primary residence.

- ii. A municipality or county may prohibit creation of internal accessory dwelling units altogether:
 1. In zoning districts that are not primarily for residential use (in other words, zones where the primary use is commercial, industrial, or agricultural);
 2. In primary dwellings already containing an internal ADU;
 3. In attached homes, mobile homes, and within detached garages;
 4. Within a zoning district that:¹⁰
 - a. Geographically covers 25% or less than the total area zoned primarily for residential use.¹¹
 - b. Geographically covers 67% or less than the total area zoned primarily for residential use if the main campus of a state or private university with a student population of 10,000 or more is located within the county or municipality.¹²
 5. In primary dwelling units with failing septic tanks.
 6. On lots with 6,000 or fewer square feet.

f. Rights of Municipalities and Counties

- i. If a municipality or county adopts permitted regulations and those regulations are violated, the municipality or county may hold a lien against the property after going through the following procedure:¹³

¹⁰ The wording in this section of the statute allows a municipality or county to "prohibit the creation" of an internal ADU in these districts. This is not written as an exception to the requirement that the use of an internal accessory dwelling unit is a permitted use in any area zoned primarily for residential use. This could be interpreted to mean that the use must be permitted, but the municipality or county could prohibit creating **new** internal ADUs in the described districts.

¹¹ As drafted, each zoning district is evaluated separately and there is no cumulative limitation. In other words, technically if a municipality had 1,000 acres zoned primarily for residential use, split evenly among 4 residential zoning districts (each with 250) acres, the municipality could prohibit the creation of internal accessory dwelling units in all of those zoning districts. However, the intent may have been that the creation of internal accessory dwelling units may only be prohibited in 25% (or 67%) of the total residential areas within the municipality or county.

¹² Right now this would likely apply to Orem (Utah Valley University), Provo (Brigham Young University), Salt Lake City (University of Utah), Ogden (Weber State University), Logan (Utah State University), Cedar City (Southern Utah University), and St. George (Utah Tech University).

¹³ Utah Code Ann. §§ 10-9a-530(5) and 17-27a-526(5).

1. Written notice of violation to the owner (mailed and posted on the property);
2. Hearing regarding the violation (only if owner files a written objection within 14 days of the notice being postmarked or posted on the property);
3. Owner fails to cure (14-day cure period for violating a 30-day rental requirement; 30-day cure period for all other violations);
4. Written notice of lien to owner (mailed and posted on the property); and
5. Record lien in county records in the amount up to \$100 for each day the violation continues after the cure period.

- ii. If a municipality or county issues a rental license or building permit for an internal ADU, the municipality or county may record a notice in the county records with a description of the primary dwelling, a statement that it contains an internal ADU, and a statement that the internal ADU may be used only in accordance with applicable land use regulations. If such a notice is recorded, a copy must be sent to the property owner.¹⁴

- g. Emergency Egress Windows.
 - i. One other statute addresses internal accessory dwelling units. Generally a municipality or county may require installation of an emergency egress window in a bedroom. There are a few instances in which adding the window cannot be required, but these exceptions do not apply to internal accessory dwelling units.¹⁵
 - ii. In other words, a municipality or county may require installation of an emergency egress window in the bedroom of an internal ADU.

II. Considerations for Making Decisions

- a. The above described statutes were adopted in the context of a state-wide housing shortage and escalating home prices. In adopting any regulations on ADUs the legislative body should consider how the proposed regulation will affect the availability of housing, particularly moderate income and affordable housing.
- b. While internal ADUs generally may not be prohibited in residential zones and may be prohibited in non-residential zones, the legislative body should consider where additional housing may be needed and would fit with the character of existing neighborhoods. A zone with primarily commercial uses, but with mixed-use projects that include residential units may be a good place to have accessory dwelling units.
- c. There are some inverse implications in the general requirement that one internal ADU in a primary detached dwelling must be a permitted use in a residential zone.
 - i. By stating that internal ADUs must be a permitted use in areas zoned primarily for residential use the following is implied:
 1. external/detached ADUs do not need to be a permitted use in any zone.

¹⁴ Utah Code Ann. §§ 10-9a-530(6) and 17-27a-526(6).

¹⁵ Utah Code Ann. §§ 10-9a-511.5 and 17-27a-510.5.

2. internal ADUs may be a conditional or prohibited use in non-residential zones.
- ii. By defining an internal ADU as being within a primary dwelling, and defining a primary dwelling as a single-family detached dwelling that is owner occupied, the following is implied:
 1. internal ADUs may be prohibited in, and the statutory limitations do not otherwise apply to multi-family or attached dwellings.¹⁶
 2. internal ADUs may be prohibited in vacation homes or dwellings occupied by renters.

III. Tips for Implementing Local Regulations

- a. Requiring a rental license, which is expressly permitted by the statute, will allow municipalities and counties to identify where ADUs are located, making it easier to enforce any restrictions. Also, part of the license process could include verifying that the applicant owns and occupies the home as a primary residence.
- b. Municipalities and counties should be consistent in how and when they enforce any restrictions. As in all regulations, no special treatment should be given to certain neighborhoods or higher-income areas.
- c. As these statutes were newly adopted in 2021, municipalities and counties should watch for legislative amendments and court cases interpreting the statutes and implementing ordinances.

¹⁶ Unfortunately, the term “attached dwelling” is never defined by statute, but is used in the Community Association Act, Utah Code Title 57, Chapter 8a, to refer to dwellings that are physically connected to another dwelling. The only statutory definition of a “detached dwelling” is found in the Community Association Act, in the context of solar energy systems, where it is defined as a dwelling where the owners association does not have an ownership interest in the roof. In common usage a “detached” home refers to a stand-alone single-family home where no part of the building is connected to another home or building and an “attached” home would include any home where there was a shared wall or ceiling/floor connecting one home to another home or unit.



STAFF REPORT

To: Mayor Shephard and City Council Members
From: Brad McIlrath, Senior Planner
Meeting Date: Tuesday, September 17th, 2024
Subject: Planning Commission Alternate Appointment

RECOMMENDED ACTION

Based upon the Planning Commission interviews and City Council discussion on January 30th, 2024, staff recommends that the City Council review the applicants that were not appointed for possible appointment as a Planning Commission alternate.

DESCRIPTION / BACKGROUND

According to the Planning Commission Rules and Regulations (Revised 4/15/2020), Clearfield City will attempt at all times to have a minimum of seven (7) residents appointed to the commission. In addition to the regular seven (7) commissioners, the City will attempt at all times to have two (2) appointed alternate commissioners to fill in for regular members due to absence or for other circumstances. The term length of each Planning Commission member (regular and alternates) is a maximum of five (5) years with no limit to the maximum number of terms a resident can serve.

On February 13th, 2024, Riley Wheeler was appointed as a regular member to the Planning Commission with Brian Swan and Danielle Sikes appointed as alternates. With the resignation of Commissioner Lauren DeSpain in April 2024, Brian Swan was appointed to complete the term vacancy which ends in February 2026. With Commissioner Swan's appointment, an alternate vacancy was created that has a term expiration of February 2027.

Due to the recency of an application period and appointment of new commission members in February 2024, review of unselected applicants from that application window would be appropriate. Staff recommends that the Mayor and City Council review the remaining applicants that were not appointed to the Planning Commission to determine a possible replacement. Following the discussion, if an alternate is not selected for appointment, or if the individual is unable to accept the appointment, the City can readvertise for a Planning Commission alternate vacancy. The following individuals were previously interviewed as part of the application window in February 2024.

- Kent Bush
- Elaine Nelson
- Nick Dragon

CORRESPONDING POLICY PRIORITY

The appointments to the Planning Commission support the policy priority of “Providing Quality Municipal Services” by placing interested and experienced community members in a position of responsibility. These residents provide valuable insight and experience that will continue to have a positive impact on the city as they continue to serve on the Planning Commission.

ALTERNATIVES

Each commission member is appointed by the Mayor, subject to the advice and consent of the City Council. The Mayor and City Council may decide an alternate direction than appointing an applicant from the last round of applications.

ATTACHMENTS

| TERM EXPIRATION | NAME | STATUS / PROPOSED ACTION |
|----------------------|---|---|
| February 2029 | Chad Mortensen | |
| February 2029 | Kathryn Murray | |
| February 2026 | Brian Swan | |
| February 2025 | David Bloomfield | |
| February 2028 | Brogan Fullmer - Chair | |
| February 2027 | Robert Browning – Vice Chair | |
| February 2025 | Riley Wheeler | |
| February 2027 | | Vacant / Appoint or Readvertise. |
| February 2026 | Danielle Sikes – Alternate | |
| June 2025 | Jaylee Bouwhuis – Youth Commission Ambassador | |



STAFF REPORT

TO: Mayor Shepherd and City Council Members

FROM: Braden Felix, Assistant Public Works Director

MEETING DATE: September 24, 2024

SUBJECT: UDOT Master Agreement and Outside Engineering Agreement for the future UTA Double Track Project along Depot Street from 200 south to 350 South

RECOMMENDED ACTION

Approve the agreement as presented and reviewed by staff

DESCRIPTION / BACKGROUND

UDOT (in behalf of UTA) will be installing a second set of tracks on the east side of their existing alignment to improve train frequency. The only location that impacts the city's facilities is the short stretch of Depot Street from 200 South to 350 South. To shift the street and utilities over, UDOT will be coordinating that effort with the city according to this master agreement (along with future supplemental agreements) and the outside engineering agreement. The template for those supplemental agreements is included in master agreement attachment. The major takeaways from these agreements are:

- All necessary construction on city-owned facilities or right-of-way acquisition due to this project will be performed by and paid for by UDOT as outlined in future supplemental agreements. (MA Sec. 7 & 8)
- Any work done by the city for the benefit of this project will be reimbursed by UDOT as outlined in future supplemental agreements. (MA Sec 15)
- Any work requested by the city in excess of the existing infrastructure ("betterments") will be paid for by the city. (MA Sec. 9)
- Any work performed by our engineering consultant for this project is subject to reimbursement from UDOT (OEA Sec. 2)

We coordinated the future alignment in the design and reconstruction of 350 South to allow for the shift of Depot Street.

CORRESPONDING POLICY PRIORITIES

- Providing Quality Municipal Services
- Improving Clearfield's Image, Livability, and Economy

We will be getting a rebuilt section of Depot Street paid for by the state. we can also take this opportunity to add active transportation striping as outlined in the North Davis ATIP.

HEDGEHOG SCORE

21

FISCAL IMPACT

Nothing at this moment. Betterments will be estimated when designed.

ALTERNATIVES

None

SCHEDULE / TIME CONSTRAINTS

Construction is slated for 2025

LIST OF ATTACHMENTS

- UDOT Master Agreement
- UDOT Outside Engineering Agreement

CLEARFIELD CITY MASTER AGREEMENT

THIS MASTER AGREEMENT (the "Agreement"), is made to be effective as of _____, 2024, by and between the **Utah Department of Transportation**, an agency of the State of Utah ("UDOT"), and Clearfield City, a political subdivision of the State of Utah, ("Third-Party"). Each may also be referred to as a party ("Party") and together as parties ("Parties").

RECITALS

WHEREAS, UDOT is preparing to award a Progressive Design-Build contract for the fixed guideway capital development project identified as Project Number: S-ST99(835) Project Name: FrontRunner 2X Project ("Project"); and

WHEREAS, a progressive design-build contractor ("Design-Builder") will complete the Project design and administer construction for UDOT; and

WHEREAS, UDOT has identified one or more Third-Party facilities within the limits of the Project (the "Facility" or "Facilities"), and when conflicts with the Project are present, the Project may necessitate the relocation, protection, or adjustment, including design thereof, of any or all of the Facilities in a manner that is functionally equivalent to the Facilities prior to their relocation (the "Third-Party Work"); and

WHEREAS, when the Third-Party or UDOT perform the Third-Party Work, it will be performed under the terms stated in this Agreement; and

WHEREAS, for the purpose of expediting any required Third-Party Work and reimbursements in connection therewith (if any), the Parties are entering into this Agreement to set out the general terms and conditions for the Third-Party Work, with the understanding that future Supplemental Agreements to this Agreement will be entered into covering specific requirements for the Third-Party Work at specific Project locations, and a sample form of a Supplemental Agreement is attached hereto at Exhibit A and incorporated herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which by this reference are incorporated into this Agreement, and for the terms set forth below, which the Parties acknowledge to be good and sufficient consideration, the Parties agree as follows:

1. APPLICATION OF AGREEMENT

This Agreement applies to Third Party Work, including Third-Party Work (and any betterment work that UDOT agrees to pursuant to Section 9 below) that: (i) UDOT performs on behalf of the Third-Party; and that (ii) the Third-Party performs. The Parties must implement this Agreement for any such work by executing a Supplemental Agreement, and this Agreement is applicable to all of the Third-Party Work (and

betterment work) described in any Supplemental Agreement. All Supplemental Agreements executed by the Parties are hereby made a part of this Agreement by this reference. For all Supplemental Agreements, this Agreement shall continue to apply to each Supplemental Agreement unless a Party terminates the Supplemental Agreement, in which case only provisions that by their nature are intended to survive shall apply to the terminated Supplemental Agreement (including, but not limited to, the indemnification and audit provisions). If the Parties do not enter any Supplemental Agreements to this Agreement, then this Agreement shall have no effect.

2. CONTACT INFORMATION

UDOT's Project Representative is Garret Jenson, Third-Party Lead, telephone number 385-318-9236, e-mail Garret.Jenson@hdrinc.com.

UDOT's Project Director is Brian Allen, telephone number 385-414-1092, e-mail brianja@utah.gov, or their designated representative, as assigned.

UDOT's Field Representative contact person will be identified in subsequent Project agreements.

Third-Party's contact person is Adam Favero, telephone number 801-525-4413, and e-mail Adam.Favero@clearfieldcity.org.

3. AUTHORIZATION FOR DESIGN WORK

In order to facilitate coordination and obtain technical information about the Facilities and requirements for inclusion in this Agreement, and the Request for Proposals for the Design-Builder, UDOT provided a Design Authorization Letter to the Third-Party on December 20, 2023, which authorizes certain work as stated in the letter.

4. SUBSURFACE UTILITY ENGINEERING

UDOT has performed preliminary Subsurface Utility Engineering ("SUE") within the limits of the Project. Regardless of which Party will perform the Third-Party Work, UDOT will perform additional SUE work to determine the precise location of underground facilities at specific, critical locations on the Project, which be reviewed with the Third-Party.

5. PROJECT COORDINATION

During the development of the Project design, the Third-Party and UDOT, along with its Design-Builder, shall consult as necessary in an effort to determine if conflicts with the Facilities can be avoided. At all times, the Third-Party will cooperate and coordinate with UDOT and its Design-Builder. Cooperation and coordination include, but are not limited to, performing necessary design reviews and inspections of the Third-Party Work as set forth in Section 12. The Third-Party will also work through UDOT's Project Representative to cooperate and coordinate with others (such as UTA and Project consultants) if they have interests that relate to the Facilities.

The Parties acknowledge the importance of completing the Third-Party Work in a manner consistent with the overall schedule for the Project. Accordingly, in connection with each Supplemental Agreement, the Parties shall coordinate, cooperate, and agree upon a schedule for the design, construction, and final completion of the Third-Party Work, as well as any betterment work to be performed by UDOT or the Third Party in conjunction with the Third-Party Work. The schedule shall be determined by UDOT with input from the Third Party.

6. THIRD-PARTY GENERAL REQUIREMENTS

UDOT and the Third-Party will comply with the following general requirements in connection with all Third-Party Work. These requirements may be altered in a Supplemental Agreement, and in case of any conflict with the following general requirements, the information stated in a Supplemental Agreement will govern. The Third-Party will require the following from UDOT:

- a. UDOT will provide the following required times for each activity after a UDOT-approved Project design has been provided to the Third-Party unless specified otherwise in a Supplemental Agreement:
 - i. Third-Party design review of UDOT designs: The Third-Party will review and approve design plans (and betterment cost estimates, if applicable), within **2 weeks** from the time UDOT delivers the design plans to the Third-Party.
 - ii. Supplemental Agreement review and signature routing by the Third-Party: **4-6 weeks**. The same time will be provided for each revision to a Supplemental Agreement.
- b. The Third-Party cannot have sewer facilities out of service. Waterlines may only be temporarily out of service for a maximum of 8 hours and must be approved by the Third-Party.
- c. When UDOT performs Third-Party Work, UDOT will supply as-built plans, in a format specified by the Third-Party, at a reasonable time after UDOT's completion of the Project.

7. GENERAL REQUIREMENTS

The following is required for design and construction:

- a. Third-Party Work will be functionally equivalent to the Facilities prior to their relocation.
- b. UDOT will schedule and meet with the Third-Party to review the design and scheduling of the Third-Party Work at specific locations on the Project to ensure maximum lead time for advance order of materials and workforce scheduling.
- c. Unless otherwise agreed in a Supplemental Agreement, the Party responsible for the construction will secure permits required for said Work.
- d. UDOT is performing Third-Party Work. UDOT will notify the Third-Party at least **2 business days** in advance of UDOT beginning work on any Third-Party Work covered by a Supplemental Agreement hereto, to allow the Third-Party time to schedule an inspector to be present during the Third-Party Work. For each Supplemental Agreement, after this initial notification, subsequent notification of when and where

Third-Party Work will be performed will be given on a day-to-day basis. The Third-Party Work will be designed in accordance with Third-Party's current standards, which are dated April 23, 2024, which are the standards that are regularly followed by the Third-Party in its own work and not considered a betterment. The Third-Party agrees that UDOT will rely on such standards for the duration of the Project, whether any Third-Party Work is designed by UDOT or by the Third-Party. In the event of a conflict between UDOT and Third-Party standards, the higher standard will be applied when it is consistent with applicable federal requirements.

8. **RIGHT-OF-WAY**

The Third-Party Work will include any replacement easements or other rights to use land that are required to be obtained for the Third-Party Work. UDOT will perform all such work to obtain easements or other rights that must be obtained in compliance with applicable law.

If UDOT must access the Third-Party's property, rights, or interests to perform Third-Party Work (or any related betterment work that UDOT agrees to), the Third-Party hereby consents to all such access. If the Third-Party must access the property, rights, or interests of UDOT, Union Pacific Railroad, or the Utah Transit Authority to perform any Third-Party Work (or any related betterment work that UDOT agrees to), the Third-Party will apply for a permit from the relevant entity.

9. **BETTERMENT WORK**

Betterment work is work in connection with Third-Party Work that exceeds what is necessary in order for UDOT to relocate, protect in place, or adjust any Facilities in a manner that is functionally equivalent to what existed prior to UDOT's Project. If the Third-Party desires to include betterment work in the Project at any specific location, UDOT, in its sole discretion, may agree to the betterment work if: (i) the difference in costs between the functionally equivalent required Third-Party Work and the Third-Party's desired betterment work that is not required by the Project is the sole cost of the Third-Party; (ii) the betterment work can be accommodated without delaying UDOT's Project; and (iii) the Parties provide for the betterment work in a Supplemental Agreement or in a separate Betterment Agreement (which, among other things, will state who is to perform the betterment work). If the Parties enter a separate Betterment Agreement, the Parties agree that the terms of this Agreement shall also apply when not in direct conflict with the Betterment Agreement. UDOT may terminate betterment work that is included in a Supplemental Agreement, and may terminate a separate Betterment Agreement, if the Third-Party does not make payment as required, and at UDOT's convenience, such as if Project needs change. UDOT shall have no interest in, responsibility for, or liability of any kind in connection with any betterment work.

10. **SUPPLEMENTAL AGREEMENTS**

If Third-Party Work is required by the Project, the Parties will implement this Agreement for each location by entering a Supplemental Agreement to identify each Party's responsibilities. Third-Party Work does not include betterments, but if UDOT agrees to

perform any betterment work, or if UDOT agrees that the Third-Party can perform betterment work as part of a Third-Party performance, then a Supplemental Agreement (or a separate Betterment Agreement) will also provide for the betterment work and identify each Party's responsibilities. Each Supplemental Agreement will also include a description and location of the Third-Party Work to be performed, design drawings showing the original and proposed locations of the Facilities, Third-Party Work schedules, cost estimates from all Parties that are participating in a share of the costs, participation shares for UDOT and the Third-Party if there are any (as further provided in Section 15), and any other terms specific to the Third-Party Work. Cost estimates included in Supplemental Agreements do not account for increases due to unknown and unforeseen hardships or other contingencies in accomplishing the Third-Party Work and are subject to change.

All Supplemental Agreements are subject to the terms of this Agreement. A Supplemental Agreement may only change a provision of this Agreement if it expressly cites such provision and states the change. Such changes to this Agreement, when expressly stated in a Supplemental Agreement, apply to that Supplemental Agreement only.

In the event there are changes in the scope of the Third-Party Work covered by a Supplemental Agreement, a modification to the Supplemental Agreement approved in writing by the Parties is required prior to the start of Third-Party Work on the scope changes. UDOT may terminate Supplemental Agreements at UDOT's convenience, such as if Project needs change, upon giving reasonable notice to the Third-Party.

11. THIRD-PARTY TO NOTIFY UDOT

The Third-Party's personnel shall notify UDOT's Field Representative upon arriving and leaving the Project site in order to verify that the Third-Party has inspected the Third-Party Work. Third-Party's personnel will comply with all applicable OSHA and Project safety requirements while within the Project limits.

12. THIRD-PARTY INSPECTION

If UDOT performs the Third-Party Work pursuant to a duly executed Supplemental Agreement, the Third-Party shall provide on-call engineering support by the Third-Party engineer or appropriate representative to support the Third-Party's obligations under this Agreement (including, but not limited to design review, schedule coordination, and to perform the necessary inspection on the Facilities installed by UDOT), in order to correct or clarify issues while the Third-Party Work is being performed.

- a. The Third-Party engineer and/or inspector shall work with and through UDOT's Field Representative and shall give no orders directly to UDOT's Design-Builder unless authorized in writing to do so by UDOT's Field Representative. UDOT will accomplish the Third-Party Work covered by a Supplemental Agreement in accordance with the plans and specifications provided and approved by UDOT and the Third-Party in the Supplemental Agreement.

- b. The Third-Party shall immediately notify UDOT's Field Representative of any deficiencies in the Third-Party Work. The Third-Party shall follow up with written detail to UDOT's Project Representative of its findings within 24-hours of making its initial notification.
- c. UDOT will respond to Third-Party's concerns within 24-hours of written notification.
- d. The Third-Party, through its inspection of the Third-Party Work, will provide UDOT's Field Representative with information addressing any problems or concerns the Third-Party may have with acceptance of the Third-Party Work.

13. UDOT INSPECTION

If the Third-Party performs the Third-Party Work pursuant to a duly executed Supplemental Agreement, UDOT shall perform the necessary inspection on the Facilities installed by the Third-Party within UDOT's or UTA's right-of-way, in order to correct or clarify issues while the Third-Party Work is being performed.

- a. UDOT shall work with and through the Third-Party's contact person identified in Section 2. The Third Party shall work with and through UDOT's Field Representative and will not work directly with UDOT's Design-Builder unless authorized in writing to do so by UDOT's Field Representative. The Third-Party will accomplish the Third-Party Work covered by a Supplemental Agreement in accordance with the plans and specifications provided and approved by UDOT and the Third-Party in the Supplemental Agreement, including changes or additions to the plans which are subsequently made a part of a Supplemental Agreement.
- b. UDOT shall immediately notify the Third-Party's contact person identified in Section 2 of any deficiencies in the Third-Party Work within UDOT's or UTA's right-of-way. UDOT shall follow up with written detail to the Third-Party's contact person of its findings within 24-hours of making its initial notification.
- c. The Third-Party will respond to UDOT's concerns within 24-hours of written notification.
- d. UDOT, through its inspection of the Third-Party Work within UDOT's or UTA's right-of-way, will provide the Third-Party's contact person identified in Section 2 with information covering any problems or concerns UDOT may have with acceptance of the Third-Party Work.

14. DAILY RECORDKEEPING

UDOT and the Third-Party will each keep daily records of onsite activities. The Third-Party's daily records will be completed on a form that has been preapproved by UDOT's Contracts, Compliance and Certification Manager. The daily records shall be signed by UDOT's Field Representative or an authorized designee and by the Third-Party or its authorized designee. Copies of the daily records shall be retained by the Parties to this Agreement.

15. REIMBURSEMENT

Except when specified otherwise by law or contract, UDOT will reimburse the Third-Party for 100% of the actual, allowable and reasonable costs that are agreed to in a

Supplemental Agreement when incurred by the Third-Party in connection with the Supplemental Agreement for design, design review, observation, inspection, construction of the functionally equivalent relocated Facilities, or any other Facility-related cost approved by UDOT in the Supplemental Agreement that is necessary to accommodate the Project (except not attorney, audit, or similar fees).

Should it become necessary for the Third-Party to use outside consultants or contractors to perform design, design review, observation, construction, or inspection to accommodate the Third-Party Work and Project schedule, the Third-Party shall notify UDOT. Upon concurrence by UDOT, the Parties then must execute a Supplemental Agreement to agree to the cost of the services; after execution, and after receiving a notice to proceed from UDOT, the Third-Party may procure outside services through applicable procurement requirements.

16. SUBMITTAL OF ITEMIZED BILLS

The Third-Party shall submit itemized bills covering the actual costs incurred, whether with Third-Party resources or for outside services, to perform design, design review, construction, oversight, or inspection work that is covered by the terms of a Supplemental Agreement, and shall submit bills to:

UDOT Contracts and Compliance Specialist
constructionpayments@utah.gov
or hard copy mailed to
4501 South 2700 West
Construction Office, Box 148220
Salt Lake City, Utah 84114-8220

Itemized bills shall bear the Project and Supplemental Agreement numbers, supporting sheets, and a complete billing statement of all actual costs incurred, following the order of the items in the detailed estimates contained in the Supplemental Agreement, and shall be submitted to UDOT within **60 days** following completion of services by the Third-Party on the Project. Otherwise, previous payments to the Third-Party will be considered final, except as agreed to between the Parties in writing in advance, and the submitted cost will be disallowed.

UDOT will reimburse the Third-Party within **60 days** after receipt of the billings, but only for those actual, allowable, and reasonable costs fully complying with this Agreement and applicable law.

17. FEDERAL REQUIREMENTS

The Third-Party agrees to include the clauses in this in Section 17 in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor that will be subject to the provisions.

a. 2 C.F.R. § 200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This Section 17(a) applies when the Project makes use of federal funds and to the extent that the Third-Party Work relates to any agreement with UDOT that is subject to Public Law 115-232, Sec. 889 and 2 CFR § 200.216 (the "Telecommunications Laws"). Among other things, the Telecommunications Laws prohibit the use of any sort of "covered telecommunications" equipment or services, which are those provided by a company listed in such laws. The Third-Party shall at all times comply with the Telecommunications Laws. The Third-Party hereby certifies that it has read the Telecommunications Laws and consulted with legal counsel as needed. For all matters which are the subject of any agreement between the Third-Party and UDOT, the Third-Party hereby certifies that it currently conforms with, and will continue to conform with, the Telecommunications Laws in all respects. The Third-Party shall also place this certification in all UDOT-related contracts with subcontractors, consultants, and suppliers for UDOT's benefit. If any government entity having jurisdiction determines that the Third-Party or its associates is not in compliance with the Telecommunications Laws, the Third-Party agrees that it shall promptly notify UDOT of the same and remedy any deficiency.

b. Buy America and Build America/Buy America Requirements

Flow down Requirements: The Buy America requirements flow down to first tier subcontractors, which are responsible for ensuring that lower tier subcontractors are in compliance.

Buy America - The Third-Party agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661 and the Build America, Buy America Act (Public Law 117-58) and its implementing regulations at 2 C.F.R. Part 184, which provide that federal funds may not be obligated unless all steel, iron, manufactured products, and construction materials used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a temporary or general waiver. General waivers are listed in 49 C.F.R. § 661.7. Temporary waivers have been issued under 87 FR 64534 and 88 FR 55817.

The Third-Party must submit to UDOT the appropriate Buy America certifications, as included in Exhibit B.

c. Program Fraud and False or Fraudulent Statements or Related Acts

Flow Down - This Program Fraud and False or Fraudulent Statements or Related Acts clause extends to Third-Party and its contracts and subcontracts at every tier. These requirements flow down to contractors and subcontractors that make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts - The Third-Party acknowledges that the provisions of the Program Fraud Civil Remedies Act

of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Third-Party certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Third-Party Work is being performed. In addition to other penalties that may be applicable, the Third-Party further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Third-Party to the extent the federal government deems appropriate.

The Third-Party also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the federal government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Third-Party, to the extent the federal government deems appropriate.

18. SALVAGED MATERIALS

All materials from Third-Party's existing Facilities which are recovered by UDOT while performing the Third-Party Work and which are not reused on this Project shall become the property of the Design-Builder unless otherwise agreed to in advance by the Parties hereto.

19. AUDIT

The Third-Party shall keep detailed and complete records verifying all costs for which the Third-Party seeks reimbursement pursuant to this Agreement and supporting the Third-Party's billings. Upon completion of the Third-Party Work, UDOT and the Third-Party shall reconcile the payments made to the Third-Party under this Agreement. For a period of three (3) years following completion of the Third-Party Work, each Party agrees to make any payment adjustment required as the result of the reconciliation performed.

UDOT, the Federal Transit Administration, the State of Utah, and any other government entity or agency with jurisdiction shall have the right, upon reasonable notice, to audit all cost records and accounts of the Third-Party pertaining to the Third-Party Work for the purpose of verifying the costs for which the Third-Party seeks reimbursement. The Third Party shall cooperate with UDOT or FTA to provide access to the records and accounts. Should this audit disclose that the Third-Party has been underpaid, the Third-Party will be reimbursed by UDOT after submission of an additional billing to cover the underpayment. Should this audit disclose that the Third-Party has been overpaid, the Third-Party will reimburse UDOT in the amount of the overpayment. The Third-Party is required to maintain cost records regarding the Third-Party Work for which the Third-Party seeks reimbursement under this Agreement for a minimum of three (3) years after final payment is received from UDOT.

20. ACCEPTANCE AND MAINTENANCE

UDOT will provide notification to the Third-Party to obtain final acceptance for any Third-Party Work upon completion of the final inspection for such work, and the notice will identify the portions of the Facilities that are subject to final acceptance. Upon receipt of any notice, the Third-Party will have **60 days** to respond in writing to UDOT's Resident Engineer with any additional comments regarding the identified Third-Party Work. After 60 days, the Third-Party is deemed to have accepted the identified Third-Party Work unless the Parties agree otherwise in writing. Upon UDOT's completion of any Third-Party Work identified in a notice, the Third-Party will solely own and maintain such Facilities unless otherwise agreed to by the Parties in writing.

Acceptance means that except as otherwise agreed in a writing signed by authorized representatives of both Parties, the Third-Party accepts the Third-Party Work "as-is," without conditions or reservations, and the Third-Party waives and releases all claims against UDOT and its commissioners, employees, agents, contractors, and consultants for any and all losses of every kind (including, but not limited to, claims, liabilities, liens, and damages), whether known or unknown, and whether or not involving negligence. This includes, but is not limited to, releasing UDOT from any responsibility or liability that may result from the Third-Party's new Facilities or the operation thereof. However, the foregoing release shall not apply to matters that are covered by a warranty provided by a contractor or the Design-Builder to the extent necessary to enforce such warranty (the intent of this sentence is to provide for all contractor warranties applying as written to obligate the contractor or the Design-Builder to remedy the warranted work).

21. ACCESS

Access for maintenance and servicing of the Facilities located on UDOT's or UTA's right-of-way will be allowed only by permit issued by UDOT and/or UTA to the Third-Party, and the Third-Party will obtain the permit and abide by the conditions thereof (for policing and other controls) in conformance with Utah Administrative Code R930-7, as applicable, and other applicable law.

22. INDEMNIFICATION

Each Party agrees to indemnify, defend, and save harmless the other from and against all claims, suits, and costs, but not attorneys' fees, for injury or damage of any kind, arising out of its own negligent acts, errors, or omissions and those of its officers, authorized agents, and employees in the performance of this Agreement (which includes any Supplemental Agreements), but subject to the following limitations. UDOT is a governmental entity that is subject to the Utah Governmental Immunity Act, and if the Third Party is also a governmental entity within the coverage of that Act, the Third Party is also subject to that Act. Nothing in this paragraph is intended to create additional rights to third parties, or to waive any of the provisions of the Governmental Immunity Act, or to prevent a Party from tendering a claim to its authorized agents, contractors, or others. The obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, provided a Party is a governmental entity that is within the coverage of that

Act and the Act applies to the action, error, or omission giving rise to the protections described in this paragraph. UDOT shall have no interest in, responsibility for, or liability of any kind in connection with any betterment work. The indemnification in this paragraph shall survive the expiration or termination of this Agreement.

23. MISCELLANEOUS

The following terms apply to this Agreement:

- a. Any Party may give a written notice under this Agreement by delivering it to the following physical addresses (an email may be used in addition as a courtesy), and notice is effective upon delivery when delivered by hand or by overnight delivery service with confirmation of delivery (or, if placed in the U.S. mail, notice is effective three days after such notice receives a postmark):

| To UDOT: | To Third-Party: |
|--|---|
| UDOT 4501 South 2700 West Box 143600 Salt Lake City, UT 84114 Attention: Brian Allen | Clearfield City Attn: City Recorder 55 South State Street Clearfield UT, 84015 Attention: Adam Favero |

- b. The Parties agree to undertake and perform all further acts that are reasonably necessary (except when expressly prohibited by law) to carry out the intent and purpose of the Agreement and to assist UDOT with maintaining compliance with the legal requirements applicable to UDOT after receiving a written notice that explains the need for such action.
- c. UDOT's consent, review, acceptance, approval, or other action or inaction relating to any conditions, inspections, plans, specifications, or other work arising out of this Agreement is for purposes of administering this Agreement only, and it does not constitute an assumption by UDOT of any responsibility or liability for the same; it does not relieve the other Party of any duties (including but not limited to duties to ensure compliance with applicable standards); and it does not constitute a waiver by UDOT of the other Party's obligation to comply with applicable standards. Any consent, review, acceptance, approval or other action or inaction must be provided by UDOT's authorized employee or representative.
- d. No part of this Agreement may be waived, whether by a Party's failure to insist on strict performance of this Agreement or otherwise, except in a writing signed by an authorized representative of the Party waiving.
- e. Neither Party may assign or delegate this Agreement and actions required by it without the other Party's prior written authorization, and any purported assignment or delegation to the contrary is void.
- f. This Agreement does not create any agency, joint venture, partnership, or other relationship among the Parties, and it is intended only for the Parties hereto and does not create any third-party beneficiaries.

- g. This Agreement is governed by Utah law without reference to choice or conflict of law provisions. Jurisdiction for any judicial action brought in connection with this Agreement shall be in a court in Salt Lake County, Utah, and ALL PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO A JURY TRIAL.
- h. Time is of the essence. This Agreement shall be construed to enforce its provisions to the fullest extent allowed under applicable law to give effect to the intent of the Parties, whether or not any provision of this Agreement is invalidated. All Parties negotiated this Agreement and are collectively considered its drafter.
- i. Before taking any legal action in connection with this Agreement, each Party agrees to first advise the other of a dispute and to meet in good faith in an effort to resolve it.
- j. All rights and remedies in this Agreement are cumulative and nonexclusive and do not limit any other rights and remedies of the Parties. The indemnity provision herein and other terms that by their nature are intended to survive this Agreement's termination shall survive. Nothing in this Agreement shall be construed to limit UDOT's governmental powers and authority.
- k. This Agreement may only be amended in a written document that is signed by an authorized representative of each Party. This Agreement (which includes any Supplemental Agreements and amendments executed by the Parties) is the entire agreement of the Parties with respect to the subject matter hereof and it shall supersede all prior negotiations, understandings, and agreements with respect to such subject matter.
- k. Each Party warrants that its authorized representative has signed this Agreement with authority to bind such Party, which also binds its successors and assigns. Each Party further warrants that all signatures necessary to make this Agreement binding against the Party have been included below, and that this Agreement's terms do not violate other contracts and commitments of the Party.
- L. This Agreement may be signed in counterparts and signed electronically.

Project No.: S-ST99 (835)
Project Name: FrontRunner 2X
Clearfield City
Charge ID No. 74234 PIN 20253

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Clearfield City

ATTEST:

Title: _____

Title: _____

Date: _____

Date: _____

(IMPRESS SEAL)

.....

Recommended For Approval:

Utah Department of Transportation

Title: _____

Title: Project Director

Date: _____

Date: _____

Form Approval Date by UDOT Assistant
Attorney General: November, 2023

Comptroller Office

Title: Contract Administrator

Date: _____

**EXHIBIT A
TO MASTER AGREEMENT**

SUPPLEMENTAL AGREEMENT FORMAT

**THIRD-PARTY
SUPPLEMENTAL AGREEMENT NO. _____**

Supplement to UDOT Finance No. _____

THIS SUPPLEMENTAL AGREEMENT ("Supplemental Agreement") is made by and between the **Utah Department of Transportation**, ("UDOT"), and **Third-Party**, a **Registered Corporation** of the State of , ("Third-Party"). Each may be referred to herein as party ("Party") and together as parties ("Parties").

AGREEMENT

The Parties acknowledge that they have received good and sufficient consideration for this Supplemental Agreement, and they agree as follows:

1. Implementation of MA. The Parties hereto entered into a Master Agreement dated _____, UDOT Finance No. _____ (the "MA"). This Supplemental Agreement is hereby made a part of the MA and it implements the MA for the Third-Party Work described herein. The MA's terms remain in full force and effect and govern this Supplemental Agreement. If there is a conflict between the MA and this Supplemental Agreement, the MA will control except as provided in Section 6, and except when, in accordance with Section 10 of the MA, this Supplemental Agreement expressly cites a provision of the MA and states a change to it in Section 4 below. Among other things, the capitalized defined terms in the MA apply to this Supplemental Agreement as well. This Supplemental Agreement applies only to the Third-Party work described herein, which can be generally described as:
_____.
_____.
_____.
2. Performance of Third-Party Work for this Supplemental Agreement. **[The Third-Party
[UDOT's contractor]]** will perform the following described Third-Party Work in accordance with the terms and conditions of the MA and this Supplemental Agreement:
 - a. Plans. The plan sheets depicting the Third-Party Work are shown in Exhibit "A" and incorporated herein by this reference.
 - b. Specifications. The special provisions for this Third-Party Work are as follows:

c. Schedule. This Third-Party Work will be completed between **x** and **x**. A schedule for this Third-Party work is shown in Exhibit "B" and incorporated herein by this reference.

d. Betterments. [No betterments are part of this Third-Party Work.] [The Third Party desires to include a betterment as part of this Third-Party Work at the Third Party's sole expense, and the betterment is described as follows: . The scope, schedule and budget relevant to the betterment is included as a part of Exhibit A attached hereto and incorporated herein. That exhibit specifies which Party will perform the betterment work, and the terms of the MA and this Supplemental Agreement apply to the betterment work if it is performed by UDOT's contractor.]

e. As-Built Survey Responsibility. If the Third Party is performing any work (whether this Third-Party Work or betterment work), and if the Design-Builder is responsible to collect data to complete an as-built survey for this Third-Party Work on behalf of the Third Party, it is the Third-Party's responsibility to notify the Design-Builder at least 48 hours in advance of the time when the Third Party begins the Third-Party Work in order for the Design-Builder's surveyor to be present. Should the proper notification and coordination not occur, and if the Third-Party Work is performed without the Design-Builder's surveyor present to collect the as-built data, UDOT may hire a Subsurface Utility Engineer (SUE) consultant to locate the facilities at the Third-Party's expense.

f. UDOT will notify the Third-Party's contact person, **Name**, telephone number **(801) xxx-xxxx**, and e-mail **xxx@** at least **2 business days** in advance of beginning and completing its portion of the Third-Party Work covered herein.

g. Third-Party will notify UDOT's **Resident Engineer, XXXXXX**, telephone number **(xxx) xxx-xxxx**, and e-mail **xxxxxx@utah.gov**, or their designated representative, as assigned at least **2 business days** in advance of beginning and completing its portion of the Third-Party Work covered herein.

3. Estimated Cost. Total estimated cost of this Third-Party Work is shown in Exhibit "C" and incorporated herein by this reference, and is summarized as follows:

| | |
|--|---------------|
| TOTAL ESTIMATED COST OF THIS SUPPLEMENTAL AGREEMENT | \$0.00 |
| THIRD PARTY WORK | |

BREAKDOWN:

| | |
|---|---------------|
| TOTAL ESTIMATED COST OF THIRD-PARTY-PERFORMED THIRD-PARTY WORK | \$0.00 |
|---|---------------|

| | |
|--|---------------|
| TOTAL ESTIMATED COST OF UDOT-PERFORMED THIRD-PARTY WORK | \$0.00 |
|--|---------------|

| | |
|--|---------------|
| COMBINED TOTAL ESTIMATED COST OF THIRD-PARTY WORK | \$0.00 |
|--|---------------|

| | |
|--|---------------|
| TOTAL ESTIMATED AMOUNT OF THIRD-PARTY PARTICIPATION @ | \$0.00 |
| [TBD]% | |

| | |
|--|---------------|
| TOTAL ESTIMATED AMOUNT OF UDOT PARTICIPATION @ [TBD]% | \$0.00 |
|--|---------------|

| | |
|--|---------------|
| TOTAL ESTIMATED COST OF THIRD-PARTY BETTERMENT WORK | \$0.00 |
|--|---------------|

4. Changes to MA. There are no changes to the MA except when, in accordance with Section 10 of the MA, this Section 4 lists below an expressly cited provision of the MA (in other words, it lists the section number in the MA and types in the affected text below), and this Section 4 then also states a change to that specific text from the MA.

IN WITNESS WHEREOF, the Parties hereto have caused this Supplemental Agreement to the MA to be executed by their duly authorized representatives as of the day and year of the last Party signing below.

Third-Party

Title: _____

Date: _____

Recommended For Approval:

Utah Department of Transportation

Title: Statewide Utility Leader

Title: Project Director

Date: _____

Date: _____

Comptroller's Office

Project No.: S-ST99 (835)
Project Name: FrontRunner 2X
Clearfield City
Charge ID No. 74234 PIN 20253

Title: Contract Administrator

Date: _____

ATTACH EXHIBITS A, B AND C TO THIS SUPPLEMENTAL AGREEMENT

EXHIBIT B

TO MASTER AGREEMENT BUY AMERICA CERTIFICATIONS

In accordance with 49 U.S.C. § 5323(j) and 49 C.F.R. § 661.6, and the Build America, Buy America Act (Pub. L. 117-58) and its implementing regulations at 2 C.F.R. Part 184, for the procurement of steel, iron, manufactured products or construction materials, use the certifications below.

Certificate of Compliance with Buy America Requirements

The Third-Party, or any of its lower-tier bidders or offerors, hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1); the applicable regulations in 49 C.F.R. Part 661; and the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-17) and its implementing regulations at 2 C.F.R. Part 184.

Date: _____

1. Signature:

2. Company:

3. Name:

4. Title:

Certificate of Non-Compliance with Buy America Requirements

The Third-Party, or any of its lower-tier bidders or offerors, hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended; the applicable regulations in 49 C.F.R. § 661.7; and the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-17) and its implementing regulations at 2 C.F.R. Part 184.

Date: _____

5. Signature:

6. Company:

7. Name:

Project No.: S-ST99 (835)
Project Name: FrontRunner 2X
Clearfield City
Charge ID No. 74234 PIN 20253

8. Title:

OUTSIDE ENGINEERING SERVICES REIMBURSEMENT AGREEMENT

THIS OUTSIDE ENGINEERING SERVICES REIMBURSEMENT AGREEMENT, made and entered into by and between the Utah Department of Transportation, ("UDOT") and Clearfield City, ("City"). Each as party, ("Party") and together as parties, ("Parties").

RECITALS

Whereas, UDOT is preparing to award a Progressive Design-Build contract for the fixed guideway capital development project identified as Project Number: S-ST99(835) Project Name: FrontRunner 2X Project ("Project"); and

WHEREAS, a progressive design-build contractor ("Design-Builder") will complete the Project design and administer construction for UDOT; and

Whereas, UDOT has identified City utility facilities ("Facility or Facilities") within the limits of the Project which may necessitate relocation, protection, or adjustment of the Facilities ("Work"); and

Whereas, the City desires to hire a consultant to perform engineering, coordination, review, and inspection of the Utility Work on behalf of the City ("Outside Engineering Services"); and

Whereas, UDOT will allow the City to hire Outside Engineering Services upon the terms and conditions of this agreement.

This Agreement is made to set out the terms and conditions for Outside Engineering Services that will be performed.

AGREEMENT

Now therefore, the Parties agree as follows:

1. The City will hire Outside Engineering Services for the Utility Work.
2. UDOT will reimburse the City for the actual cost incurred for Outside Engineering Services. The estimated cost of Outside Engineering Services is attached as Exhibit "A" that is incorporated by reference. This is an estimate only. Total payment to the City by UDOT is based on the actual costs incurred as determined after completion of the Utility Work.

Total Estimated Cost for Outside Engineering Services - \$ _____

3. In the event there are changes in the scope of the Outside Engineering Services covered by this Agreement, a modification to this Agreement in writing by the Parties is required prior to the start of Outside Engineering Services on the changes and additions.
4. The City shall submit itemized bills covering its actual costs incurred for Outside Engineering Services to:

UDOT Contracts and Compliance Specialist

Constructionpayments@utah.gov
Or hard copy mailed to
4501 South 2700 West
Construction Office, Box 148220
Salt Lake City, UT 84114-8220

Itemized bills shall bear the Project and Agreement numbers, supporting sheets, and a complete billing statement of all actual costs incurred, following the order of the items in the detailed estimates contained in this Agreement, and be submitted to UDOT within **6 months** following completion of Outside Engineering Services for the City on the Project. Otherwise, previous payments to the City may be considered final, except as agreed to between the Parties in advance.

UDOT will reimburse the City within **60 days** after receipt of the billings, but only for items complying fully with the provisions of Utah Administrative Code R930-8. Failure on the part of the City to submit final billings within **6 months** of the completion of Outside Engineering Services will result in UDOT's disallowance of that portion of Outside Engineering Services performed by the City.

5. UDOT and the Federal Highway Administration shall have the right to audit all cost records and accounts of the City pertaining to this Project in accordance with the auditing procedure of the Federal Highway Administration and 23 C.F.R. § 645, subpart A. Should this audit disclose that the City has been underpaid, the City will be reimbursed by UDOT within **60 days** upon submission of additional billing to cover the underpayment. Should this audit disclose that the City has been overpaid, the City will reimburse UDOT within **60 days** of notification of audit findings in the amount of the overpayment. For purpose of audit the City is required to keep and maintain its records of Outside Engineering Services covered herein for a minimum of 3 years after final payment is received by the City from UDOT.
6. All work of the City that relates to any agreement with UDOT is subject to Public Law 115-232, Sec. 889 and 2 CFR § 200.216 (the "Telecommunications Laws"). Among other things, the Telecommunications Laws prohibit the use of any sort of "covered telecommunications" equipment or services, which are those provided by a company listed in such laws. The City shall at all times comply with the Telecommunications Laws. The City hereby certifies that it has read the Telecommunications Laws and consulted with legal counsel as needed. For all matters which are the subject of any agreement between the City and UDOT, the City hereby certifies that it currently conforms with, and will continue to conform with, the Telecommunications Laws in all respects. The City shall also place this certification in all UDOT-related contracts with subcontractors, consultants, and suppliers for UDOT's benefit. If any government entity having jurisdiction determines that the City or its associates is not in compliance with the Telecommunications Laws, the City agrees that it shall promptly notify UDOT of the same and remedy any deficiency.
7. MISCELLANEOUS
 - a. Each Party agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purpose of this Agreement at the request of the other Party.
 - b. This Agreement in no way creates any type of agency relationship, joint venture, or partnership between UDOT and City.

- c. The failure of either Party to insist upon strict compliance of any of the terms and conditions, or failure or delay by either Party to exercise any rights or remedies provided in this Agreement, or by law, will not release either Party from any obligations arising under this Agreement.
- d. This Agreement shall be deemed to be made under and shall be governed by the laws of the State of Utah in all respects. Each person signing this Agreement warrants that the person has full legal capacity, power and authority to execute this Agreement for and on behalf of the respective Party and to bind such Party.
- e. If any provision or part of a provision of this Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision. Each provision shall be deemed to be enforceable to the fullest extent under applicable law.
- f. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were made upon the same instrument. This Agreement may be delivered by facsimile or electronic mail.
- g. This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by authorized representatives of each Party.
- h. The date of this Agreement is the date this Agreement is signed by the last Party.



Project No. S-ST99 (835)
Project Name: FrontRunner Strategic Double Track
Clearfield City
CID No. 74234 PIN 20253

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers.

ATTEST:

Clearfield City

Title: _____

Title: _____

Date: _____

Date: _____

(IMPRESS SEAL)

Recommended for Approval:

Utah Department of Transportation

Title: _____

Title: Project Director

Date: _____

Date: _____

Comptroller Office

Title: Contract Administrator

Date: _____



Project No. S-ST99 (835)
Project Name: FrontRunner Strategic Double Track
Clearfield City
CID No. 74234 PIN 20253

Exhibit A

Outside Engineering Services Cost Estimate

(cost shown here should be limited to coordination, review, inspection per the definition of Outside Engineering Services above.)