PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Agenda

5:30 PM, Tuesday, July 23, 2019
Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Decorum

The Council requests that citizens help maintain the decorum of the meeting by turning off electronic devices, being respectful to the Council and others, and refraining from applauding during the proceedings of the meeting.

Opening Ceremony

Roll Call

Prayer

Pledge of Allegiance

Approval of Minutes

- April 9, 2019 Council Meeting Minutes
- June 4, 2019 Council Meeting Minutes
- June 18, 2019 Council Meeting Minutes

Public Comment

Fifteen minutes have been set aside for any person to express ideas, concerns, comments, or issues that are not on the agenda:

Please state your name and city of residence into the microphone.
Please limit your comments to two minutes.
State Law prohibits the Council from acting on items that do not appear on the agenda.

Action Agenda

1. A resolution consenting to the appointment of individuals to the Transportation and Mobility Advisory Committee. (19-003)

2. An ordinance to amend Provo City Code regarding design standards in various Higher Density Residential and Campus Mixed Use zones. City-wide impact. (PLOTA20190025)

3. An ordinance amending Provo City Code Chapter 9.80 to update language and amend procedures regarding permit parking areas. (19-002)

4. A resolution authorizing the Mayor to sign a water carriage agreement with Central Utah Water and the US Department of the Interior. (19-083)

Redevelopment Agency of Provo

5. A resolution authorizing the Chief Executive Officer to enter into an Owner Participation Agreement with Mill Race Development, LLC to transfer Agency-owned property for a project located between 500 S and 600 S and 100 W and University Ave. (19-084)

6. A resolution approving a lease agreement with Blue Sky Development to allow them to utilize parking spaces for a pending mixed-use project at 105 East Center Street. (19-070)

Adjournment

If you have a comment regarding items on the agenda, please contact Councilors at council@provo.org or using their contact information listed at: http://provo.org/government/city-council/meet-the-council

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The next scheduled Council Meeting will be held on 8/6/2019 5:30:00 PM at 8/6/2019 5:30:00 PM in the Council Chambers, 351 West Center Street, Provo, unless otherwise noticed. The Work Meeting start time is to be determined (typically between 12:00 and 4:00 PM) and will be noticed at least 24 hours prior to the meeting.

Notice of Compliance with the Americans with Disabilities Act (ADA)

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Provo Council Office at 351 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email evanderwerken@provo.org at least three working days prior to the meeting. The meeting room in Provo City Center is fully accessible via the south parking garage access to the elevator. Council meetings are broadcast live and available for on demand viewing at youtube.com/user/ProvoCityCouncil.

Notice of Telephonic Communications

One or more Council members may participate by telephone or Internet communication in this meeting. Telephone or Internet communications will be amplified as needed so all Council members and others attending the meeting will be able to hear the person(s) participating electronically as well as those participating in person. The meeting will be conducted using the same procedures applicable to regular Municipal Council meetings.

Notice of Compliance with Public Noticing Regulations

This meeting was noticed in compliance with Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at agendas.provo.org. Council meeting agendas are available through the Utah Public Meeting Notice website at utah.gov/pmn, which also offers email subscriptions to notices.

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Please Note – These minutes have been prepared with a time-stamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

PROVO MUNICIPAL COUNCIL
Redevelopment Agency of Provo
Regular Meeting Minutes
5:30 PM, Tuesday, April 09, 2019
Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Council Member David Harding	Council Member David Knecht
Council Member David Sewell	Council Member Gary Winterton
Council Member George Handley	Council Member George Stewart
Council Member Vernon K. Van Buren	Mayor Michelle Kaufusi
Council Executive Director Cliff Strachan	Wayne Parker, Chief Administrative Officer
Council Attorney Brian Jones	

Conducting: Council Chair David Harding

Prayer	John Borget
Pledge of Allegiance	Dustin Grabau

Approval of Minutes

- **February 19, 2019 Council Meeting Minutes**

The meeting minutes for February 19, 2019, were approved unanimously.

Presentations, Proclamations, and Awards

1. A presentation on funding for the Provo City Airport expansion. (19-028)

Isaac Paxman, Deputy Mayor, presented an update on the funding for the Provo City Airport expansion. The Transportation Infrastructure Bond Amendment bill (S.B. 268) had been signed into effect on April 1; this secured $9 million in federal funding that would be available in July. The City would also receive funding from the County, $4.3 million would be available upon completion of the project.

Mr. Paxman explained that the airport was currently only large enough to facilitate one commercial airplane at a time. This has limited the number of flights that were available, as well as the airlines that could service Provo. He displayed the design plan and said the first phase would be completed now but there were plans for a second phase in the future. Phase one included four gates, and phase two would add six more gates. An engineer and architect had been selected (Jviation and MHTN Architects).

Mr. Paxman provided a summary of the funding sources:

- Federal: $9.1 million in FAA grants; $2.1 million was currently available and the remaining $7.0 million would be available sometime after October 2019.

- County: $4.3 million in County funding from the Tourism, Recreation, Cultural and Convention Tax Fund.
- City: Approximately $19 million which included the value of the land.

There would be future opportunities for community input. Following a fall groundbreaking, construction would begin in spring 2020 with completion in spring of 2021.

Councilor Winterton said this was a big deal and he was very appreciative of the opportunity. He noted that Provo would also be required to provide funding for the project. Brian Torgerson, Public Services Director, said his division was scheduled to present the details of the City potion of the funding at a future work meeting. Provo had previously received matching grants based upon the value of the land at the airport, but Mr. Torgerson noted this project would deplete the remaining value that was available for grants. The City could purchase more property for the airport that would be eligible for additional matching grants.

There were no further questions or comments from the Council. This item was presentation only.

Public Comment

Chair Harding opened public comment, there was no response.

Redevelopment Agency of Provo

2. A resolution authorizing the Chief Executive Officer of the Provo City Redevelopment Agency to modify certain contracts with NeighborWorks Provo. (18-076)

This item had been continued as David Walter, Redevelopment Agency Director, was not available to present.

Action Agenda

3. Ordinance 2019-14 granting New Cingular Wireless PCS, LLC a non-exclusive franchise to operate a telecommunications network in Provo City, Utah. (19-009)

Motion: An implied motion to adopt Ordinance 2019-14, as currently constituted, has been made by council rule.

Marcus Draper, Assistant City Attorney, presented. He explained that AT&T wanted to place small cell wireless facilities in Provo and a franchise agreement had been negotiated to permit this. Small cell technology would make 5G service available in Provo.

A standard agreement template had been used with a minor change pertaining to audit rights. Typically, the City and State both have audit rights, but this agreement eliminated Provo's right. The State collect Provo's portion of the tax revenue, 3.5 percent, and then distribute it to Provo. Mr. Harding noted this seemed like a logical change and he asked if the standard template ought to be updated to include this change. Mr. Draper said this was the first company to request this change so he did not know if the template should be modified based upon this sole request.

Chair Harding opened public comment, there was no response. There was no council discussion. He called for a vote on the implied motion.

Vote: The motion approved 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

4. Resolution 2019-18 approving the execution of a Master Tax-Exempt Lease Purchase Agreement for the purchase of Fire apparatus. (19-043)

Motion: An implied motion to adopt Resolution 2019-18, as currently constituted, has been made by council rule.

Dan Follett, Division Director of Finance, presented. The Fire Department had identified the need to replace a ladder truck and heavy rescue truck. The Council was being asked to approve the financing of the trucks through lease financing. There had been an RFP and 12 responses were received. The rates ranged from 2.63 percent to 3.25 percent. Zions Bank offered the lowest rate. The repayment would occur over an eight-year term and would be tax exempt. Mr. Follett felt this was a very competitive option. There would be no penalty for early repayment with Zions.

Mr. Winterton asked why the term "lease" was used if it was a purchase. Mr. Follett explained it is a lease with an option to purchase (usually for $1) at the end of the term. It was the City's intent to purchase at the end of the term.

Mr. Harding noted it would take eight years to repay the loan, he wanted to know what the service life of the trucks would be. Deputy Chief Headman responded the service life was typically eight to ten years, but the trucks being replaced were 12 and 18 years old.

Mr. Harding also wanted to understand why this type of purchase was not included in the budget. Other departments would use pool replacement funds to replace vehicles. Deputy Headman explained most of the apparatus had been purchased at once, so it was all coming due for replacement at the same time. He said the department was making an effort to stager the replacement so that replacements were made every year or every other year, but it was taking some time to get on this schedule.

Dustin Grabau, Budget Officer, explained that a purchase like this is difficult to budget for because they do not know how much money is needed until they receive and review the RFP responses. He said if council preferred, in the future they could try to put a baseline in the budget, then come back to council for any difference. Mr. Grabau further explained that the annual payments were included in the budget, this was just the one-time appropriation of the lease proceeds.

If approved, an appropriation for the full amount, $2.4 million, would need to be made at the next meeting after adequate public notice had been given.

Chair Harding opened public comment, there was no response. He called for a vote on the implied motion.

Vote: The motion approved 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

5. Resolution 2019-19 authorizing the Mayor to create an interlocal agreement with Utah County for vote-by-mail election for municipal primary and general elections to be held on Tuesday, August 13, 2019 and Tuesday, November 5, 2019. (19-044)

Motion: An implied motion to adopt Resolution 2019-19, as currently constituted, has been made by council rule.

Amanda Ercanbrack, City Recorder, provided an overview of the agreement. The agreement would allow the City to contract with Utah County to conduct a vote-by-mail election in 2019. The agreement was similar to agreements that had been authorized in previous years. It consisted of two main parts: the scope of work which defined the responsibilities for each party and Exhibit B which included a cost break down. The cost would not exceed $1.80 per voter, per election (municipal and primary). The total estimated cost for both elections was $147.085.20, this was based upon the number of active registered voters as of March 1, 2019.

Ms. Ercanbrack provided an overview of the upcoming 2019 election:

- Vote-by-Mail Election
- Candidate Declaration: June 3-7, 8 a.m. to 5 p.m.
- Primary Election: Tuesday, August 13
- General Election: Tuesday, November 5
- Pre-Election Day Service Center available at Utah County Building
- New vendor (ES&S) and additional equipment to improve efficiency
- Improved counting and signature verification processes
- Reduced number of provisional ballots on Election Day
- Non-provisional ballots cast at service center will be scanned and counted onsite at service center
- Newly purchased drive-up drop box to be installed at Provo City Library

Councilor Knecht said he liked the idea of the drive-up drop box but wanted to know if there would be other drop box locations. Ms. Ercanbrack replied there would also be indoor drop boxes at the City Center for the three weeks prior to election day and on at the Recreation Center on election day. Mr. Knecht suggested the drop box at the Recreation Center should be there throughout the voting period, not just on election day. Ms. Ercanbrack said she would make this request to the County.

Chair Harding opened public comment.

Beth Alligood, Provo resident, was also in favor of a drop box at the recreation center. She also suggested there should be a ballot drop box somewhere on the west side of the City.

Mr. Parker explained one of the reasons drive-up drop box was installed at the library instead of the recreation center was because the library already had a drive-up island. There was not a place at the recreation center where it could be installed without impeding traffic.

Chair Harding closed public comment. There was no further council discussion. Chair Harding called for a vote on the implied motion.

Vote: The motion approved 7:0 with Council Members Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

Adjournment

The meeting was adjourned by unanimous consent at approximately 6:21 p.m.

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PROVO MUNICIPAL COUNCIL
Redevelopment Agency of Provo
Regular Meeting Minutes

5:30 PM, Tuesday, June 04, 2019
Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Opening Ceremony

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor David Harding	Councilor David Knecht
Councilor David Sewell	Councilor Gary Winterton
Councilor George Handley	Councilor George Stewart
Councilor Vernon K. Van Buren	Mayor Michelle Kaufusi
Council Attorney Brian Jones	Council Executive Director Cliff Strachan
Chief Administrative Officer Wayne Parker	

Conducting: Council Chair David Harding

Prayer – Kisi Watkins

Pledge of Allegiance – Angela Mourik

Presentations, Proclamations, and Awards

1. Judge Romney receives Utah State Justice Court Judge of the Year Award (0:16:35)

John Borget, Administrative Services Director, presented. Mr. Borget announced that the 2019 Justice Court Judge of the Year award had been given to the Honorable Rick Romney, with the Provo City Justice Court. Judge Romney was recognized for his outstanding commitment to his fellow judges and to the Utah judiciary.

When Judge Romney received the award in St. George, he was quoted as saying that no judge received this award in a vacuum. The award was also a wonderful tribute to our court administrator and the clerk's for the great service they gave to the public. People that came to court were not always happy to be there. However, they were generally satisfied that their cases have been handled fairly.

ReAnnun Newton, Justice Court Administrator, stated it was just like Judge Romney to point the finger back at his staff when receiving this award. She had worked with more than ten judges in the past and Judge Romney was one of the most compassionate, fair judges she had ever witnessed on the bench. He genuinely cared about people. She considered it an honor to work with him.

2. Introduction of the new Wasatch Neighborhood Chair: David Acheson (21:29)

Karen Tapahe, Provo City Council Community Relations Coordinator, presented. Ms. Tapahe reported that David Atchison had been elected to replace Melissa Kendall as the new Wasatch Neighborhood Chair. Dr. Kendall would stay on as one of the vice-chairs.

Ms. Tapahe said that Kirby Sniderman, North Park Neighborhood Chair, had moved to Texas. Eric Chase was elected as the new chair in an election last week. He would attend a future meeting to introduce himself to the council. Ms. Tapahe said there were three vice-chairs in that neighborhood. One was a business owner, which would help bring a different perspective to their neighborhood meetings.

(1:11:00) Mr. Acheson was invited to address the council. Mr. Acheson stated he was a former council member and had been a neighborhood chair in the past and looked forward to serving in the future. Wasatch was a tremendous neighborhood with a hidden gem called Old Willow Lane. The neighborhood planned to rehabilitate Old Willow Lane by flattening out the buckled asphalt and trimming the trees. He had one small request – give the residents advance warning when street sweepers come into the neighborhood so they could move their cars off the street. That way the streets would be thoroughly cleaned.

Approval of Minutes

3. April 23, 2019 Council Meeting – Approved by unanimous consent.

Public Comment (0:26:06)

Angela Mourik, representing several members of her neighborhood, said they were made aware of a Terra development in the area that had raised significant concerns. She presented a letter to the council (attached to the permanent minutes) asking them to table any discussion until the neighborhood had a chance to meet with the developers. The neighborhood has not had time to respond to the proposed development. It would impact the community in several ways including building a two million gallon water tank on top of the hill and building homes in an area where the foundations could be compromised. The neighborhood wanted geological testing completed before any decisions were made.

Chair Harding suggested they prepare a petition with the resident's signatures and submit the petition to the council and planning commission.

Pam Jones, Edgemont Neighborhood Vice-Chair, sent an article from the Deseret News to all seven council members about problems with recycling. She appreciated the responses from Councilors Sewell and Handley. The article stated that the amount people were willing to pay for recycled goods had diminished. A lot of cities were at a loss at what to do about recycling. The article did not offer solutions but she hoped the council would consider doing something. Ms. Jones also asked the council to consider some type of sidewalk conveniences for the new city building. She had to walk through the flowers or in the road when she parked in the center median downtown.

Action Agenda

4. A public hearing regarding Resolution 2019-31 approving the Program Year 2019 Annual Action Plan, Fifth Year update to the 2015 Five-Year Consolidated Plan, as amended. (19-059) (0:32:52)

Motion: An implied motion to approve Resolution 2019-31, as currently constituted, has been made by council rule.

Dan Gonzalez, Redevelopment Agency Management Analyst, presented. Every year the Utah Valley Consortium submitted an update to the 2015 Five-Year Consolidated Plan. The update proposed allocations for use of new funds for the Community Development Block Grant (CDBG) and the Home Investment Partnership Program (HOME). These programs funded projects that provided services for lower income residents. This was the second of two required public hearings for approving the updated plan.

Mr. Gonzalez explained that two committees (social services and non-social services) reviewed the applications for funding and met with representatives from each entity. The committees considered factors such as effectiveness of the program and other funding sources before allocating funds.

Mr. Gonzalez reviewed the following allocations proposed by the committees:

The HOME Consortium program included the Program Year 2019 HUD entitlement of $1,296,068 plus previous year program income of $566,239 for a total of $1,862,397.

Project/Purpose	Request	Allocation
HOME Administration		$129,606
HOME-CHDO Funding		
Habitat for Humanity –		$97,206
Rural Housing Development		$97,205
Golden Spike	$60,000	$55,150
Habitat for Humanity	$200,000	$74,640
RDA – Home Owner Rehabilitation	$200,000	$110,300
RDA – Home Purchase Plus Provo	$300,000	$275,750
RDA – Loan-to-Own County Wide	$300,000	$110,300
Rural Housing Dev – Mixed SF/MF Housing	$1,000,000	$912,240
Rural Housing Dev – Mutual Self Help Program	$900,000	$0.00
Total Allocation		$1,862,397

CDBG funding included the Program Year 2018 CDBG entitlement of $1,255,621, Program Year 2017 income of $253,230, and a balance from finished projects of $38,495 for a total allocation of $1,547,346.

Project/Purpose	Request	Allocation
CDBG Administration		$251,124
Program Delivery		
Down Payment Assistance Program	$38,059	$39,059
Egress Window Program	$8,992	$8,992

Commercial Façade Renovation	$6,744	$6,744
Emergency Repairs	$10,116	$10,116
CDBG-Public Services Funding	$188,343	$188,343
108 Loan Repayment – Duncan Aviation	$280,000	$280,000
Family Support & Family Treatment	$46,750	$46,750
Friends of Utah Co Children's Justice Center	$75,500	$75,500
House of Hope: Housing Rehabilitation	$68,400	$68,400
Provo City Parks – Adaptive Playground	$200,000	$200,000
Provo City RDA – Emergency Home Repair	$100,000	$100,000
Provo City RDA – Downtown Redevelopment	$150,000	$150,000
Provo City RDA – Egress Window Program	$50,000	$37,500
Provo City RDA – Neighborhood Revitalization	$25,000	$21,818
The Alpine House	$35,000	$35,000
TURN Community Services	$28,000	$28,000
Total Allocation		$1,547,346

Mr. Gonzalez stated that the down payment assistance program had been updated. The proposal was to increase the loan amount from $10,000 to $40,000, or 20 percent of the purchase price, whichever was less. The rest of the program remained the same with a zero percent interest rate as long as they lived in the home, maintained a 650 minimum credit score, attended required homebuyer education classes, and had household liquid assets no more than $15,000. There was a $5,000 penalty if the property was sold/vacated within two years of obtaining the loan. The main intent was to avoid those that were looking to flip the homes. After a county home value analysis, the affordable home value limit was increased from $330,600 to $337,250.

Grant awards for the emergency repair program, increased from $5,000 to $7,000 and loans up to $15,000. Many of their projects included replacing a roof and $5,000 was not enough. A grant up to $7,000 would not need to be paid back. Funding exceeding $7,000 and up to $15,000 would be a loan with zero percent interest deferred. The owners would not be required to make payments on the loan unless they sold or vacated the property.

Mr. Handley noted the report showed that four percent of CDBG funds and three percent of HOME funds were awarded to Hispanics. Recent data showed that Hispanics made up 16.5 percent of the population. Should more effort be made to engage the Hispanic community and bring awareness of the programs available to them?

Mr. Gonzalez explained that they work with all the agencies to help promote their services. The agencies reach out to the neighborhoods and utilize publications to let citizens know what services were available. Centro Hispano was one of the major agencies that worked with the Hispanic community. He did not have any data showing an increase or decrease in the ethnic composition of families assisted. With the end of the fiscal year, they would start to look at the most recent data.

Chair Harding opened the public hearing for citizen comments. There was no response. Chair Harding closed the public hearing and invited council discussion.

Chair Harding explained that CDBG earmarked 15 percent of their entitlement for social service programs. Since the federal limit was 15 percent we could not allocate more funds. Mr. Knecht pointed out that some of the capital improvement programs were also helping social services.

With no more council discussion, Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

5. A public hearing on an ordinance adopting a budget for Provo City Corporation for the fiscal year beginning July 1, 2019 and ending June 30, 2020, in the amount of $254,958,760, and amending elements of Provo City Code. (19-004) (0:58:45)

John Borget, Administrative Services Director, presented. He explained that this would be the first of two required public hearings before the proposed FY 2020 budget could be approved. The council had held a number of budget meetings and met with department heads to discuss the proposed budget. There had been a few minor changes made after the tentative budget was approved. All changes to the proposed budget would be presented during the second public hearing in two weeks.

Chair Harding opened the public hearing. Seeing no responses, Chair Harding closed the public hearing.

There was no council discussion.

Redevelopment Agency of Provo

By common consent, Chair Harding recessed as the Municipal Council and reconvened as the Redevelopment Agency at 6:31 p.m.

6. A public hearing on a resolution adopting a budget for the Redevelopment Agency of Provo City Corporation for the fiscal year beginning July 1, 2019 and ending June 30, 2019, in the amount of 2,429,132. (19-005) (1:02:06)

Mr. Borget reminded the board and public that the Redevelopment Agency (RDA) was a separate entity from the city. The RDA budget followed the same requirements for public hearings. The intent was to bring the budget to the board in two weeks for a second public hearing and to adopt a final budget.

Seeing no questions from the board, Chair Knecht opened the public hearing. There was no response so the public hearing was closed.

There was no board discussion.

7. A resolution authorizing the Chief Executive Officer to enter into a lease agreement with Blue Sky Development to allow them to utilize parking spaces for a pending mixed-use project at 105 East Center Street. (19-070) (1:03:51)

Chair Knecht noted that this item was continued during work session earlier that day but invited David Walter, RDA Director, to give an update on the issue.

Mr. Walter said he spoke with McKay Christensen, project developer, earlier that day and explained the board's requests. Mr. Christensen was good with one of the provisions but wanted to discuss the ramifications of the other provision. Mr. Walter indicated he would arrange meetings with the interested parties.

Stormwater Service District

By common consent, Chair Knecht adjourned as the Redevelopment Agency and reconvened as the Stormwater Service District of Provo at 6:35 p.m.

8. A public hearing on a resolution adopting a budget for the Provo City Stormwater Service District in the amount of $5,123,278 for the fiscal year beginning July 1, 2019 and ending June 30, 2020. (19-006) (1:06:15)

Mr. Borget said the Stormwater Service District (SSD) was also a separate entity which had its own budget approved by a separate board.

Chair Harding opened the public hearing.

Steve Johnson, Provo, asked if this budget included the increased stormwater sewer fees and, if so, would they be reflected on their utility bills.

Mr. Borget replied that the budget did include a rate increase of about $0.80 per month.

Chair Harding closed the public hearing.

There was no board discussion.

Action Agenda

By common consent, Chair Harding adjourned as the Stormwater Service District and reconvened as the Municipal Council at 6:38 p.m.

9. Resolution 2019-32 authorizing the Mayor to execute the sale of the Timp-Kiwanis Park to the Provo School District. (18-018) (1:13:36)

Motion: An implied motion to approve Resolution 2019-32, as currently constituted, has been made by council rule.

Wayne Parker, Provo City CAO, said this item had been discussed a number of times for almost three years. We were rapidly reaching the culmination of that effort. He invited Doug Robins, Provo City Parks & Recreation Assistant Director to provide some context on this issue.

Mr. Robins said they would share background information regarding the acquisition proposal and our coordination with the Provo School District that led us to this point. Scott Henderson,

Parks & Recreation Director and Tara Riddle, Provo City Property Manager and Ombudsman, would also present.

Mr. Robins explained that about 50 years ago, land for the Timpview High School and the adjacent park were secured. The park was purchased with Land and Water Conservation Funds (LWCF). This was a federal grant program with strict regulations as to the use of the property. The park had been used for Timpview High School programs for several years because their school space was limited.

During a recent LWCF review, the state coordinator raised concerns about the school's increased use of the property. We did not take the concerns lightly because it could potentially impact us if we applied for future grant funding. In addition, the school district asked the city about acquiring the property to meet Title 9 requirements. The city did not promote releasing parkland but, in this circumstance, partnering together might resolve both issues.

The LWCF had a conversion program that we decided to pursue, which would allow the city to sell the park and to purchase replacement property. The conversion process required a "highest and best land use appraisal" to establish the value of the land. The city was then required to acquire property with equal or greater land value. The new site should allow public recreation access, but could not be part of an existing planning effort. The city was required to prepare an environmental assessment (EA) for the conversion process. The EA required an extensive public process, including feedback that was documented and submitted, with an application to be reviewed by state and federal coordinators.

Mr. Robins turned the time over to Ms. Riddle to review the property transactions. Ms. Riddle stated that the conversion process was difficult and time consuming. The school district participated with us by helping pay for a consultant and participating in public hearings. This had been a very public process, which included many public hearings and opportunities for input.

Ms. Riddle said it was not easy finding property we did not own that could be converted for use as a park. We identified a property in southwest Provo by the airport that was owned by the Church of Jesus Christ of Latter-day Saints (the Church). After completing the EA, a purchase agreement with the Church was fully executed in May 2018. In July, 2018, the draft EA was released for a 30-day public review period. In October 2018, after addressing the public comments, the draft was released for an additional 30-day review period. It should be noted, the federal government did not require the second public review. The final EA was presented to the council in November 2018. The report was submitted to the federal government for review, and in May 2019, the conversion proposal was approved.

The two proposals before the council were to consider a purchase contract with the Provo School District and appropriate the funds to close on the property with the Church. We would be selling two parcels to the school district. Parcel 1 ($1,931,938) included 9.4 acres where the Timp Kiwanis Bounous (TKB) park was located. The city would retain ownership of the land underneath the well house. Parcel 2 ($148,935) was a portion of hillside east of the schools. The city acquired this property years ago to help students get down safely from the neighborhood above the schools. The total purchase price, based on yellow book appraisal, was $2,130,873. The city would contribute an additional $19,127 bringing the total conversion cost to $2,150,000. These funds would be put towards purchase of the replacement property in southwest Provo. This issue was time sensitive. We needed to close with the school district by the end of June to meet the July 1, 2019 deadline with the Church.

Mr. Henderson said Parks & Recreation had been representing both the council and administration while working through the LWCF conversion process. He noted that every single public comment had been documented and included in the report. This action resolved issues that would benefit the entire community. Timpview High School would obtain additional land for sports fields (which would remain green space), and Provo City would purchase a 100 acre parcel on the west side mitigation property. The land would be used to build a regional sports park.

This was a complicated process. The Church had to accept an offer, in a time when real estate values were going up, and stay with that price for two years. The mitigation site was funded from the sale of the TKB Park property. The Church allowed Provo City to go into this site for testing during that two-year period. We appreciated their patience and commitment to our mitigation site.

Mr. Henderson stated that the city was working on a short timeframe. We had just received a letter from the federal government that week giving approval for the land conversion. With that approval, and with the need to close on the property before July 1, 2019, staff recommended a decision on the item be made that night.

Mr. Winterton felt this was a wonderful opportunity and did not want to lose it. He expressed concern that the citizens were told they would have one last chance to comment if the federal government approved the land conversion. In addition, the school district had not talked about the issue because they did not know if purchase of TKB Park was even a possibility. Now that the federal government had given their final approval, was a one-week delay a possibility? The council could hold a special session next week and citizens would also have a chance to address the school board.

Ms. Riddle said her preference would be to have a decision that night. One week would be stretching it. Two weeks would be problematic trying to get all the closings completed before July 1.

Mr. Van Buren noted that this item was scheduled for public comment that night, so citizens would have the opportunity to speak. He asked Mr. Winterton what he hoped would happen if the decision was delayed for even 24 hours.

Mr. Winterton hoped that the school board and mayor would come to an agreement on what would happen with the TKB Park property. The citizens were only notified last Thursday that a decision could be made that night. He felt an obligation to give them one more opportunity in order to reach as many people as possible. He had hoped the city would have something in writing from the school district expressing what they intended to do with the property.

Mr. Sewell felt the key issue was having a written agreement from the school district. He wanted to hear from the public before he made any more comments.

Chair Harding invited public comment. (1:40:05)

Marian Monnahan, Edgemont Neighborhood Chair, hoped the council would have the Wisdom of Solomon. This was not just a piece of land; it was ten acres in which two entities had an interest. The neighbors, who put a lot of time, money, and energy into putting this park together

and putting in equipment, and the school, who needed more room. Over the years, they had used the park together and had not had any trouble. A park was meant to be used. The more it was used, the better. She said a previous council signed a statement saying they wanted it to remain a park forever. Now that had all changed. She asked about possible deed restrictions requiring the school district to allow neighborhood use by not putting up gates and locks. She asked the council to be an advocate for them.

Sharon Memmott, Edgemont Neighborhood Vice-Chair, said their neighborhood had been given the impression they would have more time to talk about this and a final decision had not been made. They were also given the impression they would have some say in either a deed restriction or conservation easement. Although this was their chance to speak as a public, many of her neighbors were already out of town when this was item was noticed last Thursday. In addition, they had not been given the chance to read the letter from the federal government. She suggested that the neighborhood and council have some input on the school district contract before Mayor Kaufusi signed it. One option would be to keep about an acre and a half where the well house and playground were located. That way the neighbors could be assured the use would not change once the school board owned the property.

Pam Jones, Edgemont Neighborhood, said rumors started a couple of years ago that the city was going to sell the park without getting any neighborhood input. There was enough ruckus raised by the neighbors that they were promised a park just a couple of blocks north, up Timpview Drive. That had been postponed because it would be used for the temporary Fire State 2 until the new building was completed. The soccer field in the southwest part of Provo was no compensation for losing their park facilities in the northeast. She also felt the new park should have other amenities instead of just soccer fields.

Mike Roan, Northeast Area Representative, understood that this action was initially mandated by the federal government. The council has had neighborhood input but the issues have not been resolved. He was concerned that the school district, a major party in this action, did not have a representative at the meeting that night. He said they did not have things spelled out concerning the use of the land. Even though the park would be primarily for the school district, it should still be usable by the neighborhood when school events were not scheduled. He understood that the federal government required the conversion property to be greenbelt type of land, which pretty much moved it to the west side of the city. He felt there was an obligation from the city to replicate, in some means, the neighborhood park that was being lost in the northeast part of town. That process should be accelerated. He understood Fire Station 2 would take some of the land but there was still additional land that could be used for a city park. They might have to change the park priorities and allocate funds to be used for the new park in the northeast.

Lisa Brockbank, Edgemont Neighborhood, said her children attended Timpview High School. The school had used the field for as long as she could remember. She hoped the neighbors would be able to continue to use that piece of land along with the school district. However, she was there to advocate for the regional sports park. She hoped the city would not give up such an amazing project. It would help the citizens in our community but also help on a state and national level. It would bring an incredible amount of economic development to the west side of our city. The new park would move the demand for field space from neighborhood parks, which would then open up those parks to families. She hoped the council did not pass on this opportunity.

Marlon Christensen, Edgemont Neighborhood, appreciated Mr. Winterton's comments. He noted that a year and a half ago McKay Jensen and Superintendent Rittel, with the Provo School District, said all they wanted to do was be good caretakers of the land for the community. They would ensure that this was a public access park. Now it was crunch time and there was pressure to make the deal right now. The council needed to hold the school district accountable to the promises they made verbally. He hoped that Mayor Kaufusi would be authorized to sign the agreement, but would hold off until the city had something in writing from the school district.

Maren Hansen, Rock Canyon area, said she was representing her husband Derek as well. He could not attend because of the short notice. She described a normal summer day in which her family used the TKB Park multiple times every day. Many people from the community and school also used the park on a regular basis. She believed they could find a compromise that would address the needs of everyone. She and her husband strongly believed there needed to be a guarantee, in writing, that the community could continue to use the park, especially during non-school hours. Past high school administrators have locked the tennis courts and track, facilities that our taxes paid for. If they could not use the TKB Park anymore, she would like to see a replacement park for their neighborhood that was not 20 minutes away.

Lynn Shumpert, Edgemont neighborhood, had been in the construction industry for 35 years. He shared concerns about the rebuild of Timpview High School. One of the first things he looked at when constructing a new building was the seismic concerns and possible mechanical and electrical concerns. He understood that to make the high school building sound (and in bedrock), it would cost about $1 million. There were other costs associated with bringing the building up to code, but to charge the taxpayers $154 million was not in the best interest of the citizens. He asked why they were going to build a new building and not retrofit the current one.

Elda Benson, Edgemont Neighborhood, was a proponent for Provo City as well as Timpview High School. She felt that this process had been ramrodded over the neighborhood. She appreciated Councilor Winterton's comments about giving the residents an opportunity to give their input based on the letter from the federal government, a letter that was received over a holiday within the past 24 to 48 hours. This meeting, with just a few residents in attendance, came at a great expense to the neighborhood. Most of the neighborhood did not know about the approval because they were out of town. She was against the sale of this property, which was purchased, or donated to the city, to be a park in perpetuity. She hoped the council's integrity remained intact. If it came to a bond election, she would make sure it did not pass.

Chair Harding closed public comment and invited council discussion. (2:03:19)

Mr. Knecht felt this was a matter of public trust and confidence, not just in the process, but also in their representatives. The school board would do well to give a guarantee or easement, not just some vague idea of their plans. He would like an agreement in writing stating the school district would not build buildings on the land and would maintain the facilities. Another option, proposed by a citizen that night, would be to buy back an acre and a half so that we controlled the use. He did not want to vote on the resolution that night. He wanted to give the school board time to come back with something in writing guaranteeing their intent to keep it open space.

Chair Harding asked Mr. Henderson or Ms. Riddle to comment on the park replacement plans and also the deadlines the city was facing.

Mr. Henderson stated they were fortunate the approval notification from the federal government came in May. Once we received the notice, it was the natural sequence to bring the item to the council for a public hearing and decision. There was no pressure from the school district. They would abide by the decision of the council.

The replacement park was approximately three blocks north of the TKB Park. It was originally lower on the priority list of capital projects. With the sale of the TKB Park, and a commitment to the neighborhood, the park had been moved up the list, right after an unlimited play center and an addition to North Park. The timing for building the park worked since the fire department would be using the land for a temporary fire station. There were a lot of neighborhoods and residents waiting for parks in their area that would love to move up the list. He noted the Regional Sports Park featured major neighborhood amenities, such as a walking trail completely around the park and numerous play structures.

Now the council was talking about elements of negotiation. The city was listening but they were on a time frame where the clock was ticking and complicated transactions were taking place. If we had not received the approval from the federal government when we did, we would have had to go back and move some other projects around.

Mr. Sewell gave his full support for the Regional Soccer Park. We needed to make that happen regardless of what happened with the TKB Park. He saw the sale of the park, and the appropriation for the new park, as two separate issues. The shared use of the TKB Park had worked well for many years. He understood part of the property was donated, or sold for a reduced price, from a family whose intent was that it would remain a park in perpetuity. The neighborhood raised $35,000 at one point for park equipment. He would have liked a more win-win-win solution. Many of the residents have asked for a written agreement with guarantees of public access in the future. There were other possibilities the city could consider, such as deed restrictions or buying back a small portion at the southern end. Unless they delayed the approval, and made an effort to find that compromise, the neighbors would come out with almost nothing. He understood the school board was willing to issue a statement of intent. But school boards change and there would be no guarantee a future board might not do something different.

He would be in favor of moving ahead with the appropriation, delaying the vote on the sale, and getting Mayor Kaufusi involved with negotiating a written agreement with the school board.

Mr. Stewart said he would not vote for the $2 million appropriation if the sale of the property was not approved. We did not have a source for those funds except for the sale of the TKB Park. In his eleven years of public service, he never had an issue that had been discussed at length like this or has had as many public hearings. A delay to secure the sale of the TKB Park would kill the sports park. He was in favor of moving forward that night and trusting our school board.

Mr. Winterton said he did not believe in guarantees. It was not fair to this council, or any council, to bind the school board when they were paying full price for the property. He hoped the neighborhood would not lose their park, but no one had guaranteed a park across the street from them. He was not willing to wait two weeks because he did not want to lose this opportunity. He appreciated the sacrifices the neighborhood had made. If they did not have the park across the street, they would have a few blocks down the road. He believed the intent of the school board was to keep the park.

Chair Harding appreciated the commitment that Parks & Recreation had made to build a comparable replacement park. He hoped the community understood that it was not a trivial matter for the replacement park to be moved up on the priority list. Other parts of the community had been waiting a long time for their neighborhood parks to be built. The school district had stated they would not put major buildings on the property and would allow public access to the park, although it would have been nice to have their commitments in writing. In the past, the school board had made it clear their primary responsibility was to provide the best education for the children. They were not concerned about the broader community impact. He would like to see the resolution approved, with some contingencies that the school board would agree to in writing. The council would not have to reconvene and the mayor could negotiate an agreement, within the amended resolution's parameters.

Mayor Kaufusi agreed that an agreement should not be signed until the city had something in writing that everyone could review.

Mr. Jones presented a revised resolution to the council. It stated that the council's approval would be contingent upon a written statement of intended use from the school district (in broad terms and non-binding). The statement should include the following representations:

- No major structures were intended to be constructed on the property,
- The property was envisioned to remain green space,
- The property would have significant public access for the foreseeable future.

Upon receipt of said document, Mayor Kaufusi would be authorized to execute the agreement. If the school district was unwilling to provide the statement, the authorization no longer applied and the council would need to take further action.

Mr. Handley said he had immense respect and implicit trust in Parks & Recreation. He appreciated all their efforts to make this workable for the community, the school district, and city. He did not share the distrust and cynicism of the school district or city that had been expressed by the community. It was important for the public to understand that this was not an under the table action that had been rushed through. Mr. Handley expressed disappointment that the school district was not represented at the meeting to explain their hesitation about putting their intentions in writing. McKay Jensen, who was out of the country was unable to attend the meeting. He was a good friend and a man of his word; however, he no longer represented the school board as the president. If the school district would agree to some language that would protect the space in perpetuity, not for the near future, it would be a win-win-win. Every conversation he has had with Mr. Jensen and Mr. Rittel, had been reassuring. Other than temporary structures during the school construction, the school district had stated there would be no structures built on the property.

Mr. Handley said he would not support this sale unless we had some commitments, in writing, from the school district. If they say no, he had no other choice than to say no to the whole thing, which would break his heart. If there were strong opinions contrary to what had been expressed by the board, he would like to know what those concerns or fears were. Having their intentions in writing would be a reassurance to everyone and make this a very easy decision.

Chair Harding said continuing ownership of the well house property at the park should give the council and community more assurance. Due to building restrictions within proximity to that well, it made much of the property unbuildable for structures. As long as the city owned the well, the school district was limited on what kind of structures they could build on the property.

(2:40:04) Mr. Winterton wanted to reconvene in one week and give the community one last time to address the mayor and the school district. The council could vote on the original resolution at that time because it gave the mayor one week to negotiate a contract. Mayor Kaufusi said she would be fine with postponing this item for one week.

Motion: Councilor Winterton made a motion to delay the item one week and reconvene as a council to vote on this resolution without the amended language. The motion was seconded by Councilor Knecht.

Mr. Sewell hoped they would consider buying back an acre and a half. This would make the decision simpler and achieve all their objectives. Mr. Winterton said that could be part of the discussion between the mayor and the school board. His main concern was to give the public one more opportunity to express their concerns.

Chair Harding stated his preference would be to approve the amended resolution (with the contingencies) that night.

Mr. Stewart stated he was scheduled for surgery next week and did not know if he would be available. He was voting against the motion because he would prefer the amended resolution, as shown on the screen.

Councilors discussed the following possible negotiating points the mayor could consider:

- Was the school board hesitant to put something in writing because they were offering full price?
- Allow the school district to pay slightly less than full price if they would be willing to give the city a written statement of intent? The conversion process did not require the city to pay full value for the property. It only required that the replacement property be the same value as the original property.
- Purchase a 1.5-acre strip back from the school district.
- Have the school district own and maintain a 1.5 acre strip but allow public access if they payed less than full price for the property.
- What would they be willing to do if we were flexible on the asking price?

Mr. Strachan noted that deferring one week would not solve the problem. The council would likely be meeting at the same time as the school board. The school board would not have had time to discuss some of the concessions the city was proposing. The amended language in the proposed resolution gave the mayor flexibility to have those discussions. Mayor Kaufusi could hold off signing the agreement until the negotiations were complete. Or, the chair could be authorized to call a special session after Mr. Rittel had discussed the issue with the school board.

Mr. Winterton said he understood that Mr. Rittel was going to contact school board members and have something in writing within a day or two.

Mr. Jones understood Mr. Rittel to say that he could issue a statement matching the language in proposed resolution amendment but would need to meet with the school board first. The council could approve the amended version of the resolution that night and give Mr. Rittel time to obtain that statement.

Mr. Stewart did not think the council would get more than Mr. Rittel agreed to earlier in the day.

Mr. Knecht said it might be true but he wanted to give everyone the opportunity to discuss his or her concerns.

Chair Harding said it might be good to vote for the motion on the table, which was to postpone this one week. A special session would be held on June 11, the same night as the school board meeting. They would be looking at an 8:30 p.m. start time in order to give the school board time to meet.

After the conversation earlier in the day with Mr. Rittel, Mr. Van Buren did not think a discounted price would let them give concessions. They were more interested in having control over the use of the property.

Mayor Kaufusi expressed support for the councilors saying they had integrity and took their jobs seriously. They listened to the citizens and constantly negotiated what was best for the community. To suggest otherwise was offensive. She stood by them and supported whatever decisions they made.

Mr. Van Buren echoed Mr. Stewart's concern about delaying this one week. Postponing this item added complications to the funding of the appropriation.

Mr. Parker stated that approving Item No. 10, the appropriation request, would satisfy the need to move forward with closing on the conversion property. However, the appropriation language stated the funding would come from the Parks & Recreation CIP fund and reimbursed by the proceeds from the sale. If approved without the sale of the property, it would be a $2.1 million hit to the city's general fund without a reimbursement strategy. If we signaled our intent to purchase the replacement property, there would be no motivation for the school district to negotiate an agreement. It created complications if they were not approved at the same time.

Mr. Borget agreed, stating it would be a significant hit to the fund balance in the general fund if we did not sell the park. The fund balance was something that had taken years to build. The council and administration had made a concerted effort to be conservative and build a fund balance.

Mr. Van Buren agreed with Mr. Parker about the school district not being motivated to come back to the city with something in writing. He was concerned that voting on the motion on the table would affect the appropriation resolution. Was it possible to have a motion stating the appropriation request would be delayed if the motion to postpone was approved? They could vote on both resolutions on the same night.

Mr. Winterton expressed concerns about a possible 3-3 tie if Mr. Stewart was not able to attend a special meeting. He was comfortable approving the amended resolution that night if a public meeting was called where the neighborhood could weigh in on the environmental assessment.

Mr. Stewart made the following substitute motion: (3:02:41)

Motion: Councilor Stewart made a substitute motion to replace the amended version of resolution (as shown on the screen) with the original resolution to which the implied motion applied. The motion was seconded by Councilor Van Buren.

Mr. Sewell asked what the purpose of the additional public meeting would be if the decision was made that night. Mr. Winterton responded saying it would fulfill the promise to give the public the opportunity to speak one more time after entire conversion process was completed.

Mr. Henderson said he was just approached by a respected member of the community that wanted him to convey a message to the council. She felt that the neighborhood has had their voice heard throughout this process. She wanted the leaders to take responsible action.

Mr. Handley noted that if the resolution was approved that night, did the public turn their attention to the mayor and school district to find the right language? (There was an inaudible response from the audience).

Mr. Strachan said the council had heard the viewpoints during numerous public meetings with the residents. The school district had heard the residents' concerns. It appeared the residents were waiting for a response from Mr. Rittel, which was required in the amended resolution. Assuming the mayor signed the agreement, it became incumbent upon the school district to meet its promises to the community. Having another public meeting, to hear the same concerns, would not affect the council making a decision on the resolution. The federal government's approval, received last week, would not provide any further information than the residents had already seen. He encouraged the council to make a decision.

Chair Harding confirmed that the resolution authorized the mayor to execute a contract with the school district if they issued a written present and firm plan for this property. Would the school board be willing to do something binding if the city backed off on the purchase price? Is that something the mayor could choose to negotiate and bring back to the council? Something that changed the purchase price was not authorized in the substitute motion they were considering. He did not want to close the door on potential negotiations for something binding at a lower price.

Mr. Jones said the resolution authorized the mayor to sign the agreement. If she negotiated a better offer, she could chose not to execute the agreement and bring it back to the council. He emphasized that the firm plan language did not come from the school district. We were asking for a written statement of their intended use.

In response to a question from Mr. Winterton, Mayor Kaufusi stated she was on the school board when this process started and now she was the mayor. She had been in the loop on all correspondence, which was helpful for both pros and cons. She was elected by the people so she was always willing to take more feedback.

Mr. Van Buren asked how this would play into negotiations for the sale of the property. Mr. Jones stated that the mayor was allowed to execute the current agreement, which sold the property for full yellow book value, so long as the school district gave a statement of their intended use. That statement would say that no major structures would be built on the property and the property would stay green space with significant public access. If the mayor negotiated the statement with the school district she could sign it immediately or post it on her blog and wait two days for public input. Nothing in the statement had to be binding. If the mayor negotiated an entirely new agreement she would bring it back to the council. She was not authorized to sign the agreement if the school district refused to give her anything in writing. She would need to go back to the council and ask for authorization to do something else.

Mr. Knecht said approving the amended resolution would put the decision in the hands of the mayor. He had confidence that Mayor Kaufusi would negotiate the best deal for the city, regardless of what that may be. Another meeting would not have to be scheduled unless she called for one.

Mr. Stewart said he had full confidence in the mayor. She was elected to that position to negotiate for the city. We need to trust her ability to negotiate.

Mr. Winterton gave his email address and phone number. He welcomed the citizen's feedback and would forward those comments to Mayor Kaufusi.

Mr. Sewell also had full confidence in the mayor's negotiating ability, however, he would not vote for the substitute motion. If the council did not state an intent that they want a written and binding agreement our negotiating position was weak. He was fine with adding the amended language to the resolution; he just would not be able to vote for the resolution.

Previously and publically, Mr. Handley stated he would only support the sale if there was a statement, firm and in writing, that the space would be protected in perpetuity. That was not in the resolution so, for his own integrity, he would vote against the motion. He was prepared to vote in favor of the appropriation if the substitute motion was approved.

Chair Harding called for a vote on the substitute motion, which was to update the implied motion to refer to the amended version of the resolution.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 5:2 with Councilors Harding, Knecht, Stewart, Van Buren, and Winterton in favor and Councilors Handley and Sewell opposed.

10. Resolution 2019-33 appropriating $2,200,000 in the Parks and Recreation Capital Improvement Plan Fund for the purchase of real property located on Lakeview Parkway, applying to fiscal year ending June 30, 2019. (19-069) (3:22:00)

Motion: An implied motion to approve Resolution 2019-33, as currently constituted, has been made by council rule.

John Borget, Administrative Services Director, presented. The resolution stated that $2,130,873 of the appropriation would come from the sale of the TKB Park and the balance of $69,127 would come from the Parks & Recreation CIP fund. If the sale of the park did not take place, further discussion would be needed on the appropriation.

Chair Harding asked if there was wisdom in continuing this item until after the sale of the park was completed or make it contingent upon the sale of the park.

Mr. Stewart noted that the council had the option of rescinding this resolution if the sale did not go through. He was prepared to vote yes on this item.

Chair Harding opened the public hearing.

Mike Roan, Northeast Area Chair, stated allocation of funds for this purpose was a great idea. He felt they should make a motion stating the appropriation was contingent upon receipt of sale proceeds from the park.

Elda Benson, Edgemont area, felt that including additional projects the city was working on, and presenting it in this fashion, did not allow the community to do their due diligence. She did not feel comfortable that the community would not have a say with how it impacted them. The council was requesting information from the citizens when they were seeing it for the first time and have not had time to conduct any research.

Seeing no more public comment, Chair Harding closed the public hearing.

Mr. Winterton said the discussion centered on the proceeds from the sale of TKB Park. It became moot if the park was not sold. There had been a lot of discussion around this issue and the community knew that when the park was sold, the proceeds would go to purchase land for the new park.

Mr. Jones emphasized that the property the council just agreed to sell was bound by a requirement from the federal government to purchase the soccer fields.

Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

11. Ordinance 2019-28 to amend Provo City Code to clarify limitations on signage within the North University Riverbottoms Design Corridor. City wide Application. (PLOTA20190026) (1:08:48)

Motion: An implied motion to adopt Ordinance 2019-28, as currently constituted, has been made by council rule.

Aaron Ardmore, Provo City Planner, presented. The proposed ordinance clarified the type of signs that were, and were not, allowed through the North University Riverbottoms Design Corridor. There was similar language in the other design corridors.

Chair Harding invited public comment. There was no response to the request.

Chair Harding reminded council that this was the first hearing after the planning commission heard the item. The item could be continued at the request of any councilor. There was no request to continue so Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

12. Ordinance 2019-29 repealing Provo City Code Section 2.60.040 (19-071) (3:29:07

Motion: An implied motion to adopt Ordinance 2019-29, as currently constituted, has been made by council rule.

Brian Jones, Council Attorney, said the ordinance would repeal a section of code that talked about how items must be submitted to the council for review and the process and deadlines for doing so. The code had been outdated by our recent software and workflow upgrades. The new process would be addressed in an update of the council handbook. The council handbook update would be brought to a future council meeting for approval.

Chair Harding called for public comment.

Sharon Memmott, Provo, asked if this was eliminating noticing requirements. Mr. Jones replied that it was not eliminating the noticing requirement. This was an internal process for submitting items. In order for items to be placed on the agenda, they had to be submitted to a workflow process in OnBase. All public notice requirements, mandated by state law, would remain the same.

There were no more public comments.

With no council discussion, Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

13. ***CONTINUED* Brady Deucher requests a Zone Change from R1.10 to Medium Density Residential for approximately 2.1 acres located at 1320 S State Street. Spring Creek neighborhood. PLRZ20190100**

14. ***CONTINUED* Brady Deucher requests an Ordinance Text Amendment to Section 14.37.050 to allow the city to consider parking reductions for affordable housing developments. City-wide application. PLOTA20190170**

15. ***CONTINUED* Community Development Department requests Ordinance Text Amendments to consolidate Chapter 14.30 S-Supplementary Residential Overlay Zone with Chapter 14.46 A-Accessory Apartment Overlay Zone. City-wide application. PLOTA20190120**

16. ***CONTINUED* Julie Smith requests the annexation (Peay Annexation) of 13.45 acres of property into the incorporated limits of Provo City, located at approximately 5400 N Canyon Road. North Timpview and Riverbottoms neighborhoods. PLANEX20180355**

Adjourn

The meeting was adjourned at 9:02 p.m. by unanimous consent.

Please Note – These minutes have been prepared with a time-stamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

PROVO MUNICIPAL COUNCIL
Redevelopment Agency of Provo
Regular Meeting Minutes

5:30 PM, Tuesday, June 18, 2019
Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Opening Ceremony

Roll Call -

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor David Harding
Councilor David Knecht
Councilor David Sewell
Councilor Gary Winterton
Councilor George Handley
Councilor George Stewart
Councilor Vernon K. Van Buren
Mayor Michelle Kaufusi
Assistant City Attorney Gary Millward
Council Executive Director Cliff Strachan
Chief Administrative Officer Wayne Parker

Conducting: Council Chair David Harding

Excused: Brian Jones, Council Attorney

Prayer – Jenna Sutherland

Pledge of Allegiance – Jenni Houtz

Presentations, Proclamations, and Awards

- **Presentation of Awards from the Utah County Child Abuse Prevention Team. (19-077)** (0:09:26)

Kristen Colander, Chair of Utah County Child Abuse Prevention, thanked the council for allowing their organization time to recognize the 2019 Volunteer, Organization, and Coalition of the Year Award recipients.

JoAnn Brown, Region Ten PTA Director, presented Lori Jenkins with the 2019 Volunteer of the Year Award. Ms. Jenkins worked with the Women and Children in Crisis Center of Utah County. She had served and worked for hours to advocate for children and women in Utah County affected by sexual abuse. She created an instant rapport with victims, helping them navigate one of the hardest events of their lives. She encouraged others to serve as well.

Abraham Hernandez, Executive Director of Centro Hispano, reported that the rate of teen pregnancy in Utah County (specifically Provo) was nearly double the national average. A group of concerned citizens, nurses, local PTA, the Utah County Health Department, and community organizations formed a coalition to find ways to help reduce the number of teen pregnancies in

this area. The coalition helped the Provo School District develop an abstinence class education program, which was now being used by the state. Mr. Hernandez presented the 2019 Coalition of the Year Ward to Michelle Wages, chair of the coalition.

Mr. Hernandez said that the Centro Hispano Health Promotion Team taught healthy relationship and communication skills to youth 12 through 18. Participants learned about self-worth, dealing with emotions, calming strategies, how to help friends, available resources, and open discussion about how they should be treated. The team understood that, in order to change behaviors in the lives of Utah County youth, they must also help change the environment the youth live in. The team reached out to parents of youth to teach communication and bonding skills in Spanish and English. Mr. Hernandez presented the 2019 Organization of the Year Award to Jenni Houtz, Health Promotion Coordinator and Jenna Sutherland, Health Educator, representing Centro Hispano

- **Presentation by the Utah Geographic Information Council Conference Map Contest winner. (19-079)** (0:17:46)

John Borget, Administration Services Director, presented. Mr. Borget introduced Stan McShinsky, Provo City's Web Developer and a member of the Utah Geographic Information Council (UGIC). The UGIC was a non-profit organization whose mission was to promote the effective dissemination of geographic information in Utah. Part of their annual conference was to hold the annual McShinsky contest for the most creative GIS related project. The contest was named after Stan McShinsky because he had won the contest four out of the five years it had been held.

For the 2019 contest, Mr. McShinsky won the award by creating an artistic map of Provo using recycled parts from 52 computer monitors and 63 keyboards. Hidden within the keyboard map were the following words:

- Provo (spelled out ten times),
- GIS (spelled out five times),
- Names of the IS Division Staff,
- City Hall,
- Library,
- Recreation Center, and
- Happy Valley.

Mr. McShinsky used these same skills and creativity daily in his work. He had developed several online maps, including (but not limited to) maps.provo.org, and parkfinder.provo.org.

Josh Ihrig, Information Systems Division Director, stated that prior contest projects were scattered throughout the city, including a set of chairs in IS that were reupholstered using maps of city blocks. Mr. McShinsky shared his enthusiasm and creative projects with the local schools.

Public Comment (0:25:07)

Kaye Nelson, Edgemont area resident, presented a petition with 435 signatures to the council opposing a proposed high-density development by Terra Development. In addition to the petition, they started an online change.org petition that had 244 people signed in the last 16

hours. The proposed project, which included 420 homes and amenities, did not fit the green rolling hills in that part of Provo. This was a grass roots effort to make sure their voices were heard and to be included in the process.

Craig Christensen, Provo, said his family had been lifetime residents of Provo and this was his first city council meeting. He expressed concern that a mega development, like Terra Development, was even considered. It would be irresponsible of him if he did not express his strong feelings. He saw what happened when homes were zoned and built and then start sliding down the hill. He asked that the neighbors affected by this development be given a voice and stay part of the process.

Angela Maurik, Provo, read an excerpt from a letter written to her from Shawn Miller, President of the Provo City Agriculture and Sustainability Commission. Mr. Miller favored high density developments, but only in centrally located areas where infrastructure already existed, at freeway interchanges, south of BYU campus, and especially along the new UVX corridor. The city should provide incentives to build in those areas and disincentives to build in open spaces anywhere else.

Ms. Maurik also mentioned an article written by Don Jarvis about the Ponzi scheme of urban sprawl. In the article, Mr. Jarvis said that farmland only required about $0.37 in public services for every tax dollar paid by landowners compared to $1.11 in services for residential landowners. She urged the council to consider those facts when discussing this development.

Tamela Blake, Provo, served in the PTA at Canyon Crest Elementary and Timpview High School. She expressed concerns about the Terra Development and the impact it would have on the schools and the children's safety. Traffic from this proposed development would impact the safety of the students as they walked to and from school. If one classroom per grade was added there would not be enough room in the school. An increase of 200 students would max the school out. This development could bring in as many as 282 children.

Carl Sorensen, North Canyon Road resident, appreciated that past mayors and councilors had the foresight to make long-term plans for how property should be used. He expressed concern that the government might potentially see higher tax revenues from high-density developments than from low density residential. However, the higher tax revenues would come at a cost for the neighbors. He was in favor of development consistent with long-term plans.

Action Agenda

3. Resolution 2019-34 authorizing the execution of an interlocal cooperation agreement to authorize Provo's participation in the UT Valley HOME Consortium in US Dept of Housing and Urban Development's HOME Investment Partnership Program (Fed FY20-22) (19-075) (0:36:28)

Motion: An implied motion to approve Resolution 2019-34, as currently constituted, has been made by council rule.

Dan Gonzalez, Redevelopment Agency, presented. Provo City was the only entity in Utah County that qualified for a direct allocation of funding from the Home Investment Partnership (HOME) program. HOME allowed neighboring entities to form a consortium so that funding stayed in the community rather than going to the state. The current consortium included Provo,

Orem, Lehi, and Utah County (which funded all other entities not in the consortium). Provo City had been designated as the lead entity to represent the consortium and ensure that all requirements were met. He asked the council to authorize execution of the agreement, stating it was the same agreement as in the past, with no changes or amendments.

Chair Harding invited public comment. There was no response to the request.

With no council discussion, Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

4. A public hearing on transferring utility revenues to the General Fund and other funds. (19-004) (Presentation only – no action would be taken.) (0:39:09)

John Borget, Administrative Services Director, presented. The state legislature required municipalities to hold a public hearing disclosing transfers between enterprise and general funds. A notice sent with the utility bill showed all enterprise transfers during FY 2019. In order to reach all billing cycles before the end of the fiscal year, some of the numbers provided were estimates. The following transfers were slightly different than originally reported.

- The transfer to the General Fund was increased from $11,381,700 to $11,395,200 – a difference of $13,500.
- A $511,000 transfer from Wastewater to Water was made yearly to cover administrative costs in public works. The decision was made not to make the transfer in FY 2019, but would likely occur in subsequent years.
- The one percent Road Transfer was increased from $1,138,170 to $1,139,520 – a difference of $1,350
- The Administrative Overhead charges were increased from $1,209,022 to $1,251,986 – a difference of $42,964.
- The total transfer was reduced from $18,149,941 to $17,695,760 – a difference of ($454,181).

The city shared this information on the state's transparency website. The proposed FY 2020 budget document (submitted for council approval that night) included a graph showing how Provo City utility rates compared to other entities. The graph showed our rates were somewhere in the middle of the range.

Chair Harding opened the public hearing.

Carl Sorensen, Provo, asked what the difference was between collecting funds from property taxes as opposed to utility fees.

Mr. Winterton replied that about half of the city's residents and businesses paid property taxes. However, all residential and commercial utility customers paid the utility fees.

Chair Harding closed the public hearing.

There was no council discussion.

5. A public hearing on Ordinance 2019-30 adopting a budget for Provo City Corporation for the fiscal year beginning July 1, 2019 and ending June 30, 2020, in the amount of $254,958,760. (19-004) (0:45:52)

Motion: An implied motion to adopt Ordinance 2019-30, as currently constituted, has been made by council rule.

Chair Harding noted that the proposed budget had been revised to $253,940,236. This was the second of two required public hearings for approval of the budget. Final action would be taken after the public hearings for each budget.

Mr. Borget said the adjusted budget was discussed in the work session earlier that day. He noted that the Consolidated Fee Schedule in the final budget had been amended to include an increase in the airport parking fee from $5 to $6.

Mr. Borget stated that the council had met with the department directors on a number of occasions. This good, sustainable budget provided benefits to the residents and the City of Provo. They were able to fund some of the supplemental requests. The budget included the occupational index, which listed the salaries of all positions in the city.

Chair Harding opened the public hearing. There was no response so the public hearing was closed.

Councilors appreciated the efforts of the administration and shared the following comments.

- What the city did with the discretionary funds was amazing.
- They appreciated the mayor targeting council priorities, especially police department needs.
- Provo City was able to provide high-class services at low cost because of responsible citizens.
- The city did it all without raising property taxes.
- The community did not always see the work behind the scenes that made the city function.
- These numbers represented the integrity and honesty of an army of city employees.
- The council had been well educated by the administration and department heads and this was one of the best budgets the city has had.

Mr. Strachan indicated the motion to amend the resolution should include the following:

- Revise the final budget amount to $253,940,236;
- Correct references consistent with a fiscal year ending June 30, 2020;
- Amend the certified tax rates for the library to 0.000554, bond obligations to 0.0001155, and general operations to 0.000763; and
- Amend the consolidated fee schedule to increase the airport parking fee to $6.

Motion: Councilor Sewell made a motion to amend the current budget draft with the changes as explained by Mr. Strachan and as outlined on the screen. The motion was seconded by Councilor Stewart.

Chair Harding called for a vote on the motion to amend the resolution.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Chair Harding noted that the implied motion now referred to the amended resolution. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Stormwater Service District

Chair Harding recessed as the Municipal Council and reconvened as the Stormwater Service District by unanimous consent at 6:39 p.m.

6. A public hearing on transferring Stormwater fund revenues to the General Fund and other funds. (19-006) (1:00:22)

Mr. Borget stated that the estimated transfer from the Stormwater Service District (SSD) to the General Fund (as shown on the utility bill) was $764,910 and the actual transfer was $777,095.

Chair Harding opened the public hearing. There was no response so the public hearing was closed.

No action was required for this item.

7. A public hearing on Resolution 2019-SSD-06-18-1 adopting a budget for the Provo City Stormwater Service District in the amount of $5,123,278 for the fiscal year beginning July 1, 2019 and ending June 30, 2020. (19-006) (1:00:22)

Motion: An implied motion to approve Resolution 2019-SSD-06-18-1, as currently constituted, has been made by council rule.

Mr. Borget said the updated FY 2020 Stormwater Service District FY 2020 budget of $5,122,562 was shown in the amended resolution shown on the screen.

Chair Harding opened the public hearing. There was no response so the public hearing was closed.

Chair Harding asked for a motion to amend the resolution using the updated budget number, as shown on the screen.

Motion: Councilor Van Buren made a motion to amend the resolution by updating the FY 2020 budget to the number shown on the screen ($5,122,562). The motion was seconded by Councilor Winterton.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Chair Harding noted that the implied motion now referred to the amended resolution. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Redevelopment Agency of Provo

Chair Harding adjourned as the Stormwater Service District and reconvened as the Redevelopment Agency by unanimous consent at 6:34 p.m.

8. A public hearing on Resolution 2019-RDA-06-18-1 adopting a budget for the Redevelopment Agency of Provo City Corporation for the fiscal year beginning July 1, 2019 and ending June 30, 2019, in the amount of $2,429,132. (19-005) (1:06:03)

Motion: An implied motion to approve Resolution 2019-RDA-06-18-1, as currently constituted, has been made by council rule.

Mr. Borget reported that the updated number for the FY 2020 RDA budget was $2,424,867.

Chair Knecht opened the public hearing. There was no response so the public hearing was closed.

Motion: Board Member Van Buren made a motion to amend the resolution by changing the RDA budget from $2,429,132 to $2,424,867. The motion was seconded by Board Member Handley.

Vote: The motion was approved 7:0 with Board Members Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Chair Knecht noted that the implied motion now referred to the amended resolution. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

9. A resolution authorizing the Chief Executive Officer to enter into a lease agreement with Blue Sky Development to allow them to utilize parking spaces for a pending mixed-use project at 105 East Center Street. (19-070) (1:10:31)

Motion: An implied motion to approve the resolution, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, presented. The RDA participated in the construction of the Wells Fargo parking garage. When the garage went into receivership, the agency was awarded 204 parking spaces to utilize for downtown growth. Some of those parking spaces had been allocated to the 63 East project for residential and commercial tenants.

The RDA had been in talks with McKay Christensen, developer for the Blue Sky Development, about leasing parking spaces in the Wells Fargo parking garage. Blue Sky was a mixed-use project with ground floor commercial (restaurants and office spaces) and residential units on the upper five levels. Mr. Christensen would provide parking for all residential tenants inside the development but would like to use some of the parking spaces in the Wells Fargo parking garage to meet the needs of his commercial tenants. Mr. Christensen would like the spaces dedicated in order to meet the city's parking requirements and to attract potential restaurants and other commercial tenants.

Mr. Walter stated that the spaces for 63 East were on the subterranean levels of the structure and clearly marked with signs. The rest of RDA spaces were not marked so it would be hard to dedicate specific parking spaces for Mr. Christensen.

Mr. Christensen was invited to address the council. A draft lease agreement, negotiated about a year ago, dedicated 55 parking spaces to the Blue Sky Development. The location of the spaces was not critical but it was important that the stalls be dedicated. He said the RDA was comfortable with the agreement.

Per previous conversations with Paul Glauser, former RDA Director, the city was to use the parking stalls for the express purpose of promoting retail growth and new tax revenue in the DT1 zone. Mr. Christensen had been operating with the understanding that he had dedicated parking stalls when he met with the planning commission and board of adjustments. Now he was hearing that the parking facility was not for new growth and it needed to be there for everyone. It was hard, at the last minute, to be told that the parking spaces were allocated and not dedicated.

In response to a question from Mr. Winterton, Mr. Walter stated there would be between 15 and 33 stalls remaining, depending on the number allocated to the development. Mr. Winterton expressed concern about dedicating 55 parking stalls to this development. There were other projects in the downtown that might have parking needs. He stated that dedicating stalls became inefficient when they sat empty when not used by the tenants.

Chair Knecht had surveyed the parking garage earlier in the day and no one was parking on the top level because it was open. In addition, there were only 11 cars in the 79 spaces reserved for residential tenants. He did not know how the parking would be at night, but it seemed that we were not utilizing the parking spots efficiently. He would like to see parking assigned for nighttime residential use but could be used for businesses during the daytime.

Mr. Christensen stated that it would difficult to dedicate a stall for both residential and retail use. A comparison with the 63 East development was a poor example because residential parking was used day and night. They could not be shared with commercial businesses because residents would have nowhere to park during the day. The premise behind developments such as Blue Sky and 63 East, was that residents would just walk to downtown businesses, rather than drive. He noted that the development was adding 16 new stalls on the street, which were not being credited towards their parking requirements.

Although he had asked for more, he needed at least 56 stalls in order to lease the retail space to restaurants, which required 10 stalls per 1,000 square feet of retail space. There were no other developments in the downtown core building 8,000 square feet of true retail. The Towers Development and 80 East, two projects that had already been approved, had parking stalls

allocated in the parking garage. He was told the RDA might terminate the agreement with 80 East, in which case those parking spaces would be returned to the city.

The agreement was a graduating lease program, beginning with $1 per stall per month for a total of $660 for the first two years (1-2). The lease went up to $5 for years three through five (3-5), $10 for years six through ten (6-10), and $30 per stall for years eleven through twenty-four (11-24). In addition, the development would bring in almost $500,000 in property and sales taxes to the city, which was supposed to be enough for the parking allocation.

Mr. Handley wanted the stalls to be helpful to Mr. Christensen, precisely for the reasons he outlined. The concern was not a lack of enthusiasm for the project; it was a question of using the parking spaces efficiently. If the stalls were dedicated for a long term, and they sat unused, the city would not be taking full advantage of the spaces. He was comfortable allotting 56 spaces to the development but wondered if some could be dedicated and the balance just allocated. Or, build flexibility into the agreement that, over time, the ratio would be reexamined. He was looking for a middle ground of compromise.

Mr. Christensen said he was comfortable reevaluating the parking agreement in a few years. Some of the parking stalls could be released if they were not being used. He emphasized that it was intensely difficult to bring restaurants to downtown Provo and it was all about parking. In order to lease his space to restaurants, he had to have a certain amount of stalls dedicated for their use. He was willing to pay a valet service to transport the restaurant customers to and from the parking.

Mr. Stewart clarified that, while the project would generate about $250,000 in property tax, only a small percentage came to the city. Mr. Christensen agreed saying the city might receive a smaller amount but it would be infinitely more than they would bring in leasing those stalls to anyone else.

Mr. Harding said that, while Mr. Christensen had this agreement for more than a year, the RDA board, which needed to approve all agreements, had only received the agreement. What Mr. Christensen was proposing was the kind of development the board would like to see in downtown Provo. It weighed heavily on him that the parking agreement had been negotiated a long time ago and Mr. Christensen had moved forward based on that understanding. He would support 56 stalls but designating the stalls as dedicated was problematic. He did not want to tie the stalls up for 24 years. Properly managing downtown parking was limited by the use of long-term contracts for the parking stalls.

He hoped the city could negotiate an agreement with Mr. Christensen that would give him good parking for his commercial space, but have the flexibility to actively manage it in the future. He said parking spaces had been allocated to Wells Fargo, not dedicated. We were getting to the point where the general public might not be able to park in the facility because all of the stalls had been allocated or dedicated to businesses.

Mr. Stewart said the city did not have 55 stalls to dedicate to Blue Sky; they could be allocated but not numbered. There were so many issues associated with this agreement that he did not think they could approve it that night.

Chair Knecht asked Mr. Walter if the agreement was based on the premise that the spaces would be dedicated. The structure did not have dedicated spaces except for 63 East residents, who paid

$30 per month for their spaces. Mr. Walter stated that, initially, he understood the spaces were to be allocated. Mr. Christensen said he asked for dedicated spaces from the start.

Chair Knecht said the council needed to discuss which floor of the parking structure any dedicated parking stalls would be located. It would be a problem to put them on the top floor because people would not use them, they would fill in spaces on the other floors. He felt the item needed to be continued until there was something more agreeable.

Mr. Sewell said it was clear that Mr. Christensen had wanted and needed the dedicated stalls all along. He was inclined to support the agreement as written. He would be open to Mr. Handley's idea of only dedicating half of the parking spaces and allocating the balance. The use of those spaces could be evaluated after a certain period of time to determine if the split was working. If the city was not able to honor the negotiated agreement, they might need to allow Mr. Christensen to do something different that would not require the parking. But, we would have to be prepared to lose the restaurant.

In response to a question from Mr. Millward, Mr. Walter replied that there were 548 spaces in the parking structure and the RDA was allocated 204 spaces but was unsure where those spaces were located. He would contact Wells Fargo to determine exactly where the RDA parking spaces were located in the facility. Mr. Millward pointed out that, before the board entered into any lease agreement, we needed to be able to specify exactly where the RDA's 204 parking stalls were located and which parking stalls would be leased. Mr. Millward said there were a few contingencies that should be included in the lease before the board should consider the agreement.

Mr. Walter said the court appointed receiver Mr. Duncan Lambert, was represented by a law firm in Salt Lake. He had not heard back from Mr. Lambert concerning this proposed agreement. The agreement was proposed in order to help Mr. Christensen obtain financing and permits to get started with the development. The resolution gave Mayor Kaufusi, as the CEO, the authority to make minor changes to the agreement. Some of the changes discussed that night would exceed that authority. The RDA would need an agreement or understanding with Mr. Lambert before any agreement could be signed.

Chair Knecht invited public comment. (2:07:44)

Patricia McKenna-Clark said she went to downtown restaurants a lot and some of them were directly across from the Wells Fargo building. She agreed with the sentiment of what was being asked but strongly believed that a lot of the current restaurant and business owners would ask why they were not given allocated spots in the parking structure.

Glen Rollins owned an antique shop at 168 West Center. His shop was a destination business and did not rely on people just passing by and going into his shop. He had been in that location for 17 years and had heard all his neighbors complain about parking. He felt it was a management problem. The only time they had parking complaints was during lunch times. People complained about not finding parking and yet there were spaces one block away. He said the developer was willing to pay for valet service in order to obtain the parking. Were any other businesses willing to do that?

There were no more public comments.

Chair Knecht invited council discussion or a motion. (2:11:38)

Mr. Winterton said there were too many questions regarding dedication or allocation. He wanted the development to succeed but struggled with dedicating parking spaces. He was ready to make a motion to continue the item, which would give them time to find out specifically the number and location of our parking stalls in the structure. He would not vote for any agreement that included dedicated stalls.

Motion: Councilor Winterton made a motion to continue the item until the RDA Board Members concerns could be addressed. The motion was seconded by Councilor Handley.

Mr. Stewart asked for an up and down vote on the concept of giving 55 spaces (either allocated or dedicated) to a single developer. He wanted to vote on the current agreement with the dedicated parking to find out if there was support for the proposal. If there was not enough support, a new agreement would need to be brought to the council. Continuing the current agreement did not make any sense.

Motion: Councilor Stewart made a substitute motion for an up and down vote on the current agreement that included dedicated parking. The motion was seconded by Councilor Van Buren.

Chair Knecht said that if the owner of the parking garage, with a controlling interest, did not approve of the agreement it did not matter what decision the board made.

Mr. Handley agreed with Chair Knecht's comment and, because there was still a lingering question about the number of stalls that were available, he would prefer to continue. If there were 80 stalls available it would change his opinion on the agreement.

Mr. Van Buren felt they should vote on the agreement before the board. It would take a new agreement anyway no matter what terms were negotiated. He wanted to start with a clean agreement and go forward from there.

Mr. Harding said there were times when the council was criticized for making it difficult for developers, or changing the goal posts in the middle of the process. He said this was an example of that and they needed to figure out what could have been done better. He did not feel ready to approve the agreement as it was presented to the board. He said this was brought to a head because we needed to fix downtown parking. Continuing the item would be a better signal to the developer that the council wanted to work with him to find a solution that would allow him to move forward as quickly as possible.

Mr. Sewell clarified that the second motion was equivalent to calling the question on the implied motion. It required a super majority to force a vote on the original implied motion. If less than five voted in favor, the board would be back to the motion to continue the item.

Chair Knecht called for a vote on the substitute motion to call the question.

Vote: The motion failed 2:5 with Councilors Stewart and Van Buren in favor and Councilors Handley, Harding, Knecht, Sewell, and Winterton opposed.

Chair Knecht called for a vote on the motion to continue the item until July 9, 2019.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Action Agenda

Chair Knecht adjourned as the Redevelopment Agency at 7:51 p.m. and reconvened as the Municipal Council by unanimous consent.

10. Resolution 2019-35 appropriating $139,530 from the General Fund in the Fire Dept. General Fund for the purchase of a temporary apparatus facility during the relocation of Fire Station 2 applying to the fiscal year ending June 30, 2019. (19-073) (2:22:58)

Motion: An implied motion to approve Resolution 2019-35, as currently constituted, has been made by council rule.

James Miguel, Provo City Fire Chief, presented. With the construction of a new building for Fire Station 2, a temporary fire station would be needed. The proposed appropriation would be used to purchase a temporary facility for fire apparatus storage, maintenance material storage, and as the surplus holding area. The temporary facility would be located on property the city owned north of Timpview High School. There was very little cost difference between renting temporary facilities and purchasing the temporary facilities. It was anticipated the new building would be completed in ten months. Upon completion of the new fire station, the temporary facility would be moved to Public Works and used by Fleet.

Chief Miguel reported that Provo City Fire and Rescue responded to 21 different fires in five different states last year. The city received Wildland Fire revenues at the state and federal rate, which came to $200,000 more than our actual expenses. Those funds would be used to cover the $40,000 cost of moving the temporary facility to Public Works.

Chair Harding invited public comment.

Bonnie Morrow, North Timpview Neighborhood Chair, stated the temporary fire station would be located on north Timpview Drive. The chief had been very helpful by writing letters to the neighbors and holding open houses. They were more than willing to have the temporary fire station in the North Timpview neighborhood.

There were no more public comments.

Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

11. Resolution 2019-36 appropriating $60,000 from the General Fund in the Airport Fund for personnel and operating costs applying to fiscal year ending June 30, 2019.
(19-078) (2:35:05)

Motion: An implied motion to approve Resolution 2019-36, as currently constituted, has been made by council rule.

Jimmy McKnight, Public Works Business Manager, presented. He noted that there was an error in the resolution. The resolution would need to be amended to show that the funds would be appropriated from the Airport Fund Balance, not the General Fund.

The appropriation would be used to fund increased personnel expenses of $30,000 and miscellaneous maintenance and operating costs of $30,000.

Chair Harding invited public comment. There was no response to the request.

With no council discussion, Chair Harding called for a motion to amend the resolution.

Motion: Councilor Sewell made a motion to amend the resolution to reflect the recommended correction. The motion was seconded by Councilor Winterton.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

Chair Harding noted that the implied motion now referred to the amended resolution. He called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

12. Resolution 2019-37 accepting or denying an annexation petition for further consideration for approximately 2.55 acres of property generally located at 1860 South and Colorado Avenue. East Bay Neighborhood. (PLANEX20190140) (2:38:15)

Motion: An implied motion to approve Resolution 2019-37, as currently constituted, has been made by council rule.

Brian Maxfield, Provo City Planning Supervisor, presented. An application had been submitted to annex 2.5 acres at approximately 1860 South Colorado Avenue into Provo City. The council would need to vote on whether to accept or deny the annexation petition only, not approve the actual annexation.

In response to a question from Mr. Winterton, Mr. Maxfield stated that, although the General Plan showed the proposed annexation area in the Industrial zone, it would come into the city as M1 or M2. The city would designate the correct zone at the time the property was annexed.

Chair Harding invited public comment. There was no response to the request.

Mr. Knecht noted that when property was brought into the city, there was an expectation that certain services would be available. They would need to weigh all the costs in order to determine the financial impact on the city. He felt this annexation was a positive for the city.

Chair Harding called for a vote on the implied motion, reminding the councilors that it was only an acceptance or denial of the annexation petition, not approving an actual annexation.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

13. Ordinance 2019-31 amending Provo City Code to correct and update Title 10 (Water Resources). (19-072) (2:45:08)

Motion: An implied motion to adopt Ordinance 2019-31, as currently constituted, has been made by council rule.

David Decker, Public Works Director, presented. He said the proposed ordinance would update the Provo City Code to create consistency with the development guidelines and comply with state and federal regulations. The corrections would be in Title 10, Section 2 (Culinary Water), Section 3 (Wastewater), and Section 4 (Pretreatment).

Chair Harding invited public comment. There was no response to the request.

With no council discussion, Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

14. Ordinance 2019-32 amending Provo City Code to make modifications to Parking Enforcement fines and activities. (19-023) (2:46:48)

Motion: An implied motion to adopt Ordinance 2019-32, as currently constituted, has been made by council rule.

Laramie Gonzales, Customer Operations Business Analyst, presented. Parking enforcement was a service provided under customer service. Parking operations consisted of eight parking officers enforcing parking in downtown Provo, two neighborhood permitted areas, the Joaquin neighborhood, tree streets timed parking, the airport, and marking abandoned vehicles. The proposed ordinance would make modifications to the parking code by creating new parking fees and funding parking enforcement operations growth (as outlined in the Strategic Parking Management Plan).

In 2019, the state legislature passed HB0336, which modified the assessment of late fees for parking violations. The new law did not allow the accumulation of late fees to total more than 25 percent of the original fee. Provo's late fee tripled the original fee. The current fee structure charged $25 for a parking violation if paid within five days, $50 if paid between six and 10 days, and $75 if paid after 11 days. The city needed to revise the rate structure to comply with the new law.

Parking enforcement operational needs had grown to meet the demand of parking availability and increased enforcement as requested by residents and business owners. The operations budget would need an increase of 25 percent in revenue to meet the growth needs for parking enforcement over the next five years.

The proposed ordinance would increase parking fees from $30 to $55. A $15 discount would be given if paid within ten days. A late fee of 25 percent ($13.75) would be added to any fine paid after 11 days. After 16 days, the fine was considered delinquent. The Consolidated Fee Schedule would be amended to consolidate all types of parking fines (overtime, out of stall, red/yellow curb, left side to curb, etc.) into one category with the $55 fine and late fee of $68.75 (25 percent). Illegally parking in a disability space would be a separate fine of $175 if paid on time and $218.75 if paid late. The proposed fee increase would net approximately 25 percent more in revenues to meet the parking enforcement future needs.

The new fees were based on historical data which showed that 60 percent of fines were paid on time, 30 percent paid the penalty of double the fees, and 10 percent paid the penalty of triple the fees. There were a small amount of repeat offenders that were willing to pay the $25 fee. If we did not make the fine substantial enough, we might not curb that behavior.

During work session earlier in the day, eliminating the discount was suggested and having a two tier fee schedule instead of three. Mr. Gonzalez said the fine could be reduced to $42 days with a late fee of $10.50 added after 11 days. It was estimated that this fee schedule would bring in the same amount of revenue as the three tier fee schedule. Mr. Gonzalez said he would hesitate using the $42 initial fine because it was a guessing game and they wanted to make sure they brought in enough revenues to cover their costs.

Mr. Van Buren asked what the incentive was to offer a discount. Mr. Gonzalez said that it would encourage people to pay their fines right away to take advantage of the discount. They want to avoid going to collections for parking fines.

In response to a question from Mr. Winterton, Mr. Gonzales said if the payment was mailed in, the payment date was based on the postmark, not the date the payment was received.

Mr. Sewell felt the city was skirting the intent of the state law by offering a discount. If a citizen was given the opportunity to pay $40 instead of $55, it appeared that a 37.5 percent late fee was added if they paid $55 after five days. If the fine was not paid within 11 days, the $68.75 payment seemed like a 71.9 percent late fee on the original fee. He proposed eliminating the discount and having a two tier fee schedule - $55 if paid within 10 days and $68.75 if paid after 11 days. We would clearly be following the intent of the state statute and have more revenue for staffing and enforcement.

Mr. Knecht said things did not happen on the state level unless there was a reason. He asked who sponsored the legislation and what provoked the new law. Would the sponsor be concerned about Provo offering an incentive discount? Mr. Gonzales said the chief sponsors were Daniel McKay in the House and Howard Stephenson in the Senate. He was not aware of the reason the legislation was proposed.

Mr. Gonzalez said other cities had been discussing a similar incentive offer. He was not sure if any other cities had passed a rate structure with the discount.

Mr. Winterton was comfortable with offering a discount. If someone lost track of time occasionally, he did not want the penalty to be too steep. Mr. Gonzalez said the parking enforcement manager could, at her discretion, reduce the fine for any number of reasons, such as first time offenders, etc.

Mr. Handley said that if they used the three tier fee, they would not know how many people would actually pay the $40 instead of the $55. It was a guessing game as to whether it was a reasonable fee schedule to cover our costs. Mr. Gonzalez said that, under the old scenario, the driving force was paying the fee on time in order to avoid the late penalties. The new fee schedule did not provide the same incentive to pay the fees on time without offering a discount. Based on the historical data referenced earlier, they anticipated that 60 percent would pay early in order to take advantage of the discount.

Chair Harding wanted to make sure we stayed true to the state law; however, it was a guessing game. If we took away the incentive to pay early, we may find we have less compliance because the fine was too high and more of them went to collections. When fines go to collections, the city did not recover the full amount. He supported the proposal before them (offering the incentive) because it would give them the best chance of properly funding parking enforcement services.

Mr. Stewart supported the current proposal also.

Mr. Knecht was willing to take the risk because he liked the incentive to pay early.

Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 5:2 with Councilors Harding, Knecht, Stewart, Van Buren, and Winterton in favor and Councilors Handley and Sewell opposed.

Chair Harding called for a brief recess from 8:45 p.m. to 8:51 p.m.

15. An ordinance amending General Plan regarding a designation change from Public Facilities (PF) to Residential (R) for approximately 0.78 acres located at approximately at 862 East Quail Valley Drive. Edgemont Neighborhood. (PLGPA20190009) (3:22:45)

Motion: An implied motion to approve Resolution 2019-31, as currently constituted, has been made by council rule.

16. An ordinance amending the Zone Map classification of approximately 0.78 acres of real property, generally located at 862 East Quail Valley Drive, from Public Facilities (PF) Low Density Residential (LDR). Edgemont Neighborhood. (PLRZ20180430) (3:22:45)

Chair Harding introduced items 15 and 16 and stated they would be discussed together but voted on separately.

Robert Mills, Provo City Planner, presented. The applicant owned a piece of property on Quail Valley Drive, adjacent to Timpview High School. The applicant also owned the existing office building to the east of the property. The proposal was to build four townhomes on the property. The land was zoned Public Facilities (PF) and was designated as PF in the General Plan. Across the street from the property the land was zoned R1.10. In order to facilitate the development, the applicant was asking for a residential designation on the General Plan and to rezone the property as Low Density Residential (LDR). The LDR zone allowed up to 15 units to the acre.

The applicant had proffered two development agreements. The first agreement would limit the number of townhomes to four, provide the required 12 parking stalls, prohibit student housing, and would not allow sub-letting unless authorized by the owner. The second development agreement would be for the office building he owned. An existing document, relating to the office building, had covenants and restrictions on the use of the building. The document did not define specific uses that were allowed other than to designate the building for executive office use.

Mr. Knecht noted that when the General Plan was changed to residential, it could apply to any type of residential development. That would be an easy decision. The real problem came with the request for the LDR zone. If this was developed as R1.10, it would require 10,000 square feet per dwelling. The size of the property would allow three homes in the R1.10 zone.

Mr. Mills said the desire to have four townhomes (attached single-family dwellings) required the LDR zone. Single family dwellings could be attached in the R1.10 zone but needed to be part of a performance development zone. The planning commission was supportive of the zone change and of the previous proposal to allow six townhomes on the site. The neighborhood was opposed to the project and requested additional time to discuss the project.

Chair Harding invited Corbin Church, the applicant, to address the council. Mr. Church stated he purchased the office building one year ago and spent a considerable amount on repairs and upgrades. The building had been vacant for four years. He had been using the building for BYU student executives with start-up businesses. The businesses had done so well they were moving into another building. At the time he purchased the building he also purchased the .78 acre lot next door with the intent to build townhomes on the property. The lot, though odd shaped, fit the city's definition of an infill parcel. With multiple townhomes it would meet the city's goals of affordable housing.

When he met with the neighborhood in January he was surprised at the amount of emotion surrounding the office building. The neighborhood was opposed to the project citing traffic concerns, parking concerns, and devaluation of nearby homes. He was told an easement on the building and land restricted the use and he was violating that easement. He made the following comments to address the citizens' concerns.

- Traffic – The residents had a real argument when they talked about traffic. It was a blind curve going down Quail Valley Drive. However, the ingress and egress for the development provided a much greater viewing distance. Quail Valley Drive was designed to carry 12,000 vehicles per day. In a recent traffic study, there were between 1,500 and 3,420 vehicles per day. He was told that school was not in session so it was flawed data. The average speed limit of vehicles in the traffic study was 37.1 miles per hour in a 25 speed limit zone. He felt the neighbors' concerns about traffic was not related to his development because it would add, at most, eight more cars to the road.
- Parking – Each unit had a two-car enclosed garage. They also included two additional parking spaces per unit. Parking easements would require the office building overflow to park in the townhome spaces and the townhome overflow would park in the office building parking spaces.
- Development Agreements - He proffered development agreements per the city's recommendation. The agreements would be recorded against the property, which protected the neighborhood in the event the developer sold the property. The office building had restrictive covenants, which had been filed on the wrong parcel. The city had no power to enforce the restrictive covenants. The agreements would also require

that the grounds be well maintained and limited the type of businesses that could occupy the office building to include all things permitted under PO zoning and eliminated anything that would be offensive to the neighborhood.

- Devaluation of the surrounding homes – He found two appraisers that stated the addition of the proposed townhome project would not have an adverse effect on the nearby residences.
- Under the current PF zoning, the developer could build a church or a school without any input from the city.

He acknowledged there was neighbor discontent and was told there were petitions going around with 140 citizens signatures opposing the project. He wondered if they knew the facts. Two neighborhood meetings were held with approximately 24 residents at each meeting. He also held two open houses at the building on different days and different times of days. Three people attended each open house. He had gone door-to-door throughout the neighborhood to speak with the residents and also hung flyers on doors. He stated that 13 residents in the neighborhood would be directly impacted by the townhomes. There were other townhomes in the area that were surrounded by single family homes so his proposal was not inconsistent with the neighborhood. In an effort to work with the neighbors he reduced the number of units from six to four.

He had a discussion with several school board members about possibly selling the property to the school district. Given the odd shape, the small size, and high cost it would demand, the purchase would require more discussion and time that they could give to it. The districts interest remained low and the administration opted not to bring the question to the board.

In response to a question from Mr. Winterton, Mr. Mills stated that student housing was baching singles that attended a university. The development agreement stated that no student housing was permitted so the number of students was irrelevant. A student attending the high school would be a minor. Three singles, not attending a university, would be allowed.

Mr. Handley stated that the presentation was very thorough but wanted to clarify that a four unit development could add up to 60 to 80 car trips per day.

Chair Harding asked for clarification on the number of parking spaces per unit. Mr. Church stated there were 1.5 parking spaces per unit, in addition to the two car garages for each unit.

Mr. Winterton heard that the original intent of the property was to be used as potential parking for the office building. Mr. Church said he had heard the same thing from one of the neighbors but had no way to confirm the intent. Mr. Winterton asked if the south side of the property could be used for the office building overflow parking. Mr. Church stated the office building had 38 parking stalls. The development agreement stated that the office building use was limited to businesses that could manage with 38 stalls or less.

In response to a comment from Mr. Winterton, Mr. Church stated he was at the office building nearly every day and was not aware of the students parking on Quail Valley Drive because it was illegal. They might have parked in the neighborhood across the street and in the Timpview parking lot. The new tenant he was in discussion with only needed 10 to 12 parking spaces at all times.

Gary McGinn, Community Development Director, addressed the student housing issue. In Section 7.3 of the development agreement, it said use of the living unit would not be used for student housing. Student housing was not a defined term in the agreement. He understood that if they did not exceed the base definition of family or three singles, the city would not do anything. Unless the definition of student was defined better, the city would not enforce that requirement.

Chair Harding invited the neighborhood vice chairs to address the council.

Sharon Memmott, Edgemont Neighborhood Vice-Chair, said they were just informed about the proposed change to the General Plan. They have held two neighborhood meetings. No one at the second meeting was in favor of the project, even after he made changes in response to the neighbors' concerns. Mr. Church had made even more changes since then but had failed to contact the neighborhood representatives about those changes. The LDR zone would allow more development on the site, even with the development agreement. She understood that they could not count garages as parking spaces so there were not as many as represented by the developer. She said the restrictive covenants were recorded correctly and provided enough protection. He had a severability clause that would allow him to nullify the agreement. While the request had been made to continue this item, the neighbors would not be opposed to the council denying the request. She asked if someone were to buy two lots next to a council member, would they like it rezoned to LDR.

Ms. Memmott had a letter from Mr. Rosen, another neighborhood chair, voicing his concerns that smaller R1 areas were looked at to be rezoned as LDR. They recently saw a request similar to this in his neighborhood. The requests were out of place and not in harmony with single family neighborhoods. He requested that the council say no to the request.

Mr. Knecht stated that for a long time Provo allowed the garage and anything to the side of the house to be counted as parking. In the last 20 years it was changed to include parking on a driveway that led to legal off street parking. In this case, the garages would be considered legal off street parking.

Mr. Winterton would agree with Ms. Memmott's final statement if the development were right next to a residential home. This property was such an odd shape and it was not next to a residence. Building a single family home on the property between an office building and the school would be worse. This project made sense to him. The zoning was tied to the development agreement.

Mr. Handley asked Ms. Memmott if there was any concern about the 140 signatures and unanimous opposition. Were they opposed to the actual proposal or their idea of what the proposal could affect - specifically traffic and parking? He sensed a discrepancy with what was being presented by the developer and the neighborhood. He confirmed, through his own contacts with the school district, that they were not interested in the property.

Ms. Memmott said the biggest concerns came from the neighbors in the north Timpview area that would be affected by this development. Additionally, residents in Sherwood Hills drove down Quail Valley Drive to access the rest of Provo. It was a major collector road. The project did not add to the blind curve but it did not stop the number of people entering the road from the development. If the average speed limit was 37 mph, several people were going as high as 60 mph. Calming measures would not need to be installed by his project; they would need to be put

much further up the hill. The neighbors were under the assumption that the two properties were essentially one unit and that the vacant lot would be parking for the office building. She would rather pursue the school district option. It was much smaller and of less value than the park property that the city just sold to the school district for less than $200,000 per acre.

Bonnie Morrow, North Timpview Neighborhood Chair, asked the council if the 2050 vision had been approved by the council. Mr. Strachan said 2030 plan was consolidated with the existing general plan. The planning commission was working on another update that would take a longer term view. Ms. Morrow was told at the planning commission that they voted for approval on the project because of the 2050 vision and they were adhering to it because it fit the definition of affordable housing. She said this project did not fit the 2030 vision plan.

She said the neighborhood chairs were notified that the project had morphed into a four-plex was last Thursday, June 13 at 2:53 p.m. The neighborhood chairs started meeting and making phone calls because no one knew about it. Mr. Sewell sent out an email on Saturday that stated it was six units being proposed. This created more confusion. The agenda paperwork did not mention anything about a four or six unit project. She asked the council to continue this item out of respect for all the residents in North Timpview, Sherwood Hills, Edgemont, Riverbottoms, and Rock Canyon because they were all confused about what was being proposed.

Ms. Morrow said there was a lot of open land in her neighborhood and this would set a precedence for what could happen with future development. The council was benefitting one person's business but what was around him was not businesses. The zone around him was R1.10 single family homes. He mentioned that a condo complex was located just east of him. She emphasized that it was straight up a cliff. It was not an appropriate comparison.

She served on the planning commission. Every time a project was changed, the council kicked it back to the planning commission out of respect for the community. She asked the council to continue this item until all the neighborhood chairs and residents were up to speed on what was happening and then send it back to the planning commission for another review.

Mr. Sewell apologized for sending the incorrect number to the neighborhood. The official agenda stated a four-unit development but he could not find any documentation confirming the four units. He did not hear back from council staff before it was time to send his email so he just assumed it was a typo.

Chair Harding invited public comment.

Curt Bramble owned property in a cul-de-sac directly across the street from the proposed project. He thanked Mr. Church for the efforts he had made with the neighborhood. He was not opposed to the property being developed. He was concerned with the parking on Quail Valley. It was posted no parking because they needed a merging lane for safety. Even though the speed limit was 25 mph, people had been clocked driving 83 mph on Quail Valley. It was common for cars pulling out of the cul-de-sac to have cars driving down Quail Valley Drive slam on their brakes in order to avoid them. His wife had been hit twice at the location. The pressure on the neighborhood for parking was a concern. In the last 60 days there had been multiple incidents where his tenants had been parking on Quail Valley, in the cul-de-sac, and at Timpview High School. Parking was on both sides of the street, all the way past the blind turn when there were special events at the high school.

Mr. Bramble stated the restrictive covenant on the property used the correct address at the time it was recorded. In the agreement, it stated that the restrictions and covenants could be canceled by the city after a public hearing with notice to the neighborhood. The document clearly showed it was between the city and the developer and yet the city was saying they could not enforce the document. He was at the table when the document was drafted in 1978. The vacant lot was left PF because parking was a valid use for the zone. The document clearly stated that the property could not be used for anything other than the described uses. The neighborhood was now being told the document was not valid. Mr. Bramble reviewed the list of businesses that would be allowed in the professional office zone. Many of those businesses would create parking and traffic problems. He felt there was a way to navigate this development to accomplish what Mr. Church wanted to accomplish that may neutralize some of the concerns in the neighborhood, but they were not there yet.

Boyd Memmott, Edgemont neighborhood, felt a property owner should be able to do what they want with their property. However, it was within guidance of the laws that managed the property. He expressed concern that the existing structure did not meet the parking needs of the facility. It underscored the theme he had heard all night in that Provo had a parking problem. If the development was approved, the parking problem would continue. Address the parking problems with the existing structure first, then address the new proposal.

Susie Bramble, Provo, said they were concerned with the traffic and parking when Timpview was rebuilt. It was built for 1,800 students and the rebuild would be for 2,500 students. That would impact the neighborhood and parking. She did not think the school district was a dead end. The neighbors would like to see the land developed at some point but felt that R1.10 was fair. They could build three homes on the property. It was something that needed to be taken to the neighborhood because they did not have time to notify people, especially about dropping the proposal to four units.

Michael Simpson, Provo, lived in the Quail Valley condominiums above the applicants business and supported the development. While he did not live across the street from the development, he agreed that there were already parking and traffic concerns that needed to be addressed. Development growth was always an emotional thing. In his neighborhood, there were people that remodeled and added on to their homes. At the end of the day, it increased the home values of the neighborhood. Traffic and parking problems associated with the development were minimal compared to the high school. Cars were parked all the way up and down the side of the street when there was a football game. It was a lot larger issue than the business. He supported the proposal and encouraged the council to look for parking alternatives.

There were no more public comments.

Mr. Handley was convinced the item should be continued because the development agreement was posted so late. The spirit of the agreement was a compromise but it was important for the neighborhood chairs and residents be given time to examine the agreement. If necessary, they could send it back to the planning commission. He hoped they could find common ground. The development did not seem threatening to the property values or inappropriate for the area, given the location. McKay Jensen, with the school board, clearly stated it was not useful for parking. It was not helpful to speculate what the school district wanted or did not want. They needed to focus on the proposal itself and if the neighborhood concerns had been addressed.

Mr. Winterton appreciated the list of businesses that might be considered for the area. He was grateful that the rehab center was put on the list of businesses that would not be allowed. There might be other businesses that could be put on the list to protect the neighborhood. He felt that Mr. Church had addressed the resident's concerns. He would like to see the neighborhood address their concerns in a similar manner. He wanted concrete evidence that would help the council make a decision. He felt they were close to approving a development

Mr. Knecht agreed that the developer needed to meet with the neighborhood. If the developer was willing to state that additional parking spaces could be added for the businesses or housing if necessary, it might go a long way to meet the concerns the neighbors had about parking.

Chair Harding reminded the council that this was the first hearing for the council. Per council rule, this item could be continued.

Mr. Handley requested that both items be continued until the July 9, 2019 meeting.

Mr. Sewell agreed that the item should be continued. The applicant gave an impressive presentation and had gone to considerable effort to be a good neighbor. He was not convinced that the school district might not have use for the property once the bond was passed. He knew two school board members that had expressed an interest in keeping the option on the table. He would prefer to keep the property zoned PF until the school board made a formal statement that they did not need the property. He would be in favor of bringing back a proposal to rezone the office building as PF as well. It would not affect current use but it could send a signal that the school district could purchase both the properties.

Chair Harding felt that the applicant made a good faith effort to address the concerns of the neighbors. He hoped the three weeks would give him more time to engage with the residents. He felt that the general concept had support from the council. The residents could work with the developer to find a solution that everyone could live with. It was difficult to get mixed messages from members of the school board. He would encourage the school board to express an interest in the next three weeks. He did not feel comfortable holding something up long term to see if the school board changed their mind.

Mr. Handley did not understand why they were waiting on the school district to make a decision. If they wanted to make a claim on the property they would have done it. He felt they made it clear they were not interested because they had not made a claim on it.

17. An ordinance to amend Provo City Code to consolidate Chapter 14.30 (S-Supplementary Residential Overlay Zone) with Chapter 14.46 (A-Supplementary Residential Overlay Zone) and adopt related amendments. City-wide application. (PLOTA20190120) (5:29:25)

Motion: An implied motion to adopt the ordinance, as currently constituted, has been made by council rule.

Brian Maxfield, Provo City Planning Supervisor, presented. The proposed ordinance would consolidate the A and S overlay zones. The A overlay allowed basic accessory units in a home and the S overlay allowed accessory units oriented toward students. One of the changes would require a rental dwelling license instead of a permit for an accessory apartment. The planning commission heard this item in April and continued the meeting in order to discuss questions

raised by neighborhood chairs. Based on the comments, amendments were made and presented to the planning commission again. The planning commission was in favor with a couple of requests. The first was a request for council to look at parking requirements and the second was to have test cases on the rental dwelling license to determine what the licensing process would entail.

In response to a comment from Mr. Harding, Mr. Maxfield stated the S overlay zone allowed up to four singles but the consolidation would reduce that number to three. It would still allow up to four singles if the owner obtained a conditional use permit.

Mr. Knecht said that decision came about because Community Development wanted to equalize the parking requirements to one space per occupant. The underlying rule in all the parking requirements was to provide parking for all occupants or rent to people that did not have cars.

Chair Harding invited public comment.

Glen Rollins said he owned an acre of property in the Grandview area. He wanted to build a detached garage with an apartment above it but was told it was not allowed. He could meet all parking requirements but was in limbo because he could not have an accessory apartment that was not attached to the home. He was told he could have the property rezoned to a zone that would allow for a detached garage with a unit above it, and even another building in the future. Mr. Maxfield said that they were looking at a possible PRO zone that may address his needs.

Sharon Memmott, Edgemont, anticipated that this might extend to her neighborhood someday. She asked if the current setbacks would apply if it were a detached dwelling. She also understood there would not be any setbacks for the back of the property. She wondered how that would affect safety or city needs. The documents stated that a detached dwelling was allowed but it was required to have a connecting door. Mr. Maxfield replied that the detached building would have to be at least six feet from the home with a ten-foot setback off the property line. The connecting doorway was only for attached units.

Paul Evans, Provo, thanked the council for the ongoing discussion about the best way to consolidate existing code. He hoped they would continue this item until the citizens had answers to a number of questions. In a single family home you could have two people unrelated people living with you. In the last three years, BYU off campus housing had stopped approving any single student approved BYU housing in the surrounding homes. The council could set the standard as one accessory apartment with two unrelated individuals or a family.

David Acheson, Wasatch Neighborhood Chair, stated the S overlay was a good thing. The single-family residential R1 zone was established to provide areas for and promote a family life environment. It was characterized by landscaped lots and open spaces with lawns, shrubs, and orchards. The S and A overlays fell under that R1 umbrella. As ordinances changed and exceptions were made, they became the rules and the city lost the vision of what the ordinance intended. He did not support the code amendment as it was currently presented. Making formatting and grammatical changes was not the reason to pass legislation. The staff report stated this amendment would provide additional and affordable housing options for areas in the city that allowed accessory dwelling unit. It provided additional housing option but the city could not provide unlimited affordable housing. In the S overlay, an accessory apartment could be located in a basement or a second level above ground. Having the homeowner live in the main part of the home was key to promoting family life in neighborhoods. He had never seen

this ordinance enforced. There were four homes in his neighborhood where student aged residents purchased a home, lived in the basement, and rented out the main floor to four students or young transient families. The proposed ordinance would not address the fundamental issues of keeping single family residential homes to preserve family life.

Councilors said they would appreciate Mr. Acheson submitting his concerns to them in writing.

There were no more public comments.

Mr. Stewart asked why the owner did not have to live in the main part of the home. Mr. Maxfield understood that the change was made to allow for elderly or senior citizens that did not need to live in the main part of the home but wanted to stay in the neighborhood. They could live in the smaller portion of the home and rent the larger part to a family.

Mr. Knecht said that in areas outside the A or S overlay, a resident 65 or older could rent out part of the house and it did not specify if they had to be in the bigger or smaller portion. The committee had not anticipated having a young single person purchase a property and turning it into a rental on the main floor. In the A overlay, the owner could live in either part of the home. Only the S overlay required the owner to live in the main part of the home. It sounded like they needed to revisit that item.

Chair Harding wanted more discussion about the change, which allowed an accessory apartment to be a detached dwelling. For the areas with an A and S overlay, this change would have a bigger impact than the rental dwelling disclosure and acknowledgement requirements.

Mr. Handley said this change affected the Wasatch Neighborhood pretty directly. There was a lot of concern about this issue in that neighborhood. He was in favor of continuing indefinitely until it could be vetted more carefully.

Motion: Councilor Handley made a motion to continue this item to a date to be determined. The motion was seconded by Councilor Stewart.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

18. Ordinance 2019-33 amending the Zone Map classification of approximately 2.1 acres generally located at 1320 S State St, from Residential (R1.10) to a new Entry Level Housing (ELH) Project Redevelopment Zone. Spring Creek Neighborhood. (PLRZ20190100) (5:07:43)

Motion: An implied motion to adopt the Ordinance 2019-33, as currently constituted, has been made by council rule.

Mr. Mills stated the applicant was requesting a zone change to a PRO zone that was already in Provo Code 14.50.30. The project site was at 1320 South State. North of the property was a townhome development under construction and to the south was the Provo School District bus barn. Directly across the state street was the old drive-in site. The proposed PRO zone was consistent with the future land use of medium density residential. The applicant would construct 64 two-bedroom condominium units with a total of 130 parking stalls at a ratio of 2.03 per unit. Staff recommended approval of the zone change with specific conditions relating to the number

of parking stalls and the number of units. The applicant proffered a development agreement that limited the number of units to 64 and guaranteed 130 parking stalls. The planning commission recommended approval of the proposal.

Chair Harding invited Bruce Dickerson, the developer, to address the council. Mr. Dickerson said the project was FHA approved housing. FHA had not approved a condominium project in Utah County for the past 15 years. Part of the approval process required the developer to have a minimum of 50 percent owner-occupied units. They had raised that standard to 60 percent. Of the 250 units he had developed and sold in the past five years, only 16 of the units had been resold. He said that young families had purchased 80 percent of the owner-occupied units and senior citizens owned 10-15 percent. Both Provo City (through the development agreement) and the homeowners association would enforce the 60 percent owner-occupied unit requirement.

The FHA only allowed two adults per unit. Every two years, the developer had to certify that FHA requirements were being met. Most of the young families that qualified for FHA funding could not afford two cars so parking had never been a problem in any of his current developments.

Mr. Dickerson said a person could qualify for FHA financing if they made $15 to $18 per hour and paid a 3.5 percent down payment. Provo City had programs that offered interest free grants for down payments, as long as they lived in the home for ten years. If sold, the grant would need to be paid back to the city and the funds were used for other grants. FHA approval opened the door to all the financing tools such as Freddie Mac, Fannie Mae, state housing, etc. Kiddie condominium loans were also allowed where the parents (if qualified) bought the condominium with the child. The child could get into the condominium for 3.5 percent down.

Brady Deucher, the applicant, stated that there were only 33 homes available in Utah County that were under $200,000. Of those 33 homes, only eight qualified for FHA financing, with only one in Provo. They were building 64 units and the demand was so high they had not put them on the Multiple Listing Service (MLS).

Chair Harding invited Mary Millar, Springcreek Neighborhood Chair, to address the council. She said this as a great project, the neighborhood supported it, and it aligned with the General Plan and the Southeast Area Plan. This was a zone that was already on the books and worked for this project.

Chair Harding invited public comment.

Lisa, Provo, said she lived in the neighborhood and felt this would be a great project for the neighborhood. It would give young families the opportunity to live and grow in Provo.

Shelley Haslem, northwest Provo, had a newlywed daughter and she wanted the project to be approved so her daughter could buy one of the units. It was great to have this type of housing in Provo.

There were no more public comments.

Mr. Knecht was happy to see a neighborhood embracing a project. It was hard to find something not to like about this and that was s refreshing. This project was only made possible because the

previous proposal on this property, for an HDR project, was withdrawn before it was presented to the council. He hoped the developer found other properties in Provo.

Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren, and Winterton in favor.

19. ***CONTINUED* The Community Development Department requests approval of the 2019 Moderate Income Housing Plan, which is an update to the existing plan. City-wide application. PLGPA20190194**

20. ***WITHDRAWN* Julie Smith requests the annexation (Peay Annexation) of 13.45 acres of property into the incorporated limits of Provo City, located at approximately 5400 N Canyon Road. North Timpview and Riverbottoms neighborhoods. PLANEX20180355**

Adjourn

The meeting was adjourned at 11:30 p.m. by unanimous consent.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: EVANDERWERKEN
Department: Council
Requested Meeting Date: 07-23-2019

SUBJECT: A resolution consenting to the appointment of individuals to the Transportation and Mobility Advisory Committee. (19-003)

RECOMMENDATION: Appoint Stephen Mongie and James Hamula to the Transportation and Mobility Advisory Committee.

BACKGROUND: Mayor Kaufusi has recommended that Stephen Mongie and James Hamula serve on the Transportation and Mobility Advisory Committee. Their appointments are subject to the advice and consent of the Municipal Council and have been submitted to the Council for review.

FISCAL IMPACT: N/A

PRESENTER'S NAME: Mayor Kaufusi

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-003

RESOLUTION 2019-

A RESOLUTION CONSENTING TO THE APPOINTMENT OF INDIVIDUALS TO THE TRANSPORTATION AND MOBILITY ADVISORY COMMITTEE. (19-003)

WHEREAS, the Mayor, acting pursuant to her statutory authority, has recommended that individuals be appointed to serve on various boards and commissions as detailed below; and,

WHEREAS, on July 23, 2019, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the Mayor's recommendation and facts presented to the Municipal Council, the Council (i) consents to the board appointments set forth below and (ii) finds such appointments will reasonably further the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah, as follows:

PART I:

1. Pursuant to Provo City Code Section 14.04B.010, the Municipal Council consents to the appointment of the individuals listed below to serve on the Transportation and Mobility Advisory Committee (TMAC), in the designated seat, for the prescribed term:

Appointee's Name	Board	Seat	Term Expiration Date
Stephen Mongie	TMAC	District 1	June 30, 2022
James Hamula	TMAC	At-large	June 30, 2021

2. Following said appointments, there are currently 7 members and 2 vacant seats (alternates) on the Transportation and Mobility Advisory Committee, as shown on the attached Exhibit A.

PART II:

This resolution and the board and commission appointments indicated herein shall take effect immediately.

END OF RESOLUTION.

EXHIBIT A
TRANSPORTATION AND MOBILITY ADVISORY COMMITTEE APPOINTMENTS

Name	Seat	Term Expiration Date	Appointing Resolution
Stephen Mongie	District 1	June 30, 2022	Attached
Joy McMurray	District 2	June 30, 2022	2019-38
David Arnold	District 3	June 30, 2022	2019-38
Mitsuru Saito	Representative of college-level transportation academia District 4	June 30, 2021	2018-27
Clancy Black	District 5	June 30, 2020	2018-27
Deborah Jensen	Planning Commission member	June 30, 2020	2018-27
James Hamula	At large	June 30, 2021	Attached
Vacant	Alternate		
Vacant	Alternate		

Planning Commission Staff Report
Ordinance Amendment
Hearing Date: July 10, 2019

ITEM 3* The Provo City Community Development Department requests Code Amendments to Section 14.34.287 regarding the design standards for buildings in the Campus Mixed Use Zone. City-wide application. Josh Yost (801) 852-6408 PLOTA20190025

Applicant: Provo Community Development Staff Coordinator: Josh Yost *Council Action Required: Yes **ALTERNATIVE ACTIONS** 1. **Recommend Continuance** of the proposed ordinance amendment. *This would be a change from the Staff recommendation; the Planning Commission should state new findings.* 2. **Recommend Denial** of the proposed ordinance amendment. *This would be a change from the Staff recommendation; the Planning Commission should state new findings.*	Relevant History: Community Development has identified deficiencies in the Campus Mixed Use Zone and other multi-family zones pertaining to design regulation. The zone currently only requires one door on each street frontage, has no habitable first floor requirement or any regulation of windows and visual permeability at the first floor. Staff is studying amendments to the zone to provide sufficient regulation of these design elements. Neighborhood Issues: None noted. Staff Recommendation: That the Planning Commission recommend to the Municipal Council approval of the proposed amendments to Section 14.34.287 of the Provo City Code.

OVERVIEW

Community Development has identified deficiencies in the Campus Mixed Use Zone pertaining to design regulation. The zone currently only requires one door on each street frontage, has no habitable first floor requirement or any regulation of windows and visual permeability at the first floor. Staff is studying amendments to the zone to provide sufficient regulation of these design elements. Staff has also integrated previously proposed amendments to the materials standards into these proposed amendments. The amendments under consideration include the following.

- A minimum habitable first floor depth as measured from the street facing façade. In the downtown this is 30’.
- A minimum number of pedestrian building entrances. For residential in the downtown an exterior entrance is required for each street facing unit.
- A minimum requirement for first floor windows and openings.

- Any commercial included in the site, whether required or voluntary, to be sited along a street frontage.
- Site design regulations to ensure parking is located interior to a building or site and that vehicle access is consolidated.
- Additional articulation of building material controls.

STAFF ANALYSIS

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of ordinance text amendments:

   Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:

   (a) Public purpose for the amendment in question.

   The public purpose for the amendment is to ensure that development within the city's multi-family zones adds value to the city and the public realm through proper integration into the fabric of the city in terms of both spatial arrangement and building design. New development in these zones should not create isolated pockets of housing whether introverted groupings of townhomes, or apartment complexes. Housing should integrate with the city beyond the ephemeral boundaries of a project.

   (b) Confirmation that the public purpose is best served by the amendment in question.

   Staff has worked to develop the proposed amendments to accomplish the stated purpose effectively and efficiently by working with the framework of the existing Residential Design Standards. The amendments preserve the positive elements of the existing standards while reinforcing them to ensure the outcomes stated above.

   (c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

   Applicable Goals include the following

   3.4.1.2 Maintain and encourage good quality, sustainable housing and infill developments.

3.4.1.7 Offer a range of housing types within neighborhoods that meets the changing needs of an aging population and facilitate long-term residency.

3.4.5 Provo City will encourage the development of various types of housing inventory to increase the health of existing neighborhoods while providing sufficient accommodations for people who want to work and live in Provo

3.4.5.2 Provo City will encourage infill developments and redevelopment of multifamily and denser housing inventory options in areas surrounding retail trade area to help increase demographic figures and provide a larger consumer base to current and future retailers.

3.4.5.7 Require moderate and high-density housing developments to be attractive, functional, desirable, and connected.

The General Plan offers many policies, goals, and objectives focused on creating diverse, high quality housing stock that will attract owners and other long term residents. The proposed amendments are compatible with and will hasten the attainment of these aims. Owners and other long term residents will be more likely to invest and reside for the long term if they live in places that are well integrated with their surroundings and provide high quality site and building design.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Not applicable.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

Staff has found no potential for the proposed amendments to hinder or obstruct attainment of the articulated policies.

(f) Adverse impacts on adjacent land owners.

The proposed amendments reinforce the existing elements of the standards that require compatibility with surrounding development, especially in the LDR and MDR zones.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

Not applicable.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

Not applicable.

CONCLUSIONS

These types of regulations have ensured a base level of appropriate urban design in the development of new buildings in the downtown area and staff believes they will result in new projects in the CMU and other multi-family zones that properly interact with the public realm and that will increase the vibrancy of this key area.

STAFF RECOMMENDATION

That the Planning Commission recommend to the Municipal Council approval of the proposed amendments to Section 14.34.287 of the Provo City Code.

…

3. ~~Yard~~ Site Design Standards.
    a. Front Yards.
        i. There shall be a logical hard surface pedestrian connection between the street and the front entry.
        ii. The front yard shall be predominantly landscaped with a combination of turf and plants. Hard surfaces for driveways and parking shall be minimized and shall not exceed ordinance requirements.
        iii. Utility boxes shall not be located in the front or street side yards or park strips unless the applicant demonstrates that there is no other practical location for utility boxes on the site.
        iv. Mediate between public and private space on residential frontages. This requirement may be met with the following strategies.
            1. Use foundation plantings to provide separation between residential units and the sidewalk.
            2. Design porches, stoops and railings to provide intermediate semi-private spaces.
            3. Employ elevation changes to delineate the progression from public space through semi-private space into interior private space.
    b. Fences.
        i. Fences shall complement the architectural character of the project.
        ii. Chain link fences shall be prohibited in front yards.
        iii. Fencing shall conform to Section 14.34.500, Provo City Code.
    c. Building Location.
        i. New structures shall be sited consistently with the existing front setbacks of adjoining properties to maintain neighborhood compatibility, with the exception of projects that are zoned High Density Residential (HDR), Campus High Density Residential (CHDR), or Campus Mixed Use (CMU), where the zone permits lesser setbacks than the existing housing stock.
        ii. Frontage
            1. A building's front elevation is the elevation whereon the primary or common entrance is located.
            2. Buildings shall front on a street, open space, or pedestrian way.
            3. Buildings shall not front an interior property boundary or parking lot.
            ~~1.~~4. In any development consisting of (5) or more townhomes each townhome shall front a street, open space or pedestrian way.
        ~~ii.~~iii. The majority of new buildings in multifamily developments shall be sited along the block face rather than the interior of the block.

1. Interior lot development should comprise no more than twenty-five percent (25%) of a project's area.

d. Buildings, including parking structures, shall be designed and located in a manner that allows planting and growth of mature trees in the front and side yards.

4. Building Facades.

a. Ground Floor Treatment

i. Commercial Ground Floors in the Campus Mixed Use Zone

1. Design ground floor commercial space for retail or other active uses, orienting tenant spaces to the street and maximizing storefronts and entries along the sidewalks to sustain street level interest and promote pedestrian traffic
2. Wall openings, such as storefronts, windows and doors, shall comprise at least 60% of a building's street level façade measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor.
3. Open-wall storefronts are encouraged.

ii. Ground floors in all applicable zones.

1. Excepting townhomes, a minimum habitable first floor depth of 30' as measured from the street facing façade is required.
2. Residential units with individual entries shall include windows on the ground floor that look out onto the street, with wall openings comprising at least 30% of the street level façade, measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor..
3. Clear glass for wall openings, i.e., doors and windows, shall be used along all street-level façades for maximum transparency. Tinted, mirrored or opaque glazing is not permitted for any required wall opening along street level façades
4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.

b. Pedestrian Building Entrances

i. Pedestrian building entrances shall

1. meet the spatial requirements set forth in Table 14.34.295-1 Pedestrian Building Entrance (PBE) Requirements;
2. contain a door providing direct pedestrian access into a building;

3. directly access an interior and enclosed commercial tenant space, public lobby, or residential unit;
4. be directly accessible from and directly adjacent to the sidewalk; and
5. prevent doors from swinging into the public right-of-way or beyond the front façade line of the building when opened.

ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors to exterior courtyards shall not qualify as pedestrian building entrances.

~~a. All structures shall have at least one (1) primary unit entry that faces the street. Multifamily residential uses on corner lots shall have at least one (1) primary entry along each street frontage.~~

~~b. Additional entrances may be located on side or rear facades.~~

~~i.~~iii. The primary entrance of a multifamily structure shall be clearly defined by use of a raised porch or other similar entry feature.

1. The front porch or entry feature shall be oriented to the street.
2. The minimum size of the front porch or entry feature shall be functional rather than merely decorative.
3. The porch floor height shall not exceed thirty (30) inches above the elevation of the top of the street curb.

c. Doors, windows and balconies of new housing should be located to respect the privacy of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements

Frontage Type	Commercial	Residential
PBE's Required for Each Street-facing Façade	1 per 25 feet (1 min.)	1 per street-fronting ground floor unit
Maximum Spacing	38 feet	38 feet

5. Driveways and Parking.

a. New developments shall provide the minimum amount of driveway access and width required by code as a means of preserving front yard space.

i. Driveway placement ~~should~~ shall be toward the side property line to avoid dividing a building by a single, central driveway to subterranean parking.

~~i.~~ii. Driveways shall be consolidated where adjacent parcels or developments can be served by a single driveway. Cross access easements shall guarantee rights of access across the shared driveway for both parcels.

~~ii.~~iii. Alley access for properties ~~should~~ shall be encouraged to reduce the impact of parking and traffic circulation on the front of the property.

~~iii.~~iv. Parking and interior access ~~should~~ shall be designed to minimize the number of curb cuts.

b. Parking shall not be placed in the front yard and should be minimized in the ~~rear yard~~side yard, with the exception of one- and two-family dwellings when the driveway leads to a garage or carport as defined in Chapter 14.37, Provo City Code.
    i. Parking shall not be allowed between a primary building and a public street.
    ii. Surface parking areas in rear yards shall be screened from neighboring properties with appropriate plant materials and/or fencing.
    iii. Entrances to ~~underground~~ structured parking shall be provided from driveways along the sides of properties, not from a front-facing ~~underground~~ garage entry~~, unless the applicant demonstrates that no alternative is feasible~~.
    ~~iii.~~iv. Parking shall be screened from any adjacent public way, street, open space or pedestrian way.
c. Except for the minimum ground-level frontage required for access to parking and loading, no parking or loading shall be visible on the ground floor of any building façade that faces a public right-of-way. ~~It is recognized that providing parking within the primary building may create a conflict with the desire for pedestrian connectivity at street level. An alternate design that includes parking on the main level of the building and on a facade that faces a public street may be approved by the Design Review Committee, subject to the following standards:~~
    ~~i. There shall be a significant, pedestrian entrance to the building at street level to maintain a pedestrian connection to the street;~~
    ~~ii. A minimum of thirty percent (30%) of the primary street level building facade must be habitable floor space such as living space, rental office or amenity space;~~
    ~~iii. The parking structure shall be treated with materials, windows, building relief and rhythm that mask the appearance of the parking structure. The parking structure shall be appear to be part of the residential or commercial building; and~~
    ~~iv. The Design Review Committee should consider aesthetic transitions at facade corners when a side elevation is viewable from a public street.~~

6. Landscape Design.
    a. Property owners shall comply with Section 15.20.030, Provo City Code, for the protection of existing vegetation.
    b. New landscaping shall be complementary to existing neighborhood vegetation.
        i. The species, size and placement of new landscaping shall be considered in the design review process.
    c. Landscaping shall be used to reduce the impact of larger buildings on neighboring properties.
    d. Buildings and driveway lighting should not extend beyond the boundaries of the subject property, as per Chapter 15.21, Provo City Code.
7. Building Form, Mass and Scale (LDR Zone Only).

i. Building form, mass and scale should be appropriate for the zone in which the building is located and consistent with the established neighborhood character.
ii. Architectural elements such as roof form, windows, doors, etc., should be consistent with the form and character of the existing housing in the area.
iii. A porch or similar element, which defines the front entrance, shall be provided.
iv. An attached garage shall not be the dominant design feature of the front elevation.
v. Sloping roofs such as gable or hip design should be used as the primary roof form.
vi. Historic buildings are subject to Title 16, Provo City Code.

b. Building additions shall not strongly alter the character of an original building.
i. Windows, materials and doors should be compatible with those of the original building.
ii. Roof forms shall be compatible with the existing structure.

8. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).

a. The facade of any multiple-family, ~~or~~ apartment, or mixed use structure shall: ~~have sufficient relief and rhythm to give visual interest and appeal.~~
i. Be articulated in the horizontal plane to provide visual interest and enrich the pedestrian experience, while contributing to the quality and definition of the street wall.
ii. Be vertically articulated to differentiate the ground floor façade, and feature high quality materials that add human scale, texture and variety at the pedestrian level.
iii. Provide an identifiable break between the building's ground floors and upper floors. This break may include a change in material, horizontal dividing element, a change in fenestration pattern or similar means.
iv. Be vertically articulated at the street wall façade, establishing different treatment for the building's base, middle and top. Use balconies, fenestration, shading devices, or other elements to create an interesting pattern of projections and recesses.
v. Avoid extensive blank walls that detract from the experience and appearance of an active streetscape.
vi. Provide well-marked entrances to cue access and use. Enhance all public entrances to a building or use through compatible architectural or graphic treatment.
~~i.~~

~~b. One (1) continuous roof-line shall be avoided. Variation in the roof-line, or roof height, is encouraged.~~

b. Exterior stairways, corridors or landings shall not be located on the front or street side elevation of the building

c. Structures located in the CHDR and CMU zones that are greater than six ~~four~~ (6~~4~~) stories in height shall step back fifteen (15) feet from the first floor elevation for all stories above the fourth floor on all elevations that front a public street unless the applicant can demonstrate that there is sufficient variation and articulation in the building planes to give visual interest and appeal.

d. Building additions shall not strongly alter the character of the original building.

i. Windows, materials and doors shall be compatible with those of the original building.

ii. Roof forms shall be compatible with the existing structure.

…

10. Building Materials

a. ~~The primary exterior finish material of all structures shall not consist of vinyl, aluminum or metal siding (including sheet or corrugated metal), plywood, particle board, or other products not intended as an architectural finish product.~~

i. ~~Stucco may be considered when it is detailed with wood trim around windows and doors. A shadow line around windows should be created.~~

ii. ~~A range of secondary materials including trim may be used as long as they remain secondary.~~

iii. ~~Wood, slate, tiles and high-quality composition shingles and shakes shall be used for roofing materials.~~

a. Intent. The intent of the facade materials standards of this section is to:

iv. Provide minimum material standards to ensure use of well-tested, high quality, durable surfaces, while permitting a wider range of materials for details;

v. Encourage a high level of detail from smaller scaled, less monolithic materials in order to relate facades to pedestrians, especially at the ground level.

b. Major Materials. A minimum of eighty percent (80%) of each facade, not including window and door areas, shall be composed of major materials, as specified in this section.

i. Allowed Major Materials. The following are allowed major materials.

a. Stone.

b. Brick.

c. Wood.

d. Architectural metal panel systems.

e. Fiber Cement board.

f. Glass curtain wall.

g. Terra cotta decorative units, tiles or panels.

h. Architectural cast stone including glass fiber reinforced concrete.

ii. Prohibited Major Materials. The following materials are prohibited as major materials, unless otherwise approved under the standards of this Section:

a. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements.
b. Synthetic stucco or elastomeric finishes on stucco.
c. Unfinished or untreated wood.
d. Glass block.
e. Vinyl or aluminum siding.
f. Plastic, including high-density polyethylene, polyvinyl chloride (PVC), and polycarbonate, panels.
g. Fiberglass and acrylic panels.

iii. Limited Use Major Materials. The following materials are prohibited as a major material except consistent with the following:

a. Economy Bricks. Brick types larger than three inches in height are allowed as major materials on rear, alley, and rail corridor facades. In such instances, corner bricks shall be used to give the appearance of a full brick façade.

c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent areas that combine to twenty percent or less of the total surface of each facade.

i. Major Materials. All allowed major materials may serve as minor materials.

ii. Allowed Minor Materials. The following are allowed minor materials:

a. Metal for beams, lintels, trim, exposed structure, and other ornamentation
b. Split-faced, burnished, glazed, or honed concrete masonry units or block cast stone concrete elements.
c. Vinyl for window trim.
d. Cement-Based Stucco.
e. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements.
f. Synthetic stucco.

d. Other Materials with Approval. Materials that are not listed in this section for its proposed application as allowed major materials, limited use materials, or allowed minor materials, may not be installed on any facade unless approved by the reviewing authority pursuant to this subsection (d). The reviewing authority may approve facade materials that are not listed in this section for its proposed application if the applicant demonstrates the material in its proposed application meets the intent of the facade material standards described in subsection (a) of this section. Samples and examples of successful high quality local installation shall be provided by the applicant.

ORDINANCE 2019-.

AN ORDINANCE TO AMEND PROVO CITY CODE REGARDING DESIGN STANDARDS IN VARIOUS HIGHER DENSITY RESIDENTIAL AND CAMPUS MIXED USE ZONES. CITY-WIDE IMPACT. (PLOTA20190025)

WHEREAS, it is proposed to amend Provo City Code Section 14.34.287 (Residential Design Standards) to change the design elements within the Low Density Residential, Medium Density Residential, High Density Residential, Campus High Density Residential, and Campus Mixed Use zones; and

WHEREAS, Community Development has identified design standard deficiencies in these zones, including that the design standards currently only require one door on each street frontage and have no habitable first floor requirement or regulation of windows and visual permeability at the first floor; and

WHEREAS, the proposed amendments to these zones are intended to correct these deficiencies and clarify required design elements; and

WHEREAS, on July 10, 2019, the Planning Commission held a duly noticed public meeting to consider the proposed amendments and after such meeting the Planning Commission recommended approval to the Municipal Council by a vote of 7:0 with the following conditions:

1. Amend Table 14.34.287-1 under the Commercial category to read "1 per 30 feet (1 min.)" for PBE's Required for Each Street-facing Façade and "40 feet" for Maximum Spacing.

2. Insert the following paragraph into 14.34.287(2):
"All of the following requirements shall apply, unless the Planning Commission approves an alternative design arrangement equal to or better than the requirements set forth in this section. The Planning Commission shall make specific findings justifying the alternate design arrangement;" and

WHEREAS, on July 23, 2019, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the Planning Commission's recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code Section 14.34.287 (Residential Design Standards) should be amended as proposed, and (ii) the proposed

amendment reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

NOW THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

Provo City Code Section 14.34.287 (Residential Design Standards) is hereby amended as set forth in Exhibit A.

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

EXHIBIT A

14.34.287 Residential Design Standards.

…

2. Applicability. The design standards set forth in this Section shall apply to all new residential buildings and uses located in the Low Density Residential, Medium Density Residential, High Density Residential, Campus High Density Residential and Campus Mixed Use zones.
    a. In approving a project plan, the approving authority may impose reasonable conditions consistent with the purpose and intent of this Section. The requirements for this Section shall apply in addition to other applicable requirements of this Title. This Section shall be interpreted to supersede other requirements of the Provo City Code which may impose more restrictive requirements.
    b. All of the requirements of this Section shall apply, unless the Planning Commission approves an alternative design arrangement equal to or better than the requirements set forth in this section. The Planning Commission shall make specific findings justifying the alternate design arrangement.
3. ~~Yard~~ Site Design Standards.
    a. Front Yards.
        i. There shall be a logical hard surface pedestrian connection between the street and the front entry.
        ii. The front yard shall be predominantly landscaped with a combination of turf and plants. Hard surfaces for driveways and parking shall be minimized and shall not exceed ordinance requirements.
        iii. Utility boxes shall not be located in the front or street side yards or park strips unless the applicant demonstrates that there is no other practical location for utility boxes on the site.
        iv. Front yards shall provide transitions between the public way and private space on residential frontages. This requirement may be met with the following strategies.
            1. Use of foundation plantings to provide separation between residential units and the sidewalk.
            2. Use of porches, stoops and railings to provide intermediate semi-private spaces.
            3. Employment of elevation changes to delineate the progression from public space through exterior semi-private space into interior private space.
    b. Fences.
        i. Fences shall complement the architectural character of the project.
        ii. Chain link fences shall be prohibited in front yards.
        iii. Fencing shall conform to Section 14.34.500, Provo City Code.
    ~~4.~~c. Building Location.

~~a.~~i. New structures shall be sited consistently with the existing front setbacks of adjoining properties to maintain neighborhood compatibility, with the exception of projects that are zoned High Density Residential (HDR), Campus High Density Residential (CHDR), or Campus Mixed Use (CMU), where the zone permits lesser setbacks than the existing housing stock.

ii. Frontage

1. A building's front elevation is the elevation whereon the primary or common entrance is located.
2. Buildings shall front on a street, open space, or pedestrian way.
3. Buildings shall not front an interior property boundary or parking lot.
4. In any development consisting of (6) or more townhomes, each townhome shall front a street, open space or pedestrian way.

~~b~~iii. The majority of new buildings in multifamily developments shall be sited along the block face rather than the interior of the block.

~~1. Interior lot development should comprise no more than twenty-five percent (25%) of a project's area.~~

~~c~~d. Buildings, including parking structures, shall be designed and located in a manner that allows planting and growth of mature trees in the front and side yards.

~~5~~4. Building Facades.

a. Ground Floor Treatment

i. Commercial Ground Floors in the Campus Mixed Use Zone

1. Ground floor commercial space shall be designed for retail or other active uses, orienting tenant spaces to the street and maximizing storefronts and entries along the sidewalks to sustain street level interest and promote pedestrian traffic
2. Wall openings, such as storefronts, windows and doors, shall comprise at least 60% of a building's street level façade measured as a percentage of façade area between the ground plane and the finished floor elevation of the second floor.
3. Open-wall storefronts are encouraged.

ii. Ground floors in all applicable zones.

1. Excepting townhomes, a minimum habitable first floor depth of 30' as measured from the street facing façade is required.
2. Residential units with individual entries shall include windows on the ground floor that look out onto the street, with wall openings comprising at least 30% of the street level façade, measured as a percentage of façade area between the ground plane and the finished floor elevation of the second floor.
3. Clear glass for wall openings, i.e., doors and windows, shall be used along all street-level façades for maximum transparency. Tinted, mirrored or opaque glazing is not permitted for any required wall opening along street level façades.

4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.

b. Pedestrian Building Entrances

i. Pedestrian building entrances shall

1. meet the spatial requirements set forth in Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements;
2. contain a door providing direct pedestrian access into a building;
3. directly access an interior and enclosed commercial tenant space, public lobby, or residential unit;
4. be directly accessible from and directly adjacent to the sidewalk; and
5. prevent doors from swinging into the public right-of-way or beyond the front façade line of the building when opened.

ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors to exterior courtyards shall not qualify as pedestrian building entrances.

~~a. All structures shall have at least one (1) primary unit entry that faces the street. Multifamily residential uses on corner lots shall have at least one (1) primary entry along each street frontage.~~

~~b. Additional entrances may be located on side or rear facades.~~

c. The primary entrance of a multifamily structure shall be clearly defined by use of a raised porch or other similar entry feature.

i The front porch or entry feature shall be oriented to the street.

ii. The minimum size of the front porch or entry feature shall be functional rather than merely decorative.

iii. The porch floor height shall not exceed thirty (30) inches above the elevation of the top of the street curb.

d. Doors, windows and balconies of new housing should be located to respect the privacy of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements

Frontage Type	Commercial	Residential
PBE's Required for Each Street-facing Façade	1 per 30 feet (1 min.)	1 per street-fronting ground floor unit
Maximum Spacing	40 feet	38 feet

~~6~~5. Driveways and Parking.

a. New developments shall provide the minimum amount of driveway access and width required by code as a means of preserving front yard space.
    i. Driveway placement ~~should~~ shall be toward the side property line to avoid dividing a building by a single, central driveway to subterranean parking.
    ii. Driveways shall be consolidated where adjacent parcels or developments can be served by a single driveway. Cross access easements shall guarantee rights of access across the shared driveway for both parcels.
    ~~ii~~iii. Alley access for properties ~~should~~ shall be encouraged to reduce the impact of parking and traffic circulation on the front of the property.
    ~~iii~~iv. Parking and interior access ~~should~~ shall be designed to minimize the number of curb cuts.
b. Parking shall not be placed in the front yard and should be minimized in the ~~rear yard~~ side yard, with the exception of one- and two-family dwellings when the driveway leads to a garage or carport as defined in Chapter 14.37, Provo City Code.
    i. Parking shall not be allowed between a primary building and a public street.
    ii. Surface parking areas in rear yards shall be screened from neighboring properties with appropriate plant materials and/or fencing.
    iii. Entrances to ~~underground~~ structured parking shall be provided from driveways along the sides of properties, not from a front-facing ~~underground~~ garage entry~~, unless the applicant demonstrates that no alternative is feasible~~.
    iv. Parking shall be screened from any adjacent public way, street, open space, or pedestrian way.
        ~~a.~~ Except for the minimum ground-level frontage required for access to parking and loading, no parking or loading shall be visible on the ground floor of any building façade that faces a public right-of-way. ~~It is recognized that providing parking within the primary building may create a conflict with the desire for pedestrian connectivity at street level. An alternate design that includes parking on the main level of the building and on a facade that faces a public street may be approved by the Design Review Committee, subject to the following standards:~~
    ~~i. There shall be a significant, pedestrian entrance to the building at street level to maintain a pedestrian connection to the street;~~
    ~~ii. A minimum of thirty percent (30%) of the primary street level building facade must be habitable floor space such as living space, rental office or amenity space;~~
    ~~iii. The parking structure shall be treated with materials, windows, building relief and rhythm that mask the appearance of the parking structure. The parking structure shall be appear to be part of the residential or commercial building; and~~
    ~~iv. The Design Review Committee should consider aesthetic transitions at facade corners when a side elevation is viewable from a public street.~~

~~7~~6. Landscape Design.
a. Property owners shall comply with Section 15.20.030, Provo City Code, for the protection of existing vegetation.
b. New landscaping shall be complementary to existing neighborhood vegetation.

i. The species, size and placement of new landscaping shall be considered in the design review process.

c. Landscaping shall be used to reduce the impact of larger buildings on neighboring properties.

d. Buildings and driveway lighting should not extend beyond the boundaries of the subject property, as per Chapter 15.21, Provo City Code.

87. Building Form, Mass and Scale (LDR Zone Only).

a. Building form, mass and scale should be appropriate for the zone in which the building is located and consistent with the established neighborhood character.

i. Architectural elements such as roof form, windows, doors, etc., should be consistent with the form and character of the existing housing in the area.

ii. A porch or similar element, which defines the front entrance, shall be provided.

iii. An attached garage shall not be the dominant design feature of the front elevation.

iv. Sloping roofs such as gable or hip design should be used as the primary roof form.

v. Historic buildings are subject to Title 16, Provo City Code.

b. Building additions shall not strongly alter the character of an original building.

i. Windows, materials and doors should be compatible with those of the original building.

ii. Roof forms shall be compatible with the existing structure.

98. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).

a. The facade of any multiple-family, ~~or~~ apartment, or mixed use structure shall: ~~have sufficient relief and rhythm to give visual interest and appeal.~~

i. be articulated in the horizontal plane to provide visual interest and enrich the pedestrian experience, while contributing to the quality and definition of the street wall;

ii. be vertically articulated to differentiate the ground floor façade, and feature high quality materials that add human scale, texture and variety at the pedestrian level;

iii. provide an identifiable break between the building's ground floors and upper floors. This break may be accomplished by a change in material, a horizontal dividing element, a change in fenestration pattern, or similar means;

iv. be vertically articulated at the street wall façade, establishing different treatment for the building's base, middle and top. Balconies, fenestration, shading devices, or other elements shall be used to create an interesting pattern of projections and recesses;

v. avoid extensive blank walls that detract from the experience and appearance of an active streetscape; and

vi. provide well-marked entrances to cue access and use. All public entrances to a building or use shall be enhanced through compatible architectural or graphic treatment.

~~ii. One (1) continuous roof-line shall be avoided. Variation in the roof-line, or roof height, is encouraged.~~

b. Exterior stairways, corridors, or landings shall not be located on the front or street side elevation of the building.

c. Structures located in the CHDR and CMU zones that are greater than six~~four~~ (64) stories in height shall step back fifteen (15) feet from the first floor elevation for

all stories above the fourth floor on all elevations that front a public street unless the applicant can demonstrate that there is sufficient variation and articulation in the building planes to give visual interest and appeal.

d. Building additions shall not strongly alter the character of the original building.

i. Windows, materials and doors shall be compatible with those of the original building.

ii. Roof forms shall be compatible with the existing structure.

~~10~~9. Building Materials

~~a. The primary exterior finish material of all structures shall not consist of vinyl, aluminum or metal siding (including sheet or corrugated metal), plywood, particle board, or other products not intended as an architectural finish product.~~

~~i. Stucco may be considered when it is detailed with wood trim around windows and doors. A shadow line around windows should be created.~~

~~ii. A range of secondary materials including trim may be used as long as they remain secondary.~~

~~iii. Wood, slate, tiles and high-quality composition shingles and shakes shall be used for roofing materials.~~

a. Intent. The intent of the facade materials standards of this section is to:

i. provide minimum material standards to ensure use of well-tested, high quality, durable surfaces, while permitting a wider range of materials for details; and

ii. encourage a high level of detail from smaller scaled, less monolithic materials in order to relate facades to pedestrians, especially at the ground level.

b. Major Materials. A minimum of eighty percent (80%) of each facade, not including window and door areas, shall be composed of major materials, as specified in this section.

i. Allowed Major Materials. The following are allowed major materials:

1. Stone;
2. Brick;
3. Wood;
4. Architectural metal panel systems;
5. Fiber cement board;
6. Glass curtain wall;
7. Terra cotta decorative units, tiles or panels; and
8. Architectural cast stone, including glass fiber reinforced concrete.

ii. Prohibited Major Materials. The following materials are prohibited as major materials, unless otherwise approved under the standards of this Section:

1. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements;
2. Synthetic stucco or elastomeric finishes on stucco;
3. Unfinished or untreated wood;
4. Glass block;
5. Vinyl or aluminum siding;
6. Plastic panels, including high-density polyethylene, polyvinyl chloride (PVC), and polycarbonate; and
7. Fiberglass and acrylic panels.

iii. Limited Use Major Materials. The following materials are prohibited as a major material, except as specifically allowed in this subsection (iii):

1. Economy Bricks. Brick types larger than three inches in height are allowed as major materials on rear, alley, and rail corridor facades. In such instances, corner bricks shall be used to give the appearance of a full brick façade.

c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent areas that combined form twenty percent or less of the total surface of each facade.

i. Major Materials. All allowed major materials may serve as minor materials.

ii. Allowed Minor Materials. The following are allowed minor materials:

1. Metal for beams, lintels, trim, exposed structure, and other ornamentation;
2. Split-faced, burnished, glazed, or honed concrete masonry units or block cast stone concrete elements;
3. Vinyl for window trim;
4. Cement-Based Stucco;
5. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements; and
6. Synthetic stucco.

d. Other Materials with Approval. Materials that are not listed in this Section for its proposed application as allowed major materials, limited use materials, or allowed minor materials may not be installed on any facade unless approved by the reviewing authority pursuant to this subsection (d). The reviewing authority may approve facade materials that are not listed in this section if the applicant demonstrates that the alternate material meets the intent of the facade material standards described in subsection (9)(a) of this Section. Samples and examples of successful high quality local installation shall be provided by the applicant.

Provo City Planning Commission

Report of Action

July 10, 2019

*Item 3 The Provo City Community Development Department requests Code Amendments to Section 14.34.287 regarding the design standards for buildings in the Campus Mixed Use Zone. City-wide application. Josh Yost (801) 852-6408 PLOTA20190025

The following action was taken by the Planning Commission on the above described item at its regular meeting of July 10, 2019:

RECOMMEND APPROVAL WITH CONDITIONS

On a vote of 7:0, the Planning Commission approved the above noted application, with the following conditions:

Conditions of Approval:

1. Amend Table 14.34.287-1 to read "1 per 30 feet (1 min.)" under Commercial for PBE's Required for Each Street-facing façade and "40 feet" under Commercial for Maximum Spacing.
2. Insert the following paragraph into 14.34.287 as (2)(a)

   All of the following requirements shall apply, unless the Planning Commission approves an alternative design arrangement equal to or better than the requirements set forth in this section. The Planning Commission shall make specific findings justifying the alternate design arrangement.

Motion By: Jamin Rowan
Second By: Russ Phillips
Votes in Favor of Motion: Jamin Rowan, Deborah Jensen, Robert Knudsen, Maria Winden, Russ Phillips, David Andersen, Andrew Howard
Deborah Jensen was present as Chair.

- Additional Report of Action for June 27, 2019, Item 4 was continued by the Planning Commission to July 10, 2019.
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED
Not applicable

RELATED ACTIONS
None

APPROVED/RECOMMENDED OCCUPANCY
Not applicable

APPROVED/RECOMMENDED PARKING
Not applicable

DEVELOPMENT AGREEMENT
Not applicable

PLANNING COMMISSION RECOMMENDED TEXT AMENDMENT
Recommended text amendment is attached to this staff report.

STAFF PRESENTATION
The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- The recommended amendments are to correct deficiencies or strengthen weaknesses that have been identified in the current ordinance.
- Staff sought input from the development community and from the Design Review Committee.

Over a year ago, the setbacks for this zone were amended. At that time, staff said that additional, more substantive amendments would be presented to the City Council at a future date.

NEIGHBORHOOD MEETING DATE

- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- This item was City-wide or affected multiple neighborhoods. No public input was received.

PLANNING COMMISSION DISCUSSION
Key points discussed by the Planning Commission included the following:

- The Design Review Committee felt the door spacing for commercial uses may need to be increased. Staff has increased this.
- The Design Review Committee also voiced a concern over the rigid nature of some of the standards so staff added a provision to allow the Planning Commission latitude to alter or vary standards if the Planning Commission feels the final product is equal to or better than the baseline code requirement.

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION **delete section if same as Staff Report**

The Planning Commission identified the following findings as the basis of this decision or recommendation:

Planning Commission Chair

Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

14.34.287 Residential Design Standards - Revisions

…

2. Applicability. The design standards set forth in this Section shall apply to all new residential buildings and uses located in the Low Density Residential, Medium Density Residential, High Density Residential, Campus High Density Residential and Campus Mixed Use zones. In approving a project plan, the approving authority may impose reasonable conditions consistent with the purpose and intent of this Section. The requirements for this Section shall apply in addition to other applicable requirements of this Title. This Section shall be interpreted to supersede other requirements of the Provo City Code which may impose more restrictive requirements.
    a. All of the following requirements shall apply, unless the Planning Commission approves an alternative design arrangement equal to or better than the requirements set forth in this section. The Planning Commission shall make specific findings justifying the alternate design arrangement.
3. ~~Yard~~ Site Design Standards.
    a. Front Yards.
        i. There shall be a logical hard surface pedestrian connection between the street and the front entry.
        ii. The front yard shall be predominantly landscaped with a combination of turf and plants. Hard surfaces for driveways and parking shall be minimized and shall not exceed ordinance requirements.
        iii. Utility boxes shall not be located in the front or street side yards or park strips unless the applicant demonstrates that there is no other practical location for utility boxes on the site.
        iv. Mediate between public and private space on residential frontages. This requirement may be met with the following strategies.
            1. Use foundation plantings to provide separation between residential units and the sidewalk.
            2. Design porches, stoops and railings to provide intermediate semi-private spaces.
            3. Employ elevation changes to delineate the progression from public space through semi-private space into interior private space.
    b. Fences.
        i. Fences shall complement the architectural character of the project.
        ii. Chain link fences shall be prohibited in front yards.
        iii. Fencing shall conform to Section 14.34.500, Provo City Code.
    ~~4.~~c. Building Location.
        ~~a.~~i. New structures shall be sited consistently with the existing front setbacks of adjoining properties to maintain neighborhood compatibility, with the exception of projects that are zoned High Density Residential (HDR), Campus High Density Residential

(CHDR), or Campus Mixed Use (CMU), where the zone permits lesser setbacks than the existing housing stock.

ii. Frontage

1. A building's front elevation is the elevation whereon the primary or common entrance is located.
2. Buildings shall front on a street, open space, or pedestrian way.
3. Buildings shall not front an interior property boundary or parking lot.
4. In any development consisting of (5) or more townhomes each townhome shall front a street, open space or pedestrian way.

~~b~~iii. The majority of new buildings in multifamily developments shall be sited along the block face rather than the interior of the block.

1. Interior lot development should comprise no more than twenty-five percent (25%) of a project's area.

~~c~~d. Buildings, including parking structures, shall be designed and located in a manner that allows planting and growth of mature trees in the front and side yards.

~~5~~4. Building Facades.

a. Ground Floor Treatment

i. Commercial Ground Floors in the Campus Mixed Use Zone

1. Design ground floor commercial space for retail or other active uses, orienting tenant spaces to the street and maximizing storefronts and entries along the sidewalks to sustain street level interest and promote pedestrian traffic
2. Wall openings, such as storefronts, windows and doors, shall comprise at least 60% of a building's street level façade measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor.
3. Open-wall storefronts are encouraged.

ii. Ground floors in all applicable zones.

1. Excepting townhomes, a minimum habitable first floor depth of 30' as measured from the street facing façade is required.
2. Residential units with individual entries shall include windows on the ground floor that look out onto the street, with wall openings comprising at least 30% of the street level façade, measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor..
3. Clear glass for wall openings, i.e., doors and windows, shall be used along all street-level façades for maximum transparency. Tinted, mirrored or opaque glazing is not permitted for any required wall opening along street level façades
4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-

oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.

b. Pedestrian Building Entrances

i. Pedestrian building entrances shall

1. meet the spatial requirements set forth in Table 14.34.295-1 Pedestrian Building Entrance (PBE) Requirements;
2. contain a door providing direct pedestrian access into a building;
3. directly access an interior and enclosed commercial tenant space, public lobby, or residential unit;
4. be directly accessible from and directly adjacent to the sidewalk; and
5. prevent doors from swinging into the public right-of-way or beyond the front façade line of the building when opened.

ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors to exterior courtyards shall not qualify as pedestrian building entrances.

~~a. All structures shall have at least one (1) primary unit entry that faces the street. Multifamily residential uses on corner lots shall have at least one (1) primary entry along each street frontage.~~

~~b. Additional entrances may be located on side or rear facades.~~

c. The primary entrance of a multifamily structure shall be clearly defined by use of a raised porch or other similar entry feature.

i The front porch or entry feature shall be oriented to the street.

ii. The minimum size of the front porch or entry feature shall be functional rather than merely decorative.

iii. The porch floor height shall not exceed thirty (30) inches above the elevation of the top of the street curb.

d. Doors, windows and balconies of new housing should be located to respect the privacy of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements

Frontage Type	Commercial	Residential
PBE's Required for Each Street-facing Façade	1 per 30 feet (1 min.)	1 per street-fronting ground floor unit
Maximum Spacing	40 feet	38 feet

~~6~~5. Driveways and Parking.

a. New developments shall provide the minimum amount of driveway access and width required by code as a means of preserving front yard space.

a. Driveway placement ~~should~~ shall be toward the side property line to avoid dividing a building by a single, central driveway to subterranean parking.

ii. Driveways shall be consolidated where adjacent parcels or developments can be served by a single driveway. Cross access easements shall guarantee rights of access across the shared driveway for both parcels.

~~i~~iii. Alley access for properties ~~should~~ shall be encouraged to reduce the impact of parking and traffic circulation on the front of the property.

~~iii~~iv. Parking and interior access ~~should~~ shall be designed to minimize the number of curb cuts.

b. Parking shall not be placed in the front yard and should be minimized in the ~~rear yard~~ side yard, with the exception of one- and two-family dwellings when the driveway leads to a garage or carport as defined in Chapter 14.37, Provo City Code.

a. Parking shall not be allowed between a primary building and a public street.

b. Surface parking areas in rear yards shall be screened from neighboring properties with appropriate plant materials and/or fencing.

c. Entrances to ~~underground~~ structured parking shall be provided from driveways along the sides of properties, not from a front-facing ~~underground~~ garage entry~~, unless the applicant demonstrates that no alternative is feasible~~.

iv. Parking shall be screened from any adjacent public way, street, open space or pedestrian way.

c. Except for the minimum ground-level frontage required for access to parking and loading, no parking or loading shall be visible on the ground floor of any building façade that faces a public right-of-way. ~~It is recognized that providing parking within the primary building may create a conflict with the desire for pedestrian connectivity at street level. An alternate design that includes parking on the main level of the building and on a facade that faces a public street may be approved by the Design Review Committee, subject to the following standards:~~

~~a. There shall be a significant, pedestrian entrance to the building at street level to maintain a pedestrian connection to the street;~~

~~b. A minimum of thirty percent (30%) of the primary street level building facade must be habitable floor space such as living space, rental office or amenity space;~~

~~c. The parking structure shall be treated with materials, windows, building relief and rhythm that mask the appearance of the parking structure. The parking structure shall be appear to be part of the residential or commercial building; and~~

~~d. The Design Review Committee should consider aesthetic transitions at facade corners when a side elevation is viewable from a public street.~~

~~7~~6. Landscape Design.

d. Property owners shall comply with Section 15.20.030, Provo City Code, for the protection of existing vegetation.

e. New landscaping shall be complementary to existing neighborhood vegetation.

i. The species, size and placement of new landscaping shall be considered in the design review process.

f. Landscaping shall be used to reduce the impact of larger buildings on neighboring properties.

g. Buildings and driveway lighting should not extend beyond the boundaries of the subject property, as per Chapter 15.21, Provo City Code.

~~8~~7. Building Form, Mass and Scale (LDR Zone Only).

a. Building form, mass and scale should be appropriate for the zone in which the building is located and consistent with the established neighborhood character.

i. Architectural elements such as roof form, windows, doors, etc., should be consistent with the form and character of the existing housing in the area.

ii. A porch or similar element, which defines the front entrance, shall be provided.

iii. An attached garage shall not be the dominant design feature of the front elevation.

iv. Sloping roofs such as gable or hip design should be used as the primary roof form.

v. Historic buildings are subject to Title 16, Provo City Code.

b. Building additions shall not strongly alter the character of an original building.

i. Windows, materials and doors should be compatible with those of the original building.

ii. Roof forms shall be compatible with the existing structure.

~~9~~8. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).

a. The facade of any multiple-family, ~~or~~ apartment, or mixed use structure shall: ~~have sufficient relief and rhythm to give visual interest and appeal.~~

i. Be articulated in the horizontal plane to provide visual interest and enrich the pedestrian experience, while contributing to the quality and definition of the street wall.

ii. Be vertically articulated to differentiate the ground floor façade, and feature high quality materials that add human scale, texture and variety at the pedestrian level.

iii. Provide an identifiable break between the building's ground floors and upper floors. This break may include a change in material, horizontal dividing element, a change in fenestration pattern or similar means.

iv. Be vertically articulated at the street wall façade, establishing different treatment for the building's base, middle and top. Use balconies, fenestration, shading devices, or other elements to create an interesting pattern of projections and recesses.

v. Avoid extensive blank walls that detract from the experience and appearance of an active streetscape.

vi. Provide well-marked entrances to cue access and use. Enhance all public entrances to a building or use through compatible architectural or graphic treatment.

~~b. One (1) continuous roof-line shall be avoided. Variation in the roof-line, or roof height, is encouraged.~~

b. Exterior stairways, corridors or landings shall not be located on the front or street side elevation of the building.

c. Structures located in the CHDR and CMU zones that are greater than six~~four~~ (6~~4~~) stories in height shall step back fifteen (15) feet from the first floor elevation for all stories above the fourth floor on all elevations that front a public street unless the applicant can demonstrate that there is sufficient variation and articulation in the building planes to give visual interest and appeal.

d. Building additions shall not strongly alter the character of the original building.

i. Windows, materials and doors shall be compatible with those of the original building.

ii. Roof forms shall be compatible with the existing structure.

~~10~~9. Building Materials

~~a. The primary exterior finish material of all structures shall not consist of vinyl, aluminum or metal siding (including sheet or corrugated metal), plywood, particle board, or other products not intended as an architectural finish product.~~

~~i. Stucco may be considered when it is detailed with wood trim around windows and doors. A shadow line around windows should be created.~~

~~ii. A range of secondary materials including trim may be used as long as they remain secondary.~~

~~iii. Wood, slate, tiles and high-quality composition shingles and shakes shall be used for roofing materials.~~

a. Intent. The intent of the facade materials standards of this section is to:

i. Provide minimum material standards to ensure use of well-tested, high quality, durable surfaces, while permitting a wider range of materials for details;

ii. Encourage a high level of detail from smaller scaled, less monolithic materials in order to relate facades to pedestrians, especially at the ground level.

b. Major Materials. A minimum of eighty percent (80%) of each facade, not including window and door areas, shall be composed of major materials, as specified in this section.

i. Allowed Major Materials. The following are allowed major materials.

a. Stone.
b. Brick.
c. Wood.
d. Architectural metal panel systems.
e. Fiber Cement board.
f. Glass curtain wall.
g. Terra cotta decorative units, tiles or panels.
h. Architectural cast stone including glass fiber reinforced concrete.

ii. Prohibited Major Materials. The following materials are prohibited as major materials, unless otherwise approved under the standards of this Section:

a. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements.
b. Synthetic stucco or elastomeric finishes on stucco.
c. Unfinished or untreated wood.
d. Glass block.
e. Vinyl or aluminum siding.
f. Plastic, including high-density polyethylene, polyvinyl chloride (PVC), and polycarbonate, panels.
g. Fiberglass and acrylic panels.

iii. Limited Use Major Materials. The following materials are prohibited as a major material except consistent with the following:

a. Economy Bricks. Brick types larger than three inches in height are allowed as major materials on rear, alley, and rail corridor facades. In

such instances, corner bricks shall be used to give the appearance of a full brick façade.

c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent areas that combine to twenty percent or less of the total surface of each facade.
    i. Major Materials. All allowed major materials may serve as minor materials.
    ii. Allowed Minor Materials. The following are allowed minor materials:
        a. Metal for beams, lintels, trim, exposed structure, and other ornamentation
        b. Split-faced, burnished, glazed, or honed concrete masonry units or block cast stone concrete elements.
        c. Vinyl for window trim.
        d. Cement-Based Stucco.
        e. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements.
        f. Synthetic stucco.

d. Other Materials with Approval. Materials that are not listed in this section for its proposed application as allowed major materials, limited use materials, or allowed minor materials, may not be installed on any facade unless approved by the reviewing authority pursuant to this subsection (d). The reviewing authority may approve facade materials that are not listed in this section for its proposed application if the applicant demonstrates the material in its proposed application meets the intent of the facade material standards described in subsection (a) of this section. Samples and examples of successful high quality local installation shall be provided by the applicant.

ITEM 3*

The Provo City Community Development Department requests Code Amendments to Section 14.34.287 regarding the design standards for buildings in the Campus Mixed Use Zone.

City-wide application

PLOTA20190025

...

3. ~~Yard~~ Site Design Standards.
    a. Front Yards.
        i. There shall be a logical hard surface pedestrian connection between the street and the front entry.
        ii. The front yard shall be predominantly landscaped with a combination of turf and plants. Hard surfaces for driveways and parking shall be minimized and shall not exceed ordinance requirements.
        iii. Utility boxes shall not be located in the front or street side yards or park strips unless the applicant demonstrates that there is no other practical location for utility boxes on the site.
        iv. Mediate between public and private space on residential frontages. This requirement may be met with the following strategies.
            1. Use foundation plantings to provide separation between residential units and the sidewalk.
            2. Design porches, stoops and railings to provide intermediate semi-private spaces.
            3. Employ elevation changes to delineate the progression from public space through semi-private space into interior private space.
    b. Fences.
        i. Fences shall complement the architectural character of the project.
        ii. Chain link fences shall be prohibited in front yards.
        iii. Fencing shall conform to Section 14.34.500, Provo City Code.
    c. Building Location.
        i. New structures shall be sited consistently with the existing front setbacks of adjoining properties to maintain neighborhood compatibility, with the exception of projects that are zoned High Density Residential (HDR), Campus High Density Residential (CHDR), or Campus Mixed Use (CMU), where the zone permits lesser setbacks than the existing housing stock.
        ii. Frontage
            1. A building's front elevation is the elevation whereon the primary or common entrance is located.
            2. Buildings shall front on a street, open space, or pedestrian way.
            3. Buildings shall not front an interior property boundary or parking lot.
            ~~1.~~4. In any development consisting of (5) or more townhomes each townhome shall front a street, open space or pedestrian way.
        ~~ii.~~iii. The majority of new buildings in multifamily developments shall be sited along the block face rather than the interior of the block.
            1. Interior lot development should comprise no more than twenty-five percent (25%) of a project's area.
    d. Buildings, including parking structures, shall be designed and located in a manner that allows planting and growth of mature trees in the front and side yards.
4. Building Facades.
    a. Ground Floor Treatment
        i. Commercial Ground Floors in the Campus Mixed Use Zone
            1. Design ground floor commercial space for retail or other active uses, orienting tenant spaces to the street and maximizing storefronts and entries along the sidewalks to sustain street level interest and promote pedestrian traffic
            2. Wall openings, such as storefronts, windows and doors, shall comprise at least 60% of a building's street level façade measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor.
            3. Open-wall storefronts are encouraged.
        ii. Ground floors in all applicable zones.
            1. Excepting townhomes, a minimum habitable first floor depth of 30' as measured from the street facing façade is required.
            2. Residential units with individual entries shall include windows on the ground floor that look out onto the street, with wall openings comprising at least 30% of the street level façade, measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor..
            3. Clear glass for wall openings, i.e., doors and windows, shall be used along all street-level façades for maximum transparency. Tinted, mirrored or opaque glazing is not permitted for any required wall opening along street level façades
            4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
            5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.
    b. Pedestrian Building Entrances
        i. Pedestrian building entrances shall
            1. meet the spatial requirements set forth in Table 14.34.295-1 Pedestrian Building Entrance (PBE) Requirements;
            2. contain a door providing direct pedestrian access into a building;

3. directly access an interior and enclosed commercial tenant space, public lobby, or residential unit;
4. be directly accessible from and directly adjacent to the sidewalk; and
5. prevent doors from swinging into the public right-of-way or beyond the front façade line of the building when opened.

ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors to exterior courtyards shall not qualify as pedestrian building entrances.

~~a. All structures shall have at least one (1) primary unit entry that faces the street. Multifamily residential uses on corner lots shall have at least one (1) primary entry along each street frontage.~~

~~b. Additional entrances may be located on side or rear facades.~~

~~i.~~iii. The primary entrance of a multifamily structure shall be clearly defined by use of a raised porch or other similar entry feature.

1. The front porch or entry feature shall be oriented to the street.
2. The minimum size of the front porch or entry feature shall be functional rather than merely decorative.
3. The porch floor height shall not exceed thirty (30) inches above the elevation of the top of the street curb.

c. Doors, windows and balconies of new housing should be located to respect the privacy of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements

Frontage Type	Commercial	Residential
PBE's Required for Each Street-facing Façade	1 per 25 feet (1 min.)	1 per street-fronting ground floor unit
Maximum Spacing	38 feet	38 feet

5. Driveways and Parking.

a. New developments shall provide the minimum amount of driveway access and width required by code as a means of preserving front yard space.

i. Driveway placement ~~should~~ shall be toward the side property line to avoid dividing a building by a single, central driveway to subterranean parking.

~~i.~~ii. Driveways shall be consolidated where adjacent parcels or developments can be served by a single driveway. Cross access easements shall guarantee rights of access across the shared driveway for both parcels.

~~ii.~~iii. Alley access for properties ~~should~~ shall be encouraged to reduce the impact of parking and traffic circulation on the front of the property.

~~iii.~~iv. Parking and interior access ~~should~~ shall be designed to minimize the number of curb cuts.

b. Parking shall not be placed in the front yard and should be minimized in the ~~rear yard~~side yard, with the exception of one- and two-family dwellings when the driveway leads to a garage or carport as defined in Chapter 14.37, Provo City Code.

i. Parking shall not be allowed between a primary building and a public street.

ii. Surface parking areas in rear yards shall be screened from neighboring properties with appropriate plant materials and/or fencing.

iii. Entrances to ~~underground~~ structured parking shall be provided from driveways along the sides of properties, not from a front-facing ~~underground~~ garage entry~~, unless the applicant demonstrates that no alternative is feasible~~.

~~iii.~~iv. Parking shall be screened from any adjacent public way, street, open space or pedestrian way.

c. Except for the minimum ground-level frontage required for access to parking and loading, no parking or loading shall be visible on the ground floor of any building façade that faces a public right-of-way. ~~It is recognized that providing parking within the primary building may create a conflict with the desire for pedestrian connectivity at street level. An alternate design that includes parking on the main level of the building and on a facade that faces a public street may be approved by the Design Review Committee, subject to the following standards:~~

~~i. There shall be a significant, pedestrian entrance to the building at street level to maintain a pedestrian connection to the street;~~

~~ii. A minimum of thirty percent (30%) of the primary street level building facade must be habitable floor space such as living space, rental office or amenity space;~~

~~iii. The parking structure shall be treated with materials, windows, building relief and rhythm that mask the appearance of the parking structure. The parking structure shall be appear to be part of the residential or commercial building; and~~

~~iv. The Design Review Committee should consider aesthetic transitions at facade corners when a side elevation is viewable from a public street.~~

6. Landscape Design.

a. Property owners shall comply with Section 15.20.030, Provo City Code, for the protection of existing vegetation.

b. New landscaping shall be complementary to existing neighborhood vegetation.

i. The species, size and placement of new landscaping shall be considered in the design review process.

c. Landscaping shall be used to reduce the impact of larger buildings on neighboring properties.

d. Buildings and driveway lighting should not extend beyond the boundaries of the subject property, as per Chapter 15.21, Provo City Code.

7. Building Form, Mass and Scale (LDR Zone Only).

i. Building form, mass and scale should be appropriate for the zone in which the building is located and consistent with the established neighborhood character.
ii. Architectural elements such as roof form, windows, doors, etc., should be consistent with the form and character of the existing housing in the area.
iii. A porch or similar element, which defines the front entrance, shall be provided.
iv. An attached garage shall not be the dominant design feature of the front elevation.
v. Sloping roofs such as gable or hip design should be used as the primary roof form.
vi. Historic buildings are subject to Title 16, Provo City Code.

b. Building additions shall not strongly alter the character of an original building.
i. Windows, materials and doors should be compatible with those of the original building.
ii. Roof forms shall be compatible with the existing structure.

8. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).

a. The facade of any multiple-family, ~~or~~ apartment, or mixed use structure shall~~: have sufficient relief and rhythm to give visual interest and appeal.~~
i. Be articulated in the horizontal plane to provide visual interest and enrich the pedestrian experience, while contributing to the quality and definition of the street wall.
ii. Be vertically articulated to differentiate the ground floor façade, and feature high quality materials that add human scale, texture and variety at the pedestrian level.
iii. Provide an identifiable break between the building's ground floors and upper floors. This break may include a change in material, horizontal dividing element, a change in fenestration pattern or similar means.
iv. Be vertically articulated at the street wall façade, establishing different treatment for the building's base, middle and top. Use balconies, fenestration, shading devices, or other elements to create an interesting pattern of projections and recesses.
v. Avoid extensive blank walls that detract from the experience and appearance of an active streetscape.
vi. Provide well-marked entrances to cue access and use. Enhance all public entrances to a building or use through compatible architectural or graphic treatment.
~~i.~~

~~b. One (1) continuous roof line shall be avoided. Variation in the roof line, or roof height, is encouraged.~~

b. Exterior stairways, corridors or landings shall not be located on the front or street side elevation of the building

c. Structures located in the CHDR and CMU zones that are greater than six ~~four~~ (64) stories in height shall step back fifteen (15) feet from the first floor elevation for all stories above the fourth floor on all elevations that front a public street unless the applicant can demonstrate that there is sufficient variation and articulation in the building planes to give visual interest and appeal.

d. Building additions shall not strongly alter the character of the original building.
i. Windows, materials and doors shall be compatible with those of the original building.
ii. Roof forms shall be compatible with the existing structure.

...

10. Building Materials

a. ~~The primary exterior finish material of all structures shall not consist of vinyl, aluminum or metal siding (including sheet or corrugated metal), plywood, particle board, or other products not intended as an architectural finish product.~~
i. ~~Stucco may be considered when it is detailed with wood trim around windows and doors. A shadow line around windows should be created.~~
ii. ~~A range of secondary materials including trim may be used as long as they remain secondary.~~
iii. ~~Wood, slate, tiles and high-quality composition shingles and shakes shall be used for roofing materials.~~

a. Intent. The intent of the facade materials standards of this section is to:
iv. Provide minimum material standards to ensure use of well-tested, high quality, durable surfaces, while permitting a wider range of materials for details;
v. Encourage a high level of detail from smaller scaled, less monolithic materials in order to relate facades to pedestrians, especially at the ground level.

b. Major Materials. A minimum of eighty percent (80%) of each facade, not including window and door areas, shall be composed of major materials, as specified in this section.
i. Allowed Major Materials. The following are allowed major materials.
a. Stone.
b. Brick.
c. Wood.
d. Architectural metal panel systems.
e. Fiber Cement board.
f. Glass curtain wall.
g. Terra cotta decorative units, tiles or panels.
h. Architectural cast stone including glass fiber reinforced concrete.
ii. Prohibited Major Materials. The following materials are prohibited as major materials, unless otherwise approved under the standards of this Section:

a. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements.
b. Synthetic stucco or elastomeric finishes on stucco.
c. Unfinished or untreated wood.
d. Glass block.
e. Vinyl or aluminum siding.
f. Plastic, including high-density polyethylene, polyvinyl chloride (PVC), and polycarbonate, panels.
g. Fiberglass and acrylic panels.

iii. Limited Use Major Materials. The following materials are prohibited as a major material except consistent with the following:

a. Economy Bricks. Brick types larger than three inches in height are allowed as major materials on rear, alley, and rail corridor facades. In such instances, corner bricks shall be used to give the appearance of a full brick façade.

c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent areas that combine to twenty percent or less of the total surface of each facade.

i. Major Materials. All allowed major materials may serve as minor materials.

ii. Allowed Minor Materials. The following are allowed minor materials:

a. Metal for beams, lintels, trim, exposed structure, and other ornamentation
b. Split-faced, burnished, glazed, or honed concrete masonry units or block cast stone concrete elements.
c. Vinyl for window trim.
d. Cement-Based Stucco.
e. Face-sealed EIFS synthetic stucco assemblies and decorative architectural elements.
f. Synthetic stucco.

d. Other Materials with Approval. Materials that are not listed in this section for its proposed application as allowed major materials, limited use materials, or allowed minor materials, may not be installed on any facade unless approved by the reviewing authority pursuant to this subsection (d). The reviewing authority may approve facade materials that are not listed in this section for its proposed application if the applicant demonstrates the material in its proposed application meets the intent of the facade material standards described in subsection (a) of this section. Samples and examples of successful high quality local installation shall be provided by the applicant.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: BMUMFORD
Department: Council
Requested Meeting Date: 07-09-2019

SUBJECT: A discussion regarding a proposed Permit Parking Plan ordinance amendment. (19-002)

RECOMMENDATION: Information only. Item is scheduled to be heard at the July 9, 2019 Council Meeting. If the Council desires to see changes to the proposed ordinance amendment, a motion may be necessary.

BACKGROUND: In mid- to late-2018, the Policy Governance Committee began discussions to clean up and make amendments to certain elements of the Permit Parking code (see Provo City Code Chapter 9.80). The Permit Parking Areas currently in code have been subject to certain code language that has been outdated since the Parking Enforcement has gone 21st Century. There is no longer a need for actual permits due to the electronic system that Parking Enforcement has put in place. Then there were some procedural elements that the Policy Governance Committee chose to amend certain elements to tighten up the process and add a step for the Planning Commission to review the Permit Parking Area plans. This step is thought to help the Council obtain a land use perspective on these Permit Parking Area plans. Also, there is a fee added to the Consolidated Fee Schedule.

FISCAL IMPACT: Potentially added revenue

PRESENTER'S NAME: Brian Jones

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-002

ORDINANCE 2019-.

AN ORDINANCE AMENDING PROVO CITY CODE CHAPTER 9.80 TO UPDATE LANGUAGE AND AMEND PROCEDURES REGARDING PERMIT PARKING AREAS. (19-002)

WHEREAS, on July 09, 2019, the Policy Governance Committee recommended amendments to Provo City Code with regard to permit parking areas in order to modernize language and add perspective to the process, as set forth in Exhibit A; and

WHEREAS, on July 23, 2019, the Provo Municipal Council the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds: (i) that Provo City Code Chapter 9.80 (Permit Parking Areas) should be amended as proposed, and (ii) such action furthers the health, safety, and welfare, and the best interests of the citizens of Provo.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

Provo City Code Chapter 9.80 (Permit Parking Areas) is hereby amended as set forth in Exhibit A.

PART II:

A. If a provision of this Ordinance conflicts with a provision of a previously adopted ordinance concerning the same franchising act as described herein, this Ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that this Ordinance remain uncodified.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

EXHIBIT A

Chapter 9.80 PERMIT PARKING AREAS

Sections:

9.80.010. Purpose

This Chapter is enacted to establish a regulatory framework to address serious adverse effects caused in certain areas of the City by motor vehicle congestion, particularly the parking of motor vehicles on the streets where on- and off-site parking is inadequate to meet the demand for parking. As set forth in more specific detail in Section 9.80.020 of this Chapter, parking by nonresidents of such areas threatens the health, safety, and welfare of all the residents of the City. In order to protect and promote the integrity of these areas, parking regulations are needed to restrict unlimited parking therein by nonresidents, while also providing the opportunity for residents to park near their homes. For the reasons set forth in this Chapter, a system of preferential resident parking is enacted.

9.80.020. Legislative Findings.

(1) The Municipal Council finds that continued vitality of the City depends on the preservation of safe and attractive neighborhoods. Demand for parking in certain areas of the City regularly exceeds available on- and off-street parking spaces and undermines neighborhood viability. A system allowing preferential resident on-street parking in various areas of the City will promote the stability of such neighborhoods and thus promote the general public welfare.

(2) The following specific legislative findings of the Municipal Council in support of preferential resident on-street parking are set forth as illustrations of the need for the enactment

of such parking regulations. They are intended as illustrations only and do not provide the sole basis supporting their adoption.

(a) The safety, health and welfare of the residents of the City can be greatly enhanced by maintenance of the attractiveness and livability of its neighborhoods and other areas.

(b) A majority of City residents possess automobiles and as a result are daily faced with the need to store these automobiles at or near their residences.

(c) Certain neighborhoods in the City are often burdened by the presence of motor vehicles owned by nonresidents which compete for on-street parking spaces, congest City streets, and detract from neighborhood values. The presence of nonresident vehicle parking often disrupts the delivery of basic essential services, such as trash collection and mail delivery, by blocking access.

(d) There further exist certain parking "attractors" within the City, i.e., hospitals, schools, industrial and educational facilities, employment centers, ~~UTA~~transit stops and stations, and locations convenient for commuter parking, which further aggravate resident parking problems.

(e) Unnecessary vehicle miles, noise, pollution, and strains on relationships between residents and nonresidents caused by the conditions set forth herein work unacceptable hardships on residents of these neighborhoods by causing the deterioration of air quality, safety, tranquility, aesthetics and other values normally available in a residential environment.

(f) If allowed to continue unchecked, the adverse effects of excessive parking demand on specific City residents will contribute to a further decline of living conditions, a reduction in the attractiveness of residing in such areas, and consequent injury to the general public welfare.

(g) A system of preferential on-street parking as provided in this Chapter will increase pedestrian and traffic safety by reducing traffic congestion; improve traffic circulation, promote the health and welfare of all City residents by reducing unnecessary motor vehicle travel, noise and pollution; promote improvements in air quality, the convenience and attractiveness of residential areas, and the increased use of public mass transit facilities available now and in the future; and encourage the use of car pools. The public welfare will also be served by insuring a more stable and valuable property tax base in order to generate revenues necessary to provide essential public services.

9.80.030. Scope.

The provisions of this Chapter shall apply to any permit parking area established under the authority of this Chapter. The provisions of this Chapter are not intended to regulate parking on private property. If a provision of this Chapter conflicts with a provision of a chapter enacting a specific permit parking area, such as Provo City Code Chapters 9.83 and 9.88, ~~Provo City Code,~~ the provision of the specific enacting chapter shall control within that permit parking area.

9.080.040. Definitions.
In the construction of this Chapter, and any chapter enacted under the authority of this Chapter to create a specific permit parking area, the following words and phrases shall be defined as set forth in this section:

"Authorized vehicle" means a motor vehicle which:

(a) ~~displays~~has been issued a valid parking permit ~~issued~~ pursuant to the requirements of this Chapter, and any chapter adopted under the authority of this Chapter, for the specific permit parking area where the vehicle is parked, or

(b) is authorized by the regulations of a permit parking area to park within such area without a permit.

"Dwelling" shall have the same meaning as in Chapter 14.06, except as specified otherwise in the ordinance establishing a specific permit parking area~~means a building or portion thereof designed and used for residential occupancy, including one-family, two-family, multi-family, and apartment buildings; but shall not include boarding, rooming, or lodging houses, tents, trailers, mobile home parks, motels, motor courts, motor lodges, cottage camps, or similar structures designed or used primarily for transient residential uses~~.

"Motor vehicle" means an automobile, truck, motorcycle or other motor driven or self-propelled form of transportation intended primarily for use and operation on a public street.

"Parking permit" means a permit issued by the City ~~affixed to or displayed by a~~ that, through the reading of vehicle license plates, shows a qualifying motor vehicle is authorized pursuant to the requirements of this Chapter, and any chapter adopted under the authority of this Chapter, for the specific permit parking area where the permit is used.

"Permit parking area" means a contiguous or nearly contiguous area where the Municipal Council has imposed parking limitations as provided in this Chapter, and any chapter adopted under the authority of this Chapter, for a specific permit parking area.

"Unauthorized vehicle" means a motor vehicle which:

(a) ~~does not display~~ has not been issued a valid parking permit ~~issued~~ pursuant to the requirements of this Chapter, and any chapter adopted under the authority of this Chapter, for the specific permit parking area where the vehicle is parked, or

(b) is not authorized by the regulations of a permit parking area to park within such an area without a permit. (Enacted 2002-45, Am 2007-39, Am 2007-40, Am 2017-08)

9.80.050. Designation of Permit Parking Areas – Parking Restrictions.
(1) The Municipal Council in its discretion may by ordinance:

(a) designate permit parking areas pursuant to the requirements of this Chapter; and

(b) prohibit or restrict parking on any public street as the Council may deem necessary to address parking problems, protect public safety and promote public welfare.

(2) The boundaries of any permit parking area shall be shown on an Official Permit Parking Area Map adopted by the Municipal Council.

9.80.060. Designation Criteria.

(1) An area shall be eligible for permit parking if an investigation establishes the area is impacted by:

(a) nonresident vehicles for any extended period during the day or night, on weekends, or during holidays; or

(b) continuous use of on-street parking due to inadequate on-site parking.

(2) In determining whether to designate a permit parking area, the Planning Commission and Municipal Council shall consider:

(a) the desire and need of residents for permit parking and their willingness to bear administrative costs in connection therewith;

(b) the extent to which:

(i) legal on-street parking spaces are occupied by motor vehicles during the period proposed for parking restriction;

(ii) during the period proposed for parking restriction, motor vehicles within the permit parking ~~in the~~ area ~~during the period proposed for parking restriction~~ are nonresident vehicles rather than resident vehicles; and

(iii) motor vehicles registered to persons residing in the residential area cannot be accommodated by the number of available off-street parking spaces; and

(c) any other factor which contributes to the need for a permit parking area.

9.80.070. Designation Process.

(1) Each permit parking area shall be established by ordinance consistent with the provisions of this Chapter.

(2) A proposal to designate a permit parking area, or amend an area, may be initiated by a Municipal Council member, the Mayor, or ~~a resident of the area where a permit parking program is proposed~~ any Provo City resident who resides in the area specified in the application ~~and shall include at least the following information~~.

~~(a) a brief description of the current parking circumstances in the area; and~~

~~(b) a conceptual description of the proposed permit program which includes at least the following information:~~

~~(i) a map identifying the boundaries of the permit parking area, which shall be logical in configuration and be in increments of block faces;~~

~~(ii) desired parking time restrictions;~~

~~(iii) time restriction exemptions, if any; and~~

~~(iv) any other aspect the initiator wishes to propose; and~~

~~(c) if proposed by a resident, a petition which shows the names of residents in the proposed permit parking area who favor the proposal. The petition shall be on a form approved by the City Permit Parking Coordinator and shall include at least the following information:~~

~~(i) a statement at the top of each page summarizing the proposal; and~~

~~(ii) the name and address of each person signing the petition.~~

(3) Any person initiating such a proposal shall submit a Provo City Code amendment request, which shall include an application on the approved form identifying the intended boundaries for the proposed permit parking program, or amendment, and shall include at least the following:

(a) a statement of the reason(s) and justification(s) for the implementation, or amendment, of a permit parking program;

(b) a statement setting forth the manner in which the proposed permit parking program would further promote the objectives set forth in this chapter;

(4) If the process is initiated by a Provo City resident, other than elected officials of the City, they shall also submit the following before the application shall be considered complete:

(a) a petition on a form approved by the City Parking Coordinator that includes at least the following information:

(i) a map clearly identifying the property addresses within the proposed permit parking area;

(ii) a separate list containing the name, address, and signature of each resident within the proposed permit parking area boundaries who is in support of the proposal;

(iii) a statement at the top of the first page summarizing the proposal;

(iv) the desired parking time restrictions and restriction exemptions, if any;

(v) any other aspect the applicant wishes to propose; and

(b) The filing fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council, or a fee waiver as set forth in Provo City Code 2.29.060.

(~~3~~5) Following receipt of a complete application for a proposed permit parking program, the Municipal Council shall hold a public ~~hearing~~meeting, which may be a Work Session, to ~~determine~~consider the level of public interest in the proposed program and may thereafter vote to direct that a study of the proposed permit parking area be undertaken and managed by the City Parking Coordinator. The application filing fee shall be refunded if the Council does not direct that a study be undertaken.

(46) Within one hundred twenty (120) days after directing that a study of the proposed permit parking area be undertaken, the City Parking Coordinator shall review the application and submit a report to the Planning Commission, Mayor, and Municipal Council which:

(a) verifies and quantifies petition signatures, if applicable;

(b) ~~analyzes~~provides analysis on the proposed permit parking area in light of designation criteria set forth in Provo City Code Section 9.80.060~~, Provo City Code~~; and

(c) at a minimum, makes recommendations regarding the following:

(i) permit parking area boundaries,

(ii) parking time restrictions on public streets,

(iii) time restriction exemptions, if any,

(iv) permit cost (based on the total cost to administer program, and including a detail sheet showing number of residences and cost per vehicle in the proposed permit parking area),

(v) permit design/type,

(v~~i~~) planned enforcement method, and

(vi~~i~~) timeline for implementing the program.

(~~5~~7) Within ninety (90) days after receiving such report, the Planning Commission shall consider the proposal and make a recommendation to the Municipal Council, unless the Municipal Council by motion indicates that the proposal has been denied and will not be considered further. After receiving any recommendation from the Planning Commission, the Municipal Council shall hold a public hearing to consider a resolution of intent to create a permit parking area. The Municipal Council may adopt, reject, or adopt with modifications the terms and conditions of the proposed permit parking area. If the Municipal Council adopts a resolution of intent which sets forth the details of the program to be considered, the Parking Coordinator shall mail a copy of the resolution ~~shall thereafter be mailed~~ to:

(a) each address of record within the proposed permit parking area through a mailing sent to "postal patron"; and

(b) each property owner of record within the area as shown in Utah County land records.

(~~6~~8) Within ninety (90) days after adopting a resolution of intent, the Municipal Council shall conduct a public hearing on the proposal. The City Recorder, in cooperation with Council staff, shall cause notice of such hearing or hearings to be published twice in a newspaper of general circulation in the City. The first publication shall be not less than ten (10) days prior to the date of such hearing. The notice of the public hearing shall be conspicuously posted in the proposed permit parking area. The notice shall clearly state:

(a) the purpose of the hearing,

(b) the location and boundaries proposed as a permit parking area,

(c) the proposed parking time restrictions and exemptions, and ~~any prohibition or time limitation under which permit parking will be exempt therefrom and, if applicable,~~

(d) the permit fee to be charged ~~therefor~~. ~~During such hearing or hearings, any interested person shall be entitled to appear and be heard, subject to ordinary rules of order.~~

(~~7~~9) Following the public hearing, the Municipal Council may enact an ordinance which establishes the permit fee, the boundaries of a permit parking area, and any time or other restrictions imposed on the area. In order to establish a permit parking area, the Council shall find that the designation will contribute to the health, safety, and general welfare of persons residing in the area designated. In making such finding, the Council shall consider resident support for permit parking, existing parking conditions, expected effectiveness of a permit parking area in improving parking conditions, fee considerations, and the location and size of the permit parking area.

(~~8~~10) A permit parking program shall balance affected interests, as determined by the Municipal Council, including public safety, neighborhood concerns, and the welfare of the general public. A particular permit parking program shall specify the permit area and the duration of parking restrictions applicable within the permit parking area. Such restrictions may be different than those in a request to establish a permit parking area.

(~~9~~11) Following adoption of an ordinance establishing a permit parking area, a summary of the ordinance and its effective date shall be mailed by the City Parking Coordinator to:

(a) each address of record within the proposed permit parking area through a mailing sent to "postal patron"; and

(b) each property owner of record within the areas as shown in Utah County land records.

9.80.080. Modification or Removal of Permit Parking Area Designation.
After holding a public hearing the Municipal Council may by ordinance modify or remove a designated permit parking area or any associated program requirement in any manner consistent with this Chapter.

9.80.090. Posting of Permit Parking Area.
Upon the adoption by the Municipal Council of an ordinance designating a permit parking area, the Mayor shall cause appropriate signs to be erected in the area indicating prominently thereon the area prohibition or time limitation, period of the day for its application, and conditions, if any, when permit parking rules apply.

9.80.100. Permit Fees.
Fees will be assessed for (1) each application to designate, or amend, a permit parking area and (2) each vehicle permit issued within the designated permit parking area. Permit fees shall be charged as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

9.80.110. Penalty Provisions.
(1) No person may park a motor vehicle in violation of a permit parking area ordinance.

(2) It shall be unlawful for a person to falsely claim eligibility for a parking permit or to furnish false information in an application under this Chapter~~therefor~~.

(3) ~~It shall be unlawful for a person holding a valid parking area permit to allow the use or display of such permit on a motor vehicle in a manner not permitted by this Chapter or any ordinance adopted under the authority of this Chapter for the specific permit parking area where the permit is used. Such conduct shall constitute an unlawful act and violation of this Chapter both by the person holding the parking permit and the person who so uses or displays the permit on an unauthorized vehicle.~~

~~(4) It shall be unlawful and a violation of this Chapter for a person to copy, produce, or otherwise bring into existence a facsimile or counterfeit parking permit or permits. It shall further be unlawful and a violation of this Chapter for a person to transfer the beneficial ownership of or a continuous right to use a visitor parking permit or to knowingly use or display a facsimile or counterfeit parking permit in order to evade area prohibitions or time limitations on parking applicable in a permit parking area.~~

~~(5)~~ Violation of a parking area permit requirement shall be a civil infraction and shall be enforced as provided in Provo City Code Chapter 9.17~~, Provo City Code~~.

9.80.120. Revocation of Permit.
(1) The Mayor or the Mayor's designee is authorized to revoke a parking permit of any person found to be in violation of this Chapter or any provision of an ordinance which establishes a specific permit parking area, and upon written notification thereof, the person shall surrender such permit to the Police Chief or the Chief's designee. Failure to surrender a parking permit so revoked shall constitute a violation of law and of this Chapter.
(2) A permit holder found to violate the terms of this Chapter may have parking privileges revoked and the permit holder may be prohibited from obtaining a parking permit for one (1) year from the date of the violation.

9.80.130. Limit on Available Number of Permits.
~~There shall be no limit on the total number of parking permits issued within an entire permit parking area governed by this Chapter. However, n~~No more than two (2) parking permits

shall be issued in total for each qualifying dwelling unit, unless specifically provided otherwise in the provisions governing a specific permit parking area.

9.80.140. Permit Eligibility – Issuance ~~and Display~~.

(1) The Provo City Parking Coordinator shall issue parking permits that comply with the requirements set forth in this Section. Permits are issued on a per vehicle basis.

(2) ~~(a)~~ Annual application for one (1) or more parking permits authorized under this Chapter shall be made on a form approved and provided by the City Parking ~~Permit~~ Coordinator which includes at least the following information:

(~~i~~a) applicant's name, address, and e-mail address;

(~~ii~~b) proof of eligibility for the permit; ~~and~~

(~~iii~~c) the license plate number for each~~the~~ vehicle to be permitted for that applicant, including proof that the vehicle is currently registered with the Utah Division of Motor Vehicles; and

(~~b~~d) ~~A~~additional information ~~may be required~~ that will aid the enforcement of the provisions of this Chapter as determined by the City Parking Coordinator.

(3) A parking permit shall be issued for a motor vehicle only upon compliance with each of the following requirements:

(a) The permit applicant shall be a person who:

(i) owns a dwelling located within the designated permit parking area; or

(ii) is an occupant of a qualifying rental dwelling unit within the designated permit parking area for which a valid rental dwelling license has been issued.

(b) No permit shall be issued to a person who resides in a rental dwelling that does not comply with the requirements of Provo City Code Chapter 6.26, ~~Provo City Code,~~ at the time the permit is issued.

(c) Applicable fees, as set forth in the Consolidated Fee Schedule adopted by the Municipal Council, have been paid.

~~(4) A person who is issued a parking permit shall be deemed the permit holder.~~

(4~~5~~) The issuance of a parking permit does not guarantee or reserve to the permit holder a particular parking space within a permit parking area governed by this Chapter, but only authorizes a motor vehicle to be parked on a public street in a legally available parking space.

(5~~6~~) A parking permit issued to a resident who moves out of the residence in the permit parking area to which the parking permit is assigned will be revoked by Provo City. A

permit holder shall notify the City at the time the permit holder moves out of the residence to which the parking permit is assigned.

(67) Owners of vVehicles parking in the permit parking area must display are responsible to ensure that a current rear license plate is visible or current temporary registration certificate for that vehicle. Plates must be kept visible and free of snow, mud, or other obstructions. In the event of a snow storm that results in the plate being obstructed, the plate must be cleared within a reasonable time frame 72 hour period. A permit holder shall not be penalized for a violation of this Subsection (67) if the permit holder can prove that a valid permit was held and displayed in the vehicleas required by this Chapter at the time of the violation.

9.80.150. Nontransferability.
The holder of a A parking permit for a permit parking area governed by this Chapter may display the parking permit is valid only infor the vehicle for which the permit is issued.

9.80.160. Temporary Permits.
During eacha calendar year, residents of a qualifying permit parking area may request, online or by calling Provo City Customer Service (311), the issuance of up to eighteen (18) temporary one (1) day permits and one (1) seven (7) day permit. Temporary permits must be issued in advance of their usemay be issued to residents of a qualifying dwelling unit within a permit parking area governed by this Chapter.

9.80.170. Expiration.
Each parking permit issued for a permit parking area governed by this Chapter shall expire annually after the issuance thereof.

9.80.180. Handicapped Parking.
Nothing in this Chapter shall abrogate the scope of parking privileges granted to handicapped persons established by Provo City Code or other applicable law.

9.80.190. Other Parking Regulations.
The provisions of this Chapter shall not relieve any person from the duty to observe other and more restrictive provisions of the Provo City Code which prohibit or limit the stopping, standing, or parking of vehicles at specific times or places.

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Provo City Consolidated Fee Schedule

. . .

COMMUNITY DEVELOPMENT

Map and Text Amendments*	
General Plan (Map, Text, and Master Plan)	$560.00
Local Street Plan	$150.00
Ordinance Text Amendments (Titles 14 and 15)	$1,100.00
Ordinance Text Amendments (Chapter 9.80 Permit Parking Area)	$1,100.00
Rezoning	$1,050.00
Agricultural Protection Area Proposal	$500.00
Annexation (includes municipal disconnection)	$1,050.00

*A project plan is required for all rezonings and general plan applications. Project plan fees are assessed as per type of project.

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PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: JMCKNIGHT
Department: Public Works
Requested Meeting Date: 07-23-2019

SUBJECT: A resolution authorizing the Mayor to sign a water carriage agreement with Central Utah Water and the US Department of the Interior. (19-083)

RECOMMENDATION: Recommending the City Council approve a resolution authorizing the Mayor to sign an agreement for the City to pay its portion of costs associated with shared water lines in Provo Canyon.

BACKGROUND: The City utilizes shared water conveyance pipe with other agencies in Provo Canyon. This agreement formalizes how the City will pay for it's portion of related costs.

FISCAL IMPACT: Yes

PRESENTER'S NAME: Dave Decker

REQUESTED DURATION OF PRESENTATION: 10 Minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-083

RESOLUTION 2019-.

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WATER CARRIAGE AGREEMENT WITH CENTRAL UTAH WATER AND THE UNITED STATES DEPARTMENT OF THE INTERIOR. (19-083)

WHEREAS, Provo City utilizes a shared water conveyance pipe with other agencies in Provo Canyon; and

WHEREAS, the purpose of the agreement, attached hereto as Exhibit A, is to confirm that Provo is authorized to convey certain water through non-City systems and to define the terms for such conveyance; and

WHEREAS, on July 23, 2019, the Provo Municipal Council the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Council, the Council finds (i) the agreement attached hereto as Exhibit A should be approved; (ii) the Mayor, or her designee, should be authorized to execute the agreement; and (iii) such agreement reasonably furthers the health, safety, and general welfare of the citizens of Provo.

NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah, as follows:

PART I:

The Agreement between Provo City and Central Utah Water and the United States Department of the Interior, attached hereto as Exhibit A, is hereby approved, and the Mayor, or her designee, is authorized to execute the agreement.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

AGREEMENT

AMONG THE
CENTRAL UTAH WATER CONSERVANCY DISTRICT
PROVO CITY
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
FOR THE CARRIAGE OF NON-PROJECT WATER
THROUGH BONNEVILLE UNIT PROJECT FACILITIES

THIS AGREEMENT, made this _____ day of_____, 2019, among the CENTRAL UTAH WATER CONSERVANCY DISTRICT, hereinafter referred to as the "District," CITY OF PROVO, hereinafter referred to as "Provo" and the UNITED STATES DEPARTMENT OF THE INTERIOR ("Interior") (collectively Parties). This Agreement is made pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or and supplementary thereto, particularly Section 301 of Public Law 103-434, as well as the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

WITNESSETH THAT:

EXPLANATORY RECITALS:

WHEREAS, the United States Bureau of Reclamation has constructed certain features, and the District and Interior are constructing the remaining features of the Bonneville Unit ("Project") of the Central Utah Project (initial phase), a participating project of the Colorado River Storage Project. The purpose of the Project is to supply water for irrigation, municipal, domestic, industrial, and other purposes to the District for use by its petitioners and contract holders; and

WHEREAS, the District, by Contract No. 14-06-400-4286 dated December 28, 1965, as amended and supplemented, hereinafter referred to as the ("Repayment Contract,") agreed, among other things, to repay the reimbursable Project costs to the United States and to operate and maintain the facilities constructed for the Project ("Project Works"); and

WHEREAS, the District has the right to market and allot the water developed by the Project ("Project Water"), the obligation to protect the Project Water Rights from interference, and to use Project Works to deliver such Project Water; and

WHEREAS, through an initial Determination of Taking dated July 11, 1987, the United States acquired the Olmsted Flowline from PacifiCorp Electric Operations ("PacifiCorp") (formerly Utah Power and Light Company). The Olmsted Flowline was reconstructed by the

District and delivers water from the diversion dam and intake structure on the Provo River to the Olmsted Power Plant and is part of the Project Works.

WHEREAS, in 1990 the United States amended the Determination of Taking to acquire the Olmsted Power Plant, its appurtenant facilities, and the Olmsted Water Rights, together with the Olmsted Flowline ("Olmsted Facilities"), which are all part of the Project Works; and

WHEREAS, as part of the compensation for the purchase of the Olmsted Facilities, the United States, the District, and PacifiCorp, entered into the Olmsted Settlement Agreement agreeing, among other things, that the United States would hold title to the Olmsted Facilities, but PacifiCorp would continue overseeing operations of the Olmsted Power Plant and sell the energy produced until expiration of the Olmsted Settlement Agreement; and

WHEREAS, the Olmsted Settlement Agreement expired on September 21, 2015, and a new agreement is needed to allow Provo to interfere with power generation at the Olmsted Power Plant and to accommodate carriage of Provo's Non-Project Water through the Project Works; and

WHEREAS, the District has reconstructed the Olmsted Power Plant under the terms of its Central Utah Project repayment contract with the United States and the District is now responsible for the operation, maintenance, repair and replacement ("OM&R") of the Olmsted Power Plant and continues to be responsible for the OM&R of the remainder of the Project Works; and

WHEREAS, the United States constructed Alpine Aqueduct reaches 1, 2, 2A, 2B, and 3 ("Alpine Aqueduct System") which are part of the Project Works and are used to deliver Project Water for municipal and industrial purpose**;** and

WHEREAS, the Alpine Aqueduct Raw Water Bypass Pipeline and the North Branch Aqueduct ("District Owned Facilities") were constructed and are owned by the District. These District Owned Facilities are interconnected with the Project Works; and

WHEREAS, Orem City has a contractual right to convey a portion of its water in the Olmsted Flowline pursuant to an agreement that was in existence at the time the Olmsted Flowline was acquired by the United States; and

WHEREAS, the purpose of this Agreement is to confirm that Provo is authorized to convey its Non-Project Water through the Olmsted Flowline and Alpine Aqueduct System ("Olmsted-Alpine System") for a fee ("Federal Carriage Charge") and through District Owned Facilities for a separate fee ("District Carriage Charge") when there is (1) space available ("Unused Capacity") in the Olmsted Flowline that is not being utilized by Orem City under its

prior contractual right; (2) Unused Capacity in facilities utilized for Project Water; (3) for payment of a proportionate share of the operation, maintenance, and replacement (OM&R) costs, including capital repair and replacement reserves ("Capital Replacement Reserves") costs, of the Project Works and District Owned facilities used to deliver Provo's Non-Project Water; and (4) for payment of costs associated with loss of generation at the Olmsted Power Plant caused by conveyance of Provo's Non-Project Water.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

DEFINITIONS

1. Additional terms used herein:

(a) "Alpine Aqueduct System" shall mean all of the following facilities:

(i) "Alpine Aqueduct Reach 1," a feature of the Project Works, consisting of a 90-inch diameter underground pipeline and tunnel about 1.05 miles long pipe with a design capacity of 450 cfs. Alpine Aqueduct Reach 1 extends from the regulation reservoir on Olmsted Flowline to the beginning of Jordan Aqueduct and the Treatment Plant.

(ii) "Alpine Aqueduct Reach 2," a feature of the Project Works, consisting of an underground pipeline about 4.7 miles long. The upper section of the pipeline is a 48-inch diameter pipe with a design capacity of 125 cfs. The lower section consists of 36-inch to 16-inch diameter pipe with an initial design capacity of 70 cfs. Alpine Aqueduct Reach 2 begins near the Treatment Plant and extends south through Orem to about 1300 South.

(iii) "Alpine Aqueduct Reach 2A," a feature of the Project Works, consisting of a 36-inch diameter, 2,300 feet long underground pipeline pipe, with a design capacity of 70 cfs. Alpine Aqueduct Reach 2A begins at the 30-inch diameter turnout at station 6+19 on Alpine Aqueduct Reach 2 and extends to the original 60-inch diameter pipeline connected to the Treatment Plant.

(iv) "Alpine Aqueduct Reach 2B," a feature of the Project Works, consisting of a 2.2 miles long underground 24-inch diameter pipeline, with a design capacity of 47 cfs. Alpine Aqueduct Reach 2B begins just downstream of the valve and flow meter at station 22+55 on Alpine Aqueduct Reach 2A and extends south-easterly where it connects to Provo's municipal water system.

(v) "Alpine Aqueduct Reach 3," a feature of the Project Works that is a 12.2 miles long underground pipeline. The pipeline is 60-inch to 48-inch-diameter pipe in the upper section

with an initial design capacity of 155 cfs. The lower section consists of 48-inch to 18-inch-diameter pipe with an initial design capacity of 87.5 cfs. Alpine Aqueduct Reach 3 extends from near the Treatment Plant north through northern Utah Valley to Highway 92 (Alpine Highway) near the Micron Plant.

(b) "Alpine Aqueduct Raw Water Bypass Pipeline," a District Owned Facility interconnected with the Project Works that is a 2,030 feet long underground pipeline, consisting of a 60-inch to 48-inch-diameter pipe, connecting Alpine Aqueduct Reach 1 to Alpine Aqueduct Reach 3. The design capacity is 180 cfs from the Alpine Aqueduct Reach 1 connection to a Treatment Plant turnout and thereafter 87.5 cfs to the connection with Alpine Aqueduct Reach 3.

(c) "Capital Replacement Reserves" shall mean reserves charges set by the District's Board of Trustees and are subject to change as per board policy.

(d) "Lost Revenue" shall mean loss of generation and OM&R revenue from the Olmsted Power Plant facilities caused by Power Interference.

(e) "Non-Project Water" shall mean water or water rights owned or controlled by Provo that is not Project Water.

(f) "North Branch Aqueduct," a District owned facility that is an underground pipeline about 12,250 feet long consisting of 36-inch-diameter pipe with a design capacity of 18 cfs. North Branch Aqueduct begins at approximately 9675 North 4800 West in American Fork and extends to near 4380 West 11000 North in Highland.

(g) "Olmsted-Alpine System" shall mean the Olmsted Flowline and the Alpine Aqueduct System.

(h) "Olmsted Flowline," a feature of the Project Works, shall mean the pipeline and diversion previously owned by PacifiCorp and reconstructed by the District including the diversion dam, intake structure, pipeline, tunnel, regulation reservoir and appurtenant facilities. Olmsted Flowline is about 4.5 miles long with a capacity of 450 cubic feet per second (cfs). Olmsted Flowline extends from the diversion dam and intake structure on the Provo River, which is about 6 miles below Deer Creek Reservoir, to and including the regulation reservoir at the mouth of Provo Canyon.

(i) "Olmsted Power Plant," a feature of the Project Works, shall mean the power generation facility previously owned by PacifiCorp and reconstructed by the District under the Olmsted Hydroelectric Replacement Project.

(j) "Olmsted Power Plant Facilities" shall mean all of the power plant facilities generally below the 10 MG reservoir comprised of Olmsted Reach A, spillway, pipeline and penstock, Olmsted Power Plant, tailrace, and all appurtenant buildings, equipment and facilities.

(k) "Olmsted Water Rights" shall mean the water rights acquired by the United States, which water are authorized for use in generating power through the Olmsted Power Plant and used in the development of Project Water. The Olmsted Water Rights are currently decreed under the Provo River Decree, Civil No. 2888. The total quantity of water authorized for power generation under the Olmsted Water Rights is 429 cfs, which is comprised of two separate water rights: (i) a diligence right for 229 cfs with a priority of 1897, and (ii) an appropriated right for 200 cfs with a priority of 1917. The Olmsted Water Rights are non-consumptive and other water right holders historically had the right to make consumptive use of the water after the water passed through the Olmsted Power Plant.

(l) "OM&R costs" shall mean the operation, maintenance, repair costs including operation and maintenance reserves incurred annually, and Capital Replacement Reserves costs necessary to operate, maintain, and repair the Project Works in working order and replace the Project Works as necessary.

(m) "Power Interference" shall mean the reduction in power generation at the Olmsted Power Plant caused by Provo's diversion or conveyance of Non-Project water in a manner that interferes with the ability to use the full Olmsted Water Right for power generation.

(n) "Treatment Plant" means the Don A. Christiansen Regional Water Treatment Plant located at the mouth of Provo Canyon and operated by the District to treat Project and Non-Project Water. The Treatment Plant has a capacity to treat 100 million gallons per day (mgd).

(o) "Unused Capacity" means the capacity of the Project Works not required either for conveyance of Project Water or Non-Project Water by Orem City pursuant to the agreements referenced in Section 7(d) that were in existence at the time the Olmsted Flowline was acquired by the United States. It can also mean capacity in the District Owned Facilities not required for conveyance of Project Water.

TERM OF AGREEMENT

2. The term of this Agreement shall begin on the date of execution and shall remain in effect for 40 years from said date. The Agreement may be extended additional 40-year periods by mutual written agreement of the Parties.

PAYMENT OF CARRIAGE
OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

3. (a) Authority for carriage of Non-Project M&I Water in Central Utah Project facilities is provided by Public Law 103-434, an amendment to the Warren Act (36 Stat. 925). The Federal Carriage Charge paid by District under this Agreement will be credited by the United States in accordance with Section 5 of the Colorado River Storage Project Act of April 11, 1956.

(b) The District annually will report to the United States by February 15th of each year the amount of Non-Project Water carried in the Olmsted-Alpine System for Provo during the preceding water year period of November 1 through October 30 ("Water Year"). District shall pay to the United States the Federal Carriage Charge as calculated in Subsection 3(e) herein, for such Non-Project Water. District shall then bill Provo for reimbursement of the District for the Federal Carriage charge in accordance with Subsection 3(c) herein.

(c) The District also will notify Provo in writing by February 15 of each year regarding the quantity of Provo's Non-Project Water conveyed through each of the features of the Olmsted-Alpine System and District Owned Facilities during the preceding Water Year. The written notice will include information regarding (i) the Federal Carriage Charges incurred by the District to the United States in carrying this Non-Project Water for Provo in the Olmsted-Alpine System, and (ii) the District Carriage Charges for the delivery of Provo's Non-Project water through the District Owned Facilities.

(d) Included with the written notice provided pursuant to 3(c) herein, will be an invoice from the District to Provo for (i) reimbursement to District of the Federal Carriage Charge that the District paid to the Unites States for carriage of Provo's Non-Project Water, and (ii) the separate District Carriage Charge. Provo will remit the payment to District by March 15 of each year.

(e) Additionally, through the same invoice Provo shall be billed and pay the District Provo's proportionate share of Non-Project Water OM&R costs for the features of the Olmsted-Alpine System and District Owned Facilities used in the delivery of Provo's Non-Project Water, which payment shall also be due by March 15 of each year. The District retains all funds collected for OM&R costs. The OM&R costs shall include a payment for Capital Replacement Reserves required to operate and maintain the Project Works and District Owned facilities.

(i) Provo's proportionate share of OM&R costs shall be determined annually by adding the sum of Provo's proportionate share of OM&R costs for each of the individual features of the Olmsted-Alpine System and District Owned Facilities used in the delivery of Provo's Non-Project Water.

(ii) Provo's proportionate share of OM&R costs for an individual feature is calculated by multiplying the total OM&R costs incurred during the preceding Water Year for that feature by the ratio of amount the Non-Project Water owned or controlled by Provo conveyed through the feature divided by the sum of the total Project Water and Non-Project Water conveyed to all users during the Water Year through the feature.

(iii) For Olmsted Flowline only, the total water conveyed to all users shall include water delivered to the Olmsted Power Plant. Capital Replacement Reserves charges are set by the District's Board of Trustees and are subject to change as per board policy.

(f) The annual Federal Carriage Charges as shown in the following table shall be charged by the United States to the District and subsequently reimbursed to District by Provo for each acre-foot of Non-Project Water conveyed through said Project Works.

United States Owned Facilities	Federal Carriage Charges per Acre-Foot
Olmsted Flowline	$2.08
Alpine Aqueduct Reach 1	$0.52
Alpine Aqueduct Reach 2	
Upper Section	$0.16
Lower Section	$3.08
Alpine Aqueduct Reach 2A	$0.21
Alpine Aqueduct Reach 2B	$1.12
Alpine Aqueduct Reach 3	
Upper Section	$0.08
Lower Section	$3.56

(g) The annual District Carriage Charge as shown in the following table shall be charged by the District to Provo for each acre-foot of Non-Project Water conveyed through the District Owned Facilities:

District Owned Facilities	District Carriage Charge per Acre-Foot
Alpine Aqueduct Raw Water Bypass Pipeline	
Upper Section	$0.22
Lower Section	$0.38
North Branch Aqueduct	$4.25

(h) The above annual charges per acre-foot shall be subject to review and modification when capital improvements are made to the Olmsted-Alpine System and District Owned Facilities and when the final allocation of Project costs is received from the United States.

COMPENSATION TO DISTRICT FOR LOST REVENUE

4. (a) Commencing upon startup of the Olmsted Power Plant, which occurred on July 19, 2018, the District shall bill, and Provo shall pay to the District, annually an amount necessary to compensate the District for Lost Revenue attributable to Provo's diversion or conveyance of Non-Project Water causing Power Interference during the preceding Water Year.

(b) The Lost Revenue rates per acre-foot of Power Interference shall be as follows, based on the Water Year.

Water Year	Amount
2018	$21.12
2019	$21.54
2020	$21.97
2021	$22.41
2022	$22.86
2023	$23.32
2024	$23.79

The rates subsequent to Water Year 2024, will be re-evaluated and provided to Provo by the District prior to November 1, 2023, for Water Years 2025 through 2030 and then every five years thereafter during the term of this Agreement so that Provo will have at least 18 months' notice before a new rate table becomes effective. Rates are calculated by the District to account for Lost Revenue per acre-foot of Power Interference for the respective periods.

(c) District shall submit an invoice to Provo by February 15 of each year for (i) the amount of Lost Revenue due to the District, based on the Lost Revenue rates in subsection (b) above, resulting from Provo's diversion of water causing Power Interference during the preceding Water Year. District shall collect all Lost Revenue and disburse, allocate or hold such sums in accordance with its contracts with the United States. Provo will remit the payment to District on these invoices by March 15 of each year.

NOTICE OF CHANGE IN COSTS

5. The District will give Provo written notice of any conditions such as new contracts, plans, or situations of which it is aware and which have the potential to increase Provo's payments to the District as required herein by more than fifty percent (50%). Provo shall be given the opportunity to be heard and to express concerns regarding said conditions. This will give Provo an opportunity to protest such actions, if it deems appropriate, and to enable Provo to plan for potential future increases of its financial liabilities. This provision does not limit or restrict District's ability to proceed with its contracts or plans, provided that Provo has been given notice and an opportunity to be heard.

MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION

6. In consideration for the right to convey Non-Project Water through the Olmsted-Alpine System and District Owned Facilities, Provo shall:

(a) Suffer all evaporation, distribution, and administration losses relating to the diversion, conveyance, and delivery of the Non-Project Water.

(b) Make the necessary arrangements with the State of Utah and others needed for the diversion and carriage of Non-Project Water including filing and obtaining approval of any application relative thereto at no cost to the District or to the United States.

(c) Pay any charges made by the State of Utah for the distribution, handling, or administration of Provo's Non-Project Water.

(d) Indemnify and hold harmless the United States and District and all of their respective representatives from all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property using or receiving the Non-Project Water carried in the Olmsted-Alpine System and/or District Owned Facilities for Provo, as a result of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, of the Olmsted-Alpine System or District Owned Facilities, or other duties of the District or the United States regarding any of the Project Works and/or District Owned Facilities, without regard of who performs those duties.

CONDITIONS AFFECTING CARRIAGE OF NON-PROJECT WATER

7. (a) The parties acknowledge that the District intends to deliver only Provo River untreated raw water to the (Treatment Plant) where it will be treated to drinking water standards for delivery to Provo. Additionally, the parties agree that neither the District nor the United States warrants the quality of raw water delivered to the Treatment plant, and the United States does not warrant the quality of treated water delivered to Provo.

(b) Provo understands and agrees that neither the District nor the United States shall be liable for the failure of the District or the United States to convey any Non-Project Water as provided in this Agreement for any cause.

(c) The District and the United States, after notification to the Provo, reserve the right temporarily to cease deliveries of Non-Project Water without liability during periods reasonably required for inspection, maintenance, and other operating requirements.

(d) Provo understands that carriage of Non-Project Water for Provo is subject to the contractual obligations of the District and/or the United States under provisions of existing contracts including, but not limited to, the following:

(i) The contract dated February 17, 1958, in which Orem City and Utah Power and Light Company ("UP&L") entered into an agreement that provided, among other things, for nine (9) cfs of Orem's water to be conveyed through Olmsted Flowline.

(ii) The contract dated November 22, 1977, among UP&L, the Central Utah Water Conservancy District, and Orem City which provided, among other things, for the District to connect a 105 inch diameter pipeline (this is Alpine Aqueduct Reach 1, with actual diameter of 90 inches) onto the Olmsted Flowline and for Orem City to continue its right to utilize up to nine (9) cfs capacity in Olmsted Flowline, as provided in the contract dated February 17, 1958, and permit an increase of that right to fifteen (15) cfs. As consideration for this modification, Orem City relinquished its option to the District to purchase Olmsted Flowline from UP&L. The District in turn agreed to relinquish its option to the United States, provided that the Olmsted Flowline was acquired as a portion of the Bonneville Unit of the Central Utah Project.

FLOW RIGHTS

8. Provo understands and agrees that the flow capacity in the Project Works will first be used up to a limit of fifteen (15) cfs capacity to convey Non-Project Water to Orem City as provided for in the agreement referenced in paragraph 7.(d)(ii). Thereafter, the flow capacity in the Project Works will next be used to convey Project Water.

(a) Project Water petitioned for and allotted to Provo shall be delivered by the District in accordance with provisions of an executed petition and/or contract with Provo.

(b) This Agreement provides for the conveyance of Non-Project Water to Provo on a space available basis. It is understood that the Unused Capacity of facilities referenced herein is not sufficient to provide for all requests for the delivery of Non-Project Water in the Project Works. The District therefore agrees to involve all current and future Project Water petitioners in any future agreements that may be negotiated to provide for Non-Project Water deliveries in the Project Works.

(c) Requests to convey quantities of Non-Project water in excess of space available capacity will be dealt with and reduced by the District to the space available capacity of the Project Works. In limiting such requests, the District agrees to consult with all potentially affected Non-Project water users so as to limit the requests in the most fair and equitable manner reasonably possible.

PROJECT INSTREAM FLOWS

9. Provo's Non-Project Water shall not be relied on by the District or the United States to satisfy minimum in-stream flows or fisheries releases in the Utah Lake-Jordan River Drainage, including all tributaries thereto; provided, however that during such times as Non-Project Water is conveyed to Provo in the natural channel of the Provo River, this water may be non-consumptively used by the District and the United States to satisfy minimum stream flow requirements. Any such non-consumptive use shall not interfere with Provo's uses or rights to such water. This non-consumptive use of Provo's water shall be without charge to the District and the United States.

DELINQUENT PAYMENTS

10. In the event of non-payment of any payments required herein that are 30 days overdue, District shall give Provo ten-days (10) written notice of default. If Provo shall fail to cure the default within five-days (5) of its receipt of written notice of default, District may pursue all legal remedies available to it, including but not limited to, unauthorizing conveyance of Provo's Non-Project Water in the Project Works and District Facilities as well as requesting the State Engineer and Provo River Commissioner to cease delivery of the Provo's Non-Project Water causing Power Interference in order to restore power generation. The Parties agree, however, to attempt in good faith to resolve any payment disputes promptly as they may occur. Any such suspended or precluded water deliveries because of non-payment shall resume upon the payment-in-full of any outstanding and due amounts, together with accrued interest as provided in Section 10 of this Agreement.

CHARGES FOR DELINQUENT PAYMENTS

10. Every charge required by this Agreement to be paid by Provo, which shall remain unpaid after it has become due and payable, shall be subject to a penalty of eighteen percent interest (18%) per annum. Interest shall begin to accrue from the date of the delinquency until the outstanding delinquency together with all accrued interest has been paid in full. All money received shall first be applied to satisfy the accrued interest, and then to the Federal Carriage Charge reimbursement, then to the District Carriage Charge, then to the OM&R cost payment including Capital Replacement Reserves, and then to the Lost Revenue payment.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

11. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by the parties hereto and the United States.

OFFICIALS NOT TO BENEFIT

12. No member of or delegate to Congress, resident commissioner, or local official of Provo shall benefit from this Agreement other than as a water user or landowner in the same manner as other users or landowners.

INTEGRATION OF PRIOR AGREEMENTS

13. This Agreement shall supersede all prior written carriage agreements among the Parties hereto and may only be amended or superseded by a subsequent written agreement, signed by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first herein above written.

CENTRAL UTAH WATER CONSERVANCY DISTRICT

By_____ Attest _____
N. Gawain Snow, President Secretary, Gene Shawcroft

CITY OF PROVO

By_____ Attest_____
[Title] Recorder *[if applicable]*

UNITED STATES

Approved for Legal Sufficiency

By_____ By _____
Reed R. Murray, Program Director Intermountain Region
Department of the Interior Office of the Solicitor

Provo City *(Redevelopment)*

Staff Memorandum

Mill Race Development Owner Participation Agreement

July 23, 2019

Department Head David Walter 852-6167 **Presenter** David Walter 852-6167 **Required Time for Presentation** 30 minutes **Is This Time Sensitive** Yes	**Purpose of Proposal** • To effectuate the redevelopment of Block 1, the block where the former IFA store is located, by transferring Redevelopment Agency property to Mill Race Development LLC **Action Requested** • Approve the attached Resolution authorizing the Chief Executive Officer of the Redevelopment Agency to sign the attached Owner Participation Agreement **Relevant City Policies** • Pursue economic development initiatives • Eliminate blight • Provide Housing **Budget Impact** • **Description of this item** • The Community Redevelopment Agency of Provo City Corporation (Agency) purchased the property at 54 West 500 South in December of 2017 from Intermountain Farmer's Association (IFA). The Agency purchased the property in order to help IFA acquire their current location in the former OfficeMax building. However, the purchase also would allow the Agency to own approximately a quarter of a block in an area that has seen a great deal of activity recently and success with the Startup Building and other business newly opened in the area. This led to an opportunity to participate the redevelopment of the entire block and the Agency can now leverage their ownership of the existing IFA building into a larger development.

	• Agency staff began to meet with the remaining property owners on the block to gauge their interest in participating with the Agency in the redevelopment of the block. Unbeknownst to staff, Mr. Justin Earl had begun negotiations to acquire the largest piece of property on the block. Once the transaction was finished, we had the opportunity to meet with him and ascertain that he would be interested in the redevelopment of the entire block of property. • Mr. Earl met with his development team and presented a plan that will include an office tower, condominiums for sale and apartments for lease on the property. The development will also include meeting space and structured parking. Mr. Earl intends to offer some workforce housing as part of the office space. Should a firm lease space in the office tower, they would be able to contract for an apartment that would be available to their employees who make 60% the area median income. • Mr. Earl and his company have worked with the City's Community Development department to provide both a Development Agreement and PRO Zone for this block and are now looking to have the attached Owner Participation Agreement (OPA) approved in order to begin the construction process. • The OPA provides for the transfer of property to Mr. Earl's company with the requirement that the development could pay the Agency back after 10 years at the market value of $1,600,000 or pay the Agency back at a later date by appraising the development and paying the Agency one-fourth of the land value of the project, one-fourth being the Agency's approximate holding in the block. The developer is also asking the Agency to consider providing tax increment to the project in exchange for public parking in the parking structure. • Staff recommends approving the attached resolution authorizing the Chief Executive Officer or designee to sign the attached OPA and make minor changes to the document, provided such changes do not substantially change the deal points.

Attachments: Resolution
Owner Participation Agreement
Development Proposal

EXHIBIT A

PARTICIPATION AGREEMENT
by and between the
REDEVELOPMENT AGENCY OF PROVO CITY
and
MILL RACE PARTNERS

This PARTICIPATION AGREEMENT ("**Agreement**") is made and entered into as of this _____ day of _____, 2019 (the "**Effective Date**"), by and between the REDEVELOPMENT AGENCY OF PROVO CITY ("**Agency**"), a political subdivision of the State of Utah existing and operating under the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act, Utah Code § 17C-1-101 *et seq.*, and/or its predecessor statutes ("**Act**"), and Mill Race Partners , LLC ("**Participant**"), a Utah Limited Liability Corporation. Participant and the Agency may from time to time hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**." As authorized by the Act, the Agency and the Participant do hereby agree and covenant as follows:

1. SUBJECT OF AGREEMENT

1.1. Purpose of Agreement

The purpose of this Agreement is to further carry out in part the Project Area Plan for the South Downtown Community Development Project Area adopted July 1, 2014 ("**Plan**") for the South Downtown Community Development Project Area ("**Project Area**"), by providing for property tax increment incentives to entice Participant to invest in and redevelop portions of the Project Area and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in the further development of the Project Area, which will benefit the Project Area, Provo City ("**City**"), Utah County and the State of Utah.

1.2. Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of the City, and the health, safety, and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

1.3. The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

1.4. The Project Area Plan

This Agreement is subject to the provisions of the Plan. The Plan is attached hereto as **Exhibit A**.

1.5. Interlocal Agreements

Subject to the terms of the interlocal agreements with Provo City, the Provo City School District, Utah County, and the Central Utah Water Conservancy District (attached hereto as **Exhibits B**, **C**, **D**, and **E**, respectively) (the "**Interlocal Agreements**"), the Agency is entitled to receive, for a period of up to 12 years, a portion of the tax increment generated by the development on the Site (the "**Agency Share**").

1.6. Description of the Site

The site of the development contemplated by this Agreement shall be located within the Project Area on multiple parcels totaling approximately 3.67 acres (the "**Site**") that Participant intends to acquire. The Site is shown in detail on the site map, attached hereto as **Exhibit F**. The Site is only a portion of the Project Area.

1.7. Description of the Facility

Pursuant to the term of this Agreement, the Participant shall construct upon the Site a multi-use development as further described in **Exhibit G** (the "**Facility**"). The current conceptual development plan for the Facility is included in **Exhibit H**. The conceptual development plan depicted in **Exhibit H** is governed by that certain Development Agreement between the City and Participant dated _____, 2019 (the "**Development Agreement**"), which is attached hereto as **Exhibit I**. The development plans depicted and described in **Exhibit H** are subject to modification on the terms provided in the Development Agreement, and all references in this Agreement to **Exhibit I** shall refer to such development plans for the Site as such plans are modified from time-to-time in accordance with the Development Agreement.

1.8. Parties to the Agreement

1.8.1. The Agency

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is:

Redevelopment Agency of Provo City
City Center Building
351 W Center St
Provo, UT 84601
Attn: Director

With a copy to:
Adam S. Long
Smith Hartvigsen PLLC
257 East 200 South, Suite 500
Salt Lake City, Utah 84111
along@shutah.law

1.8.2. Participant

Participant is Mill Race Partners, LLC, a Utah limited liability company. Participant's address for purposes of this Agreement is:

Mill Race Partners,
LLC Attn: Justin Earl and Greg Nelson
240 N East Promontory, Suite 200
Farmington, Utah 84025
801-971-7400

1.9. Prohibition against Certain Changes

1.9.1. Acknowledgement by Participant

Participant acknowledges the importance of the continued and further development of the Project Area, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the development of the Project Area possible, that a significant change in the identity of Participant may be considered, for practical purposes, a transfer or disposition of the Site, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.9.2. Transfer of Property Prohibited

Participant represents and agrees for itself, its successors, and assigns that, as of the Effective Date of this Agreement, and during the Term (as defined in Section 2.1.6), Participant has not made or created and shall not make or create any sale, conveyance, deed, transfer, assignment, or lease of the Site, or any portions thereof, during the Term except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

1.9.3. Assignment or Transfer of Agreement

Participant represents and agrees for itself, its successors, and assigns that, during the Term, Participant shall not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, except as explicitly allowed herein or as agreed to in writing by the Parties. In the event there is a transfer or assignment of this Agreement without the express written consent, which consent shall not be unreasonably withheld, of the Agency the Agency, in its sole discretion, may suspend any and all payments under this Agreement to the Participant and any assignee or transferee of the Participant until such time that the Agency is satisfied that the purposes of this Agreement and the Plan will continue to be fulfilled and that such payments will be made to the proper person or entity.

1.9.4. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any act or attempt by Participant, its successors, or assigns to transfer any of Participant's real or personal property within the Site to a tax-exempt organization to exempt any of the real or personal property within the Site from any *ad valorem* taxes without the prior written consent of the Agency, which consent will not be unreasonably withheld, will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant, its successors, or assigns. Participant and Agency acknowledge that Participant has held prior discussions with a tax-exempt organization concerning the potential purchase of fifteen thousand (15,000) square feet of the office portion of the Project.

1.9.5. Continuing Obligations

In the absence of a specific written approval by the Agency, no assignment or transfer of this Agreement, in whole or in part, relieves Participant from any obligation under this Agreement. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant, its successors, and assigns until the expiration or termination of this Agreement.

1.9.6. Representation as to Development Intent

Participant represents and agrees that its acquisition and use of the Site, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of development of the Site and not for speculation in land holding.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Incentive

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant as an incentive eighty seven percent (87.0%) of the Agency Share actually paid to the Agency (the "**Incentive**"). Participant agrees to provide twenty (20) public parking stalls within the proposed parking structure during those times when the structure is not being utilized by the tenants of the Project.

The Agency expects to receive the Agency Share within the first quarter of 2022, which is the year following the tax year (i.e., 2021) the Agency triggers the payment of the Agency Share under the Interlocal Agreements. After the end of the tax year for which the Agency is receiving the Agency Share, the Agency shall pay the Incentive to Participant within thirty (30) days after the date on which all conditions precedent set forth in Section 2.3 have been met.

In the event that the Interlocal Agreements or the Act conflict in any way with this Agreement, this Agreement's conflicting term(s) are and shall be subordinate to the terms of the Interlocal Agreements and/or the Act. Nothing in this Agreement shall obligate the Agency to pay to Participant any amounts beyond those actually received by the Agency.

2.1.2. Collection of the Agency Share

The Agency shall have sole authority to begin, or "trigger," collection of the Agency Share from the Site according to the terms of the Interlocal Agreements. Unless requested otherwise by Participant, the Agency agrees to take actions necessary under the Interlocal Agreements to begin collecting the Agency Share from the Site for 2021.

2.2. Sole Source of Funding for Incentive

The entirety of the Incentive will be funded solely by the payments of the Agency Share received by the Agency pursuant to the Interlocal Agreements. Participant is not, and shall not be, entitled to any other funds collected by the Agency including other tax increment generated within the Project Area. The Incentive is expressly subject to and limited to the amounts available after the limitations and reductions described in this Agreement.

The Agency shall pay the Incentive to Participant only to the extent that tax increment for the Agency Share is actually generated from the Site and that the Agency Share is actually paid to the Agency pursuant to the Interlocal Agreements. The Agency Share is the only funding source available or obligated under this Agreement. Participant acknowledges and agrees that the Agency has no funds or revenue to make payments under this Agreement other than the Agency Share that the Agency receives under the Interlocal Agreements.

2.3. Conditions Precedent to the Payment of the Incentive to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all of the following conditions precedent are satisfied:

2.3.1. Agency is Entitled to Receive the Agency Share

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements.

2.3.2. Agency has Actually Received the Agency Share

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Agency Share from Utah County for the particular calendar year.

2.3.3. Continued Ownership and Operation of Participant's Facility

The Agency is not obligated to pay Participant any Incentive unless Participant (or its permitted assigns) has continuously owned and operated, as defined in Section 2.14, the Facility within the Project Area for the entire year for which Participant seeks payment of the Incentive.

2.3.4. Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant showing that Participant has paid all Taxes attributable to the Site as and when such Taxes are actually due. Notwithstanding the foregoing, Participant may at its cost and expense petition to have the assessed valuation of the Site reduced or may

initiate proceedings to contest Taxes assessed on the Project Area. Participant acknowledges that any reduction in the assessed value of the Site will result in a corresponding reduction in the Incentive. Upon the final determination of any proceeding or contest, Participant shall immediately pay the Taxes due, together with all costs, charges, interest, and penalties incidental to the proceedings. If Participant does not pay the Taxes when due and contests such taxes, Participant shall not be in Default (as defined in Section 5.1) under this Agreement for nonpayment of such taxes if Participant deposits funds sufficient to pay the contested taxes with the Agency or in an interest-bearing account reasonably acceptable to the Agency. The amount of such deposit shall be sufficient to pay the Taxes plus a reasonable estimate of the interest, costs, charges, and penalties which may accrue if Participant's action is unsuccessful. The deposit will be applied to the Taxes due, as determined at such proceedings. The real property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Site from being sold under a "tax sale" or similar enforcement proceeding. At the conclusion of such protest or action, the Agency shall refund any remaining portion of such deposit to Participant.

2.3.5. Request for Payment by Participant

The Agency is not obligated to pay the Incentive to Participant unless Participant has made a request for payment in writing pursuant to Section 2.2.1 for the year for which Participant seeks payment of the Incentive.

2.3.6. Capital Investment and Improvements to Project Area

The Agency is only obligated to pay to Participant the Incentive to the extent that Participant has met the requirements under Section 2.13.

2.3.7. Affordable Housing

The Agency is only obligated to pay to Participant the Incentive to the extent that Participant has provided affordable housing as described in Section 2.20.

2.4. Effect of Failure to Meet Conditions Precedent

In the event that the conditions precedent as described in Section 2.3 are not met for any given calendar year during the Term: (a) Participant shall not be entitled to receive the Incentive attributable to that calendar year; and (b) Participant shall forfeit the Incentive for that particular year.

Notwithstanding the foregoing, in the event that the conditions precedent as described in Section 2.3 are not met for any given calendar year during the Term, Participant shall not be considered to be in Default under this Agreement.

2.5. Limitations on the Incentive

Pursuant to the Interlocal Agreements and the conditions set forth in this Agreement, the Agency shall pay the Incentive to Participant for the period of January 1, 2021 until December 31, 2036 ("**Term**"). The Term shall not exceed fifteen (15) years.

Participant acknowledges that the Incentive is limited by the Term and the amount of tax increment actually generated by development of the Site and received by the Agency. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount during the Term. The amount of tax increment generated by the Site is determined by the assessed value of the Site as determined by the Utah County Assessor. The Agency does not guarantee a particular assessed value of the Site nor does the Agency control or influence the assessed value of the Site.

Notwithstanding all other provisions in this Agreement, the Agency is not obligated to pay to Participant in any one calendar year more than the Incentive attributable to the immediately preceding tax year. The Term and the Incentive shall not be increased by any future extension of or modification to the Interlocal Agreements. For purposes of clarification, if the Agency were to amend the Interlocal Agreements at some point in the future so that the Agency receives a greater percentage of tax increment from the Site or for a longer period of time, the Agency shall not be obligated to pay to Participant any amount greater than what Participant would have received under the terms of this Agreement and the Interlocal Agreements as effective as of the date of this Agreement

2.6. Request for Incentive

Participant shall submit in writing a request for payment to the Agency by March 31st of the year following the calendar year for which payment of the Incentive is sought. The first request for Payment is anticipated to be made on or before March 31, 2022 for the 2021 tax year. Participant shall include in the request proof of payment of all Taxes subject to and described in Section 2.2.2 ("**Request for Payment**"). Unless the Agency sends written notice to Participant of deficiency in the Request for Payment within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period.

2.7. Payment of Taxes

During the Term and to the extent applicable, Participant and any of its successors-in-interest in any portion of the Site agree to pay, prior to delinquency, all undisputed Taxes assessed against any portion of the Site to the extent owned by Participant or any of its successors-in-interest; provided, however, Participant expressly retains any and all rights to: (a) challenge, object to, or

appeal any Taxes; and (b) petition for the reduction thereof, as set forth in Section 2.3 of this Agreement. Participant shall, however, notify the Agency in writing within fifteen (15) calendar days of the Participant's filing of any protest or appeal of such assessment determination or taxes and provide a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, Participant shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date of such protest or appeal is to be heard, if known. The Agency shall have the right, without objection by Participant, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of, or objection to the amount of assessment or taxes which should or should not be assessed against the real or personal property within the Site. If Participant files any protest or appeal, Participant shall not have any claim to the Incentive for such year or years until the protest period ends or a final, non-appealable assessment has been determined. In the event the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the Ad Valorem Taxes against the property within the Site adjusts the assessed value of such property through an audit, the Incentive shall be proportionately increased or decreased, which may result in a refund from Participant to the Agency, or an increased Incentive from the Agency to Participant. At the Agency's sole discretion, the Agency may withhold the Incentive for the final year of the Term until final and unappealable values for property within the Site have been determined, whether through the passage of time or through an appeal by Participant as to the taxable value of such property.

2.8. Removal or Satisfaction of Levies or Attachments

Participant shall remove, or shall have removed, any levy or attachment made on the Project Area (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to any sale or Event of Default.

2.9. Reduction or Elimination of the Incentive

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Agency Share to the Agency or the Incentive to Participant as contemplated in and by this Agreement. If the provisions of Utah law that govern the payment of the Agency Share or Incentive are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to annually pay the Incentive to Participant, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Further, Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, and the Interlocal Agreements were properly approved, adopted, and made effective. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of the Agency Share to the Agency and/or the Incentive to Participant, and nothing

herein shall be construed as an estoppel, waiver, or consent to reduce or eliminate payment of the Agency Share to the Agency and/or the Incentive to Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of the Agency Share to the Agency and/or the Incentive to Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

2.10. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction seeking to invalidate the Project Area, Interlocal Agreements, or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Agency Share to the Agency, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Agency Share to the Agency. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Agency Share to the Agency and/or the Incentive to Participant, and nothing herein shall be construed as an estoppel, waiver, or consent to reduce or eliminate payment of the Agency Share to the Agency and/or the Incentive to Participant. In the event that the court declares that the Agency cannot receive the Agency Share, invalidates the Project Area, Interlocal Agreements or this Agreement, or takes any other action which eliminates or reduces the amount of Agency Share paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to annually pay the Incentive to Participant in accordance with this Agreement will be reduced or eliminated to the extent that the Agency Share is not received by the Agency.

2.11. Dispute over Receipt of Payment of the Incentive

If not due to the act, error, or omission of the Agency, in the event a dispute arises as to the person or entity entitled to receive all or a portion of the Incentive due to a claimed assignment or claimed successor-in-interest to all or a portion of the Incentive or otherwise, the Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute.

2.12. Nature of Participant's Obligations and Limitation

To qualify to receive the Incentive as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement.

2.13. Improvements to the Site; development of the Facility

Participant shall improve the Site pursuant to the Schedule of Performance, attached hereto as **Exhibit J**, *subject to* any extensions of such timeframes allowed under the Development Agreement, Developer shall have the right to request an extension of such period of time for twenty-four months by providing the City a market report from a reputable appraiser indicating that such final phase is not economically viable or recommended given the then current market conditions. Agency shall not unreasonably deny such a request. As detailed in the Schedule of Performance, Participant must develop the Site in a particular manner and on the specified timeframe. In the event that Participant fails to comply with the milestones and deadlines as set forth on the Schedule of Improvements, Participant shall not receive the Incentive until all development milestones have been met. For purposes of requirements in the Schedule of Performance pertaining to square feet, such square footage shall be counted toward the benchmarks as described on the Schedule of Performance if the City has issued certificate(s) of occupancy for such spaces. Agency and Developer agree that changes to the Schedule of Performance shall be accepted when both sides have agreed in writing to such changes.

2.14. Operation and Maintenance

Participant shall operate and maintain the Site in a commercially reasonable manner and in accordance with industry standards and in compliance with all applicable federal, state and municipal laws and regulations. For purposes of this Agreement, the Facility shall be considered to be "operating" or "in operation" if at least eight-five of the space for which certificates of occupancy have been issued is (a) in the case of condominiums, already sold to an unrelated third party or is available for immediate sale and (b) in the case of commercial, office, or residential space for which title will not be transferred, occupied or available for immediate leasing and occupancy.

2.15. Continuity

Participant agrees, for itself and any successors in interest, that its operation of the Facility, either by Participant or a successor in interest substantially equivalent to that of Participant in terms of type of use and square footage, shall continue during the Term, without cessation for any continuous period of more than 15 days or more than 75 total days throughout the Term.

2.16. Funding Responsibility

The Parties understand and agree that funding for the development of the Project Area comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

2.17. Audits, Appeals, and Reassessments

As noted in Section 2.3 Participant may object to, challenge, or appeal any Taxes that may be owed by Participant for property within the Site. However, in the event that such an action is pursued by Participant and is eventually successful in reducing the taxable valuation of Participant's property in the Site, Participant shall immediately pay to the Agency the portion of the Incentive for that year proportionate to the reduction in taxable value. In the event that Participant does not timely make such payment to the Agency, the Agency may correspondingly reduce the Incentive paid to Participant for the next year of the Term. The Agency, at its sole discretion, may withhold payment of the Incentive for the final year of the Term until such date as Participant can no longer appeal or contest the assessed value of Participant's property within the Project Area.

Likewise, if an audit, reassessment, or similar action by the Utah County Assessor or the Utah State Tax Commission results in an increased valuation of Participant's property within the Site, the Agency shall pay additional Incentive for that year in proportion to the increase in taxable value of Participant's property within the Project Area, subject to compliance with the terms of this Agreement.

2.18. Hazardous, Toxic, and/or Contaminating Materials

Participant agrees to defend and hold the Agency, the Agency's directors, officers, agents, employees and consultants, harmless from any and all claims, liability, loss, costs, fines, penalties, charges, and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic, and/or contaminating materials within the Site.

2.19. Agency-owned Parcel

The Agency has transferred a parcel of real property to Participant in exchange for promises by Participant to develop the Facility and to make investments within the Project Area as described in this Agreement. The parcel that is transferred to Participant is shown on **Exhibit K** (the "**Agency Parcel**"). The parties agree that the fair market value of the Agency Parcel is $1,600,000. Notwithstanding any other terms of this Agreement, in the event that Participant fails to comply with the terms of this Agreement, including but not limited to the performance benchmarks as described in Section 2.13, the Agency may, at its sole discretion, withhold the payment of the Incentive to Participant until the Agency has collected and retained an amount

equal to the fair market value of the Agency Parcel as described in this paragraph. Alternately and at the Agency's sole discretion, if Participant has not made the Phase 1 improvements to the Agency Parcel as contemplated by this Agreement in the Schedule of Performance by the date that is five years from the effective date of this Agreement, Participant shall (i) pay to the Agency in cash or other immediately available funds the full amount of the fair market value of the Agency Parcel established in this Section 2.19 consistent with the next sentence of this Section 2.19, or (ii) if Participant does not pay such amount by such five year anniversary of this Agreement, then upon written request from the Agency, Participant shall immediately transfer title to the Agency Parcel and any improvements thereon back to the Agency. Agency and Participant agree that for the first ten years following the issuance of a Certificate of Occupancy on the first phase of the development, Participant shall have the option, at its choosing, of paying the fair market value of the Property as stated above to Agency. In subsequent years, when Participant sells the Project, Participant and Agency shall obtain an appraisal of the Property (the "Appraisal") as provided in this Section 2.19. The parties shall mutually agree upon a licensed appraiser holding MAI designation from the Appraisal Institute. In the event that the parties are unable to agree on an appraiser, each party shall select an appraiser having the same qualifications, and those two appraisers shall mutually agree on a third appraiser having the same qualifications, who shall perform the Appraisal. The Appraisal shall establish the land value of the Project, of which amount twenty-five percent (25%) shall be conveyed to the Agency as fair market value of the Agency Parcel.

2.20. Affordable Housing

Affordable housing shall be provided as required in the Mill Race PRO Zone Ordinance adopted by the Provo City Council April 23, 2019, incorporated herein and made a part by this reference.

3. ADDITIONAL TERMS

3.1. City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

3.2. Restriction Against Parcel Splitting

If applicable, during the Term, Participant shall not, without the prior written approval of the Agency, (a) convey its interest in the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion thereof would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside

of the Project Area in such a way that Utah County could no longer identify the periphery of the Project Area by distinct parcels.

3.3. Disconnection

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to disconnect, de-annex, or remove the Project Area or any portion thereof from the City during the Term. In the event that the Site or a portion thereof is disconnected, de-annexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Incentive for that portion of the Site outside of the City shall immediately cease.

3.4. Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any negligent acts done or any negligent errors or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors on the Site.

3.5. Limits on Liability

In no event shall one Party be liable to the other for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability, or otherwise, and regardless of whether the Parties have been advised of the possibility of such damages at the time of contracting or otherwise.

3.6. Local, State, and Federal Laws

Participant shall construct and operate the Site and development on the Site in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

3.7. Discrimination

Participant agrees that it will not unlawfully discriminate against any employee or applicant for employment, or any contractor or any bidder on any contract.

3.8. Rights of Access

The Agency's representatives shall have the right of reasonable access to the Site for purposes of inspection, with reasonable and prior written notice, and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant. Such representatives of the Agency and other visitors to the Project Area shall observe any reasonable rules adopted by Participant for purposes of maintaining safety and security in the Project Area, including requirements that such representatives or visitors be escorted by any designated agent of Participant.

3.9. Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

3.10. Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code § 63G-7-101, *et seq.*, as may be amended from time to time.

3.11. Consent to Recording

The Parties hereby consent that this Agreement, or any abstract thereof, may be recorded against the Site.

4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest for the benefit of each of the respective Parties, their successors, and assigns during the Term, which shall terminate upon the later of: (a) the final payment of the Incentive during or upon the expiration of the Term; or (b) upon the written agreement signed by the Parties.

5. DEFAULTS, REMEDIES, AND TERMINATION

5.1. Default

If either the Agency or Participant fails to perform or delays performance of any material obligation under this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement ("**Default**"). The Party in Default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the time period provided in Section 5.3.

5.2. Notice

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice ("**Default Notice**") of the Default to the defaulting Party specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.3. Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless (a) the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto or (b) where the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same if the Default is of a nature that cannot be cured within such thirty (30) day period. The Parties understand and agree that a Default which can be cured by the payment of money is a type of default that can be cured within thirty (30) days. If a Default is not cured or commenced to be cured if such default is of a nature that cannot be cured within thirty (30) days by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an "**Event of Default**," and the non-defaulting Party, at its option, may institute an action for specific performance of the terms of this Agreement or pursue such other rights and remedies as it may have at law and/or equity.

5.4. Rights and Remedies

Upon the occurrence of an Event of Default, and subject to Section 6.11, the non-defaulting Party shall have all rights and remedies against the defaulting party as may be available (a) in this Agreement; (b) at law or in equity to cure, correct, or remedy any Default; (c) to terminate this Agreement; (d) to obtain specific performance; (e) to recover damages for any Default; and/or (f) to obtain any other remedy consistent with the purposes of this Agreement. Such

remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default by the defaulting party.

5.5. Legal Actions

5.5.1. Venue

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Fourth District Court for the State of Utah located in Utah County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah. Each Party hereby waives any objection based on *forum nonconveniens* or any objection to venue of any such action.

5.5.2. Service of Process

Service of process on the Agency shall be made by personal service upon the chairman or executive director of the Agency or in such other manner as may be provided by law. Service of process on Participant shall be by personal service upon its registered agent(s), or in such other manner as may be provided by law, whether made within or without the State of Utah.

5.5.3. Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6. GENERAL PROVISIONS

6.1. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards the representing and warranting Party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; and (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered or (2) dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Section 1.5.1 and 1.5.2. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may

from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

6.3. Severability

In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

6.4. Nonliability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, for any Default, Event of Default, or breach of a Party or for any amount which may become due to a Party or to its successor, or on any obligations under the terms of this Agreement.

6.5. Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's executive director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

6.6. Approvals

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

6.7. Time of the Essence

Time is and shall be of the essence in each Party's performance of their obligations and covenants under this Agreement.

6.8. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party shall be construed as creating the relationship of principal and agent, partnership, joint venture, or an enterprise between the Parties.

6.10. No Third-Party Beneficiaries

The Parties understand and agree that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

6.11. Mediation

In the event a dispute arises between the Parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the Parties, the Parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the Parties. The Parties must mediate in good faith to resolve the dispute in a timely manner. Each Party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Provo, Utah.

6.12. Headings

Article and section titles, headings, or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

6.13. Contra Proferentum

This is an arm's-length agreement. The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

6.14. Further Assurances

The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

6.15. Incorporation of Recitals and Exhibits

All Exhibits hereto are incorporated into this Agreement as if fully set forth herein.

6.16. Governmental Records and Management Act

The Agency acknowledges that the information provided by the Participant to the Agency in connection with this Agreement designated as confidential shall be protected to the extent possible pursuant to GRAMA under a claim of "business confidentiality" so long as Participant complies with the applicable requirements in making a claim of business confidentiality under Utah Code § 63G-2-309(1)(a)(i)(A) & (B).

7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.1. Duplicate Originals

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Electronic pdf signatures shall be considered original signatures.

7.2. Integration

This Agreement (including its Exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements, except the First Participation Agreement, between the Parties with respect to the subject matter thereof.

7.3. Waivers and Amendments

All waivers of any provision of this Agreement must be in a writing signed by the Parties. This Agreement and any provisions hereof may be amended only by mutual, signed written agreement between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

[*remainder of page intentionally left blank; signature page follows*]

[*signature page*]

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Name: _____
Title: Chair

Attest:

_____
Secretary

[PARTICIPANT]

By: _____
Name: _____
Title: _____

8. LIST OF EXHIBITS

EXHIBIT A - *Project Area Plan*

EXHIBIT B - *City Interlocal Agreement*

EXHIBIT C - *County Interlocal Agreement*

EXHIBIT D - *School District Interlocal Agreement*

EXHIBIT E - *CUWCD Interlocal Agreement*

EXHIBIT F - *Site Map*

EXHIBIT G - *Conceptual Development Plans*

EXHIBIT I - *Development Agreement*

EXHIBIT J - *Schedule of Performance*

EXHIBIT K - *Agency Parcel*

EXHIBIT A

Project Area Plan

EXHIBIT B

City Interlocal Agreement

EXHIBIT C

County Interlocal Agreement

EXHIBIT D

School District Interlocal Agreement

EXHIBIT E

CUWCD Interlocal Agreement

EXHIBIT F

Site Map

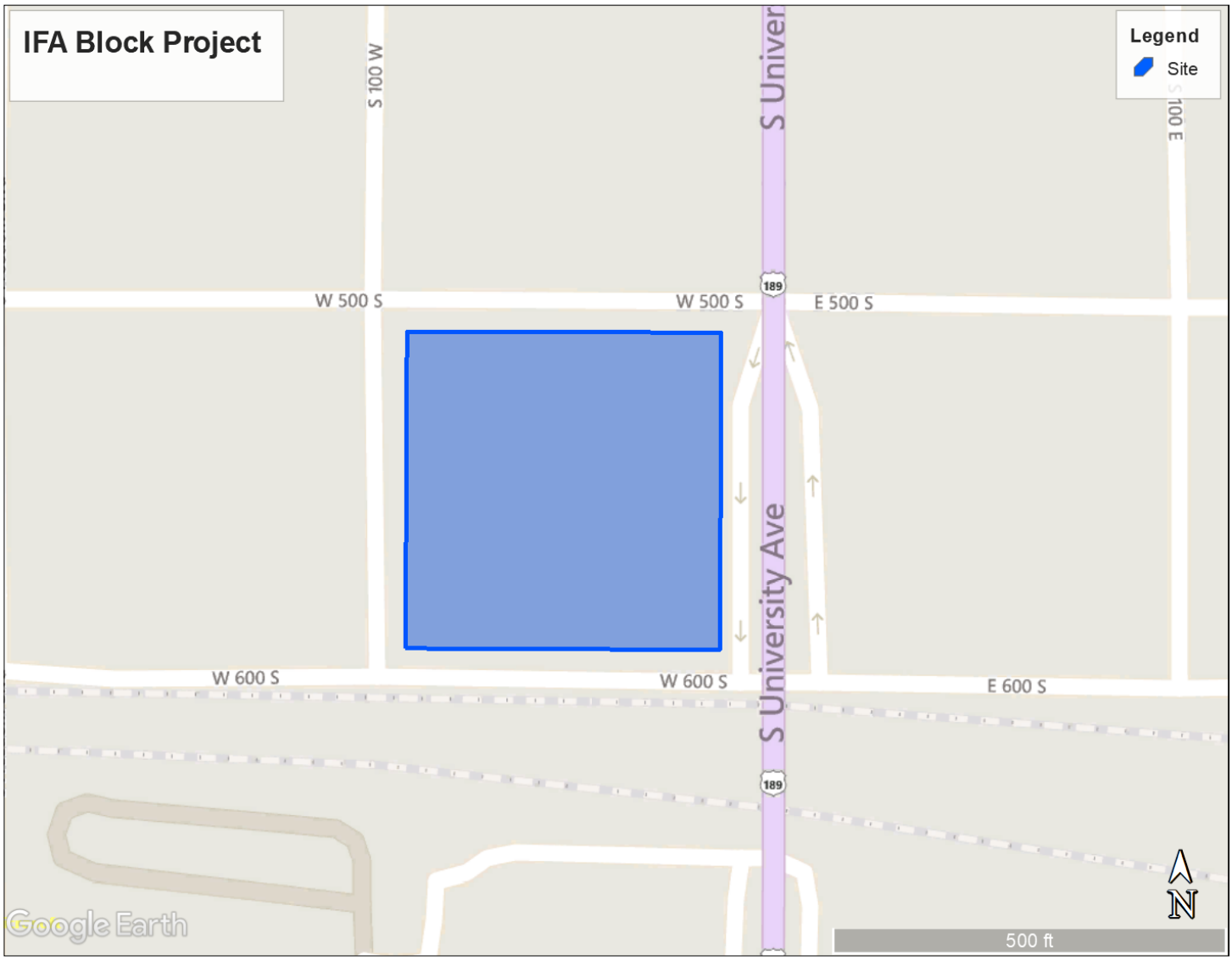


EXHIBIT G

Conceptual Development Plans

EXHIBIT I

Development Agreement

DEVELOPMENT AGREEMENT FOR MILL RACE AT PROVO STATION

(510 South University Avenue)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2019 (the "Effective Date"), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as "City," and Mill Race Partners, LLC, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer intends to acquire approximately 3.7 acres of land located within the City of Provo, as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On _____, the City Council approved Ordinance _____, vesting zoning (the "Vesting Ordinance"), based on the Site Plan set forth on EXHIBIT B ("Site Plan"), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the "Project").

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Utah County Recorder.

E. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

G. This Agreement is consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

I. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.
J. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT
NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:
1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.
2. Zoning. The Property shall be developed in accordance with (i) the requirements of the Mill Race PRO Zone, (ii) all other features as generally shown on the Final Plat, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Final Plat as permitted by the aforementioned zoning designations for the Property.
3. Governing Standards. The Final Plat, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Final Plat, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Final Plat, the Vesting Ordinance and this Agreement. Non-material variations to the Final Plat, as defined and approved by the City's Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.
4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:
a. Building Height. The maximum allowable building height in the Mill Race PRO Zone shall only be applied to those buildings to be built along University Avenue. Buildings that are not along University Avenue shall be limited to 100 feet in height, or 6 stories (not including subterranean parking), whichever is shorter.

b. Ground Floor Commercial. Pursuant to a separate Memorandum of Understanding between the Developers and certain neighbors across 100 West from the Project, Developer is committed to vetting viable commercial options for ground level occupancy along 100 West. Further, to provide maximum flexibility in the future, the building(s) along 100 West shall be built to an average ceiling height of 12-feet on the ground floor, which would allow a commercial use to occupy the space as determined by Developer.
c. Phasing. The Project is going to be built in multiple phases with commencement on the final phase starting no later than 10 years from the issuance of the Certificate of Occupancy for the condo tower, provided that if commencement of such final phase has not started within such 10

year period, Developer shall have the right to request an extension of such period of time for twenty-four months by providing the City a market report from a reputable appraiser indicating that such final phase is not economically viable or recommended given the then current market conditions. City shall not unreasonably deny such a request. The final, fully built Project shall comply with the Downtown Design Standards and City streetscape standards as shown on approved project plans.

d. Pedestrian Bridge. UTA, Mountainlands Association of Governments, and Provo City have secured federal funding to build a pedestrian bridge that is to land at the Frontrunner Provo Station and go over the railroad tracks to the north, landing on the south side of 600 South. To facilitate the complete extension of the pedestrian bridge so that it lands on the north side of 600 South, the Developer shall contribute a landing spot in the form of a perpetual easement on the Property as shown on the Site Plan, attached as Exhibit B, for the construction, public access, operations, maintenance, etc. of the bridge. The Project shall be permitted direct connection between the Project buildings and the pedestrian bridge providing access controlled connections between the Project and the Pedestrian Bridge.

e. Condominiums. Developer has expressed its intention to sell condominiums as a part of the Project. Prior to the City issuing a Certificate of Occupancy on the final phase of the project, Developer shall demonstrate their commitment to selling condominiums through (i) the actual sale of condominiums, (ii) documented marketing efforts to sell such condominiums, or (iii) providing written evidence of Developer's good faith attempt to obtain reasonable debt financing of such condominiums and corresponding written evidence that Developer has been unable to obtain debt financing for such condominiums on commercially reasonable and/or viable terms.

f. University Avenue. Upon University Avenue bridge reconstruction and widening, Developer shall be permitted to improve land owned by Provo City pursuant to, and only to the extent shown on, the Site Plan (attached hereto as Exhibit B) and Final Plats for the final, fully built Project.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City

Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Final Plat, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509.

i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:
1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,
4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.

5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.
b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.
7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure

the default within that 60-day period and diligently continues such cure in good faith until complete.
a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:
1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.
2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.
3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.
The rights and remedies set forth herein shall be cumulative.

8. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:
To the Developer: Mill Race Partners, LLC Attn: Justin Earl and Greg Nelson 240 N East Promontory, Suite 200 Farmington, Utah 84025 801-971-7400

To the City: City of Provo Attention: City Attorney 351 W Center Street Provo, UT 84601 Phone: (801) 852-6140

9. General Term and Conditions.
a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.
c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.
d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other

persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Utah County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within fifteen (15) years from the date of this Agreement (the “Term”), or upon the occurrence of an event

of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (i.e., the Developer). The Term may be extended by mutual agreement of the Parties.
ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.
10. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the City as provided herein.
a. Notice. Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.
b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.
11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.
12. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

13. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

14. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.
15. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.
CITY:

CITY OF PROVO

ATTEST:

By: _____ By:_____
City Recorder Mayor Michelle Kaufusi

DEVELOPER:

Mill Race Partners, LLC

By: Title:

STATE OF UTAH) :ss COUNTY OF UTAH)

On the ____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn, did say that they are the owners of said property and have proper authority and duly acknowledged to me that they executed the same.

Notary Public Residing at:

11
Exhibit A

Legal Description of the Property

ALL OF BLOCK 1, PLAT “A”, PROVO CITY SURVEY OF BUILDING LOTS

12

EXHIBIT J
Schedule of Performance

For purposes of this Exhibit J, the phases of the development of the Facility are defined as follows:

Phase 1a (middle and wrap)
Completion deadline: 5-years from mutual execution this Agreement
Minimum total square footage: 150,000
Minimum residential rental square footage: 125,000
Minimum commercial square footage: 0
Minimum condominium square footage: 0
Minimum office square footage: 0
Minimum number of parking stalls: 200

Phase 1b (condo)
Completion deadline: no more than 2-years after completion of the middle and wrap building in Phase 1a
Minimum total square footage: 90,000
Minimum residential rental square footage: 0
Minimum commercial square footage: 0
Minimum condominium square footage: 70,000
Minimum office square footage: 0

Minimum number of parking stalls: 125

Phase 2 (office tower)
Completion deadline: shall be the same as for the west residential building in Phase 3 as set forth in the Development Agreement between Participant and Provo City
Minimum total square footage: 100,000
Minimum residential rental square footage: 0
Minimum commercial square footage: 0
Minimum condominium square footage: 0
Minimum office square footage: 100,000
Minimum number of parking stalls: 300

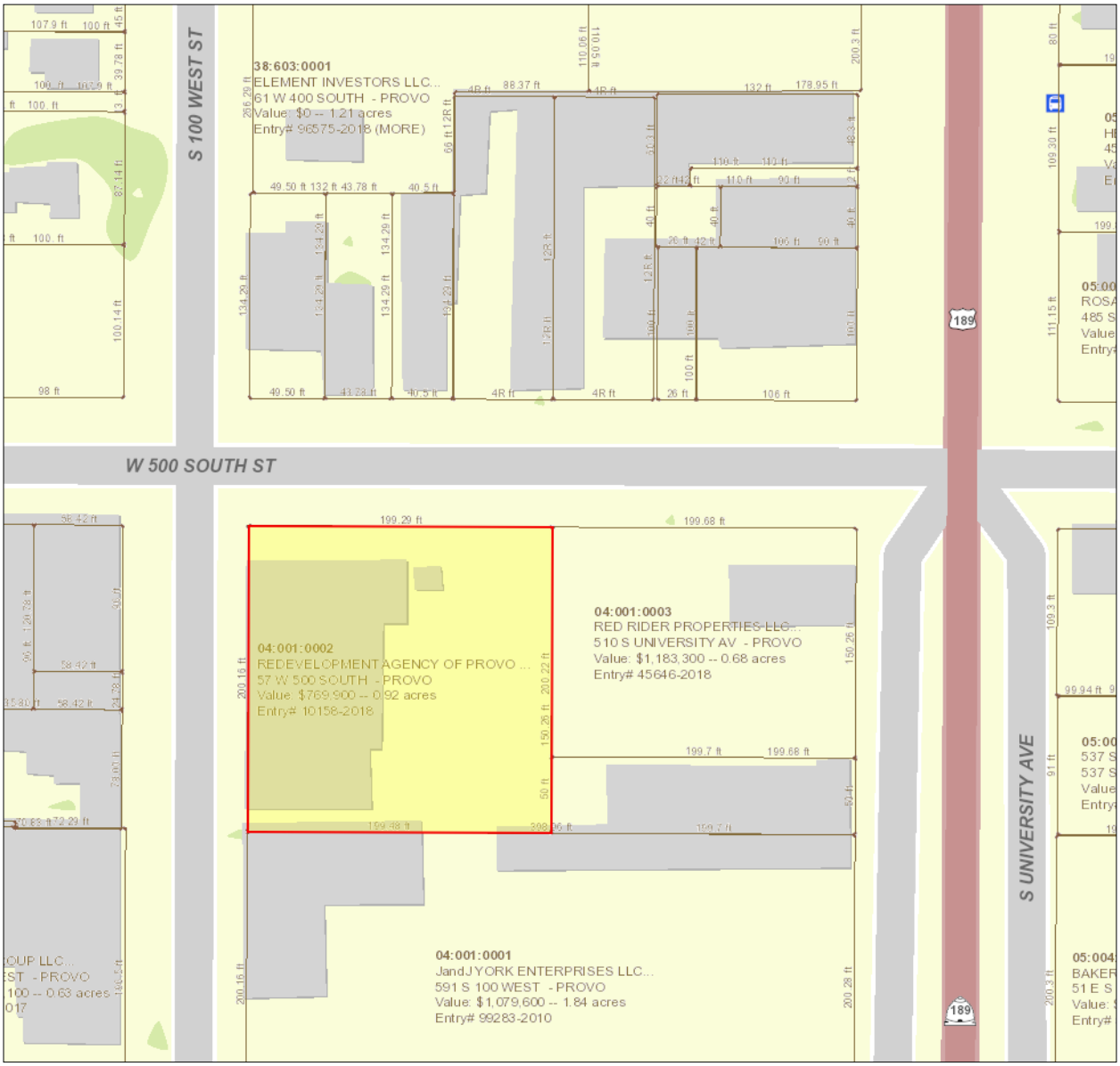
Phase 3 (west residential)
Completion deadline: as set forth in the Development Agreement between Participant and Provo City
Minimum total square footage: 115,000
Minimum residential rental square footage: 100,000
Minimum commercial square footage: 0
Minimum condominium square footage: 0
Minimum office square footage: 0
Minimum number of parking stalls: 55

EXHIBIT K

Agency Parcel

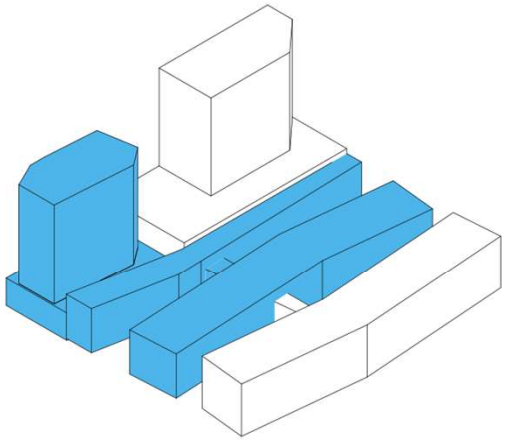
Utah County Parcel # 04:001:0002
Property address: 57 W 500 S, Provo, UT
Legal description: ALL OF LOTS 4 & 5, BLK 1, PLAT A, PROVO CITY SURVEY. AREA .90 OF AN ACRE

Map:

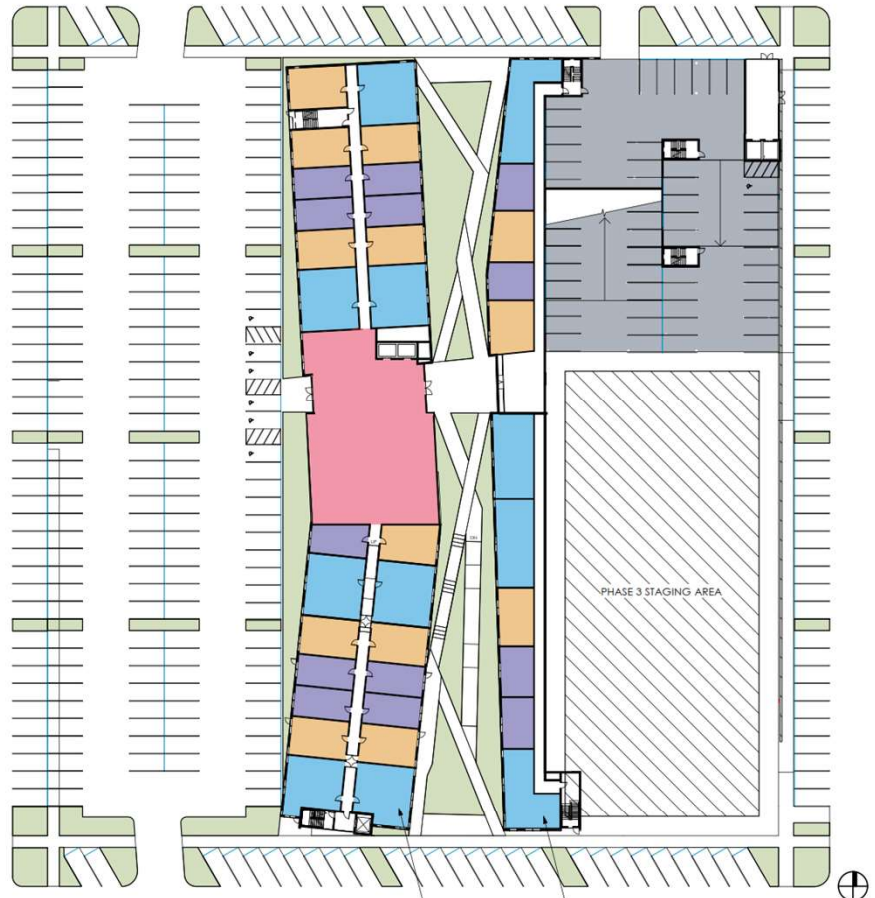


Mill Race at Provo Station

Phase 1

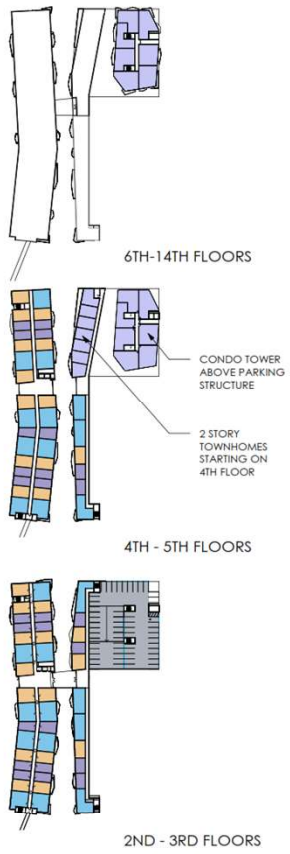


PROJECT AXON



FIRST FLOOR PLAN

1" = 60'-0"



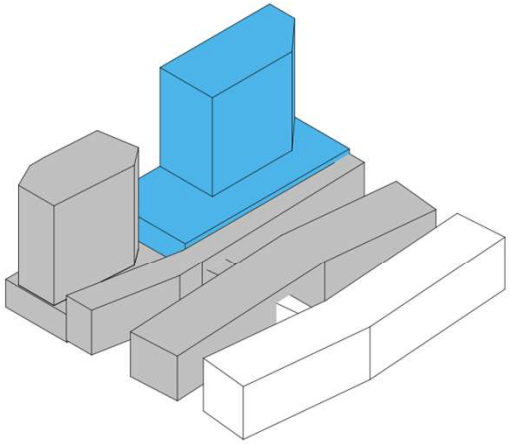
Studio
1 Bedroom
2 Bedroom
Amenity
Landscape
Commercial
Condo Unit
Office Space
Entry
Urban Church
Parking

Architectural Resources

J.B. EARL COMPANY

MILL RACE AT PROVO STATION
702.02
01.29.2019

Phase 2



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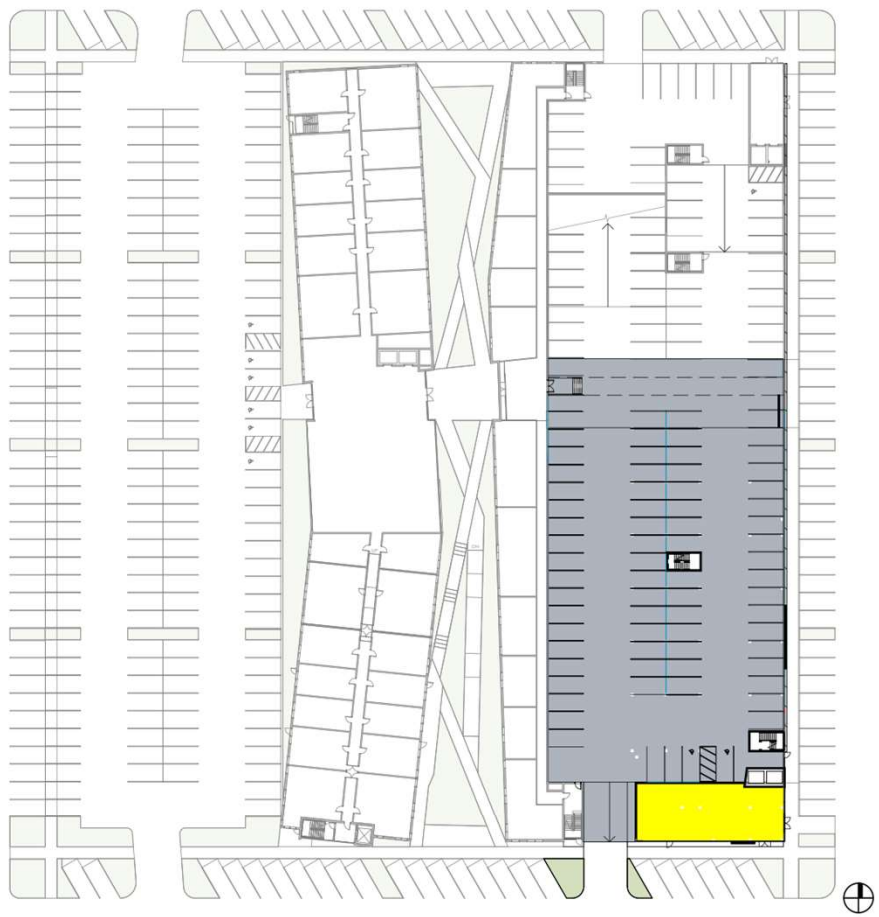


FIRST FLOOR PLAN

1" = 60'-0"

Studio	Amenity	Condo Unit	Urban Church
1 Bedroom	Landscape	Office Space	Parking
2 Bedroom	Commercial	Entry	

Architectural Resources

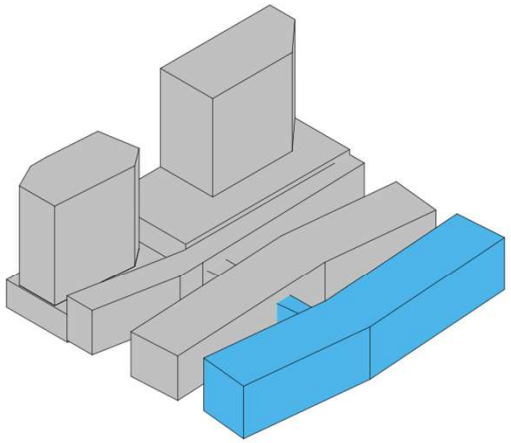
J.B. EARL COMPANY

MILL RACE AT PROVO STATION

702.02

01.29.2019

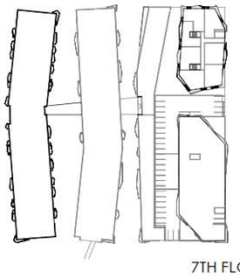
Phase 3



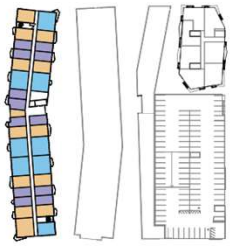
PROJECT AXON

FIRST FLOOR PLAN

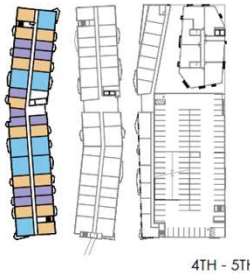
1" = 60'-0"



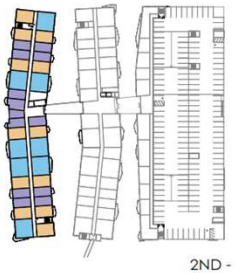
7TH FLOOR



6TH FLOOR



4TH - 5TH FLOORS



2ND - 3RD FLOORS

Studio	Amenity	Condo Unit	Urban Church
1 Bedroom	Landscape	Office Space	Parking
2 Bedroom	Commercial	Entry	

Architectural Resources

J.B. EARL COMPANY

MILL RACE AT PROVO STATION

702.02

01.29.2019

Draft Renderings

Draft Renderings

RESOLUTION 2019-.

A RESOLUTION APPROVING AN AGREEMENT WITH MILL RACE DEVELOPMENT, LLC TO TRANSFER AGENCY OWNED-PROPERTY FOR A PROJECT IN THE DOWNTOWN NEIGHBORHOOD. (19-084)

WHEREAS, Mill Race Development has a pending mixed-use project for development between 500 South and 600 South and between 100 West and University Avenue in Provo and is interested in acquiring property owned by the Redevelopment Agency on the same block; and,

WHEREAS, the RDA and Mill Race Development have come to a mutual agreement on the terms of the acquisition; and,

WHEREAS, after considering the facts presented to the Governing Body of the RDA, on July 23, 2019, the Governing Body of the Redevelopment Agency finds (i) the RDA should enter into the owner participation agreement for the transfer of the property according to the terms described in Exhibit A, and (ii) the property transfer to Mill Race Development reasonably furthers the health, safety and general welfare of the citizens of Provo City

NOW, THEREFORE, be it resolved by the Redevelopment Agency of Provo City Board of Directors, as follows:

PART I:

1. The Chief Executive Officer is authorized to enter into an Owner Participation Agreement with Mill Race Development according to the terms in Exhibit A.

2. The Chief Executive Officer of the Agency or designee is authorized to sign any paperwork necessary to effectuate the deal and to make minor changes to the language and wording of the documents provided such changes do not involve the structure of the deal.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

Provo City *(Redevelopment Agency)*

Staff Memorandum

Blue Sky Development Parking Agreement

May 7, 2019

Department Head David Walter 6167 **Presenter** David Walter 6167 **Required Time for Presentation** 15 Minutes **Is This Time Sensitive** No **Case File # (if applicable)**	Purpose of Proposal • Resolution approving a draft parking license agreement with Blue Sky Development and authorizing the Chief Executive Officer of the Redevelopment Agency to sign the agreement when finalized Action Requested • Adopt Resolution Relevant City Policies • Business and Economic Vitality • Support Economic Development • Downtown Revitalization Budget Impact • Provo Redevelopment Agency will receive lease payments from Blue Sky totaling $295,020 over the term of the lease. Description of this item • Staff has been working with McKay Christensen on a proposed mixed-use development at the corner of Center Street and 100 East. The ground floor will be commercial and the remaining floors will be residential with a mix of studio, one- and two-bedroom apartments. Mr. Christensen intends to provide all the necessary parking for his project in a parking structure at the center of the complex. However, the cost to provide parking onsite for his commercial uses is proving to be cost prohibitive. • Mr. Christensen is requesting he be allowed to utilized a

	portion of the 204 parking spaces allocated to the Redevelopment Agency in the Wells Fargo parking structure. As you will recall, the Redevelopment Agency approved 63 East using 40 of those spaces for the residents of 63 East. ● Mr. Christensen is requesting the use of 55 stalls and is willing to pay rent under the following terms: ● (a) $1 per stall or $660 per year for years one through two (1-2); ● (b) $5 per stall or $3,300 per year for years three through five (3-5); ● (c) $10 per stall or $6,600 per year for years six through ten (6-10), ● (d) $30 per stall or $19,800 per year for years eleven through twenty-four (11-24) ● The current parking facility agreement expires in 2044. The agreement is a draft since we have not yet received approval from the court appointed trustee for the parking structure to submit the agreement and obtain approval for the parking agreement. We have reached out to the law firm that represented the trustee but both that attorney and his associate are no longer working with the firm. Staff is working to find the representative of the trustee and will finalize the agreement as soon as possible. We are presenting this tonight to give assurances to Mr. Christensen's lenders that he will have the requisite parking for his commercial uses. ● Staff recommends approving the attached resolution approving a draft parking license agreement with Blue Sky Development and authorizing the Chief Executive Officer of the Redevelopment Agency to sign the agreement when finalized. Attachments: Resolution Draft Agreement

RESOLUTION 2019-.

A RESOLUTION APPROVING A LEASE AGREEMENT WITH BLUE SKY DEVELOPMENT TO ALLOW THEM TO UTILIZE PARKING SPACES FOR A PENDING MIXED-USE PROJECT AT 105 EAST CENTER STREET. (19-070)

WHEREAS, Blue Sky Development has a pending mixed-use project for development at 105 East Center Street in Provo and is interested in leasing 55 of the stalls currently owned by the Redevelopment Agency in the Wells Fargo Tower; and,

WHEREAS, the RDA and Blue Sky Development have negotiated a proposed lease agreement; and,

WHEREAS, on June 18, 2019, July 9, 2019, and July 23, 2019, the Governing Body met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Governing Body of the RDA, the Governing Body of the Redevelopment Agency finds (i) the RDA should enter into a lease agreement for the parking stalls according to the terms described in Exhibit A, and (ii) the lease of the stalls by Blue Sky Development reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Redevelopment Agency of Provo City Board of Directors, as follows:

PART I:

1. The Chief Executive Officer is authorized to enter into a lease of parking stalls to Blue Sky Development according to the terms in Exhibit A.

2. The Chief Executive Officer of the Agency or designee is authorized to sign any paperwork necessary to effectuate the deal and to make minor changes to the language and wording of the documents provided such changes do not involve the structure of the deal.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

Set _____ of __3___ originals

LEASE AGREEMENT

This is a legal and binding contract. Before signing, read the entire document, including the general printed provisions and attachments. If you have any questions before signing, consult your attorney and/or accountant.

THIS LEASE AGREEMENT (hereinafter the "Lease") is made and entered into as of the 21st day of February 2018 by and between Provo City Redevelopment Agency Center, LLC whose address is 351 West Center Street, Provo UT 84601 (hereinafter "Landlord") and 105 Partners, LLC, whose address is 5532 W Parkway West Highland Utah, 84003 ("hereinafter "Tenant").

W I T N E S S E T H:

In consideration of the rents, covenants and agreements hereinafter set forth, Landlord and Tenant mutually agree as follows:

ARTICLE I: PREMISES

Landlord hereby leases and demises to Tenant and Tenant hereby leases from Landlord that certain real property located in Utah County, State of Utah and more particularly described fifty five (55) parking stalls to be located in the _____ level of parking garage (shown in exhibit A) attached to the Wells Fargo Lifestyle Center Building located at 86 North University Avenue Provo, Utah 84601 as further described in Exhibit A (hereinafter the "Parking Stalls"), together with all buildings and other improvements now or hereafter located thereon and affixed thereto (hereinafter collectively "Improvements"), and any and all privileges, easements, and appurtenances belonging thereto or granted herein. The Parking Stalls and the Improvements are hereinafter collectively referred to as the "Premises". Landlord also grants to Tenant that right ingress and egress to the Parking Stalls in and through the parking garage and all its common areas.

ARTICLE II: TERM COMMENCEMENT

2.1 Term of Lease. This Lease shall be for a term of twenty-four (24) years commencing within fifteen (15) days of the Tenant receiving a certificate of occupancy from Provo City on the building to be built by Tenant at 105 East Center Street, Provo, (hereinafter the "Commencement Date"). This Lease shall terminate twenty-four (24) years from such Commencement Date unless sooner terminated pursuant to the terms, covenants and conditions of this Lease or pursuant to law.

2.1.1. Conditions. This Lease shall be contingent upon Tenant obtaining construction financing sufficient to develop and construct a six story building on the adjacent property commonly known as Blue Sky (the "Project").

2.2 Delivery of Possession. Possession of the Premises shall be delivered and transferred to Tenant on the Commencement Date.

2.3 Lease Year. The term "Lease Year" as used in this Lease shall mean a period of twelve (12) full consecutive calendar months. The first Lease Year commences on the Commencement Date.

ARTICLE III: RENT

3.1 Payment of Annual Base Rent. Beginning on the Commencement Date, Tenant shall pay to Landlord "Annual Base Rent", which shall be due and payable on the Commencement Date of each Lease Year.

3.2 Annual Base Rent. The "Annual Base Rent" payable each Lease Year shall be as follows:
(a) $1 per stall or $660 per year for years one through two (1-2);
(b) $5 per stall or $3,300 per year for years three through five (3-5);
(c) $10 per stall or $6,600 per year for years six through ten (6-10),
(d) $30 per stall or $19,800 per year for years eleven through twenty four (11-24);

ARTICLE IV: LATE CHARGES AND INTEREST

If Tenant fails to pay any Annual Base Rent when such Annual Base Rent is due and payable in accordance with Article III of this Lease or if Tenant fails to pay any additional amounts or charges of any character which are payable under this Lease, Landlord, at Landlord's election, may assess and collect a late fee charge equal to five percent (5%) of each payment of rent not received within thirty (30) days from the date such rent payment is due. The due date by which Annual payments must be received in the office of the Landlord, before the 5% late penalty is assessed, shall be fourteen (14) days following the Payment of Annual Base Rent.

Furthermore, and in addition to any late charges payable pursuant to the provisions of this Article, to the extent that any payment of Annual Base Rent or any other amount payable to Landlord by Tenant pursuant to any provision of this Lease is more than thirty (30) days past due, Tenant shall pay Landlord interest at the rate of eighteen percent (18%) per annum on all such past due amounts.

ARTICLE V: SECURITY DEPOSIT

On the Commencement Date, Tenant shall deposit with Landlord the sum of $5,000 (hereinafter the "Security Deposit"). The Security Deposit shall be held by Landlord for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term of this Lease. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of Annual Base Rent, and any costs, expenses, and charges payable under the provisions of this Lease, Landlord may, but shall not be obligated to use, apply or retain all or a part of the Security Deposit for the payment of any amount which Landlord may spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after written demand, deposit with Landlord an amount sufficient to restore the

Security Deposit to its original amount; and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by Tenant, the Security Deposit or any balance thereof shall be returned to Tenant or, at Landlord's option, to the last permitted assignee of Tenant's interest under this Lease within thirty (30) days of the expiration of the term of this Lease and after Tenant or Tenant's permitted assignee has vacated the Premises or within fifteen (15) days of receipt of Tenant's new mailing address, whichever is later. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer the Security Deposit to Landlord's successor in interest whereupon Tenant agrees to release Landlord from liability for the return of the Security Deposit or any accounting therefore.

ARTICLE VI: QUIET ENJOYMENT

Landlord hereby covenants to Tenant that, subject to Tenant's compliance with the terms and provisions of this Lease, Tenant shall peaceably and quietly hold and enjoy the full possession and use of the Premises during the term of this Lease.

ARTICLE VII: TAXES, ASSESSMENTS AND OTHER CHARGES

Landlord shall pay all taxes and other assessments that may be charged to or associated with the Premises.

ARTICLE VIII: UTILITIES

Landlord shall pay for all utility costs, charges and assessments charged to or associated with the Premises

ARTICLE IX: INSURANCE

9.1 Tenant's Insurance Coverage. Tenant shall, at all times during the term of this Lease, and at Tenant's own cost and expense, procure and continue in force Comprehensive liability insurance with limits of not less than $500,000.00 per person and $500,000.00 per occurrence insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use or occupancy thereof, and property damage liability insurance with a limit of not less than $500,000.00 per accident or occurrence.

9.2 Landlords Insurance Coverage: Landlord shall at all times during the term of this lease, and at Landlords own cost and expense, procure and continue in force insurance covering any buildings and all improvements on the Premises, including Tenant's leasehold improvements and personal property in or upon the Premises in an amount not less than one hundred percent (100%) of full replacement cost, providing protection against any peril generally included within the classification "Fire and Extended Coverage", together with insurance against sprinkler damage, vandalism and malicious mischief and a standard inflation guard endorsement.

9.3 Waiver of Subrogation. To the extent permitted under the insurance policies obtained by

Landlord, if any, and Tenant, Landlord and Tenant each hereby waive any and all right of recovery against the other or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage.

9.4 Landlord Named As Additional Insured. Tenant shall require Landlord to be an additional named insured.

ARTICLE X: USE OF PREMISES

10.1 Use. The Premises shall be used and occupied by Tenant solely for 55 stalls of parking space and for no other purpose without the prior written consent of Landlord, which consent may be withheld by Landlord in Landlord's sole discretion. The 55 parking stalls shall be designated by the Landlord and Tenant (as shown in exhibit A), and marked accordingly as reserved exclusively for Tenant's use. Parking outside of the designated spaces shall be prohibited. Landlord shall not be responsible or liable to police the Tenant's parking space.

10.2 Prohibited Uses.

(a) Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which will cause a cancellation of any insurance policy covering the Premises, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance unless Tenant provides additional insurance coverage extending protection to cover all risks associated with these articles.

(b) Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted, promulgated or created. Tenant shall, at Tenant's sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the use or occupancy of the Premises, including structural changes that relate to or affect the use.

(c) Tenant shall comply with all requirements of any recorded restrictive covenants or bylaws of any association affecting the Premises. Tenant acknowledges receipt of a copy of the Declaration of Covenants, Conditions and Restrictions and a copy of the Bylaws of the Condominium Owners' Association affecting the Premises.

(d) Tenant shall not permit smoking on the Premises at any time.

ARTICLE XI: MAINTENANCE AND REPAIRS

11.1 Landlord's Maintenance and Repairs. During the Term of the Lease, Landlord, at

Landlord's expense, shall keep the Premises in good order and condition and shall maintain and shall make any and all repairs and replacements to the interior surfaces of the Premises (including, but not limited to, paving, curbing, parking stall paint markings, traffic signs, and traffic paint signs, window coverings, and wall coverings), all windows and glass which are part of the Premises, all light fixtures, and all doors to the Premises. Landlord shall, at all times, and at Landlord's expense, keep the Premises in a neat, clean, and sanitary condition and shall comply with all valid federal, state, county and city laws and ordinances and all rules and regulations of any duly constituted authority, present or future, affecting or respecting the use or occupancy of the Premises by Tenant. Subject to the provisions of Article XIV below, Landlord shall, during the Term of this Lease, maintain and make necessary structural repairs to the Premises

11.2 Tenant's Maintenance and Repairs. Tenant, at Tenant's expense, shall repair any damage to the Premises caused by Tenant, or Tenant's employees, agents, contractors, invitees, licensees, customers, or clients.

ARTICLE XII: HAZARDOUS SUBSTANCES

12.1 Environmental Compliance. Tenant (a) shall at all times comply with, or cause to be complied with, any "Environmental Law" (hereinafter defined) governing the Premises or the use thereof by Tenant or any of Tenant's employees, agents, contractors, invitees, licensees, customers, or clients, (b) shall not use, store, generate, treat, transport, or dispose of, or permit any of Tenant's employees, agents, contractors, invitees, licensees, customers, or clients to use, store, generate, treat, transport, or dispose of, any "Hazardous Substance" (hereinafter defined) on the Premises without first obtaining Lessor's written approval, (c) shall promptly and completely respond to, and clean up, in accordance with applicable laws and regulations, any Release (as hereinafter defined) occurring on the Premises as a direct result of actions of Tenant or Tenant's employees or authorized agents; and (d) shall pay all costs incurred as a result of any failure by Tenant to comply with any Environmental Law, which failure results in a Release or other change in the environmental state, condition, and quality of the Premises necessitating action under applicable Environmental Laws, including with limitation the costs of any Environmental Cleanup Work (hereinafter defined) and the preparation of any closure or other required plans (all of the foregoing obligations of Tenant under this Section 12.1 are hereinafter collectively "Tenant's Environmental Obligations"). Landlord hereby releases and indemnifies Tenant from and against any and all claims, damages, or liabilities (including, without limitation, attorneys' fees and reasonable investigative and discovery costs) resulting from the environmental condition or quality of the Premises prior to the Commencement date or from actions of Landlord or its agents or employees. The provisions of this Article XII shall survive the expiration or other termination of this Lease.

12.2 Definitions. As used in this Lease (a) "Hazardous Substance" shall mean (1) any "hazardous waste", "hazardous substance", and any other hazardous, radioactive, reactive, flammable, infectious, solid wastes, toxic or dangerous substances or materials, or related materials, as defined in, regulated by, or which form the basis of liability now or hereafter under any Environmental Law; (2) asbestos, (3) polychlorinated biphenyls (PCBs); (4) petroleum products or materials; (5) underground storage tanks, whether empty or filled or partially filled with any substance; (6) flammable explosives, (7) any substance the presence of which on the Premises is or becomes prohibited by Environmental Law; (8) urea formaldehyde foam insulation; and (9) any substance which under Environmental Law requires

special handling or notification in its use, collection, storage, treatment or disposal; (b) "Environmental Cleanup Work" shall mean an obligation to perform work, cleanup, removal, repair, remediation, construction, alteration, demolition, renovation or installation in or in connection with the Premises in order to comply with any Environmental Law; (c) "Environmental Law" shall mean any federal, state or local law, regulation, ordinance or order, whether currently existing or hereafter enacted, concerning the environmental state, condition or quality of the Premises or use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials, and including, but not limited to, the following: (1) the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), as amended, and all regulations promulgated thereunder; (2) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.), as amended, and all regulations promulgated thereunder; (3) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), as amended, and all regulations promulgated thereunder; (4) the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), as amended, and all regulations promulgated thereunder; (5) the Clean Air Act (42 U.S.C. Section 7401, et seq.), as amended, and all regulations promulgated thereunder; (6) the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.), as amended, and all regulations promulgated thereunder; and (7) the Occupational Safety and Health Act (29 U.S.C. Section 651, et seq.), as amended, and all regulations promulgated thereunder; and (d) “Release” means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migration on or from the Premises or adjacent property, or disposing of Hazardous Substances into the environment.

ARTICLE XIII: FIXTURES AND ALTERATIONS

13.1 Alterations. Tenant shall not make any physical alteration in the Premises or any of the fixtures located therein or install or cause to be installed any trade fixtures, exterior signs, floor coverings, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the Improvements front without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall present to Landlord plans and specifications for the installation of any improvements or fixtures at the time approval is sought from Landlord. Any physical change and all rearrangements which are made by Tenant with the approval of Landlord shall be made at Tenant's expense. Such alterations, decorations, additions and improvements shall not be removed from the Premises during the term of this Lease without the prior written consent of Landlord. Upon expiration of this Lease all such alterations, decorations, additions and improvements shall at once become the property of Landlord. Notwithstanding the foregoing, Tenant may number and designate Parking Stalls as reserved for Tenants exclusive use to reasonably restrict parking in the Parking Stalls to Tenant and Tenants’ invitees.

ARTICLE XIV: DAMAGE OR DESTRUCTION

14.1 Landlord to Repair Improvements. Subject to the provisions of Sections 11.1, 14.2, and 14.3, if during the term of this Lease any of the Improvements are damaged or destroyed by fire or other casualty, Landlord shall repair or restore the Improvements. The work of repair or restoration, which shall be completed with due diligence, shall be commenced within a reasonable time after the damage or loss occurs. To the extent that such damage or destruction interferes with Tenant's ability to use the Premises, as determined by Landlord, rent shall be abated after the damage or destruction of the Improvements until the repair or restoration of the Improvements has been completed.

14.2 Landlord's Option to Terminate Lease. Notwithstanding anything to the contrary in this Article XIV, in the event that any of the Improvements are damaged or destroyed by fire or other casualty, Landlord shall have the right to terminate this Lease, which termination shall be deemed to be effective as of the date of such casualty, upon the occurrence of any of the following events:

(a) Insurance proceeds payable with respect to such damage or destruction are not sufficient to pay for the repair and/or restoration of the Improvements;

(b) Repair and restoration of the Improvements cannot be completed within sixty (60) days after the occurrence of the casualty causing such damage or destruction;

(c) More than thirty percent (30%) of the Improvements have been damaged or destroyed by such casualty.

Landlord's option to terminate the Lease pursuant to the provisions of this Section 14.2 must be exercised within thirty (30) days of the date of the casualty causing such damage or destruction by written notice from Landlord to Tenant. In the event that Landlord elects to terminate the Lease pursuant to this Section 14.2, Tenant shall immediately surrender possession of the Premises to Landlord and shall assign to landlord (or if the same has already been received by Tenant, pay to Landlord) all of Tenant's right, title, and interest in and to the insurance proceeds payable with respect to the Premises.

14.3 Tenant's Option to Terminate Lease. If no default by Tenant under this Lease has occurred and is then continuing and if no event has occurred and is then continuing which, with the giving of notice or lapse of time, or both, would become such a default, Tenant shall, if the Improvements are damaged or destroyed by fire or other casualty and repair or restoration of the Improvements cannot be completed within sixty (60) days following the occurrence of the casualty causing such damage or destruction, have the option of terminating this Lease by written notice to Landlord, which termination shall be deemed to be effective as of the date of the casualty. Tenant's option to terminate the Lease pursuant to the provisions of this Section 14.3 must be exercised within thirty (30) days of the date of the casualty causing such damage or destruction. In the event that Tenant elects to terminate this Lease pursuant to this Section 14.3, Tenant shall immediately surrender possession of the Premises to Landlord and shall assign to landlord (or if the same has already been received by Tenant, pay to Landlord) all of Tenant's right, title, and interest in and to the insurance proceeds payable with respect to the Premises.

ARTICLE XV: CONDEMNATION

If all or any part of the Premises is taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, Landlord and Tenant shall each have the right within thirty (30) days of receipt of notice of taking, to terminate this Lease as of the date possession is taken by the condemning authority; provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Tenant's use of the Premises. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the award or any portion thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant, for the interruption of or damage to Tenant's business and for Tenant's unamortized cost of leasehold improvements. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Premises so made unusable bears to the rented area of the Premises immediately prior to the taking. No temporary taking of the Premises or Tenant's right therein or under this Lease shall terminate this Lease or give Tenant any right to any abatement of rent thereunder; and any award made to Tenant by reason of any such temporary taking shall belong entirely to Tenant, and Landlord shall not be entitled to any portion thereof.

ARTICLE XVI: ASSIGNMENT AND SUBLETTING

16.1 Assignment Permissible. Tenant may not assign, convey or transfer this Lease or any interest therein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant will take all necessary care and consideration to ensure that the Assignee is a well-qualified party and is financially capable of fully performing under the terms and conditions of this Lease. It is understood that Tenant may, without violating the terms of this agreement, sublease the Parking Stalls to commercial tenants in the Project.

16.2 Effect of Assignment, Sublet, or Transfer. In the event that the Tenant assign or subleases some or all of the Parking Stalls to its tenant in the Project, but Tenant remains the owner of the Project, Tenant shall not be relieved of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting. Notwithstanding the foregoing, if Tenant assigns all its rights under the Lease as part of the sale or conveyance of the Project to a new owner, Tenant, upon such assignment, transfer, or conveyance, shall no longer be obligated or liable under this Lease.

ARTICLE XVII: SUBORDINATION, ATTORNMENT AND ESTOPPEL CERTIFICATES

17.1 Subordination. This Lease at Landlord's option shall be subject and subordinate to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the Premises, the Improvements, or on or against Landlord's interest or estate therein, without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such

subordination. Notwithstanding anything to the contrary in this Article XVII, this Lease shall remain in full force and effect for the full term hereof, including any extensions, so long as Tenant is not in default hereunder.

17.2 Subordination Agreements. Tenant shall execute and deliver upon demand without charge therefore, such further instruments evidencing such subordination of this Lease to the lien of any such mortgages or deeds of trust as may be required by Landlord.

17.3 Attornment. In the event of any foreclosure or the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises or the Building, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease, provided said purchaser expressly agrees in writing to be bound by the terms of this Lease.

17.4 Estoppel Certificates. Tenant shall, from time to time and within ten (10) days from receipt of prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any, (b) certifying that the Lease and any modifications of this Lease constitute the entire agreement between Landlord and Tenant with respect to the Premises and, except as set forth in this Lease and any modification of this Lease, Tenant does not claim any right, title, or interest in or to the Premises or any part thereof, (c) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any are claimed, and (d) certifying such other matters with respect to the Lease and/or the Premises as Landlord may reasonably request.

17.5 Failure to Deliver Certificate. If Tenant fails to deliver such statement within the time period referred to in Section 17.4 above, it shall be deemed conclusive upon Tenant that the (a) this Lease is unmodified and in full force and effect, (b) this Lease constitutes the entire agreement between Landlord and Tenant with respect to the Premises and, except as set forth in this Lease, Tenant does not claim any right, title, or interest in or to the Premises, or any part thereof, (c) there are no uncured defaults in Landlord's performance of Landlord's obligations under this Lease, and (d) not more than one month's Annual Base Rent has been paid in advance.

17.6 Transfer of Landlord's Interest. In the event of a sale or conveyance by Landlord of Landlord's interest in the Premises other than a transfer for security purposes only, Landlord shall be relieved from and after the date specified in any such notice of transfer of all obligations and liabilities to Tenant which accrue after such sale or conveyance on the part of Landlord, provided that any funds in the possession of Landlord at the time of transfer in which Tenant has an interest shall be delivered to the successor Landlord. This Lease shall not be affected by any such sale or transfer and Tenant shall attorn to the purchaser or other transferee provided that all of Landlord's obligations accruing hereunder from and after such sale or transfer are assumed in writing by such purchaser or transferee.

ARTICLE XVIII: DEFAULT AND REMEDIES

18.1 Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(a) Any failure by Tenant to pay the Annual Base Rent, or any other monetary sums required to be paid under this Lease, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant;

(b) Any material false statement made by Tenant to Landlord or its agents in any document delivered to Landlord in connection with the negotiation of this Lease.

(c) The abandonment or vacation of the Premises by Tenant;

(d) A failure by Tenant to observe and perform any other term, covenant or condition of this Lease to be observed or performed, by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the default cannot reasonably be cured within the thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within the thirty (30) day period commence action to cure the default and thereafter diligently prosecute the same to completion;

(e) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

18.2 Nonexclusive Remedies. In the event of any such material default or breach by Tenant, Landlord shall have, in addition to any other remedies provided in this Lease, the following nonexclusive remedies:

(a) At Landlord's option and without waiving any default by Tenant, Landlord shall have the right to continue this Lease in full force and effect and to collect all Annual Base Rent, and any other amounts to be paid by Tenant under this Lease as and when due. During any period that Tenant is in default, Landlord shall have the right, pursuant to legal proceedings or pursuant to any notice provided for by law, to enter and take possession of the Premises, without terminating this Lease, for the purpose of reletting the Premises or any part thereof and making any alterations and repairs that may be necessary or desirable in connection with such reletting. Any such reletting or relettings may be for such term or terms (including periods that exceed the balance of the term of this Lease), and upon such other terms, covenants and conditions as Landlord may in Landlord's sole discretion deem advisable. Upon each and any such reletting, the rent or rents received by Landlord from such reletting shall be applied as follows: (1) to the payment of any indebtedness (other than rent) due hereunder from Tenant to Landlord; (2) to the payment of costs and expenses of such reletting, including brokerage fees, reasonable attorney's fees, court costs, and costs of any alterations or repairs; (3) to the payment of any Annual Base Rent and any other

amounts due and unpaid hereunder; and (4) the residue, if any, shall be held by Landlord and applied in payment of future Annual Base Rent and any other amounts as they become due and payable hereunder. If the rent or rents received during any month and applied as provided above shall be insufficient to cover all such amounts including the Annual Base Rent and any other amounts to be paid by Tenant pursuant to this Lease for such month, Tenant shall pay to Landlord any deficiency; such deficiencies shall be calculated and paid Annual. No entry or taking possession of the Premises by Landlord shall be construed as an election by Landlord to terminate this Lease, unless Landlord gives written notice of such election to Tenant or unless such termination shall be decreed by a court of competent jurisdiction. Notwithstanding any reletting by Landlord without termination, Landlord may at any time thereafter terminate this Lease for such previous default by giving written notice thereof to Tenant.

(b) Terminate Tenant's right to possession by notice to Tenant, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation the following: (1) all unpaid rent which has been earned at the time of such termination plus (2) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (3) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or in addition to or in lieu of the foregoing such damages as may be permitted from time to time under applicable State law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which Landlord in Landlord's sole discretion deems reasonable and necessary.

ARTICLE XIX: INDEMNITY

Tenant shall indemnify and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant, or any of Tenant's agents, contractors, employees, licensees or invitees and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant shall not, however, be liable for damage or injury occasioned by the negligence or intentional acts of Landlord and Landlord's designated agents or employees. Tenant's obligations under this Article XX shall survive the expiration or other termination of this Lease.

ARTICLE XX: SURRENDER

21.1 Surrender. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender to Landlord the Premises, together with the Improvements and all other property affixed to the Premises, excluding Tenant's fixtures, in good order and condition, ordinary wear and tear excepted. Tenant shall, prior to the expiration or other termination of this Lease remove all personal property belonging to Tenant and failing to do so, Landlord may cause all of said personal property to be removed at the cost and expense of Tenant. Tenant's obligation to observe and perform this covenant shall survive the expiration or other termination of this Lease. In the alternative, Landlord may, at Landlord's option,

treat any and all items not removed by Tenant on or before the date of expiration or of the termination of this Lease as having been relinquished by Tenant and such items shall become the property of Landlord with the same force and effect as if Tenant had never owned or otherwise had any interest in such items.

ARTICLE XXI: MISCELLANEOUS

23.1 Signs. Tenant's parking space shall be designated on the actual stall by the Tenant.

23.2 Parking Spaces. Tenant shall be entitled to the use of only the reserved parking spaces so designated in Exhibit "A".

23.3 Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. All prior or contemporaneous oral agreements between and among Landlord and Tenant and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease.

23.4 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

23.5 Costs of Suit. If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorney's fees whether or not such action is prosecuted to judgment.

23.6 Time and Remedies. Time is of the essence of this Lease and every provision hereof. All rights and remedies of the parties shall be cumulative and nonexclusive of any other remedy at law or in equity.

23.7 Binding Effect, Successors and Choice of Law. All time provisions of this Lease are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate Section of this Lease. Subject to any provisions restricting assignment or subletting by Tenant as set forth in Article XVI, all of the terms hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Utah.

23.8 Waiver. No term, covenant or condition of this Lease shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any term, covenant or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the

same or any other term, covenant or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any term, covenant or condition unless otherwise expressly agreed to by Landlord in writing.

23.9 Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration of the term of this Lease, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, rent and other sums due hereunder shall be payable at one hundred fifty percent (150%) of the Annual Base Rent in effect immediately prior to such holdover period.

23.10 Recording. No copy of this Lease will be recorded on behalf of either party, but in lieu thereof, Landlord and Tenant agree that each will, upon the request of the other, execute, in recordable form, a "short form" of the Lease, which "short form" shall contain a description of the Premises, the term of the Lease, the parties to the Lease. The "short form" of the Lease shall not modify the terms of the Lease or be used in interpreting the Lease and in the event of any inconsistency between this Lease and the "short form" of the Lease, the terms and conditions of this Lease shall control.

23.11 Reasonable Consent. Except as limited elsewhere in this Lease, wherever in this Lease Landlord or Tenant is required to give consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld. In the event of failure to give any such consent, the other party shall be entitled to specific performance at law and shall have such other remedies as are reserved to such party under this Lease.

23.12 Notice. Any notice required to be given under this Lease shall be given in writing and shall be delivered in person or by registered or certified mail, postage prepaid, and addressed to the addresses for Landlord and Tenant set forth above. Such notice shall be deemed delivered when personally delivered or upon deposit of the notice in the United States mail in the manner provided above.

23.13 No Partnership. Landlord does not, as a result of entering into this Lease, in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

Exhibits: This lease agreement has two exhibits attached and made a part thereof.

Exhibit A – Designation of the Parking Stalls under this Lease Agreement
Exhibit B – Annual Base Rental Schedule

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD: PROVO CITY REDEVELOPMENT AGENCY

CENTER, LLC

BY: _____

_____

TENANT: 105 PARTNERS, LLC

BY:_____

EXHIBIT A
(PARKING STALLS MAP)

MAJOR GOALS FOR PARKING MANAGEMENT
AUSTIN TAYLOR

Within One Year

- Improve maps, signage, wayfinding, and public awareness about off-street parking options downtown
- Complete parking permit program in Joaquin
- Open underused parking lots for public permit use (Peaks, Church, etc.)

Within Five Years

- Charge for parking in high-demand areas (using both permits and meters)
- Install parking for at least 200 bikes downtown
- Eliminate minimum parking requirements
- Unbundle rent/lease and parking

Within Ten years

- Create consolidated parking authority that manages all public parking (on-street and off-street)
- Create in-lieu fees that allow developers to contribute to building public parking assets rather than building their own private facilities

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