PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Agenda

5:30 PM, Tuesday, November 30, 2021
Hybrid meeting: https://www.youtube.com/provocitycouncil or 351 W Center Street, Provo, UT 84601

This meeting will be conducted as a hybrid meeting, with some in-person components as well as continued virtual meeting access. The meeting will be available to the public for live broadcast and on-demand viewing on YouTube and Facebook at: youtube.com/provocitycouncil and facebook.com/provocouncil. If one platform is unavailable, please try the other. If both services are down or unavailable, after a reasonable (but short) time waiting to see if the services resume, the remainder of the meeting will be postponed to the next week, with appropriate public notice given of the rescheduled date. If you do not have access to the Internet, you can join via telephone following the instructions below. The in-person meeting will be held in the **Council Chambers**.

TO MAKE A VIRTUAL PUBLIC COMMENT:
To participate in the public comment portion(s) of the meeting, call in as an audience member as the presentation is wrapping up. Be sure to mute/silence any external audio on your end to reduce feedback (if you are viewing the live proceedings on YouTube, mute the YouTube video; you will be able to hear the meeting audio through the phone while you are on the line).

Press *9 from your phone to indicate that you would like to speak. When you are invited to speak, the meeting host will grant you speaking permission, calling on you by the last four digits of your phone number. Please begin by stating your first and last name, and city of residence for the record. After you have shared your comment, hang up. If you wish to comment on a later item, simply re-dial to rejoin the meeting for any subsequent comment period(s).

November 30 Council Meeting: Dial 346 248 7799. Enter Meeting ID 883 7750 8186 and press #. When asked for a participant ID, press #. To join via computer, visit zoom.us and enter the meeting ID and passcode: 203600.

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

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.

Consent Agenda

1. An Ordinance granting Teleport Communications America, LLC a nonexclusive franchise to operate a telecommunications network in Provo City, Utah. (21-057)

Redevelopment Agency of Provo

2. A resolution to approve a real estate purchase contract between Redevelopment Agency of Provo City and Evkell, LLC for the sale of property at approximately 1000 West Center Street for a commercial development. (21-116)

Action Agenda

3. A resolution consenting to the mayor's appointment of the City Engineer for Provo City. (21-111)

4. A resolution consenting to the mayor's appointment of the Chief of Police for Provo City. (21-111)

5. A resolution to approve a real estate purchase contract between Provo City and Evkell, LLC for the sale of property at approximately 1000 West Center Street for a commercial development. (21-116)

6. An ordinance amending the Provo City Rate Schedule to set electric service rates for distribution Voltage Pilot Optional Time-Of-Use (TOU) and Shared Solar in Provo City, Utah. (21-109)

7. An ordinance amending Provo City Code Chapter 6.06. (19-102)

8. An ordinance amending Provo City Code to allow Accessory Dwelling Units (ADUs) in the Agricultural (A1), Residential Agricultural (RA), and Residential (R1) Zones and to refine the development standards for ADUs. Citywide Application. (PLOTA20210345)

Adjournment

Hybrid Meeting Protocol

For the past year, the Provo City Municipal Council has been meeting without an anchor location, pursuant to Utah's *Open and Public Meetings Act*, and has instead conducted all meetings online. Notwithstanding the ongoing coronavirus pandemic and Utah County's high level of coronavirus transmission, **the Municipal Council has determined to hold its meetings at an anchor location AND online**. We invite interested persons to participate:

- in the Council Chambers located at the City Center building; OR
- online by watching the live broadcasts at youtube.com/provocitycouncil and facebook.com/provocouncil.

We encourage attendees to maintain appropriate health protocols such as wearing masks and social distancing. Public comment may be received in person OR online (by calling in or logging onto the Zoom Webinar) which are detailed in meeting notices and agendas, and on the broadcasts. Follow the instructions provided on public notices of each meeting.

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

Materials and Agenda: agendas.provo.org
Council meetings are broadcast live and available later on demand at youtube.com/ProvoCityCouncil
To send comments to the Council or weigh in on current issues, visit OpenCityHall.provo.org.

The next Council Meeting will be held on Tuesday, December 14, 2021. The meeting will be conducted **in a hybrid format**. Work Meetings generally begin between 12 and 4 PM. Council Meetings begin at 5:30 PM. The start time for additional meetings may vary. All meeting start times are 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. Council meetings are broadcast live and available for on demand viewing at youtube.com/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 52-4-207(4), which supersedes some requirements listed in 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.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter:
Department:
Requested Meeting Date:

SUBJECT: An Ordinance granting Teleport Communications America, LLC a nonexclusive franchise to operate a telecommunications network in Provo City, Utah. (21-057)

RECOMMENDATION: Approval of Franchise Agreement.

BACKGROUND: Provo City and Teleport Communications have come to terms on an updated Franchise Agreement. Pursuant to Provo City Code, "[n]o franchise contract shall take effect until it has been approved by the Municipal Council." 5.03.020 (5). The parties are seeking the Council's approval for the agreement that they have reached. Provo City Code states that "[i]t shall be unlawful to install, construct, or maintain any wires, cables, poles, pipes or other equipment for the provision of public utility service in, on, under, or over any street, alley, sidewalk, parkway or other public place in the municipal limits of Provo City without first having obtained a franchise for use of the public way from Provo City." 5.03.010. The prior Teleport Communications franchise agreement had expired and this will replace the old one. This agreement largely follows the approved template with only differs in one material respect by removing the fiber dedication provision, which the administration has agreed will not be necessary in this instance.

FISCAL IMPACT:

PRESENTER'S NAME: Marcus Draper, Assistant City Attorney

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 21-057

ORDINANCE 2021-.

AN ORDINANCE GRANTING TELEPORT COMMUNICATIONS AMERICA, LLC A NONEXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK IN PROVO CITY, UTAH. (21-___)

WHEREAS, Teleport Communications America, LLC ("Company") desires to obtain a nonexclusive franchise to have the right and privilege to operate a telecommunications network in Provo, Utah; and

WHEREAS, Provo City and Company have negotiated a nonexclusive franchise agreement ("Franchise Agreement") setting forth Company's rights and duties with respect to its operation of a telecommunications network in Provo, Utah, as set forth in the attached Exhibit A; and

WHEREAS, on November 30, 2021, the Provo 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) the attached Franchise Agreement should be approved, thereby granting Company a franchise to operate a telecommunications network in Provo, Utah, on the terms set forth in the Franchise Agreement; 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:

The attached Franchise Agreement between Provo City and Company is hereby approved and Company is hereby granted a franchise to operate a telecommunications network in Provo, Utah, pursuant to the Franchise Agreement. The Mayor is hereby authorized to execute the Franchise Agreement, as set forth in the attached Exhibit A; provided, however, that the Mayor is also hereby authorized to amend the Franchise Agreement as may be needed to meet the requirements of applicable law.

The franchise granted herein shall be effective upon the date on which all parties have signed the Franchise Agreement. If the Franchise Agreement has not been fully executed within

one hundred twenty (120) days after the passage of this ordinance by the City, this ordinance and the rights granted herein shall be null and void.

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.

PROVO CITY AND TELEPORT COMMUNICATIONS AMERICA, LLC
TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into on _____, 2021 by and between the City of Provo, Utah, (hereinafter "City") and Teleport Communications America, LLC, a limited liability corporation (hereinafter "Company").

WITNESSETH:

WHEREAS, Provo City Code Chapter 6.24 “Telecommunications Rights-of-Way” provides for the use of the City’s Rights-of-Way for the installation, construction, and maintenance of systems in the City’s Rights-of-Way,

WHEREAS, the Company desires to provide certain telecommunication services within the City and in connection therewith to establish a telecommunications network in, under, along, over, and across present and future streets, alleys, easements, and Rights-of-Way of the City, consisting of telecommunication lines, cables, and all necessary appurtenances; and

WHEREAS, the City, in exercise of its ownership rights over and in the public streets, alleys, easements, and Rights-of-Way, believes that it is in the best interest of the public to provide to the Company and its successors a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have negotiated an arrangement whereby the Company may provide its services within the City, pursuant to the terms and conditions outlined in this Agreement and in Provo City Code Chapter 6.24, and subject to the further reasonable regulation under its police and other regulatory power;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, City and Company agree as follows:

ARTICLE I

FRANCHISE AGREEMENT AND ORDINANCE

1.1 **Agreement**. Upon approval by the City Municipal Council, this Franchise Agreement shall be deemed to constitute a contract by and between City and Company.

1.2 **Ordinance.** Previously, the City adopted Chapter 6.24 “Telecommunications Rights-of-Way” (the "Ordinance"), and such Ordinance is incorporated herein by reference and made an integral part hereof.

1.3 Grant of Franchise. The City hereby grants to Company and its successors and assigns the non-exclusive right, privilege, and franchise (the "Franchise") to construct, maintain, and operate a telecommunications network (hereinafter "Network") in, under, along, over, and across the present and future streets, alleys, easements and Rights-of-Way of the City. The Franchise does not grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business although nothing contained herein shall preclude the Company from (1) permitting those lawfully engaged in such business to utilize Company's facilities within the City for such purposes, or (2) from providing such service if an appropriate Franchise is obtained and all other legal requirements have been satisfied. If state or federal law permits Company to operate an open video system without obtaining a separate franchise from City to provide video services, Company nevertheless acknowledges that Chapter 6.22 of the Provo City Code regulates and governs the provisions of multichannel video services, and in providing video services to Customers within City, Company shall be subject to the customer service and consumer protection provisions of that Chapter.

1.4 Financial Capability. Company warrants that it has the financial capability to construct, maintain, and operate a telecommunications network and to otherwise comply with the provisions of this Agreement.

1.5 Relationship; Joint Facilities Agreement. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with the other. The Franchise does not grant Company the right to use City poles, conduit, or other facilities. The use of such facilities shall be governed by a separate Pole Attachment and Conduit Occupancy Agreement.

1.6 Records Inspection. The records of the Company pertaining to the reports, plans, designs, and payments required by this Franchise, including, but not limited to, any records deemed necessary or useful by the City to calculate or confirm Gross Revenues, as defined herein, shall be open for inspection by the City and its duly authorized representatives at all reasonable business hours of the Company, provided Company is given reasonable notice. Such records may be copied by the City and the copies may be removed from the premises, provided that reasonable arrangements are made to protect the confidentiality of such records.

1.7 Definitions. The words, terms, and phrases which are used herein and in the Ordinance shall have their ordinary plain meaning unless the word, term, or phrase is expressly defined herein. Words, terms, and phrases which are not specifically defined herein, but are defined in 47 U.S.C. ' 153, or its successor, shall have the technical meaning provided by that section as of the date of this agreement. The following words, terms, and phrases when used herein shall have the following meanings:

"City Council" means the Provo City Municipal Council.

"Customer" means a person or user of the Company's telecommunications Network who lawfully receives telecommunications services or other services therefrom with the Company's authorized permission, including, but not limited to, other companies utilizing Company's Network to provide services to customers of those companies.

"Gross Revenues" means any and all revenues of the Company derived from the sale of telecommunications services to its Customers within the City, without regard to the billing address of the Customer; and to the extent such services utilize the herein-referenced fiber-optic, copper, or other cable; except that the term "Gross Revenue" shall not include revenue from sources excluded by law, or revenue derived by the Company from services provided to its parent, subsidiaries of its parent, or affiliated companies of the Company.

"Network" means a Network of telecommunications lines and cables (including without limitation fiber-optic and copper lines and cables), together with necessary and desirable appurtenances (including underground and above-ground conduits and structures, poles, towers, wire, and cable) for its own use for the purpose of providing telecommunications services to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof.

"Public Improvement" means any existing or contemplated public facility, building, or capital improvement project, including without limitation streets, alleys, sidewalks, sewer, water drainage, Right-of-Way improvements, poles, lines, wires, conduits, and Public Projects.

"Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

"Rights-of-Way" includes present and future City streets, alleys, rights-of-way, and public easements, including easements dedicated in plats of the City.

ARTICLE II

TERM AND RENEWAL

2.1 Term and Renewal. The Franchise granted to Company shall be for a period of five (5) years commencing on the date this Agreement is executed, unless this Franchise be sooner terminated as herein provided. At the end of the initial five (5) year term the Franchise may be renewed by Company upon the same terms and conditions as contained in this Agreement, so long as Company is in compliance with the provisions of this Agreement, for an additional five (5) year term, by providing to the City's representative, not less than ninety (90) calendar days before the expiration of the initial franchise term, written notice of Company's intent to renew. If the statutory limit imposed on the Franchise Fee by Utah Code ' 11-26-1 et seq., or any successor provision, is changed, the parties shall amend, upon its renewal, this Agreement to conform to the new statutory limit.

2.2 Rights of Company Upon Expiration or Revocation. Upon expiration of the Franchise, whether by lapse of time, by agreement between Company and the City, or by revocation or forfeiture thereof, the Company shall have the right to remove any and all of its facilities, but in such event, it shall be the duty of the Company, immediately upon such removal, to restore the streets, avenues, alleys, and other public ways and grounds from which such facilities are removed to as good condition as the same were before the removal was effected.

2.3 Rights of City Upon Expiration or Revocation. Upon expiration of the term of this Franchise, forfeiture, or lawful revocation of this Franchise, and if no renewal or extension thereof is agreed upon, Company may, at the discretion of the City Council, be required, in part or entirely, to remove all its wires, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Franchise. Alternatively, the removal, or sale of such facilities and equipment may be directed, limited, or conditioned by the City by agreement or through means of other lawful municipal power or right. The City may continue to invoke any or all provisions of this Franchise against Company or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Company will work together to take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Company.

ARTICLE III

CONSIDERATION AND PAYMENT

3.1 Franchise Fee. For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Company of the City's Rights-of-Way, the

Company agrees:

a. To pay to the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended, and imposed and levied pursuant to Provo City Code, Chapter 5.07, (collectively the "Municipal Telecommunications Tax Laws"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Laws, and shall be paid by the Company to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder. Compliance by the Company with the terms and provisions of the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.

b. Notwithstanding the provisions of Section 3.1(a) above, the Franchise Fee shall be calculated and payable as described therein only so long as the Company and the services provided within the City by the Company by means of the Company Facilities are subject to the Municipal Telecommunications Tax. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, the Company shall pay, in lieu of the Franchise Fee, a charge with respect to such portion of the Company Facilities, payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with similar facilities, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate a change in the Municipal Telecommunications Tax Laws, including payment provisions; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

3.2 Reconciliation. Within 30 calendar days after the filing of any report or the making of any payment, or within such reasonable additional time as the City may request, the City shall examine such report or payment, determine the accuracy thereof, and, if the City finds any errors, report such errors to the Company for correction. If the Franchise Fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the

Franchise Fee as paid shall be found excessive, the City shall promptly refund the difference. In the event of a disagreement, the Company shall make payment under protest pending the resolution of the dispute between the parties or through the courts. Neither payment of the Franchise Fee nor failure to make such investigation shall be deemed to estop the City or the Company in any way or prevent subsequent investigation by either and collection or return of any amount properly due. No acceptance of any payment by the City shall be construed as a release of, or an accord or satisfaction of, any claim the City might have for further or additional sums payable under the terms of this Agreement for the performance of any other obligation of the Company hereunder.

3.3 Extensions Not Statute of Limitation or Repose. The aforesaid 30-day notice period is not intended and shall not act as a statute of limitation or repose, which limitation periods shall be governed by Utah Law.

3.4 Delinquency. Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the payment. Failure to make any payment and penalty charges within thirty (30) calendar days of the applicable payment date shall constitute breach of the terms of the this Agreement and constitute just cause for termination, and such unpaid amount shall bear interest until paid at the rate of an additional ten percent (10%) per annum until paid.

3.5 Revenue Report Following Termination. In the event this Agreement or the Franchise should be terminated, forfeited, or determined to be void or invalid by any order or decree by a court of competent jurisdiction, the Company, not later than thirty (30) calendar days following such termination, forfeiture, or determination, shall submit to the City a report prepared as before required, showing the Gross Revenues of the Company for the time elapsed since the last period for which the Company has paid the Franchise Fee. Coincidental with the submission of the report, the Company shall pay to the City the Franchise Fee due and owing to the City for such period.

3.6 Audits. For the purpose of verifying the correct amount of the franchise fee, the books and records of Company pertaining thereto shall be open to inspection or audit by duly authorized representatives of Provo City at all reasonable times, but not more than once a year, upon giving reasonable notice of the intention to inspect or audit said books and records. The Company agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Company has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Company herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

ARTICLE IV

USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY

4.1 Franchise Rights to Use the Public Right-of-Way. The Company shall have the right to use the public Rights-of-Way within the City to construct and maintain its Network subject to the conditions set forth in this Agreement, including the provisions of Chapters 6.24 and 15.11 of the Provo City Code, which are hereby incorporated by reference; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any Right-of-Way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, Company shall have the right to utilize any easements across private property granted to the City for utility purposes, provided the City's written permission is obtained in each case and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and Rights-of-Way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or Right-of-Way beyond the extent that the City may have acquired, and such easements and Rights-of-Way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and Right-of-Way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or Right-of-Way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or Right-of-Way.

4.2 Company Duty to Relocate; Subordination to City Use. Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, Rights-of-Way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not less than thirty (30) calendar days, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 5.3 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate

with the Company's efforts to obtain reimbursement. In the event the City has required the Company to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of relocation. Notwithstanding anything to the contrary herein, the Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.

4.3 Duty to Obtain Approval to Move Company Property; Emergency. Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the Mayor, City Council, City Engineer, Fire Chief, Police Chief, Energy Director, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of telecommunications services provided by the use of or through the Company's property (including telecommunications services provided by the Company to the Company's Customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's Customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of Company shall be paid to the Company within thirty (30) business days.

4.4

ARTICLE V

PLAN, DESIGN, CONSTRUCTION, INSTALLATION OF COMPANY FACILITIES

5.1 Coordination of Construction and Joint Use. On or before February 28, May 31, August 31, and November 30 of each calendar year, or such other date the Company and City may agree upon from year to year, the Company's and the City's representatives will meet (the "Quarterly Coordination Meeting") for the purpose of exchanging information and documents regarding future construction of Company's facilities within the City, with

a view toward coordinating their respective activities. Documents and information to be exchanged shall include, without limitation, engineering drawings or other detailed maps of the proposed locations of construction or installation of telecommunication facilities. The Company, and the City Energy Director shall thereafter in good faith exchange other information and documents regarding the proposed construction for the purpose of coordinating the joint and respective activities within the City. Any significant construction or installation of new facilities by the Company or other franchised telecommunication companies not presented at the Quarterly Coordination Meeting shall only be commenced upon approval of the City Energy Director. Upon request, information regarding future capital improvements involving land acquisition or construction or installation of telecommunication facilities shall be treated with confidentiality as governed, and to the extent authorized, by City ordinance and the Government Records Access and Management Act.

5.2 Conditions of Public Utility Easement, Right-of-Way and Street Occupancy.

a. Except as provided below, the Company shall not erect, authorize, or permit others to erect any poles within the streets of the City for the operation of Company's Network, but shall use the existing poles and facilities of the City Energy Department and other telecommunication providers under such terms as the Company negotiates with City and these other entities in separate "joint facilities" agreements. City shall cooperate with Company in its negotiating with other telecommunication providers.

b. The Company may request, in writing, that it be authorized to erect poles or place conduit or other facilities within the streets of the City for the operation of its Network. Such consent shall be entirely discretionary with the City and shall be given upon such terms and conditions as the City Council, in its sole discretion, may prescribe, which shall include a requirement that the Company perform, at its sole expense, all tree trimming required as a result of the Company's presence to maintain the line or facilities clear of obstructions. With respect to any poles or wire-holding structures that the Company is authorized to construct and install within the City, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or facility by the Company, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Company's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility district pay to the Company any and all actual and necessary costs incurred by the Company in permitting such use, and shall indemnify the Company and City from and against any claims or causes of action brought about due to such use.

c. No cables, equipment, or wires for construction, maintenance, and operation of the Network shall be installed or the installation thereof commence on any existing pole within the City until the proposed location, specifications, and manner of installation of such cables, equipment, and wires are set forth upon an engineering drawing, plot, or map showing the existing poles, streets, alleys, or highways where such installations are proposed. The drawing, plot, or map shall be submitted to the City Engineer and the City Energy Director and reviewed for approval or disapproval within a reasonable time in writing. Such approval shall not be unreasonably withheld. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits.

d. If, in the conduct of its business, the Company is required to locate facilities in the streets of the City, other than facilities that may be attached to utility poles, the nature of such facilities shall be disclosed to the City for prior review and approval as to the need thereof and as to the location within the street. The installation shall be made under such conditions as the City Engineer shall prescribe.

e. The Company, at its own expense, may, and is solely responsible to, trim trees overhanging the public Rights-of-Way of the City to prevent the branches of such trees from coming in contact with the Company's wires and cable. Prior to the Company attempting to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City, the Company shall obtain approval from, and be under the supervision of, the City official to whom such duties have been or may be delegated in accordance with the applicable provisions of the municipal code of the City. Company shall immediately remove the trimmings and restore the area to its previous condition.

f. The Company, on the request of any person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company may require such payment in advance. The City agrees to provide prior written notice of the necessity to move the wires as far in advance as possible; provided in no event shall the City give less than forty-eight (48) hours advance notice. In the event of a disagreement between the Company and the holder of a permit, such disagreement shall be resolved by the City.

5.3 Duty to Underground. The Company shall be required to comply with the rules and regulations of the Public Service Commission in regard to the installation of underground lines. In addition, the Company shall comply with rules and regulations adopted by the

City for the placement of newly constructed Network lines underground; provided, however, Company shall only be required to place newly constructed Network lines underground to the extent that underground placement is also required of all other existing and newly constructed lines of other telecommunication companies at that location with the City. If all other electric utilities or telephone utilities are located or relocated underground in any place within the City after the Company has installed its facilities, the Company shall thereafter remove and relocate its facilities underground in such places. Where utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity and with the written approval from the City.

5.4 Company Duty to Comply with Rules and Regulations. Facilities located on, upon, over, and under property in which the City has an ownership interest shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with such rules and regulations as the City may issue. The Company shall acquire permits in accordance with such rules and regulations and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community, and from time to time, must be done under circumstances that may make prior acquisition of a permit infeasible.

5.5 Compliance with Pollution Laws. Company shall ensure that its facilities within the City meet the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company shall provide the City with a status report of such measures.

5.6 Compliance with Applicable Laws. All telecommunications lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed, used, maintained, relocated, or dismantled under color of this Agreement shall be so installed, used, operated, tested, maintained, relocated, or dismantled in accordance with applicable present and future federal, state, and City law and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be additional to or stricter than such minimum standards.

5.7 Location to Minimize Interference. All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, Rights-of-Way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, Rights-of-Way, or public property.

5.8 Repair of Damage. If during the course of work on its facilities, the Company causes damage to or alters any street, alley, Rights-of-Way, sidewalk, utility, Public Improvement, or other public property, the Company (at its own cost and expense and in a manner approved by the City) shall promptly and completely restore such street, alley, Rights-of-Way, sidewalk, utility, Public Improvement or other public property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld. The Company shall abide by all reasonable regulations and requirements of the City for such work.

5.9 Guarantee of Repairs. For a period of one year following the completion of the repair work performed pursuant to Section 5.8, the Company shall maintain, repair, and keep in good condition those portions of said streets, alleys, Rights-of-Way, or public property restored, repaired, or replaced to the satisfaction of the City.

5.10 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations, or standards imposed by law including, but not limited to, signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

5.11 Supervision by the City.

a. The Company shall construct, operate, and maintain the Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.

b. The Company's Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company.

5.12 Company's Duty to Remove Its Network.

a. The Company shall promptly remove, at its own cost and expense, from any public property within the City, all or any part of the Network when one or more of the following conditions occur:

(1) The Company ceases to operate the Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such

cessation, except when the cessation of service is a direct result of a natural or man-made disaster;

(2) The Company fails to construct said Network as herein provided and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such failure;

(3) The Franchise is terminated or revoked pursuant to notice as provided herein; or

(4) The Franchise expires pursuant to this Agreement.

b. The Company's removal of any or all of the Network that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.

c. The Company shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 5.12(a) above and shall have ninety (90) calendar days from the date upon which said notice is received to remove or abandon such facilities.

5.13 Notice of Closure of Streets. Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 5.10, above.

ARTICLE VI

POLICE POWER

6.1 Reservation of Police Power. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

6.2 Other Regulatory Approval. The Company and the City shall at all times during the life of this Franchise, comply with all federal, state, and City laws and regulations and with such reasonable and lawful regulation as the City now or hereafter shall provide,

including all lawful and reasonable rules, regulations, policies, resolutions and ordinances now or hereafter promulgated by the City relating to permits and fees, sidewalk and pavement cuts, attachment to poles, utility location, construction coordination, beautification, and other requirements on the use of the Right-of-Way. The terms of this Franchise shall apply to all the Company's facilities used, in whole or part, in the provision of telecommunications services in newly annexed areas upon the effective date of such annexation. Company shall provide no service regulated by the Federal Communications Commission (FCC) or Utah Public Service Commission (PSC) until it has received all necessary approvals and permits from said commissions. Nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this Agreement which is not in accordance with applicable federal, state and local laws.

ARTICLE VII

CITY REPRESENTATIVES

7.1 Mayor's Duties and Responsibilities. The Mayor is hereby designated as the "City Representative" with full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The Mayor may delegate to others, including but not limited to, the City Attorney, City Engineer, City Finance Director, and City Energy Director, the various duties and responsibilities of City Representative. The failure or omission of the Mayor or the Mayor's designee(s) as City Representative to act shall not constitute any waiver or estoppel.

7.2 Company Duty to Cooperate. In order to facilitate such duties of the City Representative, the Company agrees to allow the City Representative reasonable access to any part of the Company's Network within the City's public Rights-of-Way.

7.3 City Financial Review. With regard to financially related matters, the Mayor or the Mayor's designee, as City Representative may undertake a financial review of Company's payment of its Franchise fees and other fees and obligations under this agreement. The failure or omission to conduct a financial review shall not constitute any waiver or estoppel.

7.4 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any of such terms and conditions.

ARTICLE VIII

TRANSFER OF FRANCHISE

8.1 Written Approval Required. The Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld or delayed. Any attempted assignment or transfer without such prior written consent shall constitute a Default of the Franchise. In the event of such a Default, City shall proceed according to the procedure set forth in this Agreement, and any applicable state or federal law.

8.2 Procedure for Obtaining Approval for Transfer. At least ninety (90) calendar days before a proposed assignment or transfer of Company's Franchise is scheduled to become effective, Company shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider any or all of the following:

(a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
(b) qualifications of proposed assignee or transferee;
(c) legal integrity of proposed assignee or transferee;
(d) financial ability and stability of the proposed assignee or transferee;
(e) the corporate connection, if any, between the Company, and proposed assignee or transferee; and
(f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of a telecommunications network.

8.3 Certification of Assignee. Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise Agreement and all applicable laws, rules, and regulations.

8.4 Effect of Approval. In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise Agreement until the assignment actually takes place, unless specifically relieved by federal, or state law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.

8.5 Transfer Upon Revocation by City. Company and City agree that in the case of a lawful revocation of the Franchise, at Company's request, which shall be made in its sole

discretion, Company shall be given a reasonable opportunity to effectuate a transfer of its Network to a qualified third party. City further agrees that during such a period of time, it shall authorize the company to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If at the end of that time, Company is unsuccessful in procuring a qualified transferee or assignee of its Network which is reasonably acceptable to the City, Company and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Company's continued operation of its Network during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either the City or the Company. Notwithstanding anything to the contrary set forth herein, neither City nor Company shall be required to violate federal or state law.

8.6 Abandonment of Facilities by Company. The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, after receiving the written consent of the City, the abandoned Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

ARTICLE IX

ACCEPTANCE BY THE COMPANY OF FRANCHISE

Company Duty to Approve Franchise Agreement. If the Company has not duly executed this Agreement prior to the City Council's adoption of the corresponding ordinance, then within sixty (60) calendar days after the effective date of the City Council's adoption of the ordinance, the Company shall execute this Agreement and file an unqualified acceptance of the ordinance in writing with the City Recorder of the City in a form approved by the City Attorney; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

ARTICLE X

EXTENSION OF CITY LIMITS

Annexations. Upon the annexation of any territory to the City, all rights hereby granted and the Franchise shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

ARTICLE XI

EARLY TERMINATION OR REVOCATION OF FRANCHISE

11.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

a. The Company fails to make timely payments of the Franchise Fee as required under Article III of this Agreement and does not correct such failure within thirty (30) business days after written notice by the City of such failure;

b. The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and, thereupon, after written notice giving the Company notice of such determination, the Company, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such ninety-day period and failure to correct such conditions, the City may declare the Franchise forfeited, and, thereupon, the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and, provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the ninety-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Company;

c. The Company becomes insolvent, unable, or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) calendar days; or

d. In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

11.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

ARTICLE XII

INSURANCE AND INDEMNIFICATION

12.1 No City Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct.

12.2 Company Indemnification of City. The Company shall indemnify, and at the City's option defend, and hold the City, and the officers, agents and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of, or arising from, the exercise by the Company of the rights related to this Agreement, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of telecommunications lines and appurtenances, whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement.

12.3 Notice of Indemnification. The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. City shall give written notice to Company promptly after City learns of the existence of Claim for which City seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of City, except and only to the extent the Company is prejudiced by such failure. The Company shall have the right to employ counsel reasonably acceptable to the City to defend against any such Claim. If such counsel will represent both the Company and City, there may be no conflict with such counsel's representation of both. Company must acknowledge in writing its obligation to indemnify the City for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the City other than for money damages. If Company fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the City (or such shorter time specified in the notice as the circumstances of the matter may dictate), the City shall be free to dispose of the matter, at the expense of Company (but only if indemnification is adjudged to be proper), in any way in which the City deems to be in its best interest. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this

Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

12.4 Insurance. Company shall file a certificate of insurance with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies which have one of the three highest or best ratings from the Alfred M. Best Company of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, its officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars ($2,000,000) per occurrence. The insurer or insurers shall be authorized to write the required insurance in the State of Utah. The policy or policies of insurance shall be maintained by the Company in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Company or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City, and that such notice shall be transmitted postage prepaid.

12.5 City's Right to Intervene. In any suit in which the City is named as a party and seeks indemnification from the Company, and in which the City in its own reasonable discretion believes that a conflict of interest with Company exists, the City shall have the right to provide its own defense in connection with the same. In such event, in addition to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

12.6 No Creation of a Private Cause of Action. The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under these indemnity provisions and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Company shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the City in defense thereof. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Company from its duty of defense against liability or paying any judgment entered against such party.

12.7 Performance Bonds and Other Surety. To ensure completion of the Company's performance of its obligations hereunder, Company shall furnish to the City a

performance bond, that is substantially similar in form to the surety guarantee bond that is attached hereto as Exhibit 1, from an insurer or guarantor that is acceptable to the City.

ARTICLE XIII

REMEDIES

13.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

13.2 Remedies at Law. In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

13.3 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

13.4 Force Majeure. The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

ARTICLE XIV

NOTICES

City and Company Designees and Addresses. Unless otherwise specified herein, all notices between the City and the Company pursuant to or concerning this Agreement or the Franchise shall be delivered to (or to such other offices as the City or Company may designate by written notice to the other Party):

City:

Provo City Corporation
351 West Center Street
Provo, UT 84601
Attention: Finance Department

With copies to (which shall not constitute notice):

Provo City Corporation
351 West Center Street
Provo, UT 84601
Attention: City Attorney

AND

Provo City Energy Department
PO Box 658
Provo, UT 84603
Attention: Energy Department Director

Company:

Teleport Communications America, LLC
One AT&T Way
Bedminster, NJ 07921
Office 3A234G

With a copy to (which copy will not constitute notice):

Teleport Communications America, LLC
One AT&T Way
Bedminster, NJ 07921
Office 3A234G

AND

Teleport Communications America, LLC
One AT&T Way
Bedminster, NJ 07921
Legal Department

ARTICLE XV

CHANGING CONDITIONS

Meet to Confer. The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

ARTICLE XVI

AMENDMENT AND GENERAL PROVISIONS

16.1 Duty to Negotiate. At any time during the term of this Agreement, the City, through the City Council, or the Company may propose amendments to this Agreement by giving thirty (30) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s).

16.2 Written Approval to Amend Agreement Required. No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company, and an ordinance or resolution approving such amendments is approved by the City Council.

16.3 Entire Agreement. This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only by the written agreement of the parties, including the formal approval of the City Council.

16.4 Governing Law. This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

16.5 Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

ARTICLE XVII

SEVERABILITY

17.1 Conditions. If any section, sentence, paragraph, term, or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof or thereof, all of which shall remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article III hereof. The parties do not waive their right to assert that the obligations contained herein, including those obligations contained in Article III arise as a matter of contract and are not otherwise conditioned.

17.2 Conflicts. In the event of a conflict between any provision of this Agreement and the Ordinance, the provisions of the Ordinance in effect at the time the Agreement is entered into shall control.

17.3 Fee Article Non-Severable. Article III hereof is essential to the adoption of this Agreement, and should it be challenged by the Company or determined to be illegal, invalid, unconstitutional, or superseded, in whole or in part, the entire Agreement and the Franchise shall be voided and terminated, subject to the following provisions of this Article. In the event of a judicial, regulatory, or administrative determination that Article III is illegal, invalid, unconstitutional, or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Company. In the event of any legislative action that renders Article III unconstitutional, illegal, invalid, or superseded, such termination shall be effective as of the effective date of such legislative action.

17.4 Waiver of Non-Severability. Notwithstanding the foregoing, if the City stipulates in writing to judicial, administrative, or regulatory action that seeks a determination that Article III is invalid, illegal, superseded, or unconstitutional, then a determination that Article III is invalid, illegal, unconstitutional, or superseded shall have no effect on the validity or effectiveness of any other section, sentence, paragraph, term, or provision of this Agreement, which shall remain in full force and effect.

17.5 Lease Terms Upon Termination. In the event this Agreement is terminated pursuant to Section 17.3 hereof, the City grants to the Company a lease according to the same terms and conditions as set forth in this Agreement. Accordingly, the Company shall pay, as fair market rental value, the same amounts, at the same times, required for the payment of the Franchise Fee pursuant to Article III hereof and be bound by all other terms and conditions contained herein; provided, however, that in no event shall the Company be obligated to pay a higher percentage of Gross Revenues derived from the sale of telecommunications services within the City than is paid by other telecommunication companies serving within the City.

IN WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the date first set forth above, to become effective on that date.

Provo City Corporation

By: _____
Michelle Kaufusi, Mayor

ATTEST:

_____
Heidi Pepinos, City Recorder

Teleport Communications America, LLC

By: _____
Christopher Och, Vice President

ATTEST:

_____

STATE OF UTAH)
)ss.
COUNTY OF UTAH)

On the _____ day of _____, 2021, personally appeared before me Christopher J. Och, who being by me duly sworn did each respectively say that he/she is the Chief Executive Officer, Secretary, Vice President of Teleport Communications, America, LLC, and that the foregoing instrument was signed in behalf of said Company]; and he each acknowledged to me that said Company executed the same.

_____
Notary Public

TEL 801 852 6140
351 W CENTER ST
PO BOX 1849
PROVO, UT 84603

Provo City *(Legal)*

Staff Memorandum

Teleport Communications America, LLC Franchise Agreement Ordinance

November 30, 2021

Department Head Brian Jones (801) 852-6140	**Purpose of Proposal** • To establish the terms of Teleport Communications' updated franchise with Provo City.
Presenter Consent Agenda Item	**Action Requested** • Approval of Franchise Agreement.
Required Time for Presentation N/A	**Relevant City Policies** • Provo City Code Chapters 5.03, 5.07, and 6.24.
Is This Time Sensitive Yes	**Budget Impact** • Teleport Communications America, LLC shall pay the Municipal Telecommunications License Tax of 3.5% of the gross revenues it derives from sales of its services to customers within Provo City limits.
Case File # (if applicable) XX-XXX	**Description of this item (at least 2 paragraphs)** This is to help Council Members to have a clear understanding of what your item is. • Provo City and Teleport Communications have come to terms on an updated Franchise Agreement. Pursuant to Provo City Code, "[n]o franchise contract shall take effect until it has been approved by the Municipal Council." 5.03.020 (5). The parties are seeking the Council's approval for the agreement that they have reached.

	• Provo City Code states that "[i]t shall be unlawful to install, construct, or maintain any wires, cables, poles, pipes or other equipment for the provision of public utility service in, on, under, or over any street, alley, sidewalk, parkway or other public place in the municipal limits of Provo City without first having obtained a franchise for use of the public way from Provo City." 5.03.010. The prior Teleport Communications franchise agreement had expired and this will replace the old one. This agreement largely follows the approved template with only differs in one material respect by removing the fiber dedication provision, which the administration has agreed will not be necessary in this instance.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: TARAR
Department: Community and Neighborhood Services
Requested Meeting Date: 11-30-2021

SUBJECT: A resolution to approve a real estate purchase contract between Redevelopment Agency of Provo City and Evkell, LLC for the sale of property at approximately 1000 West Center Street for a commercial development. (21-116)

RECOMMENDATION: Staff recommends the approval, by resolution, of the Real Estate Purchase Contract with EVKELL, LLC for the sale of property at 1000 West Center for a commercial development.

BACKGROUND: EVKELL, LLC owns and operates Red Mountain, a floral distributor which is located at 1109 West 100 South, Provo. They have outgrown their current location and want to build a larger distribution building with a retail component. Provo City and the Redevelopment Agency own property at approximately 1000 West Center which would be a good location for the expansion of their business. EVKELL, LLC has agreed to work with Provo City representatives in creating a building that will be a nice addition to the entrance into Provo.

FISCAL IMPACT:

PRESENTER'S NAME: Tara Riddle, Property Coordinator/Ombudsman

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
The development of this property into a commerical use in the city's gateway is compatible with the general plan, policies, goals, and objectives of Provo City.

CITYVIEW OR ISSUE FILE NUMBER: 21-116

RESOLUTION 2021-.

A RESOLUTION TO APPROVE A REAL ESTATE PURCHASE CONTRACT BETWEEN REDEVELOPMENT AGENCY OF PROVO CITY AND EVKELL, LLC FOR THE SALE OF PROPERTY AT APPROXIMATELY 1000 WEST CENTER STREET FOR A COMMERCIAL DEVELOPMENT. (21-116)

WHEREAS, the Redevelopment Agency of Provo City (the "City") owns .679 acres of real property located at approximately 1000 West Center, Utah County serial numbers 21:021:0035, 21:021:0068, 21:021:0069, and 21:021:0015, further described in Exhibit A; and

WHEREAS, this property is vacant and has not been identified for future use by Provo City; and

WHEREAS, Provo City desires to sell this property for future development under appropriate circumstances; and

WHEREAS, the Mayor recommended that this parcel be placed on the surplus property list for potential sale, subject to the conditions set forth in Provo City Code Section 3.04.030; and

WHEREAS, Provo City has negotiated a Real Estate Purchase Contract, attached in Exhibit B, for the sale of the subject property; and

WHEREAS, on November 30, 2021, 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 recommendation, and facts and comments presented to the Municipal Council, the Council (i) approves the Real Estate Purchase Contract, and (ii) determines that this action 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:

The Real Estate Purchase Contract in the attached Exhibit B is hereby approved.

PART II:

This resolution shall take effect immediately.

END OF ORDINANCE.

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 737.01 FEET AND WEST 250.33 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S00°22'35"W 146.35 FEET; THENCE N88°59'59"W 101.13 FEET; THENCE S01°00'01"W 49.49 FEET; THENCE N88°26'13"W 46.26 FEET; THENCE N00°42'26"E 67.37 FEET; THENCE S89°25'14"W 61.88 FEET; THENCE N00°04'59"E 112.80 FEET; THENCE N85°44'27"E 162.12 FEET; THENCE N88°33'48"E 48.40 FEET TO THE POINT OF BEGINNING.

AREA: 30307 SQUARE FEET OR 0.696 ACRES.

Exhibit B

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into this _____ day of_____, 2021 ("Effective Date"), by and between PROVO CITY, a municipal corporation, and the REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah ("Sellers") of 351 West Center, Provo, Utah 84601, and EVKELL, LLC, a Utah limited liability company ("Buyer") of 1109 West 100 South, Provo, Utah 84601. Sellers and Buyer are hereinafter sometimes collectively referred to as "parties" and either may be referred to individually as "party," all as governed by the context in which such words are used.

RECITALS

WHEREAS, Sellers are the fee simple owners of real property collectively consisting of approximately 2.393 acres, generally located at 1000 West Center Street, in Provo, Utah County, Utah, together with all of Sellers' interest in any and all easements, rights, privileges, entitlements, improvements, water rights and appurtenances related

thereto (collectively, the "Property"), which Property is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein, and generally depicted in the map attached hereto as Exhibit "B" and incorporated herein;

WHEREAS, Sellers are willing to sell, and Buyer is willing to purchase, the Property according to the terms and conditions of this Agreement;

WHEREAS, Buyer is willing to purchase the Property for the purpose of expanding their floral distribution company along with a retail component in accordance with the conceptual plans presented to the Provo Municipal Council and other applicable zoning ordinances;

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Purchase and Sale of the Property. Subject to the terms and conditions of this Agreement, Sellers agrees to sell and convey, and Buyer agrees to purchase, the Property in fee simple.

2. Purchase Price.

   2.1 Generally. As consideration for the Property, the Buyer shall pay to Sellers the sum of $835,000.00, less the reimbursements identified in section 2.2 of this agreement.

   2.2 Reimbursement. The sum of $50,000.00 shall be placed in an escrow account to be distributed to the Buyer at the Sellers' discretion for improvements made to the façade of the Buyer's new warehouse building. The sum of $35,000.00 shall be placed in an escrow account to be dispersed to the Buyer upon the execution of an easement in favor of Sellers for an area determined during site planning for the placement of a "Welcome to Provo" sign. Said location will be mutually agreeable to both Buyer and Sellers.

   2.3 Earnest Money. Within five (5) business days of the Effective Date, Buyer shall deposit into an interest-bearing account at Title Company (defined below), the sum of Ten Thousand Dollars ($10,000.00) as earnest money (the "Earnest Money"). The Earnest Money shall be held and distributed as specified in this Agreement.

3. Inspection Period; Right of Entry; Title Review.

   3.1 Buyer acknowledges it has had access to the Property and has

conducted sufficient review to satisfy itself as to the status and condition of the Property. Buyer waives any further review or inspection of the Property (the "Inspection Period") to conduct and perform any further physical inspections, surveys, tests, environmental reviews, feasibility studies, reviews of zoning and use restrictions, and such other inspections and reviews.

3.2 Buyer, its representatives, employees, agents, independent contractors and consultants have had access to the Property at all reasonable times for the purpose of conducting such inspections and reviews. Buyer agrees to indemnify, defend, and hold Sellers harmless from and against any and all liability arising out of or otherwise in any way related to such access to, entry onto or inspections or work on the Property, except that Buyer shall have no such obligation to indemnify for, or any liability for (i) latent defects, (ii) Sellers' actions or inactions, (iii) Hazardous Materials (as defined below) not placed on the Property by Buyer or its agents, employees or contractors, or (iv) discovering conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property. The obligations and indemnities of Buyer as set forth in this Section shall survive the termination hereof, or the closing under this agreement, for a period of one (1) year, and shall not be merged into any instrument of conveyance delivered at closing.

3.3 Sellers shall obtain from Security Title and Abstract Company (the "Title Company"), whose address is 55 East Center Street, Provo, Utah 84606, a current commitment for a 2006 ALTA owner's policy of title insurance (the "Title Commitment") with respect to the Property, and shall provide the Title Commitment to Buyer within ten (10) days after the Effective Date. Buyer will provide Sellers with a written notice listing each exception (from Schedule B – Section 2 of the Title Commitment) that is unacceptable to Buyer, in Buyer's sole discretion (collectively, "Disapproved Exceptions") within five (5) days after receipt of the Title Commitment. The following will be deemed Disapproved Exceptions, whether or not explicitly disapproved by Buyer: deeds of trust; mortgages; judgment liens; mechanics' liens; and any other liens or monetary encumbrances on the Property. If Buyer fails timely to provide written notice of Disapproved Exceptions, all exceptions set forth in the Title Commitment will be deemed approved by Buyer. If Buyer timely delivers a notice of Disapproved Exceptions, Sellers will have ten (10) days to respond, in writing, to Buyer's notice by indicating which, if any, of the Disapproved Exceptions Sellers are willing or able to cure or terminate of record. Sellers' failure to timely respond will be

deemed Sellers' decision not to cure or terminate of record the Disapproved Exceptions. If Sellers timely deliver written notice indicating that Sellers are not willing or able to cure or terminate of record any Disapproved Exception, or is deemed to have made such determination, Buyer will have five (5) business days to either (i) terminate this Agreement; or (ii) by delivering a written notice to Sellers, waive its objections to any Disapproved Exceptions that Sellers have indicated or is deemed to have indicated it will not cure or terminate of record. The exceptions and other matters that Buyer has accepted in writing or that Buyer disapproved but for which such disapproval was thereafter waived in writing by Buyer are the "Permitted exceptions."

4. Entitlements.

4.1 From and after the Effective Date, Buyer shall have the right to pursue zoning, site plan and other entitlements for its anticipated development of the Property; and to obtain any and all other permits and approvals from all applicable governmental authorities, agencies and utility providers as may be deemed necessary, appropriate or desirable by Buyer, in its sole discretion. Pursuant to this Section 4, Buyer shall have the right to process and seek issuance of entitlements for the Property and all other appropriate or necessary authorizations and approvals from all applicable governmental authorities to develop the Property ("Governmental Approvals"). Sellers hereby grant Buyer the right and authority to process the Governmental Approvals. In no event shall Buyer be responsible to Sellers for any failure to obtain the Governmental Approvals, or for any change in the status or designation of the Property as a result of Buyer's attempt to obtain the Governmental Approvals.

4.2 Sellers will use good faith and commercially reasonably efforts, without the obligation to expend any funds, to support and cooperate with Buyer in its entitlement efforts; provided, however, that no zoning change will be requested or sought without Sellers' review, consent and written approval, which shall not be unreasonably withheld, conditioned, or delayed. Buyer will prepare and provide any documents requiring approval by Sellers, prior to submittal to the applicable governmental authority, to Sellers for Sellers' review, comment, and approval, which shall not be unreasonably withheld, conditioned, or delayed.

4.3 Buyer and Sellers acknowledge and agree that the Buyer is purchasing the Property for the purpose of developing and constructing a commercial office/warehouse building. Buyer also agrees to develop the Property in accordance with the zoning ordinances that govern the development of the Property. Buyer agrees that the building on the Property shall be constructed and issued a certificate of occupancy not later than five years from the date of closing.

5. Covenants of Sellers. Sellers covenant with Buyer as follows:

5.1 Sellers shall preserve the Property in substantially the same condition as existing on the Effective Date, subject to any changes to zoning and/or other entitlements as obtained by Buyer pursuant to the terms of this Agreement.

5.2 From and after the Effective Date, Sellers shall not without Buyer's prior written consent, (i) enter into, create or modify any contract or agreement with respect to the Property that will survive the closing under this Agreement or affect the use, operation or enjoyment of the Property following such closing, or (ii) cause, allow or suffer any matter constituting a title exception to be recorded or otherwise imposed against the Property, other than the Permitted Exceptions.

5.3 Sellers will pay in full, prior to the closing under this Agreement, any and all mortgages, liens and/or other financial encumbrances relating to the Property, and any and all debts, liabilities, bills and invoices for labor, goods, equipment, materials, utilities and services incurred by or on behalf of the Sellers and relating to the ownership, operation or improvement of the Property.

5.4 All covenants made by Sellers in this Agreement shall survive the closing under this Agreement for a period of twelve (12) months and shall not be merged into any instrument of conveyance delivered at closing.

6. Closing.

6.1 Closing shall occur on or before that date which is thirty (30) days after the Effective Date (the "Closing Deadline"), and shall be through escrow with the Title Company pursuant to written instructions consistent with the provisions of this Agreement.

6.2 At closing, Sellers shall deliver the following:

(a) A duly executed and acknowledged Special Warranty Deed (in substantially the form as set forth in Exhibit "C" attached hereto and incorporated herein) conveying good and marketable fee simple title to the Property to Buyer, subject only to the Permitted Exceptions.

(b) A Closing Statement signed by Sellers in a form and with content satisfactory to Buyer and Sellers.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.3 At closing, Buyer shall deliver the following:

(a) A counterpart of the Closing Statement signed by Buyer.

(b) Payment in the amount subscribed by the Title Company.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.4 Closing shall occur through escrow at the offices of the Title Company and shall be pursuant to the provisions of this Agreement and in accordance with the general provisions of the usual form of escrow agreement used by the Title Company in similar transactions (with such special provisions inserted as may be required to conform to this Agreement).

6.5 All ad valorem taxes and current installments on any assessments, if any, against a portion of the Property, as applicable, shall be prorated at closing. Such proration shall be made as of 12:01 a.m. on the closing date, in accordance with the following provisions, and shall operate to increase or decrease the payment due from Buyer to Sellers at closing:

(a) All ad valorem taxes and current installments on any assessments or special assessments, if any, against a portion of the Property for the year in which closing occurs shall be prorated as of the closing date. If the actual tax or installment amounts are not then available for such year, such amounts shall be estimated based on the most recent information available (such as tax amounts that applied for the prior year).

(b) If the prorations contemplated in Section 6.5(a) are done on the basis of estimates of the amount of taxes and current installments on any assessments for the then-current year, then following the closing, after the actual amount of taxes and assessments for such year becomes known, either party may require by written notice to the other that appropriate adjustments be made to such prorations, so as to take into account the actual tax and assessment amounts. The provisions of this Section 6.5(b) shall survive the closing. Any delinquent installment(s) on any assessments levied prior to closing shall be paid in full by Sellers prior to or concurrently with the first closing under this Agreement. Sellers shall be responsible for any rollback taxes pursuant

to the Farmland Assessment Act.

6.6 Buyer shall pay all of the Title Company's fees for its services as escrow agent. At closing, Sellers shall pay the cost of an ALTA 2006 Form B standard coverage owner's title insurance policy issued in the amount of the Net Purchase Price, showing Buyer, or its permitted assigns, as the named insured, and Buyer will pay the cost of premiums for any extended coverage or endorsements desired or required by Buyer. Buyer shall pay its own recording fees for the Special Warranty Deed. Sellers shall pay all other recording fees for matters relating to delivery of title. The prorations, credits and adjustments at closing shall otherwise be accomplished in accordance with the customary practices in Utah County, except to the extent those practices may be inconsistent with the provisions of this Agreement. Except as may be provided to the contrary elsewhere in this Agreement, Buyer and Sellers shall each bear and pay the expense of their own performance and the expense of providing the materials that are required to be provided by each of them under the provisions of this Agreement. Buyer and Sellers shall each bear the cost of their own legal counsel.

7. Possession of Property; Risk of Loss. Possession of the Property shall be delivered to the Buyer within 24 hours of the closing. Sellers shall bear all risk of casualty or other loss or damage to the Property until closing, and Buyer shall bear all risk of casualty and other loss or damage thereafter. The provisions of this Section shall survive the closing and not be merged into any instrument of conveyance delivered at closing.

8. Representations and Warranties.

8.1 Sellers represent and warrant that the following matters are true as of the Effective Date, and will also be true as of closing. All such representations and warranties shall survive the closing under this Agreement for twelve months, and shall not be merged into any instrument of conveyance delivered at closing:

8.2 Sellers represent and warrant that they do and will, at the time of closing, have the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out Sellers' obligations hereunder. Neither this Agreement nor Sellers' performance of its terms will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement, or any other undertaking. No contracts, leases, licenses, commitments or undertakings (verbal or otherwise) of which Sellers are a party exist relating to the Property except for those expressly stated herein.

8.3 Sellers represent and warrant that Sellers have full power and proper authority to execute this Agreement and to perform all of its terms and conditions without violation of Sellers' legal obligations, and except as otherwise noted herein, that all required action necessary to authorize Sellers to enter into this Agreement and to carry out its obligations hereunder have been taken.

8.4 Sellers represent and warrant that Sellers have not used Hazardous Materials on, from, or affecting the Property, or any portion thereof, in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Material. Except as otherwise expressly stated in this Agreement, Sellers have never received any notice of any violation of federal, state, or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials and, to the best of Sellers' knowledge, there have been no actions commenced or threatened by any party for noncompliance therewith. For purposes of this Agreement, "Hazardous Materials" includes any flammable materials, explosive, hazardous or toxic

substance, or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any other federal, state, or local governmental law, ordinance, rule or regulation.

8.5 Sellers represent and warrant that Sellers have not been notified of any pending or threatened litigation or other legal or administrative claim affecting the Property.

8.6 Other than pursuant to this Agreement, Sellers have not granted to any party any option, contract, or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

8.7 Sellers shall indemnify and hold Buyer harmless and defend Buyer from any loss, liability or expense, including attorneys' fees, incurred by Buyer, or any claim made against Buyer, by reason of the breach of any of the foregoing representations or warranties, which indemnity shall survive the closing under this Agreement for one (1) year.

8.8 Buyer represents and warrants that Buyer is in good standing and legally authorized to conduct business in the State of Utah and that Buyer is not in the process of declaring insolvency at the time of execution of this Agreement.

9. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Utah County, State of Utah. The parties exclude any and all statutes, laws and treaties that would allow or require any dispute to be decided in another forum or by other rules of decision than those provided in this Agreement.

10. Notices. Any notice or other communication required or permitted under this Agreement must be in writing and may be given by personal delivery or by mail, registered or certified, return receipt requested, or by overnight delivery service postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing herein, but each party may change its address by written notice in accordance with this Section:

If to Sellers:

Redevelopment Agency of Provo City Attn: David Walter
351 W. Center Street Provo, UT 84601

Provo City
Attn: Tara Riddle 351 W. Center Street Provo, UT 84601

If to Buyer:

EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members 1109
West 100 South
Provo, Utah 84601

11. Default.

11.1 A party alleged to be in default shall have ten (10) business days (except in the event the alleged default is a failure to close, in which case such party shall have only three (3) business days) after the other party delivers written notice of such alleged default within which to cure any default under this Agreement. If such party fails to cure the default within said period, it shall be in breach.

11.2 Either party shall be deemed in default under this Agreement if: (a) the warranties or representations made by such party shall be untrue or shall be discovered to be untrue; or (b) such party shall fail to meet, comply with or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required by this Agreement. In the event of any legal action to enforce this Agreement, the party in default shall pay all legal fees (including reasonable attorney's fees), costs and expenses incurred in such enforcement.

11.3 If Sellers default under this Agreement (including Sellers' obligation to close), Buyer may elect to (i) terminate Buyer's obligations under this Agreement by written notice to Sellers with a copy to the Title Company, in which event this Agreement shall be terminated and of no further force and effect, and the Title Company shall promptly refund to Buyer the Earnest Money plus all interest accrued thereon; (ii) treat this Agreement as being in full force and effect and close on the Property, and/or Buyer shall have the right to bring an action for specific performance, and/or (iii) pursue any and all

other remedies at law or in equity.

11.4 If Buyer defaults under this Agreement (including Buyer's obligation to close), Sellers may elect to (i) terminate Sellers' obligations under this Agreement by written notice to Buyer with a copy to the Title Company, in which event this Agreement shall be terminated and of no further force and effect; and/or (ii) pursue any other available remedies at law or in equity.

12. Time of the Essence. Time is of the essence with respect to this Agreement and each and every provision hereof.

13. Calculation of Days under Agreement. Unless specifically identified to the contrary, all references to "days" in this Agreement shall mean calendar days, beginning with the first day after the time period commences and ending at 5:00 p.m. (time in Utah) on the last day of the referenced time period. To the extent that the last day of any designated time period occurs on a Saturday, Sunday or legal holiday recognized by the State of Utah, then such period shall be deemed to conclude at 5:00 p.m. on the following business day.

14. Brokers' Fees. Neither Buyer nor Sellers have negotiated or otherwise involved any broker in this transaction. No broker fees or commissions shall be due or payable hereunder or in connection herewith. Each party agrees to indemnify and hold the other harmless from and against any and all claims, losses, damages, costs or expenses (including attorneys' fees) of any kind or character arising out of or resulting from any broker fee agreement or arrangement or purported agreement or arrangement by the indemnifying party. Notwithstanding anything to the contrary contained herein, this Section shall survive the closing under this Agreement or any earlier termination of this Agreement. Buyer discloses that certain employees of Buyer are licensed real estate brokers/agents in the State of Utah.

15. Amendment; Headings of Sections. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated in this Agreement and may not be modified or amended except by a written instrument executed by each of the parties hereto. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

16. Successors and Assigns. This Agreement is not assignable to

another party.

17. Exhibits. The Exhibits attached to this Agreement are incorporated into and made a part of this Agreement as if fully set forth in this Agreement.

18. Further Assurances. Each party shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Agreement, including, but not limited to, documents necessary for compliance with the laws, ordinances, rules or regulations of any authority.

19. Severability. In the event that any provision herein contained which is not essential to the effectuation of the basic purpose of this Agreement is held to be invalid or void or contrary to any existing or future law by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained which is valid.

20. Counterparts. This Agreement may be executed in any number of counterparts (including electronic signatures), each of which shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement binding on the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein written.

BUYER

EVKELL, LLC

By:_____
Kelly Mickelsen, Member

By:_____
Evan Mickelsen, Member

SELLERS

REDEVELOPMENT AGENCY OF PROVO CITY

By:_____
Michelle Kaufusi, Chief Executive Officer

PROVO CITY

By:_____
Michelle Kaufusi, Mayor

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

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AREA: 30307 SQUARE FEET OR 0.696 ACRES.

EXHIBIT B

MAP GENERALLY DEPICTING THE PROPERTY

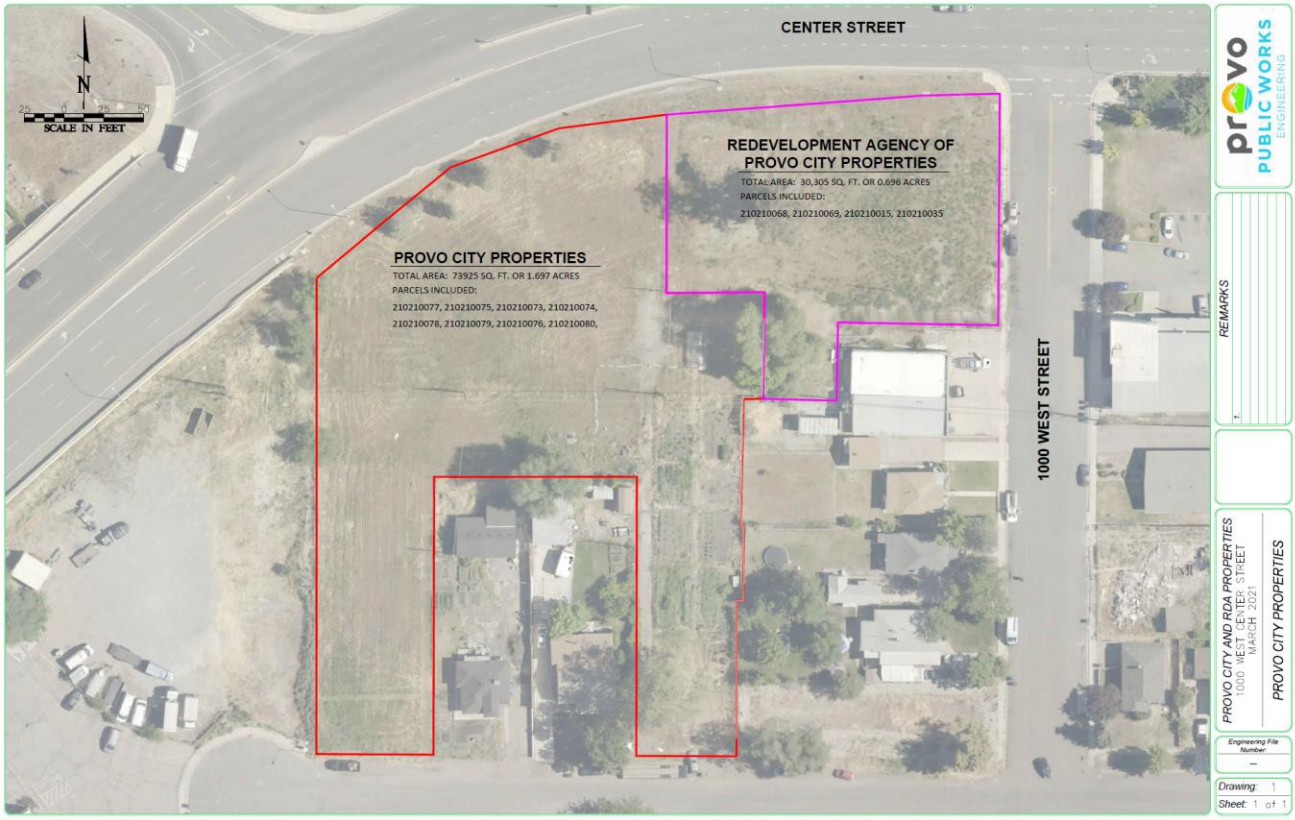


EXHIBIT C-1

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Michelle Kaufusi, Chief Executive Officer

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ___ day of_____, 2021, by Michelle Kaufusi, Chief Executive Officer of the Redevelopment Agency of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REDEVELOPMENT AGENCY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 737.01 FEET AND WEST 250.33 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S00°22'35"W 146.35 FEET; THENCE N88°59'59"W 101.13 FEET; THENCE S01°00'01"W 49.49 FEET; THENCE N88°26'13"W 46.26 FEET; THENCE N00°42'26"E 67.37 FEET; THENCE S89°25'14"W 61.88 FEET; THENCE N00°04'59"E 112.80 FEET; THENCE N85°44'27"E 162.12 FEET; THENCE N88°33'48"E 48.40 FEET TO THE POINT OF BEGINNING.

AREA: 30307 SQUARE FEET OR 0.696 ACRES.



EXHIBIT C-2

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PROVO CITY, a municipal corporation, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

PROVO CITY

By: _____
Michelle Kaufusi, Mayor

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ___ day of_____, 2021, by Michelle Kaufusi, Mayor of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.



RESOLUTION 2020 -

Approved as to form: ___

A RESOLUTION TO APPROVE A REAL ESTATE PURCHASE CONTRACT BETWEEN PROVO CITY, REDEVELOPMENT AGENCY OF PROVO CITY, AND EVKELL, LLC FOR THE SALE OF PROPERTY AT APPROXIMATELY 1000 WEST CENTER STREET FOR A COMMERICAL DEVELOPMENT.

WHEREAS, Provo City and the Redevelopment Agency of Provo City (the "City") own 2.393 acres of real property located at approximately 1000 West Center, further described in Exhibit A; and

WHEREAS, this property is vacant and has not been identified for future use by Provo City; and

WHEREAS, Provo City is desirous of selling this property for future development under the appropriate circumstances; and

WHEREAS, the Mayor recommended that this parcel be placed on the surplus property list for potential sale, subject to the conditions set forth in Provo City Code 3.04.030; and

WHEREAS, the Provo Municipal Council approved a resolution to surplus said property in a meeting held on October 20, 2020 (Resolution 2020-40); and

WHEREAS, Provo City has negotiated a Real Estate Purchase Contract, attached in Exhibit B, for the sale of the subject property containing the 2.393 acres; and

WHEREAS, on November 30, 2021, 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 recommendation, and facts and comments present to the Municipal Council, the Council finds (i) the Real Estate Purchase Contract is approved by the Municipal Council, and (ii) this action reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

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

PART 1:

The Real Estate Purchase Contract in the attached Exhibit B is hereby approved.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AREA: 30307 SQUARE FEET OR 0.696 ACRES.

EXHIBIT A-1

MAP GENERALLY DEPICTING THE PROPERTY

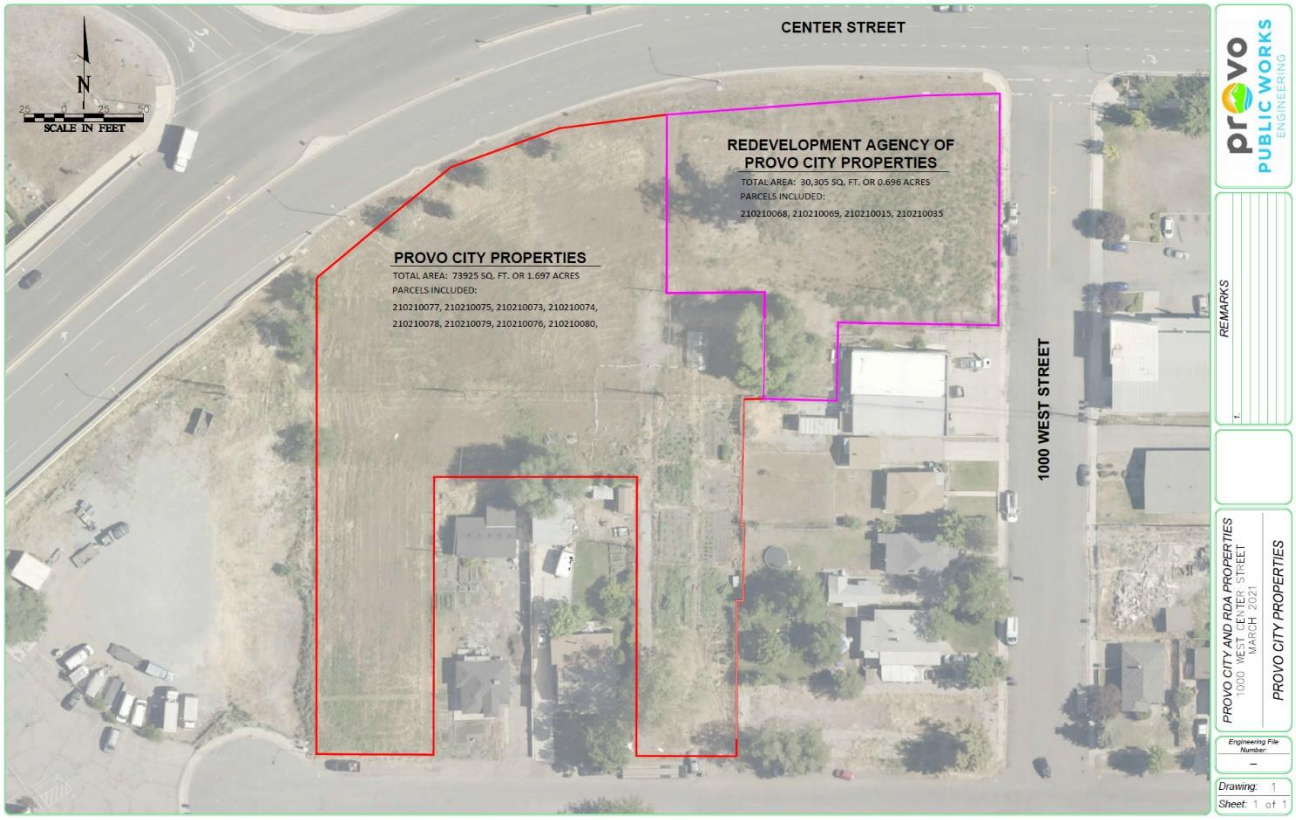


EXHIBIT B

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into this ____ day of _____, 2021 ("Effective Date"), by and between PROVO CITY, a municipal corporation, and the REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah ("Sellers") of 351 West Center, Provo, Utah 84601, and EVKELL, LLC, a Utah limited liability company ("Buyer") of 1109 West 100 South, Provo, Utah 84601. Sellers and Buyer are hereinafter sometimes collectively referred to as "parties" and either may be referred to individually as "party," all as governed by the context in which such words are used.

RECITALS

WHEREAS, Sellers are the fee simple owners of real property collectively consisting of approximately 2.393 acres, generally located at 1000 West Center Street, in Provo, Utah County, Utah, together with all of Sellers' interest in any and all easements, rights, privileges, entitlements, improvements, water rights and appurtenances related thereto (collectively, the "Property"), which Property is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein, and generally depicted in the map attached hereto as Exhibit "B" and incorporated herein;

WHEREAS, Sellers are willing to sell, and Buyer is willing to purchase, the Property according to the terms and conditions of this Agreement;

WHEREAS, Buyer is willing to purchase the Property for the purpose of expanding their floral distribution company along with a retail component in accordance with the conceptual plans presented to the Provo Municipal Council and other applicable zoning ordinances;

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Purchase and Sale of the Property. Subject to the terms and conditions of this Agreement, Sellers agrees to sell and convey, and Buyer agrees to purchase, the Property in fee simple.

2. Purchase Price.

2.1 Generally. As consideration for the Property, the Buyer shall pay to Sellers the sum of $835,000.00, less the reimbursements identified in section 2.3 of this agreement.

2.3 Reimbursement. The sum of $50,000.00 shall be placed in an escrow account to be distributed to the Buyer at the Sellers' discretion for improvements made to the façade of the Buyer's new warehouse building. The sum of $35,000.00 shall be placed in an escrow account to be dispersed to the Buyer upon the execution of an easement in favor of Sellers for an area determined during site planning for the placement of a "Welcome to Provo" sign. Said location will be mutually agreeable to both Buyer and Sellers.

2.3 Earnest Money. Within five (5) business days of the Effective Date, Buyer shall deposit into an interest-bearing account at Title Company (defined below), the sum of Ten Thousand Dollars ($10,000.00) as earnest money (the "Earnest Money"). The Earnest Money shall be held and distributed as specified in this Agreement.

3. Inspection Period; Right of Entry; Title Review.

3.1 Buyer acknowledges it has had access to the Property and has conducted sufficient review to satisfy itself as to the status and condition of the Property. Buyer waives any further review or inspection of the Property (the "Inspection Period) to conduct and perform any further physical inspections, surveys, tests, environmental reviews, feasibility studies, reviews of zoning and use restrictions, and such other inspections and reviews.

3.2 Buyer, its representatives, employees, agents, independent contractors and consultants have had access to the Property at all reasonable times for the purpose of conducting such inspections and reviews. Buyer agrees to indemnify, defend, and hold Sellers harmless from and against any and all liability arising out of or otherwise in any way related to such access to, entry onto or inspections or work on the Property, except that Buyer shall have no such obligation to indemnify for, or any liability for (i) latent defects, (ii) Sellers' actions or inactions, (iii) Hazardous Materials (as defined below) not placed on the Property by Buyer or its agents, employees or contractors, or (iv) discovering conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property. The obligations and indemnities of Buyer as set forth in this Section shall survive the termination hereof, or the closing under this

Agreement, for a period of one (1) year, and shall not be merged into any instrument of conveyance delivered at closing.

3.3 Sellers shall obtain from Security Title and Abstract Company (the "Title Company"), whose address is 55 East Center Street, Provo, Utah 84606, a current commitment for a 2006 ALTA owner's policy of title insurance (the "Title Commitment") with respect to the Property, and shall provide the Title Commitment to Buyer within ten (10) days after the Effective Date. Buyer will provide Sellers with a written notice listing each exception (from Schedule B – Section 2 of the Title Commitment) that is unacceptable to Buyer, in Buyer's sole discretion (collectively, "Disapproved Exceptions") within five (5) days after receipt of the Title Commitment. The following will be deemed Disapproved Exceptions, whether or not explicitly disapproved by Buyer: deeds of trust; mortgages; judgment liens; mechanics' liens; and any other liens or monetary encumbrances on the Property. If Buyer fails timely to provide written notice of Disapproved Exceptions, all exceptions set forth in the Title Commitment will be deemed approved by Buyer. If Buyer timely delivers a notice of Disapproved Exceptions, Sellers will have ten (10) days to respond, in writing, to Buyer's notice by indicating which, if any, of the Disapproved Exceptions Sellers are willing or able to cure or terminate of record. Sellers' failure to timely respond will be deemed Sellers' decision not to cure or terminate of record the Disapproved Exceptions. If Sellers timely delivers written notice indicating that Sellers are not willing or able to cure or terminate of record any Disapproved Exception, or is deemed to have made such determination, Buyer will have five (5) business days to either (i) terminate this Agreement; or (ii) by delivering a written notice to Sellers, waive its objections to any Disapproved Exceptions that Sellers have indicated or is deemed to have indicated it will not cure or terminate of record. The exceptions and other matters that Buyer has accepted in writing or that Buyer disapproved but for which such disapproval was thereafter waived in writing by Buyer are the "Permitted exceptions".

4. Entitlements.

4.1 From and after the Effective Date, Buyer shall have the right to pursue zoning, site plan and other entitlements for its anticipated development of the Property; and to obtain any and all other permits and approvals from all applicable governmental authorities, agencies and utility providers as may be deemed necessary, appropriate or desirable by Buyer, in its sole discretion. Pursuant to this Section 4, Buyer shall have the right to process and seek issuance of entitlements for the Property and all other appropriate or necessary authorizations and approvals from all applicable governmental authorities to develop the Property ("Governmental Approvals"). Sellers hereby grant Buyer the right and authority to process the Governmental Approvals. In no event shall Buyer be responsible to Sellers for any failure to obtain the Governmental Approvals, or for any

change in the status or designation of the Property as a result of Buyer's attempt to obtain the Governmental Approvals.

4.2 Sellers will use good faith, commercially reasonably efforts, without the obligation to expend any funds, to support and cooperate with Buyer in its entitlement efforts; provided, however, that no zoning change will be requested or sought without Sellers' review, consent and written approval, which shall not be unreasonably withheld, conditioned or delayed. Buyer will prepare and provide any documents requiring approval by Sellers, prior to submittal to the applicable governmental authority, to Sellers for Sellers' review, comment and approval, which shall not be unreasonably withheld, conditioned or delayed.

4.3 Buyer and Sellers acknowledge and agree that the Buyer is purchasing the Property for the purpose of developing and constructing a commercial office/warehouse building. Buyer also agrees to develop the Property in accordance with the zoning ordinances that govern the development of the Property. Buyer agrees that the building on the Property shall be constructed and issued a certificate of occupancy not later than five years from the date of closing.

5. Covenants of Sellers. Sellers covenant with Buyer as follows:

5.1 Sellers shall preserve the Property in substantially the same condition as existing on the Effective Date, subject to any changes to zoning and/or other entitlements as obtained by Buyer pursuant to the terms of this Agreement.

5.2 From and after the Effective Date, Sellers shall not without Buyer's prior written consent, (i) enter into, create or modify any contract or agreement with respect to the Property that will survive the closing under this Agreement or affect the use, operation or enjoyment of the Property following such closing, or (ii) cause, allow or suffer any matter constituting a title exception to be recorded or otherwise imposed against the Property, other than the Permitted Exceptions.

5.3 Sellers will pay in full, prior to the closing under this Agreement, any and all mortgages, liens and/or other financial encumbrances relating to the Property, and any and all debts, liabilities, bills and invoices for labor, goods, equipment, materials, utilities and services incurred by or on behalf of the Sellers and relating to the ownership, operation or improvement of the Property.

5.5 All covenants made by Sellers in this Agreement shall survive the closing under this Agreement for a period of twelve (12) months and shall not be merged into any instrument of conveyance delivered at closing.

6. Closing.

6.1 Closing shall occur on or before that date which is thirty (30) days after the Effective Date (the "Closing Deadline"), and shall be through escrow with the Title Company pursuant to written instructions consistent with the provisions of this Agreement.

6.2 At closing, Sellers shall deliver the following:

(a) A duly executed and acknowledged Special Warranty Deed (in substantially the form as set forth in Exhibit "C" attached hereto and incorporated herein) conveying good and marketable fee simple title to the Property to Buyer, subject only to the Permitted Exceptions.

(b) A Closing Statement signed by Sellers in a form and with content satisfactory to Buyer and Sellers.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.3 At closing, Buyer shall deliver the following:

(a) A counterpart of the Closing Statement signed by Buyer.

(b) Payment in the amount subscribed by Title Company.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.4 Closing shall occur through escrow at the offices of the Title Company and shall be pursuant to the provisions of this Agreement and in accordance with the general provisions of the usual form of escrow agreement used by the Title Company in similar transactions (with such special provisions inserted as may be required to conform to this Agreement).

6.5 All ad valorem taxes and current installments on any assessments, if any, against a portion of the Property, as applicable, shall be prorated at closing. Such proration shall be made as of 12:01 a.m. on the closing date, in accordance with the following provisions, and shall operate to increase or decrease the payment due from Buyer to Sellers at closing:

(a) All ad valorem taxes and current installments on any assessments or special assessments, if any, against a portion of the Property for

the year in which closing occurs shall be prorated as of the closing date. If the actual tax or installment amounts are not then available for such year, such amounts shall be estimated based on the most recent information available (such as tax amounts that applied for the prior year).

(b) If the prorations contemplated in Section 6.5(a) are done on the basis of estimates of the amount of taxes and current installments on any assessments for the then-current year, then following the closing, after the actual amount of taxes and assessments for such year becomes known, either party may require by written notice to the other that appropriate adjustments be made to such prorations, so as to take into account the actual tax and assessment amounts. The provisions of this Section 6.5(b) shall survive the closing. Any delinquent installment(s) on any assessments levied prior to closing shall be paid in full by Sellers prior to or concurrently with the first closing under this Agreement. Sellers shall be responsible for any rollback taxes pursuant to the Farmland Assessment Act.

6.6 Buyer shall pay all of the Title Company's fees for its services as escrow agent. At closing, Sellers shall pay the cost of an ALTA 2006 Form B standard coverage owner's title insurance policy issued in the amount of the Net Purchase Price, showing Buyer, or its permitted assigns, as the named insured, and Buyer will pay the cost of premiums for any extended coverage or endorsements desired or required by Buyer. Buyer shall pay its own recording fees for the Special Warranty Deed. Sellers shall pay all other recording fees for matters relating to delivery of title. The prorations, credits and adjustments at closing shall otherwise be accomplished in accordance with the customary practices in Utah County, except to the extent those practices may be inconsistent with the provisions of this Agreement. Except as may be provided to the contrary elsewhere in this Agreement, Buyer and Sellers shall each bear and pay the expense of their own performance and the expense of providing the materials that are required to be provided by each of them under the provisions of this Agreement. Buyer and Sellers shall each bear the cost of their own legal counsel.

7. Possession of Property; Risk of Loss. Possession of the Property shall be delivered to the Buyer within 24 hours of the closing. Sellers shall bear all risk of casualty or other loss or damage to the Property until closing, and Buyer shall bear all risk of casualty and other loss or damage thereafter. The provisions of this Section shall survive the closing and not be merged into any instrument of conveyance delivered at closing.

8. Representations and Warranties.

8.1 Sellers represent and warrant that the following matters are true as of the Effective Date, and will also be true as of closing. All such representations and warranties shall survive the closing under this Agreement for twelve months, and shall not be merged into any instrument of conveyance delivered at closing:

8.2 Sellers represents and warrants that it does and will, at the time of closing, have the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out Sellers' obligations hereunder. Neither this Agreement nor Sellers' performance of its terms will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement, or any other undertaking. No contracts, leases, licenses, commitments or undertakings (verbal or otherwise) of which Sellers is a party exist relating to the Property except for those expressly stated herein.

8.3 Sellers represent and warrant that Sellers have full power and proper authority to execute this Agreement and to perform all of its terms and conditions without violation of Sellers' legal obligations, and except as otherwise noted herein, that all required action necessary to authorize Sellers to enter into this Agreement and to carry out its obligations hereunder have been taken.

8.4 Sellers represent and warrant that Sellers have not used Hazardous Materials on, from, or affecting the Property, or any portion thereof, in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Material. Except as otherwise expressly stated in this Agreement, Sellers have never received any notice of any violation of federal, state, or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials and, to the best of Sellers' knowledge, there have been no actions commenced or threatened by any party for noncompliance therewith. For purposes of this Agreement, "Hazardous Materials" includes any flammable materials, explosive, hazardous or toxic substance, or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any

other federal, state, or local governmental law, ordinance, rule or regulation.

8.5 Sellers represent and warrant that Sellers have not been notified of any pending or threatened litigation or other legal or administrative claim affecting the Property.

8.6 Other than pursuant to this Agreement, Sellers have not granted to any party any option, contract, or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

8.7 Sellers shall indemnify and hold Buyer harmless and defend Buyer from any loss, liability or expense, including attorneys' fees, incurred by Buyer, or any claim made against Buyer, by reason of the breach of any of the foregoing representations or warranties, which indemnity shall survive the closing under this Agreement for one (1) year.

8.8 Buyer represents and warrants that Buyer is in good standing and legally authorized to conduct business in the State of Utah and that Buyer is not in the process of declaring insolvency at the time of execution of this Agreement.

9. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Utah County, State of Utah. The parties exclude any and all statutes, laws and treaties that would allow or require any dispute to be decided in another forum or by other rules of decision than those provided in this Agreement.

10. Notices. Any notice or other communication required or permitted under this Agreement must be in writing and may be given by personal delivery or by mail, registered or certified, return receipt requested, or by overnight delivery service postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing herein, but each party may change its address by written notice in accordance with this Section:

If to Sellers:

Redevelopment Agency of Provo City
Attn: David Walter
351 W. Center Street
Provo, UT 84601

Provo City
Attn: Tara Riddle
351 W. Center Street
Provo, UT 84601

If to Buyer:

EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

11. Default.

11.1 A party alleged to be in default shall have ten (10) business days (except in the event the alleged default is a failure to close, in which case such party shall have only three (3) business days) after the other party delivers written notice of such alleged default within which to cure any default under this Agreement. If such party fails to cure the default within said period, it shall be in breach

11.2 Either party shall be deemed in default under this Agreement if: (a) the warranties or representations made by such party shall be untrue or shall be discovered to be untrue; or (b) such party shall fail to meet, comply with or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required by this Agreement. In the event of any legal action to enforce this Agreement, the party in default shall pay all legal fees (including reasonable attorney's fees), costs and expenses incurred in such enforcement.

11.3 If Sellers defaults under this Agreement (including Sellers' obligation to close), Buyer may elect to (i) terminate Buyer's obligations under this Agreement by written notice to Sellers with a copy to Title Company, in which event this Agreement shall be terminated and of no further force and effect, and the Title Company shall promptly refund to Buyer the Earnest Money plus all interest accrued thereon; (ii) treat this Agreement as being in full force and effect and close on the Property, and/or Buyer shall have the right to bring an action for specific performance, and/or (iii) pursue any and all other remedies at law or in equity.

11.4 If Buyer defaults under this Agreement (including Buyer's obligation to close), Sellers may elect to (i) terminate Sellers' obligations under this Agreement by written notice to Buyer with a copy to Title Company, in which event this Agreement shall be terminated and of no further force and effect; and/or (ii) pursue any other available remedies at law or in equity.

12. Time of the Essence. Time is of the essence with respect to this Agreement and each and every provision hereof.

13. Calculation of Days under Agreement. Unless specifically identified to the contrary, all references to "days" in this Agreement shall mean calendar days, beginning with the first day after the time period commences and ending at 5:00 p.m. (time in Utah) on the last day of the referenced time period. To the extent that the last day of any designated time period occurs on a Saturday, Sunday or legal holiday recognized by the State of Utah, then such period shall be deemed to conclude at 5:00 p.m. on the following business day.

14. Brokers' Fees. Neither Buyer nor Sellers have negotiated or otherwise involved any broker in this transaction. No broker fees or commissions shall be due or payable hereunder or in connection herewith. Each party agrees to indemnify and hold the other harmless from and against any and all claims, losses, damages, costs or expenses (including attorneys' fees) of any kind or character arising out of or resulting from any broker fee agreement or arrangement or purported agreement or arrangement by the indemnifying party. Notwithstanding anything to the contrary contained herein, this Section shall survive the closing under this Agreement or any earlier termination of this Agreement. Buyer discloses that certain employees of Buyer are licensed real estate brokers/agents in the State of Utah.

15. Amendment; Headings of Sections. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated in this Agreement and may not be modified or amended except by a written instrument executed by each of the parties hereto. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

16. Successors and Assigns. This Agreement is not assignable to another party.

17. Exhibits. The Exhibits attached to this Agreement are incorporated into and made a part of this Agreement as if fully set forth in this Agreement.

18. Further Assurances. Each party shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Agreement, including, but not limited to, documents necessary for compliance with the laws, ordinances, rules or regulations of any authority.

19. Severability. In the event that any provision herein contained which is not essential to the effectuation of the basic purpose of this Agreement is held to be invalid or void or contrary to any existing or future law by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained which is valid.

20. Counterparts. This Agreement may be executed in any number of counterparts (including electronic signatures), each of which shall be deemed to be an

original, but all such counterparts together shall constitute one and the same agreement binding on the parties.

21. Subject to Approval. This Agreement is subject to the approval of the Provo Municipal Council.

22. Community Garden. A portion of the Property is being used for a community garden which is being managed by Community Action Services and Food Bank. The Buyer agrees to allow the garden to remain in operation, at no cost, until such time that development is ready to begin on the property. The Buyer agrees to give Community Action Services and Food Bank a minimum of 120 days notice to vacate the property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein written.

BUYER

EVKELL, LLC

By: _____
Kelly Mickelsen, Member

By: _____
Evan, Mickelsen, Member

SELLERS

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Michelle Kaufusi, Chief Executive Officer

PROVO CITY

By: _____
Michelle Kaufusi, Mayor

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 737.01 FEET AND WEST 250.33 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S00°22'35"W 146.35 FEET; THENCE N88°59'59"W 101.13 FEET; THENCE S01°00'01"W 49.49 FEET; THENCE N88°26'13"W 46.26 FEET; THENCE N00°42'26"E 67.37 FEET; THENCE S89°25'14"W 61.88 FEET; THENCE N00°04'59"E 112.80 FEET; THENCE N85°44'27"E 162.12 FEET; THENCE N88°33'48"E 48.40 FEET TO THE POINT OF BEGINNING.

AREA: 30307 SQUARE FEET OR 0.696 ACRES.

EXHIBIT B

MAP GENERALLY DEPICTING THE PROPERTY



EXHIBIT C-1

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Michelle Kaufusi, Chief Executive Officer

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ____ day of _____, 2021, by Michelle Kaufusi, Chief Executive Officer of the Redevelopment Agency of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REDEVELOPMENT AGENCY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AREA: 30307 SQUARE FEET OR 0.696 ACRES.



EXHIBIT C-2

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PROVO CITY, a municipal corporation, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

PROVO CITY

By: _____
Michelle Kaufusi, Mayor

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ____ day of _____, 2021, by Michelle Kaufusi, Mayor of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AREA: 73922 SQUARE FEET OR 1.697 ACRES.



PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: TARAR
Department: Community and Neighborhood Services
Requested Meeting Date: 11-30-2021

SUBJECT: A resolution to approve a real estate purchase contract between Provo City and Evkell, LLC for the sale of property at approximately 1000 West Center Street for a commercial development. (21-116)

RECOMMENDATION: Staff recommends the approval, by resolution, of the Real Estate Purchase Contract with EVKELL, LLC for the sale of property at 1000 West Center for a commercial development.

BACKGROUND: EVKELL, LLC owns and operates Red Mountain, a floral distributor which is located at 1109 West 100 South, Provo. They have outgrown their current location and want to build a larger distribution building with a retail component. Provo City and the Redevelopment Agency own property at approximately 1000 West Center which would be a good location for the expansion of their business. EVKELL, LLC has agreed to work with Provo City representatives in creating a building that will be a nice addition to the entrance into Provo.

FISCAL IMPACT:

PRESENTER'S NAME: Tara Riddle, Property Coordinator/Ombudsman

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
The development of this property into a commerical use in the city's gateway is compatible with the general plan, policies, goals, and objectives of Provo City.

CITYVIEW OR ISSUE FILE NUMBER: 21-116

RESOLUTION 2021-.

A RESOLUTION TO APPROVE A REAL ESTATE PURCHASE CONTRACT BETWEEN PROVO CITY AND EVKELL, LLC FOR THE SALE OF PROPERTY AT APPROXIMATELY 1000 WEST CENTER STREET FOR A COMMERCIAL DEVELOPMENT. (21-116)

WHEREAS, Provo City owns 1.69 acres of real property located at approximately 1000 West Center, Utah County serial numbers 21:021:0073–80, further described in Exhibit A; and

WHEREAS, this property is vacant and has not been identified for future use by Provo City; and

WHEREAS, Provo City desires to sell this property for future development under appropriate circumstances; and

WHEREAS, the Mayor recommended that this parcel be placed on the surplus property list for potential sale, subject to the conditions set forth in Provo City Code Section 3.04.030; and

WHEREAS, the Provo Municipal Council approved a resolution to surplus said property in a meeting held on October 20, 2020 (Resolution 2020-40); and

WHEREAS, Provo City has negotiated a Real Estate Purchase Contract, attached as Exhibit B, for the sale of the subject property; and

WHEREAS, on November 30, 2021, 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 recommendation, and facts and comments presented to the Municipal Council, the Council (i) approves the Real Estate Purchase Contract, and (ii) determines that this action reasonably furthers the health, safety, and general welfare of the citizens of Provo City; and

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

PART I:

The Real Estate Purchase Contract in the attached Exhibit B is hereby approved.

PART II:

This resolution shall take effect immediately.

END OF ORDINANCE.

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.

Exhibit B

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into this _____ day of_____, 2021 ("Effective Date"), by and between PROVO CITY, a municipal corporation, and the REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah ("Sellers") of 351 West Center, Provo, Utah 84601, and EVKELL, LLC, a Utah limited liability company ("Buyer") of 1109 West 100 South, Provo, Utah 84601. Sellers and Buyer are hereinafter sometimes collectively referred to as "parties" and either may be referred to individually as "party," all as governed by the context in which such words are used.

RECITALS

WHEREAS, Sellers are the fee simple owners of real property collectively consisting of approximately 2.393 acres, generally located at 1000 West Center Street, in Provo, Utah County, Utah, together with all of Sellers' interest in any and all easements, rights, privileges, entitlements, improvements, water rights and appurtenances related thereto (collectively, the "Property"), which Property is more

particularly described in the legal description attached hereto as Exhibit “A” and incorporated herein, and generally depicted in the map attached hereto as Exhibit “B” and incorporated herein;

WHEREAS, Sellers are willing to sell, and Buyer is willing to purchase, the Property according to the terms and conditions of this Agreement;

WHEREAS, Buyer is willing to purchase the Property for the purpose of expanding their floral distribution company along with a retail component in accordance with the conceptual plans presented to the Provo Municipal Council and other applicable zoning ordinances;

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Purchase and Sale of the Property. Subject to the terms and conditions of this Agreement, Sellers agrees to sell and convey, and Buyer agrees to purchase, the Property in fee simple.

2. Purchase Price.

2.1 Generally. As consideration for the Property, the Buyer shall pay to Sellers the sum of $835,000.00, less the reimbursements identified in section 2.2 of this agreement.

2.2 Reimbursements. The sum of $50,000.00 shall be placed in an escrow account to be distributed to the Buyer at the Sellers' discretion for improvements made to the façade of the Buyer's new warehouse building. The sum of $35,000.00 shall be placed in an escrow account to be dispersed to the Buyer upon the execution of an easement in favor of Sellers for an area determined during site planning for the placement of a "Welcome to Provo" sign. Said location will be mutually agreeable to both Buyer and Sellers.

2.3 Earnest Money. Within five (5) business days of the Effective Date, Buyer shall deposit into an interest-bearing account at Title Company (defined below), the sum of Ten Thousand Dollars ($10,000.00) as earnest money (the "Earnest Money"). The Earnest Money shall be held and distributed as specified in this Agreement.

3. Inspection Period; Right of Entry; Title Review.

3.1 Buyer acknowledges it has had access to the Property and has conducted sufficient review to satisfy itself as to the status and condition of the Property. Buyer waives any further review or inspection of the Property (the "Inspection Period") to conduct and perform any further physical inspections, surveys, tests, environmental reviews, feasibility studies, reviews of zoning and use restrictions, and such other inspections and reviews.

3.2 Buyer, its representatives, employees, agents, independent contractors and consultants have had access to the Property at all reasonable times for the purpose of conducting such inspections and reviews. Buyer agrees to indemnify, defend, and hold Sellers harmless from and against any and all liability arising out of or otherwise in any way related to such access to, entry onto or inspections or work on the Property, except that Buyer shall have no such obligation to indemnify for, or any liability for (i) latent defects, (ii) Sellers' actions or inactions, (iii) Hazardous Materials (as defined below) not placed on the Property by Buyer or its agents, employees or contractors, or (iv) discovering conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property. The obligations and indemnities of Buyer as set forth in this Section shall survive the termination hereof, or the closing under this

Agreement, for a period of one (1) year, and shall not be merged into any instrument of conveyance delivered at closing.

3.3 Sellers shall obtain from Security Title and Abstract Company (the "Title Company"), whose address is 55 East Center Street, Provo, Utah 84606, a current commitment for a 2006 ALTA owner's policy of title insurance (the "Title Commitment") with respect to the Property, and shall provide the Title Commitment to Buyer within ten (10) days after the Effective Date. Buyer will provide Sellers with a written notice listing each exception (from Schedule B – Section 2 of the Title Commitment) that is unacceptable to Buyer, in Buyer's sole discretion (collectively, "Disapproved Exceptions") within five (5) days after receipt of the Title Commitment. The following will be deemed Disapproved Exceptions, whether or not explicitly disapproved by Buyer: deeds of trust; mortgages; judgment liens; mechanics' liens; and any other liens or monetary encumbrances on the Property. If Buyer fails timely to provide written notice of Disapproved Exceptions, all exceptions set forth in the Title Commitment will be deemed approved by Buyer. If Buyer timely delivers a notice of Disapproved Exceptions, Sellers will have ten (10) days to respond, in writing, to Buyer's notice by indicating which, if any, of the Disapproved Exceptions Sellers are willing or able to cure or terminate of record. Sellers' failure to timely respond will be deemed Sellers' decision not to cure or terminate of record the Disapproved Exceptions. If Sellers timely deliver written notice indicating that Sellers are not willing or able to cure or terminate of record any Disapproved Exception, or is deemed to have made such determination, Buyer will have five (5) business days to either (i) terminate this Agreement; or (ii) by delivering a written notice to Sellers, waive its objections to any Disapproved Exceptions that Sellers have indicated or is deemed to have indicated it will not cure or terminate of record. The exceptions and other matters that Buyer has accepted in writing or that Buyer disapproved but for which such disapproval was thereafter waived in writing by Buyer are the "Permitted exceptions."

4. Entitlements.

4.1 From and after the Effective Date, Buyer shall have the right to pursue zoning, site plan and other entitlements for its anticipated development of the Property; and to obtain any and all other permits and approvals from all applicable governmental authorities, agencies and utility providers as may be deemed necessary, appropriate or desirable by Buyer, in its sole discretion. Pursuant to this Section 4, Buyer shall have the right to process and seek issuance of entitlements for the Property and all other appropriate or necessary authorizations and approvals from all applicable governmental authorities to develop the Property ("Governmental Approvals"). Sellers hereby grant Buyer the right and authority to process the Governmental Approvals. In no event shall Buyer be responsible to Sellers for any failure to obtain the Governmental Approvals, or for any change in the status or designation of the Property as a result of Buyer's

attempt to obtain the Governmental Approvals.

4.2 Sellers will use good faith and commercially reasonably efforts, without the obligation to expend any funds, to support and cooperate with Buyer in its entitlement efforts; provided, however, that no zoning change will be requested or sought without Sellers' review, consent and written approval, which shall not be unreasonably withheld, conditioned, or delayed. Buyer will prepare and provide any documents requiring approval by Sellers, prior to submittal to the applicable governmental authority, to Sellers for Sellers' review, comment, and approval, which shall not be unreasonably withheld, conditioned, or delayed.

4.3 Buyer and Sellers acknowledge and agree that the Buyer is purchasing the Property for the purpose of developing and constructing a commercial office/warehouse building. Buyer also agrees to develop the Property in accordance with the zoning ordinances that govern the development of the Property. Buyer agrees that the building on the Property shall be constructed and issued a certificate of occupancy not later than five years from the date of closing.

5. Covenants of Sellers. Sellers covenant with Buyer as follows:

5.1 Sellers shall preserve the Property in substantially the same condition as existing on the Effective Date, subject to any changes to zoning and/or other entitlements as obtained by Buyer pursuant to the terms of this Agreement.

5.2 From and after the Effective Date, Sellers shall not without Buyer's prior written consent, (i) enter into, create or modify any contract or agreement with respect to the Property that will survive the closing under this Agreement or affect the use, operation or enjoyment of the Property following such closing, or (ii) cause, allow, or suffer any matter constituting a title exception to be recorded or otherwise imposed against the Property, other than the Permitted Exceptions.

5.3 Sellers will pay in full, prior to the closing under this Agreement, any and all mortgages, liens and/or other financial encumbrances relating to the Property, and any and all debts, liabilities, bills and invoices for labor, goods, equipment, materials, utilities and services incurred by or on behalf of the Sellers and relating to the ownership, operation or improvement of the Property.

5.4 All covenants made by Sellers in this Agreement shall survive the closing under this Agreement for a period of twelve (12) months and shall not be merged into any instrument of conveyance delivered at closing.

6. Closing.

6.1 Closing shall occur on or before that date which is thirty (30) days after the Effective Date (the "Closing Deadline"), and shall be through escrow with the Title Company pursuant to written instructions consistent with the provisions of this Agreement.

6.2 At closing, Sellers shall deliver the following:

(a) A duly executed and acknowledged Special Warranty Deed (in substantially the form as set forth in Exhibit "C" attached hereto and incorporated herein) conveying good and marketable fee simple title to the Property to Buyer, subject only to the Permitted Exceptions.

(b) A Closing Statement signed by Sellers in a form and with content satisfactory to Buyer and Sellers.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.3 At closing, Buyer shall deliver the following:

(a) A counterpart of the Closing Statement signed by Buyer.

(b) Payment in the amount subscribed by the Title Company.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.4 Closing shall occur through escrow at the offices of the Title Company and shall be pursuant to the provisions of this Agreement and in accordance with the general provisions of the usual form of escrow agreement used by the Title Company in similar transactions (with such special provisions inserted as may be required to conform to this Agreement).

6.5 All ad valorem taxes and current installments on any assessments, if any, against a portion of the Property, as applicable, shall be prorated at closing. Such proration shall be made as of 12:01 a.m. on the closing date, in accordance with the following provisions, and shall operate to increase or decrease the payment due from Buyer to Sellers at closing:

(a) All ad valorem taxes and current installments on any assessments or special assessments, if any, against a portion of the Property for

the year in which closing occurs shall be prorated as of the closing date. If the actual tax or installment amounts are not then available for such year, such amounts shall be estimated based on the most recent information available (such as tax amounts that applied for the prior year).

(b) If the prorations contemplated in Section 6.5(a) are done on the basis of estimates of the amount of taxes and current installments on any assessments for the then-current year, then following the closing, after the actual amount of taxes and assessments for such year becomes known, either party may require by written notice to the other that appropriate adjustments be made to such prorations, so as to take into account the actual tax and assessment amounts. The provisions of this Section 6.5(b) shall survive the closing. Any delinquent installment(s) on any assessments levied prior to closing shall be paid in full by Sellers prior to or concurrently with the first closing under this Agreement. Sellers shall be responsible for any rollback taxes pursuant to the Farmland Assessment Act.

6.6 Buyer shall pay all of the Title Company's fees for its services as escrow agent. At closing, Sellers shall pay the cost of an ALTA 2006 Form B standard coverage owner's title insurance policy issued in the amount of the Net Purchase Price, showing Buyer, or its permitted assigns, as the named insured, and Buyer will pay the cost of premiums for any extended coverage or endorsements desired or required by Buyer. Buyer shall pay its own recording fees for the Special Warranty Deed. Sellers shall pay all other recording fees for matters relating to delivery of title. The prorations, credits and adjustments at closing shall otherwise be accomplished in accordance with the customary practices in Utah County, except to the extent those practices may be inconsistent with the provisions of this Agreement. Except as may be provided to the contrary elsewhere in this Agreement, Buyer and Sellers shall each bear and pay the expense of their own performance and the expense of providing the materials that are required to be provided by each of them under the provisions of this Agreement. Buyer and Sellers shall each bear the cost of their own legal counsel.

7. Possession of Property; Risk of Loss. Possession of the Property shall be delivered to the Buyer within 24 hours of the closing. Sellers shall bear all risk of casualty or other loss or damage to the Property until closing, and Buyer shall bear all risk of casualty and other loss or damage thereafter. The provisions of this Section shall survive the closing and not be merged into any instrument of conveyance delivered at closing.

8. Representations and Warranties.

8.1 Sellers represent and warrant that the following matters are true as of the Effective Date, and will also be true as of closing. All such representations and warranties shall survive the closing under this Agreement for twelve months, and shall not be merged into any instrument of conveyance delivered at closing:

8.2 Sellers represent and warrant that they do and will, at the time of closing, have the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out Sellers' obligations hereunder. Neither this Agreement nor Sellers' performance of its terms will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement, or any other undertaking. No contracts, leases, licenses, commitments or undertakings (verbal or otherwise) of which Sellers are a party exist relating to the Property except for those expressly stated herein.

8.3 Sellers represent and warrant that Sellers have full power and proper authority to execute this Agreement and to perform all of its terms and conditions without violation of Sellers' legal obligations, and except as otherwise noted herein, that all required action necessary to authorize Sellers to enter into this Agreement and to carry out its obligations hereunder have been taken.

8.4 Sellers represent and warrant that Sellers have not used Hazardous Materials on, from, or affecting the Property, or any portion thereof, in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Material. Except as otherwise expressly stated in this Agreement, Sellers have never received any notice of any violation of federal, state, or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials and, to the best of Sellers' knowledge, there have been no actions commenced or threatened by any party for noncompliance therewith. For purposes of this Agreement, "Hazardous Materials" includes any flammable materials, explosive, hazardous or toxic substance, or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any

other federal, state, or local governmental law, ordinance, rule or regulation.

8.5 Sellers represent and warrant that Sellers have not been notified of any pending or threatened litigation or other legal or administrative claim affecting the Property.

8.6 Other than pursuant to this Agreement, Sellers have not granted to any party any option, contract, or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

8.7 Sellers shall indemnify and hold Buyer harmless and defend Buyer from any loss, liability or expense, including attorneys' fees, incurred by Buyer, or any claim made against Buyer, by reason of the breach of any of the foregoing representations or warranties, which indemnity shall survive the closing under this Agreement for one (1) year.

8.8 Buyer represents and warrants that Buyer is in good standing and legally authorized to conduct business in the State of Utah and that Buyer is not in the process of declaring insolvency at the time of execution of this Agreement.

9. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Utah County, State of Utah. The parties exclude any and all statutes, laws and treaties that would allow or require any dispute to be decided in another forum or by other rules of decision than those provided in this Agreement.

10. Notices. Any notice or other communication required or permitted under this Agreement must be in writing and may be given by personal delivery or by mail, registered or certified, return receipt requested, or by overnight delivery service postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing herein, but each party may change its address by written notice in accordance with this Section:

If to Sellers:

Redevelopment Agency of Provo City
Attn: David Walter
351 W. Center Street
Provo, UT 84601

Provo City
Attn: Tara Riddle
351 W. Center Street
Provo, UT 84601

If to Buyer:

EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

11. Default.

11.1 A party alleged to be in default shall have ten (10) business days (except in the event the alleged default is a failure to close, in which case such party shall have only three (3) business days) after the other party delivers written notice of such alleged default within which to cure any default under this Agreement. If such party fails to cure the default within said period, it shall be in breach.

11.2 Either party shall be deemed in default under this Agreement if: (a) the warranties or representations made by such party shall be untrue or shall be discovered to be untrue; or (b) such party shall fail to meet, comply with or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required by this Agreement. In the event of any legal action to enforce this Agreement, the party in default shall pay all legal fees (including reasonable attorney's fees), costs and expenses incurred in such enforcement.

11.3 If Sellers default under this Agreement (including Sellers' obligation to close), Buyer may elect to (i) terminate Buyer's obligations under this Agreement by written notice to Sellers with a copy to the Title Company, in which event this Agreement shall be terminated and of no further force and effect, and the Title Company shall promptly refund to Buyer the Earnest Money plus all interest accrued thereon; (ii) treat this Agreement as being in full force and effect and close on the Property, and/or Buyer shall have the right to bring an action for specific performance, and/or (iii) pursue any and all other remedies at law or in equity.

11.4 If Buyer defaults under this Agreement (including Buyer's obligation to close), Sellers may elect to (i) terminate Sellers' obligations under this Agreement by written notice to Buyer with a copy to the Title Company, in which event this Agreement shall be terminated and of no further force and effect; and/or (ii) pursue any other available remedies at law or in equity.

12. Time of the Essence. Time is of the essence with respect to this Agreement and each and every provision hereof.

13. Calculation of Days under Agreement. Unless specifically identified to the contrary, all references to "days" in this Agreement shall mean calendar days, beginning with the first day after the time period commences and ending at 5:00 p.m. (time in Utah) on the last day of the referenced time period. To the extent that the last day of any designated time period occurs on a Saturday, Sunday or legal holiday recognized by the State of Utah, then such period shall be deemed to conclude at 5:00 p.m. on the following business day.

14. Brokers' Fees. Neither Buyer nor Sellers have negotiated or otherwise involved any broker in this transaction. No broker fees or commissions shall be due or payable hereunder or in connection herewith. Each party agrees to indemnify and hold the other harmless from and against any and all claims, losses, damages, costs or expenses (including attorneys' fees) of any kind or character arising out of or resulting from any broker fee agreement or arrangement or purported agreement or arrangement by the indemnifying party. Notwithstanding anything to the contrary contained herein, this Section shall survive the closing under this Agreement or any earlier termination of this Agreement. Buyer discloses that certain employees of Buyer are licensed real estate brokers/agents in the State of Utah.

15. Amendment; Headings of Sections. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated in this Agreement and may not be modified or amended except by a written instrument executed by each of the parties hereto. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

16. Successors and Assigns. This Agreement is not assignable to another party.

17. Exhibits. The Exhibits attached to this Agreement are incorporated into and made a part of this Agreement as if fully set forth in this Agreement.

18. Further Assurances. Each party shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Agreement, including, but not limited to, documents necessary for compliance with the laws, ordinances, rules or regulations of any authority.

19. Severability. In the event that any provision herein contained which is not essential to the effectuation of the basic purpose of this Agreement is held to be invalid or void or contrary to any existing or future law by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained which is valid.

20. Counterparts. This Agreement may be executed in any number of counterparts (including electronic signatures), each of which shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement binding on the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein written.

BUYER

EVKELL, LLC

By:_____
Kelly Mickelsen, Member

By:_____
Evan Mickelsen, Member

SELLERS

REDEVELOPMENT AGENCY OF PROVO CITY

By:_____
Michelle Kaufusi, Chief Executive Officer

PROVO CITY

By:_____
Michelle Kaufusi, Mayor

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AREA: 30307 SQUARE FEET OR 0.696 ACRES.

EXHIBIT B

MAP GENERALLY DEPICTING THE PROPERTY

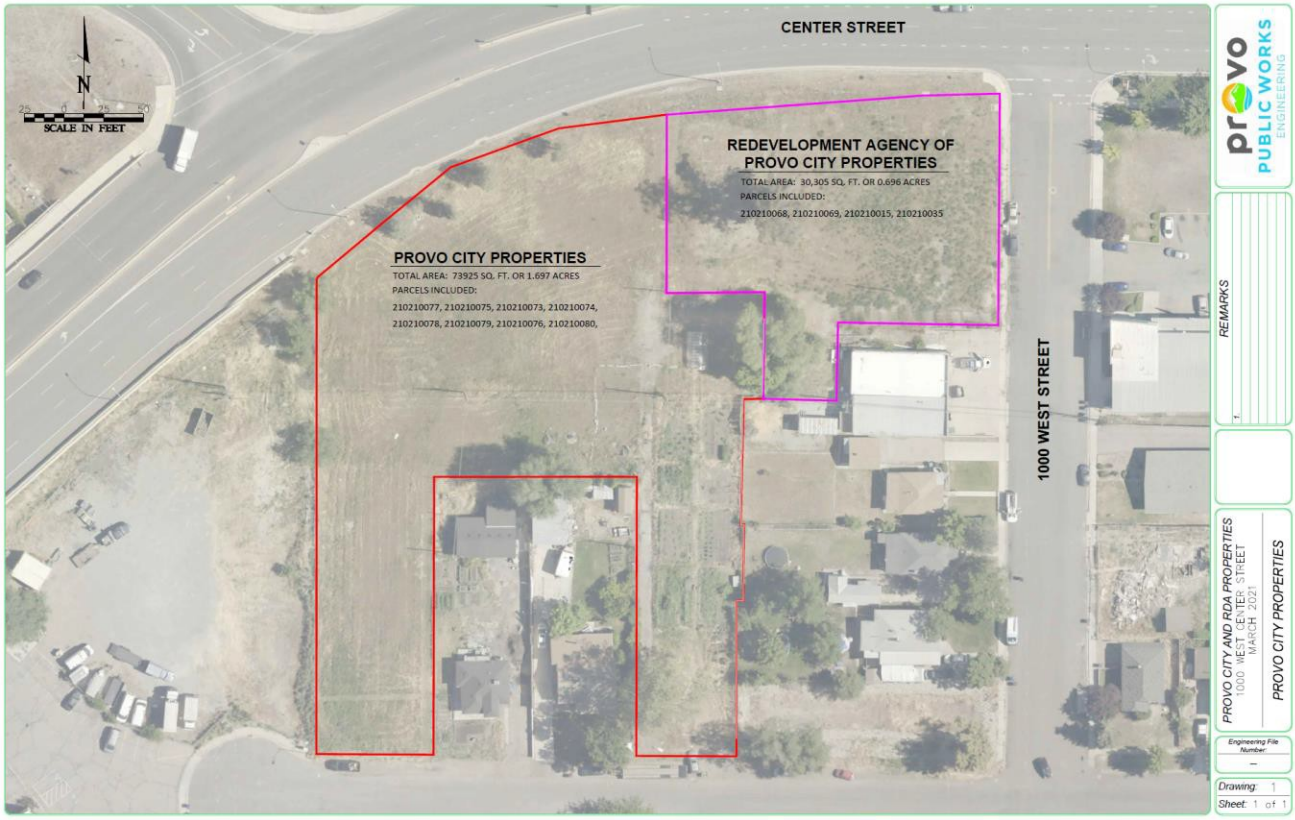


EXHIBIT C-1

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Michelle Kaufusi, Chief Executive Officer

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ___ day of_____, 2021, by Michelle Kaufusi, Chief Executive Officer of the Redevelopment Agency of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REDEVELOPMENT AGENCY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AREA: 30307 SQUARE FEET OR 0.696 ACRES.



EXHIBIT C-2

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PROVO CITY, a municipal corporation, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

PROVO CITY

By: _____
Michelle Kaufusi, Mayor

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ___ day of_____, 2021, by Michelle Kaufusi, Mayor of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AREA: 73922 SQUARE FEET OR 1.697 ACRES.



RESOLUTION 2020 -

Approved as to form: ___

A RESOLUTION TO APPROVE A REAL ESTATE PURCHASE CONTRACT BETWEEN PROVO CITY, REDEVELOPMENT AGENCY OF PROVO CITY, AND EVKELL, LLC FOR THE SALE OF PROPERTY AT APPROXIMATELY 1000 WEST CENTER STREET FOR A COMMERICAL DEVELOPMENT.

WHEREAS, Provo City and the Redevelopment Agency of Provo City (the "City") own 2.393 acres of real property located at approximately 1000 West Center, further described in Exhibit A; and

WHEREAS, this property is vacant and has not been identified for future use by Provo City; and

WHEREAS, Provo City is desirous of selling this property for future development under the appropriate circumstances; and

WHEREAS, the Mayor recommended that this parcel be placed on the surplus property list for potential sale, subject to the conditions set forth in Provo City Code 3.04.030; and

WHEREAS, the Provo Municipal Council approved a resolution to surplus said property in a meeting held on October 20, 2020 (Resolution 2020-40); and

WHEREAS, Provo City has negotiated a Real Estate Purchase Contract, attached in Exhibit B, for the sale of the subject property containing the 2.393 acres; and

WHEREAS, on November 30, 2021, 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 recommendation, and facts and comments present to the Municipal Council, the Council finds (i) the Real Estate Purchase Contract is approved by the Municipal Council, and (ii) this action reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

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

PART 1:

The Real Estate Purchase Contract in the attached Exhibit B is hereby approved.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

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AREA: 73922 SQUARE FEET OR 1.697 ACRES.

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

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AREA: 30307 SQUARE FEET OR 0.696 ACRES.

EXHIBIT A-1

MAP GENERALLY DEPICTING THE PROPERTY

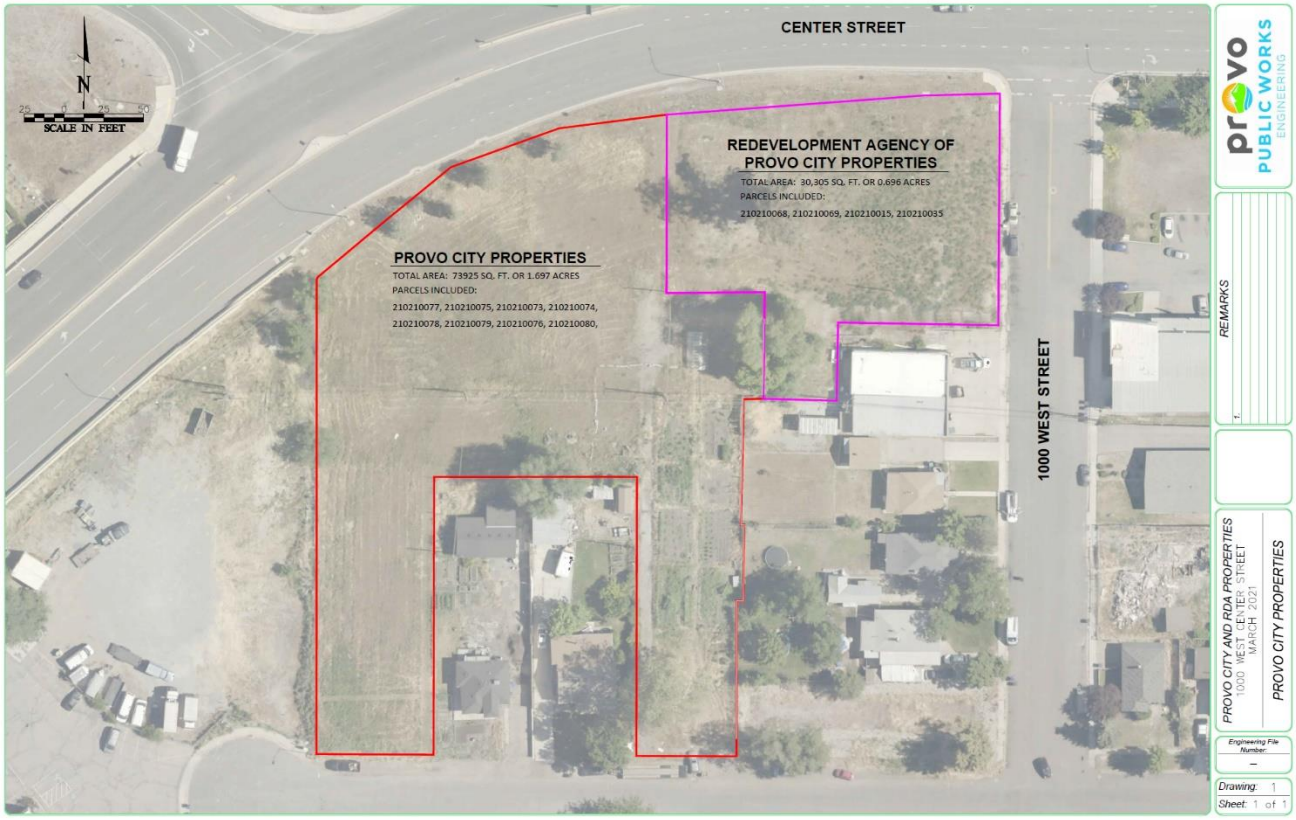


EXHIBIT B

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into this ____ day of _____, 2021 ("Effective Date"), by and between PROVO CITY, a municipal corporation, and the REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah ("Sellers") of 351 West Center, Provo, Utah 84601, and EVKELL, LLC, a Utah limited liability company ("Buyer") of 1109 West 100 South, Provo, Utah 84601. Sellers and Buyer are hereinafter sometimes collectively referred to as "parties" and either may be referred to individually as "party," all as governed by the context in which such words are used.

RECITALS

WHEREAS, Sellers are the fee simple owners of real property collectively consisting of approximately 2.393 acres, generally located at 1000 West Center Street, in Provo, Utah County, Utah, together with all of Sellers' interest in any and all easements, rights, privileges, entitlements, improvements, water rights and appurtenances related thereto (collectively, the "Property"), which Property is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein, and generally depicted in the map attached hereto as Exhibit "B" and incorporated herein;

WHEREAS, Sellers are willing to sell, and Buyer is willing to purchase, the Property according to the terms and conditions of this Agreement;

WHEREAS, Buyer is willing to purchase the Property for the purpose of expanding their floral distribution company along with a retail component in accordance with the conceptual plans presented to the Provo Municipal Council and other applicable zoning ordinances;

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Purchase and Sale of the Property. Subject to the terms and conditions of this Agreement, Sellers agrees to sell and convey, and Buyer agrees to purchase, the Property in fee simple.

2. Purchase Price.

2.1 Generally. As consideration for the Property, the Buyer shall pay to Sellers the sum of $835,000.00, less the reimbursements identified in section 2.3 of this agreement.

2.3 Reimbursement. The sum of $50,000.00 shall be placed in an escrow account to be distributed to the Buyer at the Sellers' discretion for improvements made to the façade of the Buyer's new warehouse building. The sum of $35,000.00 shall be placed in an escrow account to be dispersed to the Buyer upon the execution of an easement in favor of Sellers for an area determined during site planning for the placement of a "Welcome to Provo" sign. Said location will be mutually agreeable to both Buyer and Sellers.

2.3 Earnest Money. Within five (5) business days of the Effective Date, Buyer shall deposit into an interest-bearing account at Title Company (defined below), the sum of Ten Thousand Dollars ($10,000.00) as earnest money (the "Earnest Money"). The Earnest Money shall be held and distributed as specified in this Agreement.

3. Inspection Period; Right of Entry; Title Review.

3.1 Buyer acknowledges it has had access to the Property and has conducted sufficient review to satisfy itself as to the status and condition of the Property. Buyer waives any further review or inspection of the Property (the "Inspection Period) to conduct and perform any further physical inspections, surveys, tests, environmental reviews, feasibility studies, reviews of zoning and use restrictions, and such other inspections and reviews.

3.2 Buyer, its representatives, employees, agents, independent contractors and consultants have had access to the Property at all reasonable times for the purpose of conducting such inspections and reviews. Buyer agrees to indemnify, defend, and hold Sellers harmless from and against any and all liability arising out of or otherwise in any way related to such access to, entry onto or inspections or work on the Property, except that Buyer shall have no such obligation to indemnify for, or any liability for (i) latent defects, (ii) Sellers' actions or inactions, (iii) Hazardous Materials (as defined below) not placed on the Property by Buyer or its agents, employees or contractors, or (iv) discovering conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property. The obligations and indemnities of Buyer as set forth in this Section shall survive the termination hereof, or the closing under this

Agreement, for a period of one (1) year, and shall not be merged into any instrument of conveyance delivered at closing.

3.3 Sellers shall obtain from Security Title and Abstract Company (the "Title Company"), whose address is 55 East Center Street, Provo, Utah 84606, a current commitment for a 2006 ALTA owner's policy of title insurance (the "Title Commitment") with respect to the Property, and shall provide the Title Commitment to Buyer within ten (10) days after the Effective Date. Buyer will provide Sellers with a written notice listing each exception (from Schedule B – Section 2 of the Title Commitment) that is unacceptable to Buyer, in Buyer's sole discretion (collectively, "Disapproved Exceptions") within five (5) days after receipt of the Title Commitment. The following will be deemed Disapproved Exceptions, whether or not explicitly disapproved by Buyer: deeds of trust; mortgages; judgment liens; mechanics' liens; and any other liens or monetary encumbrances on the Property. If Buyer fails timely to provide written notice of Disapproved Exceptions, all exceptions set forth in the Title Commitment will be deemed approved by Buyer. If Buyer timely delivers a notice of Disapproved Exceptions, Sellers will have ten (10) days to respond, in writing, to Buyer's notice by indicating which, if any, of the Disapproved Exceptions Sellers are willing or able to cure or terminate of record. Sellers' failure to timely respond will be deemed Sellers' decision not to cure or terminate of record the Disapproved Exceptions. If Sellers timely delivers written notice indicating that Sellers are not willing or able to cure or terminate of record any Disapproved Exception, or is deemed to have made such determination, Buyer will have five (5) business days to either (i) terminate this Agreement; or (ii) by delivering a written notice to Sellers, waive its objections to any Disapproved Exceptions that Sellers have indicated or is deemed to have indicated it will not cure or terminate of record. The exceptions and other matters that Buyer has accepted in writing or that Buyer disapproved but for which such disapproval was thereafter waived in writing by Buyer are the "Permitted exceptions".

4. Entitlements.

4.1 From and after the Effective Date, Buyer shall have the right to pursue zoning, site plan and other entitlements for its anticipated development of the Property; and to obtain any and all other permits and approvals from all applicable governmental authorities, agencies and utility providers as may be deemed necessary, appropriate or desirable by Buyer, in its sole discretion. Pursuant to this Section 4, Buyer shall have the right to process and seek issuance of entitlements for the Property and all other appropriate or necessary authorizations and approvals from all applicable governmental authorities to develop the Property ("Governmental Approvals"). Sellers hereby grant Buyer the right and authority to process the Governmental Approvals. In no event shall Buyer be responsible to Sellers for any failure to obtain the Governmental Approvals, or for any

change in the status or designation of the Property as a result of Buyer's attempt to obtain the Governmental Approvals.

4.2 Sellers will use good faith, commercially reasonably efforts, without the obligation to expend any funds, to support and cooperate with Buyer in its entitlement efforts; provided, however, that no zoning change will be requested or sought without Sellers' review, consent and written approval, which shall not be unreasonably withheld, conditioned or delayed. Buyer will prepare and provide any documents requiring approval by Sellers, prior to submittal to the applicable governmental authority, to Sellers for Sellers' review, comment and approval, which shall not be unreasonably withheld, conditioned or delayed.

4.3 Buyer and Sellers acknowledge and agree that the Buyer is purchasing the Property for the purpose of developing and constructing a commercial office/warehouse building. Buyer also agrees to develop the Property in accordance with the zoning ordinances that govern the development of the Property. Buyer agrees that the building on the Property shall be constructed and issued a certificate of occupancy not later than five years from the date of closing.

5. Covenants of Sellers. Sellers covenant with Buyer as follows:

5.1 Sellers shall preserve the Property in substantially the same condition as existing on the Effective Date, subject to any changes to zoning and/or other entitlements as obtained by Buyer pursuant to the terms of this Agreement.

5.2 From and after the Effective Date, Sellers shall not without Buyer's prior written consent, (i) enter into, create or modify any contract or agreement with respect to the Property that will survive the closing under this Agreement or affect the use, operation or enjoyment of the Property following such closing, or (ii) cause, allow or suffer any matter constituting a title exception to be recorded or otherwise imposed against the Property, other than the Permitted Exceptions.

5.3 Sellers will pay in full, prior to the closing under this Agreement, any and all mortgages, liens and/or other financial encumbrances relating to the Property, and any and all debts, liabilities, bills and invoices for labor, goods, equipment, materials, utilities and services incurred by or on behalf of the Sellers and relating to the ownership, operation or improvement of the Property.

5.5 All covenants made by Sellers in this Agreement shall survive the closing under this Agreement for a period of twelve (12) months and shall not be merged into any instrument of conveyance delivered at closing.

6. Closing.

6.1 Closing shall occur on or before that date which is thirty (30) days after the Effective Date (the "Closing Deadline"), and shall be through escrow with the Title Company pursuant to written instructions consistent with the provisions of this Agreement.

6.2 At closing, Sellers shall deliver the following:

(a) A duly executed and acknowledged Special Warranty Deed (in substantially the form as set forth in Exhibit "C" attached hereto and incorporated herein) conveying good and marketable fee simple title to the Property to Buyer, subject only to the Permitted Exceptions.

(b) A Closing Statement signed by Sellers in a form and with content satisfactory to Buyer and Sellers.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.3 At closing, Buyer shall deliver the following:

(a) A counterpart of the Closing Statement signed by Buyer.

(b) Payment in the amount subscribed by Title Company.

(c) Any other documents, instruments or agreements called for in this Agreement, or required by the Title Company for the issuance of title insurance, which have not previously been delivered.

6.4 Closing shall occur through escrow at the offices of the Title Company and shall be pursuant to the provisions of this Agreement and in accordance with the general provisions of the usual form of escrow agreement used by the Title Company in similar transactions (with such special provisions inserted as may be required to conform to this Agreement).

6.5 All ad valorem taxes and current installments on any assessments, if any, against a portion of the Property, as applicable, shall be prorated at closing. Such proration shall be made as of 12:01 a.m. on the closing date, in accordance with the following provisions, and shall operate to increase or decrease the payment due from Buyer to Sellers at closing:

(a) All ad valorem taxes and current installments on any assessments or special assessments, if any, against a portion of the Property for

the year in which closing occurs shall be prorated as of the closing date. If the actual tax or installment amounts are not then available for such year, such amounts shall be estimated based on the most recent information available (such as tax amounts that applied for the prior year).

(b) If the prorations contemplated in Section 6.5(a) are done on the basis of estimates of the amount of taxes and current installments on any assessments for the then-current year, then following the closing, after the actual amount of taxes and assessments for such year becomes known, either party may require by written notice to the other that appropriate adjustments be made to such prorations, so as to take into account the actual tax and assessment amounts. The provisions of this Section 6.5(b) shall survive the closing. Any delinquent installment(s) on any assessments levied prior to closing shall be paid in full by Sellers prior to or concurrently with the first closing under this Agreement. Sellers shall be responsible for any rollback taxes pursuant to the Farmland Assessment Act.

6.6 Buyer shall pay all of the Title Company's fees for its services as escrow agent. At closing, Sellers shall pay the cost of an ALTA 2006 Form B standard coverage owner's title insurance policy issued in the amount of the Net Purchase Price, showing Buyer, or its permitted assigns, as the named insured, and Buyer will pay the cost of premiums for any extended coverage or endorsements desired or required by Buyer. Buyer shall pay its own recording fees for the Special Warranty Deed. Sellers shall pay all other recording fees for matters relating to delivery of title. The prorations, credits and adjustments at closing shall otherwise be accomplished in accordance with the customary practices in Utah County, except to the extent those practices may be inconsistent with the provisions of this Agreement. Except as may be provided to the contrary elsewhere in this Agreement, Buyer and Sellers shall each bear and pay the expense of their own performance and the expense of providing the materials that are required to be provided by each of them under the provisions of this Agreement. Buyer and Sellers shall each bear the cost of their own legal counsel.

7. Possession of Property; Risk of Loss. Possession of the Property shall be delivered to the Buyer within 24 hours of the closing. Sellers shall bear all risk of casualty or other loss or damage to the Property until closing, and Buyer shall bear all risk of casualty and other loss or damage thereafter. The provisions of this Section shall survive the closing and not be merged into any instrument of conveyance delivered at closing.

8. Representations and Warranties.

8.1 Sellers represent and warrant that the following matters are true as of the Effective Date, and will also be true as of closing. All such representations and warranties shall survive the closing under this Agreement for twelve months, and shall not be merged into any instrument of conveyance delivered at closing:

8.2 Sellers represents and warrants that it does and will, at the time of closing, have the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out Sellers' obligations hereunder. Neither this Agreement nor Sellers' performance of its terms will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement, or any other undertaking. No contracts, leases, licenses, commitments or undertakings (verbal or otherwise) of which Sellers is a party exist relating to the Property except for those expressly stated herein.

8.3 Sellers represent and warrant that Sellers have full power and proper authority to execute this Agreement and to perform all of its terms and conditions without violation of Sellers' legal obligations, and except as otherwise noted herein, that all required action necessary to authorize Sellers to enter into this Agreement and to carry out its obligations hereunder have been taken.

8.4 Sellers represent and warrant that Sellers have not used Hazardous Materials on, from, or affecting the Property, or any portion thereof, in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Material. Except as otherwise expressly stated in this Agreement, Sellers have never received any notice of any violation of federal, state, or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials and, to the best of Sellers' knowledge, there have been no actions commenced or threatened by any party for noncompliance therewith. For purposes of this Agreement, "Hazardous Materials" includes any flammable materials, explosive, hazardous or toxic substance, or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any

other federal, state, or local governmental law, ordinance, rule or regulation.

8.5 Sellers represent and warrant that Sellers have not been notified of any pending or threatened litigation or other legal or administrative claim affecting the Property.

8.6 Other than pursuant to this Agreement, Sellers have not granted to any party any option, contract, or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

8.7 Sellers shall indemnify and hold Buyer harmless and defend Buyer from any loss, liability or expense, including attorneys' fees, incurred by Buyer, or any claim made against Buyer, by reason of the breach of any of the foregoing representations or warranties, which indemnity shall survive the closing under this Agreement for one (1) year.

8.8 Buyer represents and warrants that Buyer is in good standing and legally authorized to conduct business in the State of Utah and that Buyer is not in the process of declaring insolvency at the time of execution of this Agreement.

9. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Utah County, State of Utah. The parties exclude any and all statutes, laws and treaties that would allow or require any dispute to be decided in another forum or by other rules of decision than those provided in this Agreement.

10. Notices. Any notice or other communication required or permitted under this Agreement must be in writing and may be given by personal delivery or by mail, registered or certified, return receipt requested, or by overnight delivery service postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing herein, but each party may change its address by written notice in accordance with this Section:

If to Sellers:

Redevelopment Agency of Provo City
Attn: David Walter
351 W. Center Street
Provo, UT 84601

Provo City
Attn: Tara Riddle
351 W. Center Street
Provo, UT 84601

If to Buyer:

EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

11. Default.

11.1 A party alleged to be in default shall have ten (10) business days (except in the event the alleged default is a failure to close, in which case such party shall have only three (3) business days) after the other party delivers written notice of such alleged default within which to cure any default under this Agreement. If such party fails to cure the default within said period, it shall be in breach

11.2 Either party shall be deemed in default under this Agreement if: (a) the warranties or representations made by such party shall be untrue or shall be discovered to be untrue; or (b) such party shall fail to meet, comply with or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required by this Agreement. In the event of any legal action to enforce this Agreement, the party in default shall pay all legal fees (including reasonable attorney's fees), costs and expenses incurred in such enforcement.

11.3 If Sellers defaults under this Agreement (including Sellers' obligation to close), Buyer may elect to (i) terminate Buyer's obligations under this Agreement by written notice to Sellers with a copy to Title Company, in which event this Agreement shall be terminated and of no further force and effect, and the Title Company shall promptly refund to Buyer the Earnest Money plus all interest accrued thereon; (ii) treat this Agreement as being in full force and effect and close on the Property, and/or Buyer shall have the right to bring an action for specific performance, and/or (iii) pursue any and all other remedies at law or in equity.

11.4 If Buyer defaults under this Agreement (including Buyer's obligation to close), Sellers may elect to (i) terminate Sellers' obligations under this Agreement by written notice to Buyer with a copy to Title Company, in which event this Agreement shall be terminated and of no further force and effect; and/or (ii) pursue any other available remedies at law or in equity.

12. Time of the Essence. Time is of the essence with respect to this Agreement and each and every provision hereof.

13. Calculation of Days under Agreement. Unless specifically identified to the contrary, all references to "days" in this Agreement shall mean calendar days, beginning with the first day after the time period commences and ending at 5:00 p.m. (time in Utah) on the last day of the referenced time period. To the extent that the last day of any designated time period occurs on a Saturday, Sunday or legal holiday recognized by the State of Utah, then such period shall be deemed to conclude at 5:00 p.m. on the following business day.

14. Brokers' Fees. Neither Buyer nor Sellers have negotiated or otherwise involved any broker in this transaction. No broker fees or commissions shall be due or payable hereunder or in connection herewith. Each party agrees to indemnify and hold the other harmless from and against any and all claims, losses, damages, costs or expenses (including attorneys' fees) of any kind or character arising out of or resulting from any broker fee agreement or arrangement or purported agreement or arrangement by the indemnifying party. Notwithstanding anything to the contrary contained herein, this Section shall survive the closing under this Agreement or any earlier termination of this Agreement. Buyer discloses that certain employees of Buyer are licensed real estate brokers/agents in the State of Utah.

15. Amendment; Headings of Sections. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated in this Agreement and may not be modified or amended except by a written instrument executed by each of the parties hereto. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not affect any construction or interpretation of this Agreement.

16. Successors and Assigns. This Agreement is not assignable to another party.

17. Exhibits. The Exhibits attached to this Agreement are incorporated into and made a part of this Agreement as if fully set forth in this Agreement.

18. Further Assurances. Each party shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Agreement, including, but not limited to, documents necessary for compliance with the laws, ordinances, rules or regulations of any authority.

19. Severability. In the event that any provision herein contained which is not essential to the effectuation of the basic purpose of this Agreement is held to be invalid or void or contrary to any existing or future law by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained which is valid.

20. Counterparts. This Agreement may be executed in any number of counterparts (including electronic signatures), each of which shall be deemed to be an

original, but all such counterparts together shall constitute one and the same agreement binding on the parties.

21. Subject to Approval. This Agreement is subject to the approval of the Provo Municipal Council.

22. Community Garden. A portion of the Property is being used for a community garden which is being managed by Community Action Services and Food Bank. The Buyer agrees to allow the garden to remain in operation, at no cost, until such time that development is ready to begin on the property. The Buyer agrees to give Community Action Services and Food Bank a minimum of 120 days notice to vacate the property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein written.

BUYER

EVKELL, LLC

By: _____
Kelly Mickelsen, Member

By: _____
Evan, Mickelsen, Member

SELLERS

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Michelle Kaufusi, Chief Executive Officer

PROVO CITY

By: _____
Michelle Kaufusi, Mayor

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.

REDEVELOPMENT AGENCY OF PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 737.01 FEET AND WEST 250.33 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S00°22'35"W 146.35 FEET; THENCE N88°59'59"W 101.13 FEET; THENCE S01°00'01"W 49.49 FEET; THENCE N88°26'13"W 46.26 FEET; THENCE N00°42'26"E 67.37 FEET; THENCE S89°25'14"W 61.88 FEET; THENCE N00°04'59"E 112.80 FEET; THENCE N85°44'27"E 162.12 FEET; THENCE N88°33'48"E 48.40 FEET TO THE POINT OF BEGINNING.

AREA: 30307 SQUARE FEET OR 0.696 ACRES.

EXHIBIT B

MAP GENERALLY DEPICTING THE PROPERTY



EXHIBIT C-1

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, REDEVELOPMENT AGENCY OF PROVO CITY, a body politic of the State of Utah, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

REDEVELOPMENT AGENCY OF PROVO CITY

By: _____
Michelle Kaufusi, Chief Executive Officer

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ____ day of _____, 2021, by Michelle Kaufusi, Chief Executive Officer of the Redevelopment Agency of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REDEVELOPMENT AGENCY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 737.01 FEET AND WEST 250.33 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S00°22'35"W 146.35 FEET; THENCE N88°59'59"W 101.13 FEET; THENCE S01°00'01"W 49.49 FEET; THENCE N88°26'13"W 46.26 FEET; THENCE N00°42'26"E 67.37 FEET; THENCE S89°25'14"W 61.88 FEET; THENCE N00°04'59"E 112.80 FEET; THENCE N85°44'27"E 162.12 FEET; THENCE N88°33'48"E 48.40 FEET TO THE POINT OF BEGINNING.

AREA: 30307 SQUARE FEET OR 0.696 ACRES.



EXHIBIT C-2

FORM OF SPECIAL WARRANTY DEEDS

When Recorded Please Return to:
EVKELL, LLC
Attn: Kelly Mickelsen and Evan Mickelsen, Members
1109 West 100 South
Provo, Utah 84601

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PROVO CITY, a municipal corporation, with an address at 351 W. Center Street, Provo, Utah 84601, Grantor, hereby conveys in fee and warrants EVKELL, LLC, a Utah limited liability company, Grantee, all of Grantor's interest in the following described real property situated in Utah County, State of Utah, together with all easements, rights, privileges, entitlements, improvements, water rights and privileges appurtenant to the real property:

See Exhibit "A"

GRANTOR

PROVO CITY

By: _____
Michelle Kaufusi, Mayor

STATE OF UTAH)
: ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged to me this ____ day of _____, 2021, by Michelle Kaufusi, Mayor of Provo City.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PROVO CITY PROPERTIES

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED N00°40'47"W ALONG THE SECTION LINE 318.29 FEET AND WEST 421.43 FEET FROM THE SOUTHEAST QUARTER CORNER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N89°43'26"W 63.20 FEET; THENCE N00°09'20"E 176.28 FEET; THENCE S89°59'42"W 127.92 FEET; THENCE S00°08'54"W 175.51 FEET; THENCE N89°40'34"W 73.79 FEET; THENCE N00°01'38"E 299.93 FEET; THENCE N25°58'54"E 1.51 FEET; THENCE N50°08'19"E 57.98 FEET; THENCE N50°42'06"E 51.03 FEET; THENCE N70°12'34"E 72.51 FEET; THENCE N82°45'19"E 68.48 FEET; THENCE S00°04'59"W 112.80 FEET; THENCE N89°25'14"E 61.88 FEET; THENCE S00°42'26"W 67.37 FEET; THENCE S88°54'47"W 12.47 FEET; THENCE S01°10'07"W 79.44 FEET; THENCE N87°37'12"E 2.02 FEET; THENCE S00°39'05"W 48.12 FEET; THENCE N87°56'11"W 4.28 FEET; THENCE S00°02'13"W 98.36 FEET TO THE POINT OF BEGINNING.

AREA: 73922 SQUARE FEET OR 1.697 ACRES.



PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: TBALL
Department: Energy
Requested Meeting Date: 11-16-2021

SUBJECT: An ordinance amending the Provo City Rate Schedule to set electric service rates for distribution Voltage Pilot Optional Time-Of-Use (TOU) and Shared Solar in Provo City, Utah. (21-109)

RECOMMENDATION: The new Shared Solar and Time of Use rates will be presented. Ultimately the Energy Department would like to add the rates to our existing rate structure,

BACKGROUND: Shared Solar is a community solar project built in Spanish Fork to provide residents the opportunity to purchase solar power and lock in the generation cost without the capital outlay required when purchasing solar for the rooftop. This also allows residents who are not able to purchase solar for their homes because of circumstances beyond their control such as HOA covenants, renting or roof issues to purchase a slice of renewable generation.
TOU (Time of Use) rates allow customers to shift the time they use energy from the peak in the City from 3:00 pm to 8:00 pm. By shaving the peak, the City will pay less for the power and the savings will be given back to the customer. The customer will need to be diligent in not using energy during the peak time of the day in order to save money on their bill. In addition, we have added an electric vehicle charging rate for those who would like to save money when charging their vehicle from midnight to 8:00 am in the morning.

FISCAL IMPACT: N/A - rate neutral according to the cost of service study.

PRESENTER'S NAME: Travis Ball, Energy Director

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Each of the rates help with the sustainability goals of reducing carbon emissions by promoting solar and reducing the peak demand for electricity which is currently filled with fossil fuels.

CITYVIEW OR ISSUE FILE NUMBER: 21-109

ORDINANCE 2021-.

AN ORDINANCE AMENDING THE PROVO CITY RATE SCHEDULE TO SET ELECTRIC SERVICE RATES FOR DISTRIBUTION VOLTAGE PILOT OPTIONAL TIME-OF-USE (TOU) AND SHARED SOLAR IN PROVO CITY, UTAH. (21-109)

WHEREAS, the Provo City Energy Department has prepared proposed rates for a TOU pilot program for residential and electric vehicle charging and Shared Solar program for the Municipal Council to consider, as set forth in the attached Exhibit A and Exhibit B; and

WHEREAS, on November 30, 2021, 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) Provo City Code should be amended as described herein 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:

The attached electric rate schedule for a time-of-use pilot program is hereby approved, as set forth in attached Exhibit A.

PART II:

The attached electric rate schedule for a Shared Solar program is hereby approved, as set forth in attached Exhibit B.

PART III:

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 Section 10-3-711, presented to the Mayor in accordance with Utah Code Section 10-3b-204, and recorded in accordance with Utah Code Section 10-3-713.

END OF ORDINANCE.

Exhibit A

PROVO CITY ENERGY DEPARTMENT
ELECTRIC SERVICE SCHEDULE NO. 3

General Service -- Distribution Voltage
Pilot Optional Time-of-Use

AVAILABILITY

This schedule is available at any point on the Energy Department electric system where facilities of adequate capacity and standard general service voltages are available. This schedule shall be available to up to 100 customers on a first-come, first served basis, and upon the installation of required Time-of-Day metering equipment. In the event that such installation may be delayed due to installation schedules or limited availability of such metering equipment, customers shall be placed on a prioritized list for service as such installation schedules or metering equipment become available.

APPLICATION

This optional schedule is for electric service used exclusively for residential purposes in conjunction with Schedule 1.

CHARACTER OF SERVICE

Service under this schedule shall be single-phase, 60 Hertz, alternating current at the Energy Department's available standard general service distribution voltages. At the option of the Energy Department, three-phase service may be provided. All service required on the premises by the customer will be supplied through one meter. Standby or resale service is not permitted under this schedule.

MONTHLY RATE

The monthly billing for electric service, excluding charges for other utility services and taxes, shall be the sum of the following charges:

Customer Service Charge: $13.92 per Service Connection
On-Peak Energy Charge: $0.1500 per kW/h
Off-Peak Demand Charge: $0.0723 per kW/h

ELECTRIC SERVICE SCHEDULE NO. 3 (Continued)

ON AND OFF-PEAK TIME PERIODS

On-Peak	3:00 pm to 8:00 pm, Monday through Friday, except holidays.
Off-Peak	All other times.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be considered a holiday and consequently off-peak.

MINIMUM CHARGE

The minimum monthly charge shall be the Customer Charge listed above under the Monthly Rate section.

SPECIAL CONDITIONS

1. Customer on this tariff schedule shall have a term of not less than one year. Service will continue under this schedule until Customer notifies the Company to discontinue service.

2. Billing under this schedule shall begin for the Customer following installation of the time-of-use meter and the initial meter reading.

3. The Energy Department will not accept enrollment for accounts that have:
    a. Time-payment agreement in effect
    b. Received two or more final disconnect notices
    c. Been disconnected for non-payment within the last 12 months
    d. Enrolled in other specialized rates including net-metering and RenewChoice options
    e. Energy consumption under 500 kW/h for more than 6 months of the year.

ELECTRIC SERVICE SCHEDULE NO. 3 (Continued)

TAX ADJUSTMENTS

The amount computed at the above Monthly Rate shall be subject to taxes, assessments and surcharges imposed by Provo City or any governmental authority authorized to levy said taxes, assessments or surcharges.

TERMS AND CONDITIONS

Service under this schedule will be in accordance with the Energy Department's electric service standards and policies and terms and conditions set forth by the Department's standard application requirements and Provo City Ordinances, including any future additions or amendments.

Provo City
Proposed residential TOU Rates

Residential TOU Rate

Customer Charge	$13.92
Energy Charge	
On Peak	$0.1500
Off Peak	$0.0723

(1) On peak is 3 pm to 8 pm M-F
(2) Off peak period is 8 pm to 3 pm M-F and all-day Sat and Sun

Residential EV All Home Rate (1)

Customer Charge	$13.92
Energy Charge	
On Peak	$0.1700
Off Peak	$0.00769
Super Off Peak	$0.0450

(1) Applicable to all household energy use for homes with qualifying EV charging system
(2) On peak period is 3 pm to 8pm M-F
(3) Off peak period is 8 am to 3 pm and 8 pm to midnight M-F and 8 am to midnight Sat and Sun
(4) Super off peak is midnight to 8 am all days

Exhibit B

Customers may purchase blocks of SharedSolar from the community solar project. Each block is a fixed energy amount of 200 kWh per month. The rate for Residential Customers is 10.62 cents per kWh of SharedSolar energy and is comprised of 4 components:

Solar Generation Block	4.42 cents
Administrative Fee	0.48 cents
Ancillary Services	2.17 cents
Solar Delivery Cost	3.55 cents
Total Cost	**10.62 cents/kWh ($21.24 per 200 kWh block)**

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: TBALL
Department: Energy
Requested Meeting Date: 11-16-2021

SUBJECT: New Electric Rates for Shared Solar and Pilot Time of Use Rate

RECOMMENDATION: The new Shared Solar and Time of Use rates will be presented. Ultimately the Energy Department would like to add the rates to our existing rate structure,

BACKGROUND: Shared Solar is a community solar project built in Spanish Fork to provide residents the opportunity to purchase solar power and lock in the generation cost without the capital outlay required when purchasing solar for the roof top. This also allows residents who are not able to purchase solar for the homes because of circumstances beyond their control such as HOA covenants, renting or roof issues to purchase a slice of renewable generation.

TOU (Time of Use) rates allow customers to shift the time they use energy from the peak in the City from 3:00 pm to 8:00 pm. By shaving the peak, the City will pay less for the power and the savings will be given back to the customer. The customer will need to be diligent in not using energy during the peak time of the day in order to save money on their bill. In addition, we have added a electric vehicle charging rate for those who would like to same money when charging their car from midnight to 8:00 am in the morning.

FISCAL IMPACT: N/A - rate neutral according to the cost of service study.

PRESENTER'S NAME: Travis Ball

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES: Each of the rates help with the sustainability goals of reducing carbon emissions by promoting solar and reducing the peak demand for electricity which is currently filled with fossil fuels.

CITYVIEW OR ISSUE FILE NUMBER:

Provo City
Proposed Residential TOU Rates

Residential TOU Rate

Customer Charge	$ 13.92
Energy Charge	
On Peak[1]	$ 0.1500
Off Peak[2]	$ 0.0723

(1) On peak period is 3 pm to 8 pm M-F

(2) Off peak period is 8 pm to 3 pm M-F and all day Sat and Sun

Residential EV All Home Rate[1]

Customer Charge	$ 13.92
Energy Charge	
On Peak[2]	$ 0.1700
Off Peak[3]	$ 0.0769
Super Off Peak[4]	$ 0.0450

(1) Applicable to all household energy use for homes with qualifying EV charging system

(2) On peak period is 3 pm to 8 pm M-F

(3) Off peak period is 8 am to 3 pm and 8 pm to midnight M-F and 8 am to midnight Sat and Sun

(4) Super Off Peak is midnight to 8 am all days

PROVO CITY ENERGY DEPARTMENT
ELECTRIC SERVICE SCHEDULE NO. 3.1

General Service -- Distribution Voltage
Pilot Optional Time-of-Use

AVAILABILITY

This schedule is available at any point on the Energy Department electric system where facilities of adequate capacity and standard general service voltages are available. This schedule shall be available to up to 100 customers on a first-come, first served basis, and upon the installation of required Time-of-Day metering equipment. In the event that such installation may be delayed due to installation schedules or limited availability of such metering equipment, customers shall be placed on a prioritized list for service as such installation schedules or metering equipment become available.

APPLICATION

This optional schedule is for electric service used exclusively for residential purposes in conjunction with Schedule 1. Applicable to all household energy use for homes with qualifying EV charging system.

CHARACTER OF SERVICE

Service under this schedule shall be single-phase, 60 Hertz, alternating current at the Energy Department's available standard general service distribution voltages. At the option of the Energy Department, three-phase service may be provided. All service required on the premises by the customer will be supplied through one meter. Standby or resale service is not permitted under this schedule.

MONTHLY RATE

The monthly billing for electric service, excluding charges for other utility services and taxes, shall be the sum of the following charges:

Customer Service Charge:	$13.92 per Service Connection
On-Peak Energy Charge:	$0.1700 per kW/h
Off-Peak Demand Charge:	$0.0769 per kW/h
Super Off-Peak Energy:	$0.0450 per kW/h

ELECTRIC SERVICE SCHEDULE NO. 3.1 (Continued)

ON AND OFF-PEAK TIME PERIODS

On-Peak	3:00 pm to 8:00 pm, Monday through Friday, except holidays.
Off-Peak	8:00 am to 3 pm and 8 :00 pm to midnight, Monday through Friday and 8:00 am to midnight, Saturday, Sunday and holidays.
Super Off-Peak	Midnight to 8 am all days

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be considered a holiday and consequently off-peak.

MINIMUM CHARGE

The minimum monthly charge shall be the Customer Charge listed above under the Monthly Rate section.

SPECIAL CONDITIONS

1. Customer on this tariff schedule shall have a term of not less than one year. Service will continue under this schedule until Customer notifies the Company to discontinue service.

2. Billing under this schedule shall begin for the Customer following installation of the time-of-use meter and the initial meter reading.

3. The Energy Department will not accept enrollment for accounts that have:
    a. Time-payment agreement in effect
    b. Received two or more final disconnect notices
    c. Been disconnected for non-payment within the last 12 months
    d. Enrolled in other specialized rates including net-metering and RenewChoice options
    e. Energy consumption under 500 kW/h for more than 6 months of the year.

ELECTRIC SERVICE SCHEDULE NO. 3.1 (Continued)

TAX ADJUSTMENTS

The amount computed at the above Monthly Rate shall be subject to taxes, assessments and surcharges imposed by Provo City or any governmental authority authorized to levy said taxes, assessments or surcharges.

TERMS AND CONDITIONS

Service under this schedule will be in accordance with the Energy Department's electric service standards and policies and terms and conditions set forth by the Department's standard application requirements and Provo City Ordinances, including any future additions or amendments.

PROVO CITY ENERGY DEPARTMENT
ELECTRIC SERVICE SCHEDULE NO. 3

General Service -- Distribution Voltage
Pilot Optional Time-of-Use

AVAILABILITY

This schedule is available at any point on the Energy Department electric system where facilities of adequate capacity and standard general service voltages are available. This schedule shall be available to up to 100 customers on a first-come, first served basis, and upon the installation of required Time-of-Day metering equipment. In the event that such installation may be delayed due to installation schedules or limited availability of such metering equipment, customers shall be placed on a prioritized list for service as such installation schedules or metering equipment become available.

APPLICATION

This optional schedule is for electric service used exclusively for residential purposes in conjunction with Schedule 1.

CHARACTER OF SERVICE

Service under this schedule shall be single-phase, 60 Hertz, alternating current at the Energy Department's available standard general service distribution voltages. At the option of the Energy Department, three-phase service may be provided. All service required on the premises by the customer will be supplied through one meter. Standby or resale service is not permitted under this schedule.

MONTHLY RATE

The monthly billing for electric service, excluding charges for other utility services and taxes, shall be the sum of the following charges:

Customer Service Charge: $13.92 per Service Connection
On-Peak Energy Charge: $0.1500 per kW/h
Off-Peak Demand Charge: $0.0723 per kW/h

ELECTRIC SERVICE SCHEDULE NO. 3 (Continued)

ON AND OFF-PEAK TIME PERIODS

On-Peak	3:00 pm to 8:00 pm, Monday through Friday, except holidays.
Off-Peak	All other times.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be considered a holiday and consequently off-peak.

MINIMUM CHARGE

The minimum monthly charge shall be the Customer Charge listed above under the Monthly Rate section.

SPECIAL CONDITIONS

1. Customer on this tariff schedule shall have a term of not less than one year. Service will continue under this schedule until Customer notifies the Company to discontinue service.

2. Billing under this schedule shall begin for the Customer following installation of the time-of-use meter and the initial meter reading.

3. The Energy Department will not accept enrollment for accounts that have:
    a. Time-payment agreement in effect
    b. Received two or more final disconnect notices
    c. Been disconnected for non-payment within the last 12 months
    d. Enrolled in other specialized rates including net-metering and RenewChoice options
    e. Energy consumption under 500 kW/h for more than 6 months of the year.

ELECTRIC SERVICE SCHEDULE NO. 3 (Continued)

TAX ADJUSTMENTS

The amount computed at the above Monthly Rate shall be subject to taxes, assessments and surcharges imposed by Provo City or any governmental authority authorized to levy said taxes, assessments or surcharges.

TERMS AND CONDITIONS

Service under this schedule will be in accordance with the Energy Department's electric service standards and policies and terms and conditions set forth by the Department's standard application requirements and Provo City Ordinances, including any future additions or amendments.



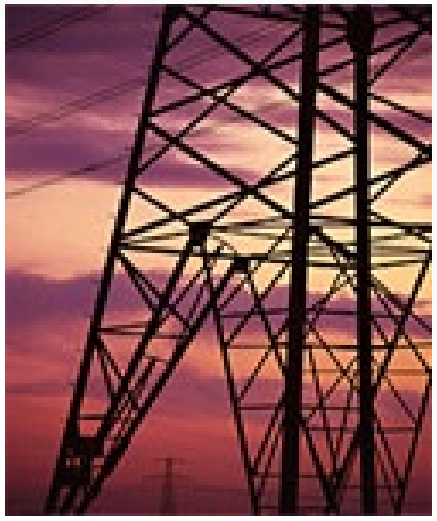




New Rates

Council Work Meeting – Nov 16, 2021







Agenda Introduction



- Purpose of New Rates
- Shared Solar
- Time of Use Rate
- EV Time of Use Rate
- Questions

Purpose of New Rates

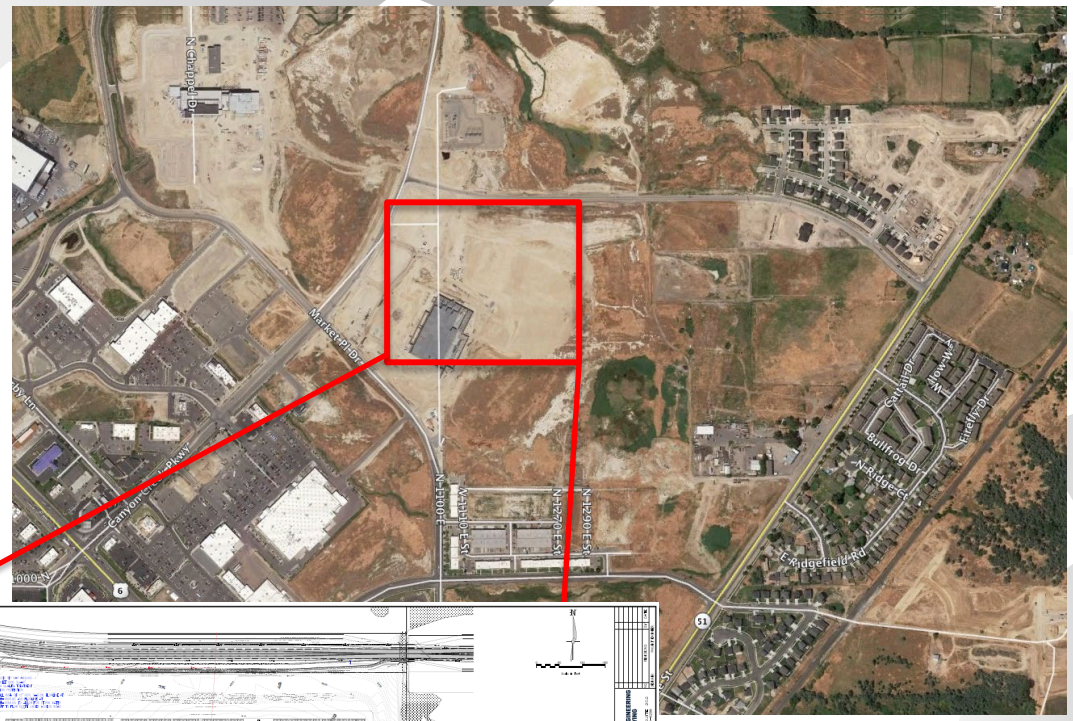
- SharedSolar
  - Provide solar options for residents that are prohibited from rooftop solar
    - Students and renters
    - HOA requirements
    - Capital cost for panels – low to moderate
    - Roof top limitations
  - Capture funds for General Fund Transfers

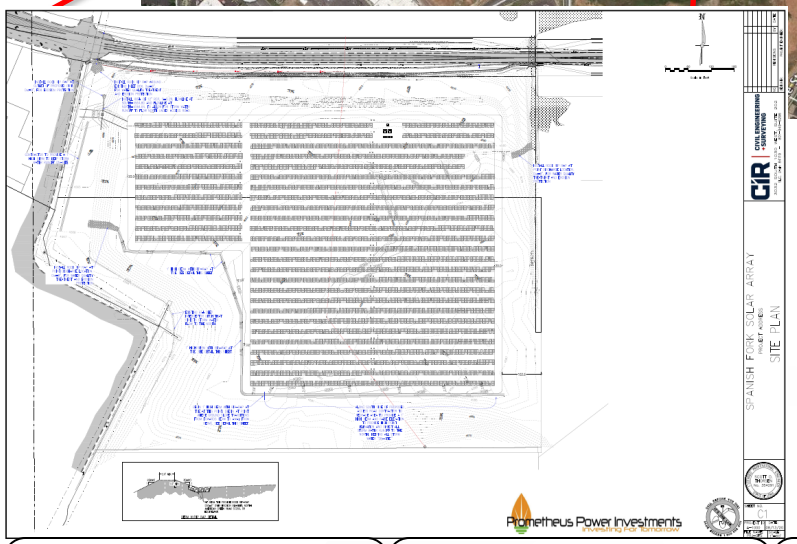
Purpose of New Rates

- Time of Use Rates
  - Provide residents with more options to reduce power cost
  - Reduce City energy demand rate
  - Follow cost of service more closely
- Electric Vehicle Time of Use Rates
  - Encourage purchasing of EV
  - Provide a low cost time to charge vehicle

Shared Solar

- Project Location: Spanish Fork, UT
- Site description: old Spanish fork landfill site that has been capped
- Project Size: 4.0 MW AC
- Project description: Ground mounted system with Ballast
- Power Generated:
  - Year one: 7.2MWh
  - 25 Years: 170MWh





Shared Solar

RenewChoice

Home Communities Programs Contact Us



SharedSolar

Community-Owned Solar

A program offering the chance to gain the benefits of solar without installing solar panels on your home or business.

The SharedSolar program will begin to enroll residential customers as the individual city utility billing parameters allow, and it is expected that commercial customers will follow in the next few months.

What is SharedSolar?

Community solar power provides clean, renewable energy to those who otherwise cannot access traditional rooftop solar panels. This is why RenewChoice is developing a new community solar program called SharedSolar.

Around 12,000 solar panels will be installed to provide clean, renewable energy to hundreds of households across the following communities:

- Provo
- Salem
- Manti
- Spanish Fork
- Nephi
- Levan

Shared Solar Terms & Conditions

Benefits of SharedSolar

Give homeowners, renters, and businesses access to fiscal and environmental benefits of solar.

Expand access to solar power for all including low-to-moderate income households.

Build a strong, distributed, and resilient electric grid.

Allow community members to receive credit on their bills for their share of power produced.

RenewChoice

Home Communities Programs Contact Us



How does it work?

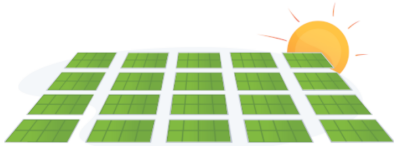
Customers can subscribe for 1 kilowatt (kw) blocks. Each will generate 200-kilowatt-hours (kwh) of energy. An average-size home uses about 750 kwh per month. Customers can keep their subscriptions for up to 25 years. If they move to another city within RenewChoice service territory, their solar blocks go with them.

See more about the project construction →

Solar Blocks Available

3,000

subscriptions currently available



Interested in the SharedSolar Program?

If you're interested in the SharedSolar program, select whether you'd like to be contacted for more information, or, you can go through the steps to sign up. Either way, a representative from your city utility will be in contact with you to help answer any questions that you may have.

Keep me informed

Sign me up

Shared Solar

RenewChoice

Home Communities Programs Contact Us

Terms and Conditions for SharedSolar

1. SharedSolar is a voluntary program for residential customers who wish to participate in the community solar program offered by their utility. This program is not yet available for commercial customers.
2. The customer must have a current utility account in their name and be in good standing.
3. Verification of tenant/landlord agreements will be reviewed and discussed before enrollment in SharedSolar is established or allowed.
4. Multi-unit apartment complexes/dwellings that are not billed individually by the utility will not be eligible for SharedSolar.
5. Customers may purchase blocks of SharedSolar from the community solar project. Each block is a fixed energy amount of 200 kWh per month. The rate for Residential Customers is 10.62 cents per kWh of SharedSolar energy and is comprised of 4 components:

Solar Generation Block	4.42 cents
Administrative Fee	0.48 cents
Ancillary Services	2.17 cents
Solar Delivery Cost	3.55 cents
Total Cost	**10.62 cents/kWh ($21.24 per 200 kWh block)**

6. Billing for enrollment in the program will begin at the beginning of the next billing cycle and is not pro-rated.
7. The Solar Generation Block rate is fixed for the duration of the life of the project. The project life is expected to be 20 years. After enrolling in the SharedSolar program, customers will remain in the program until they cancel or the end of life of the project.
8. The other non-generation cost components of the SharedSolar rates are subject to changes over time in accordance with non-generation changes (transmission, distribution, and customer service) approved for recovery in the utility's rates.
9. Customers may enroll in as many blocks up to ten (10), but the elected number of blocks cannot exceed the lower of the usage for the prior 12 months.
10. All other rates established by the utility is applicable. SharedSolar customers are subject to the customer service charge per month. SharedSolar energy is to be credited first as the energy supply to the customer utility bill. All other energy tiers and rates are to be applied in the order as established by the utility. Customer utility bills will vary depending on the amount of subscribed SharedSolar energy and customer's monthly consumption. The customer is responsible for all amounts and charges owed to the utility according to proper utility billing of the fees and services.

RenewChoice

Home Communities Programs Contact Us

10. All other rates established by the utility is applicable. SharedSolar customers are subject to the customer service charge per month. SharedSolar energy is to be credited first as the energy supply to the customer utility bill. All other energy tiers and rates are to be applied in the order as established by the utility. Customer utility bills will vary depending on the amount of subscribed SharedSolar energy and customer's monthly consumption. The customer is responsible for all amounts and charges owed to the utility according to proper utility billing of the fees and services.

11. There are approximately 3,000 blocks available to be shared among all customers in participating city utilities. Each application to participate in the SharedSolar program will be handled on a first-come, first-serve basis and will be offered until the program is fully subscribed. Once the program is fully subscribed, any new applicants will be placed on a waiting list for future opportunities as blocks become available.
12. Participating customers must commit to stay within the program for two years. Thereafter, customers will be allowed to make one change per year on the number of subscribed blocks or leaving the program. If a customer desires to make additional changes, the customer may be charged a $25 fee for the service change.
13. Any Customer leaving the program must wait a year before being permitted to enroll again in the program.
14. Any customer moving from one utility in the SharedSolar program into another utility that participates in the SharedSolar program may elect to retain their subscribed blocks after giving notice to the utility on its desire to reassign its blocks to another utility. The customer's name must remain the same in the assignment of the account.
15. If a customer cancels their participation in the program, the unsubscribed blocks will become available to other interested customers.
16. Upon cancellation, the enrollment for the block(s) will be prorated and charged appropriately with the final utility bill.
17. The utility will retain the ownership of the Renewable Energy Credits (RECs) and all other environmental attributes including but not limited to carbon emission reduction credits which will be retired on behalf of the customer.
18. Rates and regulations associated with the utility are approved by the municipal council and are not subject to Public Service Commission.
19. Customers participating in the RenewChoice SelectGreen wind program cannot participate in the SharedSolar program and vice versa.
20. Customers participating in their utility net metering program cannot participate in the SharedSolar program.
21. Customers enrolled in the utility's time of use (TOU) rate cannot participate in the SharedSolar Program.
22. These terms and conditions are set by the member utilities and are subject to change by the governing board.

Shared Solar

5. Customers may purchase blocks of SharedSolar from the community solar project. Each block is a fixed energy amount of 200 kWh per month. The rate for Residential Customers is 10.62 cents per kWh of SharedSolar energy and is comprised of 4 components:

Solar Generation Block	4.42 cents
Administrative Fee	0.48 cents
Ancillary Services	2.17 cents
Solar Delivery Cost	3.55 cents
Total Cost	**10.62 cents/kWh ($21.24 per 200 kWh block)**

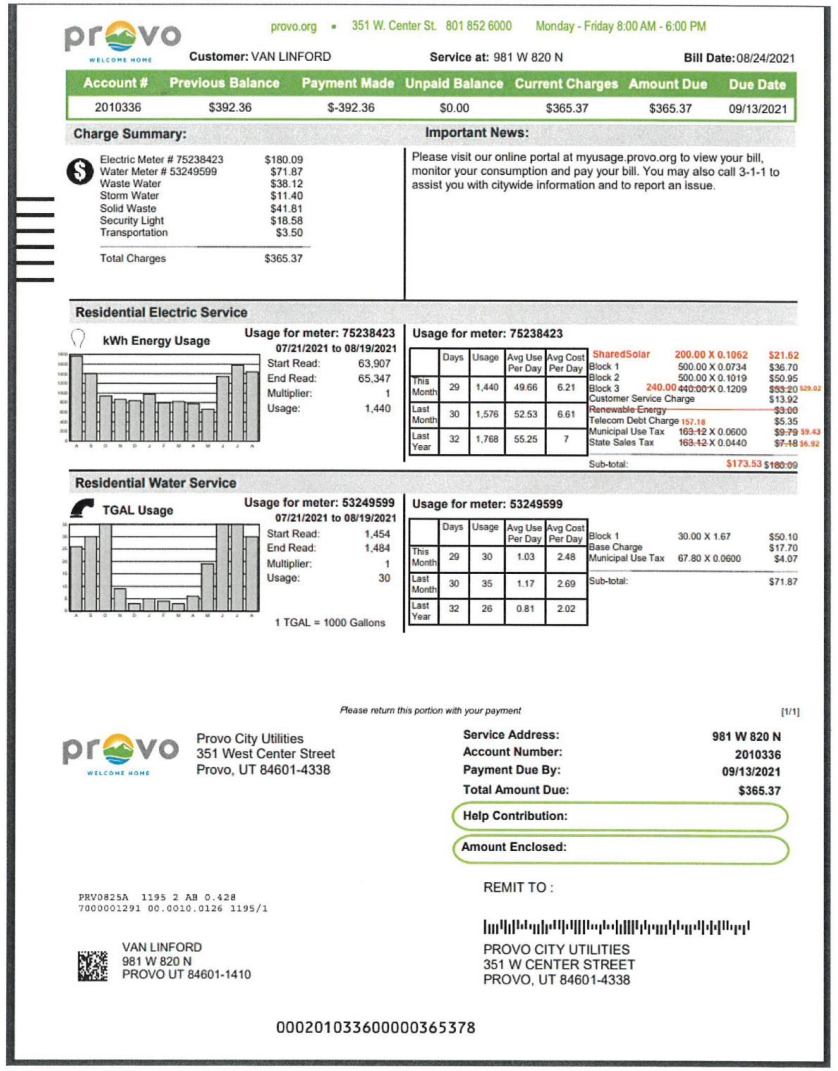
7. The Solar Generation Block rate is fixed for the duration of the life of the project. The project life is expected to be 20 years. After enrolling in the SharedSolar program, customers will remain in the program until they cancel or the end of life of the project.

8. The other non-generation cost components of the SharedSolar rates are subject to changes over time in accordance with non-generation changes (transmission, distribution, and customer service) approved for recovery in the utility's rates.

12. Participating customers must commit to stay within the program for two years. Thereafter, customers will be allowed to make one change per year on the number of subscribed blocks or leaving the program. If a customer desires to make additional changes, the customer may be charged a $25 fee for the service change.

13. Any Customer leaving the program must wait a year before being permitted to enroll again in the program.

Shared Solar



provo.org • 351 W. Center St. 801 852 6000 Monday - Friday 8:00 AM - 6:00 PM

Customer: VAN LINFORD **Service at:** 981 W 820 N **Bill Date:** 08/24/2021

Account #	Previous Balance	Payment Made	Unpaid Balance	Current Charges	Amount Due	Due Date
2010336	$392.36	$-392.36	$0.00	$365.37	$365.37	09/13/2021

Charge Summary:

Electric Meter # 75238423	$180.09
Water Meter # 53249599	$71.87
Waste Water	$38.12
Storm Water	$11.40
Solid Waste	$41.81
Security Light	$18.58
Transportation	$3.50
Total Charges	$365.37

Important News:

Please visit our online portal at myusage.provo.org to view your bill, monitor your consumption and pay your bill. You may also call 3-1-1 to assist you with citywide information and to report an issue.

Residential Electric Service

kWh Energy Usage

Usage for meter: 75238423
07/21/2021 to 08/19/2021

Start Read:	63,907
End Read:	65,347
Multiplier:	1
Usage:	1,440

Usage for meter: 75238423

	Days	Usage	Avg Use Per Day	Avg Cost Per Day
This Month	29	1,440	49.66	6.21
Last Month	30	1,576	52.53	6.61
Last Year	32	1,768	55.25	7

SharedSolar	200.00 X 0.1062	$21.62
Block 1	500.00 X 0.0734	$36.70
Block 2	500.00 X 0.1019	$50.95
Block 3	240.00 ~~410.00~~ X 0.1209	~~$53.20~~ $29.02
Customer Service Charge		$13.92
~~Renewable Energy~~		~~$3.00~~
Telecom Debt Charge	157.18	$5.35
Municipal Use Tax	~~163.12~~ X 0.0600	~~$9.79~~ $9.43
State Sales Tax	~~163.12~~ X 0.0440	~~$7.18~~ $6.92
Sub-total:		$173.53 ~~$180.09~~

Residential Water Service

TGAL Usage

Usage for meter: 53249599
07/21/2021 to 08/19/2021

Start Read:	1,454
End Read:	1,484
Multiplier:	1
Usage:	30

1 TGAL = 1000 Gallons

Usage for meter: 53249599

	Days	Usage	Avg Use Per Day	Avg Cost Per Day
This Month	29	30	1.03	2.48
Last Month	30	35	1.17	2.69
Last Year	32	26	0.81	2.02

Block 1	30.00 X 1.67	$50.10
Base Charge		$17.70
Municipal Use Tax	67.80 X 0.0600	$4.07
Sub-total:		$71.87

Please return this portion with your payment [1/1]

Provo City Utilities
351 West Center Street
Provo, UT 84601-4338

Service Address: 981 W 820 N
Account Number: 2010336
Payment Due By: 09/13/2021
Total Amount Due: $365.37
Help Contribution:
Amount Enclosed:

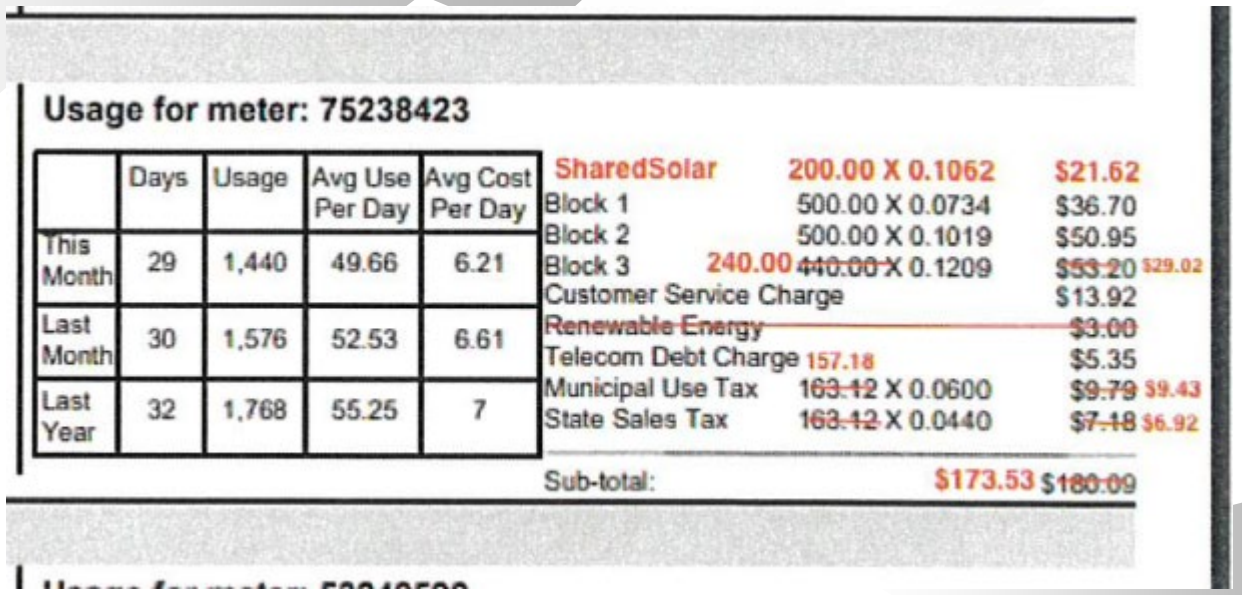
PRV0825A 1195 2 AB 0.428
7000001291 00.0010.0126 1195/1

VAN LINFORD
981 W 820 N
PROVO UT 84601-1410

REMIT TO :

PROVO CITY UTILITIES
351 W CENTER STREET
PROVO, UT 84601-4338

00020103360000365378



Usage for meter: 75238423

	Days	Usage	Avg Use Per Day	Avg Cost Per Day
This Month	29	1,440	49.66	6.21
Last Month	30	1,576	52.53	6.61
Last Year	32	1,768	55.25	7

SharedSolar	200.00 X 0.1062	$21.62
Block 1	500.00 X 0.0734	$36.70
Block 2	500.00 X 0.1019	$50.95
Block 3	240.00 ~~410.00~~ X 0.1209	~~$53.20~~ $29.02
Customer Service Charge		$13.92
~~Renewable Energy~~		~~$3.00~~
Telecom Debt Charge	157.18	$5.35
Municipal Use Tax	~~163.12~~ X 0.0600	~~$9.79~~ $9.43
State Sales Tax	~~163.12~~ X 0.0440	~~$7.18~~ $6.92
Sub-total:		$173.53 ~~$180.09~~

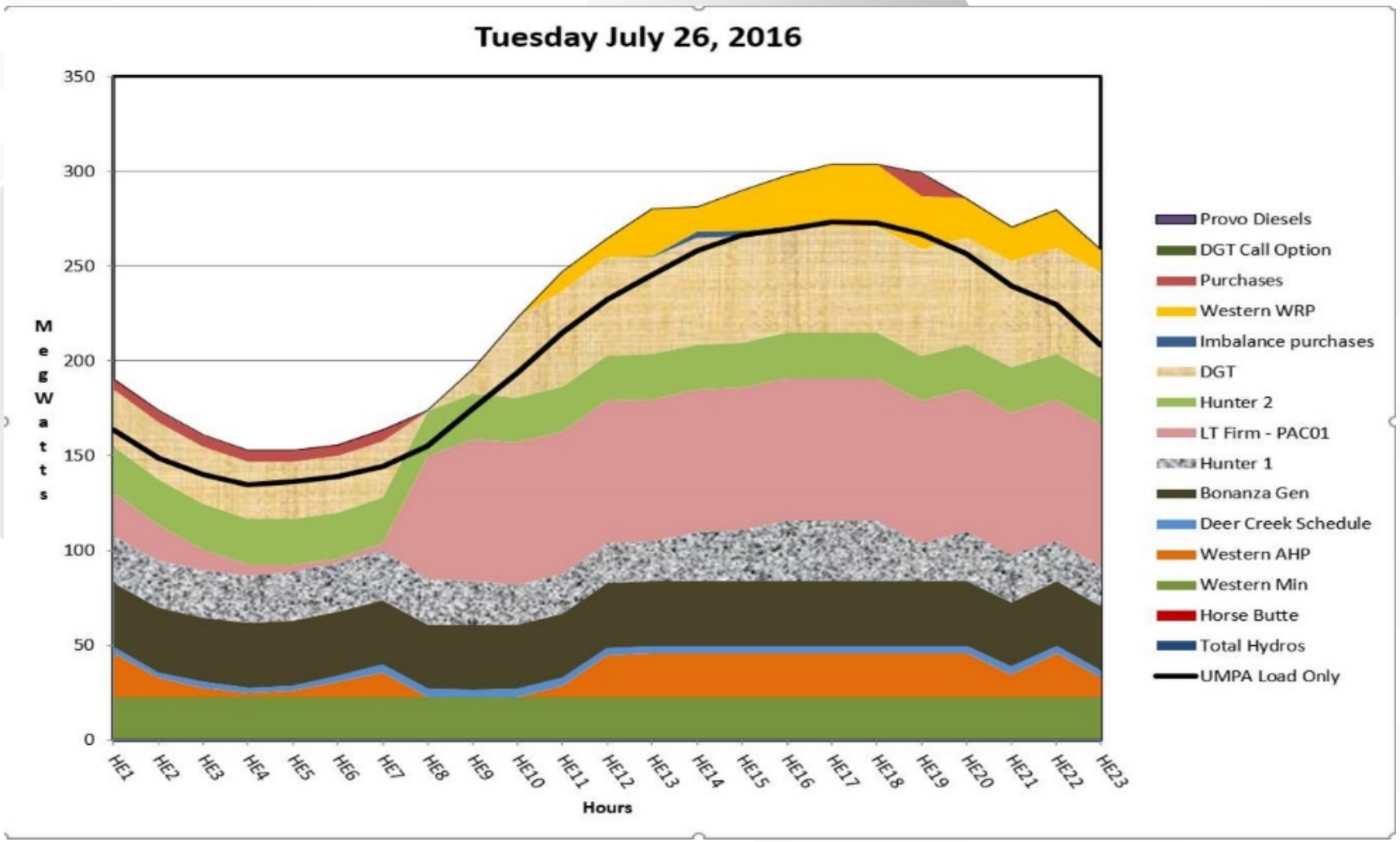
Residential Transportation

Transportation Fee Residential A	$3.50
Sub-total:	$3.50

SharedSolar

1 block = 200kWh 1kWh = 0.1062	Shared Solar Block	1 X 21.62	$21.62

TOU Rate


Tuesday July 26, 2016
MegWatts
350
300
250
200
150
100
50
0
HE1
HE2
HE3
HE4
HE5
HE6
HE7
HE8
HE9
HE10
HE11
HE12
HE13
HE14
HE15
HE16
HE17
HE18
HE19
HE20
HE21
HE22
HE23
Hours
Provo Diesels
DGT Call Option
Purchases
Western WRP
Imbalance purchases
DGT
Hunter 2
LT Firm - PAC01
Hunter 1
Bonanza Gen
Deer Creek Schedule
Western AHP
Western Min
Horse Butte
Total Hydros
UMPA Load Only

TOU Rate

Provo City
Proposed Residential TOU Rates

Residential TOU Rate

Customer Charge	$ 13.92
Energy Charge	
On Peak[1]	$ 0.1500
Off Peak[2]	$ 0.0723

(1) On peak period is 3 pm to 8 pm M-F

(2) Off peak period is 8 pm to 3 pm M-F and all day Sat and Sun

Rocky Mountain Power
Residential TOU Rates

Residential TOU Rate

Customer Charge	$ 8.00
Energy Charge	
On Peak[1]	$ 0.136362 (First 400 kWh)
	$ 0.163293 (All additional kWh)
Off Peak[2]	$ 0.074463

(1) On peak period is 1 pm to 8 pm M-F

(2) Off peak period is 8 pm to 1 pm M-F and all day Sat and Sun

TOU Rate

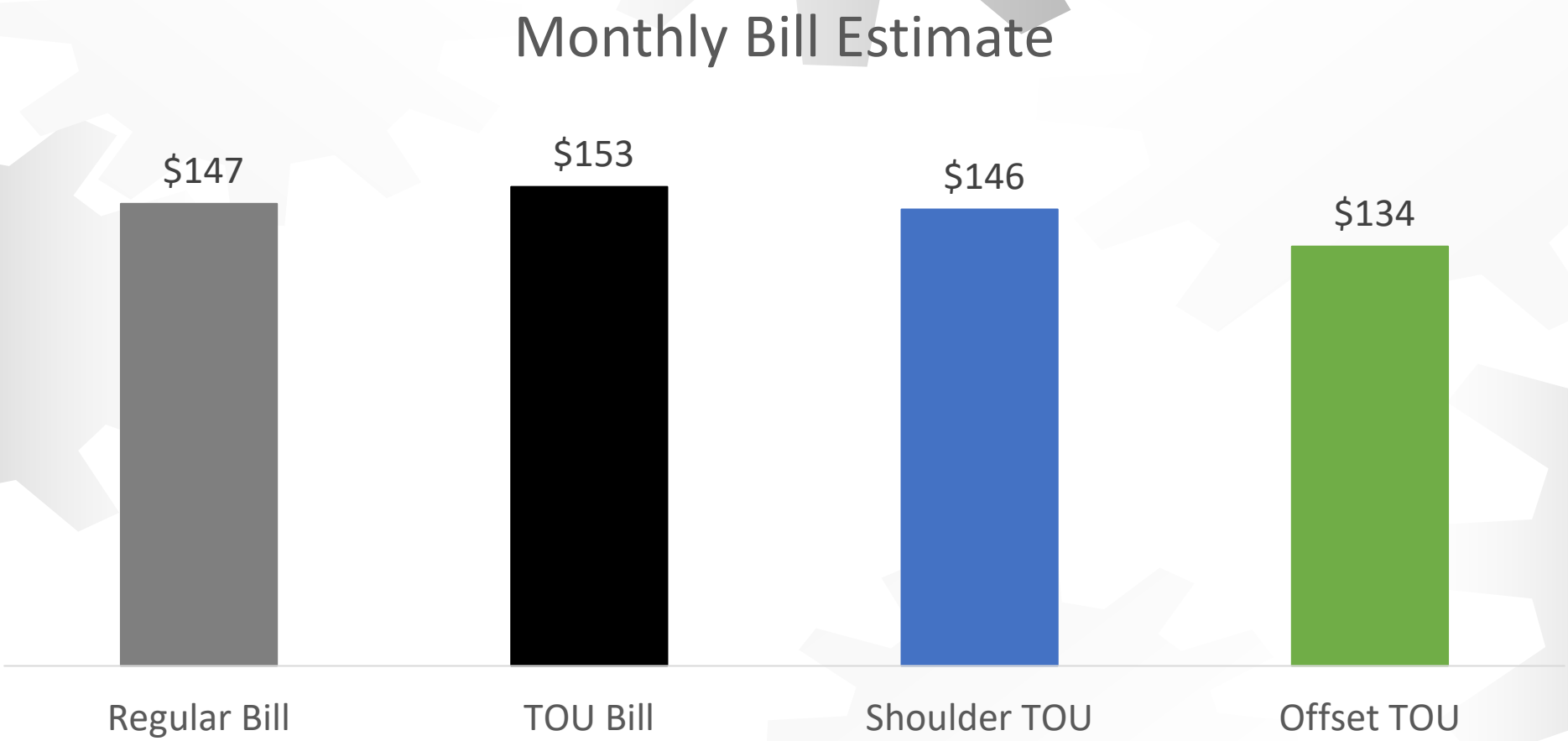
SPECIAL CONDITIONS

1. Customer on this tariff schedule shall have a term of not less than one year. Service will continue under this schedule until Customer notifies the Company to discontinue service.

2. Billing under this schedule shall begin for the Customer following installation of the time-of-use meter and the initial meter reading.

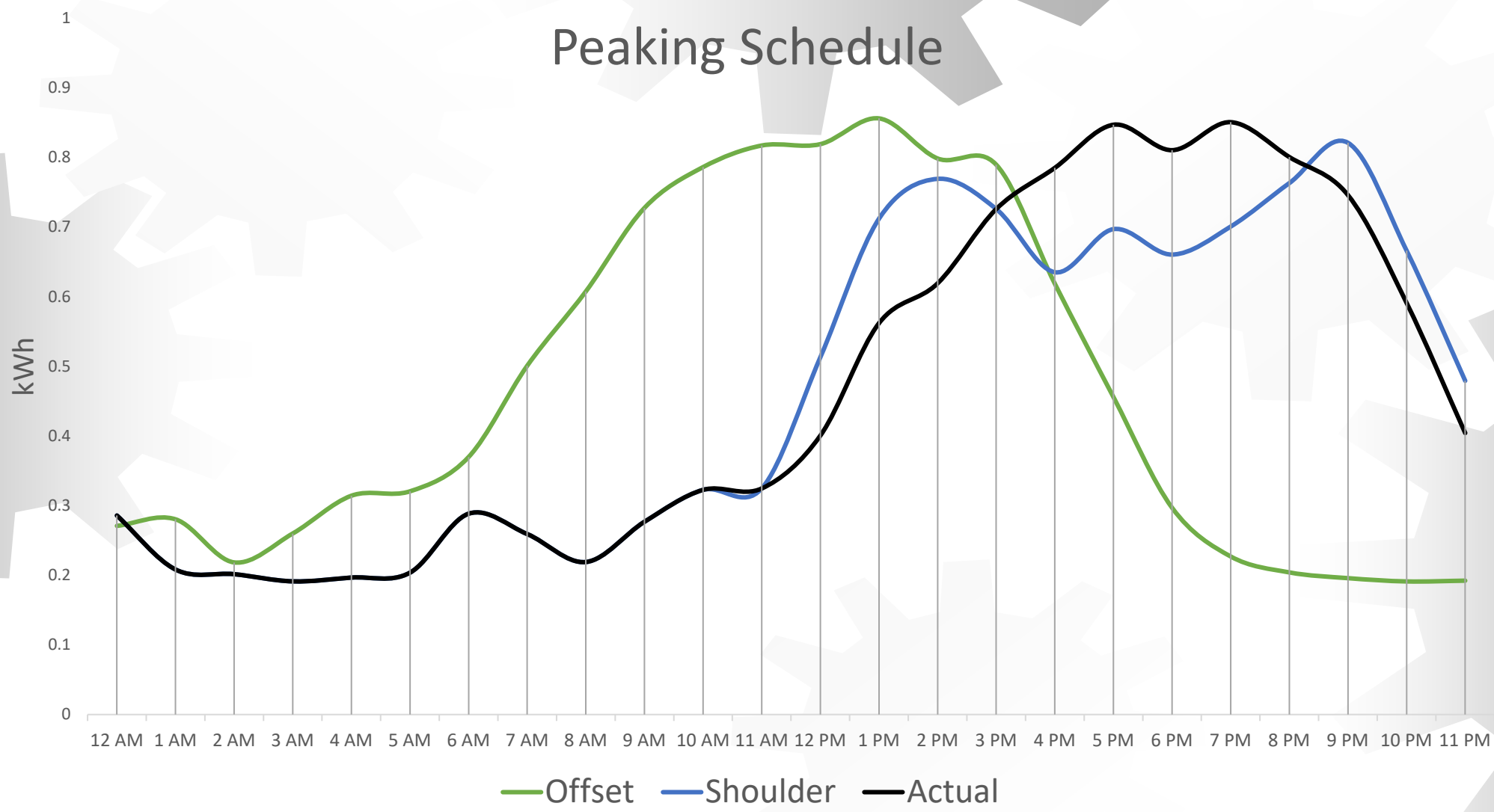
3. The Energy Department will not accept enrollment for accounts that have:
    a. Time-payment agreement in effect
    b. Received two or more final disconnect notices
    c. Been disconnected for non-payment within the last 12 months
    d. Enrolled in other specialized rates including net-metering and RenewChoice options
    e. Energy consumption under 500 kW/h for more than 6 months of the year.

TOU Rate



*Based on 1,378 kWh

TOU Rate


Peaking Schedule
kWh
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
12 AM
1 AM
2 AM
3 AM
4 AM
5 AM
6 AM
7 AM
8 AM
9 AM
10 AM
11 AM
12 PM
1 PM
2 PM
3 PM
4 PM
5 PM
6 PM
7 PM
8 PM
9 PM
10 PM
11 PM
Offset
Shoulder
Actual

EV TOU Rate

Residential EV All Home Rate[1]

Customer Charge	$ 13.92
Energy Charge	
On Peak[2]	$ 0.1700
Off Peak[3]	$ 0.0769
Super Off Peak[4]	$ 0.0450

(1) Applicable to all household energy use for homes with qualifying EV charging system
(2) On peak period is 3 pm to 8 pm M-F
(3) Off peak period is 8 am to 3 pm and 8 pm to midnight M-F and 8 am to midnight Sat and Sun
(4) Super Off Peak is midnight to 8 am all days

ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

P.S.C.U. No. 51

First Revision of Sheet No. 2E.2
Canceling Original Sheet No. 2E.2

ELECTRIC SERVICE SCHEDULE NO. 2E – Continued

MONTHLY BILL: (continued)

Energy Charge:

Rate Option 1:
21.0339¢ per kWh for all On-Peak kWh
6.4097¢ per kWh for all Off-Peak kWh

Rate Option 2:
32.4592¢ per kWh for all On-Peak kWh
3.2108¢ per kWh for all Off-Peak kWh

SURCHARGE ADJUSTMENT: All monthly bills shall be adjusted in accordance with Schedule 80.

TIME PERIODS:

On-Peak: October through April inclusive
8:00 a.m. to 10:00 a.m., and 3:00 p.m. to 8:00 p.m., Monday thru Friday, except holidays.
May through September inclusive
3:00 p.m. to 8:00 p.m., Monday thru Friday, except holidays.

Off-Peak: All other times.

EV TOU Rate

SPECIAL CONDITIONS

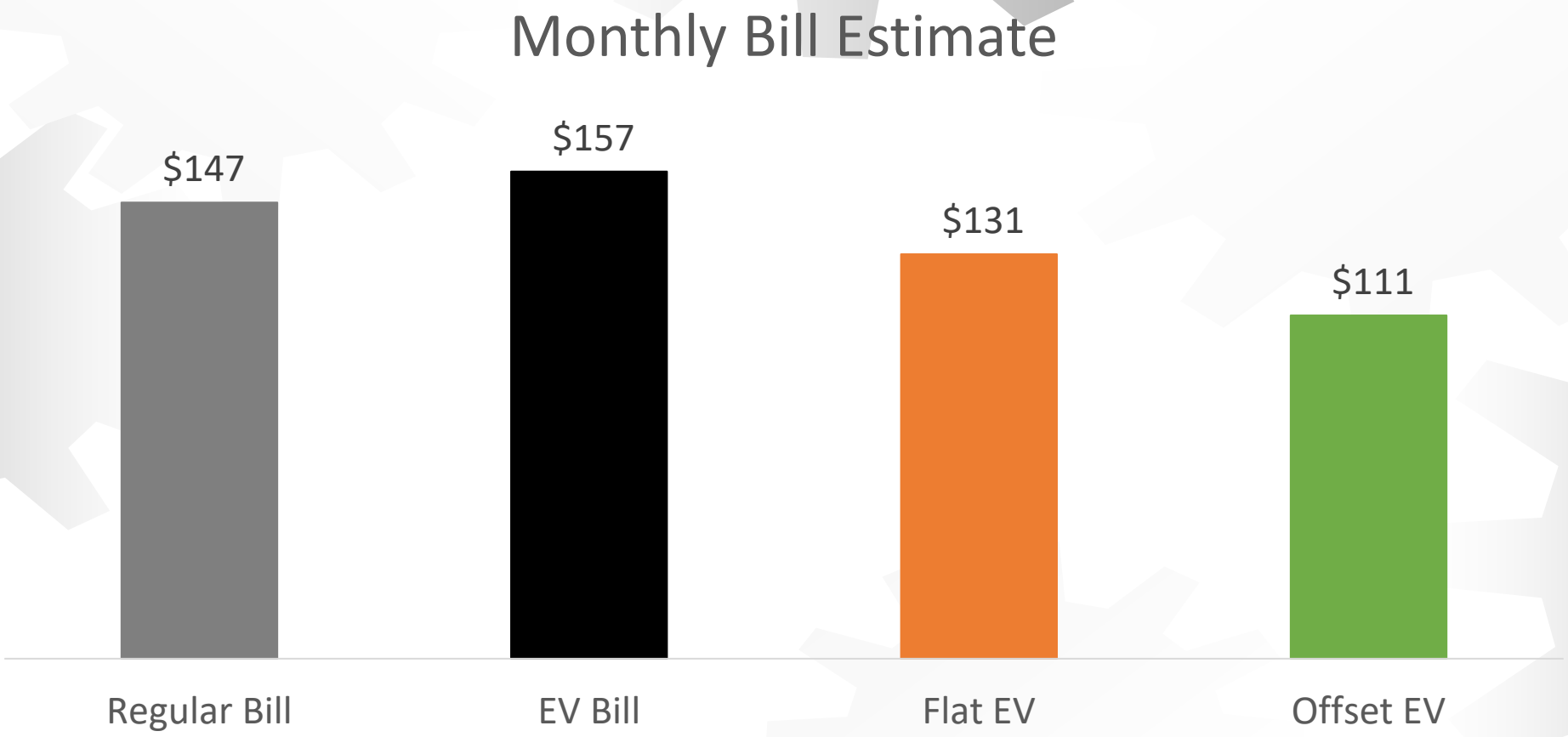
1. Customer on this tariff schedule shall have a term of not less than one year. Service will continue under this schedule until Customer notifies the Company to discontinue service.

2. Billing under this schedule shall begin for the Customer following installation of the time-of-use meter and the initial meter reading.

3. The Energy Department will not accept enrollment for accounts that have:
    a. Time-payment agreement in effect
    b. Received two or more final disconnect notices
    c. Been disconnected for non-payment within the last 12 months
    d. Enrolled in other specialized rates including net-metering and RenewChoice options
    e. Energy consumption under 500 kW/h for more than 6 months of the year.

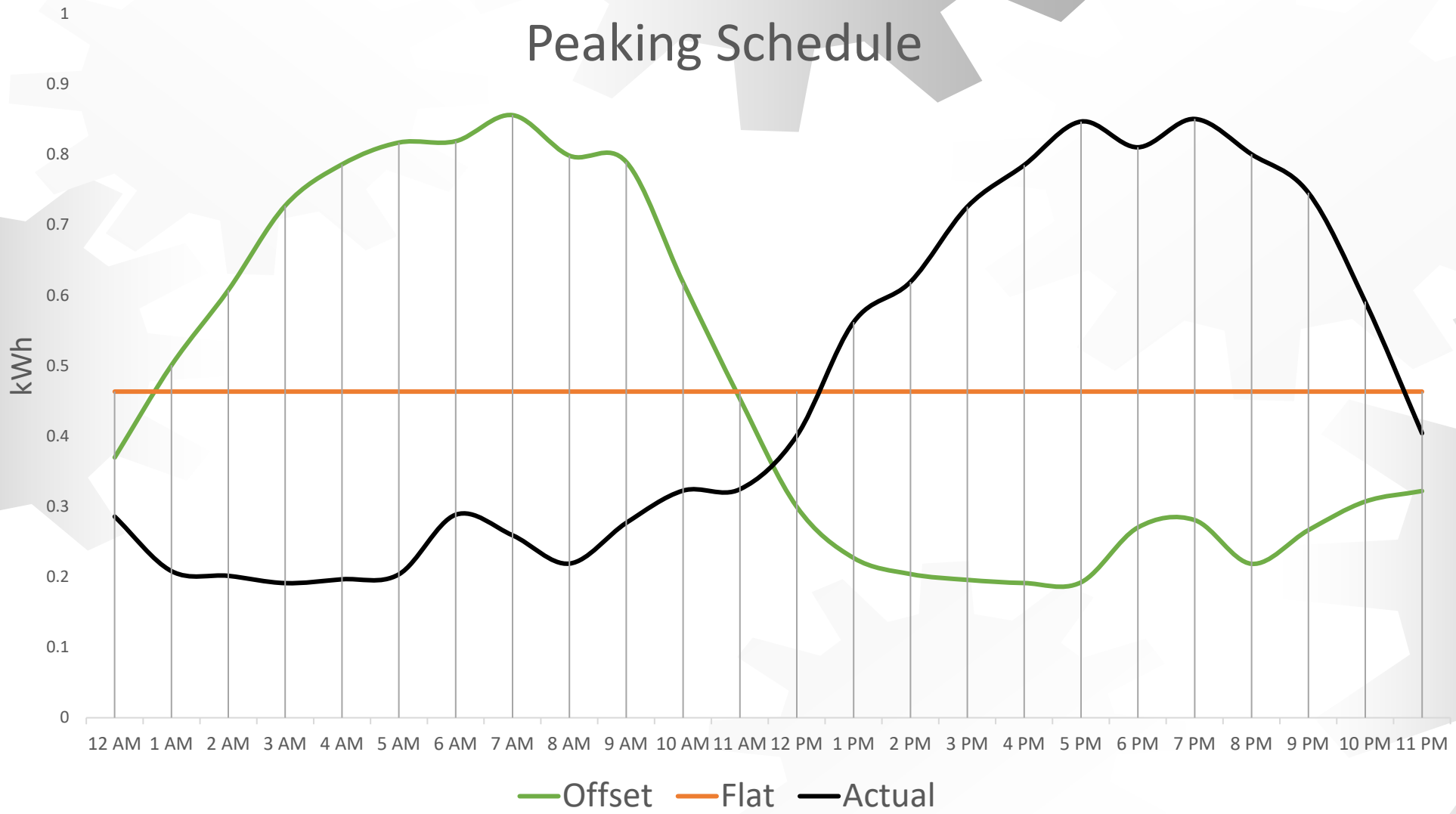
4. Shall have qualifying EV charging system.

EV TOU Rate



*Based on 1,378 kWh

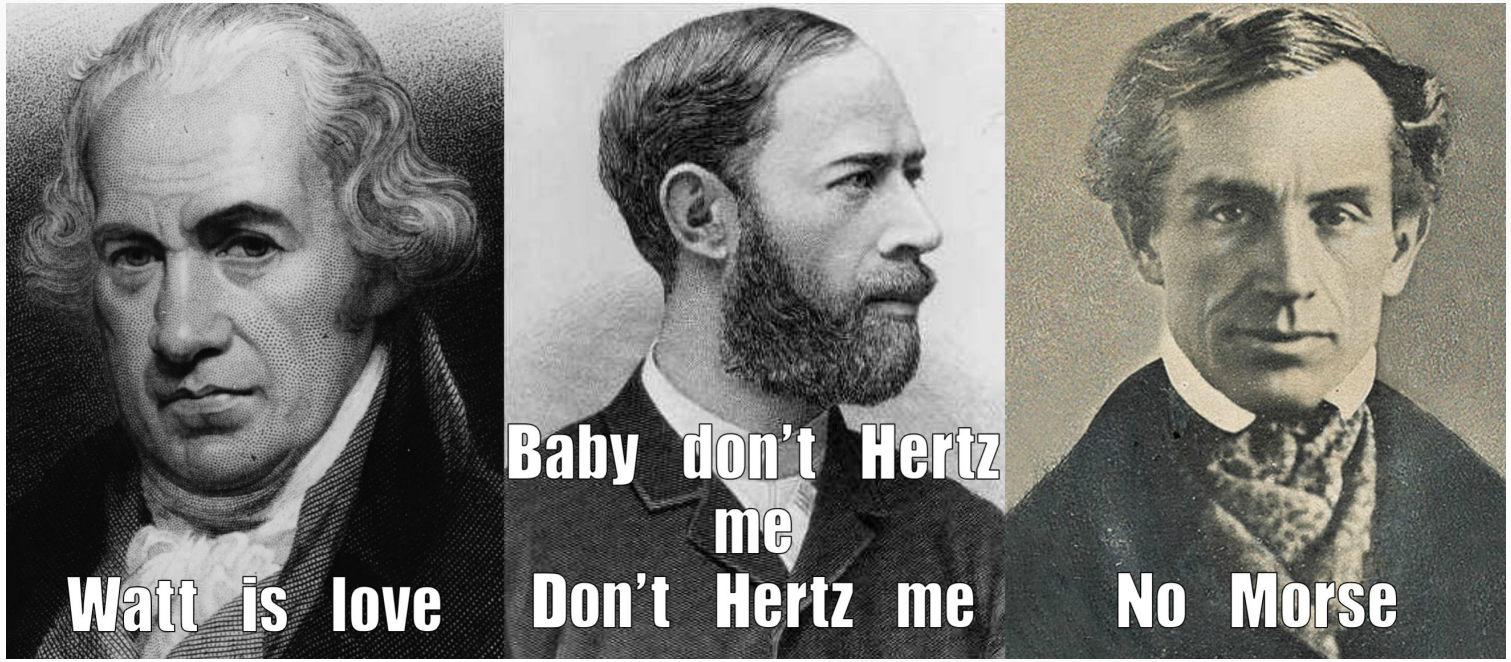
EV TOU Rate


Peaking Schedule
kWh
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
12 AM 1 AM 2 AM 3 AM 4 AM 5 AM 6 AM 7 AM 8 AM 9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM
Offset
Flat
Actual

Energy Board Recommended

- Energy Board unanimously recommended all three rates

QUESTIONS?



PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: JMAGNESS
Department: Council
Requested Meeting Date:

SUBJECT: An ordinance amending Provo City Code Chapter 6.06. (19-102)

RECOMMENDATION: Presentation and discussion.

BACKGROUND: As Electronic Digital Signs become more widely used by businesses to advertise their services, there exists a potential for the light illuminating from these signs to cause a public nuisance, especially when those businesses are close to residential neighborhoods. The Sign Committee has been working with local sign companies and national standards that have been adopted by other jurisdictions to create a nighttime brightness standard to minimize the impacts of the light emitted from Electronic Digital Signs in areas in and around residential neighborhoods.

FISCAL IMPACT: $5000.00 for the purchase of a NIT gun.

PRESENTER'S NAME: John Magness, Policy Analyst

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-102

Chapter 6.06
USE OF ELECTRONIC SIGNS

Sections:

6.06.010 **Scope.**

6.06.015 **Lighting Zones.**

6.06.020 **Hold Time and Transitions.**

6.06.030 **Brightness.**

6.06.010
Scope.

Any business operating an on-premises electronic display sign shall comply with the requirements of this Chapter in order to qualify for a business license.

6.06.015
Lighting Zones.

For purposes of regulating hold times and brightness of electronic display signs, three lighting zones within the city are designated:

LZ1: Low ambient light. This zone consists of all areas within the zones listed in Provo City Code Section 14.38.010(3) where on-premise electronic display signs are prohibited.

LZ2: Moderate ambient light. This zone is for primarily mixed-use areas and consists of all areas that are not designated as being in the LZ1 or LZ3 zones.

LZ3: Moderately high ambient light. This zone is for business district street sections and consists of those areas that are specifically listed in Provo City Code Section 14.38.025(1).

6.06.020
Hold Time and Transitions.

(1) The minimum hold time for an electronic display sign is the minimum amount of time that a message must be displayed before transitioning to a new message. ~~Except as otherwise provided in Subsection (2) of this Section, t~~The minimum hold time for all on-premises electronic display signs in the LZ2 lighting zone is one (1) hour.

(2) ~~Notwithstanding Subsection (1) of this Section, t~~The minimum hold time for an on-premises electronic display sign ~~described~~ in the LZ3 lighting zone~~this Subsection (2)~~ shall be:

(a) Eight (8) seconds for a sign adjacent to and facing Interstate 15;

(b) Fifteen (15) seconds for a sign located in an SC3 zone and associated with a commercial building housing twenty (20) or more different tenants; and

(c) One (1) minute for all other signs in the LZ3 zone that are not described in Subsection (2)(a) or (2)(b) of this Section ~~and are located in areas specified in Section 14.38.025, Provo City Code, as allowing short hold time electronic display signs~~.

(3) The images and messages displayed shall be static, and the transition from one static display to another shall be instantaneous with no special effects or the transition may provide a black screen for at least one (1) second.

(4) Electronic display signs shall not include animation, full motion video, flashing, scrolling, strobing, racing, blinking, changes in color, fade in or fade out in any manner imitating movement, or any other means not providing constant illumination.

(5) An electronic display sign that was in operation prior to May 28, 2013, is not subject to the requirements of this Section so long as the sign is not replaced, reconstructed, upgraded, moved, or otherwise substantially changed.

6.06.030
Brightness.

(1) ~~All electronic display signs shall come equipped with automatic dimming technology which automatically adjusts the sign's brightness in direct correlation with natural ambient light conditions at all times.~~ The following nighttime brightness standards shall apply beginning 30 minutes after sunset and ending 30 minutes before sunrise. No electronic display sign shall exceed a nighttime brightness level of 100 candelas per square meter (nits) in the LZ2 lightning zone or 150 candelas per square meter (nits) in the LZ3 lighting zone.

(2) Notwithstanding Subsection (1), signs adjacent to and facing Interstate 15 are exempt from the nighttime brightness standard. ~~No electronic display sign shall exceed a brightness level of more than three-tenths (3/10) foot candles above ambient light as measured using a foot candle (lux) meter perpendicular to the electronic display sign face measured at ground level and at the distances shown in the table below:~~

~~Size (square feet)~~	~~Distance from source~~
~~0 to 100~~	~~100 feet~~
~~101 to 350~~	~~150 feet~~
~~351 to 650~~	~~200 feet~~
~~Over 650~~	~~250 feet~~

(3) Prior to the issuance or renewal of a business license, the owner of an electronic display sign shall provide the City with a certification from the sign manufacturer stating that the sign is capable of complying with the above brightness provisions.

(4) An electronic display sign that was in operation prior to May 28, 2013, and that is not reasonably capable of complying with the brightness standards in this Section is not subject to the requirements of this Section so long as the sign is not replaced, reconstructed, upgraded, moved, or otherwise substantially changed.

Establishing a Nighttime Brightness Standard for Digital Signs

Amending Chapter 6.06
Adding Section 6.06.015

Establishing a Nighttime Brightness Standard for Digital Signs

Amending Chapter 6.06
Adding Section 6.06.015

Establishing a Nighttime Brightness Standard for Digital Signs

Section 60.06.015 Adds three zones. LZ 1, LZ 2, and LZ 3.

Establishing a Nighttime Brightness Standard for Digital Signs

LZ1: Low ambient light. This zone consists of all areas within the zones listed in Provo City Code Section 14.38.010(3) where on-premise electronic display signs are prohibited.

Establishing a Nighttime Brightness Standard for Digital Signs

LZ2: Moderate ambient light. This zone is for primarily mixed-use areas and consists of all areas that are not designated as being in the LZ1 or LZ3 zones.

Establishing a Nighttime Brightness Standard for Digital Signs

LZ3: Moderately high ambient light. This zone is for business district street sections and consists of those areas that are specifically listed in Provo City Code Section 14.38.025(1).

Establishing a Nighttime Brightness Standard for Digital Signs

The following nighttime brightness standards shall apply beginning 30 minutes after sunset and ending 30 minutes before sunrise. No electronic display sign shall exceed a nighttime brightness level of 100 candelas per square meter (nits) in the LZ2 lightning zone or 150 candelas per square meter (nits) in the LZ3 lighting zone.

Establishing a Nighttime Brightness Standard for Digital Signs

New Standard uses Luminance

Old Standard used Illuminance

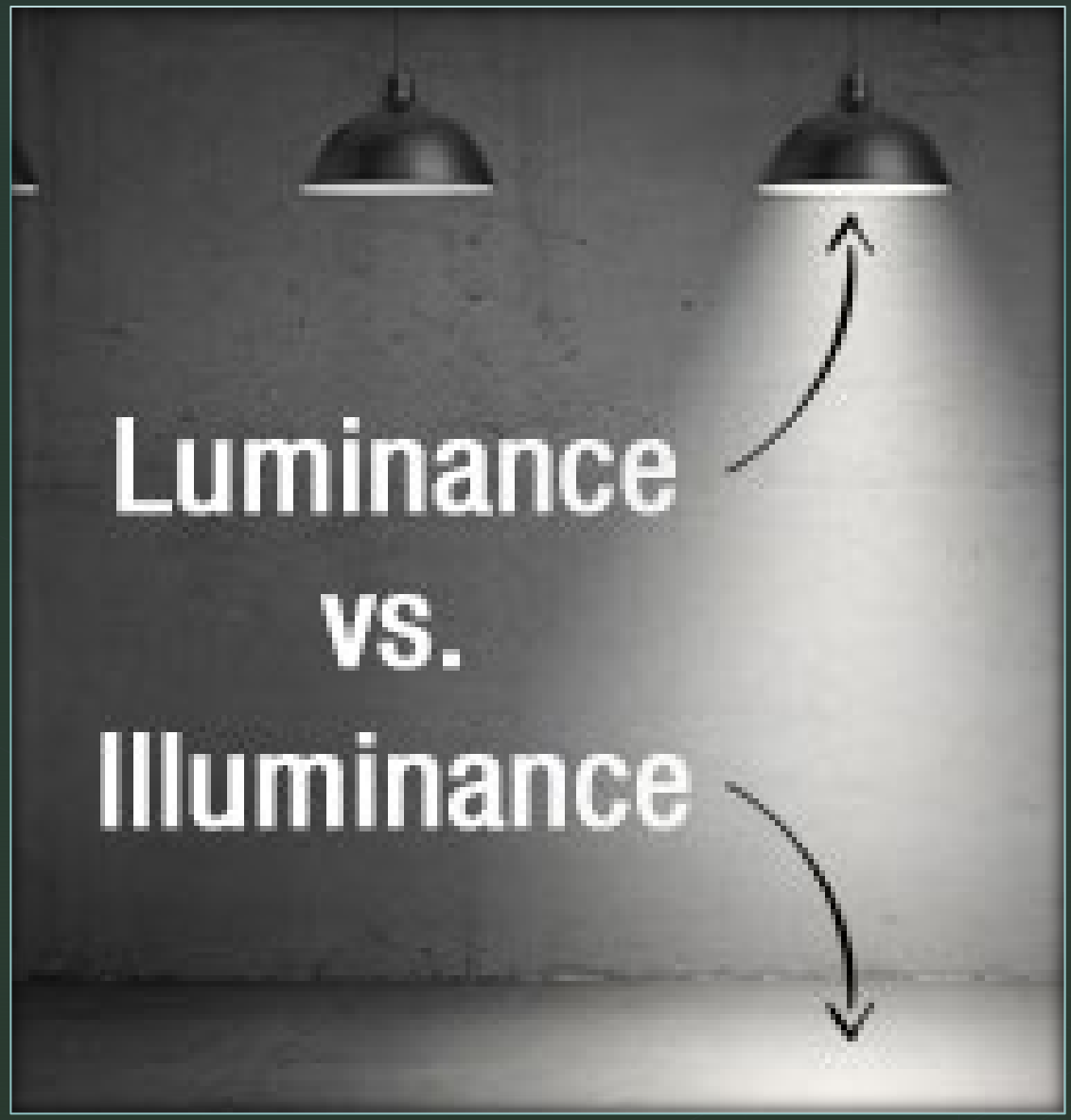
Establishing a Nighttime Brightness Standard for Digital Signs

- Luminance is the amount of light coming directly from a light source.

Establishing a Nighttime Brightness Standard for Digital Signs

- Illuminance is the amount of light falling on a surface.

Establishing a Nighttime Brightness Standard for Digital Signs



Establishing a Nighttime Brightness Standard for Digital Signs

Luminance is measured with a NIT Gun point and shoot.

Illuminance is measure with a light meter. Requires 2 measurements

Establishing a Nighttime Brightness Standard for Digital Signs

NIT Gun



Establishing a Nighttime Brightness Standard for Digital Signs

Illuminance Meter



ORDINANCE 2021-.

AN ORDINANCE AMENDING PROVO CITY CODE CHAPTER 6.06. (19-102)

WHEREAS, it is proposed that Provo City Code Chapter 6.06 be amended; and

WHEREAS, on November 30, 2021, 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, the Council finds (i) Provo City Code should be amended as described herein 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 Chapter 6.06 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

Chapter 6.06
USE OF ELECTRONIC SIGNS

Sections:

6.06.010 Scope.

6.06.015 Lighting Zones.

6.06.020 Hold Time and Transitions.

6.06.030 Brightness.

6.06.010
Scope.

Any business operating an on-premises electronic display sign shall comply with the requirements of this Chapter in order to qualify for a business license.

6.06.015
Lighting Zones.

For purposes of regulating hold times and brightness of electronic display signs, three lighting zones within the city are designated:

LZ1: Low ambient light. This zone consists of all areas within the zones listed in Provo City Code Section 14.38.010(3) where on-premise electronic display signs are prohibited.

LZ2: Moderate ambient light. This zone is for primarily mixed-use areas and consists of all areas that are not designated as being in the LZ1 or LZ3 zones.

LZ3: Moderately high ambient light. This zone is for business district street sections and consists of those areas that are specifically listed in Provo City Code Section 14.38.025(1).

6.06.020
Hold Time and Transitions.

(1) The minimum hold time for an electronic display sign is the minimum amount of time that a message must be displayed before transitioning to a new message. ~~Except as otherwise provided in Subsection (2) of this Section, t~~The minimum hold time for all on-premises electronic display signs in the LZ2 lighting zone is one (1) hour.

(2) ~~Notwithstanding Subsection (1) of this Section, t~~The minimum hold time for an on-premises electronic display sign ~~described~~ in the LZ3 lighting zone~~this Subsection (2)~~ shall be:

(a) Eight (8) seconds for a sign adjacent to and facing Interstate 15;

(b) Fifteen (15) seconds for a sign located in an SC3 zone and associated with a commercial building housing twenty (20) or more different tenants; and

(c) One (1) minute for all other signs in the LZ3 zone that are not described in Subsection (2)(a) or (2)(b) of this Section ~~and are located in areas specified in Section 14.38.025, Provo City Code, as allowing short hold time electronic display signs~~.

(3) The images and messages displayed shall be static, and the transition from one static display to another shall be instantaneous with no special effects or the transition may provide a black screen for at least one (1) second.

(4) Electronic display signs shall not include animation, full motion video, flashing, scrolling, strobing, racing, blinking, changes in color, fade in or fade out in any manner imitating movement, or any other means not providing constant illumination.

(5) An electronic display sign that was in operation prior to May 28, 2013, is not subject to the requirements of this Section so long as the sign is not replaced, reconstructed, upgraded, moved, or otherwise substantially changed.

6.06.030
Brightness.

(1) ~~All electronic display signs shall come equipped with automatic dimming technology which automatically adjusts the sign's brightness in direct correlation with natural ambient light conditions at all times.~~ The following nighttime brightness standards shall apply beginning 30 minutes after sunset and ending 30 minutes before sunrise. No electronic display sign shall exceed a nighttime brightness level of 100 candelas per square meter (nits) in the LZ2 lightning zone or 150 candelas per square meter (nits) in the LZ3 lighting zone.

(2) Notwithstanding Subsection (1), signs adjacent to and facing Interstate 15 are exempt from the nighttime brightness standard. ~~No electronic display sign shall exceed a brightness level of more than three-tenths (3/10) foot candles above ambient light as measured using a foot candle (lux) meter perpendicular to the electronic display sign face measured at ground level and at the distances shown in the table below:~~

~~Size (square feet)~~	~~Distance from source~~
~~0 to 100~~	~~100 feet~~
~~101 to 350~~	~~150 feet~~
~~351 to 650~~	~~200 feet~~
~~Over 650~~	~~250 feet~~

(3) Prior to the issuance or renewal of a business license, the owner of an electronic display sign shall provide the City with a certification from the sign manufacturer stating that the sign is capable of complying with the above brightness provisions.

(4) An electronic display sign that was in operation prior to May 28, 2013, and that is not reasonably capable of complying with the brightness standards in this Section is not subject to the requirements of this Section so long as the sign is not replaced, reconstructed, upgraded, moved, or otherwise substantially changed.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: NLA
Department: Development Services
Requested Meeting Date: 11-16-2021

SUBJECT: An ordinance amending Provo City Code to allow Accessory Dwelling Units (ADUs) in the Agricultural (A1), Residential Agricultural (RA), and Residential (R1) Zones and to refine the development standards for ADUs. Citywide Application. (PLOTA20210345)

RECOMMENDATION: To be heard at the November 16, 2021 Work & Council Meeting. Please see supporting documents.

BACKGROUND: During the 2021 Utah Legislative Session, the Legislature passed House Bill 82 (HB 82) which requires cities in Utah to allow Accessory Dwelling Units (ADUs) in more of their primarily residential-zoned areas. Most cities are required to allow ADUs in at least 75 percent (75%) of the area zoned primarily for residential uses; however, because Provo is home to a major university, it is only required to have a minimum of 33 percent (33%) of the areas primarily zoned for residential allow ADUs. Provo currently allows accessory apartments in approximately 20 percent (20%) of the areas zoned primarily for residential uses, therefore, at a minimum, must allow an additional 13 percent (13%) area where ADUs are permitted.

FISCAL IMPACT:

PRESENTER'S NAME: John Magness, Policy Analyst

REQUESTED DURATION OF PRESENTATION: 45 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: PLOTA20210345

ORDINANCE 2021-.

AN ORDINANCE AMENDING PROVO CITY CODE TO ALLOW ACCESSORY DWELLING UNITS (ADUS) IN THE AGRICULTURAL (A1), RESIDENTIAL AGRICULTURAL (RA), AND RESIDENTIAL (R1) ZONES AND TO REFINE THE DEVELOPMENT STANDARDS FOR ADUS. CITYWIDE APPLICATION. (PLOTA20210345)

WHEREAS, it is proposed that Provo City Code Sections 14.08.020, 14.09.020, 14.020, and Chapter 14.30 be amended; and

WHEREAS, on October 27, 2021, the Planning Commission held a duly noticed public hearing to consider the proposed amendment, and after such meeting, the Planning Commission recommended approval to the Municipal Council by a vote of 7:0; and

WHEREAS, on November 30, 2021, 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 should be amended as described herein 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 14.08.020 is hereby amended as set forth in Exhibit A.

PART II:

Provo City Code Section 14.09.020 is hereby amended as set forth in Exhibit B.

PART III:

Provo City Code Section 14.10.020 is hereby amended as set forth in Exhibit C.

PART IV:

Provo City Code Chapter 14.30 is hereby amended as set forth in Exhibit D.

PART V:

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 Section 10-3-711, presented to the Mayor in accordance with Utah Code Section 10-3b-204, and recorded in accordance with Utah Code Section 10-3-713.

END OF ORDINANCE.

Exhibit A

14.08.020
Permitted Uses.

(1) Those uses or categories of uses as listed herein, and no others, are permitted in the A1 zone.
(2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or groupings of such uses permitted in the zone are identified by a four (4) digit number in which the last one (1) or two (2) digits are zeros.
(3) All such classes listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the A-1 zone subject to the limitations set forth herein.
(4) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the A1 zone:

(a) The following uses shall be permitted in the A1 zone:

Use No.	Use Classification
1111	One-family dwelling - detached (see Section 14.34.310, Provo City Code)
1291	Residential facility for elderly persons (see Section 14.34.230, Provo City Code)
1292	Residential facility for persons with a disability (see Section 14.34.230, Provo City Code)
4603	Recreational vehicle storage only, subject to Section 14.34.350, Provo City Code
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4824	Gas pressure control stations
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity.
4835	Irrigation distribution channels
4836	Water pressure control stations and pumping plants
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4844	Sewage pumping stations
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
8100	Agriculture
8200	Agricultural-related activities
8300	Forestry activities and related services
8400	Fishing activities and related services

(b) The following use shall be permitted in the A1.10 zone, only:

Use No.	Use Classification
2830	Drugs (cannabis production establishments only)

(5) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the A1 zone, provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

(a) Accessory buildings such as garages, carports, bath houses, greenhouses, gardening sheds, recreation rooms, and similar structures which are customarily used in conjunction with and are incidental to a principal use or structure.

(b) Swimming pools and incidental bath houses subject to the standards of Section 14.34.210, Provo City Code.

(c) Storage of materials used for the construction of a building including a temporary contractor's office and/or tool shed, provided that such uses are on the building site or immediately adjacent thereto, and provided further, that such shall be for only the period of construction and thirty (30) days thereafter.

(d) Stands for the purpose of displaying and selling agricultural or farming products which are grown or produced on the premises on which said stand is located. Said stand shall not exceed a ground coverage of three-hundred (300) square feet, and will be limited to one (1) stand per parcel of property.

(e) Windmills, silos, tank houses, buildings or shelters for farm equipment and machinery, water wheels, water reservoirs, and storage tanks.

(f) Buildings or structures required for the housing, nurture, confinement, or storage of animals, crops, products, or other uses lawfully produced or permitted on the property.

(g) Up to three (3) caretaker dwellings for established long-term recreational vehicle storage facilities that are greater than ten (10) acres.

(h) Accessory Dwelling Units in conjunction with an owner-occupied one-family detached dwelling subject to the issuance of a building permit and in accordance with the requirements of Chapter 14.30.020, Provo City Code.

(6) *Conditional Uses.* The following uses and structures are permitted in the A1 zone only after a conditional use permit has been approved, and subject to the terms and conditions thereof:

Use No.	Use Classification
1516	Bed and breakfast inn
1902	Ranch or farm employee dwellings (one (1) per ten (10) acres of land area)
4700	Communications (subject to Section 14.34.420, Provo City Code)
4814	Electricity regulating substations
4818	Small generation
4829	Other gas utilities, NEC
4833	Water storage as part of a utility system (open reservoirs)
4834	Water storage as part of a utility system (covered including water storage standpipes)
4839	Other water utilities or irrigation, NEC
4871	Channel or right-of-way (predominantly open flume-like structure)
4872	Debris basin (a dam and basin for intercepting debris)
4874	Spreading grounds (area for percolating water into underground)
6722	Police protection and related activities, branch (office only)
6910	Religious activities
7400	Recreation activities

(Am 1986-10, Am 1987-19, Am 1987-53, Am 1989-56, Am 1991-72, Am 1992-58, Am 1993-09, Am 1995-02, Am 1995-51, Am 1997-49, Am 1998-06, Am 1998-07, Am 1998-50, Am 1999-29, Am 1999-50, Am 2006-21, Am 2009-08, Am 2009-39, Am 2010-34, Am 2018-39, Am 2019-49)

Exhibit B

14.09.020
Permitted Uses.

(1) Those uses or categories of uses as listed herein, and no others, are permitted in the RA zone.

(2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four-digit number in which the last one (1) or two (2) digits are zeros.

(3) All such classifications listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the RA zone subject to the limitations set forth herein.

(4) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the RA zone:

Use No.	Use Classification
1111	One-family dwelling - detached (see Section 14.34.310, Provo City Code)
1291	Residential facility for elderly persons (see Section 14.34.230, Provo City Code)
1292	Residential facility for persons with a disability (see Section 14.34.230, Provo City Code).
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4824	Gas pressure control stations
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4835	Irrigation distribution channels
4836	Water pressure control stations and pumping plants
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively of right-of-way activity)
4844	Sewage pumping stations
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
8110	Field and seed crops
8120	Truck crops
8130	Orchards and vineyards
8141	Beef cattle and cows (noncommercial only) as limited herein
8142	Horses (noncommercial only) as limited herein
8145	Paddock, with animal limitations set forth herein
8150	Animal specialties (noncommercial only) as limited herein
8160	Pasture and rangeland
8224	Animal kennels, boarding, breeding, training, and grooming (excluding large animals)

(5) Limitations on the keeping and maintenance of animals and fowl permitted in the RA zone:

(a) Horses: There shall be no more than four (4) horses per acre of land used exclusively for their care and keeping.

(b) Bovine Animals, sheep, or goats: There shall be no more than two (2) such animals per acre of land used exclusively for the care and keeping thereof.

(c) Poultry, rabbits, chinchillas, hamsters, and other small animals: There shall be no more than twenty-five (25) such animals on the premises. Nothing herein shall be construed as authorizing the keeping of animals capable of inflicting harm or endangering the health and safety of any person or property.

(d) Animal kennels, boarding, breeding, training, and grooming: There shall be no more than ten (10) small animals maintained on the premises.

(6) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the RA zone, provided they are incidental to, and do not substantially alter, the character of the principal permitted use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

(a) Accessory buildings such as garages, carports, bath houses, greenhouses, gardening sheds, recreation rooms, and similar structures which are customarily used in conjunction with, and are incidental to, a principal use or structure.

(b) Swimming pools and incidental bath houses subject to the standards of Section 14.34.210, Provo City Code.

(c) Storage of materials used for the construction of a building, including a temporary contractor's office and/or tool shed, provided that such uses are on the building site or immediately adjacent thereto, and provided further that such shall be for only the period of construction and thirty (30) days thereafter.

(d) Buildings or structures required for the housing, nurture, confinement, or storage of animals permitted in this zone, or equipment required for the care and keeping thereof.

(e) Home occupations, subject to the conditions of Chapter 14.41, Provo City Code.

(f) Household pets.

(g) Accessory Dwelling Units in conjunction with an owner-occupied one-family detached dwelling subject to the issuance of a building permit and in accordance with the requirements of Chapter 14.30.020, Provo City Code.

(7) *Conditional Uses.* The following uses and structures are permitted in the RA zone only after a Conditional Use Permit has been approved, and subject to the terms and conditions thereof:

Use No.	Use Classification
1516	Bed and breakfast inn
4700	Communications
4814	Electricity regulating substations
4818	Small generation
4829	Other gas utilities, NEC
4834	Water storage as part of a utility system (covered including water storage standpipes)
4872	Debris basin (a dam and basin for intercepting debris)
4874	Spreading grounds (area for percolating water into underground)
6241	Mortuaries
6722	Police protection and related activities, branch (office only)
6910	Religious activities
8221	Veterinarian services
8222	Animal hospital services

(Am 1986-10, Am 1987-19, Am 1987-45, Am 1987-53, Am 1988-52, Am 1989-56, Am 1990-01, Am 1992-56, Am 1992-58, Am 1993-09, Am 1995-02, Am 1995-91, Am 1997-49, Am 1998-06, Am 1998-07, Am 1998-50, Am 1999-50, Am 2006-21, Am 2009-08)

Exhibit C

14.10.020
Permitted Uses.

(1) Those uses or categories of uses as listed herein, and no others, are permitted in the R1 zone.

(2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or groupings of such uses permitted in

the zone are identified by a four (4) digit number in which the last one (1) or two (2) digits are zeroes.

(3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the R1 zone, subject to the limitations set forth herein.

(4) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the R1 zone:

Use No.	Use Classification
1111	One-family dwelling - detached (see Section 14.34.310, Provo City Code)
1112	One-family dwelling - attached (in approved planned unit developments only)
1292	Residential facility for persons with a disability (see Section 14.34.230, Provo City Code).
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4824	Gas pressure control stations
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4835	Irrigation distribution channels
4836	Water pressure control stations and pumping plants
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively of right-of-way activity)
4844	Sewage pumping stations
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)

(5) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the R1 zone provided they are incidental to, and do not substantially alter the character of, the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

(a) Accessory buildings such as garages, carports, bath houses, greenhouses, gardening sheds, recreation rooms, and similar structures which are customarily used in conjunction with, and incidental to, a principal use or structure;

(b) Swimming pools and incidental bath houses subject to the standards of Section 14.34.210, Provo City Code;

(c) Vegetable and flower gardens and noncommercial orchards;

(d) Home occupations subject to the regulations of Chapter 14.41, Provo City Code;

(e) Storage of materials used for construction of a building, including the contractor's temporary office, provided that such use is on the building site or immediately adjacent thereto, and provided, further, that such use shall be permitted only during the construction period and thirty (30) days thereafter; and

(f) Household pets, provided no more than two (2) dogs and two (2) cats six (6) months of age or older shall be kept at any residence or commercial establishment at any time. Nothing herein shall be construed as authorizing the keeping of any animal capable of inflicting harm or discomfort or endangering the health and safety of any person or property.

(g) Accessory Dwelling Units conjunction with an owner-occupied one-family detached dwelling subject to the issuance of a building permit and in accordance with the requirements of Chapter 14.30.020, Provo City Code.

(6) *Conditional Uses.* The following uses and structures are permitted in the R1 zone only after a Conditional Use Permit has been approved, and subject to the terms and conditions thereof:

Use No.	Use Classification
1291	Residential facility for elderly persons (see Section 14.34.230, Provo City Code)
4700	Communications
4814	Electricity regulating substations
4818	Small generation
4829	Other gas utilities, NEC
4834	Water storage as part of a utility system (covered including water storage standpipes)
4872	Debris basin (a dam and basin for intercepting debris)
4874	Spreading grounds (area for percolating water into underground)
6500	Professional services (except 6513 through 6518; and only in historic buildings as defined in this Title)
6722	Police protection and related activities, branch (office only)
6910	Religious activities

(Am 1986-10, Am 1987-19, Am 1988-49, Am 1989-56, Am 1990-01, Am 1991-01, Am 1991-14, Am 1991-56, Am 1992-58, Am 1992-65, Am 1995-91, Am 1997-49, Am 1998-06, Am 1998-07, Am 1998-10, Am 1998-50, Am 1999-50, Am 2003-24, Am 2005-18, Am 2006-21, Am 2009-08, Am 2018-25)

Exhibit D

Chapter 14.30

~~SUPPLEMENTARY RESIDENTIAL AND~~ ACCESSORY ~~APARTMENT OVERLAY ZONES~~ DWELLING UNITS.

Sections:

14.30.010 Purpose and Objectives.

14.30.020 ~~Use in Combination.~~ Accessory Dwelling Unit (ADU) Development Standards

~~**14.30.030 Permitted Uses.**~~

~~**14.30.035 Accessory Dwelling Unit Development Standards**~~

~~**14.30.040 Development Standards.**~~

~~**14.30.050 Area of Zone.**~~

~~***14.30.060 Petition for Zone Adoption.***~~

~~***14.30.070 Parking Requirements.***~~

~~***14.30.080 Nonconforming Uses.***~~

~~***14.30.090 Termination of Nonconforming Uses - Recovery of Investment.***~~

14.30.010
Purpose and Objectives.

(1) The purpose of the ~~Supplementary Residential (S) overlay zone~~ Accessory Dwelling Unit (ADU) Development Standards is to ~~recognize the unique character of Provo City as a "university community" and to accommodate supplementary living accommodations in some appropriate one-family residential areas of the community. These provisions are intended to meet community demands for residential accommodations for semi-transient residents in areas of the community adjacent to major educational and institutional uses. This overlay zone is designed to provide an alternative living environment for said semi-transient residents to that normally found within the higher density multiple residential zones. The (S) overlay zone will therefore protect and enhance the desirable aesthetic characteristics of the underlying one-family residential zone. An R1 zone with a Supplementary Residential (S) overlay as described in this Chapter is intended to continue the very low density of an R1 zone. The sole function of the overlay is to permit alternate methods of housing the occupancy otherwise permitted in an R1 zone.~~

~~(2) The Accessory Apartment (A) overlay zone is established to provide areas for the~~ encourage ~~ment and~~ promotion of an environment for family life by providing for the establishment of ~~an accessory apartment~~ ADUs in conjunction with one-family detached dwellings on individual lots. ~~The Accessory Apartment overlay zone is~~ These development standards are hereby established to promote the use of ADUs; to provide flexibility for the changes in household size associated with life cycle; to offer financial security for home ~~buyers~~ owners; and to offer security against problems associated with frailty in old age.

(Am 2013-49, Am 2019-45)

14.30.020
~~Use in Combination.~~ Accessory Dwelling Unit (ADU) Development Standards

~~(1) The overlay zones described in this Chapter may be used only in combination with other zones as follows:~~

~~(a) The Supplementary Residential (S) overlay zone may be used only in combination with the One-Family Residential (R1) zone;.~~

~~(b) The Accessory Apartment (A) overlay zone may be used only in combination with the Agricultural (A1), Residential Agricultural (RA), or One-Family Residential (R1) zones.~~

~~(2) The provisions of the overlay zones shall be supplementary to the provisions of the zone with which it is combined. If conflict arises between the provisions of the overlay zones and the provisions of the R1 zone with which it is combined, the provisions of the overlay zones shall be deemed controlling. The overlay zones shall not be applied to any land area as an independent zone.~~

ADUs shall be subject to the following development standards:

(1) *Number.* No more than one (1) ADU shall be permitted in conjunction with each one-family detached dwelling.

(2) *Location.* ADUs may be located only:

(a) Over an attached garage, provided the ADU has access to required parking and does not otherwise disrupt required covered parking;

(b) Inside a one-family detached dwelling;

(c) In an addition to a one-family detached dwelling that has an internal connection between the ADU and the principal part of the dwelling unit; provided that the addition will not alter the one-family character of the building; or

(d) As a detached accessory structure or within a detached accessory structure located in the rear and or side yard in accordance with the following requirements:

(i) The accessory structure in which the ADU is located shall have a building footprint and height less than the main dwelling, but in no case shall the accessory structure be less than two hundred (200) square feet in area;

(ii) A detached ADU or a detached accessory structure containing an ADU shall be set back from any property line no less than ten (10) feet or the distance of the existing setback of the one-family dwelling from that same property line, whichever is less;

(iii) The accessory structure shall be architecturally compatible with the main dwelling;

(iv) The accessory structure shall be permanently affixed to a site-built foundation and shall be designed in accordance with Provo City adopted building codes;

(v) The accessory structure must be approved for, and permanently connected to, all required utilities; and

(vi) Shipping containers shall not be permitted for use as an ADU unless they can meet all building codes and are clad with materials similar to and architecturally compatible with those of the main dwelling.

(3) *Appearance.* The ADU shall not alter the appearance of the structure as a one-family detached dwelling and shall not resemble in any degree a side-by-side, side-to-back, back-to-back, or other type of two-family dwelling. There shall be no external evidence from a street view of occupancy by more than one (1) family, such as two (2) front doors on the main dwelling. The yard areas of the property shall be maintained free of weeds, junk, solid waste, or other materials constituting a violation of the Provo City Code. An ADU shall not be authorized on a property that has outstanding ordinance violations.

(4) *Occupancy.* A one-family dwelling with an ADU, which is authorized by and conforms to the requirements set forth in this Section, shall, for purposes of this Subsection, consist of two (2) component parts: the one-family dwelling and the ADU. Those two parts shall be occupied as follows:

(a) Except as otherwise provided in Subsection (4)(d) of this Section, either the one-family dwelling or the ADU shall be the owner's primary residence as defined in Chapter 14.06, Provo City Code. If this requirement is not met, no ADU shall be permitted.

(b) The occupancy of the one-family dwelling shall be limited to one (1) "family" as that term is defined in Chapter 14.06, Provo City Code, except that if the ADU is also occupied, the occupancy of the one-family dwelling may not include the two (2) additional related or unrelated individuals described in Subsection (b)(i)(B) of the "Family" definition in Section 14.06.020, Provo City Code.

(c) Except as permitted by Subsection (4) of this Section, the ADU shall not be occupied by more than three (3) related or unrelated adults, with or without minor children.

(d) Owner occupancy shall not be required when the owner has submitted a temporary absence application prior to beginning the temporary absence and meets the following criteria:

(i) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, military service, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or

(ii) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.

(iii) Owner occupancy shall have the meaning set forth in Section 14.06.020, Provo City Code.

(iv) The owner has resided in the residence for at least one (1) year prior to beginning the temporary absence.

(5) *Parking.* A one-family dwelling with an ADU shall have at least four (4) off-street parking spaces. Two (2) tandem parking spaces (front to rear) shall be permitted when the front and back spaces are both designated to serve either the ADU or the principal part of the dwelling unit. Parking spaces for a one-family dwelling with an associated ADU may be located on a driveway in a required front yard, provided the driveway leads to the minimum number of required covered off-street parking spaces. In no case shall the number of off-street parking spaces be less than the number of vehicles being maintained on the premises. Parking shall comply with all other regulations of Chapter 14.37, Provo City Code.

(6) *Utility Meters.* A one-family dwelling with an ADU shall have one (1) but no more than two (2) meters for each water, gas, and electricity utility service, and each meter shall be in the property owner's name.

(7) *Addresses.* The ADU shall have its own address assigned by Provo City.

(8) *Outside Entrances.* Outside entrances to the ADU shall be on the side or rear of the building. Only one (1) front entrance shall be visible from the front yard.

(9) *Building Codes.* All existing construction and remodeling shall comply with building codes in effect at the time of the original construction or remodeling. Newly constructed ADUs shall meet current building codes.

(10) *Rental Dwelling License.* In accordance with Chapter 6.26, Provo City Code, any person operating an ADU under this Chapter shall obtain a rental dwelling license (RDL). Such license shall be in addition to any building permits that may be necessary. Before a rental dwelling license for an ADU is issued, the applicant shall:

(a) Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters.

(b) Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.

(c) Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(d) Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an ADU. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.

(e) Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an ADU shall automatically expire one (1) year after the date of the approval, or

upon transfer of the property to another owner, whichever occurs first; provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.

(f) The owner shall cooperate with the Department of Community and Neighborhood Services or their designee in recording a deed restriction with the County Recorder evidencing the restrictions under which the ADU is constructed and occupied. This deed restriction shall run with the land or otherwise contains an ADU as provided in this Chapter.

(g) The owner shall renew the Rental Dwelling License annually and confirm that the dwelling is the owner's primary residence by providing at least two of the following forms of verification: a current driver license, current vehicle registration, voter registration card, last filed state tax return, and/or last filed federal tax return.

(Am 2013-49, Am 2019-45)

~~14.30.030~~

~~Permitted Uses.~~

~~(1) *Permitted Principal Uses.* Principal uses permitted in the overlay zones described in this Chapter shall be limited to the following:~~

~~(a) Those uses listed as permitted principal uses in the underlying zone with which the overlay zone has been combined in accordance with Section 14.30.020, Provo City Code; and~~

~~(b) Accessory apartments which meet the development standards of Subsection (2) of this Section, with a valid rental dwelling license.~~

~~(2) *Accessory Apartment Development Standards.* Accessory apartments shall be subject to the following development standards:~~

~~(a) *Number.* No more than one (1) accessory apartment shall be permitted in conjunction with each one-family dwelling.~~

~~(b) *Location.* Accessory apartments may be located only:~~

(i) Over an attached garage, provided the accessory living space has an internal connection to the garage and does not otherwise disrupt required covered parking;

(ii) Inside a one-family detached dwelling by means of an internal conversion that maintains an internal connection between living areas;

(iii) In an addition to a one-family detached dwelling that has an internal connection between the accessory apartment and the principal part of the dwelling unit; provided, that the addition will not alter the one-family character of the building; or

(iv) As a detached accessory structure or within a detached accessory structure located in the rear yard in accordance with the following requirements:

(A) A detached accessory living space shall be permitted only on lots that contain a one-family detached dwelling with a minimum lot size of six thousand (6,000) square feet;

(B) The accessory structure in which the accessory apartment is located shall have a building footprint and height less than the main dwelling, but in no case shall the accessory structure be taller than twenty (20) feet nor less than two hundred (200) square feet in area;

(C) A detached accessory apartment or a detached accessory structure containing an accessory apartment shall be set back from any property line no less than ten (10) feet or the distance of the existing setback of the one-family dwelling from that same property line, whichever is less;

(D) The accessory structure shall be architecturally compatible with the main dwelling;

(E) The accessory structure shall be permanently affixed to a site-built foundation and shall be designed in accordance with Provo City adopted building codes;

(F) The accessory structure must be approved for, and permanently connected to, all required utilities; and

(G) Shipping containers shall not be permitted for use as an accessory apartment unless they can meet all building codes, and are clad with materials similar to and architecturally compatible with those of the main dwelling.

(c) *Appearance.* The accessory apartment shall not alter the appearance of the structure as a one-family dwelling, and shall not cause the dwelling unit within which the accessory apartment is located to resemble in any degree a side-by-side, side-to-back, back-to-back, or other type of two-family dwelling. There shall be no external evidence from a street view of occupancy by more than one (1) family, such as two (2) front doors on the main dwelling. The yard areas of

the property shall be maintained free of weeds, junk, solid waste or other materials constituting a violation of the Provo City Code. An accessory apartment shall not be authorized on a property that has outstanding ordinance violations.

(d) *Occupancy.* A one-family dwelling with an accessory apartment, which is authorized by and conforms to the requirements set forth in this Section, shall, for purposes of this Subsection, consist of two (2) component parts: the one-family dwelling and the accessory apartment. Those two parts shall be occupied as follows:

(i) Except as otherwise provided in Subsection (2)(d)(iv) of this Section, either the one-family dwelling or the accessory apartment shall be the owner's primary residence as defined in Chapter 14.06, Provo City Code. If this requirement is not met, no accessory apartment shall be permitted.

(ii) The occupancy of the one-family dwelling shall be limited to one (1) "family" as that term is defined in Chapter 14.06, Provo City Code, except that if the accessory apartment is also occupied, the occupancy of the one-family dwelling may not include the two (2) additional related or unrelated individuals described in Subsection (b)(i)(B) of the "Family" definition in Section 14.06.020, Provo City Code.

(iii) Except as permitted by Subsection (4) of this Section, the accessory apartment shall not be occupied by more than two (2) related or unrelated adults, with or without minor children.

(iv) Owner occupancy shall not be required when the owner has submitted a temporary absence application prior to beginning the temporary absence and meets the following criteria:

(A) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, military service, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or

(B) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.

(C) Owner occupancy shall have the meaning set forth in Section 14.06.020, Provo City Code.

(D) The owner has resided in the residence for at least one (1) year prior to beginning the temporary absence.

(e) *Parking.* A one-family dwelling with an accessory apartment shall have at least four (4) off-street parking spaces. Two (2) tandem parking spaces (front to rear) shall be permitted when

the front and back spaces are both designated to serve either the accessory apartment or the principal part of the dwelling unit. In no case shall the number of off-street parking spaces be less than the number of vehicles being maintained on the premises. Parking in the front setback is prohibited unless the driveway leads to required covered parking. Parking shall comply with all other regulations of Chapter 14.37, Provo City Code.

(f) *Utility Meters.* A one-family dwelling with an accessory apartment shall have one (1) but no more than two (2) meters for each water, gas, and electricity utility service, and each meter shall be in the property owner's name.

(g) *Addresses.* The accessory apartment shall have its own address.

(h) *Outside Entrances.* Outside entrances to the accessory apartment shall be on the side or rear of the building. Only one (1) front entrance shall be visible from the front yard.

(i) *Building Codes.* All existing construction and remodeling shall comply with building codes in effect at the time of the original construction or remodeling. Newly constructed accessory apartments shall meet current building codes.

(j) *Kitchens.* A one-family dwelling with an accessory apartment is permitted two (2) kitchens; one (1) for the principal part of the dwelling and one (1) for the accessory apartment. No other kitchens, wet bars or other food preparation areas are permitted. Refer to Chapter 14.06, Provo City Code, Interpretation and Definitions, "Kitchen," for the definition of what constitutes a kitchen per the Provo City Code.

(k) *Rental Dwelling License.* In accordance with Chapter 6.26, Provo City Code, any person operating an accessory apartment under this Chapter shall obtain a rental dwelling license (RDL). Such license shall be in addition to any building permits that may be necessary. Before a rental dwelling license for an accessory apartment is issued, the applicant shall:

(i) Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters.

(ii) Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.

(iii) Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(iv) Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an accessory apartment. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.

(v) Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an accessory apartment shall automatically expire one (1) year after the date of the approval, or upon transfer of the property to another owner, whichever occurs first; provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.

(vi) The owner shall cooperate with the Department of Community and Neighborhood Services in recording a deed restriction with the County Recorder evidencing the restrictions under which the accessory apartment unit is constructed and occupied. This deed restriction shall run with the land as long as the property is in an overlay zone described in this Chapter, or otherwise contains an accessory apartment as provided in this Chapter.

(l) *Minimum Unit Size.* An accessory apartment located within a one-family detached dwelling is only permitted if the one-family detached dwelling, not including the accessory apartment, is no smaller than one thousand two hundred (1,200) square feet.

(m) *Bedrooms.* An accessory apartment shall not have more than two (2) bedrooms, except that an accessory apartment for which a conditional use permit has been granted under Subsection (4) of this Section to allow occupancy by no more than four (4) related or unrelated adults may have no more than four (4) bedrooms.

(3) *Permitted Accessory Uses.* Accessory uses permitted in the overlay zones shall be limited to those uses listed as permitted accessory uses in the underlying zone with which the overlay zone has been combined in accordance with Section 14.30.020, Provo City Code.

(4) *Rental Dwelling License for Additional Occupancy.* In the Supplementary Residential (S) overlay zone only, a rental dwelling license may be issued allowing occupancy of an accessory apartment by no more than four (4) related or unrelated adults, with or without minor children as provided in this Subsection.

(a) Such license may be issued if, and only if, the following requirements are met:

(i) The applicant meets the parking requirements of Subsection (2)(e)(5) of this Section, including particularly the requirement that the number of off-street parking spaces may not be less than the number of vehicles being maintained on the premises at any time;

(ii) The accessory living space is not located on the ground floor of the associated one-family dwelling; and

(iii) The owner of the one-family dwelling does not reside in the accessory living space.

(b) Failure to meet any of the requirements of this Subsection is grounds for revocation of the license.

(Am 1998-55, Am 2000-15, Am 2009-17, Am 2010-28, Am 2013-49, Am 2019-45)

14.30.040
Development Standards.

Each one-family dwelling with an accessory apartment shall conform to the development standards required by the provisions of the underlying zone, or with which the overlay zone is combined.

(Am 2013-49, Am 2019-45)

14.30.050
Area of Zone.

An overlay zone described in this Chapter may only be applied to a contiguous land area of at least four (4) acres that contains at least sixteen (16) existing dwelling structures and that is at least fifty percent (50%) developed. The land area to which any overlay zone described in this Chapter is applied shall be free from islands or peninsulas or any other unreasonable boundary line configurations. Additions to an existing overlay zone are allowed so long as the resulting contiguous land area of an overlay conforms to all provisions of this Section.

(Am 1991-07, Am 2013-49, Am 2019-45)

~~**14.30.060**~~

~~**Petition for Zone Adoption.**~~

~~**14.30.070**~~

~~**Parking Requirements.**~~

~~**14.30.080**~~

~~**Nonconforming Uses.**~~

~~**14.30.090**~~

~~**Termination of Nonconforming Uses - Recovery of Investment.**~~

provo
COMMUNITY AND
NEIGHBORHOOD SERVICES

Planning Commission Staff Report Hearing Date: October 27, 2021

***ITEM 7** The Housing Committee of the Provo Municipal Council requests amendments to Sections 14.08.020, 14.09.020, 14.10.020, and Chapter 14.30 of the Provo City Code to allow Accessory Dwelling Units (ADUs) as accessory uses to owner-occupied, single-family detached dwellings in the Agricultural (A1), Residential Agricultural (RA), and Residential (R1) Zones and to refine the development standards for ADUs. Citywide application. Robert Mills (801) 852-6407 rmills@provo.org PLOTA20210345

Applicant: The Housing Committee of the Provo Municipal Council

Staff Coordinator: Robert Mills

Citywide Application

Council Action Required: Yes

Alternative Actions:

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is November 10, 2021, 6:00 p.m.*

2. **Deny** of the proposed ordinance text amendment. This would be a change from the Staff recommendation; the Planning Commission should state new findings.

Relevant History: Accessory apartments are currently permitted residential zones that have an "Accessory Apartment, 'A'" or "Supplementary 'S'" overlay; or as an accessory use in the Residential Conservation (RC) zone. The "A" overlay is also allowed in the Agricultural (A1) and Residential Agricultural (RA) zones, but there are currently no areas within the A1 or RA zones that have an "A" overlay.

In the 2021 Utah General Legislative Session, lawmakers passed a bill regarding Accessory Dwelling Units (ADUs) and conditions of their permitted use in cities throughout the state. All cities in Utah must adjust their city ordinances accordingly to align with the new state law.

Neighborhood Issues: The proposed language of the text amendment has been posted to Open City Hall and, as of printing, five people have responded. Two have concerns about parking and zoning enforcement the others are in full support of the proposed amendment.

Summary of Key Issues:

- Removes language that refers to accessory apartments or accessory living spaces and replacing with Accessory Dwelling Unit or ADU(s).
- Removes the Supplementary (S) and Accessory (A) Apartment overlays and instead allows ADUs as an accessory use in all R1, RA, RC (no change), and A1 Zones.
- Removes the requirement for an internal connection for internal ADUs.
- Removes the 20-foot height limitation on ADUs in accessory structures but keeps the requirement that the accessory structure not be larger or taller than the main dwelling.
- Changes the occupancy of an ADU from no more than two (2) unrelated adults with or without minor children to no more than three (3) unrelated adults with or without minor children.
- Clarifies that addresses for ADUs shall be assigned by Provo City.
- Clarifies that parking in the front yard can only be on a driveway that leads to required covered parking.
- Removes language regulating the number of kitchens.

Staff Recommendation:
Staff recommends the Planning Commission recommend approval of the proposed ordinance amendment to the Municipal Council.

OVERVIEW

During the 2021 Utah Legislative Session, the Legislature passed House Bill 82 (HB 82) which requires cities in Utah to allow Accessory Dwelling Units (ADUs) in more of their primarily residential-zoned areas. Most cities are required to allow ADUs in at least 75 percent (75%) of the area zoned primarily for residential uses; however, because Provo is home to a major university, it is only required to have a minimum of 33 percent (33%) of the areas primarily zoned for residential allow ADUs. Provo currently allows accessory apartments in approximately 20 percent (20%) of the areas zoned primarily for residential uses, therefore, at a minimum, must allow an additional 13 percent (13%) area where ADUs are permitted.

	Residential Areas	RC, A, and S Overlay	Percentage of Residential Areas where ADUs are Allowed
Square feet	341,578,629	67,815,405	
Divider	43,560	43,560	
Acres	7,841.57	1,556.83	20%

The Housing Committee has worked for several months to consider the best way to move forward with coming into compliance with the requirements of HB 82. The proposed text amendment takes an approach of being very permissive of allowing ADUs in all R1 Residential, Residential Agricultural (RA), Residential Conservation (RC), and Agricultural (A1) zones as an accessory use to owner-occupied, single-family, detached dwellings.

The proposed amendment also seeks to streamline the entire process of establishing an ADU by doing away with the Accessory Apartment “A” and Supplementary “S” overlays. A summary of all proposed changes is found below.

- Removes language that refers to accessory apartments or accessory living spaces and replacing with Accessory Dwelling Unit or ADU(s).
- Removes the Supplementary (S) and Accessory (A) Apartment overlays and instead allows ADUs as an accessory use in all R1, RA, RC (no change), and A1 Zones.
- Removes the requirement for an internal connection for internal ADUs.
- Removes the 20-foot height limitation on ADUs in accessory structures but keeps the requirement that the accessory structure not be larger or taller than the main dwelling.

- Changes the occupancy of an ADU from no more than two (2) unrelated adults with or without minor children to no more than three (3) unrelated adults with or without minor children.
- Clarifies that addresses for ADUs shall be assigned by Provo City.
- Clarifies that parking in the front yard can only be on a driveway that leads to required covered parking.
- Removes language regulating the number of kitchens.

It's also important to note that, while there are substantial changes in the proposed amendments, several fundamental standards that have already been established by Provo City Code for ADUs are not changing. The requirements for ADUs that are not changing are listed below.

- Only one ADU per single-family dwelling.
- The single-family dwelling must be owner occupied.
- The ADU cannot alter the appearance of the structure as a single-family dwelling.
- A minimum of four (4) off-street parking spaces are required; however, any vehicle associated with the property must have a legal off-street parking space.
- The owner must have a Rental Dwelling License.

There have been some questions raised by residents regarding Section 14.34.450 of the Provo City Code, which allows persons age 65 or older to establish an "extra living space" in their home as sort of a caregiver area, and whether the provisions of that subsection of code allows an ADU to be established anywhere. Provo Planning and Legal staff have reviewed this question and believe that Section 14.34.450 is written specifically to avoid establishing the "extra living space" areas as ADUs. For these reasons we feel it does not meet the intent of HB 82 in allowing ADUs to be established in owner-occupied single-family dwellings.

GENERAL PLAN POLICIES

The proposed text amendments are consistent with several goals and policies of the existing General Plan and the draft General Plan Update.

- Goal 3.4.2 Protect existing owner-occupied housing and neighborhoods and encourage an increased percentage of owner-occupied or long-term residency housing in Provo neighborhoods.
- Goal 3.4.3 Encourage stability and owner occupancy in Provo's housing inventory by recognizing that zoning and land use have a significant and direct impact on the local school district and the district's ability to educate its students. Families that are

unstable in terms of their location within the community make educating their children a daunting challenge for the school system.

- Goal 3.4.4 Disperse the increasing demand for affordable housing throughout the City and the County.
- Goal 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.

FINDING OF FACTS

1. Accessory apartments or ADUs are already allowed in select areas of Provo.
2. HB 82 requires that Provo allow ADUs in a minimum of 33 percent (33%) of the city zoned primarily for residential use.
3. Currently, ADUs are only allowed in approximately 20 percent (20%) of residential areas.

STAFF ANALYSIS

The proposed ordinance text amendment will allow ADUs in additional residential areas within Provo and refines and clarifies the requirements for establishing an ADU in owner-occupied, single-family, detached dwellings.

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: **(responses in bold)**

(a) Public purpose for the amendment in question.

The proposed amendment allows ADUs to be established in additional owner-occupied, single-family, detached dwellings in Provo. This encourages owner occupancy in single-family neighborhoods and provides a broader range of housing opportunities with minimal impacts.

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

The proposed amendment allows for more equitable establishment and distribution of ADUs throughout the City. The amendment is also necessary to come into compliance with State code.

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

The proposed amendment advances the goals, policies and objectives of the General Plan, especially related to housing. By allowing for ADUs in additional single-family dwellings, the housing goals to improve owner occupancy and neighborhood stabilization can more easily be achieved.

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

The propose amendment is consistent with the timing and sequencing of the General Plan.

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

There is no potential of hinderance or obstruction to the General Plan policies with the proposed amendment.

(f) Adverse impacts on adjacent land owners.

There are specific development standards that must be met in order to establish an ADU associated with a single-family dwelling. Some properties may not be suitable for an ADU because the requirements cannot be met.

(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.

No conflict exists.

STAFF RECOMMENDATION

Staff recommends the Planning Commission recommend approval of the proposed ordinance amendment to the Municipal Council.

ATTACHMENTS

1. Ordinance Text Amendments
2. HB 82 (hyperlink)

Attachment 1 – Ordinance Text

Chapter 14.30

~~SUPPLEMENTARY RESIDENTIAL AND~~ ACCESSORY ~~APARTMENT OVERLAY ZONES~~ DWELLING UNITS.

Sections:

14.30.010 Purpose and Objectives.
14.30.020 ~~Use in Combination.~~ Accessory Dwelling Unit (ADU) Development Standards
~~**14.30.030 Permitted Uses.**~~
~~**14.30.035 Accessory Dwelling Unit Development Standards**~~
~~**14.30.040 Development Standards.**~~
~~**14.30.050 Area of Zone.**~~
~~***14.30.060 Petition for Zone Adoption.***~~
~~***14.30.070 Parking Requirements.***~~
~~***14.30.080 Nonconforming Uses.***~~
~~***14.30.090 Termination of Nonconforming Uses - Recovery of Investment.***~~

14.30.010

Purpose and Objectives.

(1) The purpose of the ~~Supplementary Residential (S) overlay zone~~ Accessory Dwelling Unit (ADU) Development Standards is to ~~recognize the unique character of Provo City as a "university community" and to accommodate supplementary living accommodations in some appropriate one-family residential areas of the community. These provisions are intended to meet community demands for residential accommodations for semi-transient residents in areas of the community adjacent to major educational and institutional uses. This overlay zone is designed to provide an alternative living environment for said semi-transient residents to that normally found within the higher density multiple residential zones. The (S) overlay zone will therefore protect and enhance the desirable aesthetic characteristics of the underlying one-family residential zone. An R1 zone with a Supplementary Residential (S) overlay as described in this Chapter is intended to continue the very low density of an R1 zone. The sole function of the~~

~~overlay is to permit alternate methods of housing the occupancy otherwise permitted in an R1 zone.~~

~~(2) The Accessory Apartment (A) overlay zone is established to provide areas for the~~ encourage~~ment and~~ promotion of an environment for family life by providing for the establishment of ~~an accessory apartment~~ ADUs in conjunction with one-family detached dwellings on individual lots. ~~The Accessory Apartment overlay zone is~~ These development standards are hereby established to promote the use of ADUs; to provide flexibility for the changes in household size associated with life cycle; to offer financial security for home ~~buyers~~ owners; and to offer security against problems associated with frailty in old age.

(Am 2013-49, Am 2019-45)

14.30.020

~~Use in Combination.~~ Accessory Dwelling Unit (ADU) Development Standards

~~(1) The overlay zones described in this Chapter may be used only in combination with other zones as follows:~~

~~(a) The Supplementary Residential (S) overlay zone may be used only in combination with the One-Family Residential (R1) zone;.~~

~~(b) The Accessory Apartment (A) overlay zone may be used only in combination with the Agricultural (A1), Residential Agricultural (RA), or One-Family Residential (R1) zones.~~

~~(2) The provisions of the overlay zones shall be supplementary to the provisions of the zone with which it is combined. If conflict arises between the provisions of the overlay zones and the provisions of the R1 zone with which it is combined, the provisions of the overlay zones shall be deemed controlling. The overlay zones shall not be applied to any land area as an independent zone.~~

ADUs shall be subject to the following development standards:

(1) *Number.* No more than one (1) ADU shall be permitted in conjunction with each one-family detached dwelling.

(2) *Location.* ADUs may be located only:

(a) Over an attached garage, provided the ADU has access to required parking and does not otherwise disrupt required covered parking;

(b) Inside a one-family detached dwelling;

(c) In an addition to a one-family detached dwelling that has an internal connection between the ADU and the principal part of the dwelling unit; provided, that the addition will not alter the one-family character of the building; or

(d) As a detached accessory structure or within a detached accessory structure located in the rear and or side yard in accordance with the following requirements:

(i) The accessory structure in which ADU is located shall have a building footprint and height less than the main dwelling, but in no case shall the accessory structure be less than two hundred (200) square feet in area;

(ii) A detached ADU or a detached accessory structure containing an ADU shall be set back from any property line no less than ten (10) feet or the distance of the existing setback of the one-family dwelling from that same property line, whichever is less;

(iii) The accessory structure shall be architecturally compatible with the main dwelling;

(iv) The accessory structure shall be permanently affixed to a site-built foundation and shall be designed in accordance with Provo City adopted building codes;

(v) The accessory structure must be approved for, and permanently connected to, all required utilities; and

(vi) Shipping containers shall not be permitted for use as an ADU unless they can meet all building codes and are clad with materials similar to and architecturally compatible with those of the main dwelling.

(3) *Appearance.* The ADU shall not alter the appearance of the structure as a one-family detached dwelling and shall not resemble in any degree a side-by-side, side-to-back, back-to-back, or other type of two-family dwelling. There shall be no external evidence from a

street view of occupancy by more than one (1) family, such as two (2) front doors on the main dwelling. The yard areas of the property shall be maintained free of weeds, junk, solid waste, or other materials constituting a violation of the Provo City Code. An ADU shall not be authorized on a property that has outstanding ordinance violations.

(4) *Occupancy.* A one-family dwelling with an ADU, which is authorized by and conforms to the requirements set forth in this Section, shall, for purposes of this Subsection, consist of two (2) component parts: the one-family dwelling and the ADU. Those two parts shall be occupied as follows:

(a) Except as otherwise provided in Subsection (4)(d) of this Section, either the one-family dwelling or the ADU shall be the owner's primary residence as defined in Chapter 14.06, Provo City Code. If this requirement is not met, no ADU shall be permitted.

(b) The occupancy of the one-family dwelling shall be limited to one (1) "family" as that term is defined in Chapter 14.06, Provo City Code, except that if the ADU is also occupied, the occupancy of the one-family dwelling may not include the two (2) additional related or unrelated individuals described in Subsection (b)(i)(B) of the "Family" definition in Section 14.06.020, Provo City Code.

(c) Except as permitted by Subsection (4) of this Section, the ADU shall not be occupied by more than three (3) related or unrelated adults, with or without minor children.

(d) Owner occupancy shall not be required when the owner has submitted a temporary absence application prior to beginning the temporary absence and meets the following criteria:

(i) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, military service, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or

(ii) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.

(iii) Owner occupancy shall have the meaning set forth in Section 14.06.020, Provo City Code.

(iv) The owner has resided in the residence for at least one (1) year prior to beginning the temporary absence.

(5) *Parking.* A one-family dwelling with an ADU shall have at least four (4) off-street parking spaces. Two (2) tandem parking spaces (front to rear) shall be permitted when the front and back spaces are both designated to serve either the ADU or the principal part of the dwelling unit. Parking spaces for a one-family dwelling with an associated ADU may be located on a driveway in a required front yard, provided the driveway leads to the minimum number of required covered off-street parking spaces In no case shall the number of off-street parking spaces be less than the number of vehicles being maintained on the premises. Parking shall comply with all other regulations of Chapter 14.37, Provo City Code.

(6) *Utility Meters.* A one-family dwelling with an ADU shall have one (1) but no more than two (2) meters for each water, gas, and electricity utility service, and each meter shall be in the property owner's name.

(7) *Addresses.* The ADU shall have its own address assigned by Provo City.

(8) *Outside Entrances.* Outside entrances to the ADU shall be on the side or rear of the building. Only one (1) front entrance shall be visible from the front yard.

(9) *Building Codes.* All existing construction and remodeling shall comply with building codes in effect at the time of the original construction or remodeling. Newly constructed ADUs shall meet current building codes.

(10) *Rental Dwelling License.* In accordance with Chapter 6.26, Provo City Code, any person operating an ADU under this Chapter shall obtain a rental dwelling license (RDL). Such license shall be in addition to any building permits that may be necessary. Before a rental dwelling license for an ADU is issued, the applicant shall:

(a) Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters.

(b) Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.

(c) Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(d) Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an ADU. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.

(e) Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an ADU shall automatically expire one (1) year after the date of the approval, or upon transfer of the property to another owner, whichever occurs first; provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.

(f) The owner shall cooperate with the Department of Community and Neighborhood Services or their designee in recording a deed restriction with the County Recorder evidencing the restrictions under which the ADU is constructed and occupied. This deed restriction shall run with the land or otherwise contains an ADU as provided in this Chapter.

(Am 2013-49, Am 2019-45)

~~**14.30.030**~~

~~**Permitted Uses.**~~

~~(1) *Permitted Principal Uses.* Principal uses permitted in the overlay zones described in this Chapter shall be limited to the following:~~

~~(a) Those uses listed as permitted principal uses in the underlying zone with which the overlay zone has been combined in accordance with Section 14.30.020, Provo City Code; and~~

~~(b) Accessory apartments which meet the development standards of Subsection (2) of this Section, with a valid rental dwelling license.~~

~~(2) *Accessory Apartment Development Standards.* Accessory apartments shall be subject to the following development standards:~~

~~(a) *Number.* No more than one (1) accessory apartment shall be permitted in conjunction with each one-family dwelling.~~

~~(b) *Location.* Accessory apartments may be located only:~~

~~(i) Over an attached garage, provided the accessory living space has an internal connection to the garage and does not otherwise disrupt required covered parking;~~

~~(ii) Inside a one-family detached dwelling by means of an internal conversion that maintains an internal connection between living areas;~~

~~(iii) In an addition to a one-family detached dwelling that has an internal connection between the accessory apartment and the principal part of the dwelling unit; provided, that the addition will not alter the one-family character of the building; or~~

~~(iv) As a detached accessory structure or within a detached accessory structure located in the rear yard in accordance with the following requirements:~~

~~(A) A detached accessory living space shall be permitted only on lots that contain a one-family detached dwelling with a minimum lot size of six thousand (6,000) square feet;~~

~~(B) The accessory structure in which the accessory apartment is located shall have a building footprint and height less than the main dwelling, but in no case shall the accessory structure be taller than twenty (20) feet nor less than two hundred (200) square feet in area;~~

~~(C) A detached accessory apartment or a detached accessory structure containing an accessory apartment shall be set back from any property line no less than ten (10) feet or the distance of the existing setback of the one-family dwelling from that same property line, whichever is less;~~

~~(D) The accessory structure shall be architecturally compatible with the main dwelling;~~

~~(E) The accessory structure shall be permanently affixed to a site-built foundation and shall be designed in accordance with Provo City adopted building codes;~~

~~(F) The accessory structure must be approved for, and permanently connected to, all required utilities; and~~

~~(G) Shipping containers shall not be permitted for use as an accessory apartment unless they can meet all building codes, and are clad with materials similar to and architecturally compatible with those of the main dwelling.~~

~~(c) *Appearance.* The accessory apartment shall not alter the appearance of the structure as a one-family dwelling, and shall not cause the dwelling unit within which the accessory apartment is located to resemble in any degree a side-by-side, side-to-back, back-to-back, or other type of two-family dwelling. There shall be no external evidence from a street view of occupancy by more than one (1) family, such as two (2) front doors on the main dwelling. The yard areas of the property shall be maintained free of weeds, junk, solid waste or other materials constituting a violation of the Provo City Code. An accessory apartment shall not be authorized on a property that has outstanding ordinance violations.~~

~~(d) *Occupancy.* A one-family dwelling with an accessory apartment, which is authorized by and conforms to the requirements set forth in this Section, shall, for purposes of this Subsection, consist of two (2) component parts: the one-family dwelling and the accessory apartment. Those two parts shall be occupied as follows:~~

~~(i) Except as otherwise provided in Subsection (2)(d)(iv) of this Section, either the one-family dwelling or the accessory apartment shall be the owner's primary residence as defined in Chapter 14.06, Provo City Code. If this requirement is not met, no accessory apartment shall be permitted.~~

~~(ii) The occupancy of the one-family dwelling shall be limited to one (1) "family" as that term is defined in Chapter 14.06, Provo City Code, except that if the accessory apartment is also occupied, the occupancy of the one-family dwelling may not include the two (2) additional related or unrelated individuals described in Subsection (b)(i)(B) of the "Family" definition in Section 14.06.020, Provo City Code.~~

~~(iii) Except as permitted by Subsection (4) of this Section, the accessory apartment shall not be occupied by more than two (2) related or unrelated adults, with or without minor children.~~

~~(iv) Owner occupancy shall not be required when the owner has submitted a temporary absence application prior to beginning the temporary absence and meets the following criteria:~~

~~(A) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, military service, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or~~

~~(B) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.~~

~~(C) Owner occupancy shall have the meaning set forth in Section 14.06.020, Provo City Code.~~

~~(D) The owner has resided in the residence for at least one (1) year prior to beginning the temporary absence.~~

~~(e) *Parking.* A one-family dwelling with an accessory apartment shall have at least four (4) off-street parking spaces. Two (2) tandem parking spaces (front to rear) shall be permitted when the front and back spaces are both designated to serve either the accessory apartment or the principal part of the dwelling unit. In no case shall the number of off-street parking spaces be less than the number of vehicles being maintained on the premises. Parking in the front setback is prohibited unless the driveway leads to required covered parking. Parking shall comply with all other regulations of Chapter 14.37, Provo City Code.~~

~~(f) *Utility Meters.* A one-family dwelling with an accessory apartment shall have one (1) but no more than two (2) meters for each water, gas, and electricity utility service, and each meter shall be in the property owner's name.~~

~~(g) *Addresses.* The accessory apartment shall have its own address.~~

(h) *Outside Entrances.* Outside entrances to the accessory apartment shall be on the side or rear of the building. Only one (1) front entrance shall be visible from the front yard.

(i) *Building Codes.* All existing construction and remodeling shall comply with building codes in effect at the time of the original construction or remodeling. Newly constructed accessory apartments shall meet current building codes.

(j) *Kitchens.* A one-family dwelling with an accessory apartment is permitted two (2) kitchens; one (1) for the principal part of the dwelling and one (1) for the accessory apartment. No other kitchens, wet bars or other food preparation areas are permitted. Refer to Chapter 14.06, Provo City Code, Interpretation and Definitions, "Kitchen," for the definition of what constitutes a kitchen per the Provo City Code.

(k) *Rental Dwelling License.* In accordance with Chapter 6.26, Provo City Code, any person operating an accessory apartment under this Chapter shall obtain a rental dwelling license (RDL). Such license shall be in addition to any building permits that may be necessary. Before a rental dwelling license for an accessory apartment is issued, the applicant shall:

(i) Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters.

(ii) Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.

(iii) Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(iv) Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an accessory apartment. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.

(v) Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an accessory apartment shall automatically expire one (1) year after the date of the approval, or upon transfer of the property to another owner,

~~whichever occurs first; provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.~~

~~(vi) The owner shall cooperate with the Department of Community and Neighborhood Services in recording a deed restriction with the County Recorder evidencing the restrictions under which the accessory apartment unit is constructed and occupied. This deed restriction shall run with the land as long as the property is in an overlay zone described in this Chapter, or otherwise contains an accessory apartment as provided in this Chapter.~~

~~(l) *Minimum Unit Size*. An accessory apartment located within a one-family detached dwelling is only permitted if the one-family detached dwelling, not including the accessory apartment, is no smaller than one thousand two hundred (1,200) square feet.~~

~~(m) *Bedrooms*. An accessory apartment shall not have more than two (2) bedrooms, except that an accessory apartment for which a conditional use permit has been granted under Subsection (4) of this Section to allow occupancy by no more than four (4) related or unrelated adults may have no more than four (4) bedrooms.~~

~~(3) *Permitted Accessory Uses*. Accessory uses permitted in the overlay zones shall be limited to those uses listed as permitted accessory uses in the underlying zone with which the overlay zone has been combined in accordance with Section 14.30.020, Provo City Code.~~

~~(4) *Rental Dwelling License for Additional Occupancy*. In the Supplementary Residential (S) overlay zone only, a rental dwelling license may be issued allowing occupancy of an accessory apartment by no more than four (4) related or unrelated adults, with or without minor children as provided in this Subsection.~~

~~(a) Such license may be issued if, and only if, the following requirements are met:~~

~~(i) The applicant meets the parking requirements of Subsection (2)(e)(5) of this Section, including particularly the requirement that the number of off-street parking spaces may not be less than the number of vehicles being maintained on the premises at any time;~~

~~(ii) The accessory living space is not located on the ground floor of the associated one-family dwelling; and~~

(iii) The owner of the one-family dwelling does not reside in the accessory living space.

(b) Failure to meet any of the requirements of this Subsection is grounds for revocation of the license.

(Am 1998-55, Am 2000-15, Am 2009-17, Am 2010-28, Am 2013-49, Am 2019-45)

14.30.040 Development Standards.

Each one-family dwelling with an accessory apartment shall conform to the development standards required by the provisions of the underlying zone, or with which the overlay zone is combined.

(Am 2013-49, Am 2019-45)

14.30.050 Area of Zone.

An overlay zone described in this Chapter may only be applied to a contiguous land area of at least four (4) acres that contains at least sixteen (16) existing dwelling structures and that is at least fifty percent (50%) developed. The land area to which any overlay zone described in this Chapter is applied shall be free from islands or peninsulas or any other unreasonable boundary line configurations. Additions to an existing overlay zone are allowed so long as the resulting contiguous land area of an overlay conforms to all provisions of this Section.

(Am 1991-07, Am 2013-49, Am 2019-45)

~~**14.30.060**~~

~~**Petition for Zone Adoption.**~~

~~**14.30.070**~~

~~**Parking Requirements.**~~

~~**14.30.080**~~

~~**Nonconforming Uses.**~~

~~**14.30.090**~~

~~**Termination of Nonconforming Uses - Recovery of Investment.**~~

ATTACHMENT 2: HB 82

https://le.utah.gov/~2021/bills/hbillenr/HB0082.pdf

Provo City Planning Commission

Report of Action

October 27, 2021

Item #7* The Housing Committee of the Provo Municipal Council requests amendments to Sections 14.08.020, 14.09.020, 14.020, and Chapter 14.30 of the Provo City Code to allow Accessory Dwelling Units (ADUs) as accessory uses to owner-occupied, single-family detached dwellings in the Agricultural (A1), Residential Agricultural (RA), and Residential (R1) Zones and to refine the development standards for ADUs. Citywide application. Robert Mills (801) 852-6407 rmills@provo.org PLOTA20210345

The following action was taken by the Planning Commission on the above described item at its regular meeting of October 27, 2021:

RECOMMEND APPROVAL

On a vote of 7:0, the Planning Commission recommended that the Municipal Council approve the above noted application.

Motion By: Ally Jones
Second By: Brian Henrie
Votes in Favor of Motion: Ally Jones, Brian Henrie, Daniel Gonzales, Laurie Urquiaga, Lisa Jensen, Robert Knudsen, and Dave Anderson
Dave Anderson was present as Chair.

- 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.

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.

- The proposed amendment takes the most permissive approach.
- The proposed amendment would streamline the ADU regulations by removing the "A" and "S" overlays and make ADUs an accessory use, instead.
- Keeps the requirement that an ADU can only be established in an owner-occupied, single-family, detached dwelling.
- The proposed Airport Zones further the goals of the General Plan, Airport Master Plan and Southwest Future Lane Use Map

NEIGHBORHOOD MEETING DATE

- Citywide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- This item has been posted on Open City Hall for a few weeks. At the time of the hearing 59 people had submitted statements. Of those, 42 were in favor of the proposed amendment, 13 were opposed, and 4 were neutral or had some questions.

- A few members of the public called to offer testimony. There were concerns about enforcement and a citywide application. There was also strong support for allowing ADUs citywide.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Dave Anderson remarked that the extensive research he had done shows that ADUs are a very benign use and offer several benefits to landowners and neighborhoods.
- Lisa Jensen asked about infrastructure impacts and hoped there would be a substantial amount of outreach in utility bills and through property records.
- Laurie Urquiaga liked removing the "A" and "S" overlays but was concerned about increasing the occupancy to more than two unrelated adults. She suggested the possibility of a phased approach to rolling ADUs out citywide.
- Ally Jones supports the amendment and felt that the increase to three unrelated adults is consistent with the rest of the code.



Planning Commission Chair



Director of Development Services

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 and Neighborhood Services 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

Chapter 14.30

~~SUPPLEMENTARY RESIDENTIAL AND~~ ACCESSORY ~~APARTMENT OVERLAY ZONES~~ DWELLING UNITS.

Sections:

14.30.010 Purpose and Objectives.

14.30.020 ~~Use in Combination.~~ Accessory Dwelling Unit (ADU) Development Standards

~~**14.30.030 Permitted Uses.**~~

~~**14.30.035 Accessory Dwelling Unit Development Standards**~~

~~**14.30.040 Development Standards.**~~

~~**14.30.050 Area of Zone.**~~

~~***14.30.060 Petition for Zone Adoption.***~~

~~***14.30.070 Parking Requirements.***~~

~~***14.30.080 Nonconforming Uses.***~~

~~***14.30.090 Termination of Nonconforming Uses - Recovery of Investment.***~~

14.30.010

Purpose and Objectives.

(1) The purpose of the ~~Supplementary Residential (S) overlay zone~~ Accessory Dwelling Unit (ADU) Development Standards is to ~~recognize the unique character of Provo City as a "university community" and to accommodate supplementary living accommodations in some appropriate one-family residential areas of the community. These provisions are intended to meet community demands for residential accommodations for semi-transient residents in areas of the community adjacent to major educational and institutional uses. This overlay zone is designed to provide an alternative living environment for said semi-transient residents to that normally found within the higher density multiple residential zones. The (S) overlay zone will therefore protect and enhance the desirable aesthetic characteristics of the underlying one-family residential zone. An R1 zone with a Supplementary Residential (S) overlay as described in this Chapter is intended to continue the very low density of an R1 zone. The sole function of the overlay is to permit alternate methods of housing the occupancy otherwise permitted in an R1 zone.~~

~~(2) The Accessory Apartment (A) overlay zone is established to provide areas for the~~ encourage~~ment and~~ promotion of an environment for family life by providing for the establishment of ~~an accessory apartment~~ ADUs in conjunction with one-family detached dwellings on individual lots. ~~The Accessory Apartment overlay zone is~~ These development standards are hereby established to promote the use of ADUs; to provide flexibility for the changes in household size associated with life cycle; to offer financial security for home ~~buyers~~ owners; and to offer security against problems associated with frailty in old age.

(Am 2013-49, Am 2019-45)

14.30.020

~~Use in Combination.~~ Accessory Dwelling Unit (ADU) Development Standards

~~(1) The overlay zones described in this Chapter may be used only in combination with other zones as follows:~~

~~(a) The Supplementary Residential (S) overlay zone may be used only in combination with the One-Family Residential (R1) zone;.~~

~~(b) The Accessory Apartment (A) overlay zone may be used only in combination with the Agricultural (A1), Residential Agricultural (RA), or One-Family Residential (R1) zones.~~

~~(2) The provisions of the overlay zones shall be supplementary to the provisions of the zone with which it is combined. If conflict arises between the provisions of the overlay zones and the provisions of the R1 zone with which it is combined, the provisions of the overlay zones shall be deemed controlling. The overlay zones shall not be applied to any land area as an independent zone.~~

ADUs shall be subject to the following development standards:

(1) *Number.* No more than one (1) ADU shall be permitted in conjunction with each one-family detached dwelling.

(2) *Location.* ADUs may be located only:

(a) Over an attached garage, provided the ADU has access to required parking and does not otherwise disrupt required covered parking;

(b) Inside a one-family detached dwelling;

(c) In an addition to a one-family detached dwelling that has an internal connection between the ADU and the principal part of the dwelling unit; provided, that the addition will not alter the one-family character of the building; or

(d) As a detached accessory structure or within a detached accessory structure located in the rear and or side yard in accordance with the following requirements:

(i) The accessory structure in which ADU is located shall have a building footprint and height less than the main dwelling, but in no case shall the accessory structure be less than two hundred (200) square feet in area;

(ii) A detached ADU or a detached accessory structure containing an ADU shall be set back from any property line no less than ten (10) feet or the distance of the existing setback of the one-family dwelling from that same property line, whichever is less;

(iii) The accessory structure shall be architecturally compatible with the main dwelling;

(iv) The accessory structure shall be permanently affixed to a site-built foundation and shall be designed in accordance with Provo City adopted building codes;

(v) The accessory structure must be approved for, and permanently connected to, all required utilities; and

(vi) Shipping containers shall not be permitted for use as an ADU unless they can meet all building codes and are clad with materials similar to and architecturally compatible with those of the main dwelling.

(3) *Appearance.* The ADU shall not alter the appearance of the structure as a one-family detached dwelling and shall not resemble in any degree a side-by-side, side-to-back, back-to-back, or other type of two-family dwelling. There shall be no external evidence from a street view of occupancy by more than one (1) family, such as two (2) front doors on the main dwelling. The yard areas of the property shall be maintained free of weeds, junk, solid waste, or other materials constituting a violation of the Provo City Code. An ADU shall not be authorized on a property that has outstanding ordinance violations.

(4) *Occupancy.* A one-family dwelling with an ADU, which is authorized by and conforms to the requirements set forth in this Section, shall, for purposes of this Subsection, consist of two (2)

component parts: the one-family dwelling and the ADU. Those two parts shall be occupied as follows:

(a) Except as otherwise provided in Subsection (4)(d) of this Section, either the one-family dwelling or the ADU shall be the owner's primary residence as defined in Chapter 14.06, Provo City Code. If this requirement is not met, no ADU shall be permitted.

(b) The occupancy of the one-family dwelling shall be limited to one (1) "family" as that term is defined in Chapter 14.06, Provo City Code, except that if the ADU is also occupied, the occupancy of the one-family dwelling may not include the two (2) additional related or unrelated individuals described in Subsection (b)(i)(B) of the "Family" definition in Section 14.06.020, Provo City Code.

(c) Except as permitted by Subsection (4) of this Section, the ADU shall not be occupied by more than three (3) related or unrelated adults, with or without minor children.

(d) Owner occupancy shall not be required when the owner has submitted a temporary absence application prior to beginning the temporary absence and meets the following criteria:

(i) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, military service, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or

(ii) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.

(iii) Owner occupancy shall have the meaning set forth in Section 14.06.020, Provo City Code.

(iv) The owner has resided in the residence for at least one (1) year prior to beginning the temporary absence.

(5) *Parking.* A one-family dwelling with an ADU shall have at least four (4) off-street parking spaces. Two (2) tandem parking spaces (front to rear) shall be permitted when the front and back spaces are both designated to serve either the ADU or the principal part of the dwelling unit. Parking spaces for a one-family dwelling with an associated ADU may be located on a driveway in a required front yard, provided the driveway leads to the minimum number of required covered off-street parking spaces In no case shall the number of off-street parking

spaces be less than the number of vehicles being maintained on the premises. Parking shall comply with all other regulations of Chapter 14.37, Provo City Code.

(6) *Utility Meters.* A one-family dwelling with an ADU shall have one (1) but no more than two (2) meters for each water, gas, and electricity utility service, and each meter shall be in the property owner's name.

(7) *Addresses.* The ADU shall have its own address assigned by Provo City.

(8) *Outside Entrances.* Outside entrances to the ADU shall be on the side or rear of the building. Only one (1) front entrance shall be visible from the front yard.

(9) *Building Codes.* All existing construction and remodeling shall comply with building codes in effect at the time of the original construction or remodeling. Newly constructed ADUs shall meet current building codes.

(10) *Rental Dwelling License.* In accordance with Chapter 6.26, Provo City Code, any person operating an ADU under this Chapter shall obtain a rental dwelling license (RDL). Such license shall be in addition to any building permits that may be necessary. Before a rental dwelling license for an ADU is issued, the applicant shall:

(a) Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters.

(b) Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.

(c) Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(d) Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an ADU. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.

(e) Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an ADU shall automatically expire one (1) year after the date of the approval, or upon transfer of the property to another owner, whichever occurs first; provided, however,

that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.

(f) The owner shall cooperate with the Department of Community and Neighborhood Services or their designee in recording a deed restriction with the County Recorder evidencing the restrictions under which the ADU is constructed and occupied. This deed restriction shall run with the land or otherwise contains an ADU as provided in this Chapter.

(g) The owner shall renew the Rental Dwelling License annually and confirm that the dwelling is the owner's primary residence by providing at least two of the following forms of verification: a current driver license, current vehicle registration, voter registration card, last filed state tax return, and/or last filed federal tax return.

(Am 2013-49, Am 2019-45)

~~14.30.030~~

~~Permitted Uses.~~

~~(1) *Permitted Principal Uses.* Principal uses permitted in the overlay zones described in this Chapter shall be limited to the following:~~

~~(a) Those uses listed as permitted principal uses in the underlying zone with which the overlay zone has been combined in accordance with Section 14.30.020, Provo City Code; and~~

~~(b) Accessory apartments which meet the development standards of Subsection (2) of this Section, with a valid rental dwelling license.~~

~~(2) *Accessory Apartment Development Standards.* Accessory apartments shall be subject to the following development standards:~~

~~(a) *Number.* No more than one (1) accessory apartment shall be permitted in conjunction with each one-family dwelling.~~

~~(b) *Location.* Accessory apartments may be located only:~~

~~(i) Over an attached garage, provided the accessory living space has an internal connection to the garage and does not otherwise disrupt required covered parking;~~

~~(ii) Inside a one-family detached dwelling by means of an internal conversion that maintains an internal connection between living areas;~~

~~(iii) In an addition to a one-family detached dwelling that has an internal connection between the accessory apartment and the principal part of the dwelling unit; provided, that the addition will not alter the one-family character of the building; or~~

~~(iv) As a detached accessory structure or within a detached accessory structure located in the rear yard in accordance with the following requirements:~~

~~(A) A detached accessory living space shall be permitted only on lots that contain a one-family detached dwelling with a minimum lot size of six thousand (6,000) square feet;~~

~~(B) The accessory structure in which the accessory apartment is located shall have a building footprint and height less than the main dwelling, but in no case shall the accessory structure be taller than twenty (20) feet nor less than two hundred (200) square feet in area;~~

~~(C) A detached accessory apartment or a detached accessory structure containing an accessory apartment shall be set back from any property line no less than ten (10) feet or the distance of the existing setback of the one-family dwelling from that same property line, whichever is less;~~

~~(D) The accessory structure shall be architecturally compatible with the main dwelling;~~

~~(E) The accessory structure shall be permanently affixed to a site-built foundation and shall be designed in accordance with Provo City adopted building codes;~~

~~(F) The accessory structure must be approved for, and permanently connected to, all required utilities; and~~

~~(G) Shipping containers shall not be permitted for use as an accessory apartment unless they can meet all building codes, and are clad with materials similar to and architecturally compatible with those of the main dwelling.~~

~~(c) *Appearance.* The accessory apartment shall not alter the appearance of the structure as a one-family dwelling, and shall not cause the dwelling unit within which the accessory apartment is located to resemble in any degree a side-by-side, side-to-back, back-to-back, or other type of two-family dwelling. There shall be no external evidence from a street view of occupancy by more than one (1) family, such as two (2) front doors on the main dwelling. The yard areas of the property shall be maintained free of weeds, junk, solid waste or other materials constituting a violation of the Provo City Code. An accessory apartment shall not be authorized on a property that has outstanding ordinance violations.~~

~~(d) *Occupancy.* A one-family dwelling with an accessory apartment, which is authorized by and conforms to the requirements set forth in this Section, shall, for purposes of this Subsection, consist of two (2) component parts: the one-family dwelling and the accessory apartment. Those two parts shall be occupied as follows:~~

~~(i) Except as otherwise provided in Subsection (2)(d)(iv) of this Section, either the one-family dwelling or the accessory apartment shall be the owner's primary residence as defined in Chapter 14.06, Provo City Code. If this requirement is not met, no accessory apartment shall be permitted.~~

~~(ii) The occupancy of the one-family dwelling shall be limited to one (1) "family" as that term is defined in Chapter 14.06, Provo City Code, except that if the accessory apartment is also occupied, the occupancy of the one-family dwelling may not include the two (2) additional related or unrelated individuals described in Subsection (b)(i)(B) of the "Family" definition in Section 14.06.020, Provo City Code.~~

~~(iii) Except as permitted by Subsection (4) of this Section, the accessory apartment shall not be occupied by more than two (2) related or unrelated adults, with or without minor children.~~

~~(iv) Owner occupancy shall not be required when the owner has submitted a temporary absence application prior to beginning the temporary absence and meets the following criteria:~~

~~(A) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, military service, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or~~

~~(B) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.~~

~~(C) Owner occupancy shall have the meaning set forth in Section 14.06.020, Provo City Code.~~

~~(D) The owner has resided in the residence for at least one (1) year prior to beginning the temporary absence.~~

~~(e) *Parking.* A one-family dwelling with an accessory apartment shall have at least four (4) off-street parking spaces. Two (2) tandem parking spaces (front to rear) shall be permitted when the front and back spaces are both designated to serve either the accessory apartment or the principal part of the dwelling unit. In no case shall the number of off-street parking spaces be less than the number of vehicles being maintained on the premises. Parking in the front setback is prohibited unless the driveway leads to required covered parking. Parking shall comply with all other regulations of Chapter 14.37, Provo City Code.~~

~~(f) *Utility Meters.* A one-family dwelling with an accessory apartment shall have one (1) but no more than two (2) meters for each water, gas, and electricity utility service, and each meter shall be in the property owner's name.~~

~~(g) *Addresses.* The accessory apartment shall have its own address.~~

~~(h) *Outside Entrances.* Outside entrances to the accessory apartment shall be on the side or rear of the building. Only one (1) front entrance shall be visible from the front yard.~~

~~(i) *Building Codes.* All existing construction and remodeling shall comply with building codes in effect at the time of the original construction or remodeling. Newly constructed accessory apartments shall meet current building codes.~~

~~(j) *Kitchens.* A one-family dwelling with an accessory apartment is permitted two (2) kitchens; one (1) for the principal part of the dwelling and one (1) for the accessory apartment. No other kitchens, wet bars or other food preparation areas are permitted. Refer to Chapter 14.06, Provo~~

City Code, Interpretation and Definitions, "Kitchen," for the definition of what constitutes a kitchen per the Provo City Code.

(k) *Rental Dwelling License.* In accordance with Chapter 6.26, Provo City Code, any person operating an accessory apartment under this Chapter shall obtain a rental dwelling license (RDL). Such license shall be in addition to any building permits that may be necessary. Before a rental dwelling license for an accessory apartment is issued, the applicant shall:

(i) Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters.

(ii) Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.

(iii) Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(iv) Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an accessory apartment. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.

(v) Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an accessory apartment shall automatically expire one (1) year after the date of the approval, or upon transfer of the property to another owner, whichever occurs first; provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.

(vi) The owner shall cooperate with the Department of Community and Neighborhood Services in recording a deed restriction with the County Recorder evidencing the restrictions under which the accessory apartment unit is constructed and occupied. This deed restriction shall run with the land as long as the property is in an overlay zone described in this Chapter, or otherwise contains an accessory apartment as provided in this Chapter.

(l) *Minimum Unit Size.* An accessory apartment located within a one-family detached dwelling is only permitted if the one-family detached dwelling, not including the accessory apartment, is no smaller than one thousand two hundred (1,200) square feet.

~~(m) *Bedrooms.* An accessory apartment shall not have more than two (2) bedrooms, except that an accessory apartment for which a conditional use permit has been granted under Subsection (4) of this Section to allow occupancy by no more than four (4) related or unrelated adults may have no more than four (4) bedrooms.~~

~~(3) *Permitted Accessory Uses.* Accessory uses permitted in the overlay zones shall be limited to those uses listed as permitted accessory uses in the underlying zone with which the overlay zone has been combined in accordance with Section 14.30.020, Provo City Code.~~

~~(4) *Rental Dwelling License for Additional Occupancy.* In the Supplementary Residential (S) overlay zone only, a rental dwelling license may be issued allowing occupancy of an accessory apartment by no more than four (4) related or unrelated adults, with or without minor children as provided in this Subsection.~~

~~(a) Such license may be issued if, and only if, the following requirements are met:~~

~~(i) The applicant meets the parking requirements of Subsection (2)(e)(5) of this Section, including particularly the requirement that the number of off-street parking spaces may not be less than the number of vehicles being maintained on the premises at any time;~~

~~(ii) The accessory living space is not located on the ground floor of the associated one-family dwelling; and~~

~~(iii) The owner of the one-family dwelling does not reside in the accessory living space.~~

~~(b) Failure to meet any of the requirements of this Subsection is grounds for revocation of the license.~~

~~(Am 1998-55, Am 2000-15, Am 2009-17, Am 2010-28, Am 2013-49, Am 2019-45)~~

~~14.30.040~~

~~Development Standards.~~

~~Each one-family dwelling with an accessory apartment shall conform to the development standards required by the provisions of the underlying zone, or with which the overlay zone is combined.~~

~~(Am 2013-49, Am 2019-45)~~

~~14.30.050~~

~~Area of Zone.~~

~~An overlay zone described in this Chapter may only be applied to a contiguous land area of at least four (4) acres that contains at least sixteen (16) existing dwelling structures and that is at least fifty percent (50%) developed. The land area to which any overlay zone described in this Chapter is applied shall be free from islands or peninsulas or any other unreasonable boundary line configurations. Additions to an existing overlay zone are allowed so long as the resulting contiguous land area of an overlay conforms to all provisions of this Section.~~

~~(Am 1991-07, Am 2013-49, Am 2019-45)~~

~~14.30.060~~

~~Petition for Zone Adoption.~~

~~14.30.070~~

~~Parking Requirements.~~

~~14.30.080~~

~~Nonconforming Uses.~~

~~14.30.090~~

~~Termination of Nonconforming Uses - Recovery of Investment.~~

From: Bogdin Family
To: Council; DS Public Hearings
Subject: Adu
Date: Monday, October 25, 2021 5:14:54 AM

CAUTION: This email originated from outside of Provo's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi all

I just wanted to say that during my tenure as neighborhood chair the things I have seen echo the research that Jonathan Hill, Fort Utah neighborhood chair, has found. I am sure he will send a separate email with the data but here is a fb post he wrote:

“Thanks for posting this, Travis. I support your more slow methodical approach. While I agree that assuring housing options for all demographics is important, there are many ways to do this. Provo is already pursing several, and ADUs may not be a beneficial addition.

From what I have read concerning ADUs in other areas, I am not convinced that ADUs are a good fit in many areas of Provo. Here is what ADUs are meant to do and how that fits into our specific situation in Provo:

1. ADUs are meant to increase small, low-cost rentals. Adding ADUs results in exactly zero additional homes for purchase in a market. Instead, they take a larger home and turn it into two small units, including one that is rented. They actually decrease the number of homes in a market suitable for move-up stock or larger families. In Provo, we are building apartments at a rate of 9:1 over single family homes, and we have 70% of the affordable housing in the county. Adding more rentals will not help the cost of living issues we face.

2. ADUs are often promoted as a way to help people afford a home who can't otherwise. However, these benefits are limited to a small group. One study showed that the possibility of converting a home to an ADU increased its price by up to 50%, and drove up prices in the neighborhood by 15%. By the time you add in the conversion costs, etc. there are few who can afford them. One article even concluded that the only people who benefit are the "young relatives of the wealthy."

3. ADUs have been proposed as a way to more efficiently use underutilized road infrastructure. However, several areas in Provo are already strained. A city engineer told me that Center Street west of I15 is the busiest 2-lane road in the city, and there has been strong opposition to widening 820 N. In addition, sewage infrastructure in our area has led engineering to recommend a cap of 4 units per acre on the west side. This ADU ordinance limits the ability for the city to review projects for their effects on infrastructure. It is also the antithesis of transportation oriented development.

There are also many variables that are unknown regarding the change in BYU housing policy and enforcement in general. For these reasons, we should carefully roll it out and measure its effects before making it city wide.“

I realize that staff, specifically Robert Mills, feels that ADUs are good for Provo. I get this from a private conversation I had with him a couple of months ago as well as listening to his presentation during Council session. However, I feel they are only looking upon their data from the rental dwelling license program and are not looking into what is really going on with the current a overlay areas that we have. I believe a good housing audit would give you a better picture of what is going on than current rental dwelling license data.

Back when Beth Alligood was active in the neighborhood program she reached out to the neighborhoods that had a overlays in place. She found that those neighborhoods had lost their move up housing units. They had all been permanently converted to duplexes.

A few years ago when the rental dwelling license was under revision by the council Hannah Petersen, the spring

creek vice chair, also took a dive into the a overlays. She found that those with the a overlays had high rental rates. At the time the Dixon neighborhood chair had stated 80% of the neighborhood was rental. Dave Harding told me in a meeting about a month and 1/2 ago that he felt it was 70% rental. Either way that is a very high rate.

Instead of seeing opportunities of home ownership in Provo, I am seeing housing stock permanently converted into duplexes. Families are choosing to move to another city in the county because there is no housing stock in Provo that can accommodate their growing family and either selling the Provo home or renting it out. I am not seeing those homes converted back from a duplex into a single family dwelling unit once the family needs more space for their growing family.

I feel a blanket adu allowance for the entire city would have serious effects and repercussions. It has been discussed often lately how low income many of the neighborhoods in the city are and how this negatively impacts our schools, our church organizations and our ability to attract and keep retail.

I am particularly concerned about how this blanket ordinance will impact west Provo. Many of our housing units here in west Provo are starter homes. We need these big move up homes for many reasons. I am concerned that it is easier to just finish a basement into an adu than convert an existing finished basement. Then with the changes being discussed to add a variety of housing types in the mix and the current need for married student housing units, I am concerned the blanket adu ordinance will throw that balance out of wack. I would like us to take our time and use caution so that we are not creating more issues that the west side and other neighborhoods are seeing with our poverty rates and not accomplishing what we have set out to do in balancing that out.

In my neighborhood those that want the blanket adu are those who already have one. These are either older people who have bought our newly built move up homes…about 1/3 of these are being purchased by retirees with apartments built in the basement instead of a finished basement to supplement their retirement or aide family members who are down on their luck. Or investors who buy them and illegally convert them and rent them out.

What I am hearing from the neighborhood is frustration. Beth mentioned the same when she did her study. When people buy in these new neighborhoods with these move up homes, they buy into the idea that these are single family neighborhoods not a bunch of duplexes rented out. I encourage them to turn these matters into zoning and they do only to be frustrated again because zoning does nothing. Some of these dwellings have multiple neighbors calling but yet enforcement is lacking.

I appreciate your time in reading this lengthy piece. I hope we can take our time on this without rush. I am hearing Curt Bramble is stating Provo is already in compliance with its a and s overlays along with its over 60 adu allowance. If this is the case, why the rush? If it is not the case then please consider leaving west Provo out of the mix for now and discussing this later with our mixture of housing types.

Thank you

Becky Bogdin.

Sent from my iPhone

ITEM 7*

The Housing Committee of the Provo Municipal Council requests amendments to Sections 14.08.020, 14.09.020, 14.10.020, and Chapter 14.30 of the Provo City Code to allow Accessory Dwelling Units (ADUs) as accessory uses to owner-occupied, single-family detached dwellings in the Agricultural (A1), Residential Agricultural (RA), and Residential (R1) Zones and to refine the development standards for ADUs.

Citywide Application

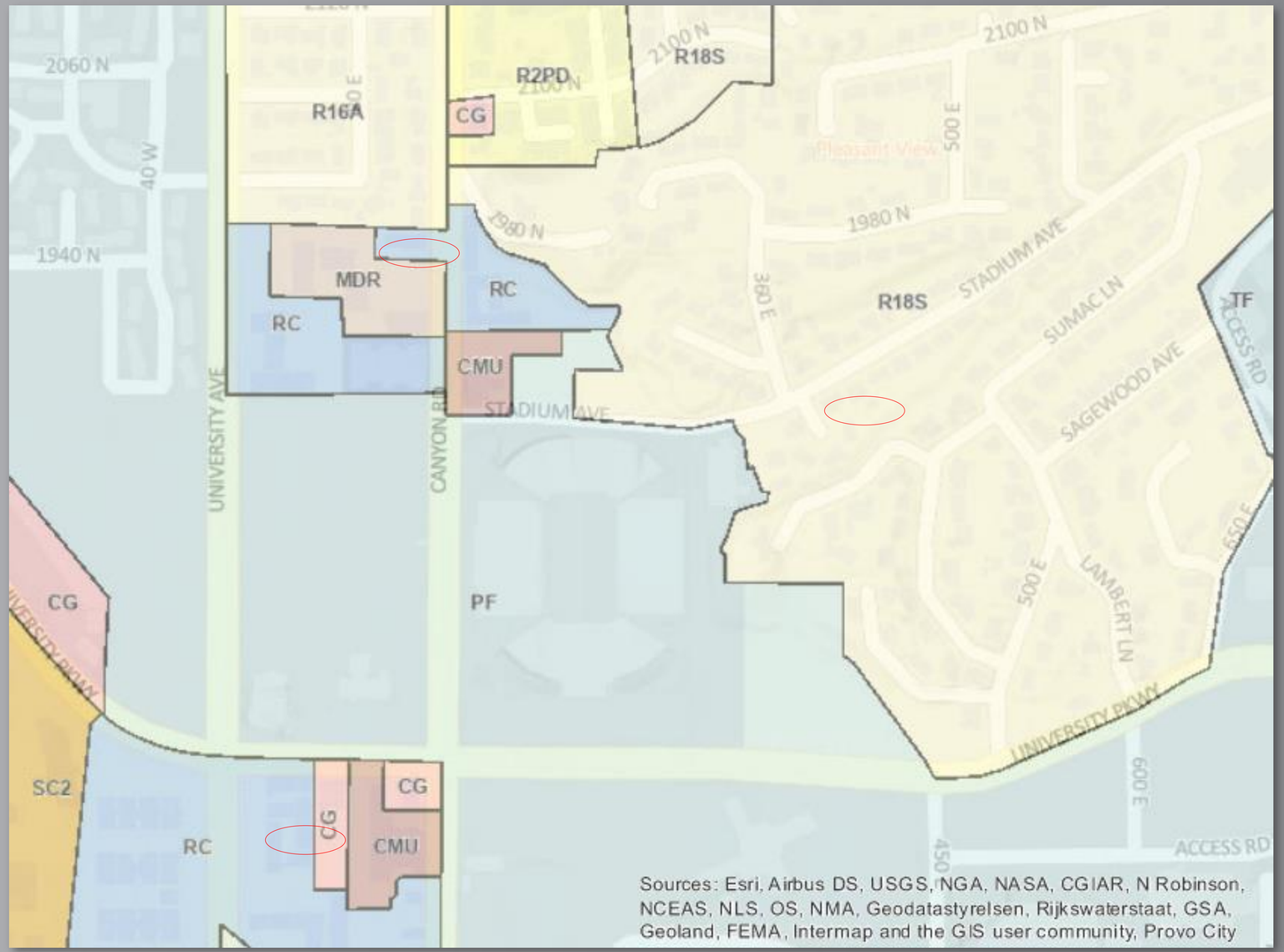
PLOTA20210345

- Current Context of ADUs
- Additional Area Required by HB 82
- Summary of Proposed Changes
- ADU Requirements that Aren’t Changing
- Considerations

Current Context

Accessory Dwelling Units (ADUs) are currently permitted as an accessory use in the Residential Conservation (RC) Zone, Very Low Density Residential (VLDR), Low Density Residential (LDR), and in R1 Zones with an “A” or “S” Overlay.

ADUs are also allowed as an overlay in the Agricultural (A1) and Residential Agricultural (RA) Zones; however, there are currently no overlay areas in those zones.



Context

- Currently, ADUs are allowed in approximately 23% of residential areas in Provo.
- HB 82 requires a university city, like Provo, to allow ADUs in 33% of residential areas.
- To comply with State Code, Provo needs to allow ADUs in at least an additional 10% of residential areas.

Zone	Zone Description	Total Acreage	% of total	Currently Allow ADU
HDR	High Density Residential	13.73	0.18%	
LDR	Low Density Residential	135.65	1.74%	1.74%
MDR	Medium Density Residential	106.33	1.36%	
PRO	All Residential PRO Zones	106.68	1.36%	
R110	Residential 10,000 SF Lot	2669.24	34.15%	
R110PD	Residential 10,000 SF Planned Develop	203.77	2.61%	
R120	Residential 20,000 SF Lot	154.69	1.98%	
R120PD	Residential 20,000 SF Planned Develop	7.02	0.09%	
R16	Residential 6,000 SF Lot	242.19	3.10%	
R16A	Residential 6,000 SF with Accessory	436.96	5.59%	5.59%
R16A-PD	Residential 6,000 SF Planned Dev. With	0.47	0.01%	0.01%
R16PD	Residential 6,000 SF Planned Develop	64.59	0.83%	
R17	Residential 7,000 SF Lot	31.34	0.40%	
R18	Residential 8,000 SF Lot	1332.85	17.05%	
R18A	Residential 8,000 SF with accessory	15.56	0.20%	0.20%
R18PD	Residential 8,000 SF Planned Develop	245.77	3.14%	
R18S	Residential 8,000 SF W Accessory	194.65	2.49%	2.49%
R19	Residential 9,000 SF Lot	1.24	0.02%	
R2	Two Family Residential	1.27	0.02%	0.02%
R2PD	Two Family Residential Planned Develo	138.39	1.77%	1.77%
RA	Residential Agricultural Zone	314.90	4.03%	
RAPD	Residential PD	54.46	0.70%	
RC	Residential Conservation Zone	909.20	11.63%	11.63%
RM	Residential Manufactured home	114.01	1.46%	
SDP4	Lakeview Fields Development	21.00	0.27%	
SDP5	Villages at Celebration Development	299.03	3.83%	
VLDR	Very low Residential Zone	0.60	0.01%	0.01%
	Totals	**7815.56**	**100.00%**	**23%**

Summary of Proposed Changes

- **Removes language that refers to accessory apartments or accessory living spaces and replacing with Accessory Dwelling Unit or ADU(s).**
- **Removes the Supplementary (S) and Accessory (A) Apartment overlays and instead allows ADUs as an accessory use in all LDR (no change), R1, RA, RC (no change), VLDR (no change) and A1 Zones.**
- **Removes the requirement for an internal connection for internal ADUs.**
- **Removes the 20-foot height limitation on ADUs in accessory structures but keeps the requirement that the accessory structure not be larger or taller than the main dwelling.**
- **Changes the occupancy of an ADU from no more than two (2) unrelated adults with or without minor children to no more than three (3) unrelated adults with or without minor children.**
- **Clarifies that addresses for ADUs shall be assigned by Provo City.**
- **Clarifies that parking in the front yard can only be on a driveway that leads to required covered parking.**
- **Removes language regulating the number of kitchens.**

Summary of Proposed Changes

- Proposed Amendments will allow ADUs in about 91% of the areas of the City zoned primarily for residential use.

Zone	Zone Description	Total Acreage	% of total	Current	Proposed
HDR	High Density Residential	13.73	0.18%		
LDR	Low Density Residential	135.65	1.74%	1.74%	
MDR	Medium Density Residential	106.33	1.36%		
PRO	All Residential PRO Zones	106.68	1.36%		
R110	Residential 10,000 SF Lot	2669.24	34.15%		34.15%
R110PD	Residential 10,000 SF Planned Develop	203.77	2.61%		2.61%
R120	Residential 20,000 SF Lot	154.69	1.98%		1.98%
R120PD	Residential 20,000 SF Planned Develop	7.02	0.09%		0.09%
R16	Residential 6,000 SF Lot	242.19	3.10%		3.10%
R16A	Residential 6,000 SF with Accessory	436.96	5.59%	5.59%	
R16A-PD	Residential 6,000 SF Planned Dev. With	0.47	0.01%	0.01%	
R16PD	Residential 6,000 SF Planned Develop	64.59	0.83%		0.83%
R17	Residential 7,000 SF Lot	31.34	0.40%		0.40%
R18	Residential 8,000 SF Lot	1332.85	17.05%		17.05%
R18A	Residential 8,000 SF with accessory	15.56	0.20%	0.20%	
R18PD	Residential 8,000 SF Planned Develop	245.77	3.14%		3.14%
R18S	Residential 8,000 SF W Accessory	194.65	2.49%	2.49%	
R19	Residential 9,000 SF Lot	1.24	0.02%		0.02%
R2	Two Family Residential	1.27	0.02%	0.02%	
R2PD	Two Family Residential Planned Develo	138.39	1.77%	1.77%	
RA	Residential Agricultural Zone	314.90	4.03%		4.03%
RAPD	Residential PD	54.46	0.70%		0.70%
RC	Residential Conservation Zone	909.20	11.63%	11.63%	
RM	Residential Manufactured home	114.01	1.46%		
SDP4	Lakeview Fields Development	21.00	0.27%		
SDP5	Villages at Celebration Development	299.03	3.83%		
VLDR	Very low Residential Zone	0.60	0.01%	0.01%	
	Totals	**7815.56**	**100.00%**	**23%**	68%

Requirements Not Changing

- **Only one ADU per single-family dwelling.**
- **Must be owner occupied.**
- **The ADU cannot alter the appearance of the structure as a single-family dwelling.**
- **A minimum of four (4) off-street parking spaces are required; however, any vehicle associated with the property must have a legal off-street parking space.**
- **Must have a Rental Dwelling License.**

Considerations

- Considerations:
  - Are you comfortable with allowing ADUs in all R1 zones? If not, what recommendations do you have? Is there a certain criteria you would use to exclude an area?
  - Are you comfortable eliminating the “A” and “S” overlays?
  - Are you comfortable with the change in occupancy?
  - Additional suggestions?