PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Council & Tooele City Redevelopment Agency will meet in a Work Session, on Wednesday, December 5, 2018 at the hour of 5:00 p.m. The Meeting will be Held in the Tooele City Hall Large Conference Room Located at 90 North Main Street, Tooele, Utah.

1. **Open City Council Meeting**

2. **Roll Call**

3. **Discussion:**

- **4th of July Funding Discussion**
- **Ranked Choice Voting**
- **Resolution 2018-67 A Resolution of the Tooele City Council Approving and Ratifying a Real Estate Purchase Contract (REPC) for 1,778 Acres of Property Located Near Vernon Town**
  Presented by Roger Baker
- **Resolution 2018-45 A Resolution of the Tooele City Council Approving an Interlocal Agreement with Tooele County for Solid Waste Disposal**
  Presented by Roger Baker
- **Ordinance 2018 - 16 An Ordinance of Tooele City Enacting Tooele City Code Chapter 5-27 Regarding Small Wireless Communication Services and Facilities in the Public Rights-of-Way**
  Presented by Roger Baker
- **Resolution 2018 - 57 A Resolution of the Tooele City Council Approving a Form Franchise Agreement for Small Wireless Facilities in the Public Rights-of-Way**
  Presented by Roger Baker
- **Resolution 2018 - 58 A Resolution of the Tooele City Council Amending the Tooele City Fee Schedule Regarding Small Wireless Facilities in the Public Rights-of-Way**
  Presented by Roger Baker
- **Resolution 2018 - 64 A Resolution of the Tooele City Council Approving a Form Pole Attachment Agreement for Small Wireless Facilities Attached to Tooele City Utility Poles in the Public Rights-of-Way**
  Presented by Roger Baker
- **Ordinance 2018 – 17 An Ordinance of Tooele City Amending Tooele City Code Chapter 5-24 Regarding Telecommunications Rights-of-Way**
  Presented by Roger Baker
- **Resolution 2018 - 62 A Resolution of the Tooele City Council Approving a Form Franchise Agreement for Telecommunications Services and Facilities in the Public Rights-of-Way**
  Presented by Roger Baker
- **Resolution 2018 - 63 A Resolution of the Tooele City Council Amending the Tooele City Fee Schedule Regarding Telecommunications in the Public Rights-of-Way**
  Presented by Roger Baker

- **Abatement of Abandoned City Facilities**
  Presented by Steve Evans
- **Resolution 2018 – 68 A Resolution of the Tooele City Council Approving an Agreement with Rocky Mountain Power for Required Electrical Work on the Police Station Site**
  Presented by Paul Hansen
- **Ordinance 2018 – 24 An Ordinance of Tooele City Amending Tooele City Code Section 7-1-5 Regarding Land Use Definitions, Establishing Section 7-2-20 Regarding Temporary Uses and Temporary Seasonal Uses, and Amending Table 1 of Section 7-14-3 and Table 1 of Section 7-16-3 Regarding Permissibility of Seasonal Uses, Temporary Uses, and Recreational Uses Within Various Zoning Districts**
  Presented by Jim Bolser
- **Ordinance 2018 – 25 An Ordinance of Tooele City Amending the Moderate Income Housing Element of the Tooele City General Plan**
  Presented by Jim Bolser
- **Providence at Overlake, Phases 3-6 – Preliminary Plan Request**
  Presented by Jim Bolser
- **Lexington Greens at Overlake, Phase 1 – Preliminary Plan Request**
  Presented by Jim Bolser
- **Land Use Policy, Transportation & Utility Modeling for the Overlake Area**
  Presented by Jim Bolser

4. Close Meeting

- **Litigation & Property Acquisition**

5. Adjourn

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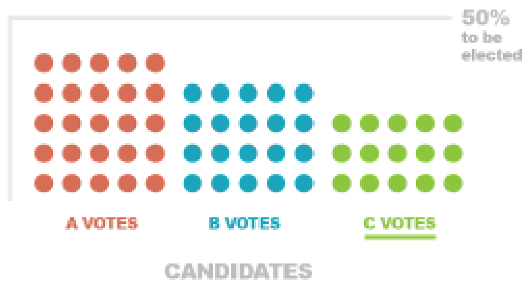
Michelle Y. Pitt
Tooele City Recorder/RDA Secretary

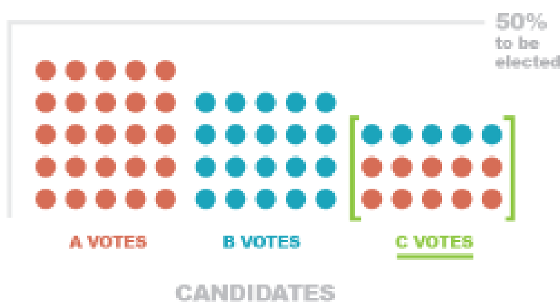
Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 843-2110 or michellep@tooelecity.org, Prior to the Meeting.

Single-winner ranked choice voting refers to the method of voting and counting of the votes for a single winner contest, such as mayor, governor, or a single-winner district, when only one person is elected to the position. With ranked choice voting, the voter ranks their candidate choices in order of preference, then choices are counted to determine which candidate has more than 50% of the votes after the first round of counting or if additional rounds of counting are needed to reach a majority.

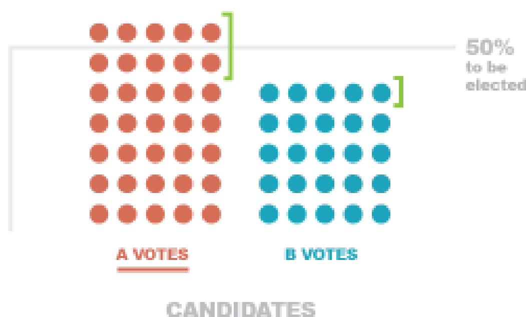


If a candidate wins more than 50% of the votes cast, a winner is declared, and no other counting will take place. However, if no candidate wins a majority (50% + 1), as seen in the scenario above, counting continues to round two.

In round two, the candidate with the lowest number of votes is eliminated from the contest. Even though the candidate has been eliminated, the voters who had that candidate as their first choice will then have their vote count for the candidate they marked as their next choice.

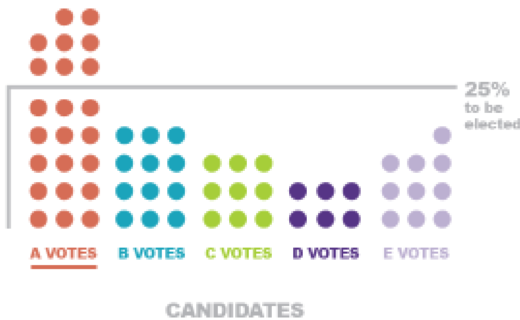


After adding these votes to the totals of the other candidates, you can see below that these candidates' vote totals increase. This process of eliminating the lowest candidates and adding the votes to remaining candidates continues until a candidate receives more than a majority of the remaining votes cast. In the scenario above, Candidate A reached a majority and is declared the winner after Candidate C was eliminated.

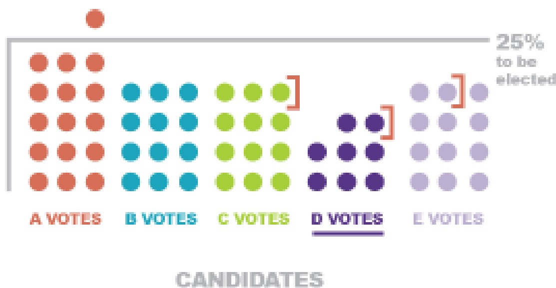


Multi-winner ranked choice voting refers to the method of voting and counting of the votes for a multi-winner contest, such as city council, school board or legislature when more than one individual is elected at-large or for district elections with multiple representatives within a district. With ranked choice voting, the voter ranks their choices in order of preference. Then, first choices are counted to determine which candidates have exceeded the number of votes necessary to be elected. After the first round of counting, we can determine whether additional rounds of counting are needed to fill each seat up for election.

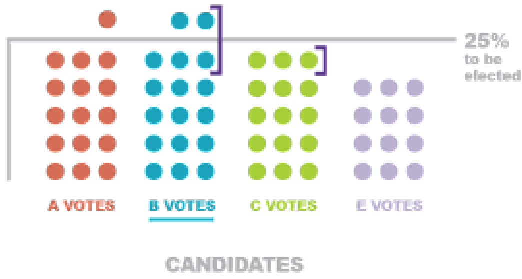
EXAMPLE: ELECTING 3 SEATS WITH RANKED CHOICE VOTING
In this example, there will be 3 winners. In order to be declared a winner, a candidate must receive the threshold (25%) plus one vote.



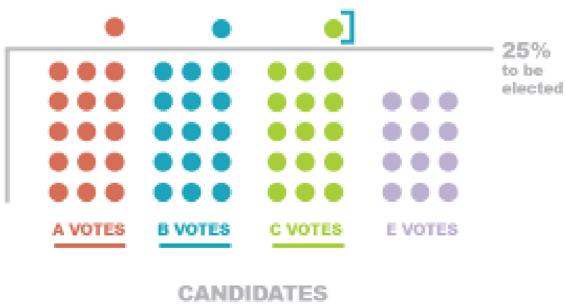
Candidate A wins in the first round of counting because he/she received more than 25% of the votes cast. Since ranked choice voting is designed to waste as few votes as possible, the surplus votes for Candidate "A" beyond the 25% needed to win will count for those voters' next choice. Since Candidate "A" received 7 votes beyond the winning threshold, those 7 will count for those voters’ second choice, adding three votes to Candidate "C," two votes to Candidate "D," and two votes to Candidate "E."



Candidate "D" has the lowest number of votes and is eliminated. The eight votes Candidate "D" received will now count for voters’ next choice, pushing Candidate "B" over the threshold to be elected. One vote for Candidate "B" is beyond what is necessary to win, and is therefore counted for the voter’s next choice. Candidate "B" is declared a winner along with Candidate "A," and we have one seat left to elect among the remaining candidates.



The one surplus vote from Candidate "B" counts for the voter's next choice, putting Candidate "C" over the threshold to be elected (25% +1), making Candidate "C "the 3rd and final winner.



Additional information can be found at https://www.rankedchoicevoting.org

TOOELE CITY CORPORATION

RESOLUTION 2018-67

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AND RATIFYING A REAL ESTATE PURCHASE CONTRACT (REPC) FOR 1,778 ACRES OF PROPERTY LOCATED NEAR VERNON TOWN.

WHEREAS, in 1990 Tooele City acquired 1,783 acres of land (“Land”), two large-capacity production wells (“Wells”), and approximately 4,400 acre-feet of water rights (“Water Rights”) for the combined sum of $810,000; and,

WHEREAS, Tooele City’s principal purpose in purchasing the Land and the Water Rights was to acquire and protect the Wells and Water Rights, valuable water assets, for future use in Tooele City; and,

WHEREAS, Tooele City does not have as a core municipal function the ownership and operation of agricultural property, but does have as a core municipal function the ownership and operation of water systems for the benefit of Tooele City residents and businesses; and,

WHEREAS, Tooele City determined to dispose of the Land in order to limit the costs and liabilities associated with owning and operating agricultural property, while maintaining ownership of the Wells and Water Rights for the future use of Tooele City; and,

WHEREAS, Tooele City commissioned the agricultural appraisal services of Don W. Peterson of Southern Utah Appraisal Services, headquartered in Richfield, Utah, whose October 11, 2018, appraisal report established a non-irrigated farm land value of $1,100,000 for the Land, not including any value for the Wells, Water Rights, or a hypothetical water supply from the Wells and Water Rights; and,

WHEREAS, by Resolution 2018-55, passed on September 19, 2018, the City Council retained the real estate brokerage services of Mike Quarnberg to list and sell the Land; and,

WHEREAS, Utah Code Section 10-8-2(4)(a) requires Utah municipalities to hold a public hearing prior to the disposition of significant parcels of real property, with 14 days notice of the hearing; and,

WHEREAS, Tooele City Code Section 1-25-1 defines “significant parcel of real property” to mean “a single parcel of real property owned by Tooele City regardless of size or value”; and,

WHEREAS, Utah law requires municipalities to obtain the fair market value for the sale of municipal-owned property; and,

WHEREAS, Tooele City has received and accepted an offer (the “REPC” attached as Exhibit A) from 6 Mile Ranch, Inc., to purchase the Land for the sum of $1,300,100, with a closing to occur prior to December 22, 2018; and,

WHEREAS, the REPC reserves to Tooele City the following items:

- the Water Rights
- five acres of land for a groundwater protection area
- pipeline easements
- access easements

WHEREAS, the City Council held a duly-noticed public hearing on December 5, 2018, as required by state and local law, and considered all comments received; and,

WHEREAS, the sale of the Land is in the best interest of Tooele City because it will eliminate the costs of owning and operating agricultural land and will provide a one-time source of revenue to offset litigation and enterprise fund expenses:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that

1. the REPC attached as Exhibit A is hereby approved and ratified; and,
2. the Mayor is hereby authorized to sign all documents necessary to close on the sale of the Land to 6 Mile Ranch, Inc.

This Resolution is in the best interest of the general welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _______________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ____

MAYOR OF TOOELE CITY

(Approved) (Disapproved)

______________________________ ______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form: ______________________________
Roger Evans Baker, City Attorney

Exhibit A

6 Mile Ranch, Inc.
Real Estate Purchase Contract (REPC)

Utah Association of REALTORS®

REAL ESTATE PURCHASE CONTRACT FOR LAND

This is a legally binding Real Estate Purchase Contract ("REPC"). If you desire legal or tax advice, consult your attorney or tax advisor.

OFFER TO PURCHASE AND EARNEST MONEY DEPOSIT

On this 2nd day of November, 2018 ("Offer Reference Date") 6 Mile Ranch Inc. ("Buyer") offers to purchase from City of Tooele ("Seller") the Property described below and [ ] **delivers to the Buyer's Brokerage with this offer, or** [X] **agrees to deliver no later than four (4) calendar days after Acceptance (as defined in Section 23)**, Earnest Money in the amount of $5000.00 in the form of CK. After Acceptance of the REPC by Buyer and Seller, and receipt of the Earnest Money by the Brokerage, the Brokerage shall have four (4) calendar days in which to deposit the Earnest Money into the Brokerage Real Estate Trust Account.

Buyer's Brokerage Non Represented Phone: ____________

Received by: [signature] on 11/7/18
(Signature above acknowledges receipt of Earnest Money) (Date)
For Security Title Co.

OTHER PROVISIONS

1. PROPERTY: 3409 North Hwy 36

also described as: 1778.71 + - Acres See Exhibit " A " attached

City of Vernon, County of Tooele State of Utah, Zip 84080 (the "Property"). Any reference below to the term "Property" shall include the Property described above, together with the Included Items and water rights/water shares, if any, referenced in Sections 1.1, and 1.3.

1.1 Included Items. (specify) Existing buildings, home, corrals, out buildings.

1.2 Excluded Items. (specify) Water rights, existing water wells, & water distribution systems.

1.3 Water Service. The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source for Seller's current culinary water service and irrigation water service, if any, to the Property. The water rights/water shares will be conveyed or otherwise transferred to Buyer at Closing by applicable deed or legal instruments. The following water rights/ water shares, if applicable, are specifically excluded from this sale: All currently owned by City of Tooele

2. PURCHASE PRICE. The Purchase Price for the Property is $1,300,100.00. Except as provided in this Section, the Purchase Price shall be paid as provided in Sections 2(a) through 2(d) below. Any amounts shown in 2(b) and 2(d) may be adjusted as deemed necessary by Buyer and the Lender.

$5000 **(a) Earnest Money Deposit.** Under certain conditions described in the REPC, this deposit may become totally non-refundable.

$ 0 **(b) New Loan.** Buyer may apply for mortgage loan financing (the "Loan") on terms acceptable to Buyer.

$ 0 **(c) Seller Financing.** (see attached Seller Financing Addendum)

$1,295,100.00 **(d) Balance of Purchase Price in Cash at Settlement**

$1,300,100.00 **PURCHASE PRICE. Total of lines (a) through (d)**

3. SETTLEMENT AND CLOSING.

3.1 Settlement. Settlement shall take place no later than the Settlement Deadline referenced in Section 24(d), or as otherwise mutually agreed by Buyer and Seller in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents

(except for the proceeds of any new loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

3.2 Prorations. All prorations, including, but not limited to, homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations, if any, shall be made as of the Settlement Deadline referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The provisions of this Section 3.2 shall survive Closing.

3.3 Greenbelt. If any portion of the Property is presently assessed as "Greenbelt" the payment of any roll-back taxes assessed against the Property shall be paid for by: [ ] Seller [ ] Buyer [ ] Split Equally Between Buyer and Seller [ ] Other (explain) NA

3.4 Special Assessments. Any assessments for capital improvements as approved by the HOA (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by: [ ] Seller [ ] Buyer [ ] Split Equally Between Buyer and Seller [ ] Other (explain) NA

The provisions of this Section 3.4 shall survive Closing.

3.5 Fees/Costs/Payment Obligations. Unless otherwise agreed to in writing, Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Tenant deposits (including any prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Buyer agrees to be responsible for homeowners' association and private and public utility service transfer fees, if any, and all utilities and other services provided to the Property after the Settlement Deadline. The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. The provisions of this Section 3.5 shall survive Closing.

3.6 Closing. For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (c) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in 3.6 (b) and (c) shall be completed within four calendar days after Settlement.

4. POSSESSION. Seller shall deliver physical possession of the Property to Buyer as follows: [ ] **Upon Closing;** [ ] __ **Hours after Closing;** [ ] __ **Calendar Days after Closing;** [X] **Other (explain)**
To be determined

Any contracted rental of the Property prior to or after Closing, between Buyer and Seller, shall be by separate written agreement. Seller and Buyer shall each be responsible for any insurance coverage each party deems necessary for the Property. Seller agrees to deliver the Property to Buyer free of debris and personal belongings. The provisions of this Section 4 shall survive Closing.

5. CONFIRMATION OF AGENCY DISCLOSURE. Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:

Seller's Agent Michael J. Quarnberg, represents [X] **Seller** [ ] **both Buyer and Seller as a Limited Agent;**

Seller's Brokerage New West Realty Group, LLC., represents [X] **Seller** [ ] **both Buyer and Seller as a Limited Agent;**

Buyer's Agent Non Represented, represents [ ] **Buyer** [ ] **both Buyer and Seller as a Limited Agent;**

Buyer's Brokerage Non Represented, represents [ ] **Buyer** [ ] **both Buyer and Seller as a Limited Agent.**

6. TITLE & TITLE INSURANCE.

6.1 Title to Property. Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8. Buyer also agrees to accept title to the Property subject to any existing leases rental and property management agreements affecting the Property not expiring prior to Closing which were provided to Buyer pursuant to Section 7(e). The provisions of this Section 6.1 shall survive Closing.

6.2 Title Insurance. At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the Commitment, the most current version of an ALTA standard coverage owner's policy of title insurance. Any additional title insurance coverage desired by Buyer shall be at Buyer's expense.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents in hard copy or electronic format which are collectively referred to as the "Seller Disclosures":

(a) a written Seller Property Condition Disclosure (Land) for the Property, completed, signed and dated by Seller as provided in Section10.2;

 Buyer's Initials [signature] Date 11-2-18 Seller's Initials DEW Date 11-8-18

(b) a Commitment for Title Insurance as referenced in Section 6.1;
(c) a copy of any restrictive covenants (CC&R's), rules and regulations affecting the Property;
(d) a copy of the most recent minutes, budget and financial statement for the homeowners' association, if any;
(e) a copy of any lease, rental, and property management agreements affecting the Property not expiring prior to Closing;
(f) evidence of any water rights and/or water shares referenced in Section 1.3;
(g) written notice of any claims and/or conditions known to Seller relating to environmental problems; and violation of any CC&R's, federal, state or local laws, and building or zoning code violations; and
(h) Other (specify) All deemed necessary and prudent by Purchaser.

8. BUYER'S CONDITIONS OF PURCHASE.

8.1 DUE DILIGENCE CONDITION. Buyer's obligation to purchase the Property: **[X] IS [ ] IS NOT** conditioned upon Buyer's Due Diligence as defined in this Section 8.1(a) below. This condition is referred to as the "Due Diligence Condition." If checked in the affirmative, Sections 8.1(a) through 8.1(c) apply; otherwise they do not.

(a) Due Diligence Items. Buyer's Due Diligence shall consist of Buyer's review and approval of the contents of the Seller Disclosures referenced in Section 7, and any other tests, evaluations and verifications of the Property deemed necessary or appropriate by Buyer, such as: the physical condition of the Property; the existence of any hazardous substances, environmental issues or geologic conditions; the square footage or acreage of the Property; the costs and availability of flood insurance, if applicable; water source, availability and quality; the location of property lines; regulatory use restrictions or violations; fees for services such as HOA dues, municipal services, and utility costs; convicted sex offenders residing in proximity to the Property; and any other matters deemed material to Buyer in making a decision to purchase the Property. Unless otherwise provided in the REPC, all of Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence. Buyer agrees to pay for any damage to the Property resulting from any such inspections or tests during the Due Diligence.

(b) Buyer's Right to Cancel or Resolve Objections. If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 24(b), cancel the REPC by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 24(b), resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

(c) Failure to Cancel or Resolve Objections. If Buyer fails to cancel the REPC or fails to resolve in writing any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 8.1(b), Buyer shall be deemed to have waived the Due Diligence Condition.

8.2 APPRAISAL CONDITION. Buyer's obligation to purchase the Property: **[ ] IS [X] IS NOT** conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "Appraisal Condition." If checked in the affirmative, Sections 8.2(a) and 8.2(b) apply; otherwise they do not.

(a) Buyer's Right to Cancel. If after completion of an appraisal by a licensed appraiser, Buyer receives written notice from the Lender or the appraiser that the Property has appraised for less than the Purchase Price (a "Notice of Appraised Value"), Buyer may cancel the REPC by providing written notice to Seller (with a copy of the Notice of Appraised Value) no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

(b) Failure to Cancel. If the REPC is not cancelled as provided in this section 8.2(a), Buyer shall be deemed to have waived the Appraisal Condition.

8.3 FINANCING CONDITION. Buyer's obligation to purchase the property: **[ ] IS [X] IS NOT** conditioned upon Buyer obtaining the Loan referenced in Section 2(b). This condition is referred to as the "Financing Condition." If checked in the affirmative, Sections 8.3(a) and 8.3(b) apply; otherwise they do not. If the Financing Condition applies, Buyer agrees to work diligently and in good faith to obtain the Loan.

(a) Buyer's Right to Cancel Before the Financing & Appraisal Deadline. If Buyer, in Buyer's sole discretion, is not satisfied with the terms and conditions of the Loan, Buyer may cancel the REPC by providing written notice to Seller no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

(b) Buyer's Right to Cancel After the Financing & Appraisal Deadline. If after expiration of the Financing & Appraisal Deadline referenced in Section 24(c), Buyer fails to obtain the Loan, meaning that the proceeds of the Loan have not been delivered by the Lender to Seller or to the escrow/closing office as required under Section 3.6 of the REPC, then Buyer or Seller may cancel the REPC by providing written notice to the other party; whereupon the Earnest Money Deposit, or Deposits, if applicable (see Section 8.4 below), shall be released to Seller without the requirement of further written authorization from Buyer. In the event of such cancellation, Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages. Buyer and Seller agree that liquidated damages would be difficult and impractical to calculate, and the Earnest Money Deposit, or Deposits, if applicable, is a fair and reasonable estimate of Seller's damages in the event Buyer fails to obtain the Loan.

 Buyer's Initials [signature] Date 11-2-18 Seller's Initials DEW Date 11-8-18

8.4 ADDITIONAL EARNEST MONEY DEPOSIT. If the REPC has not been previously cancelled by Buyer as provided in Sections 8.1, 8.2 or 8.3(a), then no later than the Due Diligence Deadline referenced in Section 24(b), or the Financing & Appraisal Deadline referenced in Section 24(c), whichever is later, Buyer: [ ] **WILL** [X] **WILL NOT** deliver to the Buyer's Brokerage, an Additional Earnest Money Deposit in the amount of $____________. The Earnest Money Deposit and the Additional Earnest Money Deposit, if applicable, are sometimes referred to herein as the "Deposits". The Earnest Money Deposit, or Deposits, if applicable, shall be credited toward the Purchase Price at Closing.

9. ADDENDA. There [X] **ARE** [ ] **ARE NOT** addenda to the REPC containing additional terms. If there are, the terms of the following addenda are incorporated into the REPC by this reference: [X] **Addendum No.** 1 [ ] **Seller Financing Addendum** [ ] **Other (specify)** ____________

10. AS-IS CONDITION OF PROPERTY.

10.1 Condition of Property/Buyer Acknowledgements. Buyer acknowledges and agrees that in reference to the physical condition of the Property: (a) Buyer is purchasing the Property in its "As-Is" condition without expressed or implied warranties of any kind; (b) Buyer shall have, during Buyer's Due Diligence as referenced in Section 8.1, an opportunity to completely inspect and evaluate the condition of the Property; and (c) if based on the Buyer's Due Diligence, Buyer elects to proceed with the purchase of the Property, Buyer is relying wholly on Buyer's own judgment and that of any contractors or inspectors engaged by Buyer to review, evaluate and inspect the Property.

10.2 Condition of Property/Seller Acknowledgements. Seller acknowledges and agrees that in reference to the physical condition of the Property, Seller agrees to: (a) disclose in writing to Buyer defects in the Property known to Seller that materially affect the value of the Property that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer; (b) carefully review, complete, and provide to Buyer a written Seller Property Condition Disclosure (Land) as stated in Section 7(a); and (c) deliver the Property to Buyer in substantially the same general condition as it was on the date of Acceptance, as defined in Section 23. The provisions of Sections 10.1 and 10.2 shall survive Closing.

11. FINAL PRE-SETTLEMENT INSPECTION.

11.1 Pre-Settlement Inspection. At any time prior to Settlement, Buyer may conduct a final pre-Settlement inspection of the Property to determine only that the Property is "as represented", meaning that the items referenced in Sections 1.1, 1.3 and 8.1(b)(ii) ("the items") are respectively present, repaired or corrected as agreed. The failure to conduct a pre-Settlement inspection or to claim that an item is not as represented shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented. If the items are not as represented, Seller agrees to cause all applicable items to be corrected, repaired or replaced (the "Work") prior to the Settlement Deadline referenced in Section 24(d).

11.2 Escrow to Complete the Work. If, as of Settlement, the Work has not been completed, then Buyer and Seller agree to withhold in escrow at Settlement a reasonable amount agreed to by Seller, Buyer (and Lender, if applicable), sufficient to pay for completion of the Work. If the Work is not completed within thirty (30) calendar days after the Settlement Deadline, the amount so escrowed may, subject to Lender's approval, be released to Buyer as liquidated damages for failure to complete the Work. The provisions of this Section 11.2 shall survive Closing.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any leases, rental or property management agreements shall be made; (b) no new lease, rental or property management agreements shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; (d) no further financial encumbrances to the Property shall be made, and (e) no changes in the legal title to the Property shall be made.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person signing the REPC on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. The REPC together with its addenda, any attached exhibits, and Seller Disclosures (collectively referred to as the "REPC"), constitutes the entire contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties whether verbal or otherwise. The REPC cannot be changed except by written agreement of the parties.

15. MEDIATION. Any dispute relating to the REPC arising prior to or after Closing: [X] **SHALL** [ ] **MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other procedures and remedies available under the REPC shall apply. Nothing in this Section 15 prohibits any party from seeking emergency legal or equitable relief, pending mediation. The provisions of this Section 15 shall survive Closing.

 Buyer's Initials [signature] Date 11-2-18 Seller's Initials DEW Date 11-8-18

16. DEFAULT.

16.1 Buyer Default. If Buyer defaults, Seller may elect one of the following remedies: (a) cancel the REPC and retain the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages; (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Buyer to specifically enforce the REPC; or (c) return the Earnest Money Deposit, or Deposits, if applicable, to Buyer and pursue any other remedies available at law.

16.2 Seller Default. If Seller defaults, Buyer may elect one of the following remedies: (a) cancel the REPC, and in addition to the return of the Earnest Money Deposit, or Deposits, if applicable, Buyer may elect to accept from Seller, as liquidated damages, a sum equal to the Earnest Money Deposit, or Deposits, if applicable; or (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Seller to specifically enforce the REPC; or (c) accept a return of the Earnest Money Deposit, or Deposits, if applicable, and pursue any other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

17. ATTORNEY FEES AND COSTS/GOVERNING LAW. In the event of litigation or binding arbitration to enforce the REPC, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15. This contract shall be governed by and construed in accordance with the laws of the State of Utah. The provisions of this Section 17 shall survive Closing.

18. NOTICES. Except as provided in Section 23, all notices required under the REPC must be: (a) in writing; (b) signed by the Buyer or Seller giving notice; and (c) received by the Buyer or the Seller, or their respective agent, or by the brokerage firm representing the Buyer or Seller, no later than the applicable date referenced in the REPC.

19. NO ASSIGNMENT. The REPC and the rights and obligations of Buyer hereunder, are personal to Buyer. The REPC may not be assigned by Buyer without the prior written consent of Seller. Provided, however, the transfer of Buyer's interest in the REPC to any business entity in which Buyer holds a legal interest, including, but not limited to, a family partnership, family trust, limited liability company, partnership, or corporation (collectively referred to as a "Permissible Transfer"), shall not be treated as an assignment by Buyer that requires Seller's prior written consent. Furthermore, the inclusion of "and/or assigns" or similar language on the line identifying Buyer on the first page of the REPC shall constitute Seller's written consent only to a Permissible Transfer.

20. INSURANCE & RISK OF LOSS.

20.1 Insurance Coverage. As of Closing, Buyer shall be responsible to obtain such casualty and liability insurance coverage on the Property in amounts acceptable to Buyer and Buyer's Lender, if applicable.

20.2 Risk of Loss. If prior to Closing, any part of the Property is damaged or destroyed by fire, vandalism, flood, earthquake, or act of God, the risk of such loss or damage shall be borne by Seller; provided however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the Purchase Price referenced in Section 2, Buyer may elect to either: (i) cancel the REPC by providing written notice to the other party, in which instance the Earnest Money, or Deposits, if applicable, shall be returned to Buyer; or (ii) proceed to Closing, and accept the Property in its "As-Is" condition.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in the REPC. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in the REPC: (a) performance under each Section of the REPC which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" and "calendar days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (e.g. Acceptance). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to the REPC, except as otherwise agreed to in writing by such non-party.

22. ELECTRONIC TRANSMISSION AND COUNTERPARTS. Electronic transmission (including email and fax) of a signed copy of the REPC, any addenda and counteroffers, and the retransmission of any signed electronic transmission shall be the same as delivery of an original. The REPC and any addenda and counteroffers may be executed in counterparts.

23. ACCEPTANCE. "Acceptance" occurs **only** when **all** of the following have occurred: (a) Seller or Buyer has signed the offer or counteroffer where noted to indicate acceptance; and (b) Seller or Buyer or their agent has communicated to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to the REPC:

(a) Seller Disclosure Deadline 10 DAYS AFTER ACCEPTANCE (Date)

(b) Due Diligence Deadline 30 DAYS AFTER ACCEPTANCE (Date)

(c) Financing & Appraisal Deadline ________ (Date)

(d) Settlement Deadline 45 DAYS AFTER ACCEPTANCE (Date)

25. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: 6 :00 [ ] **AM** [X] **PM** Mountain Time on NOV 8, 2018 (Date), this offer shall lapse; and the Brokerage shall return any Earnest Money Deposit to Buyer.

[signature] 11-2-18

(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

(Buyer's Names) **(PLEASE PRINT)** (Notice Address) (Zip Code) (Phone)

(Buyer's Names) **(PLEASE PRINT)** (Notice Address) (Zip Code) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[✓] **ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.

[ ] **COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. ________.

[ ] **REJECTION:** Seller rejects the foregoing offer.

Debra E. Weir 11-8-18

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

(Seller's Names) **(PLEASE PRINT)** (Notice Address) (Zip Code) (Phone)

(Seller's Names) **(PLEASE PRINT)** (Notice Address) (Zip Code) (Phone)

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 Buyer's Initials [initials] Date 11-2-18 Seller's Initials DEW Date 11-8-18

ADDENDUM NO. One TO REAL ESTATE PURCHASE CONTRACT

THIS IS AN [X] ADDENDUM [ ] COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of 2nd day of November, 2018 including all prior addenda and counteroffers, between 6 MILE RANCH, INC as Buyer, and City of Tooele as Seller, regarding the Property located at 3409 No. Hwy 36, Vernon, Utah 84080 (1778.71 + - Acres) ________. The following terms are hereby incorporated as part of the REPC:

1) No water rights, water wells, or water distribution systems are included in this sale.

2) Seller shall retain 5 acres around existing water wells. Location, and dimensions shall be determined by a survey by the City. Said survey shall be approved by Seller and Purchaser prior to closing.

3) Seller shall retain easements and rights of way from said well site stated above for power lines, access, and water pipelines from existing well site through property, to outside of existing property lines. Said easements, and rights of way shall be determined by Seller, and surveyed by Seller. Buyer and Seller shall approve of said easements and rights of way prior to closing.

4) Propetty is being sold in its present physical condition, with no warranties expressed or implied.

5) Seller is unaware of any existing mineral rights owned by Seller. Therefore, there are no mineral rights included in this sale. BUT, SELLER SHALL DEED ANY & ALL MINERAL RIGHTS THAT MAY BE OWNED BY SELLER TO PURCHASE AT CLOSING.

6) PURCHASER IS UTILIZING A 1031 EXCHANGE & SELLER AGREES TO ASSIST IN THE EXCHANGE

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): [ ] REMAIN UNCHANGED [ ] ARE CHANGED AS FOLLOWS:________________

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. [X] **Seller** [ ] **Buyer** shall have until 6 : 00 [ ] **AM** [X] **PM** Mountain Time on NOV 7 2018 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

[signature] 11-2-18

[ ] Buyer [ ] Seller Signature (Date) (Time) [ ] Buyer [ ] Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[✓] **ACCEPTANCE:** [ ] **Seller** [ ] **Buyer** hereby accepts the terms of this ADDENDUM.

[ ] **COUNTEROFFER:** [ ] **Seller** [ ] **Buyer** presents as a counteroffer the terms of attached ADDENDUM NO. ____.

Debra E. Win 11-8-18 11:21 am

(Signature) (Date) (Time) (Signature) (Date) (Time)

[ ] **REJECTION:** [ ] **Seller** [ ] **Buyer** rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

 Buyer's Initials ______ Seller's Initials DEW

EXHIBIT " A "

The following parcels are included in this sale:

Tax #'s

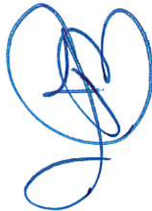
07-017-0-0001 (Parcel 1)

07-017-0-0003 (Parcel 2)

07-017-0-0005 (Parcel 3)

07-017-0-0008 (Parcel 4)

06-127-0-0007 (Parcel 5)



1,784 acres in Tooele County, Utah.

Tooele County parcels # 612700007, 701700001, 701700003, 701700005, 701700008

Utah Association of REALTORS®

UNREPRESENTED BUYER DISCLOSURE

This disclosure form is not a contract. Signing it does not create any relationship between you and the real estate agent who has also signed.

NAME OF BUYER: 6 MILE RANCH, INC. (the "Buyer")
NAME OF SELLER: City of Tooele (the "Seller")
LOCATION OF PROPERTY: 3409 No. Hwy 36, Vernon, Utah 84080 (the "Property")
AGENT REPRESENTING SELLER: Michael J Quarnberg (the "Agent")
BROKERAGE REPRESENTING SELLER: New West Realty Group LLC (the "Company")

WHEN YOU ENTER INTO A DISCUSSION WITH A REAL ESTATE AGENT REGARDING A POTENTIAL REAL ESTATE TRANSACTION, YOU SHOULD, FROM THE OUTSET, UNDERSTAND WHO THE REAL ESTATE AGENT IS REPRESENTING IN THAT TRANSACTION. WHAT FOLLOWS IS A BRIEF BUT VERY IMPORTANT EXPLANATION REGARDING AGENCY RELATIONSHIPS AND THE REAL ESTATE AGENTS INVOLVED IN THIS TRANSACTION.

SELLER'S AGENT

A real estate agent who lists a seller's property for sale ("Seller's Agent"), acts as the agent for the seller only, and has fiduciary duties of loyalty, full disclosure, confidentiality and reasonable care to that seller. In practical terms, the seller hires a Seller's Agent to locate a buyer and negotiate a transaction with terms favorable to the seller. Although the Seller's Agent has these fiduciary duties to the seller, the Seller's Agent is, by law, responsible to all prospective buyers to treat them with honesty, fair dealing, and with good faith.

BUYER'S AGENT

A real estate agent that acts as agent for the buyer only ("Buyer's Agent") has the same fiduciary duties to that buyer that a Seller's Agent has to the seller. In practical terms, the buyer hires a Buyer's Agent to locate a suitable property and negotiate a transaction with terms favorable to the buyer. Although the Buyer's Agent has these fiduciary duties to the buyer, the Buyer's Agent is, by law, responsible to all prospective sellers to treat them with honesty, fair dealing, and with good faith.

AGENT OF BOTH BUYER AND SELLER

A real estate agent can, with the prior written consent of the buyer and seller, represent both the buyer and seller in the same transaction ("Limited Agent"). A Limited Agent has fiduciary duties to both the buyer and the seller, but the Limited Agent is also "limited" by a separate duty of neutrality in the negotiations between the buyer and seller.

CONFIRMATION OF AGENCY IN THIS TRANSACTION

The Property shown above is presently listed for sale through the Company. Consequently, the Company and the Agent are representing the Seller. BY SIGNING THIS UNREPRESENTED BUYER DISCLOSURE THE BUYER ACKNOWLEDGES AND AGREES THAT THE AGENT AND THE COMPANY WILL ONLY REPRESENT THE SELLER IN THIS TRANSACTION AS A SELLER'S AGENT. THE BUYER ACKNOWLEDGES THAT THE COMPANY AND THE AGENT HAVE ADVISED THE BUYER THAT THE BUYER IS ENTITLED TO BE REPRESENTED BY A BUYER'S AGENT WHO WILL REPRESENT ONLY THE BUYER. THE BUYER HAS HOWEVER, ELECTED NOT TO BE REPRESENTED BY A REAL ESTATE AGENT IN THIS TRANSACTION.

ACKNOWLEDGMENT

I/we acknowledge receipt of a copy of this Unrepresented Buyer Disclosure and understand and agree with the agency relationships confirmed herein.

[signature] 11-2-18
(Buyer) (Date) (Buyer) (Date)

The Company by: [signature] 11/2/18
(Authorized Agent) Date

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TOOELE CITY CORPORATION

RESOLUTION 2018-45

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN INTERLOCAL AGREEMENT WITH TOOELE COUNTY FOR SOLID WASTE DISPOSAL.

WHEREAS, Tooele County owns and operates a solid waste landfill and transfer station (“Landfill”); and,

WHEREAS, Tooele City operates a refuse collection utility program and contracts with Ace Recycling and Disposal, a private hauler (“Contractor”), to collect refuse (“Refuse”) from the City’s residential utility customers (“City Customers”); and,

WHEREAS, the County entered into an agreement with ClearSky Environmental, Inc., a Wyoming corporation, to construct and operate a waste processing facility, to which facility the County has agreed to deliver no less than 35,000 tons of refuse per year, the majority of which refuse originates from City Customers; and,

WHEREAS, the Parties desire to establish through interlocal agreement the terms under which the County will accept the Refuse at the Landfill (see Exhibit A); and,

WHEREAS, the City will pay the initial cost of $36.00 per ton to dispose of the Refuse at the Landfill, which cost will escalate $1 per ton each year for the term of the agreement:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Interlocal Agreement for Solid Waste Disposal Attached as Exhibit A is hereby approved and that the Mayor is hereby authorized to execute the same on behalf of Tooele City.

This Resolution shall become effective immediately upon passage by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _______________, 2018.

TOOELE CITY COUNCIL

(For)	(Against)
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________

ABSTAINING: ______________________________

MAYOR OF TOOELE CITY

(Approved)	(Disapproved)
______________________	______________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form: ______________________
Roger Evans Baker, Tooele City Attorney

EXHIBIT A

Interlocal Agreement for Solid Waste Disposal

TOOELE COUNTY CORPORATON
CONTRACT # 18-11-01

INTERLOCAL AGREEMENT
FOR SOLID WASTE DISPOSAL

THIS AGREEMENT, entered into by and between TOOELE COUNTY ("County"), a Utah political subdivision, and TOOELE CITY CORPORATION ("City"), a Utah municipal corporation and charter city (individually and collectively a "Party" and the "Parties"), as of July 1, 2018 (the "Effective Date").

RECITALS

WHEREAS, the County owns and operates a solid waste landfill and transfer station ("Landfill"); and,

WHEREAS, the City operates a refuse collection utility program and contracts with a private hauler ("Contractor") to collect refuse ("Refuse") from the City's residential utility customers ("City Customers"); and,

WHEREAS, the County entered into an agreement with ClearSky Environmental, Inc., a Wyoming corporation, to construct and operate a waste processing facility, to which facility the County has agreed to deliver no less than 35,000 tons of refuse per year, the majority of which refuse originates from City Customers; and,

WHEREAS, the Parties desire to establish the terms under which the County will accept the Refuse at the Landfill:

NOW, THEREFORE, in exchange for the mutual promises described herein, the County and the City hereby agree as follows:

SECTION 1. REFUSE. The County agrees to receive at the Landfill all Refuse collected by the Contractor from City Customers.

SECTION 2. TIPPING FEE. The County agrees to charge, and the City agrees to pay, a tipping fee of no more than $36.00 per ton for Refuse delivered by the Contractor. On January 1, 2019, the tipping fee will increase to $37.00 per ton and will increase on January 1st of each year by $1.00 per ton. Payments shall be made by the City promptly upon verifiable County invoice.

SECTION 3. TERM. This Interlocal Agreement shall have a term of three (3) years, expiring automatically on June 30, 2021. The Parties may thereafter enter into a new agreement if they choose.

SECTION 4. TERMINATION.

(a) Either party may terminate this Agreement for good cause or upon a default by the other Party not cured after 60 days' written notice.

(b) A default event includes an attempt to raise the tipping fee or a failure to pay the tipping fee.

(c) Either party may terminate this Agreement without cause upon 180 days' written notice.

SECTION 5. NOTICES.

(a) All notices provided under this Agreement shall be given by regular U.S. mail, certified U.S. mail, or personal delivery to:

COUNTY:
Board of County Commissioners
47 South Main
Tooele, UT 84074

(with copy to County Attorney)

CITY:
Tooele City Mayor
90 North Main
Tooele, Utah 84074

(with copy to City Attorney

SECTION 6. INDEMNIFICATION. The Parties shall each indemnify, release, and hold each other harmless from and against any suit, claim, or liability resulting from, or otherwise arising out of, the subject matter of this Agreement. This obligation shall survive termination.

SECTION 7. WAIVER OF JURY TRIAL. The Parties expressly waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

SECTION 8. NO WAIVER. The failure by a Party to insist upon the strict performance of any obligation of this Agreement, or to exercise any right or remedy consequent upon a failure to perform thereof, shall not constitute a waiver of any such failure to perform.

SECTION 9. AUTHORITY. The individuals executing this Agreement represent and warrant that they possess the legal authority to execute this Agreement pursuant to its terms, such authority being granted and evidenced by duly adopted Resolutions of each Party.

SECTION 10. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended for the benefit of any party except for the named Parties.

SECTION 11. ATTORNEYS' FEES. If any formal legal proceeding is brought by any Party to enforce this Agreement, the prevailing Party shall be entitled to recover its related costs and reasonable attorneys' fees.

SECTION 12. ENTIRE AGREEMENT. This Agreement constitutes the final expression of

the Parties as to the terms of this Agreement and the subject matter hereof, and supersedes all prior agreements, understandings, negotiations, and discussions between the Parties and/or their respective counsel with respect to the subject matter covered hereby.

SECTION 13. EXECUTION. The Parties shall execute two (2) originals of this Agreement, in accordance with the requirements of applicable state law, with one original being delivered to each of the Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

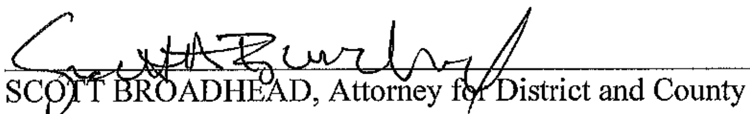
ATTEST:

MARILYN K. GILLETTE, County Clerk

COUNTY:

WADE BITNER, Chair
Board of County Commissioners

APPROVED AS TO FORM:



SCOTT BROADHEAD, Attorney for District and County

ATTEST:

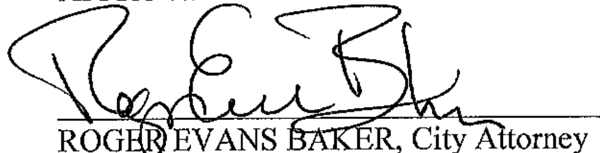
MICHELLE Y. PITT, City Recorder

(S E A L)

CITY:

DEBRA E. WINN, Mayor

APPROVED AS TO FORM:



ROGER EVANS BAKER, City Attorney

TOOELE CITY CORPORATION

ORDINANCE 2018-16

AN ORDINANCE OF TOOELE CITY ENACTING TOOELE CITY CODE CHAPTER 5-27 REGARDING SMALL WIRELESS COMMUNICATION SERVICES AND FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, Senate Bill 189 of the 2018 Utah Legislative Session ("SB 189"), which took effect on September 1, 2018, enacted Utah Code Chapter 54-21, entitled the Small Wireless Facilities Deployment Act, accomplishing the following:

- allowing a wireless provider to deploy a small wireless facility and any associated utility pole within a public right-of-way
- allowing a municipality to establish a permitting process for the deployment of a small wireless facility and any associated utility pole
- establishing a wireless provider's access to a municipal utility pole within a right-of-way
- setting rates and fees for the placement of a small wireless facility and a utility pole within a right-of-way
- allowing a municipality to adopt indemnification, insurance, and bonding requirements for a small wireless facility permit for a small wireless facility and a utility pole within a right-of-way
- allowing a municipality to enact design standards for a small wireless facility and a utility pole within a right-of-way; and,

WHEREAS, the Utah League of Cities and Towns has prepared a two-page summary of SB 189 (attached as Exhibit A, in lieu of attaching the complete 28-page SB 189, which can be seen at https://le.utah.gov/~2018/bills/static/SB0189.html); and,

WHEREAS, the City Council makes the following findings regarding Tooele City's public rights-of-way:

- they are critical to the travel and transport of persons and property in the business and social life of the City
- they are intended for public uses and must be managed and controlled consistent with that intent
- they can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit to the enhancement of the health, welfare, and general economic well-being of the City and its citizens
- they are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the allowed uses and to minimize the inconvenience to and negative effects upon the public from such facilities construction, placement, relocation, and maintenance in the rights-of-way; and,

WHEREAS, the City Council makes the following finding regarding compensation for the use of Tooele City's public rights-of-way: the right to occupy portions of the rights-of-way for limited times for the business of providing personal wireless services is a

valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the rights-of-way; and,

WHEREAS, the City Council makes the following finding regarding Tooele City's local concern in regulating utilities and public services in the public rights-of-way: while wireless communication facilities are in part an extension of interstate commerce, their operations also involve and affect the public rights-of-way, municipal franchising, and vital business and community services, which are of local concern; and,

WHEREAS, the City Council makes the following finding regarding the promotion of wireless communication services in Tooele City: it is in the best interests of its taxpayers and citizens to promote the rapid and orderly development of wireless communication services, on a nondiscriminatory basis, responsive to community and public interests, and to assure availability for municipal, educational, and community purposes; and,

WHEREAS, the City Council makes the following findings regarding the necessity for franchise standards for wireless communication services in the public rights-of-way: it is in the best interests of the public to franchise and to establish standards for franchising providers in a manner that:

- compensates the City fairly and reasonably on a competitively neutral and nondiscriminatory basis
- encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public
- protects fully the public interests and the City from any harm that may flow from such commercial use of rights-of-way
- protects the police powers and right-of-way management authority of the City, in a manner consistent with federal and state law
- otherwise protects the public interests in the development and use of the City's infrastructure
- protects the public's investment in improvements in the rights-of-way
- ensures that no barriers to entry by wireless communication service providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting personal wireless services, within the meaning of the Telecommunications Act of 1996 ("Act") (P.L. No. 96-104); and,

WHEREAS, Article XI Section 5 of the Utah Constitution grants to charter cities "the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law" including "to grant local public utility franchises and within its powers regulate the exercise thereof"; and,

WHEREAS, Utah Code Section 10-8-84 empowers municipalities to "pass all ordinances and rules, and make all regulations, not repugnant to law . . . as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity,

improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city"; and,

WHEREAS, Utah Code Section 10-3-702 empowers municipalities to "pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law"; and,

WHEREAS, the City Administration proposes enacting Tooele City Code Chapter 5-27 (Wireless Communication Services) to comply with and implement SB 189 and the Small Wireless Facilities Deployment Act, consistent with federal and state law, and to accomplish the purposes and findings stated above:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF TOOELE CITY that Tooele City Code Chapter 5-27 (Wireless Communication Services) is hereby enacted as shown in Exhibit B.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, and welfare of Tooele City and its residents and businesses and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this ____ day of _______________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ____

MAYOR OF TOOELE CITY

(Approved) (Disapproved)

______________________________ ______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form: ______________________________
Roger Evans Baker, City Attorney

Exhibit A

ULCT Summary of Senate Bill 189 (2018)

Exhibit B

Tooele City Code Chapter 5-27

UTAH LEAGUE OF CITIES AND TOWNS

2nd Substitute SB 189 Small Wireless Facilities Deployment Act (Sen. Bramble)

Note: Federal law requires that cities allow access to the right-of way (ROW). 2SB 189 creates a uniform state-wide process for facilitating that access and compensating cities.

Overview

- Wireless providers have the right to:
  - install small wireless facilities and utility poles within ROW; and
  - collocate small wireless facilities on non-electric municipal poles.
- Municipalities are required to recognize small wireless facilities ("SWF") in ROW as a permitted use in all zones and districts (strictly an administrative process).
- A small wireless facility consists of: an antenna of 6 ft^3 or less; ground equipment of 28 ft^3 or less; and it is collocated or installed on a utility pole no taller than 50 ft. (potential additional 10ft. for antennae).

Municipality Powers

- Design/Historic and Underground Districts - must allow SWF including utility poles (heightened design standards).
- May limit new utility poles in ROW that is 60 ft. wide or less and adjacent to residential property.
- May adopt reasonable, nondiscriminatory design standards.
- May adopt nondiscriminatory police-power-based regulations for management of ROW.
- May deny applications for articulable public safety reasons.
- May require agreement dealing with indemnification, insurance and bonding before ROW work.

Compensation

- Annual ROW Access Rate
  - 3.5% of gross revenue under Municipal Telecommunications License Tax; or
  - the greater of 3.5% of gross revenue or \$250 per small wireless facility.
- Annual Authority Pole Attachment Rate
  - \$50 per collocated small wireless facility per authority pole.
- Application Fees
  - \$100 per collocated small wireless facility.
  - \$250 per utility pole with a small wireless facility.
  - \$1000 per non-permitted use.
- Other applicable permit fees.

UTAH LEAGUE OF CITIES AND TOWNS

Application Limits

- Consolidated application: up to 25 small wireless facilities of substantially the same type.
- Category One Authority: Population of 65,000 or greater
    - Up to 75 small wireless facility (3 consolidated) applications per 30 days.
- Category Two Authority: Population of 64,999 or less.
    - Up to 25 small wireless facility (1 consolidated) applications per 30 days.

Shot Clocks

- Completion: 30 days
- Collocation: 60 days (including completion review)
- New, modified, or replacement utility pole: 105 days (including completion review)
- One additional extension of 10 business days.
- Deemed complete and/or granted if municipality does not meet deadlines.

For more information, contact Roger Tew at 801.560.9273 or rtew@ulct.org

CHAPTER 27. WIRELESS COMMUNICATION SERVICES

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Article I. Declaration of Findings and Intent—Scope of Ordinance.

5-27-1. Findings regarding right-of-way.

(1) Tooele City finds that the rights-of-way within the City:

(a) are critical to the travel and transport of persons and property in the business and social life of the City;

(b) are intended for public uses and must be managed and controlled consistent with that intent;

(c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and,

(d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the allowed uses and to minimize the inconvenience to and negative effects upon the public from such facilities construction, placement, relocation, and maintenance in the right-of-way.

(2) Finding Regarding Compensation. The City finds the right to occupy portions of the right-of-way for limited times for the business of providing personal wireless services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the rights-of-way.

(3) Finding Regarding Local Concern. The City finds that while wireless communication facilities are in part an extension of interstate commerce, their operations also involve and affect the rights-of-way, municipal franchising, and vital business and community services, which are of local concern.

(4) Finding Regarding Promotion of Wireless Communication Services. The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid and orderly development of wireless communication services, on a nondiscriminatory basis, responsive to community and public interests, and to assure availability for municipal, educational, and community purposes.

(5) Findings Regarding Franchise Standards. The City finds that it is in the best interests of the public to franchise and to establish standards for franchising providers in a manner that:

(a) compensates the City fairly and reasonably on a competitively neutral and nondiscriminatory basis, as provided herein;

(b) encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;

(c) protects fully the public interests and the City from any harm that may flow from such commercial use of rights-of-way;

(d) protects the police powers and right-of-way management authority of the City, in a manner consistent with federal and state law;

(e) otherwise protects the public interests in the development and use of the City's infrastructure;

(f) protects the public's investment in improvements in the rights-of-way; and,

(g) ensures that no barriers to entry by wireless communication service providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting personal wireless services, within the meaning of the Telecommunications Act of 1996 ("Act") (P.L. No. 96-104).

(6) Power to Manage Rights-of-Way. The City adopts the wireless communication services ordinance codified in this Chapter pursuant to its power to manage the public rights-of-way, pursuant to common law, the Utah Constitution and statutory authority, and the City Charter, and to receive fair and reasonable compensation for the use of rights-of-way by providers as expressly set forth by Section 253 of the Act.

5-27-2. Scope of ordinance.

This Chapter shall provide the basic local framework for providers of wireless communication services and systems that require the use of the right-of-way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This Chapter shall apply to all future providers and to all providers in the City existing prior to the effective date of the ordinance codified in this Chapter, whether operating with or without a wireless franchise as set forth in Section 5-27-76.

5-27-3. Excluded activity.

(1) Cable TV. This Chapter shall not apply to cable television operators otherwise regulated by Chapter 5-18 (Utility License Tax), regarding cable television services, or to open video system providers otherwise regulated.

(2) Wireline Services. This Chapter shall not apply to wireline service facilities.

(3) Provisions Applicable. All of the requirements imposed by this Chapter through the

exercise of the City's police power and not preempted by other law shall be applicable.

Article II. Defined Terms.

5-27-4. Definitions.

For purposes of this Chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Antenna" is defined in Utah Code Ann. § 54-21-101(1), as amended.

"Applicable codes" is defined in Utah Code Ann. § 54-21-101(2), as amended.

"Applicable standards" is defined in Utah Code Ann. § 54-21-101(3), as amended.

"Applicant" is defined in Utah Code Ann. § 54-21-101(4), as amended.

"Application" is defined in Utah Code Ann. § 54-21-101(5), as amended.

"Backhaul network" means the lines that connect a provider's WCFs to one or more cellular telephone switching offices or long distance providers, or the public switched telephone network.

"City" means Tooele City Corporation and Tooele City, Utah.

"Collocate" is defined in Utah Code Ann. § 54-21-101(11), as amended. Except as otherwise allowed by this Chapter, the cumulative impact of colocation at a site is limited to no more than 6 cubic feet in volume for antennas and antenna arrays, and no more than 28 cubic feet in volume of associated equipment, whether deployed on the ground or on the structure itself.

"Construction costs" means all costs of constructing a system, including make ready costs, other than engineering fees, attorney's or accountant's fees, or other consulting fees.

"Control" or "controlling interest" means actual working control in whatever manner exercised, including working control through ownership, management, debt instruments, or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than 35% of any provider (which person or group of persons is hereinafter referred to as "controlling person"). "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.

"Distributed antenna system" or "DAS" means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

"FAA" means the Federal Aviation Administration, or any successor thereto.

"FCC" means the Federal Communications Commission, or any successor thereto.

"Franchise" means the rights and obligations extended by the City to a provider to own, lease, construct, maintain, use, or operate a wireless communication system in a right-of-way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include the following: (1) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; or, (2) any other permit, agreement, or authorization required in connection with operations on right-of-way or public property, including permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the right-of-way.

"Franchise agreement" means a contract entered into in accordance with the provisions of this Chapter between the City and a provider that sets forth, subject to this Chapter, the terms and conditions under which a wireless franchise will be exercised.

"In-strand antenna" means an antenna that is suspended by or along a wireline between utility poles and is not physically supported by any attachments to a base station, utility support structure, or tower. An in-strand antenna may not exceed 3 cubic feet in volume. For each in-strand antenna, its associated equipment, whether deployed on the ground or on the structure itself, may not be larger than 17 cubic feet in volume. In calculating equipment volume, the volume of power meters and vertical cable runs for the connection of power and other services shall be excluded. In-strand antennas in the rights-of-way are exempt from the requirements of Chapter 7-27 (Personal Wireless Telecommunications Facilities), but shall comply with the provisions of this Chapter.

"Infrastructure provider" means a person providing to another, for the purpose of providing personal wireless services to customers, all or part of the necessary system which uses the right-of-way.

"Macrocell" means a wireless communication facility that provides radio frequency coverage served by a high power cell site (tower, antenna, or mast). Generally, macro cell antennas are mounted on ground-based towers, rooftops, and other existing structures, at a height that provides a clear view over

the surrounding buildings and terrain. Macro cell facilities are typically greater than 3 cubic feet per antenna and typically cover large geographic areas with relatively high capacity and are capable of hosting multiple wireless service providers. For purposes of this Chapter, a macrocell is anything other than a small wireless facility or in-strand antenna. In addition to the requirements of this Chapter, a macrocell must comply with the applicable zoning and land use requirements as Personal Wireless Services Facilities under Chapter 7-27 (Personal Wireless Telecommunications Facilities).

"Micro wireless facility" is defined in Utah Code Ann. § 54-21-101(21), as amended.

"Ordinance" or "wireless ordinance" means the ordinance concerning the granting of wireless franchises in and by the City for the construction, ownership, operation, use, or maintenance of a wireless communication system.

"Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

"Personal wireless services facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. Section 332(c)(7)(c)), which includes what is commonly known as cellular services.

"PSC" means the Public Service Commission, or any successor thereto.

"Right-of-way" is defined in Utah Code Ann. § 54-21-101(24), as amended.

"Site" means the location in the right-of-way of a wireless communication facility, a utility pole, or their associated equipment.

"Small wireless facility" is defined in Utah Code Ann. § 54-21-101(35), as amended. Small wireless facilities in the rights-of-way are exempt from the requirements of Chapter 7-27 (Personal Wireless Telecommunication Facilities).

"Stealth design" means technology or installation methods that minimize the visual impact of wireless communication facilities by camouflaging, disguising, screening, or blending into the surrounding environment. Examples of stealth design include facilities disguised as trees (e.g., monopines), utility and light poles, and street furniture.

"Substantial modification" is defined in Utah Code Ann. § 54-21-101(26), as amended.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information sent and received.

"Telecommunications services" or "services" means any telecommunications or communications services provided by a provider within the City that the provider is authorized to provide under federal, state, and local law, and any equipment and/or facilities required for and integrated with the services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. Section 521, et seq.), and the Telecommunications Act of 1996.

"Telecommunications system" or "system" means all conduits, manholes, poles, antennas, transceivers, amplifiers, and all other electronic devices, equipment, wire, and appurtenances owned, leased, or used by a provider, located in the right-of-way and utilized in the provision of services, including fully digital or analog, voice, data, and video imaging and other enhanced telecommunications services.

"Utility pole" or "pole" is defined in Utah Code Ann. § 54-21-101(28), as amended.

"Transmission equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services, including private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as, microwave backhaul.

"Wire" means fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

"Wireless facility," "wireless communication facility," or "WCF" is defined in Utah Code Ann. § 54-21-101(29), as amended.

"Wireless provider" or "provider" is defined in Utah Code Ann. § 54-21-101(31), as amended.

"Wireless service" is defined in Utah Code Ann. § 54-21-101(32), as amended.

"Wireless support structure" is defined in Utah Code Ann. § 54-2-101(34), as amended.

Article III. Wireless Franchise Required.

5-27-5. Nonexclusive wireless franchise.

The City is empowered and authorized to issue nonexclusive wireless franchises governing the installation, construction, operation, use, and maintenance of wireless systems in the City's rights-of-way, in accordance with the provisions of this Chapter. The wireless franchise is granted through a wireless franchise agreement entered into between the City and provider.

5-27-6. Every provider must obtain.

Except to the extent preempted by federal or state law, every provider must obtain a wireless franchise prior to constructing, operating, leasing, or subleasing

a wireless communication system or providing wireless service using the rights-of-way. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide wireless services over the same system, must also obtain a wireless franchise.

5-27-7. Nature of grant.

A wireless franchise shall not convey title, equitable or legal, in the rights-of-way. A wireless franchise is only the right to occupy rights-of-way on a nonexclusive basis for the limited purpose and for the limited period stated in the wireless franchise; the franchise right may not be subdivided, assigned, or subleased. A wireless franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including on the City's property. This Section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.

5-27-8. Current providers.

Except to the extent exempted by federal or state law, any provider acting without a wireless franchise on the effective date of the ordinance codified in this Chapter shall request issuance of a wireless franchise from the City within 90 days of the effective date of the ordinance codified in this Chapter. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a wireless franchise is not granted, the provider shall comply with the provisions of Section 5-27-68 (Extended operation and continuity of services).

5-27-9. Nature of wireless franchise.

The wireless franchise granted by the City under the provisions of this Chapter shall be a nonexclusive wireless franchise providing the right and consent to install, repair, maintain, remove, and replace its system on, over, and under the right-of-way in order to provide services.

5-27-10. Regulatory approval needed.

Before offering or providing any services pursuant to the wireless franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations, or licenses for the offering or provision of such services from the appropriate federal, state, and local authorities, if required, and shall submit to the City, upon the written request of the City, evidence of all such approvals, permits, authorizations, or licenses.

5-27-11. Term.

No wireless franchise issued pursuant to this Chapter shall have a term of less than 5 years or greater than 15 years. Each wireless franchise shall be granted in a nondiscriminatory manner.

Article IV. Compensation and Other Payments.

5-27-12. Compensation.

As fair and reasonable compensation for any wireless franchise granted pursuant to this Chapter, a provider shall have the following obligations:

(1) Application Fees. A provider shall pay the following application fees for the respective applications in accordance with Utah Code Ann. § 54-21-503, as amended:

(a) $100 for each small wireless facility;

(b) $250 for each utility pole associated with a small wireless facility; and,

(c) $1000 for each utility pole or WCF that is not permitted under Utah Code Ann. § 54-21-204, as amended.

(2) Right-of-Way Rate. A provider shall pay a right-of-way rate of the greater of 3.5% of all gross revenues related to the provider's use of the City's right-of-way for small wireless facilities or $250 annually for each small wireless facility in accordance with Utah Code Ann. § 54-21-502(2). A provider does not have to the pay this rate if it is subject to the municipal telecommunications license tax under Title 10, Part 4, Municipal Telecommunications License Tax Act.

(3) Permit Fees. The provider shall also pay fees required for any permit necessary to install and maintain the proposed WCF or utility pole.

(4) Authority Pole Collocation Rate. The City adopts the authority pole collocation rate as established in Utah Code Ann. § 54-21-504, as amended.

5-27-13. Timing.

Unless otherwise agreed to in the wireless franchise agreement, all right-of-way rates shall be paid in accordance with Utah Code Ann. § 54-21-502, as amended.

5-27-14. Fee statement and certification.

Each rate payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

5-27-15. Future costs.

A provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and expenses the City incurs for the services of third parties (including attorneys and other

consultants) in connection with any renewal or provider-initiated renegotiation, transfer, amendment, or a wireless franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations.

5-27-16. Taxes and assessments.

To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a provider's use or occupation of the right-of-way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Chapter to the extent permitted by law.

5-27-17. Interest on late payments.

In the event that any payment is not actually received by the City on or before the applicable date fixed in the wireless franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

5-27-18. No accord and satisfaction.

Acceptance by the City of any rate or fee shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

5-27-19. Not in lieu of other taxes or fees.

A rate or fee payment is not a payment in lieu of any tax, fee, or other assessment except as specifically provided in this Chapter, or as required by applicable law. By way of example and not limitation, excavation permit fees are not waived and remain applicable.

5-27-20. Continuing obligation and holdover.

In the event a provider continues to operate all or any part of the system after the term of the wireless franchise, such operator shall continue to comply with all applicable provisions of this Chapter and the wireless franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, however, that any such continued operation shall in no way be construed as a renewal or other extension of the wireless franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including damages and restitution.

5-27-21. Costs of publication.

A provider shall assume any publication costs associated with its wireless franchise that may be required by law.

Article V. Wireless Franchise Applications.

5-27-22. Wireless franchise application.

To obtain a wireless franchise to construct, own, maintain, or provide services through any wireless system within the City's rights-of-way, to obtain a renewal of a wireless franchise granted pursuant to this Chapter, or to obtain the City approval of a transfer of a wireless franchise, as provided in Article IX (Wireless Franchise and License Transferability), granted pursuant to this Chapter, an application must be filed with City.

5-27-23. Application criteria.

In making a determination as to an application filed pursuant to this Chapter, the City may request information, including the following, from the provider.

(1) A copy of the order from the PSC granting a certificate of convenience and necessity, if any is necessary for provider's offering of wireless communication services within the state of Utah.

(2) An annually renewed performance bond or letter of credit from a Utah-licensed financial institution in the amount of $25,000 to compensate the City for any damage caused by the provider to the City's rights-of-way or property during the term of the franchise agreement or the provider's abandonment of WCFs within a year after the expiration or termination of the franchise agreement.

(3) A copy of the provider's FCC license or registration, if applicable.

(4) An insurance certificate for the provider that lists the City as an additional insured and complies with the requirements of the franchise agreement.

5-27-24. Wireless franchise determination.

The City, in its discretion, shall determine the award of any wireless franchise on the basis of the considerations contained in this Chapter, and other considerations relevant to the use of the rights-of-way, without competitive bidding.

5-27-25. Incomplete application.

The City may deny an applicant's wireless franchise application for incompleteness the following occur.

(1) The application is incomplete.

(2) The City provided notice to the applicant that the application was incomplete and provided, with reasonable specificity, the information needed to complete the application.

(3) The provider did not provide the requested information within 30 days of the notice.

Article VI. Site Applications.

5-27-26. Franchise necessary.

Prior to approving a site permit, the applicant must have a valid franchise agreement granted by applicable law.

5-27-27. Site preference.

When small wireless facilities are to be constructed in the rights-of-way, the City's order of preference for a provider is as follows.

(1) To install in-strand antennas.

(2) To collocate on existing poles.

(3) To collocate on replacement poles in the same or nearly the same location and with such heights as provided in this Chapter or in the franchise.

(4) Lastly, to collocate on new poles.

5-27-28. Poles adjacent to residential properties.

In accordance with Utah Code Ann. § 54-21-103(6), as amended, a provider may not install a new utility pole in a right-of-way if the right-of-way is adjacent to or part of a street or thoroughfare that is 60 feet wide or less, as depicted on the official plat records or recorded deeds of dedication, and that is adjacent to single-family residences, multifamily residences, or undeveloped land that is designated for residential use by land use plan, zoning ordinance, zoning map, or deed restriction.

5-27-29. Height and size restrictions.

(1) The height of a new or modified utility pole, including a collocated WCF, may not exceed 50 feet above the ground level.

(2) For a utility pole existing on or before September 1, 2018, an antenna of a WCF may not extend more than 10 feet above the top of the utility pole.

(3) A small wireless facility and its associated equipment may not exceed the dimensions set forth in Utah Code Ann. § 54-21-101(25), as amended.

5-27-30. Safety.

A WCF, pole, cabinet, or other equipment shall not violate the requirements in Utah Code Ann. § 54-21-302, as amended. A small wireless facility, pole, cabinet, and other equipment may not do any of the following.

(1) Interfere materially with the safe operation of traffic control equipment.

(2) Interfere materially with a sight line or clear zone for vehicular or pedestrian traffic.

(3) Interfere materially with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement.

(4) Create a public health or safety hazard.

(5) Obstruct or hinder the usual travel or public safety of the right-of-way.

(6) Violate any applicable law or legal obligation.

5-27-31. Equipment.

(1) Due to the limited size and capacity of the City's rights-of-way, applicants shall be required to install any equipment associated with a small wireless facility according the following requirements, to the extent operationally and technically feasible and to the extent permitted by law.

(a) Existing utility poles. If a WCF is collocated on an existing utility pole, the WCF's associated equipment may be installed in one of the following methods.

(i) Within a pole. Any equipment installed within a pole may not protrude from the pole except to the extent reasonably necessary to connect to power or to a wireline.

(ii) On a pole. Any equipment enclosure installed on a pole must:

(A) be flush with the pole;

(B) be painted to reasonably match the color of the pole;

(C) not exceed in width the diameter of the pole by more than 3 inches on either side;

(D) not allow the furthest point of the enclosure to extend more than 18 inches from the pole; and,

(E) be installed flush with the grade or, alternatively, the lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.

(iii) Underground. Any equipment installed underground shall be located in a park strip within the City's rights-of-way and shall be installed and maintained level with the surrounding grade.

(iv) Private property. For any equipment installed on private property, the applicant must provide written permission from the property owner allowing the applicant to locate facilities on the property. If equipment is placed in an enclosure, the enclosure shall be designed to blend in with existing surroundings, using architecturally compatible construction, colors, and landscaping, and shall be located as unobtrusively as possible consistent with the proper functioning of the WCF. Equipment placed on private property may be subject to zoning and land use provisions of Title 7 (Uniform Zoning Title of Tooele City).

(b) Replacement utility poles. If a WCF is collocated on a replacement utility pole, the WCF's

associated equipment may be installed in the following manner.

(i) To the extent technologically and economically feasible, a provider must install the WCF's associated equipment within the replacement utility pole in accordance with Subsection (1)(a)(i).

(ii) If the installation of the WCF's equipment within the replacement utility pole is not technologically or economically feasible, a provider may install the WCF's associated equipment in accordance with any of the methods established in Subsection (1)(a)(ii)-(iv).

(c) New utility poles. If a WCF is collocated on a new utility pole, a provider must install the WCF's associated equipment within the pole in accordance with Subsection (1)(a)(i) or (iv).

(2) As required for the operation of a WCF or its equipment, an electric meter may be installed in accordance with requirements from the electric provider; provided, however, that the electric meter must be installed in the location that (1) minimizes its interference with other users of the City's rights-of-way, including pedestrians, motorists, and other entities with equipment in the right-of-way, and (2) minimizes any negative aesthetic impact.

(3) The City shall not provide an exemption to these requirements when there is insufficient room in the right-of-way to place facilities at ground-level and comply with ADA requirements, public safety concerns for pedestrians, cyclists, and motorists, or other articulable public safety concerns.

5-27-32. Undergrounding.

A provider must underground its equipment in accordance with Section 7-19-24 (Public utilities), as amended, and Utah Code Ann. §54-21-207, as amended.

5-27-33. Visual impact.

(1) Minimization. All WCFs shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible within 100 feet of a site, and consistent with the proper functioning of the WCF.

(2) Integration. WCFs and equipment shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall be designed to be compatible with the built environment through matching and complimentary existing structures and specific design considerations, such as, architectural designs, height, scale, color, and texture, or be consistent with other uses and improvements permitted in the relevant vicinity, e.g., city block.

(3) Decorative poles. If a provider must displace a decorative pole to collocate a small wireless facility, the replacement pole must reasonably conform to the design aesthetic of the displaced decorative pole.

(4) Downtown Overlay. Subject to Utah Code Ann. § 54-21208, as amended, a provider's design and location must be approved prior to collocating a new small wireless facility or installing a new utility pole in the Downtown Overlay zoning district (DO) and any neighboring area within a ¼ mile.

5-27-34. Stealth design/technology.

(1) Stealth design is required, and concealment techniques must be utilized, consistent with the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design features shall be designed and constructed to substantially conform to surrounding utility poles, light poles, or other similar support structures in the rights-of-way so the WCF is visually unobtrusive.

(2) Stealth design requires screening WCFs in order to reduce visual impact. The provider must screen all substantial portions of the facility from view. Such screening should match the color and finish of the attached support structure.

(3) All WCFs shall be fully encased and enclosed with no exposed wiring.

(4) WCFs and their associated equipment must be installed flush with any pole or support structure (including antennas mounted directly above the top of an existing pole or support structure), and the furthest point of an antenna or equipment may not extend beyond 18 inches from the pole or support structure except if the pole owner requires use of a standoff to comply with federal, state, or local rules, regulations, or laws. Any required standoff may not defeat stealth design and concealment requirements.

(5) Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the state.

5-27-35. Lighting.

Only such lighting as is necessary to satisfy FAA requirements is permitted. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on-the-ground ancillary equipment is permitted, as long as it is down-shielded to keep light within the boundaries of the site.

5-27-36. Signage.

No facilities may bear any signage or advertisement except as allowed in Chapter 7-25.

5-27-37. Site design flexibility.

Individual WCF sites vary in the location of adjacent buildings, existing trees, topography, and other local variables. By mandating certain design

standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within the right-of-way. Therefore, the WCF and supporting equipment shall be installed so as to best camouflage, disguise, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, to minimize the visual impact of the WCF, supporting equipment, and equipment enclosures on neighboring properties, and to interfere less with pedestrians, cyclists, motorists, and other users of the rights-of-way upon approval by the City.

5-27-38. General requirements.

All wireless communication facilities and utility poles shall be required to obtain a site permit and shall be subject to the site development standards prescribed herein. Every site permit application, regardless of type, shall contain the information required for an application under this Chapter and the applicable building codes and shall provide an industry standard pole load analysis.

5-27-39. Application review process.

(1) Review for completeness. Upon receiving an application for the collocation of a small wireless facility or a new, modified, or replacement utility pole, the City will determine within 30 days if the application is complete. The City will notify the applicant whether the application is complete.

(2) Incomplete application. If the City determines the application is incomplete:

(a) the City will specifically identify the missing information in the written notification to the applicant; and,

(b) the review deadline in Subsection (1) is tolled from the day that the City sends the applicant written notice of the missing information or as the applicant and the City agree in writing.

(3) Shot clocks. The City must approve or deny a complete application within:

(a) 30 days, for the installation of an in-strand antenna;

(b) 60 days, for the collocation of a small wireless facility; or,

(c) 105 days, for a new, modified, or replacement utility pole.

(4) Extension. The City may extend the shot clock deadlines in this Section for an additional 10 business days if the City notifies the applicant before the day in which the deadline expires.

(5) Deemed approved. If the City fails to approve or deny an application before its deadline or extended deadline, the application is deemed approved.

(6) Denial. The City may deny an application that fails to meet the requirements of this Chapter. If the City denies an application, the City will notify the applicant of the denial and document the basis for the denial, including any specific laws on which the denial is based.

(7) Cure. Within 30 days of the City’s denial, the applicant may cure any deficiency identified in the City’s denial and resubmit its application without paying an additional application fee. The resubmitted application shall highlight the additional and revised information and materials. The City must approve or deny the resubmitted application within 30 days of its receipt. The City may only review the portions of the application that were missing, deficient, or revised.

5-27-40. Application consolidation and submission limit.

(1) Consolidated application. An applicant may file a consolidated application for either:

(a) the collocation of up to 25 small wireless facilities, if all the small wireless facilities in the application are substantially the same type and are proposed for collocation on substantially the same types of structures; or,

(b) the installation, modification, or replacement of up to 25 utility poles.

(2) A consolidated application may not combine the collocation of small wireless facilities and the installation, modification, or replacement of utility poles.

(3) Submission limit. Within a 30-day period, an applicant may not file more than one consolidated application or multiple applications that collectively seek for a combined total of more than 25 small wireless facilities and utility poles.

5-27-41. Expired application.

An application expires if the City has notified the applicant that the application is incomplete and the applicant fails to respond within 90 days of the City’s notification.

5-27-42. Site permit approval.

Upon approval of a site permit, a provider:

(1) must complete the work approved within the scope of the permit and must make the small wireless facility operational within 270 days after the day on which the City issues the permit, unless the lack of commercial power or communications facilities at the site delays completion, in which case the 270 days begins to run on the date commercial power or communications facilities are accessible at the site;

(2) is authorized to operate and maintain any small wireless facility or utility pole covered by the permit for a period of 10 years from the date of approval; and,

(3) is not authorized to provide communications service within the rights-of-way or to install, place, or operate any other facility or structure in the rights-of-way.

5-27-43. Site permit renewal.

(1) A provider with a current franchise agreement may renew an expiring site permit by submitting an application no sooner than 90 days prior the expiration of the site permit with the following information:

(a) the location of the permitted site;

(b) the type of site permit; and,

(c) sufficient evidence that the WCF or utility pole meets or exceeds the requirements of this Chapter at the time of renewal.

(2) A site permit renewal may not be approved unless the covered WCF or utility pole is in compliance with this Chapter at the time the site permit renewal application is submitted.

(3) A site permit renewal application will have the same application fee and review process as a collocation application.

5-27-44. Exemptions.

(1) In accordance with Utah Code Ann. § 54-21-303, as amended, a provider is not required to submit an application, obtain a permit, or pay a rate for:

(a) routine maintenance;

(b) the replacement of a small wireless facility with a small wireless facility that is:

(i) substantially similar; or,

(ii) smaller in size; or;

(c) the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles in compliance with the National Electrical Safety Code.

(2) A provider must obtain a street excavation permit as required under Chapter 4-9 for any activities that require excavation or closing of sidewalks or vehicular lanes in a right-of-way.

(3) A provider must provide the City with 14 days prior written notice, with sufficient supporting documentation, of any of the activities described in this Section. For example, the notice of the replacement of a small wireless facility that is substantially similar to an existing small wireless facility must include documentation that demonstrates that the replacement small wireless facility meets the requirements of being substantially similar.

5-27-45. Exceptions to standards.

(1) Except as otherwise provided in this Chapter, no WCF shall be used or developed contrary to any applicable development standards unless an exception has been granted pursuant to this Section. The provisions of this Section apply exclusively to WCFs and are in lieu of the generally applicable variance and design departure provisions in this Code; provided, however, that this Section does not provide an exception from this Chapter's visual impact and stealth design standards and requirements.

(2) A WCF's exception is subject to approval by the City.

(3) An application for a WCF exception shall include the following.

(a) A written statement demonstrating how the exception would meet the standards established in this Chapter.

(b) A site plan that includes the following:

(i) a description of the proposed facility's design and dimensions, as it would appear with and without the exception;

(ii) elevations showing all components of the WCF, as it would appear with and without the exception;

(iii) color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception; and,

(iv) an explanation that demonstrates the following:

(A) for macrocells, a significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

(B) the gap can only be filled through an exception to one or more of the standards herein;

(C) the exception is narrowly tailored to fill the service gap such that the WCF conforms to the standards established in this Chapter to the greatest extent possible; and,

(D) the manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect; and,

(v) any other information requested by the City in order to review the exception.

(4) An application for a WCF exception shall be granted if the exception is consistent with the purpose of the standard for which the exception is sought.

5-27-46. Application to install a macrocell or nonpermitted utility pole.

(1) The City generally does not permit macrocells and utility poles that are not permitted under Utah Code Ann. § 54-21-204 within a right-of-way. The City will only permit a nonpermitted macrocell or utility pole if required by federal law.

(2) Macrocells and utility poles that are not permitted under Utah Code Ann. § 54-21-204, as amended, are not subject to the application approval process established in Section 5-27-39 (Application review process). As such, this Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.

(3) Application review for nonpermitted macrocells and utility poles.

(a) The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request to install a nonpermitted macrocell or utility pole.

(b) Upon receipt of an application for a nonpermitted macrocell or utility pole pursuant to this Section, the City shall review the application, make a final decision to approve or disapprove the application, and advise the applicant in writing of the City's final decision.

(c) Within 150 days of the date on which an applicant submits an application seeking approval of a nonpermitted macrocell or utility pole under this Section, the City shall review and act upon the application, subject to the tolling provisions below.

(d) The 150-day review period begins to run when the application is filed and may be tolled only by mutual written agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

(i) To toll the time frame for reason of incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.

(ii) The time frame for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(iii) Following a supplemental submission, the City will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Section. Second or subsequent notices of incompleteness need not specify missing documents or information that were delineated in the original notice of incompleteness.

(e) Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the time frame for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

(4) In addition to the information required in Section 5-27-38 (General requirements), a nonpermitted macrocell or utility pole application must also include the following information.

(a) The manufacturer's recommended installation, if any.

(b) A written affirmation for the applicant that the macrocell or utility pole meets or exceeds all applicable codes, applicable standards, and federal, state, and local requirements, laws, regulations, and polices.

(c) A map that indicates the type and separation distance of other WCFs owned or operated by the same wireless provider from the proposed WCF.

(d) A visual analysis including to-scale photo and visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least two angles, together with a map that shows the location of each view including all equipment and ground wires. Such visual analysis must include a description, drawing, and elevations with the finished color, method of camouflage, and any illumination.

(e) A detailed explanation justifying why the WCF is required in the right-of-way. The applicant must demonstrate in a clear and complete written alternative sites analysis that multiple alternatives in the geographic range of the service coverage objectives of the applicant were considered. This includes, but is not limited to, explaining why the installation of permitted small wireless facilities and the installation of a macrocell on non-right-of-way property, the latter pursuant to Chapter 7-27 (Personal Wireless Telecommunications Facilities), are insufficient. This analysis must include a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

(i) A complete alternative sites analysis provided under this subsection may not include less than 5 alternative sites unless the applicant provides a factually detailed rationale for why it could not identify at least 5 potentially available sites.

(ii) For purposes of disqualifying potential alternative sites for the failure to meet the applicant's service coverage objectives the applicant must provide the following:

(A) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency, or technology;

(B) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative; and,

(C) a description of why the alternative does not meet the objective.

(f) An explanation that demonstrates the following.

(i) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building.

(ii) The gap can only be filled through an exception to one or more of the standards contained in this Chapter.

(iii) The exception is narrowly tailored to fill the service gap such that WCF conforms to the standards contained in this Chapter to the greatest extent possible.

(iv) The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

(g) A noise study for the proposed WCF and all associated equipment. The application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a qualified Utah-license Professional Engineer that demonstrates that the WCF will comply with the intent and goals of this Chapter.

(h) The proposed WCF may not be closer than the average distance between existing poles that are within 1 mile of the proposed site. If no poles exist within 1 mile of proposed pole site, then all subsequently placed poles must be at least 250 feet from each other.

(i) The design of a new pole must comply with the requirements of this Chapter and be approved by the City.

(j) An affidavit certifying that the applicant has posted or mailed notices to property owners within 300 feet of the proposed WCF site.

(i) This requirement is not necessary to have been completed at the time the application is submitted, but is required to be completed prior to approval of a permit.

(ii) The notice shall provide the following information:

(A) the applicant's name and contact information;

(B) a phone number for the provider by which an individual could request additional information;

(C) a scaled site plan clearly indicating the location, type, height, and width of the proposed tower, separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, setbacks from property lines and the nearest buildings, and elevation drawings or renderings of the proposed tower and any other structures; and,

(D) language that states "If you have any public safety concerns or comments regarding the aesthetics or placement of this wireless communication facility, please submit your written comments within 14 days to:

Tooele City Corporation
ATTN: Community Development Director
90 North Main Street
Tooele, Utah 84074

Article VII. Construction and Technical Requirements.

5-27-70 General requirement.

(1) No provider shall receive a wireless franchise unless it agrees to comply with each of the terms set forth in this Chapter governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the City or the wireless franchise, including requirements regarding colocation and cost sharing.

(2) No antenna, small wireless facility, or other equipment may be added to City poles without a pole attachment agreement with the City or where the City poles are not able to structurally accommodate the antenna, small wireless facility, or other equipment.

(3) WCFs that lawfully existed prior to the adoption of this Chapter shall be allowed to continue their use as they presently exist. This Chapter does not make lawful any WCF that is not fully approved on the date the ordinance codified in this Chapter is adopted, and those pending WCFs will be required to meet the requirements of this Chapter.

(4) The applicant must comply with all federal (such as the Americans with Disabilities Act), state, and local laws and requirements. This includes, but is not limited to, participating in Blue Stakes of Utah as required by Utah Code 54-8a-2 through 54-8a-13, as amended.

(5) In the installation of any WCF within the rights-of-way, care must be taken to install in such a way that does not damage, interfere with, or disturb any other utility or entity that may already be located in the right-of-way or vicinity. Any damage done to another utility's or entity's property must be immediately reported to both the City and the owner of the damaged property, and must be promptly repaired by the provider, with the provider being responsible for all costs of repair, including any extra charges that may be assessed for emergency repairs. Failure to notify the City and the owner of the

damaged property shall constitute cause for revocation of the franchise agreement. When approving the location for a WCF, the location of utilities' or other entities' property, or the need for the location of other utilities, within the rights-of-way must be considered before approval to locate the WCF will be given in order to ensure those other services to the public are not disrupted.

(6) All WCFs and utility poles must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate WCFs and utility poles including RF emissions. If such standards and regulations are changed, and if WCF equipment is added either through colocation or replacement, then the owners of the WCFs and utility poles governed by this Chapter shall bring such WCFs and utility poles into compliance with such revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring WCFs and utility poles into compliance with such revised standards and regulations shall constitute grounds for the removal of the WCF or utility pole at the owner's expense.

(7) A WCF or utility pole must comply with all applicable codes and standards.

(8) All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand a minimum 100-mile per hour (mph) wind, or the minimum wind speed as required by the City's currently adopted uniform building code.

(9) The following maintenance requirements apply to WCFs, as applicable.

(a) All landscaping shall be maintained at all times and shall be promptly replaced if not successful.

(b) All WCF sites shall be kept clean, neat, and free of litter and refuse.

(c) A WCF shall be kept clean, painted, and in good condition at all times. Rusting, dirty, or peeling facilities are prohibited.

(d) All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.

(e) The applicant shall provide a description of anticipated maintenance needs, including frequency of service, personnel needs, equipment needs, and potential safety impacts of such maintenance.

(10) Inspections.

(a) The City or its agents shall have authority to enter onto the right-of-way upon which a WCF is located to inspect the facility for the purpose of determining whether it complies with the applicable codes and applicable standards.

(b) The City reserves the right to conduct such inspections at any time. In the event such inspection results in a determination that a violation of applicable standards set forth by the City has occurred, the City will notify the provider of the violation.

(c) Upon receipt of a notice of violation, the provider will have 30 days from the date of violation to correct the violation. If the provider fails to correct the violation within the 30-day period, the City may remove the violating WCF or utility pole at the provider's sole expense.

(d) The City may recover all of its costs incurred in processing and removing the violation.

(e) Appeals. The provider may appeal a notice of violation by following the appeals process found in Chapter 1-28.

5-27-48. Quality.

All work involved in the construction, maintenance, repair, upgrade, and removal of the system shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including any means used to distribute signals over or within the system, is harmful to the public health, safety, or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.

5-27-49. Licenses and permits.

A provider 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 wireless communication system, including any necessary approvals from persons, entities, the City, and other government entities (such as neighboring cities or the Utah Department of Transportation) to use private property, easements, poles, conduits, and right-of-way. A provider shall obtain any required permit, license, approval, or authorization, including excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval, or authorization is required.

5-27-50. Relocation of the system.

(1) Generally. The City may require a provider to relocate or adjust a small wireless facility or utility pole in a right-of-way in a timely manner and without cost to the City.

(2) Emergency. The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the wireless communication

system and appurtenances located on, over, or under the right-of-way of the City, in which event the City shall not be liable therefor to a provider. The City shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 5-27-74 (Notices).

(3) Temporarily Move System for Third Party. A provider shall, upon prior reasonable written notice by the City or by any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its wireless communication system to allow the moving of the structure. A provider may impose a reasonable charge on any person other than the City for any such movement of its systems.

5-27-51. Protect structures.

(1) In connection with the construction, maintenance, repair, upgrade, or removal of the wireless communication system, a provider shall, at its own cost and expense, protect any and all existing structures.

(2) A provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure or facility located on, over, or under the right-of-way of the City required because of the presence of the system. Such consent may be given at the sole discretion of the City. Any such alteration shall be made by the City or its designee on a reimbursable basis.

(3) A provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City any municipal structure or any other right-of-way of the City involved in the construction, maintenance, repair, upgrade, or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the wireless franchise.

5-27-52. No obstruction.

In connection with the construction, maintenance, upgrade, repair, or removal of the system, a provider shall not unreasonably obstruct the right-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from, or within the City without the prior consent of the appropriate authorities.

5-27-53. Safety precautions.

A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel, suitable and sufficient lighting, and other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state, and local requirements including the National Electric Safety Code, as amended or superseded.

5-27-54. Damage and Repair.

(1) If a provider's activity causes damage to a right-of-way, the provider must repair the right-of-way to substantially the same condition as before the damage.

(2) If the provider fails to make a repair required by the City within a reasonable time after written notice, the City may make the required repair and charge the provider the reasonable, documented, actual cost for the repair.

(3) If the provider's damage causes an urgent safety hazard, the City may immediately make the necessary repair and charge the provider the reasonable, documented, actual cost for the repair.

(4) The provider shall pay to the City the entire amount of the repair within 30 days of receiving of the City's invoice.

Article VIII. Provider Responsibilities.

5-27-55. System maintenance.

A provider shall do the following.

(1) Install and maintain all parts of its wireless communication system in a non-dangerous condition throughout the entire period of its wireless franchise.

(2) Install and maintain its system in accordance with standard prudent engineering practices and comply with all applicable codes and standards.

(3) At all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the right-of-way.

5-27-56. Trimming of trees.

A provider shall have the authority to prune and trim trees, in accordance with all applicable utility restrictions, ordinances, and easement restrictions, upon and hanging over the rights-of-way so as to prevent the branches of such trees from coming in contact with its WCFs. A provider must provide the City with written notice at least 14 days before performing any pruning or trimming of trees. All pruning and trimming performed shall comply with the City Code, the American National Standard for Tree Care Operation (ANSI A300), and Best Management Practices: Utility Pruning of Trees, and be conducted under the direction of an arborist certified with the International Society of Arboriculture.

5-27-57. Inventory of existing sites.

A provider shall provide every July 1st to the City an inventory of its existing WCFs, and sites approved for WCFs, that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each WCF and utility pole. The City may share such information with other applicants applying for permits under this Chapter or other organizations seeking to locate antennas within the jurisdiction of the City; provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

Article IX. Wireless Franchise and License Transferability.

5-27-58. Notification of sale.

(1) PSC Approval. When a provider or wireless communication system is the subject of a sale, transfer, lease, assignment, sublease, or disposal of, in whole or in part, either by forced or involuntary sale or by ordinary sale, consolidation, or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the City of the nature of the transaction and, if applicable, request a transfer of the wireless franchise to the successor entity. A request for transfer shall include a certification that the successor entity unequivocally agrees to all the terms of the original provider's wireless franchise agreement.

(2) Transfer of Wireless Franchise. Upon receipt of a request to transfer a wireless franchise, the City designee shall, if it approves such transfer, send notice affirming the transfer of the wireless franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Chapter or the wireless franchise agreement, it may require an application for the transfer. The application shall comply with Article V of this Chapter.

(3) If PSC Approval Is No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in this Section, and the City has good cause to believe that the successor entity may not comply with this Chapter or the wireless franchise agreement, it may require an application to transfer. The application shall comply with Article V of this Chapter.

5-27-59. Events of sale.

The following events shall be deemed to be a sale, assignment, or other transfer of the wireless franchise requiring City approval.

(1) The sale, assignment, or other transfer of all or a majority of a provider's assets to another person.

(2) The sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a provider by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in a provider.

(3) The issuance of additional capital stock or partnership, membership, or other equity interest by a provider so as to create a new controlling interest in such a provider.

(4) The entry by a provider into an agreement with respect to the management or operation of such provider or its system.

Article X. Oversight and Regulation.

5-27-60. Insurance, indemnity, and security.

(1) A provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the wireless franchise and shall obtain and provide proof of the insurance coverage required by the wireless franchise. A provider shall also indemnify the City as set forth in the wireless franchise.

(2) Each permit issued for a WCF or utility pole located within the right-of-way or on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify, and hold harmless the City and its officials, officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF or utility pole.

5-27-61. Oversight.

The City shall have the right to oversee, regulate, and inspect periodically the construction, maintenance, and upgrade of the wireless communication system, and any part thereof, in accordance with the provisions of the wireless franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures, and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the term, that a provider is in compliance with the wireless franchise. A provider shall retain such records for not less than the applicable statute of limitations.

5-27-62. Maintain records.

A provider shall at all times maintain the following.

(1) On file with the City, a full and complete set of plans, records, and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights-of-way where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of a provider who is an incumbent local exchange carrier for the existing system to the extent they do not exist.

(2) Throughout the term of the wireless franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the City at all times to determine whether a provider is in compliance with the wireless franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the state of Utah, and generally accepted accounting principles, shall be deemed to be acceptable under this Section.

5-27-63. Confidentiality.

If the information required to be submitted is proprietary in nature or may be kept confidential under federal, state, or local law, the provider may make such a request in accordance with the Utah Government Records Access and Management Act, Title 63G Chapter 2 of the Utah Code Ann., as amended ("GRAMA"). A provider recognizes that the City, as a governmental entity under GRAMA, cannot guarantee the confidentiality of any information in the City's possession, and the provider submits such information at its own risk.

5-27-64. Provider's expense.

All reports and records required under this Chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this Chapter or a wireless franchise.

5-27-65. Right of inspection.

For the purpose of verifying the correct amount of the wireless franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives or agents of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided, however, that the City shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid 95% or less of the compensation due to the City for the period of such audit. In the event the accounting rendered to the City by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within 30 calendar days of written notice, it being agreed that the City may accept any amount offered by the provider, 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 XI. Rights of City.

5-27-66. Enforcement and remedies.

(1) The City is responsible for enforcing and administering this Chapter, and the City or its designee, as appointed by the Mayor, is authorized to give any notice required by law or under any wireless franchise agreement.

(2) In the event that an individual or entity violates this Chapter, the City will notify the violating party of the violation and provide 30 days for the party to cure the violation.

(3) If the violation is not cured within 30 days, the City may:

(a) fine the violating party $500 per day until the violation is cured; and,

(b) terminate or suspend any franchises, permits, or licenses held by the violating party.

(4) If the violation is not cured within 180 days of the City's notice, the City may remove and impound the violating party's equipment until the violation has been cured. In no event shall the City be required to keep any equipment in impound for longer than 180 days, and the City may dispose of any impounded equipment after 180 days without penalty.

(5) The violating entity may appeal the City's notice of violation within 10 days in accordance with Chapter 1-28.

5-27-67. Force majeure.

In the event a provider's performance of any of the terms, conditions, or obligations required by this Chapter or a wireless franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of a provider shall include acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

5-27-68. Extended operation and continuity of services.

(1) Continuation after Expiration. Upon either expiration or revocation of a wireless franchise granted pursuant to this Chapter, the City shall have the discretion to permit or require a provider to continue to operate its system or provide services for an extended period of time not to exceed 6 months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this Chapter and the wireless franchise granted pursuant to this Chapter.

(2) Continuation by Incumbent Local Exchange Carrier. If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

5-27-69. Removal or abandonment of WCF.

(1) Abandoned WCF. In the event that (a) the use of any portion of a WCF is discontinued for a continuous period of 12 months, and 30 days after no response to written notice from the City to the last known address of provider, or (b) any WCF has been installed in the rights-of-way without complying with the requirements of this Chapter, or (c) no franchise is granted, a provider shall be deemed to have abandoned such WCF.

(2) Removal of abandoned WCF. The City, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any WCF, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this Chapter, a provider shall remove within a reasonable time the abandoned WCF and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time the WCF was installed, so as not to impair their usefulness. In removing its WCF, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments, and poles prior to and after removal. The liability, indemnity, and insurance provisions of this Chapter and of the franchise, and any security fund provided in a franchise, shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this Section.

(3) Transfer of abandoned WCF to City. Upon abandonment of any WCF in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned WCF.

(4) Removal of above-ground system. At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this Chapter, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all above-ground portions of a WCF from the rights-of-way, including poles, within a reasonable period of time, which shall not be less than 180 days.

(5) Leaving underground facilities. Notwithstanding anything to the contrary set forth in this Chapter, a provider may abandon any underground facilities in place so long as they do not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other person.

Article XII. Obligation to Notify.

5-27-70. Publicizing work.

Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance and describe the work to be performed.

Article XIII. General Provisions

5-27-71. Conflicts.

In the event of a conflict between any provision of this Chapter and a wireless franchise entered pursuant to it, the provisions of this Chapter shall control.

5-27-72. Severability.

If any provision of this Chapter is held by any federal, state, or local court of competent jurisdiction to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the

validity of the Chapter provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended, or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with such law, the provision in question shall return to full force and effect and shall again be binding on the City and the provider; provided, however, that the City shall give the provider 30 days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

5-27-73. New developments.

It shall be the policy of the City to consider amendments to this Chapter, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of personal wireless services which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public, subject to the purposes of this Chapter.

5-27-74. Notices.

All notices from a provider to the City required under this Chapter or pursuant to a wireless franchise granted pursuant to this Chapter shall be directed to the personnel designated by the Community Development Director. A provider shall provide in any application for a wireless franchise the identity, address, and phone number to receive notices from the City. A provider shall immediately notify the City of any change in its name, address, or telephone number.

5-27-75. Exercise of police power.

To the full extent permitted by applicable law either now or in the future, the City reserves the right to amend this Chapter and/or to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers and its power to manage the public rights-of-way.

Article XIV. Federal, State, and City Jurisdiction.

5-27-76. Construction.

This Chapter shall be construed in a manner consistent with all applicable federal and state statutes.

5-27-77. Chapter applicability.

This Chapter shall apply to all wireless franchises granted or renewed after the effective date of the ordinance codified in this Chapter. This Chapter shall further apply, to the extent permitted by applicable federal or state law, to all existing wireless franchises granted prior to the effective date of the ordinance codified in this Chapter and to a provider providing services, without a wireless franchise, prior to the effective date of this Chapter.

5-27-78. Other applicable ordinances.

A provider's rights are subject to the police powers of the City, as a Charter city and as a Utah political subdivision, to adopt and enforce ordinances necessary for the health, safety, and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all providers shall comply with the City's zoning and other land use ordinances and requirements.

5-27-79. City failure to enforce.

A provider shall not be relieved of its obligation to comply with any of the provisions of this Chapter or any wireless franchise granted pursuant to this Chapter by reason of any failure of the City to enforce prompt and full compliance.

5-27-80. Construed according to Utah law.

This Chapter and any wireless franchise granted pursuant to this Chapter shall be construed and enforced in accordance with the substantive laws of the state of Utah. Specifically, in the event of any conflict between this Chapter with the Small Wireless Facilities Deployment Act, Title 54 Chapter 21 of the Utah Code Ann., as amended, the Small Wireless Facilities Deployment Act shall control.

TOOELE CITY CORPORATION

RESOLUTION 2018-57

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING A FORM FRANCHISE AGREEMENT FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, Senate Bill 189 of the 2018 Utah Legislative Session ("SB 189"), which took effect on September 1, 2018, enacted Utah Code Chapter 54-21, entitled the Small Wireless Facilities Deployment Act, accomplishing the following:

- allowing a wireless provider to deploy a small wireless facility and any associated utility pole within a public right-of-way
- allowing a municipality to establish a permitting process for the deployment of a small
  wireless facility and any associated utility pole
- establishing a wireless provider's access to a municipal utility pole within a right-of-way
- setting rates and fees for the placement of a small wireless facility and a utility pole within a right-of-way
- *allowing a municipality to adopt indemnification, insurance, and bonding requirements for a small wireless facility permit for a small wireless facility and a utility pole within a right-of-way*
- allowing a municipality to enact design standards for a small wireless facility and a utility pole within a right-of-way

WHEREAS, Article XI Section 5 of the Utah Constitution grants to charter cities "the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law" including "to grant local public utility franchises and within its powers regulate the exercise thereof"; and,

WHEREAS, the Tooele City Council has approved Ordinance 2018-16, which enacted Tooele City Code Chapter 5-27 to regulate small wireless facilities in the public rights-of-way in Tooele City; and,

WHEREAS, the recitals of Ordinance 2018-16 are incorporated herein; and,

WHEREAS, the City Administration recommends that all providers of small wireless services utilizing the public rights-of-way be required to enter into a standardized franchise agreement, consistent with Chapter 5-27, containing the terms and conditions under which the rights-of-way may be utilized, including indemnification, insurance, and bonding:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the form Wireless Communication Services Franchise Agreement attached as Exhibit A is hereby approved for use in Tooele City.

This Resolution shall take effect immediately upon passage, by authority of the Tooele City Charter, without further publication.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ___ day of _________________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ____________________________________

MAYOR OF TOOELE CITY

(For) (Against)

______________________________ ______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to form: ________________________________
Roger Evans Baker, Tooele City Attorney

Exhibit A

Wireless Communication Services Franchise Agreement Form

WIRELESS COMMUNICATION SERVICES FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") as of the___ day of __________, 20___ (the "Effective Date"), is between Tooele City, a Utah municipal corporation and charter city (the "City"), and ____________________, a _______________ corporation ("Grantee").

RECITALS

A. Grantee desires to install, maintain, and operate wireless communication facilities (WCFs) in the City's rights-of-way ("Franchised Area"). "WCF" is defined in Utah Code Ann. § 54-21-101(29), as amended. WCF equipment includes antennas, power supplies and meters, monitoring devices, communications equipment, radio amplifiers, radio frequency and optical signal converters, fiber optic and other cabling, and connectors and other equipment necessary to serve Grantee's WCFs (collectively, the "Facilities").

B. The City is willing to grant to Grantee a franchise for the operation of the Facilities under the terms of this Agreement, subject to the approval of the Mayor, whose approval shall not be unreasonably withheld. This Agreement is subject to the requirements of Tooele City Code Chapter 5-27 (Wireless Communication Services), as amended (hereinafter "Chapter 5-27").

C. Grantee desires to use the Franchised Area for the purpose of installing, maintaining, and operating WCFs in order to provide wireless communication services pursuant to federal laws.

D. The installation, maintenance, and operation of Grantee's WCFs within the Franchised Area will be done in a manner consistent with the City's rights-of-way management regulations, including Chapter 5-27, and all other applicable local, state, and federal regulations.

E. Grantee has entered, or intends to enter, into a Pole Attachment Agreement with pole owners for the purpose of attaching WCFs on poles erected within the Franchised Area.

In consideration of the following mutual covenants, terms, and conditions, the parties agree as follows:

1. DEFINITIONS.

All terms shall have the meanings established in Chapter 5-27. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive. For the purposes of this Agreement, the listed terms shall have the following meanings:

"Cost" means any actual, reasonable, and documented costs, fees, or expenses, including attorneys' fees.

"Gross Revenue" has the same meaning as 'gross receipts from telecommunications service' as defined in Utah Code Ann. § 10-1-402, as amended.

2. FRANCHISED AREA.

The Franchised Area includes and is limited to the public rights-of-way either owned or regulated by the City. The WCFs of Grantee in the Franchised Area will be used solely to provide personal wireless services. The use of the Franchised Area for any other purpose is not allowed without additional permits, agreements, and approvals. Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless towers, equipment, or facilities, nor the installation on poles of wireless equipment and facilities designed for macro wireless towers.

3. CITY'S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to Grantee that: (i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; (ii) for property which it owns, the City has good and unencumbered title or prescriptive rights to the Franchised Area free and clear of any liens or mortgages, except those disclosed to Grantee that will not interfere with Grantee's right to use the Franchised Area; and, (iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, franchises, or other agreements binding on the City.

B. Grantee has studied and inspected the Franchised Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (3)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. Grantee has inspected the Franchised Area and obtained information and professional advice as Grantee has determined to be necessary related to this Agreement.

4. GRANT OF FRANCHISE; TERM.

A. City hereby grants to Grantee a non-exclusive franchise to use and occupy the Franchised Area for the purpose of developing and installing WCFs, including the right to attach, operate, maintain, install, and replace WCFs as approved by the City subject to the conditions outlined in this Agreement. Grantee shall install its WCFs consistent with Chapter 5-27.

B. Grantee's right to use and occupy the Franchised Area shall not be exclusive, and the City reserves the right to grant a similar use of the Franchised Area to itself or to any person or entity at any time during the term of this Agreement.

C. Nothing in this Agreement will be construed as granting to Grantee the authority to use any property that is owned or regulated by any person or entity other than the City, including

state-owned or -maintained rights-of-way or highways. Nor does it confer any right to use City property other than the Franchised Area.

D. The initial term of this Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Effective Date and ending on the tenth anniversary thereof, unless sooner terminated under the provisions of this Agreement. Provided, however, that if Grantee is not operational and providing services to customers within the City within two hundred seventy (270) days of the effective date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon thirty (30) days written notice.

E. If Grantee continues to occupy the Franchised Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month franchise. Grantee shall be subject to Chapter 5-27 and the terms of this Agreement throughout the period of such holdover operation. Grantee shall pay the City fees in an amount that is double the amount of the normal fees that would otherwise be due under Section 6 herein. Either party may terminate the month-to-month franchise by providing fourteen (14) days written notice to the other party.

F. Notwithstanding any provision in this Agreement to the contrary, or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Grantee's rights in the Franchised Area are limited to the rights created expressly by this Agreement. Grantee's rights are subject to all covenants, restrictions, easements, agreements, reservations, and encumbrances upon, and all other conditions of title regarding, the Franchised Area. Grantee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of any local, state, or federal agency, now or later having jurisdiction over the Franchised Area or Grantee's use of the Franchised Area.

5. PERMITTED USE OF FRANCHISED AREA.

A. The Franchised Area may be used by Grantee, seven (7) days a week, twenty-four (24) hours a day, only for the purposes authorized by this Agreement and not for any other purpose. This Agreement shall include new types of WCFs that may evolve or be adopted using wireless technologies. Grantee shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations (including laws and ordinances relating to health, safety, and radio frequency (RF) emissions) in connection with the use, installation, operation, maintenance, and replacement of WCFs within the Franchised Area.

B. Subject to the terms of this Agreement, WCFs may be installed only on City-owned poles under the terms of a fully-executed pole attachment agreement with the City, on non-City poles under the terms of a fully-executed pole attachment agreement with the owner of such poles, or on Grantee's proprietary poles.

C. The use of the Franchised Area under this Agreement does not include a franchise to install and operate fiber optic cable, wires, equipment, and facilities to provide front-haul or backhaul transmission service, whether provided by a third-party provider or by Grantee. Any entity that provides front-haul or backhaul transmission service must have a separate legal authorization from the City to use public rights-of-way outside of this Agreement unless provided otherwise in this Agreement.

D. Nothing under this Agreement shall be interpreted to create or vest in Grantee any easement or other ownership or property interest to any City property or rights-of-way. This Agreement shall not constitute an assignment of any City's rights to City property or rights-of-way. Grantee shall, at all times, be and remain a franchisee only.

E. Grantee shall not use or permit the WCFs to be used for any activity violating any applicable local, state, or federal laws, rules, or regulations.

6. FRANCHISE FEES; COSTS.

A. Grantee shall pay all rates and fees in accordance with Part 5 of the Small Wireless Facilities Deployment Act (Utah Code Ann. §§ 54-21-101 to 54-21-602), as amended, Chapter 5-27, and the Tooele City Fee Schedule.

B. Grantee shall pay the City an Annual Franchise Fee for every WCF site approved by the City regardless of whether Grantee attaches its WCF to a light or other pole owned by the City, utility pole owned by a third-party, or pole owned by Grantee. Except as otherwise approved by the City, Grantee shall not make multiple installations on a single pole. The Annual Franchise Fee is equivalent to the "Right-of-Way Rate" defined in Chapter 5-27.

C. In addition to Annual Franchise Fees as set forth above, Grantee shall be responsible for paying administrative fees for the processing of WCF site applications by City staff as prescribed in this Agreement. Starting on the Effective Date, Grantee shall pay a non-refundable administrative fee to the City for each WCF site application submitted for review and approval as set forth under Chapter 5-27. The administrative fee shall be submitted with every WCF site application as a prerequisite to begin review of the WCF site application. Grantee shall have the right to amend the WCF site application to correct errors or provide additional information without having to pay a second administrative fee.

D. Grantee shall pay for reimbursement as further set forth in Chapter 5-27 or as provided elsewhere in local laws or regulations.

E. To the extent Grantee wishes to utilize the Franchised Area for the installation, use, or operation of fiber or conduit in connection with the WCF, a separate Franchise for wireline (as opposed to wireless) usage shall be required from the City.

F. In addition to other payments required herein, Grantee shall pay all permit fees and all other required City fees in connection with construction, inspection, traffic and pedestrian

flow, and other City requirements without any offset against any other fees or payments required herein.

G. Grantee shall remit payments of the Annual Franchise Fee on the first day of every month. If the Effective date of this Agreement is not the first day of a month, the Grantee's payment for the first and last month of this Agreement will be prorated accordingly.

H. If Grantee fails to pay any franchise fee or other amount due in full within ten (10) days after receipt of written notice of delinquency, Grantee shall be responsible for paying interest on the unpaid principal balance at the rate charged for delinquent state taxes, from the due date until payment is made in full.

I. Grantee shall pay the City's actual costs for inspections, materials testing, and other costs incurred by the City as a direct result of the operation, construction, repair, alteration, or relocation of the Facilities. All costs shall be paid in full within thirty (30) days of invoice.

J. The City agrees that any fees or taxes charged to Grantee under this Agreement shall be of the same nature and calculation of fees or taxes as other similarly situated entities on a non-discriminatory basis.

7. <u>APPROVAL OF WCF SITES</u>.

A. Grantee shall file with the City a WCF site application in accordance with Chapter 5-27. The application form may be modified from time-to-time by the City as deemed necessary in order to more efficiently process applications.

B. All WCF site applications requesting access to a City pole must include a load bearing study to determine whether the attachment of a WCF may proceed without pole modification or whether the installation will require pole re-enforcement or replacement. If pole re-enforcement or replacement is necessary, Grantee shall provide engineering design and specification drawings demonstrating the proposed alteration to the pole. Moreover, all WCF site applications requesting the installation of a new pole shall include engineering design and specification drawings demonstrating compliance with the Americans with Disabilities Act. For each WCF site application, the City or its designee shall verify that the WCF site application is complete and the appropriate administrative fee has been submitted and shall review engineering design documents to determine compliance with contractual requirements under this Agreement and that there is no interference with public safety radio systems, traffic signal light systems, or other communications components. If requested by the City, Grantee will provide a copy of a study conducted by a qualified Utah-licensed engineer demonstrating that the proposed WCF will not interfere with public safety radio systems, traffic signal light systems, or other communications components. Grantee shall include appropriate design of stealth components necessary to comply with historic preservation requirements or aesthetic design elements and compliance with City pole attachment regulations for poles, including replacement of existing electric meters with dual meters.

C. As appropriate, the City or its designee shall require Grantee to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in a denied WCF site application which may not be processed under this Agreement.

D. Upon finding that the WCF site application is complete and in compliance with all applicable requirements as outlined above and in Chapter 5-27, the City shall approve the WCF site application. Grantee shall comply with the requirements of Chapter 5-27 and other provisions of the City Code. Grantee shall pay all appropriate permit fees. Upon obtaining all necessary permits, Grantee may proceed to install the WCF in coordination with any affected City departments. Upon completion of the installation, Grantee shall notify the City, or its designee, in writing and provide a picture of the installation to be included in the WCF site application records.

E. Grantee shall maintain a current inventory of WCFs throughout the term of this Agreement. Grantee shall provide to the City a copy of the inventory of its WCF sites every July 1 until the end of the term. The inventory of WCFs shall include GIS coordinates, date of installation, Company Site ID#, type of pole used for installation, pole owner, and description/type of installation for each WCF. Concerning WCF sites that become inactive, the inventory of WCF sites shall include the same information as active installations in addition to the date the WCF site was deactivated and the date any WCF was removed from the right-of-way. The City may compare the inventory of WCF sites to its records to identify any discrepancies.

F. Any unauthorized WCF sites that are identified by the City as a result of comparing the inventory of WCF sites to internal records or through any other means will be subject to the payment of unauthorized installation charges by Grantee. The City shall provide written notice to Grantee of any unauthorized WCF site identified by City staff, and Grantee shall have thirty (30) days thereafter in which to submit an approved application. Failure to produce an approved application corresponding with the unauthorized WCF site will result in the imposition of an unauthorized installation charge, which shall be calculated by applying the Annual Franchise Fee formula set out in Section 6 to the period spanning from the original date of installation of the unauthorized WCF site to the date of the written notice sent by the City. The total amount resulting from this calculation shall be assessed an interest rate of eighteen percent (18%) per annum to constitute the applicable unauthorized installation charge. Thereafter, Grantee shall submit an application fee and administrative fee for the unauthorized WCF site and, if approved by the City, Grantee shall become liable for paying Annual Franchise Fees going forward. If the WCF site application for the unauthorized WCF site is not approved based on applicable considerations under this Agreement, Grantee shall remove the WCF and any related facilities from the right-of-way within thirty (30) days.

8. <u>UTILITIES</u>.

Grantee is responsible for obtaining and paying for all utilities necessary to operate the Facilities.

9. USE RESTRICTIONS.

A. Subject to the interference provisions set forth below, Grantee shall at all times use reasonable efforts to minimize any impact that its use of the Franchised Area will have on other users of the Franchised Area and on the Franchised Area itself.

B. Grantee shall not remove, damage, or alter in any way any improvements or personal property of the City or third parties in the Franchised Area without the owner's prior written approval. Grantee shall repair any damage or alteration to another's property caused by Grantee's use of the Franchised Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.

C. Whenever Grantee performs construction activities within the Franchised Area, Grantee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the Franchised Area to the condition existing before construction, to the satisfaction of the Community Development Director. Grantee represents and warrants that it has obtained all government licenses, permits, and authorization by the Federal Communications Commission and the Utah Public Service Commission, as applicable and as necessary to provide the services.

If Grantee fails to restore the Franchised Area as required, the City may take all reasonable actions necessary to restore the Franchised Area, and Grantee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, shall pay all of the City's reasonable costs of restoration.

D. Grantee shall use the Franchised Area solely for constructing, installing, operating, maintaining, repairing, modifying, and removing the Facilities. The Facilities are limited to the WCF equipment and facilities approved by the City in writing.

E. Grantee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification, and removal of the Facilities. In no event shall the City's use of the Franchised Area be unreasonably interrupted by Grantee's work. Prior to entering upon the Franchised Area for activities that disrupt vehicular and/or pedestrian traffic, Grantee shall give the Community Development Director at least seven (7) days advance notice in the manner provided in this Agreement or, in the event of emergency repairs, any prior notice as is practical.

F. Grantee shall at all times have on call, and at the City's access, an active, qualified, and experienced representative to supervise the Facilities, who is authorized to act for the Grantee in matters pertaining to all emergencies and the day-to-day operation of the Facilities. Grantee shall provide the Community Development Director with the names, addresses, and 24-hour telephone numbers of designated persons in writing.

G. In the vicinity of any above-ground facilities Grantee may have in the Franchised Area, Grantee shall keep the Franchised Area maintained, orderly, and clean at all times.

H. Grantee acknowledges the following: i) Grantee's use of the Franchised Area is subject and subordinate to, and shall not adversely affect, the City's use of the Franchised Area; and, ii) the City reserves the right to further develop, maintain, repair, or improve the Franchised Area, provided that the City shall reasonably cooperate with Grantee to ensure that Grantee's use and operation of WCFs is not interfered with or interrupted.

I. Grantee shall not install any signs in the Franchised Area other than required safety or warning signs or other signs necessary for the use of the Franchised Area as requested or approved by the City. Grantee bears all costs pertaining to the erection, installation, maintenance, and removal of all of its signs.

10. HAZARDOUS WASTE.

The Grantee shall not produce, dispose of, transport, treat, use, or store any hazardous waste or toxic substance upon or about the Franchised Area in violation of any federal, state, or local law pertaining to hazardous waste or toxic substances. Grantee shall not use the Franchised Area in a manner inconsistent with any regulations, permits, or approvals issued by any federal or state agency. The City and Grantee acknowledge that if Grantee uses sealed batteries, such batteries shall be used and maintained pursuant to industry standards and applicable laws. Grantee shall defend, indemnify, and hold the City harmless against any loss or liability, claims, damages, costs, expenses, and attorneys' fees incurred by reason of any hazardous waste or toxic substance release on or affecting the Franchised Area, to the extent caused by the Grantee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Franchised Area. Grantee shall promptly and without request provide the City with copies of all written communications between Grantee and any governmental agency concerning environmental inquiries, reports, problems, or violations in the Franchised Area.

11. GRANTEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

A. The following provisions govern all improvements, repairs, installation, and other construction, removal, demolition, or similar work by Grantee related to the Facilities or the Franchised Area (collectively referred to as "Grantee Improvements").

(i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate Grantee in any manner for any Grantee Improvements or other work provided by Grantee during or related to this Agreement. Grantee shall timely pay for all labor, materials, work, and all professional and other services related to Grantee Improvements, and shall defend, indemnify, and hold harmless the City against the same for any claims, damages, costs, expenses, and attorneys' fees.

(ii) Grantee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Grantee Improvements shall be commensurate with high quality

industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed.

(iii) Grantee acknowledges that, as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for Grantee Improvements.

(iv) Grantee shall make no structural or grading alterations, structural modifications or additions, or other significant construction work in the Franchised Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Review shall include all Grantee Improvements, equipment, fixtures, paint, and other construction work of any description as described in all plans delivered by Grantee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function, and appearance.

(v) Grantee shall keep as-built records of all Grantee Improvements and upon request shall furnish copies of records to the City, at no cost to the City, upon completion of or changes to Grantee Improvements. Grantee shall participate with Blue Stakes of Utah regarding underground facilities, and shall submit proof of participation to the City upon request.

(vi) All changes to utility facilities shall be limited to the Franchised Area and shall be undertaken by Grantee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

(vii) All Grantee Improvements shall be designed so as to present uniformity and consistency of design, function, appearance, and quality throughout the Franchised Area.

(viii) Grantee shall properly mark and sign all excavations, and shall maintain barriers and traffic control, in accordance with applicable laws, regulations, and best management practices including compliance with Chapter 4-9 (Street Excavations), as amended.

B. The following procedure governs Grantee’s submission to the City of all plans for the Franchised Area and Grantee Improvements, including any proposed changes by the Grantee of previously submitted plans.

(i) Grantee shall coordinate with the City as necessary on significant design issues prior to submission of plans.

(ii) Upon execution of this Agreement, Grantee shall designate a project manager to coordinate Grantee’s participation in designing and constructing Grantee Improvements. The project manager shall devote time and efforts to the project as may be necessary for timely, good faith, and convenient coordination among all persons involved with the project and compliance with this Agreement.

(iii) No plans are considered finally submitted until Grantee delivers to the City a formal certification by a Utah-licensed engineer, acceptable to the Community Development Director, to the effect that all Grantee Improvements are properly designed to be safe and functional as designed and as required by this Agreement and Chapter 5-27. The certification shall be accompanied by and refer to any backup information and analysis as the City Engineer may reasonably require.

(iv) No plans are considered approved until stamped "APPROVED" and dated and signed by the Community Development Department.

(v) Grantee is responsible to secure all zoning approvals, design revisions, or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City to initiate or suggest any particular process or course of action.

(vi) The City's issuance of permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. City staff shall be reasonably available to coordinate and assist Grantee in working through issues that may arise in connection with such plan approvals and requirements.

(vii) Grantee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performance and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.

(viii) Subject to federal, state, and local law, any delay in the City's review of or marking Grantee's plans with changes necessary to approve the plans, or approve revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Grantee's construction deadlines. The City agrees to use reasonable efforts to review, mark, or approve Grantee's plans in a prompt and timely manner and in conformance with established policies and procedures.

(ix) Grantee shall provide the City with two (2) complete paper sets and one (1) complete electronic set of detailed plans and specifications of the work as completed.

(x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its sole discretion.

(xi) Before any construction begins in the Franchised Area, Grantee shall provide the City with performance bonds and, if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract

pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Utah, and acceptable to the City, and shall be kept in place for the duration of the work.

12. GRANTEE'S CONSTRUCTION.

Subject to state law, Grantee shall install the Facilities in the Franchised Area within two hundred seventy (270) days of the City's approval in accordance with the approved application and applicable law.

13. CONSTRUCTION WORK - REGULATION BY CITY.

A. The work done by Grantee in connection with the installation, construction, maintenance, repair, and operation of WCFs on poles within the Franchised Area shall be subject to and governed by all pertinent federal, state, and local laws, rules, and regulations.

B. All pole excavations, construction activities, and aerial installations on poles in the Franchised Area shall be performed so as to minimize interference with the use of the Franchised Area and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety, and convenience.

14. CONSTRUCTION, RESTORATION, AND MAINTENANCE ACTIVITIES.

A. The City shall have the authority at any time to order and require Grantee to remove and abate any WCF or other structure that is in violation of the City Code. In case Grantee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of Grantee (which shall be paid to the City within thirty (30) days of receipt of an invoice), all without compensation or liability for damages to Grantee.

B. The parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain, and remove City poles in the manner that best enables the operation of the City and protects public safety. The Community Development Director may deny collocation access to City poles subject to the Small Wireless Facilities Deployment Act (Utah Code Ann. §§ 54-21-101 to 54-21-602), as amended. Further, nothing in this Agreement shall be construed as granting to Grantee any attachment right to install WCFs to any specific pole, other than to an approved WCF site application under the terms of this Agreement.

C. Grantee may construct new poles in order to install WCFs in accordance with Chapter 5-27. Such poles shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets

or sidewalks. The location of all Grantee's personal property, poles, and electrical connections placed and constructed by Grantee in the installation, construction, and maintenance of WCFs shall be subject to the lawful, reasonable, and proper control, direction, and/or approval of the Community Development Director.

15. INTERFERENCE WITH OTHER FACILITIES PROHIBITED.

A. Grantee shall not impede, obstruct, or otherwise interfere with the installation, existence, and operation of any other facility in the Franchised Area including sanitary sewers, water mains, storm water drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or municipal property.

B. In the event that Grantee's WCFs interfere with a traffic light signal system, public safety radio system, or City communications infrastructure operating on a spectrum where the City is legally authorized to operate, Grantee will respond to the City's request to address the source of the interference as soon as practicable, but in no event later than two (2) hours of receiving notice.

C. If any interference is creating a public safety hazard, Grantee shall immediately shut down the interfering WCF pending approval and implementation of a remediation plan. The Grantee shall provide the Community Development Department an Interference Remediation Report that includes a remediation plan to stop the event of interference, an expected timeframe for execution of the remediation plan, and any additional information relevant to the execution of the remediation plan. In the event that interference with other facilities cannot be timely eliminated, Grantee shall remove or relocate the WCF that is the source of the interference as soon as possible to an approved alternative location.

D. If the interference is not creating a public safety hazard, Grantee shall provide the Community Development Director an Interference Remediation Report that includes a remediation plan to stop the event of interference, an expected timeframe for execution of the remediation plan, and any additional information relevant to the execution of the remediation plan. In the event interference with City facilities cannot be timely eliminated, Grantee shall shut down the interfering WCF and remove or relocate it as soon as possible to an approved alternative location.

16. MAINTENANCE.

A. Grantee has all responsibilities, at its own cost, for improvements to and maintenance of the Facilities in the Franchised Area.

B. Grantee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Franchised Area.

C. Subject to state and federal law, Grantee shall provide the City five (5) business days' advanced notice of:

(i) routine maintenance;

(ii) the replacement of a WCF with a WCF that is substantially similar or smaller in size; and,

(iii) the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles (or, an in-strand antenna), in compliance with the National Electrical Safety Code.

D. Grantee shall:

(i) install and maintain all parts of its system in a safe condition throughout the entire term of the franchise;

(ii) maintain its system in accordance with standard prudent engineering practices and shall conform with the National Electrical Safety Code and all applicable other federal, state, and local laws or regulations; and,

(iii) at all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the Franchised Area.

E. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinances, and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming into contact with its facilities.

17. <u>COMPLIANCE WITH UTILITY, HEIGHT, AND HISTORIC PRESERVATION REGULATIONS</u>.

Grantee shall comply with all applicable local, state, and federal design and historic preservation regulations, including the following:

A. Grantee shall comply with all legal requirements for connecting the WCF to electricity and telecommunications services. The City is not responsible for providing electricity or transport connectivity to Grantee.

B. All WCF installations shall be in compliance with height restrictions applicable to poles and other structures in the zoning districts.

C. The design plans for all WCF site installations shall be compatible with the character and aesthetics of the neighborhoods, plazas, boulevards, parks, public spaces, and commercial districts. Subject to applicable law and in coordination with the City's Community Development Department, Grantee shall implement design concepts and the use of camouflage and stealth materials, as necessary, to blend its WCF installations with the overall character of the selected site. Grantee shall comply with the City regulations applicable to aesthetics, stealthing, and materials.

18. <u>RELOCATION AND REMOVAL OF FACILITIES</u>.

A. Subject to state law, the City may require Grantee to relocate or adjust a WCF in the Franchised Area in a timely manner and without cost to the City.

B. Grantee's duty to relocate or adjust its WCFs at its expense under this subsection is not contingent on the availability of an alternative location acceptable for relocation. The City will make reasonable efforts to provide an alternative location in the Franchised Area for relocation, but regardless of the availability of an alternative site acceptable to Grantee, Grantee shall comply with the notice to remove its property as instructed.

C. If Grantee fails to relocate or adjust its facilities to the satisfaction of the City by the 90th day after the date of notice, the City may remove the WCF at the expense of Grantee (which expense shall be paid to the City within thirty (30) days of receipt of an invoice).

D. Any damage to the Franchised Area or adjacent property caused by Grantee that occurs during the relocation or adjustment of Grantee's WCF shall be promptly repaired or replaced at Grantee's sole expense. Should Grantee not make nor diligently pursue adequate repairs within thirty (30) days of receiving written notice, the City may make all reasonable and necessary repairs on behalf of Grantee, and reimburse itself from proceeds from the surety bond required under this Agreement. Any remaining amount will be charged to Grantee. Grantee shall within thirty (30) days remit payment of such costs after receipt of an invoice from the City.

E. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Franchised Area or right-of-way in close proximity to the Franchised Area are already located, and the conflict between the Grantee's potential Facilities and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities. Any relocation of City infrastructure is purely discretionary on the part of the City and may not be demanded by the Grantee.

F. If Grantee's relocation effort delays construction of a public project, causing the City to be liable for delay or other damages, Grantee shall reimburse the City for those damages, attorneys' fees, expenses, and costs attributable to the delay created by Grantee. If Grantee fails to pay the damages, attorneys' fees, expenses, and costs in full within thirty (30) days after receiving an invoice, Grantee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full.

19. <u>COLLOCATION</u>.

A. Subject to subsection (B) below, Grantee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible collocation of additional equipment, facilities, or structures in and around the Franchised Area ("Collocation"). If a Collocation on a City-owned pole is feasible, the City may, in its sole discretion, negotiate a Collocation franchise agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Grantee's consent in connection with the final determination of

Collocation of a third party is not required, provided that Grantee's operations are not unreasonably interfered with or interrupted. Any fees or charges paid by an additional collocation company belong solely to the City.

B. Prior to permitting the installation of a Collocation by any third party in or around the Franchised Area which may interfere with Grantee's operations, the City shall give Grantee forty-five (45) days' notice of the proposed Collocation so that Grantee can determine if the Collocation will interfere with the Facilities. If Grantee determines that interference is likely, Grantee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate Grantee's position. The City and Grantee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Collocation to the third party. If a subsequent franchisee is permitted to operate near the Franchised Area, and the subsequent franchisee's operations materially interfere with Grantee's Facilities, then the City shall direct the subsequent franchisee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent franchisee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Grantee with respect to any Collocation existing and as configured prior to the installation of Grantee's Facilities.

20. RECORDS.

A. Grantee shall keep complete and accurate GIS and mapping information, deployment plans, equipment inventories, and other relevant records of its WCF deployments in the Franchised Area.

B. The City may, at reasonable times and for reasonable purposes, examine, verify, and review the maps, plans, equipment inventories, and other records of Grantee pertaining to WCFs installed in the Franchised Area. Grantee shall make the above records available to the City for review within ten (10) business days after requested by the City.

21. RIGHT TO AUDIT.

A. The City shall have the right to audit, examine, and inspect, at the City's election and at the City's expense, all Grantee records at any and all of Grantee's locations relating to WCF deployments under this Agreement ("Grantee's Records") during the term of the Agreement and retention period. The audit, examination, or inspection may be performed by the City' designee, which may include internal City auditors or outside representatives engaged by the City. Grantee agrees to retain Grantee records for a minimum of two (2) years following termination or expiration of this Agreement, unless there is an ongoing dispute under the Agreement, in which case the retention period shall extend until final resolution of the dispute beyond the two (2) year retention period.

B. Grantee's records shall be made available at Grantee's place of business, if within fifty (50) miles from the City, or the City's designated offices within thirty (30) calendar days

of the City's request and shall include any and all information, materials, and digital data of every kind and character generated as a result of this Agreement. Examples of Grantee's records include copies of inventory of WCF sites, WCF site applications, supplemental franchises, right-of-way permits, third-party pole attachment permits, payment records for Annual Franchise Fees and administrative fees, equipment invoices, subcontractor invoices, engineering documents, vendor contracts, network diagrams, internal network reports, and other documents related to installation of WCFs at WCF sites. Grantee bears the cost of producing, but not reproducing, any and all requested business records.

C. If an audit inspection or examination discloses that Grantee's Annual Franchise Fee payments to the City as previously remitted for the period audited were underpaid, Grantee shall pay within thirty (30) days to the City the underpaid amount for the audited period together with interest at the interest rate of eighteen percent (18%) per annum from the date(s) such amount was originally due.

22. ASSIGNMENT.

A. Grantee may not assign or transfer this Agreement, nor may there be a change in control to any person or entity controlling, controlled by, or under common ownership with Grantee or Grantee's parent company, or to any person or entity that acquires Grantee's business and assumes all obligations of Grantee under this Agreement, without the prior written consent of the City, which consent may not be unreasonably withheld, delayed, or conditioned.

B. Control means actual working control in whatever manner exercised. Control includes, but may not necessarily require, majority stock ownership. The requirements of this Section shall also apply to any change in control of Grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of Grantee. The consent required shall not be unreasonably withheld or delayed, but may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon Grantee by the City. For the purpose of determining whether it should consent to transfer of control, the City may inquire into the qualifications of the proposed transferee, and Grantee shall assist the City in the inquiry.

C. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial, technical, and operational ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Grantee's interest. In no event will the City unreasonably withhold, condition, or delay its approval to a proposed assignment.

D. Grantee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees, deed of trust beneficiaries, or holders of security interests, including their

successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Grantee grant or attempt to grant a security interest in any of the real property underlying the Franchised Area.

E. Subject to subsections (A) and (B) above, Grantee shall not sublease any of its interest under this Agreement, nor permit any other person to occupy the Franchised Area. The parties acknowledge that Facilities deployed by Grantee in the Franchised Area pursuant to this Agreement may be owned and/or remotely operated by a third-party wireless carrier customer ("Carriers") and installed and maintained by Grantee pursuant to existing agreements between Grantee and Carriers. Grantee shall provide to the City prior written notice of any such Facilities and identify the associated Carriers. Such Facilities shall be treated as Grantee's Facilities for all purposes under this Agreement and any applicable pole attachment agreements. Carriers' ownership and/or operation of such Facilities shall not constitute an Assignment under this Agreement, provided that Grantee shall not actually or purportedly sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the Franchised Area or this Agreement to Carriers, or otherwise permit any portion of the Franchised Area to be occupied by anyone other than itself. Grantee shall remain solely responsible and liable for the performance of all obligations under this Agreement and applicable pole attachment agreements with respect to any Facilities owned and/or remotely operated by Carriers.

23. **BOND/LETTER OF CREDIT REQUIREMENT.**

Before undertaking any of the work authorized by this Agreement, as a condition precedent to the City's issuance of any permits, Grantee shall, upon the City's request, furnish an annually renewed performance bond or letter of credit from a Utah-licensed financial institution in the amount of at least twenty-five thousand dollars ($25,000). Every July 1 during the term of this Agreement, except for the initial year of this Agreement, the amount of Grantee's performance bond or letter of credit shall be adjusted to one-hundred ten percent (110%) of the value of Grantee's system and its associated installation costs or twenty-five thousand dollars ($25,000), whichever is greater. The bond or letter of credit shall remain in effect for the entirety of the term of this Agreement as well as an additional one (1) year after the expiration or termination of this Agreement. The bond shall be conditioned so that Grantee shall observe all the covenants, terms, and conditions of this Agreement, and shall faithfully perform all of the obligations of this Agreement and to repair or replace any defective work or materials discovered in the Franchised Area, and to remove any WCFs and their associated equipment that is not in service or remaining in the Franchised Area after the termination or expiration of this Agreement. The bond shall ensure the faithful performance of Grantee's obligations under this Agreement, including Grantee's payment of any penalties, claims, liens, or fees due to the City that arise by reason of the operation, construction, or maintenance of the Facilities within the Franchised Area. Grantee shall pay all premiums or other costs associated with maintaining the bond.

24. REGULATORY AGENCIES, SERVICES AND BANKRUPTCY.

A. Grantee shall upon request provide to the City the following.

(i) All non-proprietary and relevant petitions, applications, communications, and reports submitted by Grantee to the Public Service Commission or other state or federal authority having jurisdiction that directly relates to Grantee's operations in the Franchised Area.

(ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by Grantee over Facilities in the Franchised Area. Non-proprietary copies of responses from regulatory agencies to Grantee shall be available to the City upon request. To the extent permitted by the Utah Government Records Access and Management Act, the City will treat all documentation and information obtained pursuant to this Section 24 as private and protected; provided, however, that the onus of demonstrating the private and protected nature of the records shall be upon Grantee.

B. Grantee shall upon request provide to the City copies of any petition, application, communications, or other documents related to any filing by the Grantee of bankruptcy, receivership or trusteeship.

25. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Grantee:

(i) Failure of Grantee to perform any obligation under this Agreement, after Grantee fails to cure a default within the notice and cure period. However, if a cure cannot reasonably be implemented within the notice period, Grantee must commence and diligently pursue to cure within thirty (30) days of the City's notice.

(ii) The taking of possession for a period of ten (10) days or more of substantially all of Grantee's personal property in the Franchised Area by or pursuant to lawful authority of any legislative act, resolution, rule, order, or decree, or any act, resolution, rule, order, or decree of any court or governmental board, agency, officer, receiver, trustee, or liquidator.

(iii) The filing of any lien against the Facilities in the Franchised Area, or against the City's underlying real property, due to any act or omission of Grantee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by Grantee.

B. The City may place Grantee in default of this Agreement by giving Grantee fifteen (15) days written notice of Grantee's failure to timely pay the fees required under this Agreement or any other charges required to be paid by Grantee pursuant to this Agreement. If Grantee does not cure the default within the notice period, the City may terminate this Agreement or exercise any other remedy allowed by law or in equity.

C. If Grantee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to Grantee, immediately

terminate this Agreement or secure the required insurance at Grantee's expense (which expense shall be paid to the City within thirty (30) days of receipt of an invoice).

D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. The City's acceptance of the franchise fee or any other fees or charges for any period after a default by Grantee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by Grantee to comply with its obligations.

26. <u>TERMINATION</u>.

A. This Agreement may be terminated by either party for any of the following:
   (i) The issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Grantee's use of any portion of the Facilities in the Franchised Area and remaining in force for a period of thirty (30) consecutive days.
   (ii) The inability of Grantee to use any substantial portion of the Facilities in the Franchised Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, flood, or other acts of God or the public enemy.
   (iii) Upon ninety (90) days' written notice, if Grantee is unable to obtain or maintain any franchise, permit, or governmental approval necessary for the construction, installation, or operation of the Facilities or Grantee's business.

B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and must provide reasonable written notice to the other party.

27. <u>INDEMNIFICATION</u>.

A. Grantee shall defend, indemnify, and hold harmless the City and its elected and appointed officials, agents, boards, commissions, and employees from all loss, damages, or claims of whatever nature, including attorneys' fees, expert witness fees, and costs of litigation, that arise out of any act or omission of Grantee or its agents, employees, or invitees in connection with Grantee's operations in the Franchised Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Grantee to comply with any provision of this Agreement. The City shall in all instances, except for losses, damages, or claims resulting from the negligence or willful acts of the City, be indemnified by Grantee against all losses, damages, claims, attorneys' fees, expenses, and costs. The City shall give Grantee prompt written notice of any claim made or suit instituted that may subject Grantee or the City to liability under this Section, and Grantee shall have the right to compromise and defend the same at Grantee's cost and expense provided that Grantee may not enter into any settlement imposing liability or cost on the City. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving Grantee of any obligations under this

Agreement. Grantee's obligations under this Section survive any termination of this Agreement or the termination of Grantee's activities in the Franchised Area.

B. The City shall not be liable to Grantee, or its customers, agents, representatives, or employees, for any claims arising from this Agreement for lost revenue, lost profits, loss of equipment, interruption or loss of service, loss of data, or incidental, indirect, special, consequential, or punitive damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

28. <u>INSURANCE</u>.

A. On or before the effective date of this Agreement, Grantee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise, at the expense of Grantee, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and property damage occasioned by the installation, removal, maintenance, or operation of the communications system by Grantee in the following minimum amounts:
   (i) Ten Million Dollars ($10,000,000.00) combined single limit, bodily injury and real property damage in any one occurrence; and,
   (ii) Ten Million Dollars ($10,000,000.00) aggregate.

B. Grantee shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired, and leased vehicles operated by Grantee, with limits not less than Two Million Dollars ($2,000,000.00) each accident, single limit, bodily injury and property damage combined.

C. Grantee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the franchise, workers compensation insurance, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars ($500,000.00) for employer's liability.

D. All liability insurance required pursuant to this section, except for employers' liability, shall name the Tooele City Corporation and its officers, employees, board members, and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by Grantee during the existence of the franchise and until after the removal or abandonment of all WCFs, poles, wires, cables, underground conduits, manholes, and any other conductors and fixtures installed by Grantee incident to the maintenance and operation of the system as defined in this Agreement. Failure to obtain and maintain continuously the required insurance shall constitute a violation of this agreement and a default. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to cancel by either Grantee or the insuring company. Grantee

may utilize primary and umbrella liability insurance policies to satisfy insurance policy limit requirements in this Section.

E. The City reserves, and Grantee acknowledges, the right to modify the insurance requirements contained herein based upon changes in the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated.

F. In addition to any other remedies the City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Grantee to stop work in the Franchised Area until Grantee demonstrates compliance with the requirements hereof.

G. Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

H. It is agreed that Grantee's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement.

I. Any self-insurance by Grantee may be disapproved by the City in its sole and absolute discretion.

29. DAMAGE OR DESTRUCTION OF REPLACEMENT POLES.

A. The City has no obligation to reimburse Grantee for the loss of or damage to fixtures, equipment, or other personal property of Grantee, except for loss or damage caused by the negligence or intentional acts of the City or its officers, employees, or agents. Grantee may insure such fixtures, equipment, or other personal property for its own protection if it so desires.

B. If the City approves a Grantee proposal to install antennas on a City-owned pole, then in addition to the other requirements of this Agreement the following shall apply.

(i) Grantee shall provide and deliver to the City replacement poles so that a replacement is immediately available to the City in case an original pole is damaged.

(ii) If the City uses a replacement pole, then Grantee shall provide another replacement pole.

(iii) Grantee shall remove any pole which is damaged and replace it with a pole that meets the original approved standard within sixty (60) days, weather permitting.

(iv) All performance under this paragraph shall be at Grantee's expense. The City owns the original pole and all replacement poles.

(v) If applicable, Grantee will provide the City with five (5) replacement light poles. Annually, the City may reasonably request additional poles directly in proportion to the number of light pole attachments added by Grantee, but in no event greater

than 10% of the total number of Grantee-provided light poles then in the City's possession.

(vi) This paragraph does not diminish the plan approval or any other requirement of this Agreement.

C. If Grantee installs or replaces a pole, the replacement pole shall meet the requirements of Chapter 5-27.

30. <u>SURRENDER OF POSSESSION</u>.

Upon the expiration or termination of this Agreement, Grantee's right to occupy the Franchised Area and exercise the privileges and rights granted under this Agreement shall cease, and Grantee shall surrender and leave the Franchised Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by Grantee in the Franchised Area shall remain the property of Grantee, and Grantee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Franchised Area so long as Grantee is not in default of any of its obligations, and shall repair at its sole cost any damage caused by the removal. Any property not removed by Grantee within the 90-day period becomes a part of the Franchised Area, and ownership vests in the City; or the City may, at Grantee's expense, have the property removed at Grantee's expense (which cost shall be paid to the City within thirty (30) days of receipt of an invoice). Grantee's indemnity under this Agreement applies to any post-termination removal operations.

31. <u>NOTICE</u>.

A. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be mailed by certified mail, return receipt requested, postage prepaid, or sent via national overnight courier, to the following addresses:

TO THE CITY: Tooele City Corporation
90 North Main Street
Tooele City, Utah 84074
Attn: Community Development Director

TO GRANTEE: ___________________________
____
____
Attention: _________________

B. Any notice given by certified mail or overnight courier is considered to be received on the date delivered or refusal to accept. Either party may designate in writing a different address for notice purposes pursuant to this Section.

32. <u>TAXES AND FRANCHISES</u>.

A. Grantee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax, or other exaction assessed or assessable as a direct result of its occupancy of the Franchised Area under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Grantee's occupancy of the Franchised Area, the tax shall also be paid by Grantee on a proportional basis for the period this Agreement is in effect.

B. Grantee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all permits required for all activities authorized by this Agreement.

33. GOVERNING LAW AND VENUE; ATTORNEYS' FEES.

This Agreement is governed by federal laws, the laws of the State of Utah, and local laws. Venue for any litigation or dispute between the parties shall be in the Third District Court of Tooele County, State of Utah. If any claim or litigation between the City and Grantee arises under this Agreement, the successful party is entitled to recover its reasonable attorneys' fees, reasonable expert witness fees, and other reasonable costs and expenses incurred in connection with the claim or litigation.

34. RULES AND REGULATIONS.

Grantee shall at all times comply with all federal, state, and local laws, ordinances, rules, and regulations which are applicable to its operations in the Franchised Area, including all laws, ordinances, rules, and regulations adopted after the Effective Date. Grantee shall display to the City, upon request, any permits or other reasonable evidence of compliance with the law.

35. RIGHT OF ENTRY RESERVED.

A. The City may, at any time, enter upon the Franchised Area for any lawful purpose, so long as the action does not unreasonably interfere with Grantee's use or occupancy of the Franchised Area. The City shall have access to the Facilities themselves only in emergencies or as otherwise provided for herein or in Chapter 5-27.

B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical, and other systems and to enter upon the Franchised Area at any time to make repairs, replacements, or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in, or under the Franchised Area all necessary systems or parts and in connection with maintenance, and to use the Franchised Area for access to other areas in and around the Franchised Area. Exercise of rights of access to repair, to make alterations, or to commence new construction will not unreasonably interfere with the use and occupancy of the Franchised Area by Grantee.

C. Exercise of any of the foregoing rights by the City, or others pursuant to the City's rights, do not constitute an eviction of Grantee, nor are grounds for any abatement of fees or any claim for damages.

36. FORCE MAJEURE.

Notwithstanding any other provision of this Agreement, Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to an event or events reasonably beyond the ability of Grantee to anticipate and control. "Force majeure" includes acts of God, terrorism, war or riots, labor strikes or civil disturbances, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, and work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Grantee's facilities are attached or are to be attached, or conduits in which Grantee's facilities are located or are to be located.

37. SEVERABILITY; CONFLICT.

(A) If any section, subsection, paragraph, or provision of this Agreement becomes void, voidable, or unenforceable for any reason, such provision or provisions shall be deemed severable from the remaining provisions of this Agreement and shall have no effect on the legality, validity, or constitutionality of any other section, subsection, paragraph, or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

(B) If any section, subsection, paragraph, or provision of this Agreement conflicts with Chapter 5-27, the provisions of Chapter 5-27 shall govern.

38. WAIVER OF JURY TRIAL. To the fullest extent possible, the Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement and the transactions contemplated herein.

39. MISCELLANEOUS: INTEGRATION; CONSTRUCTION; CAPTIONS; WAIVER; NO JOINT VENTURE; NO THIRD-PARTY BENEFICIARIES.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings, and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. The captions in this Agreement are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this Agreement. No provision of this Agreement may be waived or modified except in writing. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to act, nor shall either party act, toward third persons or the public in any manner which would indicate any such relationship with the other. The relationship between the City and Grantee is at all times solely that of the City and Grantee, and not that of partners or joint venturers. This Agreement may be executed in any number of

counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon the parties hereto and inure to the benefit of the parties' permitted successors and assigns. There are no third-party beneficiaries of this Agreement.

TOOELE CITY CORPORATION

____
Mayor

ATTEST:

____
City Recorder

APPROVED AS TO FORM:

____
City Attorney

(GRANTEE)

____
By: ___________________________
Its: ___________________________

STATE OF _____________)
) ss.
COUNTY OF ___________)

Before me, a notary public, appeared_________________, who did affirm to me that he/she holds the position of ______________ with Grantee, and that he/she did execute the foregoing instrument with due authority this ____ day of ____________, 20___.

____
Notary Public
Residing in ________County, State of ________

TOOELE CITY CORPORATION

RESOLUTION 2018-58

A RESOLUTION OF THE TOOELE CITY COUNCIL AMENDING THE TOOELE CITY FEE SCHEDULE REGARDING SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, Senate Bill 189 of the 2018 Utah Legislative Session ("SB 189"), which took effect on September 1, 2018, enacted Utah Code Chapter 54-21, entitled the Small Wireless Facilities Deployment Act, accomplishing the following:

- allowing a wireless provider to deploy a small wireless facility and any associated utility pole within a public right-of-way
- allowing a municipality to establish a permitting process for the deployment of a small
  wireless facility and any associated utility pole
- establishing a wireless provider's access to a municipal utility pole within a right-of-way
- *setting rates and fees for the placement of a small wireless facility and a utility pole within a right-of-way*
- allowing a municipality to adopt indemnification, insurance, and bonding requirements for a small wireless facility permit for a small wireless facility and a utility pole within a right-of-way
- allowing a municipality to enact design standards for a small wireless facility and a utility pole within a right-of-way

WHEREAS, Tooele City Code §1-26-1 authorizes the City Council to establish City fees by resolution for activities regulated by the City and services provided by the City; and,

WHEREAS, under the Council-Mayor form of municipal government, established and governed by the Tooele City Charter (2006) and Utah Code §10-3b-201 et seq., the Mayor exercises all executive and administrative powers; however, it has been the practice of Tooele City for all fees proposed by the Mayor and City Administration to be approved by the City Council; and,

WHEREAS, the Tooele City Council has approved Ordinance 2018-16, which enacted Tooele City Code Chapter 5-27 to regulate small wireless facilities in the public rights-of-way in Tooele City; and,

WHEREAS, the recitals of Ordinance 2018-16 are incorporated herein; and,

WHEREAS, the Small Wireless Facilities Deployment Act set the maximum fees and rates a municipality may charge for the collocation of small wireless facilities on utility poles in the public rights-of-way, which fees and rates the City Council enacted through Ordinance 2018-16 and the new Chapter 5-27, as follows:

5-27-12. Compensation.

As fair and reasonable compensation for any wireless franchise granted pursuant to this Chapter, a provider shall have the following obligations:

(1) Application Fees. A provider shall pay the following application fees for the respective applications in accordance with Utah Code Ann. § 54-21-503, as amended:

(a) $100 for each small wireless facility;

(b) $250 for each utility pole associated with a small wireless facility; and,

(c) $1000 for each utility pole or WCF that is not permitted under Utah Code Ann. § 54-21-204, as amended.

(2) Right-of-Way Rate. A provider shall pay a right-of-way rate of the greater of 3.5% of all gross revenues related to the provider's use of the City's right-of-way for small wireless facilities or $250 annually for each small wireless facility in accordance with Utah Code Ann. § 54-21-502(2). A provider does not have to the pay this rate if it is subject to the municipal telecommunications license tax under Title 10, Part 4, Municipal Telecommunications License Tax Act.

(3) Permit Fees. The provider shall also pay fees required for any permit necessary to install and maintain the proposed WCF or utility pole.

(4) Authority Pole Collocation Rate. The City adopts the authority pole collocation rate of $50 per pole per year as established in Utah Code Ann. § 54-21-504, as amended.

WHEREAS, the City Administration recommends that the Tooele City Fee Schedule be amended to include the fees and rates enacted in Ordinance 2018-16 and Chapter 5-27; and,

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Fee Schedule is hereby amended to include the following fees and rates for small wireless facilities in the public rights-of-way:

Small Wireless Application Fees $100 for each small wireless facility $250 for each utility pole associated with a small wireless facility $1,000 for each utility pole or WCF not permitted under UCA 54-21-204 Right-of-Way Rate: the greater of 3.5% of all gross revenues related to the provider's use of the City's right-of-way for small wireless facilities or $250 annually for each small wireless facility Pole Collocation Rate: $50 per year per Tooele City-owned utility pole Permit Fees: IBC rate (see Building section)

This Resolution shall take effect immediately upon passage, by authority of the Tooele City Charter, without further publication.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ___ day of _________________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ______________________________________

MAYOR OF TOOELE CITY

(For) (Against)

______________________________ ______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to form: ______________________________
Roger Evans Baker, Tooele City Attorney

TOOELE CITY CORPORATION

RESOLUTION 2018-64

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING A FORM POLE ATTACHMENT AGREEMENT FOR SMALL WIRELESS FACILITIES ATTACHED TO TOOELE CITY UTILITY POLES IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, the Tooele City Council approved Ordinance 2018-16 enacting Tooele City Code Chapter 5-27 regarding small wireless communication services and facilities; and,

WHEREAS, the Tooele City Council approved Resolution 2018-57, approving a form franchise agreement for small wireless communication facilities in the public rights-of-way, pursuant to TCC Chapter 5-27, which requires such franchises; and,

WHEREAS, Chapter 5-27 and the franchise agreement contemplate requiring a pole attachment agreement specifying the terms and conditions upon which a wireless communication service provider can attached a wireless communication facility to a Tooele City utility pole; and,

WHEREAS, the City Council approved Resolution 2018-58 approving a pole colocation rate of $50 per utility pole upon which a wireless communication facility is colocated; and,

WHEREAS, Article XI Section 5 of the Utah Constitution grants to charter cities “the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law” including “to grant local public utility franchises and within its powers regulate the exercise thereof”; and,

WHEREAS, it is in Tooele City’s interest, and the interest of wireless communication service providers, to approve a standardized pole attachment agreement form, attached hereto as Exhibit A:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the form Pole Attachment Agreement attached as Exhibit A is hereby approved for use in Tooele City.

This Resolution shall take effect immediately upon passage, by authority of the Tooele City Charter, without further publication.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ___ day of _________________, 2018.

TOOELE CITY COUNCIL

(For)	(Against)
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

ABSTAINING: ____________________________________

MAYOR OF TOOELE CITY

(For)	(Against)
______________________________	______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to form: ________________________________
Roger Evans Baker, Tooele City Attorney

Exhibit A

Pole Attachment Agreement Form

TOOELE CITY CORPORATION

ORDINANCE 2018-17

AN ORDINANCE OF TOOELE CITY AMENDING TOOELE CITY CODE CHAPTER 5-24 REGARDING TELECOMMUNICATIONS RIGHTS-OF-WAY.

WHEREAS, Tooele City Code (TCC) Chapter 5-24 (Telecommunications Rights-of-way) was enacted by Ordinance 1997-42 and governs the installation of telecommunications facilities and systems in the public rights-of-way; and,

WHEREAS, Senate Bill 189 of the 2018 Utah Legislative Session ("SB 189") enacted Utah Code Chapter 54-21, entitled the Small Wireless Facilities Deployment Act, requiring all Utah municipalities to accommodate small wireless telecommunications facilities in the public rights-of-way; and,

WHEREAS, the City Council has approved Ordinance 2018-16, enacting Tooele City Code Chapter 5-27, entitled Wireless Communication Services, in order to comply with SB 189; and,

WHEREAS, TCC Chapter 5-24 and Chapter 5-27 deal with different types of communication facilities in the public rights-of-way, and implementation of SB 189 requires some minor amendments to Chapter 5-24, as shown on the attached Exhibit A, in order to avoid conflicts between the two chapters; and,

WHEREAS, Article XI Section 5 of the Utah Constitution grants to charter cities "the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law" including "to grant local public utility franchises and within its powers regulate the exercise thereof"; and,

WHEREAS, Utah Code Section 10-8-84 empowers municipalities to "pass all ordinances and rules, and make all regulations, not repugnant to law . . . as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city"; and,

WHEREAS, Utah Code Section 10-3-702 empowers municipalities to "pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law":

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF TOOELE CITY that Tooele City Code Chapter 5-24 (Telecommunications Rights-of-way) is hereby amended as shown in Exhibit A.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, and welfare of Tooele City and its residents and businesses and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this _____ day of ________________, 2018.

TOOELE CITY COUNCIL

(For)	(Against)
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

ABSTAINING: ____

MAYOR OF TOOELE CITY

(Approved)	(Disapproved)
______________________________	______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form: ___________________________
Roger Evans Baker, City Attorney

Exhibit A

Amended Tooele City Code Chapter 5-24

CHAPTER 24. TELECOMMUNICATIONS RIGHTS-OF-WAY

5-24-1. Declaration of Finding and Intent.
5-24-2. Finding Regarding Compensation.
5-24-3. Finding Regarding Local Concern.
5-24-4. Finding Regarding Promotion of Telecommunications Services.
5-24-5. Findings Regarding Franchise Standards.
5-24-6. Power to Manage Rights-of-Way.
5-24-7. Scope of Ordinance.
5-24-8. Excluded Activity.
5-24-9. Defined Terms.
5-24-10. Franchise Required.
5-24-11. Compensation and other payments.
5-24-12. Franchise applications.
5-24-13. Construction and technical requirements.
5-24-14. Relocation of the System.
5-24-15. Franchise, license, transfer or sale.
5-24-16. Oversight and regulation.
5-24-17. Rights of city.
5-24-18. Obligation to notify.
5-24-19. General provisions.
5-24-20. Federal, state and city jurisdiction.

5-24-1. Declaration of Finding and Intent.

(1) Findings Regarding Rights-of-Way. Tooele City finds that the Rights-of-Way within the City:

(a) are critical to the travel and transport of persons and property in the business and social life of the City;

(b) are intended for public uses and must be managed and controlled consistent with that intent;

(c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and

(d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.

(Ord. 97-42, 12-03-97)

5-24-2. Finding Regarding Compensation.

The City finds that the City should receive fair and reasonable compensation for use of the Rights-of-Way.

(Ord. 97-42, 12-03-97)

5-24-3. Finding Regarding Local Concern.

The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community services, which are of local concern.

(Ord. 97-42, 12-03-97)

5-24-4. Finding Regarding Promotion of Telecommunications Services.

The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

(Ord. 97-42, 12-03-97)

5-24-5. Findings Regarding Franchise Standards.

(1) The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:

(a) fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;

(b) encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;

(c) fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;

(d) protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;

(e) otherwise protects the public interests in the development and use of the City infrastructure;

(f) protects the public's investment in improvements in the Rights-of-Way; and

(g) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 104-104].

(Ord. 97-42, 12-03-97)

5-24-6. Power to Manage Rights-of-Way.

The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

(Ord. 97-42, 12-03-97)

5-24-7. Scope of Ordinance.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise ~~as set forth in Section 12.2~~.

(Ord. 97-42, 12-03-97)

5-24-8. Excluded Activity.

(1) Cable TV. This Ordinance shall not apply to cable television operators otherwise regulated by the "Cable Television Ordinance".

(2) Wireless Services. This Ordinance shall not apply to:

(a) ~~This Ordinance shall not apply to~~ Personal Wireless Service Facilities, which are regulated by Chapter 7-27 of the Tooele City Code.

(b) Wireless Communication Facilities, which are regulated by Chapter 5-27 of the Tooele City Code.

(3) Provisions Applicable to Excluded Providers. Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.
(Ord. 97-42, 12-03-97)

5-24-9. Defined Terms.

(1) Definitions. For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense; words in the single number include the plural number; words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "Application" means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider; and any other matter pertaining to a proposed System or Service.

(b) "City" means Tooele City, Utah.

(c) "Completion Date" means the date that a Provider begins providing Services to customers in the City.

(d) "Construction Costs" means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

(e) "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than ~~twenty-five percent (~~25%~~)~~ of any Provider (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

(f) "FCC" means the Federal Communications Commission, or any successor thereto.

(g) "Franchise" means the rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:

(i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

(ii) any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

(h) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

(i) "Gross Revenue" includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code annotated, 1953, as amended.

(j) "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.

(k) "Open Video Service" means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, et seq., of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.

(l) "Open Video System" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.

(m) "Operator" means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(n) "Ordinance" or "Telecommunications Ordinance" means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.

(o) "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

(p) "Personal Wireless Services Facilities" has

the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.

(q) "Provider" means an Operator, Infrastructure Provider, Resaler, or System Lessee.

(r) "PSC" means the Public Service Commission, or any successor thereto.

(s) "Resaler" refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

(t) "Rights-of-Way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.

(u) "Signal" means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(v) "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide Services.

(w) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.

(x) "Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, Wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

(y) "Telecommunications Service(s)" or "Services" means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521, et seq.), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

(z) "Wire" means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

(Ord. 97-42, 12-03-97)

5-24-10. Franchise Required.

(1) Non-Exclusive Franchise. The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

(2) Every Provider Must Obtain. Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

(3) Nature of Grant. A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

(4) Current Providers. Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 5-24-17(3)~~9.4~~.

(5) Nature of Franchise. The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services.

(6) Regulatory Approval Needed. Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to

the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

(7) Term. No Franchise issued pursuant to this Ordinance shall have a term of less than ~~five (~~5~~)~~ years or greater than ~~fifteen (~~15~~)~~ years. Each Franchise shall be granted in a nondiscriminatory manner.
(Ord. 97-42, 12-03-97)

5-24-11. Compensation and other payments.

(1) Compensation. As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

(2) Application Fee. In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, $500 as a non-refundable Application fee.

(3) Franchise Fees. The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The Franchise fee is offset by any ~~business license fee or business license~~ telecommunication service provider tax collected ~~enacted~~ by the City under Chapter 5-18c (Telecommunication Service Providers Tax).

(4) Excavation Permits. The Provider shall also pay fees required for an excavation permit as provided in Title 4 Chapter 9 of the Tooele City Code.

(5) Timing. Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within ~~forty-five (~~45~~)~~ days of the close of each calendar month.

(6) Fee Statement and Certification. Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

(7) Future Costs. A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the City's Public Works Department to provide space on City owned poles shall be borne by the Provider.

(8) Taxes and Assessments. To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

(9) Interest on Late Payments. In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

(10) No Accord and Satisfaction. No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

(11) Not in Lieu of Other Taxes or Fees. The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned poles are not waived and remain applicable.

(12) Continuing Obligation and Holdover. In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

(13) Costs of Publication. A Provider shall assume any publication costs associated with its Franchise that may be required by law.
(Ord. 97-42, 12-03-97)

5-24-12. Franchise applications.

(1) Franchise Application. To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 5-24-15(2)~~7.1.2~~, granted pursuant to this Ordinance, an Application must be filed with City on a ~~the~~ form approved by the City~~attached to this Ordinance as Exhibit A, which is hereby incorporated by reference~~. The Application form may be changed by the Mayor so long as such changes request information that is consistent with this Ordinance. ~~Such Application form, as amended, is incorporated by reference.~~

(2) Application Criteria. In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

(a) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.

(b) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;

(c) Provider's agreement to comply with the requirements ~~of Section 6~~ of this Ordinance.

(3) Franchise Determination. The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.
(Ord. 97-42, 12-03-97)

5-24-13. Construction and technical requirements.

(1) General Requirement. No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

(2) Quality. All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

(3) Licenses and Permits. A Provider 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. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.
(Ord. 97-42, 12-03-97)

5-24-14. Relocation of the System.

(1) New Grades or Lines. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance.

(2) The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 5-24-19~~11.4~~.

(3) A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.

(4) Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

(5) Protect Structures. In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks, as well as all other structures within any designated landmark district. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

(6) No Obstruction. In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

(7) Safety Precautions. A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

(8) Repair. After written reasonable notice to the

Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within ~~thirty (~~30~~)~~ days after receipt of the statement, pay to the City the entire amount thereof.

(9) System Maintenance. A Provider shall:

(a) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.

(b) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.

(c) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

(10) Trimming of Trees. A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System.

(Ord. 97-42, 12-03-97)

5-24-15. Franchise, license, transfer or sale.

(1) Notification of Sale.

(a) Notification and Election. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:

(i) the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or

(ii) the successor entity's Application in compliance with Section 5-24-12 of this Ordinance.

(2) Transfer of Franchise. Upon receipt of a notification and certification~~ in accordance with Subsection 7.1.1(a)~~, the City designee~~, as provided in Subsection 9.1.1,~~ shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Section 5-24-12.

(3) If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 5-24-7~~.1~~, and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application. The Application shall comply with this Section~~5~~.

(4) Events of Sale. The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 7.1:

(a) the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person;

(b) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider;

(c) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or

(d) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

(Ord. 97-42, 12-03-97)

5-24-16. Oversight and regulation.

(1) Insurance, Indemnity, and Security. Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

(2) Oversight. The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

(3) Maintain Records. A Provider shall at all times maintain:

(a) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As- built" maps are not required of the Provider who is the

incumbent local exchange carrier for the existing System to the extent they do not exist.

(b) Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

(4) Confidentiality. If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

(5) Provider's Expense. All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

(6) Right of Inspection. For the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider 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 Provider 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 Provider, 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.
(Ord. 97-42, 12-03-97)

5-24-17. Rights of city.

(1) Enforcement and Remedies.

(a) Enforcement - City Designee. The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the Mayor, is authorized to give any notice required by law or under any Franchise Agreement.

(b) Enforcement Provision. Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

(2) Force Majeure. In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(3) Extended Operation and Continuity of Services.

(a) Continuation After Expiration. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

(b) Continuation by Incumbent Local Exchange Carrier. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

(4) Removal or Abandonment of Franchise Property.

(a) Abandoned System. In the event that (1) the use of any portion of the System is discontinued for a continuous period of ~~twelve (~~12~~)~~ months, and ~~thirty (~~30~~)~~ days after no response to written notice from the City to the last known address of Provider,~~;~~ or (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise,~~;~~ or (3) ~~the provisions of Section 3.5 are applicable and~~ no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

(b) Removal of Abandoned System. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so

as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

(c) Transfer of Abandoned System to City. Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

(d) Removal of Above-Ground System. At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than ~~one hundred eighty (~~180~~)~~ days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

(e) Leaving Underground System. Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person.
(Ord. 97-42, 12-03-97)

5-24-18. Obligation to notify.

Publicizing Work. Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.
(Ord. 97-42, 12-03-97)

5-24-19. General provisions.

(1) Conflicts. In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the Franchise is entered into shall control.

(2) Severability. If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider ~~thirty (~~30~~)~~ days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

(3) New Developments. It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

(4) Notices. All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the Mayor. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its name, address, or telephone number.

(5) Exercise of Police Power. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.
(Ord. 97-42, 12-03-97)

5-24-20. Federal, state and city jurisdiction.

(1) Construction. This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

(2) Ordinance Applicability. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

(3) Other Applicable Ordinances. A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

(4) City Failure to Enforce. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

(5) Construed According to Utah Law. This

Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.
(Ord. 97-42, 12-03-97)

TOOELE CITY CORPORATION

RESOLUTION 2018-62

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING A FORM FRANCHISE AGREEMENT FOR TELECOMMUNICATIONS SERVICES AND FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, the Tooele City Council approved Resolution 2018-57, approving a form franchise agreement for small wireless facilities in the public rights-of-way, pursuant to TCC Chapter 5-27, which requires such franchises; and,

WHEREAS, Article XI Section 5 of the Utah Constitution grants to charter cities "the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law" including "to grant local public utility franchises and within its powers regulate the exercise thereof"; and,

WHEREAS, the Tooele City Council has approved Ordinance 2018-17, which amended Tooele City Code Chapter 5-24, which regulates telecommunications facilities in the public rights-of-way in Tooele City, and which requires a franchise; and,

WHEREAS, the City Administration recommends that all providers of telecommunications services utilizing the public rights-of-way be required to enter into a standardized franchise agreement, consistent with Chapter 5-24, containing the terms and conditions under which the rights-of-way may be utilized, including indemnification, insurance, and bonding, except to the extent a franchise is required under Chapter 5-27, in which case the franchise agreement form approved under Resolution 2018-57 will be used:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the form Telecommunication Services Franchise Agreement attached as Exhibit A is hereby approved for use in Tooele City.

This Resolution shall take effect immediately upon passage, by authority of the Tooele City Charter, without further publication.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ___ day of _________________, 2018.

TOOELE CITY COUNCIL

(For)	(Against)
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

ABSTAINING: _____________________________________

MAYOR OF TOOELE CITY

(For)	(Against)
______________________________	______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to form: _________________________________
Roger Evans Baker, Tooele City Attorney

Exhibit A

Telecommunications Services Franchise Agreement Form

TELECOMMUNICATION SERVICES FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") as of the___ day of __________, 20___ (the "Effective Date"), is between Tooele City, a Utah municipal corporation and charter city (the "City"), and ____________________, a _______________ corporation ("Grantee").

RECITALS

A. Grantee desires to install, maintain, and operate telecommunications system ("System") in the City's rights-of-way ("Franchised Area"). System is defined in Tooele City Code Chapter 5-24, as amended.

B. The City is willing to grant to Grantee a franchise for the operation of the System under the terms of this Agreement, subject to the approval of the Mayor, whose approval shall not be unreasonably withheld. This Agreement is subject to the requirements of Tooele City Code Chapter 5-24 (Telecommunications Rights-of-Way), as amended (hereinafter "Chapter 5-24").

C. Grantee desires to use the Franchised Area for the purpose of installing, maintaining, and operating the System in order to provide telecommunication services pursuant to federal laws.

D. The installation, maintenance, and operation of Grantee's System within the Franchised Area will be done in a manner consistent with the City's rights-of-way management regulations, including Chapter 5-24, and all other applicable local, state, and federal regulations.

In consideration of the following mutual covenants, terms, and conditions, the parties agree as follows:

1. <u>DEFINITIONS</u>.

All terms shall have the meanings established in Chapter 5-24. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive. For the purposes of this Agreement, the listed terms shall have the following meanings:

"Cost" means any actual, reasonable, and documented costs, fees, or expenses, including attorneys' fees.

"Gross Revenue" has the same meaning as 'gross receipts from telecommunications service' as defined in Utah Code Ann. § 10-1-402, as amended.

2. FRANCHISED AREA.

The Franchised Area includes and is limited to the public rights-of-way either owned or regulated by the City. The System of Grantee in the Franchised Area will be used solely to provide telecommunications services, not personal wireless services. The use of the Franchised Area for any other purpose is not allowed without additional permits, agreements, and approvals. Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless towers, equipment, nor the installation on poles of equipment designed for macro wireless towers.

3. CITY'S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to Grantee that: (i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; (ii) for property which it owns, the City has good and unencumbered title or prescriptive rights to the Franchised Area free and clear of any liens or mortgages, except those disclosed to Grantee that will not interfere with Grantee's right to use the Franchised Area; and, (iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, franchises, or other agreements binding on the City.

B. Grantee has studied and inspected the Franchised Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (3)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. Grantee has inspected the Franchised Area and obtained information and professional advice as Grantee has determined to be necessary related to this Agreement.

4. GRANT OF FRANCHISE; TERM.

A. City hereby grants to Grantee a non-exclusive franchise to use and occupy the Franchised Area for the purpose of developing and installing the System, including the right to attach, operate, maintain, install, and replace the System as approved by the City subject to the conditions outlined in this Agreement. Grantee shall install the System consistent with Chapter 5-24.

B. Grantee's right to use and occupy the Franchised Area shall not be exclusive, and the City reserves the right to grant a similar use of the Franchised Area to itself or to any person or entity at any time during the term of this Agreement.

C. Nothing in this Agreement will be construed as granting to Grantee the authority to use any property that is owned or regulated by any person or entity other than the City, including state-owned or -maintained rights-of-way or highways. Nor does it confer any right to use City property other than the Franchised Area.

D. The initial term of this Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Effective Date and ending on the tenth anniversary thereof,

unless sooner terminated under the provisions of this Agreement. Provided, however, that if Grantee is not operational and providing services to customers within the City within two hundred seventy (270) days of the effective date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon thirty (30) days written notice.

E. If Grantee continues to occupy the Franchised Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month franchise. Grantee shall be subject to Chapter 5-24 and the terms of this Agreement throughout the period of such holdover operation. Grantee shall pay the City fees in an amount that is double the amount of the normal fees that would otherwise be due under Section 6 herein. Either party may terminate the month-to-month franchise by providing fourteen (14) days written notice to the other party.

F. Notwithstanding any provision in this Agreement to the contrary, or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Grantee's rights in the Franchised Area are limited to the rights created expressly by this Agreement. Grantee's rights are subject to all covenants, restrictions, easements, agreements, reservations, and encumbrances upon, and all other conditions of title regarding, the Franchised Area. Grantee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of any local, state, or federal agency, now or later having jurisdiction over the Franchised Area or Grantee's use of the Franchised Area.

5. <u>PERMITTED USE OF FRANCHISED AREA</u>.

A. The Franchised Area may be used by Grantee, seven (7) days a week, twenty-four (24) hours a day, only for the purposes authorized by this Agreement and not for any other purpose. This Agreement shall include new types of System equipment that may evolve or be adopted using new technologies. Grantee shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations (including laws and ordinances relating to health, safety, and radio frequency (RF) emissions) in connection with the use, installation, operation, maintenance, and replacement of the System within the Franchised Area.

B. The use of the Franchised Area under this Agreement does not include a franchise to install small wireless communication facilities. Any entity that provides small wireless communication services must have a separate legal authorization from the City to use public rights-of-way outside of this Agreement unless provided otherwise in this Agreement.

C. Nothing under this Agreement shall be interpreted to create or vest in Grantee any easement or other ownership or property interest to any City property or rights-of-way. This Agreement shall not constitute an assignment of any City's rights to City property or rights-of-way. Grantee shall, at all times, be and remain a franchisee only.

D. Grantee shall not use or permit the System to be used for any activity violating any applicable local, state, or federal laws, rules, or regulations.

6. FRANCHISE FEES; COSTS.

A. Grantee shall pay all rates and fees in accordance with Chapter 5-24, Chapter 18c, and the Tooele City Fee Schedule.

B. In addition to Annual Franchise Fees, Grantee shall be responsible for paying administrative fees for the processing of System site applications by City staff as prescribed in this Agreement. Starting on the Effective Date, Grantee shall pay a non-refundable administrative fee to the City for each System site application submitted for review and approval as set forth under Chapter 5-24. The administrative fee shall be submitted with every System site application as a prerequisite to begin review of the System site application. Grantee shall have the right to amend the System site application to correct errors or provide additional information without having to pay a second administrative fee.

C. Grantee shall pay for reimbursement as further set forth in Chapter 5-24 or as provided elsewhere in local laws or regulations.

D. To the extent Grantee wishes to utilize the Franchised Area for the installation, use, or operation of small wireless communication facilities in connection with the System, a separate Franchise for wireless (as opposed to wireline) usage shall be required from the City.

E. In addition to other payments required herein, Grantee shall pay all permit fees and all other required City fees in connection with construction, inspection, traffic and pedestrian flow, and other City requirements without any offset against any other fees or payments required herein.

F. Grantee shall remit payments of the Annual Franchise Fee on the first day of every month. If the Effective date of this Agreement is not the first day of a month, the Grantee's payment for the first and last month of this Agreement will be prorated accordingly.

G. If Grantee fails to pay any franchise fee or other amount due in full within ten (10) days after receipt of written notice of delinquency, Grantee shall be responsible for paying interest on the unpaid principal balance at the rate charged for delinquent state taxes, from the due date until payment is made in full.

H. Grantee shall pay the City's actual costs for inspections, materials testing, and other costs incurred by the City as a direct result of the operation, construction, repair, alteration, or relocation of the System. All costs shall be paid in full within thirty (30) days of invoice.

I. The City agrees that any fees or taxes charged to Grantee under this Agreement shall be of the same nature and calculation of fees or taxes as other similarly situated entities on a non-discriminatory basis.

7. APPROVAL OF SYSTEM SITES.

A. Grantee shall file with the City a System site application in accordance with Chapter 5-24. The application form may be modified from time-to-time by the City as deemed necessary in order to more efficiently process applications.

B. As appropriate, the City or its designee shall require Grantee to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in a denied System site application which may not be processed under this Agreement.

C. Upon finding that the System site application is complete and in compliance with all applicable requirements as outlined above and in Chapter 5-24, the City shall approve the System site application. Grantee shall comply with the requirements of Chapter 5-24 and other provisions of the City Code. Grantee shall pay all appropriate permit fees. Upon obtaining all necessary permits, Grantee may proceed to install the System in coordination with any affected City departments. Upon completion of the installation, Grantee shall notify the City, or its designee, in writing and provide a picture of the installation to be included in the System site application records.

D. Grantee shall maintain a current inventory of the System throughout the term of this Agreement. Grantee shall provide to the City a copy of the inventory of its System sites every July 1 until the end of the term. The inventory of the System shall include GIS coordinates, date of installation, Company Site ID#, type of facilities used for installation, facilities owner, and description/type of installation for each System. Concerning System sites that become inactive, the inventory of System sites shall include the same information as active installations in addition to the date the System site was deactivated and the date any System was removed from the right-of-way. The City may compare the inventory of System sites to its records to identify any discrepancies.

E. Any unauthorized System sites that are identified by the City as a result of comparing the inventory of System sites to internal records or through any other means will be subject to the payment of unauthorized installation charges by Grantee. The City shall provide written notice to Grantee of any unauthorized System site identified by City staff, and Grantee shall have thirty (30) days thereafter in which to submit an approved application. Failure to produce an approved application corresponding with the unauthorized System site will result in the imposition of an unauthorized installation charge, which shall be calculated by applying the Annual Franchise Fee formula set out in Section 6 to the period spanning from the original date of installation of the unauthorized System site to the date of the written notice sent by the City. The total amount resulting from this calculation shall be assessed an interest rate of eighteen percent (18%) per annum to constitute the applicable unauthorized installation charge. Thereafter, Grantee shall submit an application fee and administrative fee for the unauthorized System site and, if approved by the City, Grantee shall become liable for paying Annual Franchise Fees going forward. If the System site application for the unauthorized System site is not approved based on applicable

considerations under this Agreement, Grantee shall remove the System and any related System from the right-of-way within thirty (30) days.

8. UTILITIES.

Grantee is responsible for obtaining and paying for all utilities necessary to operate the System.

9. USE RESTRICTIONS.

A. Subject to the interference provisions set forth below, Grantee shall at all times use reasonable efforts to minimize any impact that its use of the Franchised Area will have on other users of the Franchised Area and on the Franchised Area itself.

B. Grantee shall not remove, damage, or alter in any way any improvements or personal property of the City or third parties in the Franchised Area without the owner's prior written approval. Grantee shall repair any damage or alteration to another's property caused by Grantee's use of the Franchised Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.

C. Whenever Grantee performs construction activities within the Franchised Area, Grantee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the Franchised Area to the condition existing before construction, to the satisfaction of the Community Development Director. Grantee represents and warrants that it has obtained all government licenses, permits, and authorization by the Federal Communications Commission and the Utah Public Service Commission, as applicable and as necessary to provide the services.

If Grantee fails to restore the Franchised Area as required, the City may take all reasonable actions necessary to restore the Franchised Area, and Grantee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, shall pay all of the City's reasonable costs of restoration.

D. Grantee shall use the Franchised Area solely for constructing, installing, operating, maintaining, repairing, modifying, and removing the System.

E. Grantee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification, and removal of the System. In no event shall the City's use of the Franchised Area be unreasonably interrupted by Grantee's work. Prior to entering upon the Franchised Area for activities that disrupt vehicular and/or pedestrian traffic, Grantee shall give the Community Development Director at least seven (7) days advance notice in the manner provided in this Agreement or, in the event of emergency repairs, any prior notice as is practical.

F. Grantee shall at all times have on call, and at the City's access, an active, qualified, and experienced representative to supervise the System, who is authorized to act for the Grantee

in matters pertaining to all emergencies and the day-to-day operation of the System. Grantee shall provide the Community Development Director with the names, addresses, and 24-hour telephone numbers of designated persons in writing.

G. In the vicinity of any above-ground System Grantee may have in the Franchised Area, Grantee shall keep the Franchised Area maintained, orderly, and clean at all times.

H. Grantee acknowledges the following: i) Grantee's use of the Franchised Area is subject and subordinate to, and shall not adversely affect, the City's use of the Franchised Area; and, ii) the City reserves the right to further develop, maintain, repair, or improve the Franchised Area, provided that the City shall reasonably cooperate with Grantee to ensure that Grantee's use and operation of the System is not interfered with or interrupted.

I. Grantee shall not install any signs in the Franchised Area other than required safety or warning signs or other signs necessary for the use of the Franchised Area as requested or approved by the City. Grantee bears all costs pertaining to the erection, installation, maintenance, and removal of all of its signs.

10. HAZARDOUS WASTE.

The Grantee shall not produce, dispose of, transport, treat, use, or store any hazardous waste or toxic substance upon or about the Franchised Area in violation of any federal, state, or local law pertaining to hazardous waste or toxic substances. Grantee shall not use the Franchised Area in a manner inconsistent with any regulations, permits, or approvals issued by any federal or state agency. The City and Grantee acknowledge that if Grantee uses sealed batteries, such batteries shall be used and maintained pursuant to industry standards and applicable laws. Grantee shall defend, indemnify, and hold the City harmless against any loss or liability, claims, damages, costs, expenses, and attorneys' fees incurred by reason of any hazardous waste or toxic substance release on or affecting the Franchised Area, to the extent caused by the Grantee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Franchised Area. Grantee shall promptly and without request provide the City with copies of all written communications between Grantee and any governmental agency concerning environmental inquiries, reports, problems, or violations in the Franchised Area.

11. GRANTEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

A. The following provisions govern all improvements, repairs, installation, and other construction, removal, demolition, or similar work by Grantee related to the System or the Franchised Area (collectively referred to as "Grantee Improvements").

(i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate Grantee in any manner for any Grantee Improvements or other work provided by Grantee during or related to this Agreement. Grantee shall timely pay for all labor, materials, work, and all professional and other services related to Grantee Improvements, and shall defend, indemnify, and hold harmless

the City against the same for any claims, damages, costs, expenses, and attorneys' fees.

(ii) Grantee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Grantee Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed.

(iii) Grantee acknowledges that, as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for Grantee Improvements.

(iv) Grantee shall make no structural or grading alterations, structural modifications or additions, or other significant construction work in the Franchised Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Review shall include all Grantee Improvements, equipment, fixtures, paint, and other construction work of any description as described in all plans delivered by Grantee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function, and appearance.

(v) Grantee shall keep as-built records of all Grantee Improvements and upon request shall furnish copies of records to the City, at no cost to the City, upon completion of or changes to Grantee Improvements. Grantee shall participate with Blue Stakes of Utah regarding underground System, and shall submit proof of participation to the City upon request.

(vi) All changes to utility System shall be limited to the Franchised Area and shall be undertaken by Grantee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

(vii) All Grantee Improvements shall be designed so as to present uniformity and consistency of design, function, appearance, and quality throughout the Franchised Area.

(viii) Grantee shall properly mark and sign all excavations, and shall maintain barriers and traffic control, in accordance with applicable laws, regulations, and best management practices including compliance with Chapter 4-9 (Street Excavations), as amended, including bonding and the payment of fees.

B. The following procedure governs Grantee's submission to the City of all plans for the Franchised Area and Grantee Improvements, including any proposed changes by the Grantee of previously submitted plans.

(i) Grantee shall coordinate with the City as necessary on significant design issues prior to submission of plans.

(ii) Upon execution of this Agreement, Grantee shall designate a project manager to coordinate Grantee's participation in designing and constructing Grantee Improvements. The project manager shall devote time and efforts to the project as may be necessary for timely, good faith, and convenient coordination among all persons involved with the project and compliance with this Agreement.

(iii) No plans are considered finally submitted until Grantee delivers to the City a formal certification by a Utah-licensed engineer, acceptable to the Community Development Director, to the effect that all Grantee Improvements are properly designed to be safe and functional as designed and as required by this Agreement and Chapter 5-24. The certification shall be accompanied by and refer to any backup information and analysis as the City Engineer may reasonably require.

(iv) No plans are considered approved until stamped "APPROVED" and dated and signed by the Community Development Department.

(v) Grantee is responsible to secure all zoning approvals, design revisions, or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City to initiate or suggest any particular process or course of action.

(vi) The City's issuance of permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. City staff shall be reasonably available to coordinate and assist Grantee in working through issues that may arise in connection with such plan approvals and requirements.

(vii) Grantee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performance and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.

(viii) Subject to federal, state, and local law, any delay in the City's review of or marking Grantee's plans with changes necessary to approve the plans, or approve revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Grantee's construction deadlines. The City agrees to use reasonable efforts to review, mark, or approve Grantee's plans in a prompt and timely manner and in conformance with established policies and procedures.

(ix) Grantee shall provide the City with two (2) complete paper sets and one (1) complete electronic set of detailed plans and specifications of the work as completed.

(x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason,

final decision authority regarding all design and construction issues shall rest with the City in its sole discretion.

(xi) Before any construction begins in the Franchised Area, Grantee shall provide the City with performance bonds and, if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Utah, and acceptable to the City, and shall be kept in place for the duration of the work.

12. GRANTEE'S CONSTRUCTION.

Subject to state law, Grantee shall install the System in the Franchised Area within two hundred seventy (270) days of the City's approval in accordance with the approved application and applicable law.

13. CONSTRUCTION WORK - REGULATION BY CITY.

A. The work done by Grantee in connection with the installation, construction, maintenance, repair, and operation of the System within the Franchised Area shall be subject to and governed by all pertinent federal, state, and local laws, rules, and regulations.

B. All excavations, construction, and installation activities in the Franchised Area shall be performed so as to minimize interference with the use of the Franchised Area and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety, and convenience.

14. CONSTRUCTION, RESTORATION, AND MAINTENANCE ACTIVITIES.

A. The City shall have the authority at any time to order and require Grantee to remove and abate any System or other structure that is in violation of the City Code. In case Grantee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of Grantee (which shall be paid to the City within thirty (30) days of receipt of an invoice), all without compensation or liability for damages to Grantee.

B. The parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain, and remove City facilities in the manner that best enables the operation of the City and protects public safety.

C. The location of all Grantee's personal property and electrical connections placed and constructed by Grantee in the installation, construction, and maintenance of the System

shall be subject to the lawful, reasonable, and proper control, direction, and/or approval of the Community Development Director.

15. INTERFERENCE WITH OTHER SYSTEM PROHIBITED.

A. Grantee shall not impede, obstruct, or otherwise interfere with the installation, existence, and operation of any other facility in the Franchised Area including sanitary sewers, water mains, storm water drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, small wireless facilities, public safety and City networks, and other telecommunications, utility, or municipal property.

B. In the event that Grantee's the System interfere with a traffic light signal system, public safety radio system, or City communications infrastructure operating on a spectrum where the City is legally authorized to operate, Grantee will respond to the City's request to address the source of the interference as soon as practicable, but in no event later than two (2) hours of receiving notice.

C. If any interference is creating a public safety hazard, Grantee shall immediately shut down the interfering System pending approval and implementation of a remediation plan. The Grantee shall provide the Community Development Department an Interference Remediation Report that includes a remediation plan to stop the event of interference, an expected timeframe for execution of the remediation plan, and any additional information relevant to the execution of the remediation plan. In the event that interference with other System cannot be timely eliminated, Grantee shall remove or relocate the System that is the source of the interference as soon as possible to an approved alternative location.

D. If the interference is not creating a public safety hazard, Grantee shall provide the Community Development Director an Interference Remediation Report that includes a remediation plan to stop the event of interference, an expected timeframe for execution of the remediation plan, and any additional information relevant to the execution of the remediation plan. In the event interference with City System cannot be timely eliminated, Grantee shall shut down the interfering System and remove or relocate it as soon as possible to an approved alternative location.

16. MAINTENANCE.

A. Grantee has all responsibilities, at its own cost, for improvements to and maintenance of the System in the Franchised Area.

B. Grantee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Franchised Area.

C. Subject to state and federal law, Grantee shall provide the City five (5) business days' advanced notice of:

(i) routine maintenance; and,

(ii) the replacement of a System with a System that is substantially similar or smaller in size.

D. Grantee shall:

(i) install and maintain all parts of its system in a safe condition throughout the entire term of the franchise;

(ii) maintain its system in accordance with standard prudent engineering practices and shall conform with the National Electrical Safety Code and all applicable other federal, state, and local laws or regulations; and,

(iii) at all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the Franchised Area.

E. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinances, and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming into contact with its System.

17. COMPLIANCE WITH UTILITY, HEIGHT, AND HISTORIC PRESERVATION REGULATIONS.

Grantee shall comply with all applicable local, state, and federal design and historic preservation regulations, including the following:

A. Grantee shall comply with all legal requirements for connecting the System to electricity and telecommunications services. The City is not responsible for providing electricity or transport connectivity to Grantee.

B. All System installations shall be in compliance with height restrictions applicable structures in the zoning districts.

C. The design plans for all System site installations shall be compatible with the character and aesthetics of the neighborhoods, plazas, boulevards, parks, public spaces, and commercial districts. Subject to applicable law and in coordination with the City's Community Development Department, Grantee shall implement design concepts and the use of camouflage and stealth materials, as necessary, to blend its System installations with the overall character of the selected site. Grantee shall comply with the City regulations applicable to aesthetics, stealthing, and materials.

18. RELOCATION AND REMOVAL OF SYSTEM.

A. Subject to state law, the City may require Grantee to relocate or adjust a System in the Franchised Area in a timely manner and without cost to the City.

B. Grantee's duty to relocate or adjust the System at its expense under this subsection is not contingent on the availability of an alternative location acceptable for relocation. The City will make reasonable efforts to provide an alternative location in the Franchised Area for

relocation, but regardless of the availability of an alternative site acceptable to Grantee, Grantee shall comply with the notice to remove its property as instructed.

C. If Grantee fails to relocate or adjust its System to the satisfaction of the City by the 90th day after the date of notice, the City may remove the System at the expense of Grantee (which expense shall be paid to the City within thirty (30) days of receipt of an invoice).

D. Any damage to the Franchised Area or adjacent property caused by Grantee that occurs during the relocation or adjustment of Grantee's System shall be promptly repaired or replaced at Grantee's sole expense. Should Grantee not make nor diligently pursue adequate repairs within thirty (30) days of receiving written notice, the City may make all reasonable and necessary repairs on behalf of Grantee, and reimburse itself from proceeds from the surety bond required under this Agreement. Any remaining amount will be charged to Grantee. Grantee shall within thirty (30) days remit payment of such costs after receipt of an invoice from the City.

E. The City shall not bear any cost of relocation of existing System, irrespective of the function served, where the City System or other System occupying the Franchised Area or right-of-way in close proximity to the Franchised Area are already located, and the conflict between the Grantee's potential System and existing System can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted System. Any relocation of City infrastructure is purely discretionary on the part of the City and may not be demanded by the Grantee.

F. If Grantee's relocation effort delays construction of a public project, causing the City to be liable for delay or other damages, Grantee shall reimburse the City for those damages, attorneys' fees, expenses, and costs attributable to the delay created by Grantee. If Grantee fails to pay the damages, attorneys' fees, expenses, and costs in full within thirty (30) days after receiving an invoice, Grantee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full.

19. COLLOCATION.

A. Subject to subsection (B) below, Grantee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible collocation of additional equipment, System, or structures in and around the Franchised Area ("Collocation"). If a Collocation is feasible, the City may, in its sole discretion, negotiate a Collocation franchise agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Grantee's consent in connection with the final determination of Collocation of a third party is not required, provided that Grantee's operations are not unreasonably interfered with or interrupted. Any fees or charges paid by an additional collocation company belong solely to the City.

B. Prior to permitting the installation of a Collocation by any third party in or around the Franchised Area which may interfere with Grantee's operations, the City shall give Grantee

forty-five (45) days' notice of the proposed Collocation so that Grantee can determine if the Collocation will interfere with the System. If Grantee determines that interference is likely, Grantee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate Grantee's position. The City and Grantee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Collocation to the third party. If a subsequent franchisee is permitted to operate near the Franchised Area, and the subsequent franchisee's operations materially interfere with Grantee's System, then the City shall direct the subsequent franchisee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent franchisee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Grantee with respect to any Collocation existing and as configured prior to the installation of Grantee's System.

20. RECORDS.

A. Grantee shall keep complete and accurate GIS and mapping information, deployment plans, equipment inventories, and other relevant records of its System deployments in the Franchised Area.

B. The City may, at reasonable times and for reasonable purposes, examine, verify, and review the maps, plans, equipment inventories, and other records of Grantee pertaining to the System installed in the Franchised Area. Grantee shall make the above records available to the City for review within ten (10) business days after requested by the City.

21. RIGHT TO AUDIT.

A. The City shall have the right to audit, examine, and inspect, at the City's election and at the City's expense, all Grantee records at any and all of Grantee's locations relating to System deployments under this Agreement ("Grantee's Records") during the term of the Agreement and retention period. The audit, examination, or inspection may be performed by the City' designee, which may include internal City auditors or outside representatives engaged by the City. Grantee agrees to retain Grantee records for a minimum of two (2) years following termination or expiration of this Agreement, unless there is an ongoing dispute under the Agreement, in which case the retention period shall extend until final resolution of the dispute beyond the two (2) year retention period.

B. Grantee's records shall be made available at Grantee's place of business, if within fifty (50) miles from the City, or the City's designated offices within thirty (30) calendar days of the City's request and shall include any and all information, materials, and digital data of every kind and character generated as a result of this Agreement. Examples of Grantee's records include copies of inventory of System sites, System site applications, supplemental franchises, right-of-way permits, payment records for Annual Franchise Fees and administrative fees, equipment invoices, subcontractor invoices, engineering documents, vendor contracts, network diagrams, internal network reports, and other documents related

to installation of the System at System sites. Grantee bears the cost of producing, but not reproducing, any and all requested business records.

C. If an audit inspection or examination discloses that Grantee's Annual Franchise Fee payments to the City as previously remitted for the period audited were underpaid, Grantee shall pay within thirty (30) days to the City the underpaid amount for the audited period together with interest at the interest rate of eighteen percent (18%) per annum from the date(s) such amount was originally due.

22. **ASSIGNMENT**.

A. Grantee may not assign or transfer this Agreement, nor may there be a change in control to any person or entity controlling, controlled by, or under common ownership with Grantee or Grantee's parent company, or to any person or entity that acquires Grantee's business and assumes all obligations of Grantee under this Agreement, without the prior written consent of the City, which consent may not be unreasonably withheld, delayed, or conditioned.

B. Control means actual working control in whatever manner exercised. Control includes, but may not necessarily require, majority stock ownership. The requirements of this Section shall also apply to any change in control of Grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of Grantee. The consent required shall not be unreasonably withheld or delayed, but may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon Grantee by the City. For the purpose of determining whether it should consent to transfer of control, the City may inquire into the qualifications of the proposed transferee, and Grantee shall assist the City in the inquiry.

C. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial, technical, and operational ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Grantee's interest. In no event will the City unreasonably withhold, condition, or delay its approval to a proposed assignment.

D. Grantee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the System, and may assign this Agreement and the System to any mortgagees, deed of trust beneficiaries, or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Grantee grant or attempt to grant a security interest in any of the real property underlying the Franchised Area.

E. Subject to subsections (A) and (B) above, Grantee shall not sublease any of its interest under this Agreement, nor permit any other person to occupy the Franchised Area. The parties acknowledge that System deployed by Grantee in the Franchised Area pursuant to this Agreement may be owned and/or remotely operated by a third-party carrier customer ("Carriers") and installed and maintained by Grantee pursuant to existing agreements between Grantee and Carriers. Grantee shall provide to the City prior written notice of any such System and identify the associated Carriers. Such System shall be treated as Grantee's System for all purposes under this Agreement. Carriers' ownership and/or operation of such System shall not constitute an Assignment under this Agreement, provided that Grantee shall not actually or purportedly sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the Franchised Area or this Agreement to Carriers, or otherwise permit any portion of the Franchised Area to be occupied by anyone other than itself. Grantee shall remain solely responsible and liable for the performance of all obligations under this Agreement with respect to any System owned and/or remotely operated by Carriers.

23. BOND/LETTER OF CREDIT REQUIREMENT.

Before undertaking any of the work authorized by this Agreement, as a condition precedent to the City's issuance of any permits, Grantee shall, upon the City's request, furnish an annually renewed performance bond or letter of credit from a Utah-licensed financial institution in the amount of at least twenty-five thousand dollars ($25,000). Every July 1 during the term of this Agreement, except for the initial year of this Agreement, the amount of Grantee's performance bond or letter of credit shall be adjusted to one-hundred ten percent (110%) of the value of Grantee's system and its associated installation costs or twenty-five thousand dollars ($25,000), whichever is greater. The bond or letter of credit shall remain in effect for the entirety of the term of this Agreement as well as an additional one (1) year after the expiration or termination of this Agreement. The bond shall be conditioned so that Grantee shall observe all the covenants, terms, and conditions of this Agreement, and shall faithfully perform all of the obligations of this Agreement and to repair or replace any defective work or materials discovered in the Franchised Area, and to remove any the System and their associated equipment that is not in service or remaining in the Franchised Area after the termination or expiration of this Agreement. The bond shall ensure the faithful performance of Grantee's obligations under this Agreement, including Grantee's payment of any penalties, claims, liens, or fees due to the City that arise by reason of the operation, construction, or maintenance of the System within the Franchised Area. Grantee shall pay all premiums or other costs associated with maintaining the bond.

24. REGULATORY AGENCIES, SERVICES AND BANKRUPTCY.

A. Grantee shall upon request provide to the City the following.

(i) All non-proprietary and relevant petitions, applications, communications, and reports submitted by Grantee to the Public Service Commission or other state or federal authority having jurisdiction that directly relates to Grantee's operations in the Franchised Area.

(ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by Grantee over System in the Franchised Area.

Non-proprietary copies of responses from regulatory agencies to Grantee shall be available to the City upon request. To the extent permitted by the Utah Government Records Access and Management Act, the City will treat all documentation and information obtained pursuant to this Section 24 as private and protected; provided, however, that the onus of demonstrating the private and protected nature of the records shall be upon Grantee.

B. Grantee shall upon request provide to the City copies of any petition, application, communications, or other documents related to any filing by the Grantee of bankruptcy, receivership or trusteeship.

25. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Grantee:

(i) Failure of Grantee to perform any obligation under this Agreement, after Grantee fails to cure a default within the notice and cure period. However, if a cure cannot reasonably be implemented within the notice period, Grantee must commence and diligently pursue to cure within thirty (30) days of the City's notice.

(ii) The taking of possession for a period of ten (10) days or more of substantially all of Grantee's personal property in the Franchised Area by or pursuant to lawful authority of any legislative act, resolution, rule, order, or decree, or any act, resolution, rule, order, or decree of any court or governmental board, agency, officer, receiver, trustee, or liquidator.

(iii) The filing of any lien against the System in the Franchised Area, or against the City's underlying real property, due to any act or omission of Grantee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by Grantee.

B. The City may place Grantee in default of this Agreement by giving Grantee fifteen (15) days written notice of Grantee's failure to timely pay the fees required under this Agreement or any other charges required to be paid by Grantee pursuant to this Agreement. If Grantee does not cure the default within the notice period, the City may terminate this Agreement or exercise any other remedy allowed by law or in equity.

C. If Grantee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to Grantee, immediately terminate this Agreement or secure the required insurance at Grantee's expense (which expense shall be paid to the City within thirty (30) days of receipt of an invoice).

D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. The City's acceptance of the franchise fee or any other fees or charges for any period after a default by Grantee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by Grantee to comply with its obligations.

26. TERMINATION.

A. This Agreement may be terminated by either party for any of the following:

(i) The issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Grantee's use of any portion of the System in the Franchised Area and remaining in force for a period of thirty (30) consecutive days.

(ii) The inability of Grantee to use any substantial portion of the System in the Franchised Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, flood, or other acts of God or the public enemy.

(iii) Upon ninety (90) days' written notice, if Grantee is unable to obtain or maintain any franchise, permit, or governmental approval necessary for the construction, installation, or operation of the System or Grantee's business.

B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and must provide reasonable written notice to the other party.

27. INDEMNIFICATION.

A. Grantee shall defend, indemnify, and hold harmless the City and its elected and appointed officials, agents, boards, commissions, and employees from all loss, damages, or claims of whatever nature, including attorneys' fees, expert witness fees, and costs of litigation, that arise out of any act or omission of Grantee or its agents, employees, or invitees in connection with Grantee's operations in the Franchised Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Grantee to comply with any provision of this Agreement. The City shall in all instances, except for losses, damages, or claims resulting from the negligence or willful acts of the City, be indemnified by Grantee against all losses, damages, claims, attorneys' fees, expenses, and costs. The City shall give Grantee prompt written notice of any claim made or suit instituted that may subject Grantee or the City to liability under this Section, and Grantee shall have the right to compromise and defend the same at Grantee's cost and expense provided that Grantee may not enter into any settlement imposing liability or cost on the City. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving Grantee of any obligations under this Agreement. Grantee's obligations under this Section survive any termination of this Agreement or the termination of Grantee's activities in the Franchised Area.

B. The City shall not be liable to Grantee, or its customers, agents, representatives, or employees, for any claims arising from this Agreement for lost revenue, lost profits, loss of equipment, interruption or loss of service, loss of data, or incidental, indirect, special, consequential, or punitive damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

28. INSURANCE.

A. On or before the effective date of this Agreement, Grantee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise, at the expense of Grantee, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and property damage occasioned by the installation, removal, maintenance, or operation of the communications system by Grantee in the following minimum amounts:

(i) Ten Million Dollars ($10,000,000.00) combined single limit, bodily injury and real property damage in any one occurrence; and,

(ii) Ten Million Dollars ($10,000,000.00) aggregate.

B. Grantee shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired, and leased vehicles operated by Grantee, with limits not less than Two Million Dollars ($2,000,000.00) each accident, single limit, bodily injury and property damage combined.

C. Grantee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the franchise, workers compensation insurance, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars ($500,000.00) for employer's liability.

D. All liability insurance required pursuant to this section, except for employers' liability, shall name the Tooele City Corporation and its officers, employees, board members, and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by Grantee during the existence of the franchise and until after the removal or abandonment of all the System, wires, cables, underground conduits, manholes, and any other conductors and fixtures installed by Grantee incident to the maintenance and operation of the system as defined in this Agreement. Failure to obtain and maintain continuously the required insurance shall constitute a violation of this agreement and a default. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to cancel by either Grantee or the insuring company. Grantee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limit requirements in this Section.

E. The City reserves, and Grantee acknowledges, the right to modify the insurance requirements contained herein based upon changes in the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated.

F. In addition to any other remedies the City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein

required, the City shall have the right to order Grantee to stop work in the Franchised Area until Grantee demonstrates compliance with the requirements hereof.

G. Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

H. It is agreed that Grantee's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement.

I. Any self-insurance by Grantee may be disapproved by the City in its sole and absolute discretion.

29. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse Grantee for the loss of or damage to fixtures, equipment, or other personal property of Grantee, except for loss or damage caused by the negligence or intentional acts of the City or its officers, employees, or agents. Grantee may insure such fixtures, equipment, or other personal property for its own protection if it so desires.

30. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, Grantee's right to occupy the Franchised Area and exercise the privileges and rights granted under this Agreement shall cease, and Grantee shall surrender and leave the Franchised Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by Grantee in the Franchised Area shall remain the property of Grantee, and Grantee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Franchised Area so long as Grantee is not in default of any of its obligations, and shall repair at its sole cost any damage caused by the removal. Any property not removed by Grantee within the 90-day period becomes a part of the Franchised Area, and ownership vests in the City; or the City may, at Grantee's expense, have the property removed at Grantee's expense (which cost shall be paid to the City within thirty (30) days of receipt of an invoice). Grantee's indemnity under this Agreement applies to any post-termination removal operations.

31. NOTICE.

A. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be mailed by certified mail, return receipt requested, postage prepaid, or sent via national overnight courier, to the following addresses:

TO THE CITY: Tooele City Corporation
90 North Main Street

Tooele City, Utah 84074
Attn: Community Development Director

TO GRANTEE: __________________________
____
____
Attention: ________________

B. Any notice given by certified mail or overnight courier is considered to be received on the date delivered or refusal to accept. Either party may designate in writing a different address for notice purposes pursuant to this Section.

32. TAXES AND FRANCHISES.

A. Grantee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax, or other exaction assessed or assessable as a direct result of its occupancy of the Franchised Area under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Grantee's occupancy of the Franchised Area, the tax shall also be paid by Grantee on a proportional basis for the period this Agreement is in effect.

B. Grantee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all permits required for all activities authorized by this Agreement.

33. GOVERNING LAW AND VENUE; ATTORNEYS' FEES.

This Agreement is governed by federal laws, the laws of the State of Utah, and local laws. Venue for any litigation or dispute between the parties shall be in the Third District Court of Tooele County, State of Utah. If any claim or litigation between the City and Grantee arises under this Agreement, the successful party is entitled to recover its reasonable attorneys' fees, reasonable expert witness fees, and other reasonable costs and expenses incurred in connection with the claim or litigation.

34. RULES AND REGULATIONS.

Grantee shall at all times comply with all federal, state, and local laws, ordinances, rules, and regulations which are applicable to its operations in the Franchised Area, including all laws, ordinances, rules, and regulations adopted after the Effective Date. Grantee shall display to the City, upon request, any permits or other reasonable evidence of compliance with the law.

35. RIGHT OF ENTRY RESERVED.

A. The City may, at any time, enter upon the Franchised Area for any lawful purpose, so long as the action does not unreasonably interfere with Grantee's use or occupancy of the

Franchised Area. The City shall have access to the System themselves only in emergencies or as otherwise provided for herein or in Chapter 5-24.

B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical, and other systems and to enter upon the Franchised Area at any time to make repairs, replacements, or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in, or under the Franchised Area all necessary systems or parts and in connection with maintenance, and to use the Franchised Area for access to other areas in and around the Franchised Area. Exercise of rights of access to repair, to make alterations, or to commence new construction will not unreasonably interfere with the use and occupancy of the Franchised Area by Grantee.

C. Exercise of any of the foregoing rights by the City, or others pursuant to the City's rights, do not constitute an eviction of Grantee, nor are grounds for any abatement of fees or any claim for damages.

36. FORCE MAJEURE.

Notwithstanding any other provision of this Agreement, Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to an event or events reasonably beyond the ability of Grantee to anticipate and control. "Force majeure" includes acts of God, terrorism, war or riots, labor strikes or civil disturbances, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, and work delays caused by waiting for utility providers.

37. SEVERABILITY; CONFLICT.

(A) If any section, subsection, paragraph, or provision of this Agreement becomes void, voidable, or unenforceable for any reason, such provision or provisions shall be deemed severable from the remaining provisions of this Agreement and shall have no effect on the legality, validity, or constitutionality of any other section, subsection, paragraph, or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

(B) If any section, subsection, paragraph, or provision of this Agreement conflicts with Chapter 5-24, the provisions of Chapter 5-24 shall govern.

38. WAIVER OF JURY TRIAL. To the fullest extent possible, the Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement and the transactions contemplated herein.

39. MISCELLANEOUS: INTEGRATION; CONSTRUCTION; CAPTIONS; WAIVER; NO JOINT VENTURE; NO THIRD-PARTY BENEFICIARIES.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings, and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. The captions in this Agreement are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this Agreement. No provision of this Agreement may be waived or modified except in writing. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to act, nor shall either party act, toward third persons or the public in any manner which would indicate any such relationship with the other. The relationship between the City and Grantee is at all times solely that of the City and Grantee, and not that of partners or joint venturers. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon the parties hereto and inure to the benefit of the parties' permitted successors and assigns. There are no third-party beneficiaries of this Agreement.

TOOELE CITY CORPORATION

____
Mayor

ATTEST:

____
City Recorder

APPROVED AS TO FORM:

____
City Attorney

(GRANTEE)

____
By: ___________________________
Its: ___________________________

STATE OF ____________)
) ss.

COUNTY OF ___________)

Before me, a notary public, appeared_________________, who did affirm to me that he/she holds the position of ______________ with Grantee, and that he/she did execute the foregoing instrument with due authority this ____ day of ____________, 20___.

____
Notary Public
Residing in ________County, State of ________

TOOELE CITY CORPORATION

RESOLUTION 2018-63

A RESOLUTION OF THE TOOELE CITY COUNCIL AMENDING THE TOOELE CITY FEE SCHEDULE REGARDING TELECOMMUNICATIONS IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, the City Council has enacted Ordinance 2018-17, amending Tooele City Code Chapter 5-24 regarding telecommunications in the public rights-of-way; and,

WHEREAS, Tooele City Code §1-26-1 authorizes the City Council to establish City fees by resolution for activities regulated by the City and services provided by the City; and,

WHEREAS, under the Council-Mayor form of municipal government, established and governed by the Tooele City Charter (2006) and Utah Code §10-3b-201 et seq., the Mayor exercises all executive and administrative powers; however, it has been the practice of Tooele City for all fees proposed by the Mayor and City Administration to be approved by the City Council; and,

WHEREAS, the Tooele City Council has approved Ordinance 2018-16, which enacted Tooele City Code Chapter 5-27 to regulate small wireless facilities in the public rights-of-way in Tooele City; and,

WHEREAS, the recitals of Ordinances 2018-16 and 2018-17 are incorporated herein; and,

WHEREAS, the City Administration recommends that the Tooele City Fee Schedule be amended to include the fees enacted in Chapter 5-24 and Chapter 5-18c:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Fee Schedule is hereby amended to include the following fees for telecommunications franchises:

Telecommunications Franchise Application Fee: $500 (see TCC Chapter 5-24)

Telecommunications Franchise Fee: 3.5% of all gross revenues related to the provider's use of the City's right-of-way (see TCC Chapter 5-18c)

This Resolution shall take effect immediately upon passage, by authority of the Tooele City Charter, without further publication.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ___ day of ________________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ____________________________________

MAYOR OF TOOELE CITY

(For) (Against)

______________________________ ______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to form: ______________________________
Roger Evans Baker, Tooele City Attorney

TOOELE CITY CORPORATION

RESOLUTION 2018-68

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH ROCKY MOUNTAIN POWER FOR REQUIRED ELECTRICAL WORK ON THE POLICE STATION SITE.

WHEREAS, the City is in the final stages of preparing to construct a new police station at approximately 88 North Garden Street/100 East in Tooele City; and,

WHEREAS, important preparatory work includes electrical work on the police station site, including to remove and reroute power lines; and,

WHEREAS, to expedite the preparatory electrical work required to have the site ready for construction, Rocky Mountain Power has prepared an agreement embodying a cost estimate for the require work, and the Mayor has approved that agreement (see Exhibit A); and,

WHEREAS, the agreement is being brought to the City Council for its approval because the anticipated cost of the work to be performed under the agreement exceeds $20,000:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Customer Request Work Agreement attached as Exhibit A is hereby approved and ratified.

This Resolution is in the best interest of the general welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of ________________, 2018.

TOOELE CITY COUNCIL

(For)	(Against)
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

ABSTAINING: ____

MAYOR OF TOOELE CITY

(Approved)	(Disapproved)
______________________________	______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form: ____________________________
Roger Evans Baker, City Attorney

Exhibit A

Customer Request Work Agreement
Rocky Mountain Power

Lisa Baker
Work Order #: 6559194
Cust. Acct. #:34191536 001

CUSTOMER REQUESTED WORK AGREEMENT

This Customer Requested Work Agreement (this "Agreement"), dated November 15, 2018 ("Agreement Date"), is between Rocky Mountain Power, an unincorporated division of PacifiCorp ("Company"), and **TOOELE CITY CORP**, ("Customer"), for work to be performed by Company for Customer at or near **88 N Garden Street** in **Tooele** County, State of Utah.

Description:

Overhead to Underground Conversion

The Customer will provide, all necessary trenching and backfilling, and will furnish and install all distribution transformer pads, conduit and duct required by Company. Company may abandon in place any underground cables installed under this Agreement that are no longer useful to Company.

Customer also agrees to:
a) Establish final grade for routing of circuits, placement of transformer pads, vaults, junction boxes and other underground facilities as required by Company.
b) Install and maintain property lines and survey stakes; and,
c) Make no permanent surface improvements, except curb and gutters, before Company completes installation of its facilities.
d) Provide legal rights-of-way to Company, at no cost to Company, using Company's standard forms.

If any change in grade, or property lines, or any surface improvements require Company to change its facilities, or causes additional cost to Company, Customer agrees to reimburse Company for such change or cost.

Third-Party Relocation Costs: This work does not include any third-party relocation costs. Customer shall be solely responsible for obtaining cost estimates from any third-parties attached to the existing facilities, and Customer shall be solely responsible for making all necessary arrangements to transfer third-party facilities to the replacement facilities, or any alternative arrangements to accommodate all such third-parties.

Payment to Company: In consideration of the work to be performed by Company, Customer agrees to pay the estimated costs of the work in advance, with the understanding that there will be no other charges or refunds for the above specified work. Customer has previously paid for design, permitting or other work in the amount of $0.00. The total advance for this work is $27,215.00, with a **balance due of $27,215.00. Estimated cost is valid for 90 days from the Agreement Date.**

Requested Date of Service: December 15, 2018

Any correspondence regarding this work shall be directed to the appropriate party as shown below:

Tooele City Corp
Paul Hansen
90 N Main Street
Tooele, UT 84074
Phone (435) 843-2132
Cellular ( )
Fax ( )

Rocky Mountain Power
Lisa Baker
555 North Main Street
Tooele, UT 84074
Phone (435) 833-7925
Cellular ( )
Fax (435) 833-7979

This Agreement, upon execution by both Company and Customer, shall be a binding agreement for work performed by Company to accommodate Customer at the Customer's expense. The provisions of Appendix A, General Terms and Conditions, are an integral part of this Agreement.

TOOELE CITY CORP

By Debra E. Winn
Signature

Title Mayor

Debra E. Winn
Print name of Signing Officer

11-27-18
Date

ROCKY MOUNTAIN POWER

By ______
Signature.

Title Manager

Carlos Rugamas
Print name of Signing Manager/Officer

______
Date

Approved as to Form:

Tooele City Attorney

Appendix A
GENERAL TERMS AND CONDITIONS

LIABILITY AND INDEMNIFICATION

The Customer shall indemnify, defend and hold harmless Company to this Agreement and Company's officers, directors, agents, employees, successors and assigns from any and all claims, demands, suits, losses, costs, and damages of any nature whatsoever, including attorney's fees and other costs of litigation brought or made against or incurred by Company and resulting from, arising out of, or in any way connected with any act, omission, fault or negligence of the Customer, its employees or any officer, director, or employee or agent of the same and related to the subject matter of this Agreement. The indemnity obligation shall include, but not be limited to, loss of or damage to property, bodily or personal injury to, or the death of any person. The Customer's obligation under this provision of the Agreement shall not extend to liability caused by the sole negligence of Company.

WAIVER OF JURY TRIAL

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

WORK COMPLETION

Company agrees to use commercially reasonable efforts to begin performance of the work on the date(s) specified above. In those instances where by reason of unanticipated events or emergencies which cause power outages or threaten Company's ability to continuously provide electric service as it is required to do by law or by contract, then Company personnel assigned to perform the work may be withdrawn from the work until such time as the unanticipated event or emergency is concluded. In the event that Company personnel are removed from the work in response to such an event or emergency, then the time for completion of the work shall be extended by a period of time equal to that period from the time the personnel are removed from the work until they are available to complete the work plus 48 hours.

It is expressly agreed that Company and those persons employed by Company in connection with the work described herein are not employed by or employees of the Customer.

Company warrants that its work shall be consistent with prudent utility practices. COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES. Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the work. Under no circumstances shall Company be liable for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages.

The Customer may, at reasonable times and by written agreement with Company, request additional work within the general scope of the work as described in this Agreement or request the omission of or variation in the work, provided, however, that the Customer and Company agree to increase or decrease the amount the Customer is to pay Company and such changes in scope are reasonably acceptable to Company. Any such change to the scope of the work and the associated adjustment of costs shall be in writing and shall be submitted when obtained as an addendum to this agreement after being signed by both parties.

GENERAL

PAYMENTS: All bills or amounts due hereunder shall be payable to Company as set forth herein or on the 25th day following the postmarked date of the invoice if not otherwise specified. In the event that all or a portion of Customer's bill is disputed by Customer, Customer shall pay the total bill and shall designate that portion disputed. If it is later determined that Customer is entitled to a refund of all or any portion of the disputed amount, Company shall refund that portion of the amount of which Customer is found to be entitled. All billing statements shall show the amount due for the work performed.

COLLECTION: Customer shall pay all costs of collection, including court costs and reasonable attorney's fees upon default of customer, in addition to interest at a rate of 1.5 percent per month on any amounts not paid within thirty (30) day of invoice.

ASSIGNMENT: Customer shall not assign this Agreement to any successor without the written consent of Company, which consent shall not be unreasonably withheld. If properly assigned, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the party making the assignment.

Company may at any time assign its rights and delegate its obligations under this Contract to any: affiliate; successor in interest; corporation; or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party.

EXHIBIT A

Customer Signature

RMP CREW:

(10) R/R 40/45' HIGH NEUTRAL TANGENT
INSTALL 4" RISER 65T FUSING
INSTALL 100' 3#1/0 UG PRI FROM 10–20

(20) INSTALL 3PHS G.S.
200' #1/0 UG PRI FROM 20–30
570' #1/0 UG PRI FROM 20–40

(30) D.E. 3WIRE OPEN SECONDARY
REMOVE X-ARM AND DE PRIMARY
INSTALL GUY AND ANCHOR
(TRY TO ANCHOR WITHIN 20' OF POLE)
INSTALL 3" PRI RISER – 40T FUSE
REMOVE TX FROM 30–50
REMOVE 3 WIRE OPEN SEC AND
REMOVE PRIMARY FROM 30–60

(40) INSTALL 3" PRI RISER TO RE-FEED
SUBDIVISION TO THE EAST – 65T FUSE
REMOVE 3 WIRE OPEN SEC AND PRIMARY
FROM 40–60, D.E. POLE
INSTALL GUY AND ANCHOR TO THE WEST

(50) REMOVE POLE AND LIGHT

(60) REMOVE 1PHS TANGENT POLE
3 WIRE OPEN SEC AND SPAN GUY FROM 60–80
SEC TX FROM 60–70
1PHS OH PRI FROM 60–100

(70) REMOVE D.E. SEC POLE
REMOVE SVC AND MTR

(80) REMOVE SEC D.E. POLE
REMOVE SPAN GUY FROM 80–90

(90) REMOVE SPAN GUY ATTACHMENT

(100) REMOVE 1PHS TANGENT POLE
REMOVE PRIMARY FROM 100–110

(110) REMOVE 1PHS TAP

811 Know what's below. Call before you dig.

CUSTOMER RESPONSIBILITIES:

INSTALL 1–4" GRAY PVC FROM 10–20. USE WIDE 36" RADIUS FIBERGLASS SWEEPS AND SWEEP UP 2' FROM EXISTING POLE (POLE BEING REPLACED NEW POLE WILL BE ON THE SOUTH SIDE OF THE EXISTING).

INSTALL 3" GRAY SCHEDULE 40 PVC FROM 20–30 AND 20–40. USE WIDE 36" RADIUS FIBERGLASS SWEEPS AND SWEEP UP 8" AWAY FROM POLES. SWEEP UP ON THE SOUTHEAST QUADRANT OF POLE AT POINT 30. SWEEP UP ON SOUTHWEST QUADRANT OF POLE AT POINT 40.

BURY ALL CONDUIT AT A DEPTH OF 40" AND INSTALL PULL ROPE CAPABLE OF WITHSTANDING 1000 LBS OF TENSION AND EXTEND 7' FROM CONDUIT ENDS. CAP CONDUIT ENDS.

CONTACT LARRY WILLIAMS FOR TRENCH/CONDUIT INSPECTION AND PROVIDE A 48 HOUR NOTICE: 435-833-7917

CONTACT LISA BAKER WITH ANY QUESTIONS OR CONCERNS: 435-833-7925

PACIFICORP
A BERKSHIRE HATHAWAY ENERGY COMPANY

Field	Value
Foreman	
Job Start Date	
Emp #	
CC#	
WO# / REQ#	006559194
Map String	11303004.0
Job Complete Date	
CUSTOMER	Tooele City
ADDRESS	88 N Garden Street, Tooele, UT 84074
Circuit	T0011
Post Jobs / RQII / Posted	☐ ☐ ☐
EST ID#	
Print Date	11/15/18
Scale	1=100'
Sheet	1 of 1

November 20, 2018

90 N Main St.
Tooele, UT 84

Re: Design / Contracts

Project # 6559194

To Whom It May Concern:

I have completed the construction design for electrical service, and/or for work to be performed for the project identified above in Tooele County, State of Utah.

The estimated cost / advance for work is: $ 27,215.00

Contract Minimum Billing: $ 0.00

Description: Overhead to Underground Conversion located at or near 88 N Garden St Tooele.

I have enclosed contracts covering the conditions of this project.

- Please sign or initial both drawings included in this mailing.
- Sign both original copies of your contract and date
- Please return all of the above to me along with check for the amount due.

The return address is given below.

The enclosed contracts are only good for 90 days from the date of this letter.

Please note: In some cases material may require up to 60 days to receive. Your prompt attention to this matter is essential.

If you have any questions concerning this matter please feel free to contact me.

Sincerely,

Lisa Baker
Rocky Mountain Power
555 North Main
Tooele, UT 84074 (435) 833-7925

TOOELE CITY CORPORATION

ORDINANCE 2018-24

AN ORDINANCE OF TOOELE CITY AMENDING TOOELE CITY CODE SECTION 7-1-5 REGARDING LAND USE DEFINITIONS, ESTABLISHING SECTION 7-2-20 REGARDING TEMPORARY USES AND TEMPORARY SEASONAL USES, AND AMENDING TABLE 1 OF SECTION 7-14-3 AND TABLE 1 OF SECTION 7-16-3 REGARDING PERMISSIBILITY OF SEASONAL USES, TEMPORARY USES, AND RECREATIONAL USES WITHIN VARIOUS ZONING DISTRICTS.

WHEREAS, Utah Code §10-9a-102 authorizes cities to enact ordinances, resolution, and rules and may enter other forms of land use controls they consider necessary or appropriate for the use and development of land within the municipality to provide for the health, safety, welfare, prosperity, peace and good order, comfort, convenience, and aesthetics of the municipality; and,

WHEREAS, residential land uses in Tooele City are regulated by Tooele City Code Chapter 7-14; and,

WHEREAS, Tooele City Code Chapter 7-14 includes tables that identify specific uses of land and their permissibility based on the zoning designation assigned to residential properties; and,

WHEREAS, non-residential land uses in Tooele City are regulated by Tooele City Code Chapter 7-16; and,

WHEREAS, Tooele City Code Chapter 7-16 includes tables that identify specific uses of land and their permissibility based on the zoning designation assigned to non-residential properties; and,

WHEREAS, the change and diversification of business opportunities over time presents challenges to land use regulation through their inclusion into existing defined land uses; and,

WHEREAS, the change and diversification of business opportunities stretches the interpretive boundaries of defined land uses; and,

WHEREAS, the observed and potential impacts inherent to changed and diversified business opportunities may not match those of other business opportunities interpreted to be defined under the same land use definition; and,

WHEREAS, the interpretive inclusion of changed and diversified business opportunities into defined land uses can place additional burden on those business opportunities and surrounding land uses; and,

WHEREAS, it is prudent to regularly examine established land use regulation from time to time for applicability and adaptation to changing trends and desires of the community; and,

WHEREAS, in light of the above, the City Administration recommends that Section 7-1-5, Table 1 of Section 7-14-3 and Table 1 of Section 7-16-3 of Tooele City Code be amended and Section 7-2-20 be established as shown in Exhibit A to bring the City Code into better balance between the rights of property owners, changed and diversified business opportunities, and the health, safety, welfare, prosperity, peace and good order, comfort, convenience, and aesthetics of the community; and,

WHEREAS, on November 14, 2018, the Planning Commission convened a duly noticed public

hearing, accepted written and verbal comment, and voted to forward its recommendation to the City Council (see Planning Commission minutes attached as Exhibit B); and,

WHEREAS, on ____________, the City Council convened a duly-advertised public hearing:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF TOOELE CITY that Section 7-1-5, Table 1 of Section 7-14-3 and Table 1 of Section 7-16-3 of Tooele City Code be amended and Section 7-2-20 be established as shown in Exhibit A.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, and welfare of Tooele City and its residents and businesses and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this _______ day of _________________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ______________________________

MAYOR OF TOOELE CITY

(Approved) (Disapproved)

______________________________ ______________________________

ATTEST:

____
Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form: ______________________________
Roger Evans Baker, City Attorney

EXHIBIT A

Proposed Revisions to Section 7-1-5,
Proposed Section 7-2-20,
Proposed Revisions to Table 1 of Section 7-14-3, and
Proposed Revisions to Table 1 of Section 7-16-3 of the Tooele City Code

7-1-5. Definitions.

Recreation Facility, Indoor - A recreation facility located within a structure or building and operated as a business or public entity for use by an admission fee, membership fee or other charge such as a skating rink, bowling alley, mini-golf course, *games and activities of skill or* amusement*,* arcade or substantially similar uses.

Recreation Facility, Outdoor - A recreational facility operated as a business and open to the general public for a fee such as amusement parks, tennis facility, water park, swimming pool, golf driving ranges and baseball batting ranges or substantially similar uses.

Recreational Facility, Private - A recreation facility or area operated on private property and not open to the public, including recreation facilities owned by a home owner or property owners association for private use by members.

Temporary Use - ~~Fireworks stands, Christmas tree sale lots, and similar a~~*Activities which are open to the public and exist for a period of time not to exceed that outlined in Section 7-2-20 of the Tooele City Code* ~~scheduled to occur over a period not to exceed 40 days in any calendar year and including uses incidental to construction~~.

Temporary Seasonal Use - Activities related to specific seasons, holidays, or times of year which are open to the public and exist for a period of time not to exceed that outlined in Section 7-2-20 of the Tooele City Code.

7-2-20. Temporary Uses and Temporary Seasonal Uses.

(1) Temporary Uses. Temporary uses shall occur over a period not to exceed 40 days in any calendar year including uses incidental to set up and take down of the temporary use.

(2) Temporary Seasonal Uses. Temporary seasonal uses, as permitted in this Title, shall not exceed the time limits listed herein, or 120 calendar days, whichever is shorter.

- *a. Permitted Temporary Seasonal Uses. Where temporary seasonal uses are identified in this Title as permitted, the following shall be permitted uses. Where temporary seasonal uses are identified in this Title as conditional, the following shall be conditional uses permissible only following issuance of a Conditional Use Permit:*
  - *i. Christmas tree lot, not to exceed 45 calendar days;*
  - *ii. Pumpkin patch, not to exceed 45 calendar days; and*
  - *iii. Corn maze, not to exceed 45 calendar days; and*
  - *iv. Firework sales stand, limited to the period of time as set forth under state law.*
- *b. Conditional Temporary Seasonal Uses. Where temporary seasonal uses are identified in this Title as allowed, the following uses shall be conditional uses allowed only following issuance of a Conditional Use Permit:*
  - *i. Agricultural produce stand and open-air farmer's market for the sale of agricultural produce, not to exceed the length the local outdoor growing season;*
  - *ii. Haunted house, not to exceed 45 calendar days; and*
  - *iii. Other uses determined by the Zoning Administrator to be substantially similar to any of the above.*

(3) Exclusive Uses. For the purposes of this Title, temporary uses and temporary seasonal uses shall be mutually exclusive of each other and mutually exclusive of other uses defined within this Title.

7-14-3. Uses Allowed within the Residential Zoning Districts.

TABLE 1
TABLE OF USES

	RESIDENTIAL ZONING DISTRICTS						
	HDR	MDR	R1-7	R1-8	R1-10	R1-12	R1-14
Temporary Seasonal Use							

	RESIDENTIAL ZONING DISTRICTS				
	R1-30	RR-1	RR-5	RR-20	MU-160
Temporary Seasonal Use		*P*	*P*	*P*	

7-16-3. Table of Uses. Mixed Use, Commercial and Industrial Districts.

TABLE 1
TABLE OF USES
MIXED USE, COMMERCIAL AND INDUSTRIAL DISTRICTS

	DISTRICT							
Use	**MU-B** Mixed Use - Broadway	**MU-G** Mixed Use - General	**NC** Neighborhood Commercial	**GC** General Commercial	**RC** Regional Commercial	**LI** Light Industrial	**I** Industrial	**RD** Research and Development
Temporary Seasonal Use	*C*	*C*	*P*	*P*	*P*	*P*	*P*	
Temporary Use	C	C	C	~~P~~ *C*	~~P~~ *C*	P	P	

EXHIBIT B

Planning Commission Minutes

STAFF REPORT

November 8, 2018

To: Tooele City Planning Commission
Business Date: November 14, 2018

From: Planning Division
Community Development Department

Prepared By: Jim Bolser, Director

Re: **Seasonal, Temporary & Recreational Uses – City Code Text Amendment Request**

Application No.: P18-786
Applicant: Tooele City
Request: Request for approval of a City Code Text Amendment regarding the amendment of certain existing land use categories and the addition of certain new land use categories involving seasonal, temporary and recreational uses.

BACKGROUND

This application is a request for approval of a City Code Text Amendment. The City is requesting that a City Code Text Amendment be approved to allow for the revision of existing land uses with the addition of new land use categories in an effort to: 1) further define and clarify those uses; and 2) address the applicability of those uses for, primarily, businesses within the community.

ANALYSIS

City Code. Section 7-1-5 of the Tooele City Code (TCC) establishes and defines the various land uses allowed within the city. As can be typical, some of those defined uses have come overlap somewhat in there meaning as new business ventures and uses of land are developed causing interpretations to become difficult and those defined uses to become expanded somewhat. The intent of this proposed text amendment is to take one such case that has come to light and provide clarification in the code. By doing so, it's also intended that such an amendment will also provide for greater applicability for applicants as well as make the review process simpler and easier to administer.

Currently in the City Code there are three defined land uses that over time have come to intermingle with each other as new applications come forward. These land uses involve recreational uses and temporary uses. Both have come to be expanded through interpretive inclusion. Conversely, uses of land that fall into those categories through the definitions themselves or through interpretive inclusion tend to carry with them differing levels and types of impacts. The proposed text amendment looks to accomplish four goals. First, it would provide some clarification to the definition of recreational uses. Second, it would create some clarification and separation between uses that would fall under the definition of a temporary use and uses that would fall under newly created definitions for seasonal temporary uses. Third, it would establish previously uncodified regulations pertaining to temporary and now seasonal temporary uses. Finally, it would amend the land use tables for the residential and non-residential zones to revise the permissibility of temporary uses and include the seasonal temporary uses land use category into those tables with its permissibility. The language of the proposed text amendment can be found in Exhibit "A" to this report. A draft ordinance that could be used to establish these provisions can be found in Exhibit "B" to this report.

Criteria For Approval. The criteria for review and potential approval of a City Code Text Amendment request is found in Section 7-1A-7 of the Tooele City Code. This section depicts the standard of review for such requests as:

(1) No amendment to the Zoning Ordinance or Zoning Districts Map may be recommended by the Planning Commission or approved by the City Council unless such amendment or conditions thereto are consistent with the General Plan. In considering a Zoning Ordinance or Zoning Districts Map amendment, the applicant shall identify, and the City Staff, Planning Commission, and City Council may consider, the following factors, among others:
   - (a) The effect of the proposed amendment on the character of the surrounding area.
   - (b) Consistency with the goals and policies of the General Plan and the General Plan Land Use Map.
   - (c) Consistency and compatibility with the General Plan Land Use Map for adjoining and nearby properties.
   - (d) The suitability of the properties for the uses proposed viz. a. viz. the suitability of the properties for the uses identified by the General Plan.
   - (e) Whether a change in the uses allowed for the affected properties will unduly affect the uses or proposed uses for adjoining and nearby properties.
   - (f) The overall community benefit of the proposed amendment.

REVIEWS

Planning Division Review. The Tooele City Planning Division has completed their review of the City Code Text Amendment submission and has issued a recommendation for approval.

Engineering Review. The Tooele City Engineering Division has completed their review of the City Code Text Amendment submission and have issued a recommendation for approval.

Noticing. The applicant has expressed their desire to amend the terms of the City Code and do so in a manner which is compliant with the City Code. As such, notice has been properly issued in the manner outlined in the City and State Codes.

STAFF RECOMMENDATION

Staff recommends approval of the request for a City Code Text Amendment by Tooele City, application number P18-786.

This recommendation is based on the following findings:

1. The proposed text amendment would be consistent with the intent, goals, and objectives of the Tooele City General Plan through providing clarification and opportunity for an expanded uses of land within the city.
2. The proposed text amendment meet the requirements and provisions of the Tooele City Code.
3. The proposed text amendment will not serve to be deleterious to the health, safety, and general welfare of the general public nor the residents of adjacent properties.
4. The proposed text amendment would serve to provide for the general aesthetic and physical development of the area in which these uses are established.

MODEL MOTIONS

Sample Motion for a Positive Recommendation – "I move we forward a positive recommendation to the City Council for the Seasonal, Temporary & Recreational Uses City Code Text Amendment Request by Tooele City for the purpose of addressing seasonal, temporary and recreational uses, application number P18-786, based on the findings listed in the Staff Report dated November 8, 2018:"

1. List any additional findings …

Sample Motion for a Negative Recommendation – "I move we forward a negative recommendation to the City Council for the Seasonal, Temporary & Recreational Uses City Code Text Amendment Request by Tooele City for the purpose of addressing seasonal, temporary and recreational uses, application number P18-786, based on the following findings:"

1. List findings…

EXHIBIT A

PROPOSED SEASONAL, TEMPORARY & RECREATIONAL USES CITY CODE TEXT AMENDMENT

7-1-5. Definitions.

Recreation Facility, Indoor - A recreation facility located within a structure or building and operated as a business or public entity for use by an admission fee, membership fee or other charge such as a skating rink, bowling alley, mini-golf course, *games and activities of skill or* amusement*,* arcade or substantially similar uses.

Recreation Facility, Outdoor - A recreational facility operated as a business and open to the general public for a fee such as amusement parks, tennis facility, water park, swimming pool, golf driving ranges and baseball batting ranges or substantially similar uses.

Recreational Facility, Private - A recreation facility or area operated on private property and not open to the public, including recreation facilities owned by a home owner or property owners association for private use by members.

Temporary Use - ~~Fireworks stands, Christmas tree sale lots, and similar a~~*Activities which are open to the public and exist for a period of time not to exceed that outlined in Section 7-2-20 of the Tooele City Code* ~~scheduled to occur over a period not to exceed 40 days in any calendar year and including uses incidental to construction~~.

Temporary Seasonal Use - Activities related to specific seasons, holidays, or times of year which are open to the public and exist for a period of time not to exceed that outlined in Section 7-2-20 of the Tooele City Code.

7-2-20. Temporary Uses and Temporary Seasonal Uses.

(1) Temporary Uses. Temporary uses shall occur over a period not to exceed 40 days in any calendar year including uses incidental to set up and take down of the temporary use.

(2) Temporary Seasonal Uses. Temporary seasonal uses, as permitted in this Title, shall not exceed the time limits listed herein, or 120 calendar days, whichever is shorter.

- *a. Permitted Temporary Seasonal Uses. Where temporary seasonal uses are identified in this Title as permitted, the following shall be permitted uses. Where temporary seasonal uses are identified in this Title as conditional, the following shall be conditional uses permissible only following issuance of a Conditional Use Permit:*
  - *i. Christmas tree lot, not to exceed 45 calendar days;*
  - *ii. Pumpkin patch, not to exceed 45 calendar days; and*
  - *iii. Corn maze, not to exceed 45 calendar days; and*
  - *iv. Firework sales stand, limited to the period of time as set forth under state law.*
- *b. Conditional Temporary Seasonal Uses. Where temporary seasonal uses are identified in this Title as allowed, the following uses shall be conditional uses allowed only following issuance of a Conditional Use Permit:*
  - *i. Agricultural produce stand and open-air farmer's market for the sale of agricultural produce, not to exceed the length the local outdoor growing season;*
  - *ii. Haunted house, not to exceed 45 calendar days; and*
  - *iii. Other uses determined by the Zoning Administrator to be substantially similar to any of the above.*

(3) Exclusive Uses. For the purposes of this Title, temporary uses and temporary seasonal uses shall be mutually exclusive of each other and mutually exclusive of other uses defined within this Title.

7-14-3. Uses Allowed within the Residential Zoning Districts.

TABLE 1
TABLE OF USES

	RESIDENTIAL ZONING DISTRICTS						
	HDR	**MDR**	**R1-7**	**R1-8**	**R1-10**	**R1-12**	**R1-14**
Temporary Seasonal Use							

	RESIDENTIAL ZONING DISTRICTS				
	R1-30	**RR-1**	**RR-5**	**RR-20**	**MU-160**
Temporary Seasonal Use		*P*	*P*	*P*	

7-16-3. Table of Uses. Mixed Use, Commercial and Industrial Districts.

TABLE 1
TABLE OF USES
MIXED USE, COMMERCIAL AND INDUSTRIAL DISTRICTS

	DISTRICT							
Use	**MU-B** Mixed Use - Broadway	**MU-G** Mixed Use - General	**NC** Neighborhood Commercial	**GC** General Commercial	**RC** Regional Commercial	**LI** Light Industrial	**I** Industrial	**RD** Research and Development
Temporary Seasonal Use	*C*	*C*	*P*	*P*	*P*	*P*	*P*	
Temporary Use	C	C	C	~~P~~ *C*	~~P~~ *C*	P	P	

EXHIBIT B

PROPOSED ORDINANCE 2018-24

TOOELE CITY CORPORATION

ORDINANCE 2018-25

AN ORDINANCE OF THE TOOELE CITY COUNCIL AMENDING THE MODERATE INCOME HOUSING ELEMENT OF THE TOOELE CITY GENERAL PLAN.

WHEREAS, Utah Code § 10-9a-401, *et seq.*, requires and provides for the adoption of a "comprehensive, long-range plan" (hereinafter the "General Plan") by each Utah city and town, which General Plan contemplates and provides direction for (a) "present and future needs of the community" and (b) "growth and development of all or any part of the land within the municipality"; and,

WHEREAS, the Tooele City General Plan includes various elements, including water, sewer, transportation, moderate income housing, and land use. The Tooele City Council adopted the Tooele City General Plan, after duly-noticed public hearings, by Ordinance 1998-39 as a Tooele City ordinance, and which set forth appropriate Use Designations for land in Tooele City (e.g., residential, commercial, industrial); and,

WHEREAS, Utah Code Sections 10-9a-401(3) and 10-9a-403(2) require the General Plan of each Utah municipality to include a plan element that provides a realistic opportunity to meet the need for additional moderate income housing; and,

WHEREAS, in preparing the Moderate Income Housing element of the General Plan, Utah Code Section 10-9a-403(2)(b) requires the City to do the following:

- consider the Legislature's determination that municipalities shall facilitate a reasonable opportunity for a variety of housing, including moderate income housing, to meet the needs of people desiring to live in the community, and to allow persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life; and,
- include an analysis of why the means and techniques recommended in the Moderate Income Housing element provide that realistic opportunity within the next five years; and,
- consider means and techniques, such as:
  - rezoning for densities necessary to assure the production of moderate income housing;
  - facilitate and encourage the rehabilitation of existing uninhabitable housing stock into moderate income housing;
  - consider general fund subsidies to waive constructed related fees;
  - consider utilization of state or federal funds or tax incentives to promote the construction of moderate income housing;
  - consider programs offered by the Utah Housing Corporation;
  - consider Department of Workforce Services affordable housing programs; and,
- identify agriculture protection areas.

WHEREAS, Tooele City has actively considered and enacted means and techniques to allow a variety of housing opportunities for Tooele City residents, including moderate income housing, including by doing the following:

- enacting incentives for in-fill development, including less restrictive land use regulations (Ordinance 2015-25);
- creating several areas of HDR zoning that allow residential densities of up to 16 units per acre;
- approving several new apartment and attached single-family developments;
- enacting multi-family design standards to ensure that high-density housing developments include good site and building design for the benefit of residents, which standards recognize the fact that high density requires good design to be successful (Ordinance 2005-05);
- eliminating the five-acre minimum multi-family housing project size (2018-19);
- amending the MU-B (Mixed Use-Broadway) zoning district regulations to allow higher density residential developments with less restrictive land use regulations (Ordinance 2018-13);
- enacting a point-based for single-family design standards intended to improve building and site design without significantly increasing costs (Ordinance 2006-22);
- allowing for residential facilities for persons with a disability (Ordinance 2012-17);
- allowing for residential facilities for elderly persons (Ordinance 2012-17); and,
- allowing for housing in the MU-G (Mixed Use-General) zoning district.

WHEREAS, the Moderate Income Housing element reflects the findings of Tooele City's elected official regarding the appropriate range, placement, and configuration of housing within the City, which findings are based in part upon the recommendations of City staff, public comments, and other relevant considerations; and,

WHEREAS, the Moderate Income Housing element and the policies contained therein may be amended from time to time by the Tooele City legislative body to reflect the changing policies and values of the elected officials and the public; and,

WHEREAS, Utah Code § 10-9a-403 and § 10-9a-404 provide for the municipal legislature to consider General Plan amendment recommendations given by the Planning Commission, and to approve, revise, or reject proposed General Plan amendments; and,

WHEREAS, the City has proposed amendments to the Moderate Income Housing element, as shown in the attached **Exhibit A**; and,

WHEREAS, on November 14, 2018, the Planning Commission convened a duly noticed public hearing, accepted written and verbal comment, and voted to forward its recommendation to the City Council (see Planning Commission minutes attached as **Exhibit B**); and,

WHEREAS, on __________, the City Council convened a duly-advertized public hearing:

NOW, THEREFORE, BE IT ORDAINED BY THE TOOELE CITY COUNCIL that:

1. this Ordinance and the Moderate Income Housing element amendments proposed therein are in the best interest of the City in that they will facilitate a reasonable opportunity for a variety of housing to meet the needs of people desiring to live in the community and allow persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life in Tooele City and are consistent with the General Plan; and,
2. the Moderate Income Housing element of the General Plan is hereby amended as illustrated in **Exhibit A**, attached.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective immediately upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this ____ day of _______________, 20__.

MODERATE INCOME HOUSING PLAN
TOOELE CITY - 2018

PERPARED BY

TOOELE CITY COMMUNITY DEVELOPMENT DEPARTMENT

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INTRODUCTION

House Bill 295

Utah's affordable housing legislation (HB295) does not require that a community's housing market meet the homeownership desires of all moderate, low and extremely low income households. The legislation encourages a community to provide a "reasonable opportunity for a variety of affordable housing for moderate income households." The results of this housing needs analysis demonstrates that the Tooele City housing market satisfies HB295. The City housing market has a substantial number of homeownership opportunities for moderate income households while affordable housing opportunities for low and extremely low income households, as shown by household data, tend to be limited.

City General Plan

Tooele City adopted a General Plan with a Land Use Element on December 16, 1998. The moderate housing plan fits into the City General Plan as one on the guiding elements of the total plan. Each department coordinates with the Community Development Director and the City Engineer, to maintain, replace, and expand City services and utilities as needed. The Community Development Department uses the General Plan Elements to regulate and guide new developments to provide a balanced and diversified housing inventory.

Regional Planning

The three main population centers in Tooele Valley are Tooele City, Grantsville City and Stansbury Park and each are separated by large tracts of land predominately rural in nature with single-family homes on large parcels. No coordination has occurred with the other entities in the development of a regional moderate-income housing plan. Tooele County Housing Authority and Utah Housing Corporation have constructed 11 of their 16 low income or tax credit housing communities in Tooele City. Tooele City is the only urban area in the Tooele Valley with a sizable and diverse housing inventory that provides for all income levels.

City Growth Pattern

Despite the housing construction recession of 2007, residential construction and home sales in Tooele City are strong. Sales of existing homes are at record levels and the median sales price of a single family home has increase by 75% in 2017 to $210,000.

Tooele City has experienced rapid population growth over the last 3 decades (Chart 1 next page). From 1980 to 1990, the City experienced a negative growth rate of -3.13% a possible result of local mine closures. From 1990 to 2010, the housing boom of the Wasatch Front Counties spilled over into the Tooele Valley with 62% growth rate in spite of a building recession from 2007 to 2011. From 2010 to the 2016 ACS Census shows a low 3.7% growth rate for Tooele City and market indicators predict a growth rate increase in the near future as new subdivisions and apartment projects are completed.

Chart 1

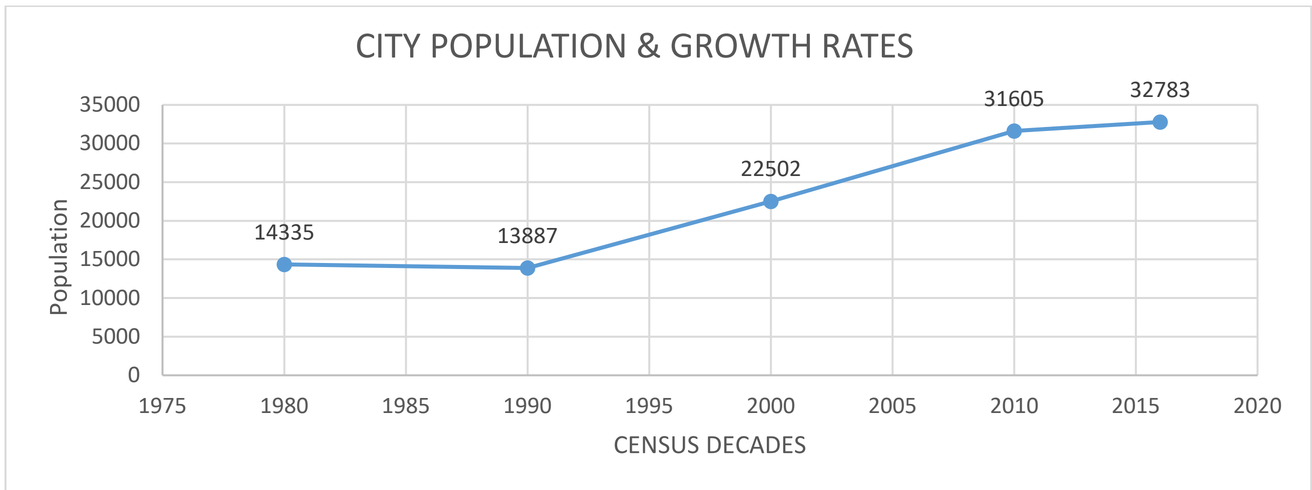
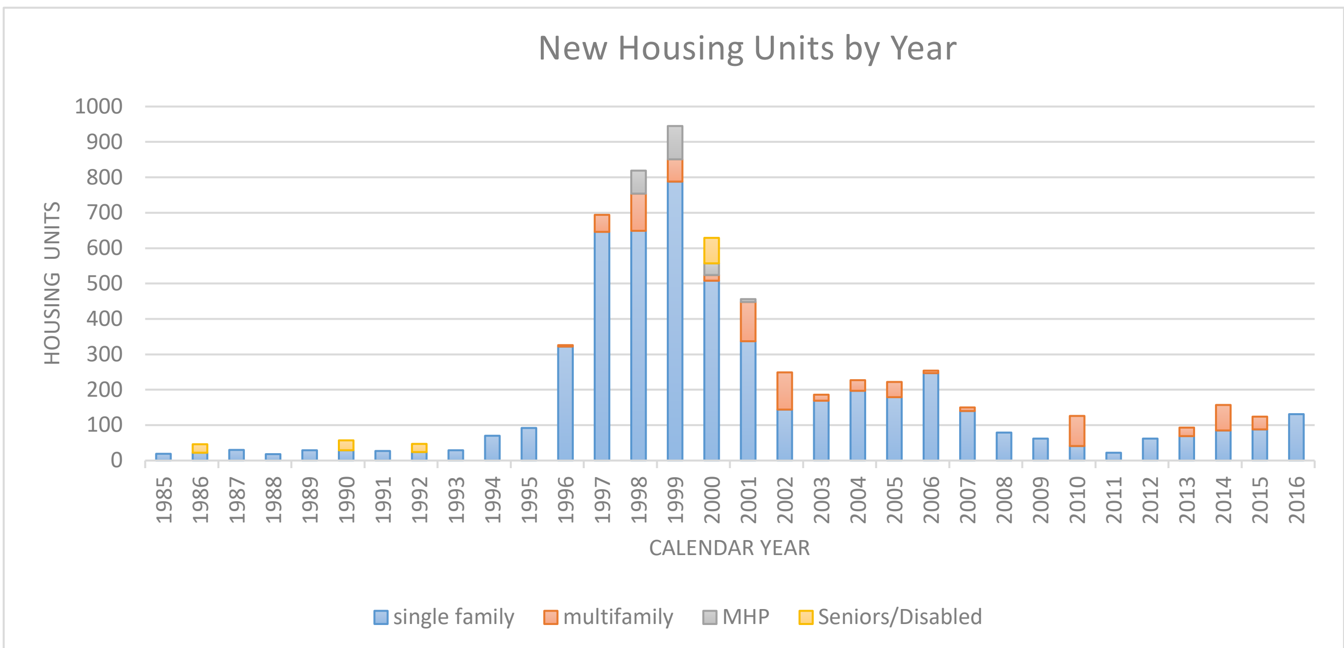


Chart 1 shows housing units constructed each year including new Mobile Home units in Mobile Home Parks, Elderly and Disabled housing units constructed in each year. Single-family detached homes are the preferred housing unit constructed in Tooele City over the last 30 years.

Tooele City, at a population of 32,763, is the largest City in Tooele County comprising roughly half of the County's 2016 population of 65,285. The high growth rate of Tooele City and Tooele County in the past 25 years has been partly the result of the Wasatch Front's soaring housing costs and diminished land availability. Tooele City's rapid growth started in 1994, peaked in 1999 with over 900 new housing units and then declined to a low of 186 housing units in 2003. The market attempted to recover until 2006 but declined again until 2011 with just new 21 housing units. Since 2011, housing construction has increased to just over 130 housing units per year in 2016.

Chart 2



Source: Tooele City Building Department

Commuting Patterns

The majority of Tooele County's working age population commute for employment. Each workday more than 18,000 County residents leave the county for work in Salt Lake, Utah, Davis, and Weber Counties. Tooele County has an out-commuting ratio of 3.11 which means a little over 3 residents leave Tooele County for employment each day, while one resident lives and works in Tooele County. The mean travel time of residents of Tooele City is 28.4 minutes which does not deter new home buyers from selecting Tooele City. (Source: U.S. Census ACS 2016)

New Housing Construction

Apartment communities (rent assisted and market rate) show a very low vacancy rate at or below four percent. Rent assisted communities are full with waiting lists and the four large market rate projects in the City have very low vacancy rates. Rents in Tooele have also increased. Two of the newest apartment communities report rents for 3 bedroom units at $950 to $1300 per month and the communities are 99% occupied. (Source: Tooele County affordable housing needs assessment - 2018)

Housing market indicators point to a housing shortage in Tooele City with increasing prices for both homeownership and renters and very low vacancy rates. Currently, most major housing markets in Utah face similar conditions. Housing demand is outpacing the supply of new homes and apartments.

Tooele City residential construction for the last 5 years has been relatively slow compared to the housing market in the Wasatch Front counties that have recovered from the 2007 construction recession. Few new single-family housing subdivisions were completed in Tooele City between 2006 and 2016, however 2018 has seen a dramatic increase in new subdivisions and an increase in residential construction.

Community Sentiment

Community sentiment towards growth was noted during public hearings for the adoption of the City General Plan with the Land Use element in December 1998. The public was not in favor of large high density housing projects and expressed concerns about traffic, noise and higher taxes. The consensus of the hearings was for a balanced mix of housing styles which would permit residents to select from single family homes, condominiums, townhomes, apartments, mobile homes, and senior housing. The lot sizes would range from 1 and 5 acre lots for larger homes, 10,000 to 14,000 square foot lots for large to moderate sized homes and 7,000 to 8,000 square foot lots for moderate to small homes. The mix would be predominately single family homes.

Procedures and Definitions

City Staff utilized the Utah Affordable Housing Forecast Tool (UAHFT) to analyze housing needs in the community, based upon the affordability of the existing housing stock. The UAHFT is a housing needs model that projects housing demand based upon current trends of housing affordability and projected population increases. Data for the model was obtained through the US Census, the US Department of Housing and Urban Development, the Utah State Governor's Office of Planning and Budget (GOPB) and other sources. Findings for the models are summarized throughout this study.

The following terms are commonly used throughout this document:

- Affordable Housing: Housing for which the occupant is paying no more than 30 percent of his or her income for gross housing cost, including utilities.
- Area Median Income (AMI): the Area Median Income is a statistic generated by the U.S. Department of Housing and Urban Development (HUD) for the purposes of determining the eligibility of applicants for certain federal housing programs.
- American Community Survey (ACS): the American Community Survey is an ongoing survey by the U.S. Census Bureau. It regularly gathers information previously contained only in the long form of the decennial census, such as ancestry, educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics. Sent to approximately 295,000 addresses monthly, it is the largest household survey that the Census Bureau administers.
- Utah Affordable Housing Forecast Tool (UAHFT is a housing needs model that projects housing needs based upon currents trends of housing affordability and projected population increases.
- Low to Moderate Income Households (LMI): Low to Moderate Income Households refer to Households whose income does not exceed 115 percent of the median income for the area when adjusted for family size.
- U.S. Department of Housing and Urban Development (HUD): HUD is a cabinet department in the Executive branch of the United States federal government. HUD's Comprehensive Housing Affordability Strategy (CHAS) also makes available, projections of needs for affordable housing for the three moderate income target groups.
- Cost burdened households: Households spending more than 30 percent of their income for housing cost are considered to be cost burdened.

Population

Current Demographics

Chart 3

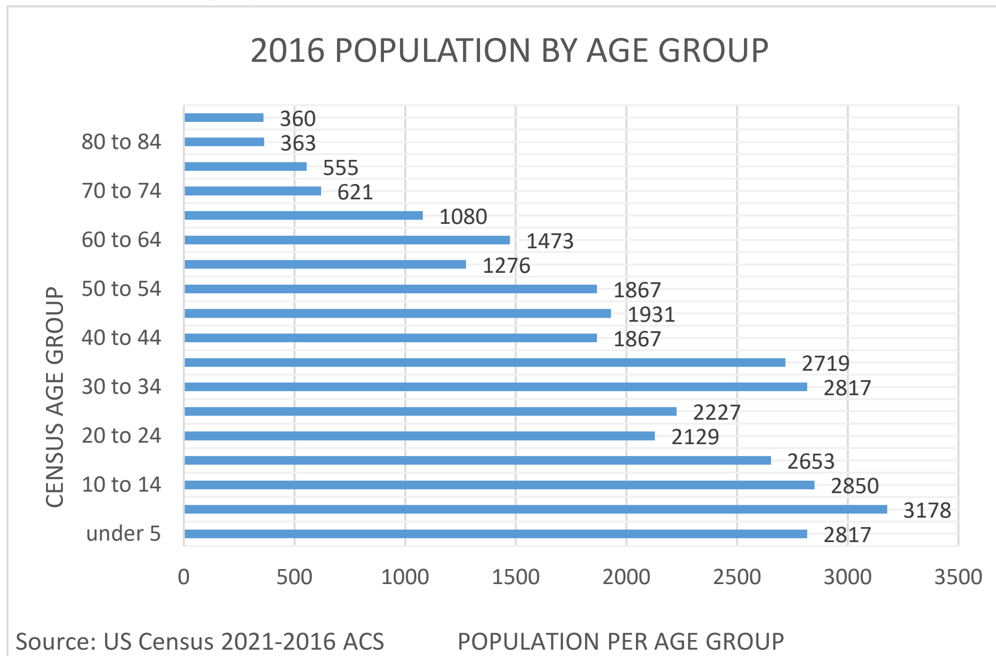


Chart 3 shows Tooele City as having a median age of 31 years. The chart also shows that the young adult age group (20 to 29 years) drops which is probably a result of young adults leaving home for college and additional job opportunities in adjacent counties. The adult age group of 30 years and older reflects a significant number of families returning to or

migrating to Tooele City from the Wasatch Front counties. A survey of new residents signing up for City utilities, shows most new families have moved to Tooele City because of Tooele City's more affordable housing .

The US Census numbers show Tooele City Population increasing from the 2010 Census population of 31,605 to 32,783 in 2016 with a growth rate of 3.6%. In the same period, Tooele City issued building permits for 380 single family homes and 132 apartment units. The demographics of the 2016 Census estimates demonstrates that family migration (30 to 40 years old) to Tooele City is still occurring.

Households within Targeted Income Groups

An effective indicator of the need for affordable housing is the number of households experiencing housing cost burdens. This data is provided by HUD's Comprehensive Housing Affordability Strategy (CHAS). If a household is paying more than 30 percent of their income for housing and utilities, that household has a "housing cost burden." If a household is paying more than 50 percent of their income for housing, that household has a "severe housing cost burden."

Table 1

HUD CHAS 2015 HOME OWNER - RENTERS COST BURDEN 30% AND 50% TOOELE CITY			
Income by Cost Burden (Renters only)	Cost burden > 30%	Cost burden > 50%	Total
Household Income <= 30% HAMFI	505	460	640
Household Income >30% to <=50% HAMFI	305	55	475
Household Income >50% to <=80% HAMFI	240	0	550
Household Income >80% to <=100% HAMFI	0	0	240
Household Income >100% HAMFI	0	0	680
Total	1050	515	2585
Income by Cost Burden (Owners only)	Cost burden > 30%	Cost burden > 50%	Total
Household Income <= 30% HAMFI	195	130	245
Household Income >30% to <=50% HAMFI	325	155	620
Household Income >50% to <=80% HAMFI	690	95	1670
Household Income >80% to <=100% HAMFI	190	0	1145
Household Income >100% HAMFI	130	0	4030
Total	1530	380	7705
HUD CHAS 2015			

Table 1 shows the HUD CHAS Owners & Renter Data for Tooele City. CHAS estimates there are 2585 renters and 7705 owners. About 20 percent of homeowners have a housing cost burden of at least 30 Percent. The share of homeowners facing severe housing cost burdens drops to about 5 percent for 50% of income.

Table 2

	Homeowners with Cost Burdens in Tooele City, 2015			
Total Owners	Owners with Cost burden >=30% of Income	Percent of Owners burden >=30% of Income	Owners with Cost burden >=50% of Income	Percent of Owners burden >=50% of Income
7,705	1530	19.9%	380	4.9%
Source: HUD CHAS				

	Renters with Cost Burdens in Tooele City, 2015			
Total Renters	Renters with Cost Burden >=30% of Income	Percent of Renters Burden >=30% of Income	Renters with Cost Burden >=50% of Income	Percent of Renters Burden >=50% of Income
2,585	1,050	40.6%	515	19.9%
Source: HUD CHAS				

In Tooele City, 40.6 percent of all renters have a cost burden of at least 30%. The share of renters with a severe housing cost burden (50% AMI or less) drops to 19.9 percent (Table 2). Households that have a cost burden are not receiving any housing subsidy, (tax credit, voucher, etc.).

Table 3

Tooele City 2016 Affordable Housing Costs by Income, Tenure, Race, and Age		
Category - $56,602/yr	Gross Monthly Income	Affordable Housing Costs
Area Median Household Income	$4,747	$1,424
>50%-80% AMI	$2,667 to $4,266	$800 to $1,280
>30-50% AMI	$1,653 to $2,666	$496 to $799
0-30% AMI	$0 To $1,652	$0 to $495
Median Homeowner Household Income	$5,352	$1,606
Median Renter Household Income	$2,899	$870
White Household Median Income	$4,904	$1,471
Hispanic Household Median Income	$4,561	$1,368
Elderly Household Median Income (65+)	$3,245	$974
Source: U.S. Census Bureau, American Community Survey. 2012-2016.		

Tooele City has an Area Median Income of $56,602 in 2016 which is up from $48,133 in 2000. Stansbury Park has an AMI of $85,297 and Grantsville has an AMI of $64,652. Table 3 shows the income required to afford housing for median income households in Tooele City, households at 50% to 80% AMI, households at 30% to 50% AMI, and households below 30% AMI. Also shown is what a household in each income group can afford to spend on housing. For example, a household in Tooele City with income at 50% AMI to 80% AMI could afford to spend, without incurring a cost burden, $800 to $1,280 each month. The estimated Gross Monthly Income and Affordable Housing Costs for several race and age groups are also listed. The elderly (65+) are a special needs population with the lowest median income and having many disabilities and medical needs which makes finding affordable housing difficult. The elderly are a priority concern for Tooele City.

CURRENT HOUSING STOCK

Total Housing Units

The US Census ACS 2016, shows Tooele City as having 11,040 housing units. Of the 11,040 housing units, 8,009 are owner occupied, and 2,497 housing units are renter occupied. The remaining housing units of 534 were vacant at the time of the survey (Table 4).

Table 4

	Tooele City Housing Units by Tenure, 2016				
Owner Occupied Units	Renter Occupied Units	Total Vacant Units	Total Occupied Units	Percent Owner Occupied	Percent Renter Occupied
8,009	2,497	534	10,506	76.20%	23.80%
Source: U.S. Census, ACS 2012-2016					

Breakdown of Housing Units demographics

Table 5

Tooele City's housing inventory is predominantly detached single-family at 8,618 units (78%). A count of attached single-family units shows only 461 units (4.2%) while 2, 3 and 4 unit housing structures account for 479 housing units (4.3%). The remaining housing units in structures of 5 units or more equal 724 units for 6.5%. Mobile homes in Mobile Home Parks account for 6.9% of the housing units (Table 5).

Housing Units by Units in Structure		
	Housing Units	Percent of Total
Total Housing Units	11,040	
1, Detached	8,618	78.1%
1, Attached	461	4.2%
2	179	1.6%
3 to 4	300	2.7%
5 to 9	276	2.5%
10 to 19	169	1.5%
20 or more units	279	2.5%
mobile homes	758	6.9%
Source: U.S. Census, ACS 2012-2016		

Tooele City has a relatively young housing unit inventory (Table 6). 52.5% of all housing units in the City were built in or after 1990 and are not older than 30 years. The housing units built before 1990 but after 1950 (36%) account for 3971 units, are of an age where upgrades or remodeling may be necessary. The housing units built before 1950 account for 11.5% (1268) of Tooele's housing inventory and are primarily located in the older homes within the central core of the City. These homes may be more affordable than newer homes but, due to advanced age may require some investment in remodeling and renovation (Table 6).

Table 6

Year Structure was Built - Tooele City		
Year Built	Housing Unit	Percent of Total
2010 or after	239	2.2%
2000 to 2009	2774	25.1%
1990 ti 1999	2788	25.2%
1980 to 1989	671	6.1%
1970 to 1979	1320	12.0%
1960 to 1969	1366	12.3%
1950 to 1959	614	5.6%
1940 to 1949	581	5.3%
1939 to earlier	687	6.2%
Total Units	11,040	100.0%
Source: U.S. Census, ACS 2012-2016		

Table 7

Number of Bedrooms in Housing Unit		
Housing Units with	Housing Units	Percent of Total
No Bedrooms	61	0.6%
1 bedroom	418	3.8%
2 Bedrooms	2,000	18.1%
3 Bedrooms	3,827	34.7%
4 Bedrooms	2,987	27.1%
5 or more Bedrooms	1,747	15.8%
Source: U.S. Census, ACS 2012-2016		

The vast majority of housing units in Tooele City have 3, 4, 5 or more bedrooms (77.6%). Housing units of two bedrooms or less make up only 22.5% of Tooele City housing units. This large percentage of 3, 4 and 5 bedrooms in housing units indicates that Tooele City's housing market is dominated by large families. The 2016 US Census ACS lists the average family as 3.63 people and the average household as 3.09 people and both exceed the national average (Table 7).

Housing Units with Housing Problems, 2016	
Housing Problems	
Overcrowding	11
Lack kitchen, plumbing	0
Source: U.S. Census, ACS 2012-2016	

Table 8

Overcrowding was the only housing problem noted by the ACS 2016. HUD CHAS considers more than one person per room as overcrowding (Table 8).

Affordability of Existing Housing Stock

Home sales data indicates that Tooele city has a high level of affordable housing. Affordability is measured by comparing various income levels and the percentage of new units each income level can afford. In order to qualify as equally affordable, at least 50% of homes sold in a city should be affordable to the median income

level. If more than 50% of new housing units sold in the city are at or above the median income level the City has an affordable housing market. The greater the percentage, the greater the affordability. If 50% of housing units sold are below median income level the City no longer has an affordable housing market.

Median Sales Price of Single Family Homes

Table 9

Median Sales Price of Single-Family Homes in Tooele City			
2000	$119,900	2010	$150,000
2001	$117,460	2011	$125,000
2002	$115,000	2012	$131,000
2004	$117,900	2013	$143,000
2005	$129,900	2014	$157,500
2006	$152,500	2015	$172,500
2007	$180,000	2016	$189,500
2008	$175,000	2017	$210,000
2009	$159,900	AAGR	2.90%
AAGR = average annual growth rate.			
Source: UtahRealtor.Com			

Housing prices in Tooele City are very affordable compared to prices in neighboring Wasatch Front counties. The City median sales price in 2017 was $210,000. In Salt Lake County the median sales price of a single family home in 2017 was $325,000, 55 percent higher (Table 9).

Median Sales Price of a Condominium and Townhomes

Table 10

Tooele City Meadian Sales Price of Condominiums and Townhomes			
2000	$115,463	2010	$112,200
2001	$91,900	2011	$81,750
2002	$91,995	2012	$90,950
2004	$84,850	2013	$109,900
2005	$85,950	2014	$109,000
2006	$101,000	2015	$120,000
2007	$119,900	2016	$132,000
2008	$136,400	2017	$152,000
2009	$125,000	AAGR	1.60%
AAGR = average annual growth rate.			
Source: UtahRealtor.Com			

In the previous 6 years Tooele City has experienced sales price increases for single-family homes from $125,000 to $210,000 in 2017. Condominiums sales price increases have also jumped from $81,750 to $152,000 in 2017. A 68 percent price increase in single-family homes and 86 percent price increase for condominiums and townhomes (Table 10).

CURRENT AFFORDABLE HOUSING AVAILABLE AND NEED

Table 11 lists the Gross Monthly Income and Affordable Housing Costs for the three targeted income groups. A household earning $28,301 (50% AMI), may afford housing costs of $799 per month but housing costs greater than the $799 per month would become a cost burden. Table 11 also shows the Gross Monthly Income and Affordable Housing Costs for Median Homeowners Household Income, median renter Household Income, white households Median Income, Hispanic Household Median Income, and Elderly Household Median Income (65+). This table follows the recommended template for needs assessment from the Utah State Division of Community Housing.

Table 11

Tooele City 2016 Affordable Housing Costs by Income, Tenure, Race, and Age		
Category - $56,602/yr	Gross Monthly Income	Affordable Housing Costs
Area Median Household Income	$4,747	$1,424
>50%-80% AMI	$2,667 to $4,266	$800 to $1,280
>30-50% AMI	$1,653 to $2,666	$496 to $799
0-30% AMI	$0 To $1,652	$0 to $495
Median Homeowner Household Income	$5,352	$1,606
Median Renter Household Income	$2,899	$870
White Household Median Income	$4,904	$1,471
Hispanic Household Median Income	$4,561	$1,368
Elderly Household Median Income (65+)	$3,245	$974
Source: U.S. Census Bureau, American Community Survey. 2012-2016.		

Table 12

Owners and Renters by number w/Cost Burdens						
	<=30% AMI	<30% AMI to <=50% AMI	<50% AMI to <=80% AMI	<80% AMI to <=100% AMI	>100% AMI	Total
Owners by Income	245	620	1,670	1,145	4,030	7,705
30% Cost Burden of Owners	195	325	690	190	130	1,530
50% Cost Burden of Owners	130	155	95	0	0	380
Renters by Income	640	475	550	240	680	2,585
30% Cost Burden of Renters	505	305	240	0	0	1,050
50% Cost Burden of Renters	460	55	0	0	0	515
Source: HUD CHAS						

Table 12 shows the number of households in the five target groups. HUD CHAS indicates there are 7,705 owners and 2,585 people in Tooele City that rent their homes. Renter households face cost burdens also. Tables 11 and 12 list the income levels and number of renters in the five income target groups. By HUD CHAS numbers (Table 12), Tooele City needs an additional 325 affordable owner housing units.

Tooele City has 445 subsidized rental units but by HUD CHAS number, Tooele City needs 965 affordable rental units which leads to a need of 520 additional affordable rental units.

Table 13

Percent of Homes Sold in Tooele City Affordable to Households at Area Median Income			
	Total Homes Sold	Affordable Homes	Percentage of Homes Sold Affordable
2012	424	414	97.6%
2013	501	491	98.0%
2014	549	519	94.0%
2015	660	632	95.8%
2016	771	740	96.2%
Source: Utah RealEstate.com			

Percent of Condos Sold in Tooele City Affordable to Households at Area Median Income			
	Total Condos Sold	Affordable Condos	Percentage of Condos Sold Affordable
2012	24	24	100.0%
2013	29	29	100.0%
2014	38	38	100.0%
2015	41	41	100.0%
2016	54	54	100.0%
Source: Utah RealEstate.com			

The following Tables 13-16 show the availability of existing housing stock for targeted income groups for single family and condominiums or townhomes for the years 2012 to 2016.

At the Area Median Income group level, $56,602, affordable home sales dropped from 97% in 2012 to 96.2% in 2016. Condominiums and townhomes sales at the Area Median Income level were at 100% for all 5 years.

Over 740 single family homes were affordable out of 771 sales (96.2%). This makes Tooele City very affordable at this AMI group level in 2016 (Table 13).

No additional housing units are required for this income level.

Table 14

At the 80% Area Median Income group level, $45,282 (Table 14), affordable home sales dropped from 93% in 2012 to 70% in 2016. Condominiums and townhomes sales at the 80% Area Median Income level were at 100% or near 100% affordable prices for all 5 years (Table 14). This makes Tooele City very affordable at the 80% AMI. This target income group still has many choices in the purchase of a home, condominium or townhome.

At the 80 percent AMI ($45,282), single -family home sales and condominium or townhome sales were well over the affordable 50% sales level hurdle. No additional housing units are needed for this income level.

Percent of Homes Sold in Tooele City Affordable to Househoulds at 80% AMI			
	Total Homes Sold	Affordable Homes	Percentage of Homes Sold Affordable
2012	424	397	93.6%
2013	501	450	89.8%
2014	549	444	80.9%
2015	660	518	78.5%
2016	771	546	70.8%
Source: Utah RealEstate.com			

Percent of Condos Sold in Tooele City Affordable to Househoulds at 80% AMI			
	Total Condos Sold	Affordable Condos	Percentage of Condos Sold Affordable
2012	24	24	100.0%
2013	29	29	100.0%
2014	38	35	92.1%
2015	41	40	97.6%
2016	54	54	100.0%
Source: Utah RealEstate.com			

Percent of Homes Sold in Tooele City Affordable to Househoulds at 50% AMI			
	Total Homes Sold	Affordable Homes	Percentage of Homes Sold Affordable
2012	424	134	31.6%
2013	501	96	19.2%
2014	549	79	14.4%
2015	660	52	7.9%
2016	771	37	4.8%

Source: Utah RealEstate.com

Percent of Condos Sold in Tooele City Affordable to Househoulds at 50% AMI			
	Total Condos Sold	Affordable Homes	Percentage of Homes Sold Affordable
2012	24	17	70.8%
2013	29	14	48.3%
2014	38	5	13.2%
2015	41	16	39.0%
2016	54	10	18.5%

Source: Utah RealEstate.com

Table 15

At the 50% Area Median Income group level, $28,301 per year, homes sales that were affordable dropped from 31.6% in 2012 to 4.8% in 2016 (Table 15).

Condominiums and townhomes sales at the 50% Area Median Income level dropped from 70.8% to 18.5% in 2016. This makes Tooele City less affordable and this target group has limited choices in home or condominium purchases. Per HUD CHAS, Tooele City, with only 37 affordable homes and 10 affordable condos, needs 48 additional affordable homes or condos at the 50% AMI level (Table 15).

Percent of Homes Sold in Tooele City Affordable to Households at 30% AMI			
	Total Homes Sold	Affordable Homes	Percentage of Homes Sold Affordable
2012	424	17	4.0%
2013	501	5	1.0%
2014	549	3	0.5%
2015	660	6	0.9%
2016	771	1	0.1%

Source: Utah RealEstate.com

Percent of Condos Sold in Tooele City Affordable to Households at 30% AMI			
	Total Condos Sold	Affordable Condos	Percentage of Homes Sold Affordable
2012	24	2	8.3%
2013	29	0	0.0%
2014	38	0	0.0%
2015	41	0	0.0%
2016	54	0	0.0%

Source: Utah RealEstate.com

Table 16

At the 30% Area Median Income group level, $16,980 per year, homes sales that were affordable dropped from 4.0% in 2012 to 0.1% in 2016 (Table 16). Condominiums and townhomes sales at the 30% Area Median Income level dropped from 8.3% to 0% in the same 5 year period (Table 16). At the 30% AMI level, home purchase options are extremely limited and condominium or townhome purchases may be unavailable. Tooele City is not affordable at the 30% Area Median Income level.

Per HUD CHAS, Tooele City needs an additional 324 affordable housing units at the 30% AMI level.

Rental rates have increased as the median sales prices have gone up. The US Census ACS 2016 shows a median rent of $759. From a recent survey of rental rates on Zillow.com for rentals, there were only 12 homes or apartments available for rent at rates of $700 to $1500 per month. The newer apartments and homes are renting well above the median rate. In the 2016 rental housing market, affordable rental units are limited or not available in the newer apartment communities.

Ethnic and Racial Minority Populations

Tooele City's population is 82% white (not Hispanic). Minorities, which includes Hispanics, comprise 18% of the total City Population. The Hispanic population is 12.9% of the City's population and American Indian being reported for 1.4% of the City population.

Table 17

Tooele City		
Percent Share of City Population by Race		
	Number	Percent
Total	32,783	100%
White	26,919	82.10%
Hispanic	4235	12.90%
American Indian	462	1.40%
Asian	160	0.49%
Pacific Islands	82	0.25%
Black	278	0.85%
Other Race	72	0.22%
2 or more Races	575	1.75%
Source: US Census ACS 2016		

Racial and ethnic minority status is correlated with poverty level. In Tooele City, 8.1% of the entire population is reported to be below the poverty level which would indicate that approximately 2,656 residents are living at or below the poverty income level set by the U.S. Census. The poverty percentage for Tooele County is 7.2% and for the entire State is 11.7%.

Poverty rates by race are identified in Table 18 (below). Because of this correlation, any deficiencies in available low and moderate-income housing units, disproportionately impacts minority populations. Of the minority population, 15% are below the poverty level.

Table 18

Tooele City			
Poverty by Race in Tooele City			
Race	Number in Poverty	Percent of Race in Poverty	US Cenus Table
All Races = 8.1%			
White only	1,910	7.2%	B17001H
Hispanic	467	11.2%	B17001I
American Indian	61	12.8%	B17001C
Asian	0	0.0%	B17001D
Pacific Islands	0	0.0%	B17001E
Black	21	7.8%	B17001B
Other Race	241	15.2%	B17001F
2 or more Races	91	10.1%	B17001G
Source: US Census ACS 2016			

SPECIAL NEEDS POPULATION

Tooele City understands that it is important to address affordable housing for those with special needs. People with special needs may include vulnerable populations such as senior citizens, people with disabilities, the homeless or those otherwise in need of specialized or supportive housing.

DISABILITY

Table 19

Tooele City Residents with Disabilities				
Disability	Age Group	Total Pop.	Pop. w/disability	% of Total
hearing disability	Under 5	2828	0	0.00%
	5 to 17	7753	11	0.10%
	19 to 64	19008	468	2.50%
	65 - plus	2898	581	20.00%
vision disability	Under 5	2828	0	0.00%
	5 to 17	7753	37	0.30%
	19 to 64	19008	304	1.60%
	65 - plus	2898	1854	6.40%
cognative disability				
	under 18	10581	560	7.20%
	19 to 64	19008	877	4.60%
	65 - plus	2898	143	4.90%
ambulatory disability	under 18	10581	90	0.20%
	19 to 64	19008	1257	6.60%
	65 - plus	2898	817	28.20%
self-care disability	under 18	10581	142	1.80%
	19 to 64	19008	367	1.90%
	65 - plus	2898	268	9.20%
independent living	19 to 64	19008	729	3.80%
	65 - plus	2898	525	18.1%
Source: US Census ACS 2016				

People with disabilities under the age of 65 comprise approximately 9.0% of the City population or 2,930 people. It is estimated that 36.6% of all Americans 65 or older have some form of disability. According to the ACS approximately 1,178 individuals, or 40.6% of Tooele City residents over age 65 have a disability. People with disabilities often face financial and social difficulties that make it difficult to obtain housing. Programs that are geared toward helping people with disabilities obtain housing include: low rent and public housing voucher programs, assistance through centers of independence, employment and training resources.

The median income of an individual with a disability is usually considerably less than persons without a disability. According to the ACS, median income for disabled residents over 16 years of age, is 32.5% less than City residents without a disability of the same age. This would translate to a disabled single householder having a median income of $38,206 which would require using a larger share of their income for housing.

Seniors-Elderly

About 9.0 percent of Tooele City population is 65 and older as of the 2016 ACS. The share of the city's population that is 65 or older is expected to remain approximately the same. As the City population ages, more families will elect to move their elderly family members to Tooele City to be near them. Some elderly residents may not be able to remain in their homes or may choose to relocate to a dwelling type that better suits their preferences and needs. Tooele City recognizes the need to evaluate the housing options available to seniors wishing to remain in or move to the community.

Homeless

According to the 2016 annualized Point in Time count, roughly 0.1% of Utah's population is homeless. Although regional differences may impact the rate of homelessness, this percentage can be used to estimate the number of homeless individuals in Tooele City, which is approximately 32. Tooele County Housing Authority has programs in place as noted in the Tooele County Moderate Housing Study which address this need.

Veterans

Based on the 2016 ACS, veterans account for approximately 7.6% of Tooele City's population, or 2,507 people. Men make up 92% of those veterans and women 8%. There are 811 veterans that are age 65 years or older, or 32.3% of the Tooele City veteran population. Also, 749 veterans in Tooele City were reported as having some form of disability, which amounts to 18.2% of the city's disabled population being veterans. Of the 1423 working age veterans (18 to 65 years old), 43% or 1084 were unemployed. There were 100 veterans reported to be living below the poverty level by the 2016 ACS. The median income of a veteran in Tooele City was reported to be $50,533 which is 10.7% lower then the city as a whole. This suggests that a single income household with a veteran is less likely to afford the median housing unit in the city. Given these estimates, the City should work with the Utah Department of Workforces Services to consider strategies to lower the unemployment rate among working-aged veterans.

Victims of Domestic Violence

Victims of domestic violence receive shelter at Pathways Domestic Violence Shelter operated by Valley Behavioral Health. The facility has 16 beds and operates at high levels of occupancy. The program provides shelter for victims of domestic violence for 30 days before the individual(s) is released. In 2017 the facility served 536 individuals, 342 were residents of Tooele County. A high need, as expressed by director Elizabeth Albertson, is for transitional housing. Many of their clients do not have housing and are left to choose between homelessness or living with friends/family. Pathways Domestic Violence Shelter has applied for a U.S. Department of Justice grant that would help fund and develop a 5-unit transitional housing facility. Under the terms of the grant the transitional housing would be for 6 months to 24 months. Transitional housing for this population is a high priority.

Fair Housing Status

HUD measures Fair Housing Status by the number of housing discrimination complaints in a jurisdiction. Fair Housing complaints are very low for Tooele County. Since 1994, 24 complaints have been filed. Five complaints were filed in 2012 which was the highest year. Only 3 complaints were file in 2017. Considering the county has about 4,300 rental units, filed complaints are an extremely low percentage of the renter population. (Source: Tooele County Affordable Needs Assessment)

Availability of a Variety of Housing Sizes

Tooele City's housing inventory is predominately single family with 3 and 4 bedrooms (61.8%). There are only 2,479 housing units (22.5%) with 2 bedroom or less within Tooele City. New homes are required by zoning to be at least 1,100 square feet which again leads to a 3 bedroom home. A majority of the homes in Tooele City have basements which have been or can be finished for additional bedrooms as the need arises.

Analysis of Special Needs Housing

There is a significant population of seniors and people with disabilities in Tooele City, currently there is a deficiency of housing specifically designed for this segment of the population in Tooele City. There are 16 low income tax credit and subsidized rental communities in Tooele County. Of the 16, 11 are located in Tooele City (Table 20) and contain 445 housing units (60.7%). The other rental communities consist of 287 units (39.3%) and are located in Grantsville, Stansbury Park and Wendover. Tooele City needs more special needs housing since all available housing units are occupied and there is a waiting list for available rental units. As the city grows, the need for specialized housing will likely continue to increase and the city should evaluate and monitor current zoning regulations to assure that there are minimal regulatory barriers to constructing this type of housing. Subsidized housing and special needs rental housing is managed by Utah Housing Corp and Tooele County Housing Authority (TCHA).

Table 20

Low Income Tax Credit and Subsidized Rental Communities In Tooele City

Apartment Community	Address	subsidy	Units
Somerset Gardens (Senior)	143 North 400 West	RD Senior	28
Oquirrh View Apartments (Senior)	552 North 270 East	RD Senior	16
Canyon Cove Senior Housing (Senior)	178 East Vine St	HUD Senior	21
Remington Park Retirement (Senior)	495 W Utah Avenue	RD Senior	72
Lake View Apartments	742 N 100 East	Tax Credit	76
Valley Meadows	582 N Shay Lane	Tax Credit	40
Tooele Crown	Scattered Sites	Tax Credit	11
Tooele Gateway Apartments	232 W Fenwick Lane	Tax Credit	130
Westwood Mesa	780 West 770 South	Tax Credit	22
Landmark Apartments	350 West 400 North	HUD Senior	24
Five-Plex		Public Housing	5
		Total	445

Source: Utah Housing Corp & Tooele County Housing Authority

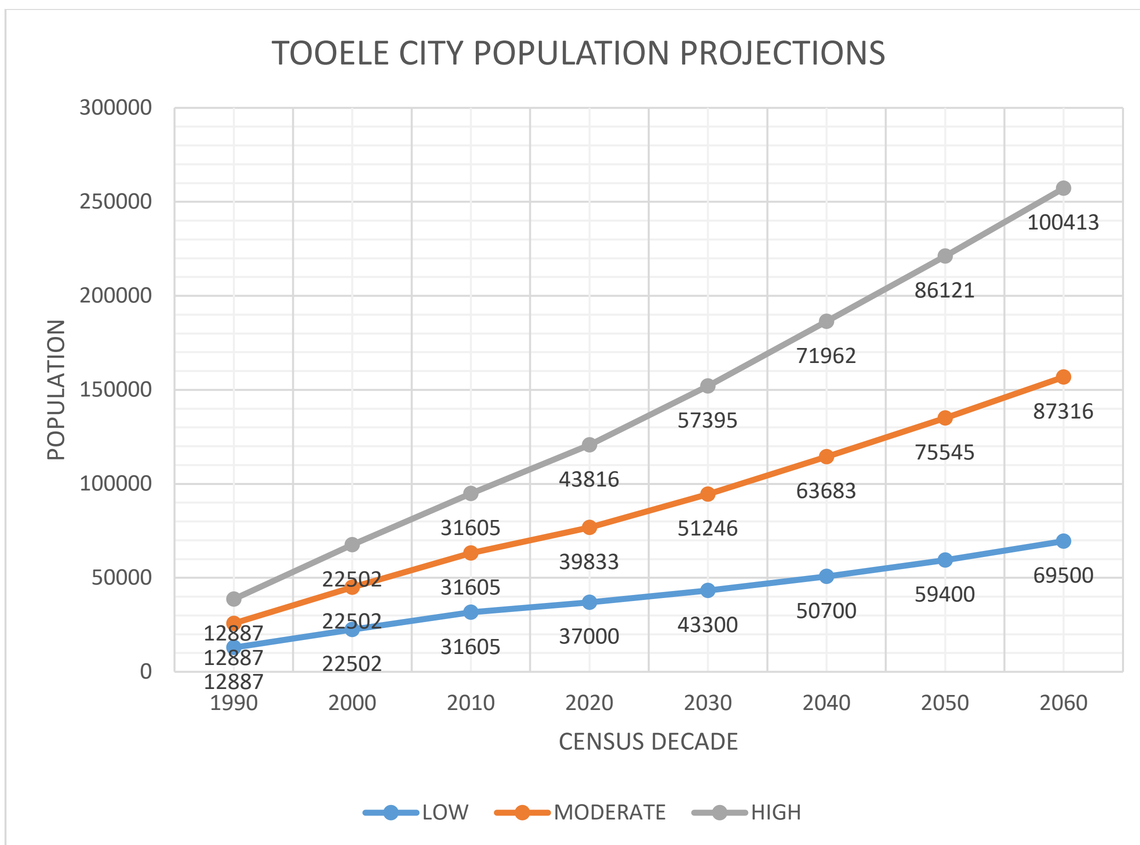
TCHA and Utah Housing Corp administer many affordable housing assistance programs as well as the many tax credit and subsidized rental communities. There is a home repair program, weatherization program, down payment assistance program, security deposit assistance program, rent to own program and Section 8 rental assistance program. Not all programs are funded at any one time but the Housing Authority is constantly seeking grants and additional funding to continue the programs. TCHA is also seeking funding to construct a new housing community for low income households which it will manage because many private landlords have stop participating in the assisted rental program.

Population Projections

High, Medium and Low Population Projections

The population projection used for this study (Moderate Projection) is from the Governor's Office of Budget and Planning with growth rates of between 16% and 29% each decade. A high and low population projection was also calculated based upon the GOBP projection. The GOBP projection is used because it tends to follow the recent growth rates. Chart 4 shows the three population projections. The high projection predicts Tooele City population to reach about 100,000 people by 2060. Assuming all growth factors such as expanded sanitary sewer facilities, expanded culinary water facilities, expanded transportation system to Salt Lake County, expanded city services and continued good economic growth continue, it is possible moderate population projection may be achieved (Chart 4).

Chart 4



Estimated percentages of Targeted Income groups and Special Needs Groups

The UAHFT tool, using the moderate growth projection, shows the percent share of the City 2016 population in relationship to the AMI ($56,605). 50.6% of the City's population has an income at or above the Area Median Income in 2016 (Chart 5). Using the same percentage of the City population in the targeted income groups for the 5 and 10 year projections as is currently estimated by the ACS, see Chart 5. The US Census ACS shows 9% of Tooele's population is disabled, 9% are seniors, 0.01% are homeless (2016 annualized Point in Time), 7.6% are veteran, and approximately 0.005% are victims of domestic violence (342 county residents served in 2017).

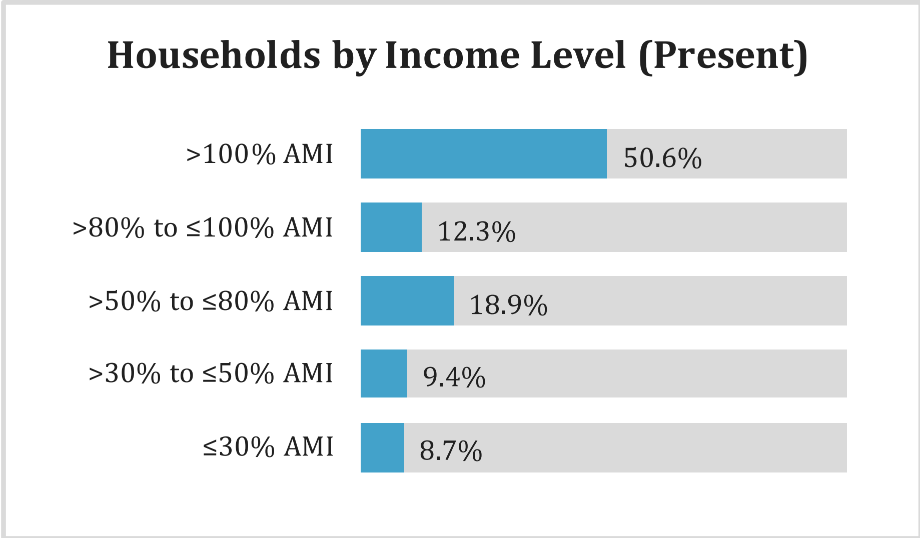


Chart 5

Forecast of Affordable Housing Need

Comparing Population Projections with Expected Housing Construction

The housing construction industry in Tooele City in 2016 is still recovering from the economic recession of 2007-2011. New subdivisions are in the planning stages and builders have reported having problems finding building lots and scheduling subcontractors. In 2016, residential contractors are still trying to keep up with the expanding demand in the Tooele City market and have had to delay construction projects because of these problems.

*= actual	2010	2016	2020	2025
Population for	*31,605	32,783	39,833	45,539
Projected number new housing units		*512	2,350	1,902
Projected ramp up of residential construction			600	1,250

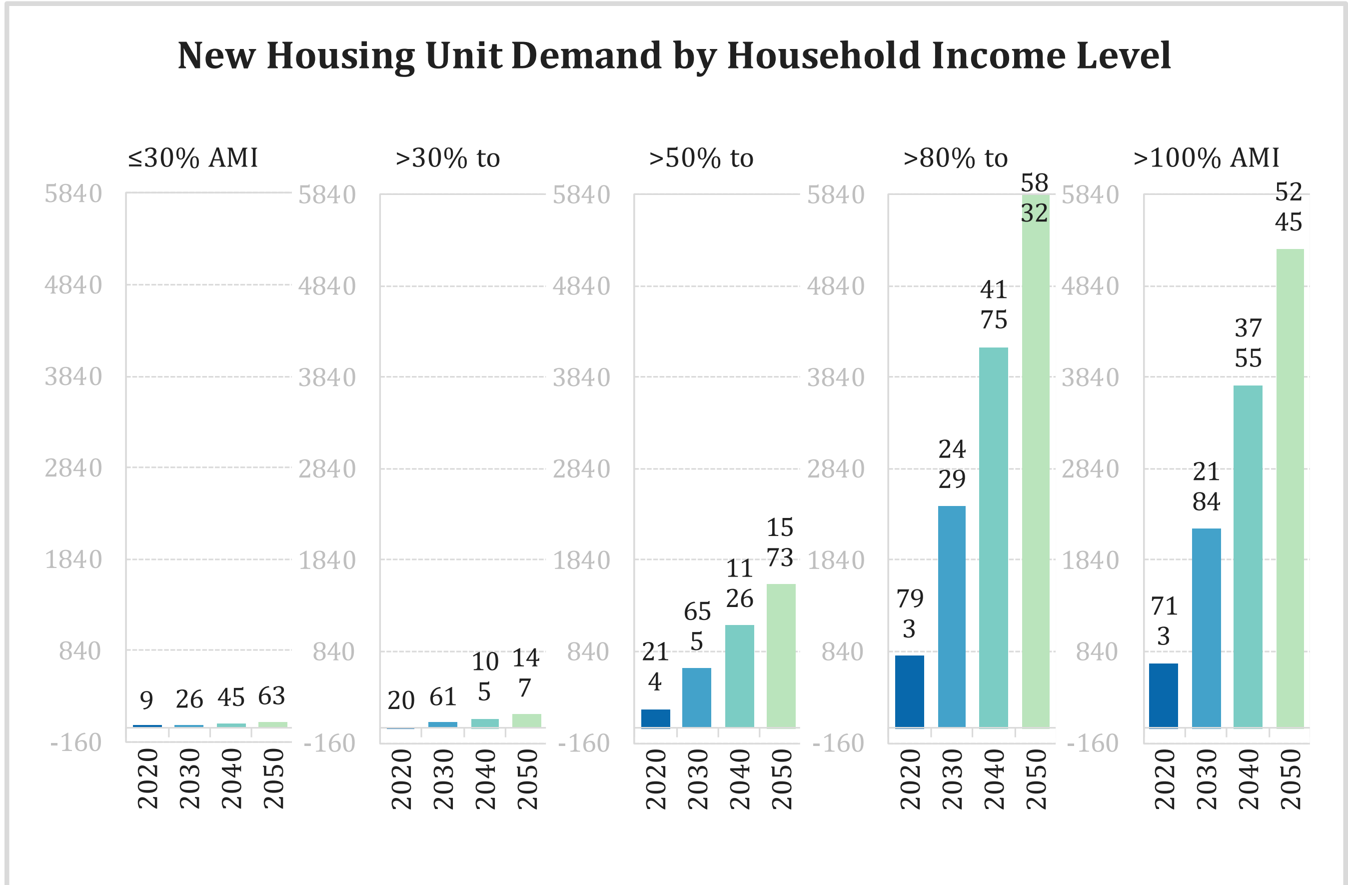
Estimated Number of New Housing Units Needed

Income group	2020 New Housing Unit Demand	2025 New Housing Unit Demand
<=30% AMI	9	10
>30% to >50% AMI	26	31
>50% to >80% AMI	45	53
>80% to >100% AMI	63	74
Seniors	193	171
Disabled	193	171
Homeless	23	19
Veterans	178	144
Domestic Violence	12	10

Table 21

Chart 6 is generated by the UAHFT tool for the 2020 through 2050 population projections for each of the five targeted income groups. The 2025 projections would be calculated as half of the 2030 number. The numbers are put into a simple table above (Table 21). Again the special needs groups may overlap.

Chart 6



Regulatory Environment

Current Zoning and Affordable Housing

Currently Tooele City does not have an ordinance specific to affordable housing. There are no fee or permit waivers or density bonuses for affordable housing. Although there are no proactive policies promoting affordable housing, ordinances or policies that prohibit or discourage affordable housing do not exist in the City's code either. Manufactured housing is permitted, high density multi-family housing is permitted, and minimum lot sizes for single-family homes are as small as 7,000 square feet under base zoning tenets, which helps with affordable housing.

The only City ordinance that may be a barrier to affordable housing or Fair Housing, is the single-family, multi-family residential standards (Title 7, Chapters 11a & 11b). These ordinances establish minimum standards for enclosed garages, square footage, minimum masonry percentage and minimum architectural features such as front porches, decorative windows, articulated roof lines, articulated building elevations and others which can increase the cost of a housing unit.

Table 22

ZONING DISTRICT	TOTAL ACREAGE	USED ACRES	PERCENT OF TOTAL	VACANT ACRES	PERCENT OF TOTAL
BISON RIDGE PUD	55.29	0	0.00%	55.29	100.00%
COPPER CANYON PUD	128.74	57.1	44.40%	71.64	55.60%
GLENEAGLES PUD	17.71	6.53	37.00%	11.18	63.10%
General Commercial	988.87	171.71	17.40%	817.16	82.60%
High Density Residential	170.12	82.2	48.30%	87.92	51.70%
Industrial (heavy)	802.26	210.25	26.20%	592.009	73.80%
Light Industrial	385.93	180.94	46.90%	204.99	53.10%
Medium Density Residentia	94.74	90.49	95.50%	4.25	4.50%
Mixed Use-160 acres	320.11	34.23	10.70%	285.88	89.30%
Mix Use-Broadway	22.16	18.75	84.60%	3.413	15.40%
Mixed Use-General	101.73	88.169	86.70%	13.563	13.30%
Neighbor Commercial	254.6	2.388	0.90%	252.216	99.10%
Open Space	2,196.33	109.26	5.00%	2087.07	95.00%
OVERLAKE HWY COM	16.45	14.4	87.50%	2.05	12.50%
OVERLAKE MULTI-FAMILY	15	15	100.00%	0	0.00%
OVERLAKE SINGLE FAMILY	149.39	149.39	100.00%	0	0.00%
Peterson Industrial Depo PU	273.63	267.56	97.80%	6.073	2.20%
R1-10	160.06	149.84	93.60%	10.22	6.40%
R1-12	160.58	113.231	70.50%	47.35	29.50%
R1-14	80.37	44.2	55.00%	36.17	45.00%
R1-7	3,726.67	1499	40.20%	2227.665	59.80%
R1-8	306.64	267.119	87.10%	39.52	12.90%
Research and Development	842.1	0	0.00%	842.102	100.00%
Rural Residential – 1 acre	685.81	288.363	42.00%	397.442	58.00%
Rural Residential – 5 acres	827.39	24.38	2.90%	803.01	97.10%
UNKNOWN	54.28	0	0.00%	54.28	100.00%
	12,836.97	3,884.49	30.50%	8,920.69	69.50%
Source: Tooele City Planning and Zoning					

Tooele City has annexed vast areas of vacant property in the last 30 years. A total of 20 square miles (Table 22) is zoned for development. Only 6.1 square miles (30.5%) is developed. The potential for future growth is high. The zone most suitable to affordable housing is the HDR High Density Residential zone (16 units per acre) with 87.92 available acres. Also the MDR zone, 4.25 available acres (8 units per acre) is suitable for affordable housing. The R1-7 zone, 2,227.66 available acres (5 units per acre) and the R1-8 zone, 39.52 available acres (4.5 units per acre) are the most suitable zones for affordable single-family homes.

Plans to Meet the Affordable Housing Need

Existing Development for Affordable Housing

With housing values declining after the 1999 peak, several approved Tooele City condominium and townhome projects completed their infrastructure but ceased constructing housing units. Builders claimed they could not construct townhomes or condominiums that would be substantially more affordable than single-family homes and so sales ground to a halt. With today's median home sales price at over $210,000, townhomes and condominiums should now fill the price range under single-family housing. There are 221 condominium or townhome units platted with site work competed where the residential buildings were never completed in Tooele City (Table 23). These types of housing units tend to be more affordable.

Table 23

Tooele City unfinished Condominium and Townhome Projects			
Project Name	Total Units	Remaining Units	Project Start Year
West Point Meadows Condominium Amd	64	43	1997
Cresent Court Condominiums Amd	199	133	2001
Comiskey Park Garden Home Condos	88	8	2000
Gleneagles PUD	54	37	2001
Total	405	221	
Source: Tooele City Planning Dept.			

Existing Zoning that Typically allows Affordable Housing

Table 24

Current Zoning which Facilitates Affordable Housing				
Zoning	Density Per Acre	Vacant Acres	Projected lots/units	Projected Populations
R1-7	5	2227.0	11,135	33,405
R1-8	4.5	39.5	177	533
Copper Canyon PUD	5	55.3	276	829
Gleneagles PUD	16	2.6	41	123
Cresent Ct Condos	16	7.9	133	399
West Point Meadow Condos	16	2.4	37	111
Medium Density Residential	8	4.3	19	58
High Density Residential	16	87.9	1,400	4,200
Source: Tooele City Planning Department		2426.9	13,218	39,658

Table 24 demonstrates that without rezoning more acreage in the future, Tooele City could grow by 13,218 affordable housing units and reach a population of 72,441. Acres set aside for parks, schools, and roads would need to be deducted. Future annexations could offset the deducted acreages. With the thousands of acres of land surrounding the City, Tooele is likely to continue annexing and grow as City.

Existing and Future Mobile Home Parks

Tooele City has 639 mobile home spaces in the existing eight mobile home parks. Mobile homes within a mobile home park can be an affordable housing option. Building pad rents and utilities must be calculated in order to determine the affordability of the housing unit. Tooele City ordinances prohibit the construction of new mobile home parks and are designed to phase out existing mobile home parks as units age and cannot be replaced due to changing building codes.

Strategy to meet Current and Forecasted Affordable Housing Needs

Zoning and Annexations

Tooele City does not regularly change zoning on its own, however, the Land Use Element requires a balance and diverse mix of residential housing units and lot sizes and each rezone request should comply with the requirements of the City's Land Use Element.

Tooele City has recently approved several rezones of agricultural land to R-10 and R1-14 and one rezone for High Density Residential which provides more options in lot size and residential housing unit styles.

Tooele City will consider future annexation petitions and has approved one residential annexation as recently as 2015.

Tooele City's current Zoning Map provides sufficient zoning districts to meet the city's affordable housing needs through 2050. More than 2,400 acres of zoning that can support affordable housing exists within City boundaries. All zoning change requests are reviewed individually, case by case, as they are submitted.

Tooele City has an in-fill overlay district that provides incentives for residential construction in the older central city area. The incentives include smaller setbacks, reduction of water rights requirements, and increased total lot coverage.

Tooele City also has an effective PUD (Planned Unit Development) ordinance that can be applied to any residential zoning district. The PUD ordinance provides flexibility in development standards such as setbacks, lot sizes, lot coverages and so forth without affecting density. Flexibility in these standards can serve to reduce per-lot land costs and help to reduce the overall cost of housing within the development.

Goals and Strategies

The Goals and Strategies should be achievable by the time of the next Moderate Income Affordable Housing Plan update.

Goal 1: Examine Regulatory Zoning that Impact Affordable Housing

Strategy 1 – Review the zoning ordinances 7-14-11a and 7-14-11b, which require higher architectural standards on new residential construction in most areas of the City including the Infill areas (old central core) of the city. The infill areas are prime areas for new affordable housing but the residential standards require costly additions such as a large two-car garage instead of a carport, 35% brick, stone, stucco, 30 square foot covered front porch and other architectural features making new home construction more costly than the surrounding older homes. Reconsideration of the type, location and amount of

architectural features required on structures within the Infill areas may assist in providing more affordable housing and may result in reduced construction costs (Chart 7).

Strategy 2 – Consider the impact of rezoning the Infill areas from R1-7 to HDR as was the zoning before 1998. Small apartment buildings would be permitted without extending City utilities or service areas. Property values would increase and vacant weed patches would be removed. Infill areas are already home to many legal nonconforming apartment buildings built before 1998 (Chart 7).

Strategy 3 – Modify the Infill area incentives to allow residential construction on narrow lots. The older lots were created before Tooele City had subdivision ordinances (1960s) and narrow lots were permitted and often desired for a small home. This would affect only 5% of the old lots but today's zoning allows no residential construction on lots less than 50 feet wide in the HDR zone and 60 feet wide in the R1-7 zone (Chart 7).

Strategy 4 – Create an Accessory Dwelling Unit code for the Infill areas. Many Cities have found that by allowing an accessory dwelling unit at the rear of a large residential lot or in the basement of an owner occupied home many affordable housing units can be created without taxing City utilities or service areas. The owner benefits by having a cash flow from which to maintain or improve the property. The accessory unit would be smaller and would be more affordable. The City's code would need to amended to include criteria for approving accessory dwelling units such as lot size, setbacks, building height, etc. (Chart 7).

Strategy 5 – Inventory sites for consideration of re-zoning, especially those with close proximity to public transit, and commercial shopping, which may be appropriate for more diverse housing options which are harmonious with the surrounding neighborhoods.

Goal 2: Increase Affordable Rental Opportunities for Low to Moderate Income Households

Strategy 1 – Work with Tooele County Housing Authority and have a City representative attend the quarterly meetings. Tooele City has the largest population in Tooele County and has the most to gain from having good cooperation with the Housing Authority.

Strategy 2 - Promote the construction of housing units across all income categories to facilitate the natural attrition of existing housing stock to become available for low to moderate-income households.

Goal 3 – Rehabilitate Existing Housing to Increase Rental Opportunities, Homeownership, Retention, and Reinvestment in Tooele City.

Strategy 1 – Promote the many affordable housing programs. The programs are the home repair program, weatherization program, down payment assistance program, security deposit assistance program, rent to own program, and section 8 rental assistance program.

Strategy 2 – Revise the Infill area incentives to encourage replacing or remodeling a dilapidated housing unit that could become a more affordable housing unit than new construction.

Strategy 3 – The City should seek grants and funding for the many existing housing programs administered by Tooele County Housing Authority which are often needed by moderate and low income households. The funding for the programs by their nature are limited and households must often wait for funds to be made available.

Chart 7 – Tooele City Infill Areas A and B

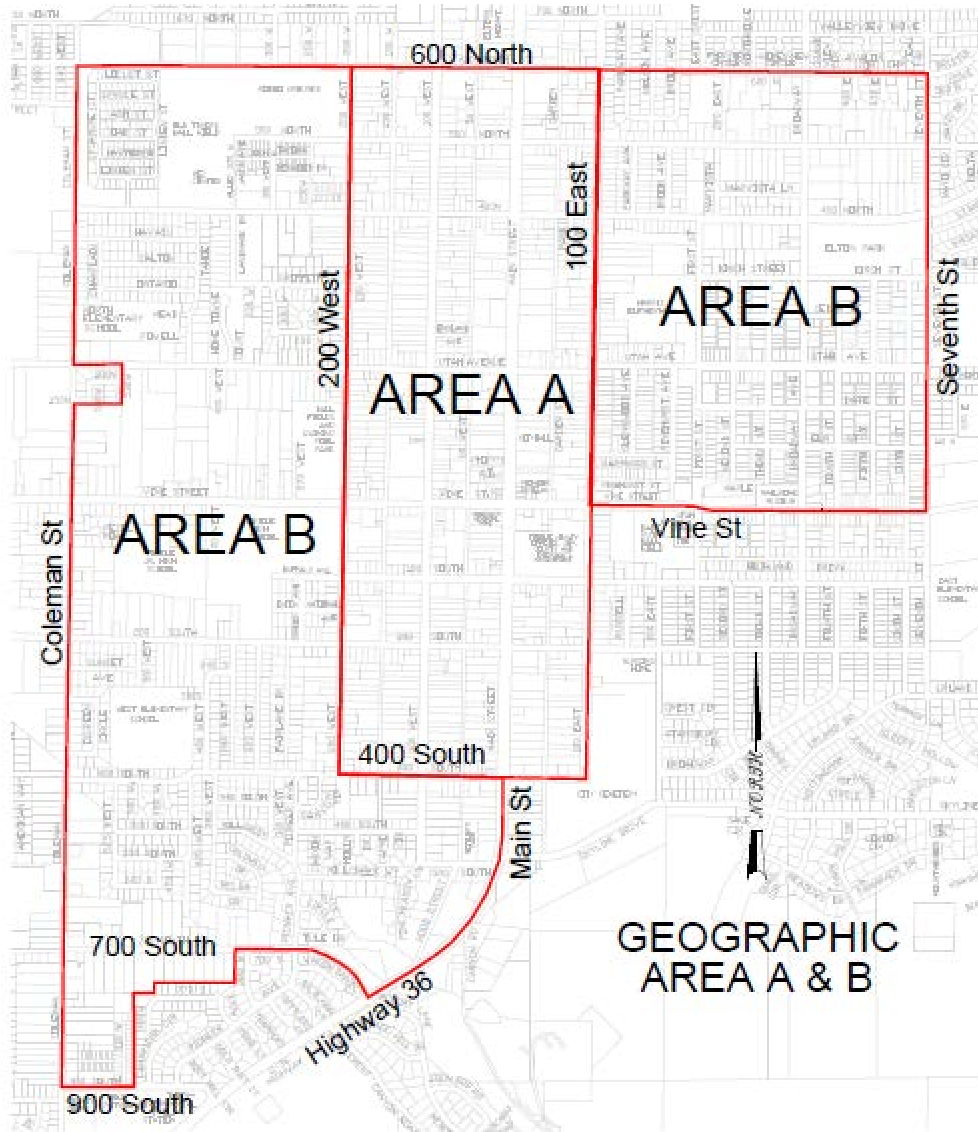


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EXHIBIT B

ORDINANCE

STAFF REPORT
November 5, 2018

To: Tooele City Planning Commission
Business Date: November 14, 2018

From: Planning Division
Community Development Department

Prepared By: Andrew Aagard, City Planner / Zoning Administrator

Re: **Moderate Income Housing Plan – General Plan Amendment and Update**
Applicant: Tooele City Corporation
Request: Request for approval of an update to the Moderate Income Housing Element of the Tooele City General Plan.

BACKGROUND

Tooele City is proposing an update to the Moderate Income Housing Element of the General Plan. The proposed plan along with current housing statistics has been updated to reflect current housing conditions in Tooele City. The plan also includes potential strategic plans to address the rising cost of housing and comply with the requirements of Utah State Code (UCA §10-9a-103, 401, 403 and 408). The moderate income housing plan has been attached for review and can be found in Exhibit "A" to this report.

ANALYSIS

General Plan and Zoning. Tooele City's General Plan contains a five year moderate income housing element. It is required by Utah State law that the moderate income housing plan is reviewed every two years to update the plan and assess the plan's implementation. The review should also update the five year moderate-income housing needs estimates and then report the findings to the Housing and Community Development Division (HCDD) of the Utah Department of Workforce Services.

Analysis. Utah State Code 10-9a-103(34): States that "moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located. In addition to this, Utah State Code Section 10-9a-103(41) requires that cities adopt a "moderate income housing" plan that incorporates the following:

a. An estimate of the existing supply of moderate income housing within the city.
b. An estimate of the need for moderate income housing for the next five years, revised biennially.
c. A survey of total residential land use.
d. An evaluation of how existing land uses and zones affect opportunities for moderate income housing.
e. A description of the City's programs to encourage an adequate supply of moderate income housing.

The attached moderate income housing plan addresses each of the five criteria listed above.

In drafting, reviewing and adopting a moderate income housing element the Planning Commission and City Council bear the responsibilities to consider possibilities for:

1. meeting the housing needs of people desiring to live in Tooele City;
2. allowing persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life in Tooele City;
3. rezoning for densities necessary to assure the production of moderate income housing;
4. facilitating the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;
5. encouraging the rehabilitation of existing uninhabitable housing stock into moderate income housing;
6. considering General Fund subsidies to waive construction fees that are otherwise generally imposed by the City;
7. considering utilization of program offered by the Utah Housing Corporation within that agency's funding capacity;
8. considering utilization of affordable housing programs administered by the Department of Workforce Services; and
9. considering utilization of programs administered by an association of governments established by an interlocal agreement.

The moderate income housing element also includes strategies for Tooele City to consider to continue encouraging the construction of affordable housing to meet the needs at the moderate income level. Some of those strategies are detailed in the text of the plan and are summarized below:

1. Review design criteria found in sections 7-11a and 7-11b regarding architectural design and exterior elements requirements to ensure these requirements do not increase the cost of homes in the area.
2. Consider rezoning areas within the Infill overlay from R1-7 to HDR as they were previously zoned.
3. Provide incentives in the Infill overlay to permit residential construction on narrow lots.
4. Consider the creation of an Accessory Dwelling Unit code for the Infill areas of the City that would permit the construction of smaller residential units on one lot.
5. Consider higher density zones in areas closer to transit stops, commercial centers, highways, etc.

Criteria For Approval. In considering a proposed amendment to the Tooele City General Plan, the applicant shall identify, and the City Staff, Planning Commission, and City Council may consider, the following factors, among others:

(a) The effect of the proposed amendment on the character of the surrounding area;
(b) Consistency with the General Plan Land Use Map and the goals and policies of the General Plan and its separate elements;
(c) Consistency and compatibility with the existing uses of adjacent and nearby properties;
(d) Consistency and compatibility with the possible future uses of adjoining and nearby properties as identified by the General Plan;
(e) The suitability of the properties for the uses requested viz. a viz. the suitability of the properties for the uses identified by the General Plan; and
(f) The overall community benefit of the proposed amendment.

REVIEWS

Planning Division Review. The Tooele City Community Development Department has compiled current housing data and analyzed this data as required by state law listed above for moderate income housing. Tooele City's Planning staff recommends approval of the prepared plan draft.

Noticing. The amendment to the moderate income housing element of the General Plan requires a public hearing and was noticed as required by the City and State Codes.

STAFF RECOMMENDATION

Staff recommends approval of the proposed amendment to the moderate income housing element of the General Plan.

This recommendation is based upon the following findings:

1. The proposed Moderate Income Housing plan estimates the existing supply of moderate income housing in the city.
2. The plan demonstrates that Tooele City currently provides sufficient housing options for those 1t 100% and 80% of Area Median Income in the form of homes, condominiums, townhomes, apartments and other rental units.
3. The plan provides a survey of total residential land uses.
4. The plan evaluates how existing land uses and zones affect opportunities for moderate income housing.
5. The plan provides descriptions of the City's programs and goals to encourage an adequate supply of moderate income housing.

MODEL MOTIONS

Sample Motion for a Positive Recommendation – "I move we forward a positive recommendation to City Council to amend the Moderate Income Housing element of the General Plan and adopt the draft Tooele City Moderate Income Housing Plan, 2018, based upon the findings listed in the staff report dated November 5, 2018."

1. List any additional findings….

Sample Motion for Negative Recommendation – "I move we forward a negative recommendation to City Council to amend the Moderate Income Housing element of the General Plan and adopt the draft Tooele City Moderate Income Housing Plan, 2018, based upon the following findings."

1. List findings…

EXHIBIT A
PROPOSED PLAN TEXT

STAFF REPORT

October 11, 2018

To: Tooele City Planning Commission
Business Date: October 24, 2018

From: Planning Division
Community Development Department

Prepared By: Andrew Aagard, City Planner / Zoning Administrator

Re: **Providence at Overlake, Phases 3-6 – Preliminary Plan Request**

Application No.:	P18-526
Applicant:	Howard Schmidt
Project Location:	Approximately 1200 North 400 West
Zoning:	R1-7 Residential Zone
Acreage:	31.4 Acres (Approximately 1,368,655 Square Feet)
Request:	Request for approval of a Preliminary Plan in the R1-7 zone for a 48 lot single-family dwelling subdivision.

BACKGROUND

This application is a request for approval of Preliminary Plan Subdivision for approximately 31.4 acres located at approximately 1200 North 400 West. The property is currently zoned R1-7 Residential. The applicant is requesting that a Preliminary Plan Subdivision be approved to allow for the development of the currently vacant site as a 48 lot, multi-phase subdivision.

ANALYSIS

General Plan and Zoning. The property has been assigned the R1-7 Residential zoning classification, supporting approximately five dwelling units per acre. The purpose of the R1-7 zone is to "provide a range of housing choices to meet the needs of Tooele City residents, to offer a balance of housing types and densities, and to preserve and maintain the City's residential areas as safe and convenient places to live. These districts are intended for well-designed residential areas free from any activity that may weaken the residential strength and integrity of these areas. Typical uses include single-family dwellings, two-family dwellings and multi-family dwellings in appropriate locations within the City. Also allowed are parks, open space areas, pedestrian pathways, trails and walkways, utility facilities and public service uses required to meet the needs of the citizens of the City." The property is surrounded on the east, west and north by R1-7 zoning and some NC Neighborhood Commercial zoning at the southwest. Some high density residential zoning is nearby on the opposite side of the Union Pacific railroad tracks.

Subdivision Layout. The proposed preliminary plan subdivision contains 48 lots and is a continuation of Providence at Overlake Phase 2, located immediately to the north. Access into the subdivision will be gained from the existing Clemente way in the Overlake Development to the north, which will in turn connect to 400 West. The development will eventually connect to Berra Boulevard as stubs are being provided on the east and west sides of the development for future connectivity and additional access to the development. The preliminary plan consists of three proposed phases, which will be required to have final plat approval before each phase develops. Lots within the subdivision do meet or exceed minimum lot standards as required by the R1-7 zone for lot width, lot frontage and lot size.

Criteria For Approval. The criteria for approval or denial of a Preliminary Plan Subdivision request as well as the information required to be submitted for review as a complete application is found in Sections 7-19-10 and 11 of the Tooele City Code.

REVIEWS

Planning Division Review. The Tooele City Planning Division has completed their review of the Preliminary Plan submission and has issued a recommendation for approval for the request with the following proposed conditions:

1. The developer shall install a temporary cul-de-sac turn around at the end of Clemente Way as per Tooele City standards.
2. The developer shall obtain final plat approval for each phase prior to any construction on the site.

Engineering Review. The Tooele City Engineering and Public Works Divisions have completed their reviews of the Preliminary Plan submission and have issued a recommendation for approval for the request.

STAFF RECOMMENDATION

Staff recommends approval of the request for a Preliminary Plan by Howard Schmidt, application number P18-526, subject to the following conditions:

1. That all requirements of the Tooele City Engineering and Public Works Divisions shall be satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.
2. That all requirements of the Tooele City Building Division shall be satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.
3. That all requirements of the Tooele City Fire Department shall be satisfied throughout the development of the site and the construction of all buildings on the site.
4. That all requirements of the geotechnical report shall be satisfied throughout the development of the site and the construction of all buildings on the site.
5. The developer shall install a temporary turn around at the end of Clemente Way as per Tooele City standards.
6. The developer shall obtain final plat approval for each phase prior to any construction on the site.

This recommendation is based on the following findings:

1. The proposed development plans meet the intent, goals, and objectives of the Master Plan.
2. The proposed development plans meet the intent, goals, and objectives of the Tooele City General Plan.
3. The proposed development plans meet the requirements and provisions of the Tooele City Code.
4. The proposed development plans will not be deleterious to the health, safety, and general welfare of the general public nor the residents of adjacent properties.
5. The proposed development conforms to the general aesthetic and physical development of the area.

6. The public services in the area are adequate to support the subject development.

MODEL MOTIONS

Sample Motion for a Positive Recommendation – "I move we forward a positive recommendation to the City Council for the Providence at Overlake Phases 3-6 Preliminary Plan request by Howard Schmidt for the purpose of creating 48 single-family residential lots at approximately 1200 North 400 West, application number P18-526, based on the findings and subject to the conditions listed in the Staff Report dated 10/11/2018:"

Sample Motion for a Negative Recommendation – "I move we forward a negative recommendation to the City Council for the Providence at Overlake Phases 3-6 Preliminary Plan request by Howard Schmidt for the purpose of creating 48 single-family residential lots at approximately 1200 North 400 West, application number P18-526, based on the following findings:

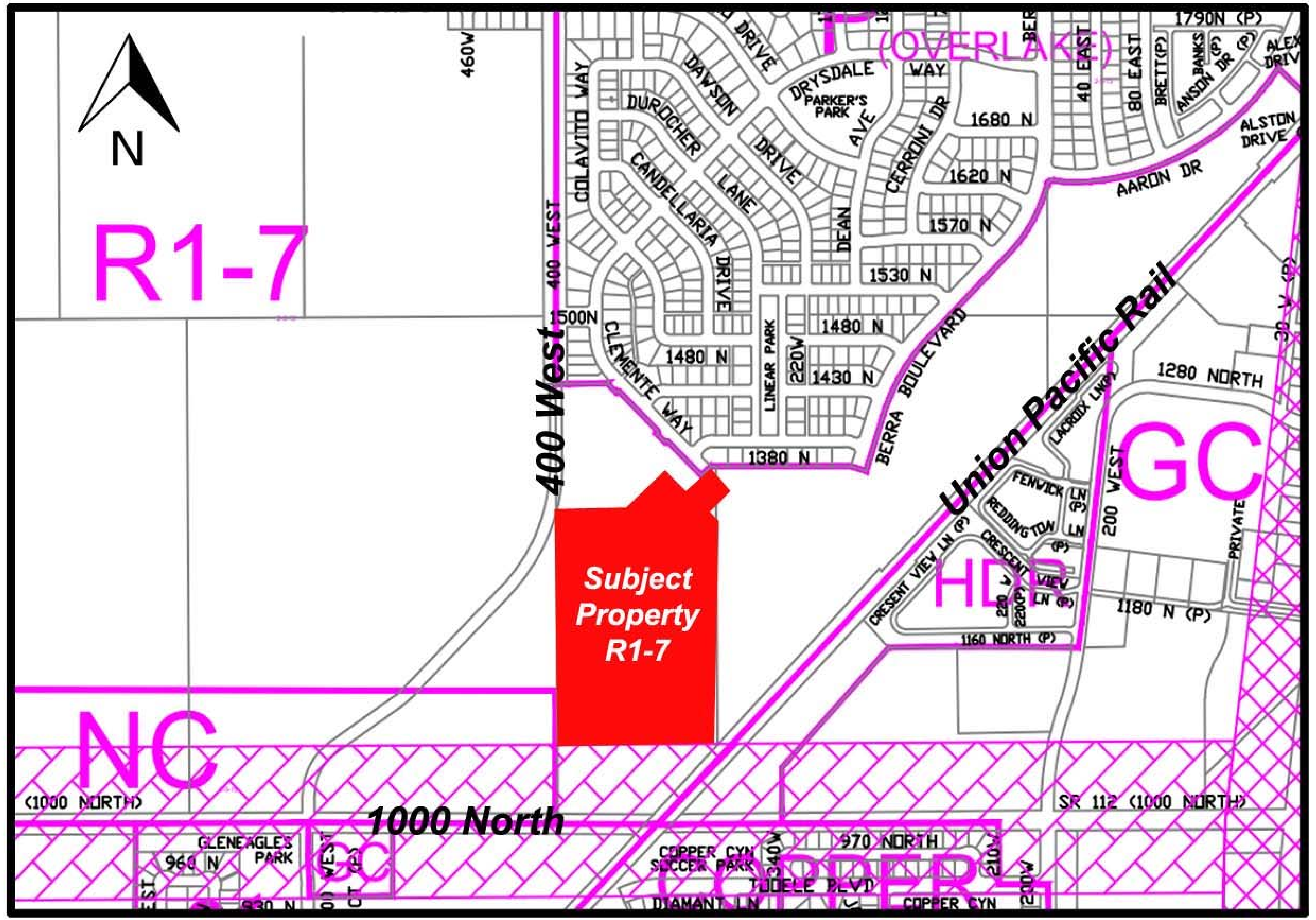
EXHIBIT A

MAPPING PERTINENT TO THE PROVIDENCE AT OVERLAKE PHASES 3-6, PRELIMINARY PLAN

Providence at Overlake Phases 3-6 Preliminary Plan

Aerial View

Providence at Overlake Phases 3-6 Preliminary Plan



Current Zoning

EXHIBIT B

PROPOSED DEVELOPMENT PLANS

PRELIMINARY PLAT
PROVIDENCE SUBDIVISION AT OVERLAKE

LOCATED IN THE SOUTHWEST QUARTER
OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST,
SALT LAKE BASE AND MERIDIAN
TOOELE CITY, TOOELE COUNTY, UTAH

TOOELE ASSOCIATES LIMITED PARTNERSHIP
ENTRY #107635

OVERLAKE ESTATES PHASE 1D ENTRY #122500

PROVIDENCE AT OVERLAKE PHASE 1
ENTRY #1293090

PROVIDENCE AT OVERLAKE PHASE 2
ENTRY #XXXXXX

ZENITH TOOELE LLC
ENTRY #418920

96' TEMPORARY TURNAROUND EASEMENT

PHASE 3

PHASE 4

PHASE 5

PHASE 6

1380 NORTH

CLEMENTE WAY

LAUREN LANE

300 WEST STREET (DEDICATED PUBLIC ROAD)

340 WEST STREET (DEDICATED PUBLIC ROAD)

PROVIDENCE WAY (380 WEST) (DEDICATED PUBLIC ROAD)

1280 NORTH (DEDICATED PUBLIC ROAD)

BERRA BLVD. (1150 NORTH) (DEDICATED PUBLIC ROAD)

1170 NORTH (DEDICATED PUBLIC ROAD)

400 WEST STREET

1000 NORTH STREET (SR 112)

RAILROAD

S 45°16'09" E 123.37'

S 44°43'51" W 166.00'

S 45°16'09" E 75.30'

S 0°14'46" E 1178.51'

N 44°43'51" E 66.00'

S 45°16'09" E 26.41'

N 44°43'51" E 100.00'

S 45°16'09" E 149.56'

N 44°43'51" E 100.00'

N 45°16'09" W 29.40'

N 43°42'46" E 175.82'

N 89°45'14" E 246.94'

S 82°13'55" E 60.06'

S 84°32'22" E 97.96'

D=3°31'12"
R=1047.00'
L=64.32'
CB=S 15°13'36" W
C=64.31'

N 0°14'46" W 1551.79'

BASIS OF BEARING:
N 0°14'46" W 2642.58' (MON. TO MON.)

S 43°54'30" W 520.79'

S 89°49'09" W 51.92'

D=0°36'18"
R=39317.08'
L=415.23'
CB=S 89°52'42" E
C=415.23'

S 89°34'33" E 28.08'

POINT OF BEGINNING SET BAR & CAP

WEST QUARTER CORNER OF SECTION 16, T3S, R4W, SLB&M (FOUND 3" TOOELE COUNTY SURVEYOR BRASS MON. W/ RING & LID, DATED 2009)

SOUTHWEST CORNER OF SECTION 16, T3S, R4W, SLB&M (FOUND 3" TOOELE COUNTY SURVEYOR BRASS MON. W/ RING & LID, DATED 2009)

LOT 601
189,867 sq.ft.
4.36 acres

LOT 101, LOT 102, LOT 205, LOT 206, LOT 207, LOT 210, LOT 211, LOT 212, LOT 213, LOT 214, LOT 215, LOT 216, LOT 217, LOT 218, LOT 219

Lot	sq.ft.	acres
LOT 301	7,436	0.17
LOT 302	7,714	0.18
LOT 303	7,714	0.18
LOT 304	7,714	0.18
LOT 305	7,714	0.18
LOT 306	7,714	0.18
LOT 307	7,714	0.18
LOT 308	7,714	0.18
LOT 309	7,714	0.18
LOT 310	7,714	0.18
LOT 311	7,714	0.18
LOT 312	8,500	0.20
LOT 313	8,500	0.20
LOT 314	8,500	0.20
LOT 315	8,500	0.20
LOT 316	8,500	0.20
LOT 317	8,852	0.20
LOT 318	7,000	0.16
LOT 319	8,000	0.18
LOT 320	7,500	0.17
LOT 321	8,000	0.18
LOT 322	7,500	0.17
LOT 323	8,000	0.18
LOT 324	8,000	0.18
LOT 325	9,603	0.22
LOT 326	9,310	0.21
LOT 327	8,585	0.20
LOT 328	8,018	0.18
LOT 329	8,180	0.19
LOT 330	8,886	0.20
LOT 331	8,994	0.21
LOT 332	8,000	0.18
LOT 333	8,000	0.18
LOT 334	7,500	0.17
LOT 335	8,000	0.18
LOT 336	7,500	0.17
LOT 337	8,000	0.18
LOT 338	8,000	0.18
LOT 339	8,895	0.20
LOT 340	8,895	0.20
LOT 341	8,000	0.18
LOT 342	8,000	0.18
LOT 343	7,500	0.17
LOT 344	8,000	0.18
LOT 345	7,500	0.17
LOT 346	8,000	0.18
LOT 347	8,000	0.18
LOT 348	8,994	0.21
LOT 401	8,000	0.18
LOT 402	8,000	0.18
LOT 403	8,000	0.18
LOT 404	7,479	0.17
LOT 405	7,500	0.17
LOT 406	8,000	0.18
LOT 407	9,302	0.21
LOT 408	7,317	0.17
LOT 409	7,500	0.17
LOT 410	8,000	0.18
LOT 411	8,000	0.18
LOT 412	7,500	0.17
LOT 413	7,500	0.17
LOT 414	8,000	0.18
LOT 415	8,000	0.18
LOT 416	8,000	0.18
LOT 417	8,852	0.20
LOT 418	8,563	0.20
LOT 419	8,500	0.20
LOT 420	8,852	0.20
LOT 421	7,000	0.16
LOT 422	8,000	0.18
LOT 423	7,500	0.17
LOT 424	8,000	0.18
LOT 425	7,500	0.17
LOT 426	8,000	0.18
LOT 427	8,000	0.18
LOT 428	7,500	0.17
LOT 429	8,000	0.18
LOT 430	8,279	0.19
LOT 431	8,000	0.18
LOT 432	8,000	0.18
LOT 501	8,000	0.18
LOT 502	8,000	0.18
LOT 503	8,000	0.18
LOT 504	9,000	0.21
LOT 505	8,500	0.20
LOT 506	7,530	0.17
LOT 507	7,530	0.17
LOT 508	7,530	0.17
LOT 509	7,530	0.17
LOT 510	7,530	0.17
LOT 511	7,530	0.17
LOT 512	8,500	0.20
LOT 513	8,500	0.20
LOT 514	7,530	0.17
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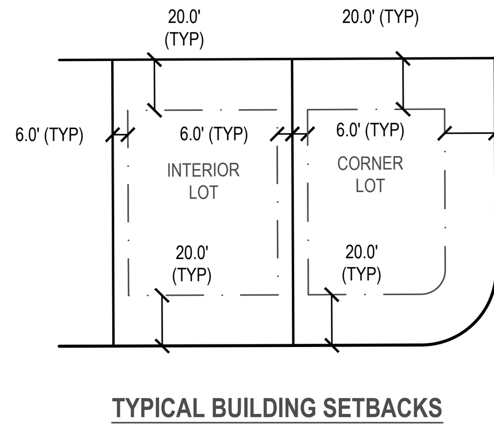
LOT 516	7,530	0.17
LOT 517	7,530	0.17
LOT 518	7,530	0.17
LOT 519	7,530	0.17
LOT 520	8,500	0.20
LOT 521	8,500	0.20
LOT 522	7,530	0.17
LOT 523	7,530	0.17
LOT 524	7,530	0.17

10.0' PU&DE (TYP)

5.0' PU&DE (TYP)



TYPICAL BUILDING SETBACKS

SCALE 1" = 80'
(SETBACK REQUIREMENTS FOR R1-7 ZONE PER TOOELE CITY DEVELOPMENT CODE CHAPTER 14, TABLE 3

For Review

LEGEND

SECTION CORNER

EXISTING STREET MONUMENT

PROPOSED STREET MONUMENT

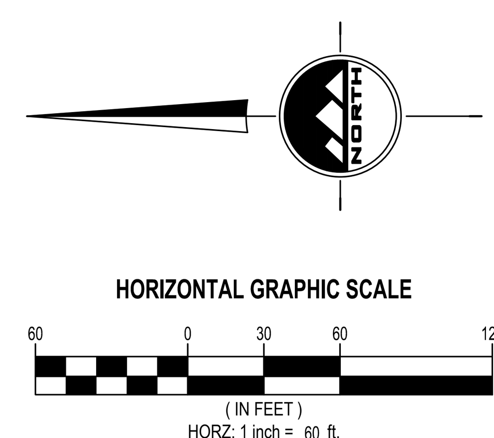
SET 5/8" REBAR WITH YELLOW PLASTIC CAP, OR NAIL STAMPED "ENSIGN ENG. & LAND SURV."

PU&DE = PUBLIC UTILITY & DRAINAGE EASEMENT

BOUNDARY LINE

CENTER LINE

EASEMENTS



HORIZONTAL GRAPHIC SCALE

60 0 30 60 120

(IN FEET)
HORZ: 1 inch = 60 ft.

DEVELOPER
HOWARD SCHMIDT
PO BOX 95410
SOUTH JORDAN, UT
801-859-9449

PRELIMINARY PLAT
PROVIDENCE SUBDIVISION AT OVERLAKE

LOCATED IN THE SOUTHWEST QUARTER
OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST,
SALT LAKE BASE AND MERIDIAN
TOOELE CITY, TOOELE COUNTY, UTAH

TOOELE
169 North Main Street Unit 1
Tooele, Utah 84074
Phone: 435.843.3590
Fax: 435.578.0108

WWW.ENSIGNENG.COM

SALT LAKE CITY
LAYTON
CEDAR CITY
RICHFIELD

SHEET 2 of 2

PROJECT NUMBER : 7563A

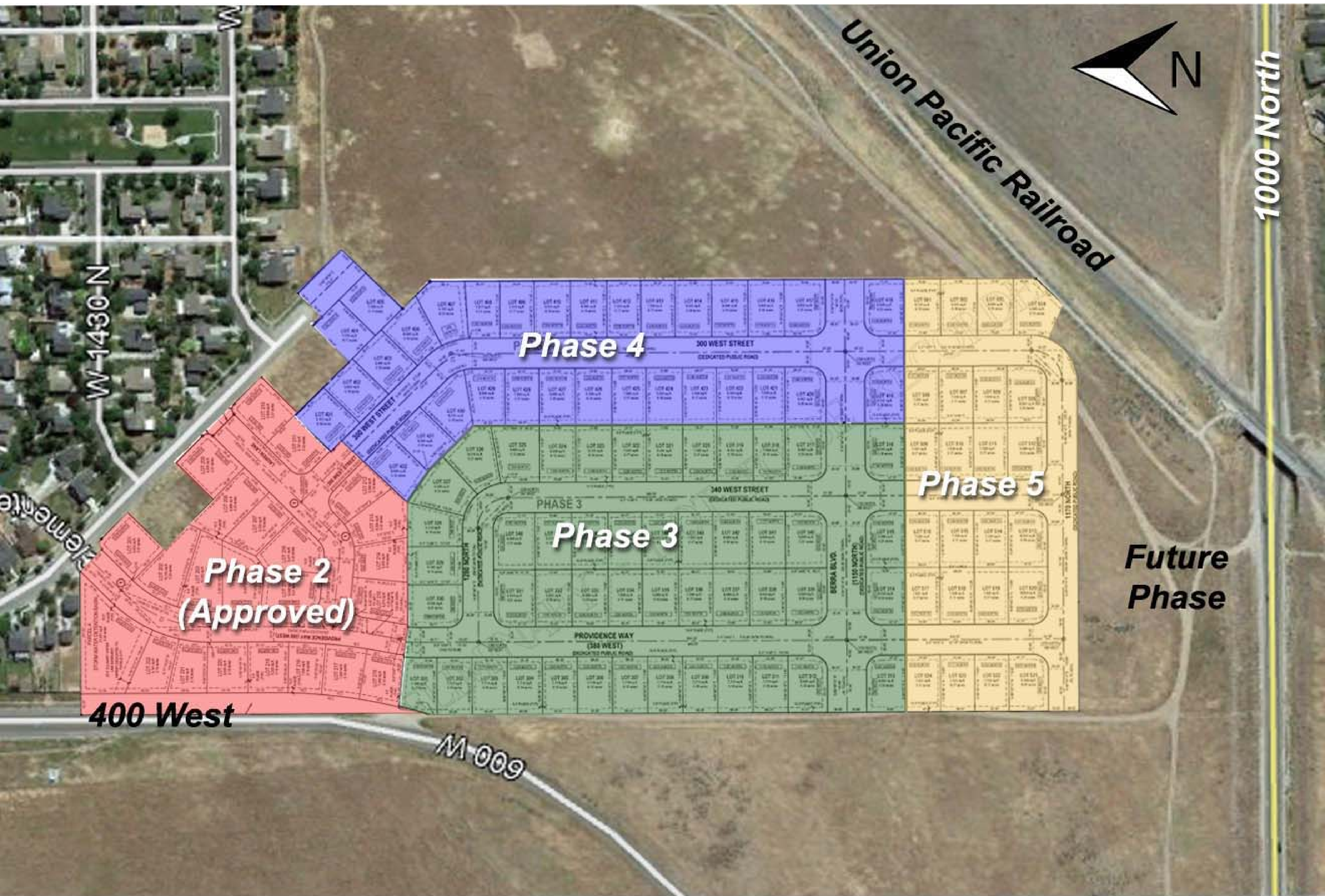
MANAGER : D. KINSMAN

DRAWN BY : R. FISH

CHECKED BY : D. KINSMAN

DATE : 9/11/18

Providence at Overlake Phases 3-6 Preliminary Plan



Phasing Plan

STAFF REPORT

11/7/2018

To: Tooele City Planning Commission
Business Date: 11/14/2018

From: Planning Division
Community Development Department

Prepared By: Andrew Aagard, City Planner / Zoning Administrator

Re: **Lexington Greens at Overlake Phase 1 – Preliminary Plan Request**

Application No.:	P18-586
Applicant:	Charles Ackerlow, representing Zenith Tooele, LLC
Project Location:	Approximately 600 West 1200 North
Zoning:	R1-7 Single-Family Residential Zone
Acreage:	4.72 Acres (Approximately 205,603 ft^2)
Request:	Request for approval of a Preliminary Plan in the R1-7 zone for a 17 lot single-family dwelling subdivision.

BACKGROUND

This application is a request for approval of a Preliminary Plan for approximately 4.72 acres located at approximately 600 West 1200 North. The property is currently zoned R1-7 Single-Family Residential. The applicant is requesting that a Preliminary Plan be approved to allow for the development of the currently vacant site as 17 single-family dwellings.

ANALYSIS

General Plan and Zoning. The Land Use Map of the General Plan calls for the Residential land use designation for the subject property. The property has been assigned the R1-7 Single-Family Residential zoning classification, supporting approximately five dwelling units per acre. The purpose of the R1-7 zone is to "provide a range of housing choices to meet the needs of Tooele City residents, to offer a balance of housing types and densities, and to preserve and maintain the City's residential areas as safe and convenient places to live. These districts are intended for well-designed residential areas free from any activity that may weaken the residential strength and integrity of these areas. Typical uses include single family dwellings, two-family dwellings and multi-family dwellings in appropriate locations within the City. Also allowed are parks, open space areas, pedestrian pathways, trails and walkways, utility facilities and public service uses required to meet the needs of the citizens of the City." The R1-7 Single-Family Residential zoning designation is identified by the General Plan as a preferred zoning classification for the Residential land use designation. Properties to the north, west and south are all zoned R1-7 Residential. Properties to the east are zoned R1-7 Residential and P Overlake. Mapping pertinent to the subject request can be found in Exhibit "A" to this report.

Subdivision Layout. The proposed subdivision contains 17 lots and is the first phase of a much larger subdivision. Access into the subdivision is gained from 400 West, an existing public right-of-way. Lots within the subdivision range in size from 7,020 square feet up to 16,000 square feet. All lots within the subdivision meet or exceed all minimum lot standards for lot width, lot size and lot frontages as required by the R1-7 zone. The applicant is proposing some open space with the subdivision. Parcels "A" and

“B” will be open space streetscape and will be maintained by a development HOA.

A large 20 wide sewer easement is proposed between lots 104 and 105 and will also be landscaped and maintained by the development HOA.

All roads within the development will be public streets and will terminate into a 120 foot temporary turnaround that will be protected in an easement until future phases develop to the west.

Criteria For Approval. The procedure for approval or denial of a Subdivision Preliminary Plat request, as well as the information required to be submitted for review as a complete application is found in Sections 7-19-8 and 9 of the Tooele City Code.

REVIEWS

Planning Division Review. The Tooele City Planning Division has completed their review of the Preliminary Plan submission and has issued a recommendation for approval for the request with the following proposed conditions:

1. The developer shall install temporary cul-de-sac turn around at the ends of 1470 North and 1410 North.
2. Parcels “A” and “B” shall be privately owned and maintained.
3. The Developer shall obtain final plat approval for each phase prior to any construction on the site.

Engineering Review. The Tooele City Engineering and Public Works Divisions have completed their reviews of the Preliminary Plan submission and have issued a recommendation for approval for the request.

STAFF RECOMMENDATION

Staff recommends approval of the request for a Preliminary Plan by Charles Ackerlow, representing Zenith Tooele, LLC, application number P18-586, subject to the following conditions:

1. That all requirements of the Tooele City Engineering and Public Works Divisions shall be satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.
2. That all requirements of the Tooele City Building Division shall be satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.
3. That all requirements of the Tooele City Fire Department shall be satisfied throughout the development of the site and the construction of all buildings on the site.
4. That all requirements of the geotechnical report shall be satisfied throughout the development of the site and the construction of all buildings on the site.
5. The developer shall install temporary cul-de-sac turn around at the ends of 1470 North and 1410 North.
6. Parcels “A” and “B” shall be privately owned and maintained.
7. The Developer shall obtain final plat approval for each phase prior to any construction on the site.

This recommendation is based on the following findings:

1. The proposed development plans meet the intent, goals, and objectives of the Master Plan.
2. The proposed development plans meet the intent, goals, and objectives of the Tooele City General Plan.
3. The proposed development plans meet the requirements and provisions of the Tooele City Code.
4. The proposed development plans will not be deleterious to the health, safety, and general welfare of the general public nor the residents of adjacent properties.
5. The proposed development conforms to the general aesthetic and physical development of the area.
6. The public services in the area are adequate to support the subject development.

MODEL MOTIONS

Sample Motion for a Positive Recommendation – "I move we forward a positive recommendation to the City Council for the Lexington Greens at Overlake Phase 1 Preliminary Plan Request by Charles Ackerlow, representing Zenith Tooele, LLC for the purpose of creating 17 single-family residential lots at approximately 600 West 1200 North, application number P18-586, based on the findings and subject to the conditions listed in the Staff Report dated 11/7/2018:"

1. List any additional findings and conditions…

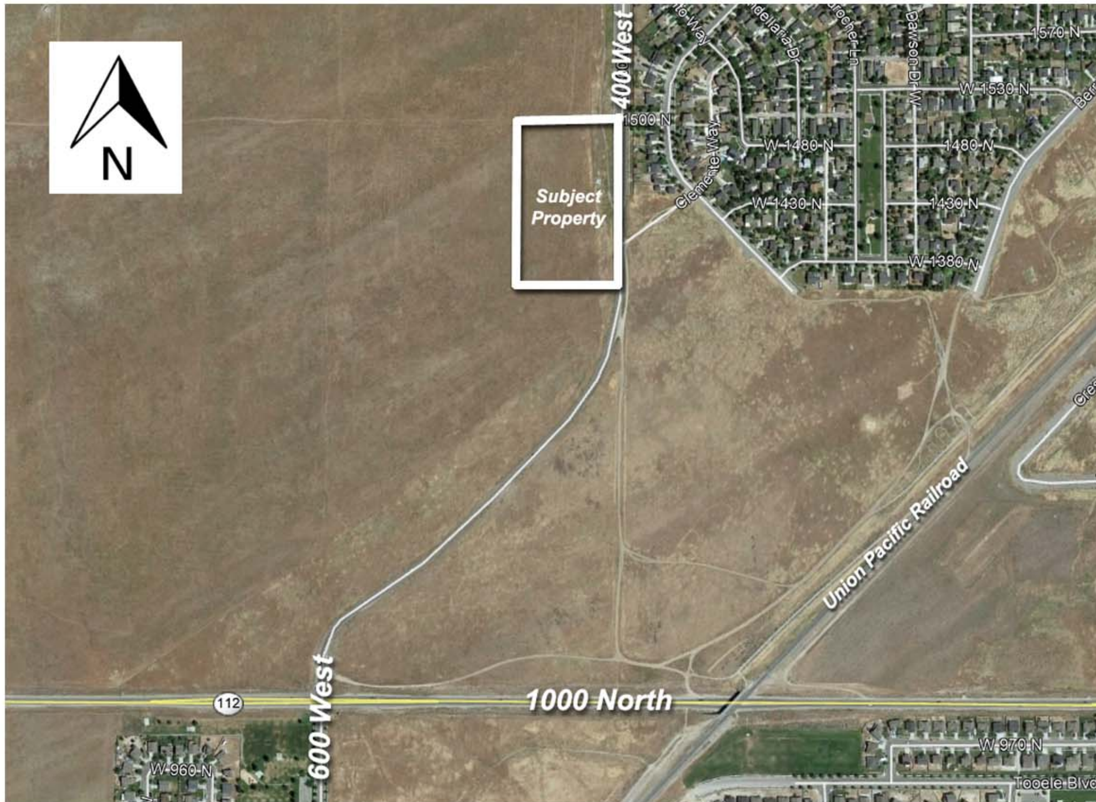
Sample Motion for a Negative Recommendation – "I move we forward a negative recommendation to the City Council for the Lexington Greens at Overlake Phase 1 Preliminary Plan Request by Charles Ackerlow, representing Zenith Tooele, LLC for the purpose of creating 17 single-family residential lots at approximately 600 West 1200 North, application number P18-586, based on the following findings:"

1. List any additional findings…

EXHIBIT A

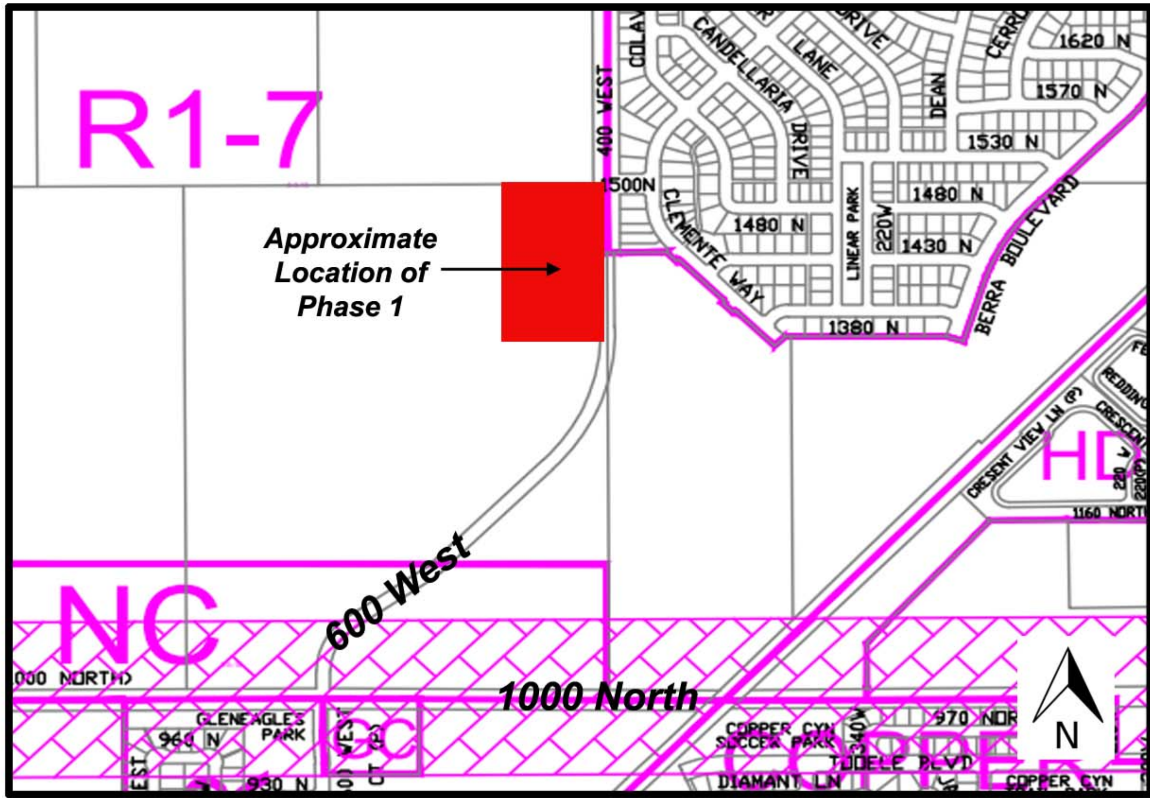
MAPPING PERTINENT TO THE LEXINGTON GREENS AT OVERLAKE PHASE 1 PRELIMINARY PLAN

Lexington Greens Phase 1 Preliminary Plan



Current Zoning

Lexington Greens Phase 1 Preliminary Plan



Current Zoning

EXHIBIT B

PROPOSED DEVELOPMENT PLANS

PRELIMINARY PLAT
LEXINGTON GREENS AT OVERLAKE PHASE 1

LOCATED IN THE
SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 3
SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN,
TOOELE CITY, TOOELE COUNTY, UTAH

PERRY HOMES INC.
ENTRY No. 418920

NORTHEAST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN. (FOUND 3" BRASS TOOELE COUNTY SURVEYORS MONUMENT WITH RING AND LID, DATED 2000)

EAST QUARTER CORNER OF SECTION 17, T3S, R4W, SLB&M (FOUND 3" TOOELE COUNTY SURVEYOR BRASS MON. W/ RING & LID, DATED 2009)

OVERLAKE EST PH 1C
ENTRY #107635

N 89°42'23" E 326.09'

N 0°17'37" W 117.00'

N 89°42'23" E 25.11'

N 0°17'37" W 354.00'

S 89°42'23" W 24.57'

N 0°17'37" W 117.00'

S 89°42'23" W 388.14'

S 0°14'46" E 350.05'

N 89°45'14" E 62.00'

S 0°14'46" E 237.90'

POINT OF BEGINNING

LOT 101 — 7,020 sq.ft. 0.16 acres — 458 WEST
LOT 102 — 7,093 sq.ft. 0.16 acres — 448 WEST
LOT 103 — 8,506 sq.ft. 0.20 acres — 444 WEST
LOT 104 — 16,005 sq.ft. 0.37 acres — 1468 NORTH
LOT 105 — 7,000 sq.ft. 0.16 acres — 1458 NORTH
LOT 106 — 7,020 sq.ft. 0.16 acres — 1448 NORTH
LOT 107 — 7,020 sq.ft. 0.16 acres — 1436 NORTH
LOT 108 — 8,003 sq.ft. 0.18 acres — 1424 NORTH
LOT 109 — 7,700 sq.ft. 0.18 acres — 445 WEST
LOT 110 — 7,020 sq.ft. 0.16 acres — 465 WEST
LOT 111 — 7,020 sq.ft. 0.16 acres — 454 WEST
LOT 112 — 7,700 sq.ft. 0.18 acres — 446 WEST
LOT 113 — 7,020 sq.ft. 0.16 acres — 451 WEST
LOT 114 — 7,020 sq.ft. 0.16 acres — 443 WEST
LOT 115 — 7,020 sq.ft. 0.16 acres — 433 WEST
LOT 116 — 7,020 sq.ft. 0.16 acres — 425 WEST
LOT 117 — 7,011 sq.ft. 0.16 acres — 415 WEST
PARCEL A — 17,000 sq.ft. 0.39 acres
PARCEL B — 4,839 sq.ft. 0.11 acres

1470 NORTH (DEDICATED PUBLIC ROAD)

440 WEST (DEDICATED PUBLIC ROAD)

1410 NORTH (DEDICATED PUBLIC ROAD)

400 WEST (DEDICATED PUBLIC ROAD)

CAROLE PARKWAY (DEDICATED PUBLIC ROAD)

120' TEMPORARY TURNAROUND EASEMENT ENTRY #

20' SEWER & WATER EASEMENT

10.0' PACIFIC CORP. EASEMENT

5.0' PU&DE (TYP)

10.0' PU&DE (TYP)

BASIS OF BEARING: N 0°14'46" W 2642.63' (MON TO MON)

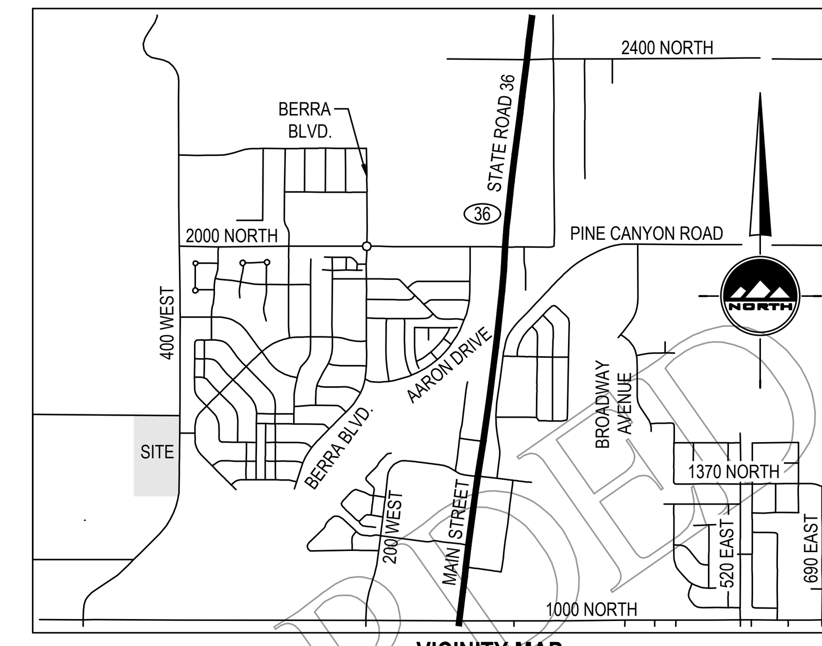
FUTURE LEXINGTON GREENS AT OVERLAKE PHASE 2
ZENITH TOOELE LLC
ENTRY No. 418920

SOUTH QUARTER CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN. (FOUND 3" BRASS TOOELE COUNTY SURVEYORS MONUMENT WITH RING AND LID, DATED 2009)

SOUTHEAST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN. (FOUND 3" BRASS TOOELE COUNTY SURVEYORS MONUMENT WITH RING AND LID, DATED 2009)

TYPICAL BUILDING SETBACKS

SCALE 1" = 80'
(SETBACK REQUIREMENTS FOR R1-7 ZONE PER TOOELE CITY DEVELOPMENT CODE CHAPTER 14, TABLE 3



VICINITY MAP
NOT TO SCALE

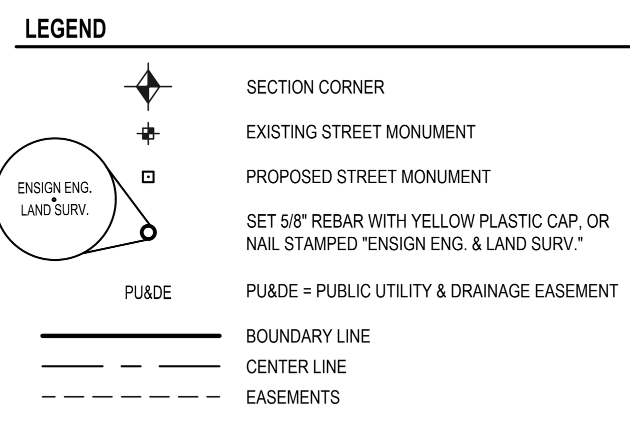
CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD	TANGENT
CL1	762.00'	32.63'	2°27'13"	S0°58'51"W	32.63'	16.32
CL2	762.00'	84.84'	6°22'46"	S5°23'50"W	84.80'	42.46
CL3 (TOTAL)	762.00'	117.47'	8°49'58"	S4°10'14"W	117.36'	58.85

CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD	TANGENT
C1	29.50'	46.31'	89°57'08"	N44°43'48"E	41.70'	29.48
C2	29.50'	46.34'	90°00'00"	S45°17'37"E	41.72'	29.50
C3	15.00'	14.92'	56°59'34"	S28°12'09"W	14.31'	8.14
C4	50.00'	48.39'	55°26'50"	S28°58'31"W	46.52'	26.28
C5	50.00'	20.46'	23°26'53"	S10°28'21"E	20.32'	10.38
C6	50.00'	33.45'	38°20'02"	S41°21'48"E	32.83'	17.38
C7	50.00'	47.53'	54°27'47"	S87°45'42"E	45.76'	25.73
C8	50.00'	8.58'	9°49'37"	S60°05'36"W	8.57'	4.30
C9 (TOTAL)	50.00'	158.41'	181°31'09"	N34°03'38"W	99.99'	-3771.26
C10	15.00'	9.04'	34°31'36"	N72°26'35"E	8.90'	4.66
C11	29.50'	46.34'	90°00'00"	N45°17'37"W	41.72'	29.50
C12	29.50'	46.34'	90°00'00"	N44°42'23"E	41.72'	29.50
C13	29.50'	47.63'	92°30'05"	S44°02'35"E	42.62'	30.82
C14	720.00'	86.73'	6°54'07"	S5°39'31"W	86.68'	43.42

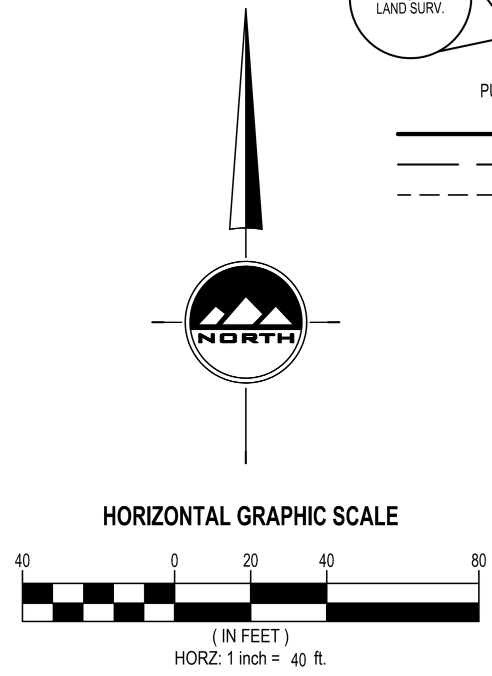
NOTE:

1. PARCEL "A" & "B" TO BE OPEN SPACE AND TO BE OWNED AND MAINTAINED BY PROVIDENCE AT OVERLAKE SPECIAL SERVICE DISTRICT.
2. ZONING IS R1-7.

LEGEND



- SECTION CORNER
- EXISTING STREET MONUMENT
- PROPOSED STREET MONUMENT
- SET 5/8" REBAR WITH YELLOW PLASTIC CAP, OR NAIL STAMPED "ENSIGN ENG. & LAND SURV."
- PU&DE = PUBLIC UTILITY & DRAINAGE EASEMENT
- BOUNDARY LINE
- CENTER LINE
- EASEMENTS



HORIZONTAL GRAPHIC SCALE
40 0 20 40 80
(IN FEET)
HORZ: 1 inch = 40 ft.

DEVELOPER
ZENITH DEVELOPMENT LLC
2040 MURRY HOLLADAY ROAD, SUITE 204
SALT LAKE CITY, UTAH 84117
801-428-3755

SURVEYOR'S CERTIFICATE

I, Douglas J Kinsman do hereby certify that I am a Licensed Land Surveyor, and that I hold certificate No. 334575 as prescribed under laws of the State of Utah. I further certify that by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land into lots and streets, hereafter to be known as LEXINGTON GREENS AT OVERLAKE PHASE 1, and that the same has been correctly surveyed and staked on the ground as shown on this plat. I further certify that all lots meet frontage width and area re-quirements of the applicable zoning ordinances.

BOUNDARY DESCRIPTION

A parcel of land, situate in the Southeast Quarter of Section 17, Township 3 South, Range 4 West, Salt Lake Base and Meridian, said parcel also located in Tooele City, Tooele County, Utah, more particularly described as follows:

Beginning at a point on the Section line, said point being South 0°14'46" East 350.10 feet along the Section Line from the East Quarter Corner of Section 17, Township 3 South, Range 4 West, Salt Lake Base and Meridian, and running:

thence South 0°14'46" East 237.90 feet along said Section Line;
thence South 89°42'23" West 287.31 feet;
thence North 00°17'37" West 117.00 feet;
thence South 89°42'23" West 24.57 feet;
thence North 00°17'37" West 354.00 feet;
thence North 89°42'23" East 25.11;
thence North 00°17'37" West 117.00 feet; to the Quarter Section Line of said Section 17
thence North 89°42'23" East 326.09 feet along said Quarter Section, to the west line of 400 West Street;
thence South 0°14'46" East 350.05 feet along said west line;
thence North 89°45'14" East 62.00 feet; to the Point of Beginning.

Contains 215,301 square feet or 4.94 acres.

Date
Douglas J Kinsman
License no. 334575

For Review 10/17/2018 7:57:26 AM

DOMINION ENERGY

DOMINION ENERGY APPROVES THIS PLAT SOLELY FOR THE PURPOSE OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS. DOMINION ENERGY MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT CONSTITUTE ABROGATION OR WAIVER OF ANY OTHER EXISTING RIGHTS, OBLIGATIONS OR LIABILITIES PROVIDED BY LAW OR EQUITY. THIS APPROVAL DOES NOT CONSTITUTE ACCEPTANCE, APPROVAL OR ACKNOWLEDGMENT OF ANY TERMS CONTAINED IN THE PLAT, INCLUDING THOSE SET IN THE OWNERS DEDICATION AND THE NOTES AND DOES NOT CONSTITUTE A GUARANTEE OF PARTICULAR TERMS OF NATURAL GAS SERVICE. FOR FURTHER INFORMATION PLEASE CONTACT DOMINION ENERGY'S RIGHT-OF-WAY DEPARTMENT AT 1-800-366-8532.

APPROVED THIS ________ DAY OF ____________________, 20

DOMINION ENERGY

BY - ______________________________

TITLE - ______________________________

ROCKY MOUNTAIN POWER COMPANY

1. PURSUANT TO UTAH CODE ANN. § 54-3-27 THIS PLAT CONVEYS TO THE OWNER(S) OR OPERATORS OF UTILITY FACILITIES A PUBLIC UTILITY EASEMENT ALONG WITH ALL THE RIGHTS AND DUTIES DESCRIBED THEREIN.
2. PURSUANT TO UTAH CODE ANN. § 17-27A-603(4)(C)(II) ROCKY MOUNTAIN POWER ACCEPTS DELIVERY OF THE PUE AS DESCRIBED IN THIS PLAT AND APPROVES THIS PLAT SOLELY FOR THE PURPOSE OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS AND APPROXIMATES THE LOCATION OF THE PUBLIC UTILITY EASEMENTS, BUT DOES NOT WARRANT THEIR PRECISE LOCATION. ROCKY MOUNTAIN POWER MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT AFFECT ANY RIGHT THAT ROCKY MOUNTAIN POWER HAS UNDER:

(1) A RECORDED EASEMENT OR RIGHT-OF WAY
(2) THE LAW APPLICABLE TO PRESCRIPTIVE RIGHTS
(3) TITLE 54, CHAPTER 8A, DAMAGE TO UNDERGROUND UTILITY FACILITIES OR
(4) ANY OTHER PROVISION OF LAW.

APPROVED THIS ________ DAY OF ____________________, 20

ROCKY MOUNTAIN POWER

BY - ______________________________

TITLE - ______________________________

HEALTH DEPARTMENT

APPROVED THIS ________ DAY OF ____________________, 20______, BY THE TOOELE COUNTY HEALTH DEPARTMENT.

TOOELE COUNTY HEALTH DEPARTMENT

SCHOOL DISTRICT

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE COUNTY SCHOOL DISTRICT

TOOELE COUNTY SCHOOL DISTRICT

POST MASTER

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE POST MASTER

POST MASTER

COMCAST

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE COMCAST CABLE

COMCAST

CENTURY LINK

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE CENTURY LINK.

CENTURY LINK

CHIEF OF POLICE

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE CITY CHIEF OF POLICE.

TOOELE CITY CHIEF OF POLICE

FIRE CHIEF

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE CITY FIRE DEPARTMENT.

TOOELE CITY FIRE CHIEF

PARKS DEPARTMENT

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE CITY PARKS DEPARTMENT.

TOOELE CITY PARKS DEPARTMENT

CITY ATTORNEY

APPROVED AS TO FORM THIS ________ DAY OF ____________________, 20________.

TOOELE CITY ATTORNEY

CITY ENGINEER

APPROVED AS TO FORM THIS ________ DAY OF ____________________, 20________.

TOOELE CITY ENGINEER

COMMUNITY DEVELOPMENT

APPROVED AS TO FORM THIS ________ DAY OF ____________________, 20________.

TOOELE CITY COMMUNITY DEVELOPMENT

COUNTY RECORDER

REVIEWED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE COUNTY RECORDER AS TO DESCRIPTION OF RECORD.

TOOELE COUNTY RECORDER

CITY COUNCIL

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE CITY COUNCIL.

CHAIRMAN TOOELE CITY COUNCIL

PLANNING COMMISSION

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE TOOELE CITY PLANNING COMMISSION.

ATTEST:

PRELIMINARY PLAT
LEXINGTON GREENS AT OVERLAKE PHASE 1

LOCATED IN THE
SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 3
SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN,
TOOELE CITY, TOOELE COUNTY, UTAH

ENSIGN
TOOELE
169 North Main Street Unit 1
Tooele, Utah 84074
Phone: 435.843.3590
Fax: 435.578.0108
WWW.ENSIGNENG.COM

SALT LAKE CITY Phone: 801.255.0529
LAYTON Phone: 801.547.1100
CEDAR CITY Phone: 435.865.1453
RICHFIELD Phone: 435.896.2983

SHEET 1 of 1

PROJECT NUMBER : 8260A
MANAGER : D. KINSMAN
DRAWN BY : C. CHILD
CHECKED BY : D. KINSMAN
DATE : 10/17/18

PRELIMINARY - NOT TO BE RECORDED

TOOELE CITY CORPORATION

ORDINANCE 2018-21

AN ORDINANCE OF THE TOOELE CITY COUNCIL REASSIGNING 31.88 ACRES OF PROPERTY CURRENTLY ZONED R1-7 RESIDENTIAL TO HDR HIGH DENSITY RESIDENTIAL, CREATING A PLANNED UNIT DEVELOPMENT ZONING OVERLAY, AND ASSIGNING THE PLANNED UNIT DEVELOPMENT OVERLAY TO 23.90 ACRES OF PROPERTY LOCATED AT APPROXIMATELY 1600 NORTH BERRA BOULEVARD .

WHEREAS, Utah Code §10-9a-401, *et seq.*, requires and provides for the adoption of a "comprehensive, long-range plan" (hereinafter the "General Plan") by each Utah city and town, which General Plan contemplates and provides direction for (a) "present and future needs of the community" and (b) "growth and development of all or any part of the land within the municipality"; and,

WHEREAS, the Tooele City General Plan includes various elements, including water, sewer, transportation, and land use. The Tooele City Council adopted the Land Use Element of the Tooele City General Plan, after duly-noticed public hearings, by Ordinance 1998-39, on December 16, 1998, by a vote of 5-0; and,

WHEREAS, the Land Use Element (hereinafter the "Land Use Plan") of the General Plan establishes Tooele City's general land use policies, which have been adopted by Ordinance 1998-39 as a Tooele City ordinance, and which set forth appropriate Use Designations for land in Tooele City (e.g., residential, commercial, industrial); and,

WHEREAS, the Land Use Plan reflects the findings of Tooele City's elected officials regarding the appropriate range, placement, and configuration of land uses within the City, which findings are based in part upon the recommendations of land use and planning professionals, Planning Commission recommendations, public comment, and other relevant considerations; and,

WHEREAS, Utah Code §10-9a-501, *et seq.*, provides for the enactment of a "land use [i.e., zoning] ordinances and a zoning map" that constitute a portion of the City's regulations (hereinafter "Zoning") for land use and development, establishing order and standards under which land may be developed in Tooele City; and,

WHEREAS, a fundamental purpose of the Land Use Plan is to guide and inform the recommendations of the Planning Commission and the decisions of the City Council about the Zoning designations assigned to land within the City (e.g., R1-10 residential, neighborhood commercial (NC), light industrial (LI)); and,

WHEREAS, Tooele City Code Chapter 7-6 constitutes Tooele City's Planned Unit Development (PUD) overlay zoning district, the purposes of which are stated in §7-6-1, incorporated herein by this reference, and which include, among others, to create opportunities for flexible site planning, to

encourage the preservation of open space areas and critical natural areas, and to encourage the provision of special development amenities by the developer; and,

WHEREAS, the R1-7 zoning district is currently assigned to approximately 57.78 acres of land located on the north side of the Union Pacific Railroad along Berra Boulevard at approximately 1600 North (see map attached as **Exhibit A**); and,

WHEREAS, the 57.78 acres are currently owned by Metro West Developers, LLC; and,

WHEREAS, by Rezone Petition received September 28, 2018, Metro West Developers, LLC requested that 31.88 acres of the subject property be reassigned to the HDR High Density Residential zoning district and the remaining 23.90 acres receive a Planned Unit Development ("PUD") zoning overlay designation with its current R1-7 zoning assignment for the purpose of decreasing lot size, lot width and lot setbacks to provide flexibility in site and building design, placement of buildings, product type, and use of open space; and,

WHEREAS, the Planned Unit Development portion is anticipated to contain single-family detached homes on individual lots; and,

WHEREAS, the surrounding properties to the west are assigned the R1-7 Residential zoning designation and properties to the north are assigned to the P Planned Development zoning designation; and,

WHEREAS, the surrounding properties to the east and south across the Union Pacific Railroad line are assigned the HDR High Density Residential and GC General commercial zoning districts; and,

WHEREAS, the development will contain a variety of housing types ranging from apartments and townhomes in the HDR High Density Residential portion to single-family detached and small lot cluster style homes in the PUD Planned Unit Development portion; and,

WHEREAS, density within the PUD Planned Unit Development portion of the proposed development shall be determined only by the underlying R1-7 zoning district, (Tooele City Code §7-6-2); and,

WHEREAS, the subject properties' design and development shall maintain all of the standards and requirements of the City Code for it's zoning designation including those standards established herein for the portion of the properties assigned to the Planned Unit Development zoning overlay; and,

WHEREAS, all roads within the 31.88 acre HDR High Density Residential development shall be privately owned and maintained roads; and,

WHEREAS, all open space within the development shall be privately owned and maintained; and,

WHEREAS, the City Administration recommends approval of this Ordinance 2018-21 as being in the best interest of the City to allow for desirable development and housing opportunities for all citizens of our community; and,

WHEREAS, Utah Code §10-9a-501 and §10-9a-503 provide for the municipal legislature to consider Planning Commission recommendations for amendments to the land use ordinances and zoning map, and to approve, revise, or reject the recommended amendments; and,

WHEREAS, on October 24, 2018, the Planning Commission convened a duly noticed public hearing, accepted written and verbal comment, and voted to forward its recommendation to the City Council (see Planning Commission minutes attached as Exhibit C); and,

WHEREAS, on ____________, the City Council convened a duly-advertised public hearing; and,

WHEREAS, the City Council finds that, subject to the reasonable and appropriate conditions outlined below, the proposed PUD overlay rezone is consistent with the General Plan and is not adverse to the best interest of the City; and,

WHEREAS, because the City is under no obligation to approve a PUD, it is appropriate for the City to require Irish Creek, LLC to comply with the conditions listed below:

NOW, THEREFORE, BE IT ORDAINED BY THE TOOELE CITY COUNCIL that:

Section 1. **Amendment.** The Tooele City Zoning Map is hereby amended to indicate that 31.88 acres of the subject property is reassigned to the HDR High Density Residential zoning district and 23.9 acres of the subject property is assigned a PUD Planned Unit Development according to the terms established herein, the underlying zone of which shall be the R1-7 Residential zoning district; and,

Section 2. **Conditions.** As express conditions to the City's approval of this Ordinance 2018-21 and the Zoning Map Amendment approved thereby, Metro West Developers, LLC is hereby required to do all of the following within the 23.9 acres of the subject property assigned the PUD Planned Unit Development designation at no cost to Tooele City:

1. A minimum of 50 lots within the PUD Planned Unit Development shall conform to the following standards:
    a. Lot Size: 5000 square foot minimum.
    b. Lot width and Frontage: 50 feet at front setback line, 35 feet of frontage.
    c. Front Setback: 20 feet to the home and garage from property line.
    d. Rear Setback: 20 feet from property line, 15 feet on corner lots.
    e. Side Setback: 6 feet from property line, 15 feet on corner lots.
    f. Building Height: 35 feet, 1 story minimum.

g. Lot coverage: 45% of the lot may be covered with buildings.

2. All remaining lots within the PUD Planned Unit Development shall conform to the following standards:
   1. Lot Setbacks: minimum setbacks shall be in accordance with the R1-7 zoning district except as expressly outlined as follows:
      A. Front-loaded single-family dwellings facing a public right-of-way.
         I. Front yard setback of 15 feet to right-of-way to dwelling and 18 feet from right-of-way to garage.
         II. Side yard setback of 3 feet from any shared interior lot line and 10 feet on corner lots.
         III. Rear yard setback of 10 feet for interior lots and 5 feet for corner lots.
      B. Front-loaded single-family dwellings facing a private right-of-way.
         I. Front yard setback of 5 feet from private road or shared driveway to dwelling and garage.
         II. Side yard setback of 3 feet from any shared interior lot line and 10 feet on corner lots.
         III. Rear yard setback of 5 feet from any shared interior lot line, and 10 feet from a right-of-way.
      C. Rear loaded single-family dwellings face a public or private right-of-way or open space.
         I. Front yard setback of 10 feet from public right-of-way.
         II. Side yard setback of 3 feet from any shared interior lot line and 10 feet on corner lots.
         III. Rear yard setback of 5 feet from private road or shared driveway to dwellings and garages.

   2. Lot Size: each lot shall be a minimum of 2,500 square feet per unit.
   3. Lot Width and Frontage: 30 foot lot width at front setback line for single-family dwellings and all other uses. Lot frontage of 30 feet.
   4. Lot Coverage: Total lot coverage of 70% for all buildings.
   5. Building Height: Maximum height of 35 feet or 3 stories. Minimum height of 1 story.
   6. Open Space: A minimum of 21,780 Square Feet of improved open space with one 700 square foot minimum playground area and one 100 square foot minimum covered sitting area.
   7. Roads: All roads within the PUD shall be public rights-of-way, with an exception to the private driveways providing access to cluster home type development.
   8. Water Rights: developer shall convey to the Tooele City Water Special Service District, by water rights deed, municipal water rights pursuant to Tooele City Code 7-26, as amended.
   9. Connecting Streets: developer shall accommodate and provide connecting public streets to and through the development for properties to the east and to the west.
   10. Design Standards: developer shall comply with the residential design standards,

established in Tooele City Code Chapters 7-11a and 7-11b, as amended.

11. Tooele City Regulations: the developer shall comply with all other Tooele City regulations, whether established by ordinance or policy, including, but not limited to the development and design standards, processes, application requirements, and payment of fees, including impact fees. All public improvements shall be designed and construction to standards and specifications established by the City.
12. Double-Frontage Lots or Units: Lots on public rights-of-way the developer shall provide for the installation and perpetual maintenance, by a duly-organized homeowner's association, of the public improvements (e.g., fencing, sidewalks, park strip landscaping, etc.) associated with double-frontage lots or units as required by Tooele City Code §7-19-17.1.
13. Fencing: Solid barrier type fencing shall be installed by the developer where lots and open space front on the Union Pacific Railroad right-of-way.

Section 3. **Rational Basis.** The City Council hereby finds that the above-described expressed conditions to the approval of this Ordinance 2018-21 are reasonable and necessary to serve, protect, and preserve the health, safety, and welfare of Tooele City and its residents, including future residents of the subject property.

Section 4. **No Vesting.** Approval of this Ordinance 2018-21, together with its exhibits, shall not be construed to imply or constitute any vesting or entitlement as to intensity of use (i.e., density) or configuration (i.e., lots, units, roads).

Section 5. **Severability.** If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 6. **Effective Date.** This Ordinance is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective immediately upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is passed by the Tooele City Council this _____ day of _________________, 2018.

TOOELE CITY COUNCIL

(For) (Against)

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

ABSTAINING: ____

MAYOR OF TOOELE CITY

(Approved) (Disapproved)

______________________________ ______________________________

ATTEST:

____
Michelle Y Pitt, City

Recorder S E A L

Approved as to Form: ____________________________
Roger Baker, Tooele City Attorney

EXHIBIT A

ZONING MAP

Berra Boulevard Development Zoning Map Amendment

Subject Property R1-7

1.99 Acre Tooele City Parcel

Subject Property R1-7

400 West

Main Street

1000 North

Aerial View

EXHIBIT B

REZONE PETITION

Zoning, General Plan, & Master Plan Map Amendment Application

Community Development Department
90 North Main Street, Tooele, UT 84074
(435) 843-2130 Fax (435) 843-2139
www.tooelecity.org

Notice: The applicant must submit copies of the map amendment proposal to be reviewed by the City in accordance with the terms of the Tooele City Code. Once plans for a map amendment proposal are submitted, the plans are subject to compliance reviews by the various city departments and may be returned to the applicant for revision if the plans are found to be inconsistent with the requirements of the City Code and all other applicable City ordinances. All submitted map amendment proposals shall be reviewed in accordance with the Tooele City Code. Submission of a map amendment proposal in no way guarantees placement of the application on any particular agenda of any City reviewing body. It is strongly advised that all applications be submitted well in advance of any anticipated deadlines.

P18-713

Project Information

Date of Submission: 09/28/18	Current Map Designation: Medium Density Res.	Proposed Map Designation: MDR and HDR	Parcel #(s): 02-126-0-0001 02-126-0-0025 & 02-126-0-0006
Project Name: Berra Boulevard Development			Acres: 55.78 + 1.99
Project Address: South of Aaron Dr., east of Berra Blvd., northwest of Union Pacific Railroad			
Proposal for Amendment: ☒ Zoning Map ☒ General Plan ☐ Master Plan:			
Brief Project Summary: We are requesting a zoning and general plan amendment for the parcel numbers listed above. The subject properties are being planned for future residential development.			

Property Owner(s): METRO WEST DEVELOPERS, LLC			Applicant(s): METRO WEST DEVELOPERS, LLC		
Address: 1168 HAWLINS CIRCLE			Address: SAME		
City: KAYSVILLE	State: UT	Zip: 84037	City: SAME	State:	Zip:
Phone: (801) 550-5499			Phone: → TOM 801-403-5281		
Contact Person: JACK ANDREWS			Address: 1168 HAWLINS CIRCLE		
Phone: (801) 550-5499			City: KAYSVILLE	State: UT	Zip: 84037
Cellular: (801) 550 5499	Fax:		Email: JACK@RADIOCLOUD.COM		

*The application you are submitting will become a public record pursuant to the provisions of the Utah State Government Records Access and Management Act (GRAMA). You are asked to furnish the information on this form for the purpose of identification and to expedite the processing of your request. This information will be used only so far as necessary for completing the transaction. If you decide not to supply the requested information, you should be aware that your application may take a longer time or may be impossible to complete. If you are an "at-risk government employee" as defined in *Utah Code Ann.* § 63-2-302.5, please inform the city employee accepting this information. Tooele City does not currently share your private, controlled or protected information with any other person or government entity.

Note to Applicant: tromney@focusutah.com

Zoning and map designations are made by ordinance. Any change of zoning or map designation is an amendment the ordinance establishing that map for which the procedures are established by city and state law. Since the procedures must be followed precisely, the time for amending the map may vary from as little as 2½ months to 6 months or more depending on the size and complexity of the application and the timing.

60323520
2180721 CA 9/28/18

For Office Use Only			
Received By: SB	Date Received: 9-28-18	Fees: $6,600	App. #:

EXHIBIT C

PLANNING COMMISSION MINUTES

TOOELE CITY PLANNING COMMISSION MINUTES
October 24, 2018

Date: Wednesday, October 24, 2018
Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

Commission Members Present:
Tony Graf
Tyson Hamilton
Shauna Bevan
Chris Sloan
Matt Robinson
Phil Montano
Melanie Hammer

Commissioner Members Excused:
Bucky Whitehouse

City Employees Present
Mayor Debbie Wynn
Jim Bolser, Community Development Director
Andrew Aagard, City Planner
Roger Baker, City Attorney
Paul Hansen, City Engineer

Council Member Present:
Council Member McCall
Council Member Gochis

Minutes prepared by Kelly Odermott

Chairman Robinson called the meeting to order at 7:00 p.m.

1. **Pledge of Allegiance**

   The Pledge of Allegiance was led by Commissioner Hamilton

2. **Roll Call**
   Phil Montano, Present
   Tyson Hamilton, Present
   Chris Sloan, Present
   Tony Graf, Present
   Shauna Bevan, Present
   Melanie Hammer, Present

Matt Robinson, Present

Mr. Jim Bolser notified the Commissioners that the public notice for agenda items 3 and 4 listed a start time of 7:30 pm. Those two items could not be discussed until the public notice time of 7:30 pm. He provided the Commissioners with two options; one to move the agenda items 5, 6, 7, and 8 to 7:00 p.m. because they had a public notice of 7:00 p.m. or hold off on all agenda items until 7:30 p.m.

Commissioner Sloan moved to move agenda items 3 and 4 to the bottom of the agenda to meet the 7:30 public notice time. Commissioner Hamilton seconded the motion. The votes was as follows, Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye," Commissioner Bevan, "Aye," Commissioner Graf, "Aye'" Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

3. **Recommendation on a Subdivision Preliminary Plan request by Howard Schimdt for the 48-lot Providence at Overlake Subdivision, Phases 3-6 in the R1-7 Residential zoning district on approximately 31.4 acres located at approximately 1200 North 400 West.**

Presented by Andrew Aagard

This item tonight is a preliminary plan for Providence at Overlake Subdivision phases 3 through 6. The zoning is R1-7 as are the properties located to the West and East of the property. There is an existing road connection at Clemente Way. As part of the proposal road connections will be made at Berra Boulevard to the existing Berra Boulevard and to Zenith Properties which is currently under review as a subdivision. There will be a temporary turn around at the end of Clemente Way until it is continued to Berra Boulevard. All lots have been reviewed for compliance with lot standards under the R1-7 code. Staff is recommending approval with the staff conditions listed in the Staff Report.

Chairman Robinson asked the Commission if there were questions or comments in regard to the project; there were none.

Commissioner Bevan moved to forward a positive recommendation to the City Council for the Providence at Overlake Subdivision, Phases 3-6, preliminary plan request by Howard Schmidt for the purpose of creating approximately 48 single family residential lots at approximately 1200 North 400 West, application number P18-526 based on the findings and subject to the conditions listed in the Staff Report dated October 11, 2018 . Commissioner Sloan seconded the motion. The votes was as follows, Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye," Commissioner Bevan, "Aye," Commissioner Graf, "Aye'" Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

4. **Recommendation on a Subdivision Final Plat request by Joseph Earnest of Lone Star Builders for the 2 lot Quick Quack Tooele Subdivision in the GC General Commercial zoning district on approximately 1.01 acres located at 1262 North Main Street.**

Presented by Andrew Aagard

A map was shown on the screen. There is an existing car wash on the property. The car wash will be removed for the new development. The zoning of the property is general commercial. This is really a lot line adjustment done through a plat amendment, but because there was a prior plot line in place it is being processed as a typical final plat subdivision. This is the final plats being proposed and shifts the plot line a little to the East. This provides a little more room for the development. There is a sewer line in the center of the property that is being vacated and will be brought to the City Council. Staff is recommending a positive recommendation based on the conditions listed in the Staff Report.

Chairman Robinson asked the Commission if there were any questions or comments, there were none.

Commissioner Hammer moved to forward a positive recommendation to the City Council for the Quick Quack Tooele final plat request by Joseph Earnest representing Lone Star Builders for the purpose of redeveloping a 2-lot commercial subdivision, application number P18-294, based on the findings and subject to the conditions listed in the Staff Report dated October 11, 2018 . Commissioner Hamilton seconded the motion. The votes was as follows, Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye," Commissioner Bevan, "Aye," Commissioner Graf, "Aye'" Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

5. **Public Hearing and Recommendation on a Zoning Ordinance Text Amendment request by Tooele City regarding amendments to Table 1 of Section 7-14-3 of the Tooele City Coded dealing with the minimum project size for multi-family residential developments.**

Presented by Jim Bolser

This is a text amendment proposal. The City staff and City administration routinely look for areas of complication or inefficiencies in the City ordinance and look for ways to correct those. One that has been identified is a notation in the provisions of Section 7-14-3 that addresses residential zoning. In the land use table for that section, Table 1, there is a small notation under the listing for permissibility of multi-family residential developments that puts an acreage requirement on projects. The City's proposal is to strike that note. It does not change the permissibility of any land use. It simply removes the minimum project area requirement and lets the market do what it needs to do.

Chairman Robinson asked the Commission if there were any questions or comments; there were none.

Chairman Robinson opened the public hearing and asked if there were any members of the public that would like to step forward and comment.

Andrew Aston asked why it is necessary to eliminate the text from the Table. It eliminates the areas that are predetermined zone for housing, that sounds like it is a good thing.

Kristine Jackson asked what the minimum lot size is currently for multi-family residential units. Why would we want to change that because I feel like for multi-family units you wouldn't want to cram a bunch of people in and have no parking or facilities.

Andrea Cahoon stepped forward and stated that from the real estate side there are parcels that may be able to have multi-family units but are four acres and fall below the minimum of 5 acres. If a developer must have 5 acres, it may not be the best use of the property. With property rights, owners do not want the government dictating what a property owner can do with their property. There are reasons to have zoning requirements. Ms. Cahoon stated that she is aware of a 3-acre parcel that a developer is looking at putting multi-family units on, but with current code they are limited to the type of unit they can build. The code dictates what they can do there but does not change the nature of what they are doing.

Ben Sandgern stated obviously the notation was put into the text originally for a purpose. He is curious as to why it was put in and why the City needs to change that purpose now.

Howard Schmidt was not aware that there was a minimum size requirement. It does make sense for some of the smaller infill areas. With multifamily there is code that needs to be met for a multi-family residential unit request He thinks it sounds like a reasonable text adjustment.

Alan Snarr stated that he gets nervous when he hears the comment, "let the market take care of it." Because the people have a right to shape their communities as well, not just the market, not just the developer, not just the cash. And for some reason in the past, this was coded a certain way by people who had an idea of what they wanted their community to look like. And now we let the market solve our problem or do we ask the people what is in their interest and why the notation was put in the table in the first place.

Chairman Robinson asked if there were any other members of the public that would like to come forward; there were none. Chairman Robinson closed the public hearing.

Mr. Bolser stepped forward to address questions made during the public hearing. Currently the notation that is proposed to be stricken is a minimum of 5 acres needed for multi-family units. The rationale behind it, is twofold. Speaking to historical rational, the City employees present do not know the reason it was put in place. Any explanation they would have would be speculative as to why the notation was placed on the table. The reason the City feels comfortable in bringing this amendment to the Planning Commission and City Council is that there is already a twostep check and balance on projects of this nature. Number one the actions of the Planning Commission and the City Council can control that on a case by case basis through public meetings and voting. There are already design standards and development requirements in the City Code that specify additional amenities, such as parking and green space based on lot size. Those factors determine the property size or conversely how many units to put on a property. There are multiply levels of review to the ensure this requirement is in place that serve this purpose. The proposal is to allow those checks and balances to occur and allow property owners to exhibit the rights they have, not only to request zoning but to develop their property according to the zoning applied to a piece of property.

Commissioner Sloan moved to forward a positive recommendation to the City Council for the Multi-Family Project Area City Code Text Amendment Request by Tooele City to address minimum project size requirements for multi-family residential developments, application P18-750 based on the findings and subject to the conditions listed in the Staff Report dated October 18, 2018. Commissioner Hamilton seconded the motion. The votes was as follows, Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye," Commissioner Bevan, "Aye," Commissioner Graf, "Aye'" Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

6. **Review and Approval of Planning Commission minutes for meeting held October 10, 2018.**

Chairman Robinson asked the Commission if they had any questions or concerns; there were none.

Commissioner Hammer moved to approve minutes from the meeting held on October 10, 2018. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye'" Commissioner Bevan, 'Aye, Commissioner Graf, "Aye," Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

Mr. Bolser addressed the Commission and recommended that the Planning Commission recess until 7:30 p.m. for the remaining items on the agenda.

Commissioner Sloan moved recess the meeting until 7:30 p.m. Commissioner Hamilton seconded the motion. The vote was as follows: Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye'" Commissioner Bevan, 'Aye, Commissioner Graf, "Aye," Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

The meeting was recessed until 7:30 p.m.

Chairman Robinson opened the meeting at 7:30 p.m.

7. **Public Hearing and Recommendation on a Zoning Map Amendment request by Jack Andrews representing Metro West Developers, LLC, to reassign the zoning designation from the R1-7 Residential zoning district to the HDR High Density Residential zoning district for 31.88 acres, creating PUD provisions, and assigning the PUD zoning overlay designation for 23.9 acres currently assigned the R1-7 Residential zoning district located for the Berra Boulevard Development located at approximately 1600 North along Aaron Drive and Berra Boulevard.**

Presented by Andrew Aagard

A map of the property was shown on screen. The property is a total of approximately 57 acres. The zoning of the property currently is R1-7. There is a small parcel of property in the surrounded by the 57 acres that does belong to Tooele City. The R1-7 zoning is a medium density code that allows single family lots of 7000 square feet, in a density of five lots per acre.

The developer is proposing to rezone the property into two separate zoning districts. The northeastern parcel 31.88 acres is proposed at the HDR high density residential zone. The HDR zone allows for 16 units per acre. The types of units that can be constructed in this zone are single family detached, single family attached, townhomes, condominium, apartments. It is the City's most liberal zone in regard to the types of properties that can be constructed. It provides a wide variety of housing types to be constructed. The Tooele City parcel, the City would also like to see that rezoned to HDR for uniformity in zoning and allow for greater ability for development in future regardless of who owns the property. The southern portion of property, which is 23.9 acres, is being requested for a PUD designation. A PUD is a planned unit development. It provides flexibility in the development standards for lots. It can reduce lot sizes, setbacks, and widths. The PUD does not increase density. The density is determined by the underlining zone, which is R1-7 and allows for five units per acre. The applicant submitted some standards for what they would like to see in the PUD development. A minimum of 50 lots shall be 5000 square feet, 50 feet wide. That is slightly smaller than what is currently allowed in the R1-7 zone. The other lots remaining in the PUD the developer is proposing the lots go down to 2500 square feet, 30 feet wide. That is smaller still, but they wanted some flexibility in the development of the lots and provide for open space. A conceptual map was shown on the screen. This is what the developer would like to do and not what is approved. This area was intended to be part of Overlake and be a park. Due to recent settlement agreements resulting from litigation this area is no longer part of the Overlake Development. Its development will be determined by the City.

There have been many comments received from the public concerning this item. Most comments had been forwarded to the Commission. A few comments were received just prior to the meeting and had not been forwarded. They were pretty similar to all the comments already received.

Staff is recommending approval for this rezone request. There are some conditions that staff would like for Planning Commission to forward to the City Council. One of those conditions is to include the Tooele City parcel in the rezone request for HDR zoning. The City would like to include that the developer provides for access to the Tooele City parcel, so it does not become land locked. Another condition requiring the cost and planning of utility upgrades resulting from the change in use of the property from potential park space to HDR residential development shall be born and conducted by the developer, not the City. The developer shall provide and maintain provisions to route all storm water through the property per City Code and shall maintain their own storm water run-off site. That condition was requested by the City Engineer.

Mr. Aagard added one additional condition for the Planning Commission to consider. This was not included in the Staff Report. Require a six-foot solid masonry fencing along the railroad. That requirement may be in the ordinance, but Mr. Aagard was not familiar if it was in the City ordinance.

Chairman Robinson asked if the Commission had any questions or comments.

Commissioner Hammer asked what areas in Tooele City are already zoned HDR high density residential. Mr. Aagard stated there are areas located East of Albertsons and Macey's that have HDR zoning designations. He thought there was a senior residential development that had just been zoned as HDR PUD. Commissioner Hammer asked how much each of these lots were in acreage. Mr. Aagard stated he did not know off the top of his head. Commissioner Montano stated he thought the senior development was 14 acres off 1000 N. Mr. Aagard stated he believed the parcel behind Albertsons was approximately 5.5 acres. There is an HDR parcel at the southern part of the City that is approximately 5.5 to 6 acres. Mr. Aagard stated he is still new as an employee of the City and is not familiar with all the areas of the City that may have these zones. He could come back with that information.

Commissioner Bevan stated she is concerned that if this property gets rezoned to an HDR there is a bottleneck of traffic at SR36. She is concerned already about the traffic situation and if we add more homes and more cars it will create more congestion, which is already an issue. Mr. Aagard stated that the development would bring more traffic. The City can require a traffic study be conducted by the applicant with recommendations on how to deal with the increased traffic. Development is occurring to the west which will provide additional access to 1000N through Berra Boulevard. Future connections are coming. The Planning Commission can require a traffic study.

Commissioner Graf asked regarding the traffic study. Is this just a recommendation that the developer look into the traffic study as informational or would there be something binding in the traffic study. Mr. Aagard stated that the Planning Commission could make a recommendation that the approval is based on the recommendations of the traffic study. That would make it binding if the City Council approves.

Commissioner Montano wanted to make the conditions of the Staff Report clear. Item number 5 in the Staff Report is the two-acre City parcel. Item 6 is the utility upgrades for the development. Item 8 is the developer shall provide for storm water and the Planning Commission could add 9 for the railroad fence. Commissioner Montano stated that he had read and gone through the emails from the public and he understands and appreciates everything that everyone wrote. He understands their concerns and he would like Paul Hansen to get up and address those concerns related to the research done on the traffic, water, and sewer.

Chairman Robinson asked Paul Hansen, City Engineer to address Commissioner Montana's comments. Mr. Paul Hansen stepped forward. He stated any time the City considers a new development the city does a traffic study and reviews water and sewer. This costs the City money and he didn't want to imply that they didn't do them because they cost money. But in this case the tax payer's money would be used because there was no plan for final approval. Typically, the City looks at it from a general standpoint and then a detailed water modeling, detailed sewer modeling, and required traffic modeling is done. The conditions that the Commission is considering tonight would be required by the City on the developer. The City uses it's the modeling to ensure that nothing is inappropriate or doesn't significantly impact. He can't say that no one's water pressure would drop based on development, but the City makes every reasonable effort that they can as part of any development approval to make sure the

impact is as minimal as possible and as allowed by law. Should the Planning Commission recommendation include each of the conditions, the City will follow up on those conditions.

Chairman Robinson asked Commissioner Montano if that answered his questions. Commissioner Montano stated it did and thanked Mr. Hansen.

Commisioner Graf asked a question. The map that the Commission received is conceptual, but one the outside of the development on the street, does this allow for street parking. Mr. Aagard asked if he was referring to Berra Boulevard. He stated he was referring to the entirety of the HDR section. Mr. Aagrad stated that it is a public street and therefore there could be parking there, but that it is in place currently. Mr. Baker addressed Commissioner Graf. The City Code does have specific code requirements for parking. The City Code intends for parking to be on the interior of the project. Parking on public streets is allowed, but the City Code development requirements intend to require sufficient parking onsite. That has not been the case with all previous projects including one in Overlake, but that was part of an old development agreement. This new development would have to follow the new City Code. Commissioner Montano made the comment that the developer would be required to provide parking for all dwellings. They have to supply enough parking for all units. Anyone can use the street, but the development must provide what is required by code. Mr. Aagard stated that the code requires two spaces per unit. Commissioner Hammer commented that the developer has to supply the two spaces for each unit, but in the case with The Cove at Overlake the residents are charged for use of those two spaces. A lot of them do not use their two spots and park on the street because the fee is in addition to their rent. So, these conceptual apartments could very well do the same thing. We again have the same traffic and parking issues along Berra Boulevard and Aaron Drive that is currently in place, effectively making it a one way road.

Commissioner Sloan wanted to clarify, is it appropriate in the conceptual phase of the project to put conditions in, such as the masonry six-foot fence and a traffic study, which would normally be required in an actual application for a specific project. The Commission does not have that here. Is now the time for that or do those conditions, if we assign those things to the rezone and an applicant comes in with R1-7 lots, would they be affected with the conditions? Mr. Baker stated that it is appropriate at this stage of the process. The conditions the Commission is being asked to impose would apply regardless of the final layout proposed; the traffic study, the requirement to pay for water, sewer, and storm water modeling, and infrastructure to make sure there is adequate utility capacity to serve the development. The masonry wall to have sound and safety barriers against the railroad would need to be in place no matter what the development is.

Chairman Robinson asked Mr. Baker how the settlement with Tooele Associates affects what happens with this property. He recognizes that the land now falls under City Code and the park that was originally planned has gone away. Are there binding factors that the City now needs to deal with? Mr. Baker stated that it is a complex question. The park went away not because of the settlement agreement. The park went away because the development agreement went away. That was a direct result of the result in court. There is nothing the City can do to change or alter that result. The Settlement agreement did not establish the zoning for this property because the Planning Commission gets to make land use policy recommendations to the City

Council and the City Council determine land use policy with input from the public. The City cannot sign a contract regarding zoning that does not have public input. The settlement agreement did not establish zoning. The Settlement agreement does provide however that the City and Planning Commission would go through a process to establish new zoning for these properties that were formally part of the Overlake plan, that were not developed. The City did go through a public process in February of 2015 to amend the land use plan, the general plan, and establish zoning districts for the area. Almost four years ago the City went through the process and the City did establish the medium density residential land use designation and in that it identified the uses that would be allowed in that area for this rezone request. The HDR is one of those zoning districts that is allowed for this property and other former Overlake properties.

Commissioner Graf had an additional question directed towards City employees. Is the City aware of any other HDR applicants or proposals at this time? Is this the only one? Mr. Aagard stated there was one in the following agenda item and he was not aware of any other than the two on the agenda. Commissioner Graf clarified if there were any other HDR zones in the City. Mr. Baker stated that there is one five to 6 acre lot in South Tooele that is zoned and development is in the process.

Chairman Robinson asked if the Commissioners had any other comments or questions for City staff.

Commissioner Bevan stated she was a little concerned about the recommendations based on the findings in the Staff Report state these will meet the general requirements of the general plan, master plan. Who decides what the general master plan would be for this development? Does the City? Mr. Baker stated that the City Council determined in 2015 that HDR was an appropriate zoning district for this property.

Chairman Robinson asked if the Commissioners had any other comments or questions; there were none.

Chairman Robinson opened the public hearing. Chairman Robinson stated the comments were limited to three minutes. The Commission will take down all questions and at the end after all comments City staff will address all questions. He stated that the emails were received by the Commissioners and the Commissioners were aware of the concerns stated in the emails.

Katie Carlie who is the chair of the Overlake HOA. First this parcel of land, the residents express concerns over the land. The residents of Overlake thought this would be a park and now they understand that agreement is gone. She wanted the Commissioners to consider and understand that the park is what the residents were anticipating and expecting when they purchased their homes. She wanted to address the apartment in Overlake, The Cove. She stated that she wanted to have a good attitude about them, but there has been harassment, vandalism, two cases of arson, and an accidental fire in the two years since it was developed. Drysdale Street has become a one-way street due to parking. It has been a burden and hardship to have The Cove. She wanted the Commissioners to understand and consider the expectations that the residents of Overlake had when they bought their homes.

Ryan Olson thanked the Commissioners for being able to share his family's thoughts tonight. Nearly 20 years ago after finishing university studies, he, his wife, and two small children began looking for a home, a place to lay down their roots. They were exhausted from the constant congestion and noise that accompanied their life in the big city. They had lived many years in high density housing. They were eager to purchase their first home in a stable, family friendly community. Their search for a home ranged over Utah. After months of research they had money down on two lots, one in Eagle Mountain, Utah and one in Overlake. After weeks of consideration their hearts were set on Overlake in Tooele. They love this community. They knew that Tooele offered the kind of neighborhood they had been looking for. We were seeking a community neighborhood free of congestion, noise, and traffic. Overlake is and was perfect for them. Mr. Olson stated there were three factors that moved them to Overlake. They loved the idea of a Homeowners Association. While expensive, an HOA requires all members to respect and care for their properties. Second the park. They are deeply saddened that the funds they spent when they built their home are no longer going to be used for that purpose. Green space was very important to the Olson family and that was one of the major reasons they chose Overlake. Three they love the residents they have met. When looking for a home they would stop and visit with residents of Overlake and ask what they liked and didn't like. They asked about schools and crime. Each answer satisfied their needs for a community. As the years have passed they have been blessed. In the years since living in Overlake they have stayed because they love their neighborhood. They plead with the Commission and the City Council to leave the zoning designation as is. They strongly oppose the HDR zoning. It will change their quality of life by adding congestion and traffic. Less green space will place strain on already strained sources, especially water. He further stated that their water pressure was already very difficult.

Jayson Stenquist stated he appreciated the time to come before the Commisioners. He is a resident of Overlake and one who lives directly across the street from The Cove. He wanted to share some of his concerns with additional high-density zoning. He brought a laptop with pictures from the neighborhood. He approached the Council to share the pictures. He showed a picture of the corner of Drysdale and Berra Boulevard. A picture of Drysdale and the cars parked on the street. He had several pictures of the cars on Berra Boulevard. He showed a picture of the portion of the street that is on the undeveloped road. It had RVs parked there. With the concerns with the parking on the road and the small green space at the apartments and Parkers Park which is just a short distance away; he stated there are always children in the road running back in forth. He is concerned that residents of The Cove use his parking strip to shoot off fireworks. This has been a concern because he hears sparks hitting his roof on July 4, 24, and the neighboring days. He has had to deal pet droppings in his yard, due to The Cove being pet friendly. For the safety of his community he asks that he Commission do not rezone the land.

Andrea Rawlings stated she is an educator at Overlake Elementary and a resident of Overlake. She loves the kids at the school. She wants to make sure a safe environment is provided at the school. She stated they had already talked about the traffic report in the meeting and she is so happy with that. She wonders if the traffic report will consider the new builds that will be coming, including a new high school that is proposed to be on the other side of Overlake. That is going to add traffic that will affect the neighborhood. Some of the other concerns are the traffic that

crosses the train tracks. She lives right across from the train tracks and has seen from the other side of the wall that people have jumped the tracks. She knows there have been accidental people on the tracks and even with a wall there are people getting to the tracks. Another concern is fire danger. If there is a fire and those two roads are blocked how can a firetruck come in. She stated getting access for a firetruck to the new apartments will be pretty hard. She knows that the seconds count in an emergency. She stated there is not enough green space. As more bodies are added there needs to be a place to be active. She stated Tooele County does not have the best record with obesity so there needs to be places for people to go to be active. Currently the lot under question is used for people to walk and run and they will be losing that as the development comes in. Ms. Rawlings stated that she is fine with growth. As a staff member of Overlake Elementary she is excited to see the new kids come to Overlake. But she hopes the safety concerns are done responsibility and not injected with steroids to make this faster then what the infrastructure can handle. She wants Overlake to be a beautiful community. She wants people to come and feel how awesome Tooele is. As the Commission looks at the zoning she wants the Commission to ask if it is responsible.

Malory Sandgren and she is a resident of Overlake. She wants to address the high-density residences proposed and others already designated as high-density areas in Tooele. If you look at the Tooele City Map the general land plan that there are three places currently zoned for high density in Tooele. There are two that were talked about the five acres south of town and east of Macey's and Albertsons. The big one that is a huge concern for the residents of Overlake is the big one that is already zoned and south of 1000 North. It is bigger than the 58 acres in Overlake. So, if we add another huge section of high-density housing in Tooele, in a small area, the infrastructure will already be taxed. There is no reason to have more high-density housing if we already have a large chunk already zoned for that. It was mentioned that the lot count is determined by the City. Well we as residents are the voice of the City and you represent us. We are hoping that you will help us keep the zoning as is and keep the medium density residential housing. The proposed plan has 600 units on 58 acres. That is huge. On the west side of Overlake, the lots that already designated for development is 70 lots on 30 acres. There is a big difference. It is high density, but really high density in one parcel of land. The residents of Overlake propose that the Commissioners consider keeping it as a medium density and not high density residential.

Kari Scribner stated she appreciates the time to talk to the Commissioners. She is a resident of the Overlake development. She takes what the Commissioners do seriously. She wants to discuss the building that is already going on. She provided a map for the Commissioners. She stated that she got the information from the Planning Commission. The Providence has 30 acres and 70 lots. The Overlake Phase two has 150 acres and 122 lots. The Lexington Green has 85 acres and 164 lots. She asked Mr. Aagard the size of those and states that he stated over 365 new developments on 270 acres. What the developer for this project is saying is 711 dwellings on 59 acres. That is not responsible building. That will make changes for everyone. She doesn't see how there will be water for everyone. She has to water in the middle of the day because she has no water pressure at night because of everyone watering. She is told not to water during the day, but she has to keep her lawn green. Please think about 611 units in less than 59 acres compared to 356 on 270 acres. Already you are looking at another 700 new cars in what has already been approved. The new development would add an additional 1200 cars. Please keep that in mind. She understands they are not getting a big park. She is asking that the Commission restrict the builder

to a responsible pace. Please remember that the residents love living in Overlake. She loves Tooele and cares about the community. Please take the recommendation seriously.

Andrew Aston, he is a resident of Overlake and a full-time fire fighter in Salt Lake. He stated that this size of apartment complex rivals any complexes in Salt Lake. Tooele City does not have full time fire department. There is one fire station right next door to the City offices. How are we going to protect the people in the apartments? A multi family dwelling is one of the scariest apartments fires that he goes on. It is one of the most labor intensive. They need lots and lots of people to fight them; to save people and property. How are we going to protect these people? We cannot change the zone until we have a way to protect these people. Tooele should have had a full-time fire department long ago. Eagle Mountain has less people than Tooele City and has two full time stations. That is irresponsible of Tooele, that is not adequate and is not adequate to support a high-density apartment complex. His question for the City is how they are going to protect these people?

Whitey Sivill stated she is a resident of the Overlake development and a mother of three. She stated that one of the biggest draws was the fact that she had two small children and there was a park across the street from her house. In the preceding weeks that they lived in their house they discovered that because 1000 North had not been taken out to the state road, that their street was used by speeding cars. Now that 1000 North has gone in, it has gotten better, but not fixed. It is hard for her to send her kids out to the place spaces, when she is concerned they will get hit by a car. The reason she has a problem with the high density is that if the cars don't go out to 2000 North, the cars will be going down her street. That's a big problem for her. Another big problem is that Tooele has been notoriously slow at building schools to adequately service the children that the community has already. If the Commissioner's put in high density housing where are the children going to go. They could go to Overlake Elementary, but when her kids went to Overlake the teachers had 30 kid in a class. That's a lot of kids for a teacher to deal with. Ms. Sivill stated that if the Commissioners bring in the high-density development there is nowhere for the kids to go. As far as she knew there were no new schools planned. The builder will build as fast as he can and get people in as fast as he can, then Tooele will be in an education crisis.

Brandon Ushio thanked the Commissioners for their time. He stated public service is important. He stated that he had not lived in Overlake for as long as some of the other residents who had spoken. He had been in Overlake for four years It had been a five-year plan, but it has become a 20 year plan. The community is great. He loves that he can send his kids out on bikes, which is something you can't do in Salt Lake. He works for Granite School District. He stated that there are schools that he has overseen that have 10 relocatable classrooms behind them. He stated students don't get the same experience when in one. If there is not adequate space, there will not be adequate education. He stated that there needs to be more housing in Tooele, but he doesn't believe that this is the way to do it. He urges the Commission to deny the application. He states that the City needs to add infrastructure to be able to have buildings like this. He stated that Tooele is a commuter City. A large chunk of resident's travel into Salt Lake to work. He does this for his family. If we add that many cars to the road a big chunk of them will be driving into Salt Lake to work. He stated that Tooele is not an island, we are part of a larger community. Overlake is part of Tooele and Tooele City is part of Tooele County. We need to make sure that there is infrastructure to support residents. SR 36 and proposed UDOT improvements are only

band aids in outgrowing community. Tooele is the best kept secret in Utah. He tells people he lives in Tooele and they raise their brow. He doesn't want Tooele to become the dumping ground for the states problem. Please vote no.

Julie Watson and she would like to address some of the concerns about the fire department. The city needs a fire department. We all love Tooele and we love our beautiful places. We don't want higher taxes, but in order to get the revenue in Tooele, we need to have commercial business. We can't get commercial business without higher density in certain areas. I'm not saying it has to be Overlake, but it has to come from somewhere. That is how most cities get their fire department. Everybody wants a quant little city but we can't build our fire department, or police department without some high density and commercial buildings coming because of the high density. Everyone says they want an Olive Garde or a Texas Road House, but that's why they don't come out here because there isn't high density in certain areas. We would love to have commercial, but commercial won't come out here without more high density. She would like to thank the City for what they do and the new Police Department coming in.

Ed Rasmussen wanted to tell the Commissioners something that happened when he moved out to Overlake 18 years ago. They had rented and had a condo previously, but this was the first house they had owned. The first night he is laying in bed. Sometime during the night he awoke to something and he realized it was the train. There was a train going by. He can see the train tracks from his front porch. He can feel the train going by. Nobody is going to want to live next to these train tracks. If you develop this area the people won't want to live there, stay there and this will become a low income area. If you put a wall in there it will give another wall for the graffiti artists to work on. Along Maverick gas station if you look during the winter, you will see that deer come down and follow the tracks down into that area. If you build a wall in that area, you force the deer up into SR36 and it will be a traffic hazard along the road This development is looking at 1200 cars, if you put that many cars there and deny access to the hospital because there is only one way to get into the hospital. You could have some major problems with people trying to get there. He stated to the Commissioners to please consider these things. This is for the safety of the people and future of property development. If he was to come into your home and build a railroad track from your home, you would state that your home would lose property value. This area will not maintain property value. It needs to be considered a park again. Maybe go back to thinking about a park, everyone in the city will benefit from a park.

Dave Quist stated he as a resident of Overlake for 18 years. He came from a small community in Payson and Spanish Fork area. Worked changed and he was brought up to Tooele. During the winter there is a City ordinance that limits on the street parking. He doesn't know if that has ever been enforced. He knows that residents park there all the time. He wants to know what will happen with all these people. If what happened at The Cove with parking he thinks the owners of The Cove, should know their residents shouldn't park on the street. He stated economic development has been mentioned already. Where are these people going to go? He stated the people will be working in Salt Lake. The City needs to get on the ball and start going. He has heard about water. Who owns the water rights? He had heard that Kennecott owned the water rights. There is limited water on this side of the mountain. The development, we need to work with the county to develop access. He states there has been talk about the Midvalley Highway for years

and work might start in 2022. He mentioned speed control before the timer sounded for the end of his three minutes.

Melissa Brimhall thank the Commissioner for letting her speak and express her concerns. She stated serval people have mentioned schools, safety, and green spaces. She wanted to put some numbers on those things. The schools have an ideal capacity and a stretched capacity. Clark an Jonson Middle School can accommodate 942 bodies, including children, staff, people, they are currently at 820. They are 122 away from stretched capacity. There are already planned building happening that will increase numbers by next year. Overlake Elementary can accommodate 675 and the school is currently at 579. It is only 96 bodies away from stretched capacity. By the time the medium density is developed and moved into the schools will be full. She asked a question. How do the City Council or Planning Commission regulate these things? When people want to come in and build where is the accountability to determine if there is room for the students that come to the schools. Who is planning for elementary and junior highs to accommodate for the influx of students? There is a high school planned but the new developments won't just have high school students. Where are the children supposed to be put and where are the children supposed to be put and when is that decision raised?

Allen Snarr has been a resident of Overlake for 18 years. When is family moved to Overlake, they couldn't believe such a place existed. They liked the idea of a planned community. The plan has gone askew. The two-diamond baseball park was supposed to be four and there were supposed to be more green zones. It was all zoned R1-7. There was a challenge to the R1-7 zone to the north before and it seems that we are fighting this battle every decade. Mr. Snarr asked why they have to change? Why do we have to high density housing in an area that was zoned for single family homes. Why the constant need? He realizes that the City was in a lawsuit and has a lot of debt, but that is not Overlake residents' fault. Overlake residents bought homes in Overlake, they did not cause the lawsuit. They do not need to be punished for the lawsuit. He wanted to talk about the aesthetic concerns of the development. He stated that there was a certain artistry to Overlake. He would like to preserve what they have and instead of thinking about higher density zoning in this area. Maybe we need to be thinking about even less than R1-7. Maybe we need to be thinking about zoning for parks and green space and things that will benefit the residents of Overlake. He is a tax payer of the community. He expects his taxes to go up, especially if we have less contributors. He likes where he lives, the beauty of it, the shape of it, and he doesn't want that to change. He sees no reason to rezone this unless he has a better one than this. He held up his wallet for the public record.

Narda Emmitt is a resident of Overlake. She has lived there for 20 years. She has six children. They moved to Overlake because it was so family friendly. They love it and can't think of a reason to leave. As far as looking at the map, she sees the need for people to need high density housing. Not everyone can afford a house. There is a need for it. There is a benefit for it. She understands that it would benefit the City to have more people paying into the tax base. There is a place for it too. When looking at the map the whole backside of acreage is lined by a railroad track. There is no way to get in or out of that part of the neighborhood. The only exits are through the neighborhood, where the kids are playing and riding their bikes. There is a safety concern. The only way you could have exit points is to build overpasses over the train tracks, to the Walmart area. There are only two exit points. It's a problem. If there are already areas zoned for high

density lets encourage people to build there. Do they have better access points to accommodate the shear numbers of cars that live there?

Jimmy Clayton has lived in Tooele for four years. He grew up in rural Riverton and spent a good number of years in Logan. As he has been looking at the map. The development is right up against the train tracks. You would be taking some of the most densely populated areas of Overlake and cornering them back against the wall and the tracks. He stated that the Council room is a similar layout and if we densely packed the people into the corner behind the Commissioners, it would be hard for people to make their way out and hard for people to make their way in.

Ben Clayton stated that he is an Environmental Professional. He is pro-growth, pro-development, but he thinks it should be regulated. He considers himself a groundwater specialist. The point has been made over and over again on water. The only way we are going to overcome this is to put in more wells and more infrastructure. He comments on the water report every year. To do that, the development with the amount of water we have is irresponsible. He is a father and he is concerned about traffic safety. He is concerned that the traffic study has not been done already. He strongly encourages the Commission that a traffic study with modeling occurs. What also has not been talked about yet is the risk of high-density housing next to the railroad. There are buffer zones and risks associated with that. Mr. Clayton stated that the company he works for wouldn't build that close to a railroad at all. Now there are already apartments close to the railroad in Tooele, but you need to think about what would happen if you had an incident there. Also, he is a certified safety professional and the six-foot wall is adequate for pedestrian isolation, but that won't do anything for hearing and noise. You can overcome that by landscaping and a higher wall.

Jeremy Bastao thanked the Commissioners for their time. He has only lived in Overlake for about five years. He is an architect and designer. He deals with this process often. There is a reason that the land was a park. It was designed, planned as a park because no one wants to live next to railroad tracks. He thinks R1-7 is a poor zone to be right there. He stated that as a designer that creates low income, blight and value is not put by the people living in those houses. It creates problems. It is budding up technically against an industrial activity. He wanted to read one thing, because it gets noted many times. From the general purpose plan, " This Title is designed and enacted for the purpose of promoting health, safety, morals, convivence, order, prosperity, and welfare the present and future inhabitants of Tooele City, including among other things, the lessoning of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy and other expenditures. He stated that he though the only thing being protected was the tax base. He thinks it is poor zoning ad he thinks it should be mixed use. Either a park or daytime activities as office spaces. Not residences.

Ben Sandford asked a couple of questions. Is there potential or Section 8 housing or subsidized housing? He stated the question had been asked if there were high density areas that are being developed or planned. He wants to know if there is land that is already zoned for high density? Are the Commissioner's considering high density zoning if they already have high density land sitting in Tooele? Also, he thought he saw in documentation, that the park that would be placed in the development would be privately owned. Who would own that and if it would fall to ruin, what recourse would the residents have? Linear park became unsafe and the playground was

pulled from the park. The park then became a plot of grass. Several years later the park did get four swing sets which was wonderful, but that is not exactly a park. He believed that at that time it was privately owned, and it took some negotiations between the HOA and City. He is worried that if we put in a park and it is privately owned the residents of Overlake would have no recourse if it was to happen again. What is already zoned presently when we have other HDR? Documentation that the park, would be privately own, what recourse would happen?

Heather Herriman, she wanted to give the Commissioners her view point as a parent who used to live in the apartments directly across the rail road tracks from Overlake. She stated she didn't know how many times her children and their friends wanted to jump the fence to the railroad tracks. She saw eight-year old's jumping the fence. She caught her eight-year-old jumping the fence. She doesn't think that even a fence is safe with an apartment complex. She knows the parents at her complex were not watching their kids. How many parents did not know her kids were jumping the tracks? She confronted several parents and was told their kids couldn't climb the fence. She told them the children could. She thinks that it is an important thing to analyze. When looking at high density housing, the parents aren't out watching the kids all the time. They won't know their kids are climbing the fences. Her kids are always asking to walk to Walmart and she says no because you can't walk along the highway and you can't jump the tracks. Another concern is the traffic. Her son was hit by a car when he was 20 months old. She lived by a stop sign. People don't watch and if you look around Overlake there are plenty of intersections that have traffic going both ways and no stop sign. She stated that it is already unsafe to teach her 15-year-old how to drive in Overlake. Then add in more young people who are renting an apartment and don't have a care in the world because they don't have a house and are not paying for something that has equity . She can see how that will cause a lot of problems. Ms. Herriman stated she is a teacher. She teaches a class of 30 six graders. Her classroom is wall to wall desks. She has taught in a portable and it is not ideal. There are distractions and safety issues with portable classrooms. She doesn't want a portable Overlake Elementary. She urges the Commissioners to look at the aspects that have been brought up tonight and it is not a good idea.

John Slaugh, he thanked the Commissioners for their time. He is new to Tooele. One of the reasons he came to Tooele was because of the those, he pointed to the concept design on the screen. He was in safety for 34 years. He stated that the development will become a ghetto. You will not have enough law enforcement to protect the people who live there or the surrounding communities, unless you hire more. That type of a development goes downhill rapidly. Within five years he stated it will not be the same.

Chris Devry is a resident of Overlake. He stated he has a few questions. A traffic study was discussed, but from everything has heard there are still only going to be two roads in and out of Overlake. He hasn't heard a proposal for more. Doesn't really matter if you only have two roads, you are only going to have bottlenecks. Are there any current plans for additional roads out to the main roads? The other question, since the City owns the land are there any stipulations in the ordinances for green spaces in any of the zones discussed tonight? The third question is, that he agrees with planned and managed growth, but are there alternatives? Just because one developer wants to have high density doesn't mean it is the right decision for the City. If we have alternatives or can make alternatives that would make the whole City better.

Heidi Snarr stated she concurred with what had been already stated. She has been commuting for 20 years. She stated that Tooele does not have the capacity to move people in and out of the County and there are no plans to change that. Ms. Snarr stated that if she wants to go to Olive Garden, it is a special event for her family. They get ready and drive into Salt Lake and there are a lot of them to choose from. And if she doesn't want to do that, if she is running an errand in Salt Lake she can stop in and grab a pint of their sauce and breadsticks and do it at home. When she goes out to eat, they eat at Kraver's. They support Casas Del Ray in Grantsville. She doesn't complain about taxes going up because she appreciates the privilege it is to live in Toole. It costs a little bit more and she must drive to Salt Lake to go to Costco and Olive Garden. She is okay with that. They support local businesses, such as Kraver's, American Burger. They employee people in the community and support the community. She appreciates that there is a need for this type of housing. Let's spread it around. We don't need everybody all in one spot. She sees that this will spiral out of control as the safety mangers, the professionals have stated that it is not a good thing. When they purchased this was not what they saw on the map. She appreciates that there needs to be high density housing, but you don't need it all in one place and spread it around to be responsible. This seems irresponsible. She is frustrated to see this knowing there is no access out of there. If you drive by the Maverick in the morning when all the busses are driving in, it's not a good thing. All those apartments are going to have two cars. They will drive down in the morning. It's not safe to have all those cars on the road. Please be wise.

Gene Jackson lives across the street from Clarke Johnson Junior High. He stated he has seen the traffic getting worse and worse. And the hosing is getting worse and worse. Don't build it.

Heather Roy she is a home owner in Overlake. She has a rule in her household that you can't complain unless you help with what you are complaining about, which is why she is in attendance. She has heard the concerns. The traffic, the safety, the firefighters the policeman, the green spaces the schools, those are all important. She asked the Commissioners that if they are voting yes tonight, she would like to hear the reason why, they think it would help the community. She wants to hear the reason why and how that will cancel out these concerns.

Kara Wood has been in Overlake for four years. She is grateful that she gets to speak at the meeting. She moved to Tooele to get away from a bad neighborhood, bad allergies. She likes to tell people that she moved to get away from the sirens every day. The high school from the prospective of having high schoolers. This last year the bus for the schools, after the first couple of stops there wouldn't be room for the students. The School District got a second bus, but the point is that was this year. Crime has increased with The Cove apartments. Her kids' backpacks were stolen out of the car in her driveway. People walk up and down the street casing the properties. Residents of The Cove peer into her neighbor's window and they have them looking into the car twice. She knows that there is a need for high density housing.

Kim Young has lived in Overlake for 12 years. She is the crossing guard for Overlake Elementary. She has seen a large increase in traffic since the new homes have gone in. The cars do not pay attention to the speed limits. She doesn't believe they are aware they are in a school zone, even if she has flashing lights. Cars speed. We need more speed limits posted in Overlake.

Bob Wood asked the question, that if this is already zoned residential, shouldn't the train be going through at a much slower speed? It seems it goes through fast considering it is a residential area.

Kristine Jackson was raised in Tooele. She saw the first stop light. She doesn't want to see this. It took 33 years to find their dream home. She doesn't want it in the community.

Travis Brady is a resident of Overlake. He has a question because he believes that the only people benefiting from this are the developers. Everyone who has come has opposed this as high-density housing. He asked what is the property tax revenue for the City for this high-density housing as compared to homes? If it doesn't really make that much of a difference to the City, the Commissioners should do what the residents want. He knows that a park isn't going to provide any revenue. What is the difference in tax revenue? And second what type of people will this attract. Will these be people who come to Tooele to live here a year or two while their house in Salt Lake is being built? The whole point of having housing in Tooele is to have people shop and live in Tooele and if this is not going to bring in that benefit, he doesn't see the point in having it. The only people benefitting here are the developers.

Ken Mitchell stated that his home sits directly across from Parkers Park. From his back yard he could throw a ball and hit The Cove, hit the park. In looking at the map, the corner that it peaks and the distance to The Cove is about a 30 second walk. Mr. Mitchell stated that we are not talking about adding high density to a mixed zone area, we are talking about adding more high density to an area. This is increasing what has already been done. If you want to do a study look at what has already happened with The Cove and do the math. He believes in mixed area housing. It is good for families, people and neighborhoods. But what we are doing is throwing the entire balance out. Mr. Mitchell stated that the cost of The Cove on the church welfare system has not been in the hundreds or the thousands, but hundreds of thousands of dollars. That is how much money that has been absorbed by an apartment complex and the size it is. Take that number and multiply it by the new development. Speaking to the Commissioners, you cannot throw that much housing on one neighborhood, in that tight of space. We can't absorb this in one space, it has to be spread out. We love our neighbors in The Cove, but there are only so many resources and this is beyond what we can handle.

Paki Olive stated that she works with the homeless community. She is a resident of Overlake. Housing is a challenge for the homeless people.; She would love to keep the homeless in the community. She asked if this development would ever be turned into a subsidized development?

Chairman Robinson asked if there were any more comments or questions from the public; there weren't. Chairman Robinson closed the public hearing.

Chairman Robinson asked staff to address the questions.

Mr. Jim Bolser stated he would take the first efforts on answering the questions. There were a number of comments made that were personal perspectives on the matter and he will not be addressing those. He will address the questions specifically. He wanted to thank all that had spoken and all that attended for their participation in this process.

There were a number of questions in regard to traffic and access points. There was testimony prior to the public hearing about traffic studies and the requirements. Those traffic studies are what determines what the applicant has to do with development. That includes access points. If additional access points are required in order maintain a level of service on roads, that would be a condition on the amount of construction until roads are built or a requirement to build additional roads. The City does have a Master Transportation Plan that identifies those corridors, but often those corridors are built with development. A lot of that is determined and constructed with development and determined with traffic studies.

Mr. Bolser stated that there was a question in regard to who owns water and water rights. All the water in the City system is owned by the City. There is a water special service district operated by the City under the guidance of the Mayor and Council. The City does own all the water in the system. As new developments come online, they are required to provide additional water to address the impact of that development specifically. As with all developments, regardless of their development type, they are obligated to provide additional water into the City's system in the form of water right transmission to accommodate their impact.

There was a question regarding additional developments beyond what this traffic study would address. Those projects require their own traffic study. Those are being addressed. There are accommodations in traffic studies that address other developments that are under way or developed. What the City cannot require is to say there is another project that is coming over there and now add that to yours. If something is under construction or has been built, the City can require and does require that it is included in the traffic studies.

Mr. Bolser stated in regard to schools. There were questions about who is responsible in the planning of schools. That is the State and the School District. By State law, Cities are removed in large part from planning and construction for schools; including site design. The only thing the City can say when a school is built is utilities, water and sewer. The City is prevented from addressing them by State law. He encouraged the audience to speak with their local school board representative.

Mr. Bolser stated that here was a question about accountability for how many people come into an area and who is responsible for that. That is why we are here this evening. The Planning Commission and following the recommendation, the Council. The Council will be charged with that duty. The Commission has that ability through zoning decisions to address that concern. There were a couple questions in regard to subsidized housing. That is a private determination. That is something the developer would determine on his own through his own do diligence. That is not something the City can dictate, and City cannot dictate that point.

Mr. Bolser addressed the question about who owns the park. That is something that is determined during the development process. There was also question about if the City has regulations requiring parks, Mr. Bolser stated, "yes we do." In those circumstances there are different aspects that need to be taken into consideration, one being is that park or open space area going to be dedicated to the City, thereby maintain by City open space. Or is there going to be a development with an HOA, that will be responsible for the development of the park if it stays

privately. The question on who determines who owns the park is done during the development process with developers working with the Planning Commission and City Council.

Are there alternative solutions? Mr. Bolser stated that is why we are here this evening. There are a whole range of zoning classifications that are available. This is an applicant driven application, so the City is obligated to respond to their specific request. The Council and Planning Commission do have a whole range of classifications in the ordinance to choose. There was question regarding, that is for the Planning Commission to answer, how you are voting and if you will explain your vote. That is for the Commissioners to determine.

Mr. Bolser stated that there was a question about the speed of the trains. All rail traffic is federally regulated. The City has no input and cannot influence that process in determining what the speed limits are. The question about the property tax revenue. That is a question for the City Finance Department. Mr. Bolser stated that he could not answer that question.

Chairman Robinson asked the Commission if there was any other questions that need to addressed. An individual in the public stated their question had not been addressed about green space. Mr. Bolser stated that there are requirements in the City Code that require open spaces based on the type of development. If there was a standard subdivision such as R1-7, there are not requirements beyond impact fees on the individual homes for open space or parks. Projects with a PUD consideration or high density multi family there are performance standards in City ordinance that require open spaces and park space. They are specific to certain types of development. What is being proposed would have those requirements on it.

Commisioner Graf stated he had a comment. He wanted to thank all for coming out. He disclosed that he lives in the Sunset Estates and the schools that were talked about are the schools his children attend. He recognizes friends and neighbors in the audience. He wanted to recognize staff and their time to make this meeting possible. He stated that he took the time to visit the three largest apartment complexes and they are at the 98% capacity. There is not a whole lot room. He spent time looking at research and looking at things such as property values when high density comes into neighborhoods. He stated that it was interesting that it didn't affect it too much. Notwithstanding that there were areas where Section 8 housing could affect. He has benefited from lived in an apartment. He stated that if his kids were 18 or 19 where would they live He recognizes that there isn't much that is affordable. Commissioner Graf stated that this is a request for a zoning change and he respects property rights. He has taken that all into consideration for when he votes.

Commisioner Montano wanted to make a few comments. He wanted to say one thing on the fire fighters. Tooele City has the finest fire department probably in the State of Utah. We have more than two fire departments, we have as quick or quicker response time as Salt Lake City. We have a great fire department. Addressing Paul, Mr. Montano stated that he has been in predevelopment with this project. Paul has done all the modeling on it, he is the Engineer and we need to put our faith in him and Roger. He asked about the water and they met all the requirements. They will have to meet all the requirements. Mr. Paul Hansen stated that the modeling is yet to be finalized, but they will have to meet will all aspects of City policy. The only other comment he wanted to make about green space. A member of the public had asked if there

was another alternative to this, he state he didn't think there was. We have to allow high density apartment buildings to serve the community. When this was done in 2015, this was part of the plan. This is what we do here. Mr. Roger Baker stated that his statement is one of the allowable zoning districts for residential developments in this area. It is one of about 10 different districts allowed and it is the highest density residential allowed. It is on the high-density spectrum for this property.

Commisioner Hammer stated she had a comment. On Monday October 15, she did have a conversation about this item on the agenda. It was before she received her planning packet for this meeting. It will not in fact sway how she will vote tonight. She would like to talk about things she thinks are important. There are alternatives to this rezone tonight. She does not believe that it is in the best interest of the city or the residents in Overlake. There are other areas in Tooele where they can build. She thinks that apartments are good. This is too much in one area. When she came to the rezone for The Cove apartments and Mr. Sivill sat on the Commission and stated that he wanted to see the growth rate be a comparable rate not higher than the single families. If this is the highest density possible there are other things that we can do. Mrs. Hammer stated that she does not think that much high density on that size of acreage is what we need to do. She stated that she lives in Overlake and it is troublesome now and she can't imagine adding 365 residents, 700 cars. It can't withstand that much traffic. She believes we need more green space, and although we lost the park and we can't get back but putting in that much housing is not the smart thing to do.

Chairman Robinson asked if there were any other comments from the Commission.

Commisioner Sloan stated he would be reticent if he did not comment. He wanted to talk about a little bigger issue, whether this project moves forward, or zoning moves forward, but it is something we need to talk about. What does the number 80,000 mean to you? That's your population at 2040, projected. We have talked a little bit tonight about infrastructure out in the County. That is obviosity a hot topic Highway 36 is not adequate and it's at 105% capacity now. It's not safe. Companies would like to relocate but are hesitant to do so. There are a lot of reasons for that. There is nowhere else to go. Tooele City is our little corner of heaven. His wife was born and raised in Stockton. The reality is the things that drew most of us here are still in play to the rest of the world. We all started out somewhere, in a apartment, a single wide trailer. We all aspire to be wherever we are right now. Again, I don't know if this is necessarily the right place for this, but from an affordability stand point. Commisioner Graf mentioned the 98% occupancy rate in places, that is probably light. He is in the real estate business ad he does this every day. He loves this community. All your comments tonight, well not all of them, were wonderfully thought out at the Overlake level. Fortunately, unfortunately the Commissioners must view things with what is best for our City. We are not always going to be perfect. We do the best we can . We have heard a lot about infrastructure tonight; water, sewer, traffic, schools. The debacle that is Highway 36 has taught us anything, until there is a tragic or need, infrastructure never comes before the growth. That said schools are the same way. Those are valid. Again, the school district, who indecently the property taxes 70% goes to the School district. We can't afford new schools with the tax base we have now. The legislature gave us some equalization last year, but that is still not going to get it done. Schools are million of dollars a piece. When we talk about this nasty circle that is growth. We all want commercial because they pay taxes at 100%, but those

commercial people don't come until there are 70,000 rooftops. The tax revenue does not come around to help us until it passed the time we need them. Whether we pass this particular rezone tonight or subsequent ones, understand that all commissioners have heard you. People will live were they can afford to live. We are $70,000 to $90,000 dollars cheaper than Salt Lake County. I appreciate your time, but understand that we will have to have these tough conversations whether it is tonight, next week, or next year. We also seem to agree we want high density, but we all seem to agree we don't want it here, in our backyard. I urge you to look at it but understand that there is some context that we the Commission and your elected officials will have to do from a long-term stand point. We have to do what we believe is best for the Community. We are not going to agree with each other. Mr. Sloan once again thank each of the public for being in attendance and for their input.

Chairman Robinson commented that the Planning Commission is not passing anything tonight. The role of the Planning Commission is to make recommendations. Those recommendations go to the City Council. Some mentioned that you are voters, you didn't vote for us. What we do tonight ill be a recommendation that goes to City Council and then they will take it on their agenda. It's a zoning map amendment. There is a whole lot of things that have to happen before anything goes in that spot. So tonight, the Planning Commission is going to make a recommendation based on what we have studied and what we have observed and that goes to the City Council, which is the legislative body of the City. The Planning Commission is community-based recommendation body . Regardless of how you feel about what we do, this is not passing.

Council Member McCall wanted to comment quickly. In the event that the Commission does pass this, he would like to make a recommendation that you add to the conditions that the parking, the parking that is required for the developer; two parking spots per dwelling; that those two spots are free. They cannot fair for The Cove in Overlake to be charging people to park in those spots. Commisioner Hammer asked how they could do that? The Commission can dictate what someone can do on their land? Mr. Baker stated that it is not a legal question he has researched before, but the two onsite spaces per unit are a required City development standard. He is concerned that a developer can discourage tenant use of the parking lot that the City requires for them. He stated that there is a good likelihood that it is a legal condition to impose. Council Member McCall also stated that the Planning Commission should require the wall by the train tracks be bigger than six feet.

Mr. Bolser added a follow up to Chairman Robinson's comment; that for the public's general knowledge and the Planning Commissions as well. Regardless of the Planning Commission's decision this evening, whether in favor or opposed, it will go on to the City Council. The City Council will be holding their own public hearing. Essentially the process that would happen, following a decision this evening, the information collected this evening would be provided to the Council Chair. They will assign a meeting for this to be heard again. The public will not be receiving a specific letter stating when the hearing is. Please keep an eye on the agendas and information in the newspaper to be aware of when that will occur. Mr. Bolser did not know if that will be the next City Council meeting, which is on November 7th, 2018, simply because the City wants to make sure they have the record and minutes, even in draft form, to make sure the Council has a complete picture of all the public's testimony. As quickly as it can be completed, it will be provided to the Administration and Council Chair for scheduling. Understand it may not be the next

meeting, so we can provide them as complete record this evening so that they have your views and opinions from this evening. Commissioner Hammer addressed the audience and reminded them that they could sign up on the City's website for email alerts when agendas are posted for City Council and Planning Commission meetings.

Chairman Robinson encouraged the audience to return to a Planning Commission meeting.

Commisioner Graf stated he would like to modify the recommendation for tonight. Commisioner Graf moved that we forward a recommendation to the City Council for the Berra Boulevard zoning map amendment, requested by Jake Andrews, representing Metro West Developers, for the purpose, of reassigning the zoning districts of the northern 32 acres, including the 1.99 acres City owned parcel to R1-7 PUD, Planned Unit Development, and the southern 24 acres to R1-7 PUD, Planned Unit Development, application number P18-713, and including the conditions of a binding traffic study as well as a six foot masonry wall.

Commisioner Graf stated he was not sure he should include the Staff Report conditions and then did not include them in his motion.

Commisioner Montano asked if they wanted to include the requirement on the parking.

Chairman Robinson asked Commisioner Graf to explain his motion.

Commisioner Graf stated that the smaller development is reflected in the larger development. He is not asking for HDR in the second parcel 31.88 acres. He is saying that both zones are R1-7 PUD zone or both 23.9 acres, Tooele City parcel of 1.99 acres, and what's listed as HDR zone of 31.88 acres. Chairman Robinson stated with the PUD development subject to those conditions listed for that one are listed for the entire parcel. Commissioner Graf stated that is correct.

Commisioner Hammer asked Commisioner Graf to specify what R1-7 PUD zone is? Commisioner Graf stated that that is R1-7 zone requires 7000 square foot lots for single family residence. The applicant is requesting that the PUD overlay reduce the lot size to 2500 square feet. Essentially, it's taking what is zoned right now, medium density, and adopting the R1-7 PUD zone and allowing for smaller lot sizes but not allowing for HDR, high density residence.

Mr. Baker commented that he needs to answer the question on if the conditions in the Staff Report are still appropriate for the motion that Commisioner Graf has made. Yes, they are, so I urge you to consider whether you want to include those or not; instead of passing over them as part of your motion. Commisioner Graf stated that he did want to include the conditions in the Staff Report as relating to R1-7 PUD, in addition he is not sure if the six-foot masonry wall was part of R1-7 PUD conditions. If it is not he would like to include that. He would also like to include the traffic study in addition that is binding and also addressing the verbiage on the parking. Commisioner Montano stated that the parking wouldn't apply because it is no longer high density.

Chairman Robinson stated that this motion is completely different than what the applicant requested. He wanted to make sure everyone understood.

Commisioner Graf moved that we forward a recommendation to the City Council for the Berra Boulevard zoning map amendment, requested by Jake Andrews, representing Metro West Developers, for the purpose, of reassigning the zoning districts of the northern 32 acres, including the 1.99 acres City owned parcel to R1-7 PUD, Planned Unit Development, and the southern 24 acres to R1-7 PUD, Planned Unit Development, application number P18-713, based on the findings and subject to the conditions listed in the Staff Report dated October 15, 2018 and including the conditions of a binding traffic study as well as a six foot masonry wall. Commissioner Hammer seconded the motion. The vote as follows: Commissioner Montano, "No," Commissioner Hamilton, "Aye," Commissioner Sloan, "No," Commissioner Bevan, "Aye," Commissioner Graf, "Aye," Commissioner Hammer, "Aye," Chairman Robinson, "No." The motion passed four to three.

Commisioner Sloan stated during the vote that he had spent a week and half studying this application and he is pretty comfortable with it. He doesn't disagree on the space with Commissioner Graf's suggestion, he just hasn't had time to look at it and see what is substantially changes. At this point he has to vote no. Chairman Robinson also stated he voted no for the reasons Commissioner Sloan stated.

Chairman Robinson stated the Commission would forward that recommendation with that verbiage on to the City Council.

Commissioner Hammer and Sloan thanked everyone for coming and for their time.

Chairman Robinson stated that the Planning Commission would take a short recess and return at 10:00 p.m.

8. **Public Hearing and Recommendation on a Zoning Map Amendment request by Doug Kinsman of Ensign Engineering to reassign the zoning designation from the GC General Commercial zoning district to the HDR High Density Residential zoning district for Brady Townhome Development on approximately 5.26 acres located at approximately 750 North 100 East.**

Presented by Andrew Aagard

A map of the property was shown on the screen. This property is east of Albertsons. To the North there is an existing high-density residential property. The property is currently zoned general commercial. The property to the North is also zoned general commercial. That exists as a non-conforming situation. Applicant is requesting to rezone as HDR, high density residential. Staff is recommending approval of the rezone request. This property is not highly served as a commercial property. It doesn't receive much visibility due to the Albertsons store directly in front of it.

Chairman Robinson asked the Commission if there were any comments or questions.

Mr. Aagard asked if he could add that the City would like to see the property to the North also zoned HDR while we are doing this rezone. Mr. Baker stated that they should have a discussion with the applicant of that property before rezoning the non-conforming property.

Chairman Robinson stated he would rather not do it tonight.

Commisioner Hammer asked the GC non-conforming that is where the apartments are right now. How did it get there? Mr. Aagard stated he had no idea. It predates his time at the City. Mr. Baker stated he has been at the City 25 years and did not know. Commissioner Hammer asked if those apartments are 25 years old. Mr. Baker stated they were.

Chairman Robinson asked about the google map that was shown on screen. There are little house right there, what does this do to the homes? A member of the audience stated he would address the question in public hearing.

Chairman Robinson opened the public hearing.

Arthur Brady stepped forward. He stated that he owned the property, the one home on the subject property he owns. He bought it 18 years ago. In the years since then he acquired the surrounding properties. He originally owned a half acre originally. He acquired them so there wouldn't be more apartments built right in his back yard and originally, he wanted to put in an orchard. He was told by a prior City employee told him that wouldn't be allowed. It wouldn't conform with general commercial zoning. The only reason Mr. Brady believed high density was required was to allow the possibility that one of the townhome units can have more than four units. The intent is to build townhomes, that will be individually sold as opposed to apartments that will be rented.

Chairman Robinson asked if there were any other comments in the public hearing; there were none. Chairman Robinson closed the public hearing.

Commissioner Sloan moved forward a positive recommendation to the City Council for the Brady Townhome zoning map amendment request, by Doug Kinsman, representing Ensign Engineering, to reassign the subject property to the HDR, high density residential zoning district, application number P18-724 and based on the findings and subject to the conditions listed in the Staff Report dated October 12, 2018. Chairman Robinson seconded the motion. Robinson seconded the motion. The votes was as follows, Commissioner Montano, "Aye," Commissioner Hamilton, "Aye," Commissioner Sloan, "Aye," Commissioner Bevan, "Aye," Commissioner Graf, "Aye'" Commissioner Hammer, "Aye," Chairman Robinson, "Aye." The motion passed.

9. **Adjourn**

Commissioner Bevan move to adjourn the meeting. The meeting adjourned at 10:07 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting

Approved this 14th Day of November, 2018

____
Chris Sloan, Chairman, Tooele City Planning Commission

STAFF REPORT
October 15, 2018

To: Tooele City Planning Commission
Business Date: October 24, 2018

From: Planning Division
Community Development Department

Prepared By: Andrew Aagard, City Planner / Zoning Administrator

Re: **Berra Boulevard Development – Zoning Map Amendment Request**

Application No.: P18-713
Applicant: Jack Andrews, representing Metro West Developers
Project Location: Approximately Aaron Drive & Berra Boulevard
Zoning: R1-7 Residential Zone
Acreage: Approximately 57.77 Acres (Approximately 2,516,461 ft^2)
Request: Request for approval of a Zoning Map Amendment in the R1-7 Residential zone regarding the reassignment of the subject property to the HDR High Density Residential and R1-7 PUD Planned Unit Development zoning districts.

BACKGROUND

This application is a request for approval of a Zoning Map Amendment for approximately 57.77 acres (including a 1.99 acre Tooele City Parcel) located at approximately Aaron Drive and Berra Boulevard between Berra Boulevard and the Union Pacific Railroad. The property is currently zoned R1-7 Residential. The applicant is requesting the northern 34 (including 2 acre City owned parcel) acres be rezoned to HDR High Density Residential to facilitate development of the property as apartments, condominiums and townhomes. It is being requested that the southern 24 acres be rezoned to R1-7 PUD Planned Unit Development to facilitate flexibility in the development standards for lots in the R1-7 Residential zone. The applicant has submitted proposed PUD standards, they can be found in the applicant submitted information section of this report in "Exhibit B" bellow.

ANALYSIS

General Plan and Zoning. The Land Use Map of the General Plan calls for the Single-Family Residential land use designation for the subject property. The property has been assigned the R1-7 Residential zoning classification, supporting approximately five dwelling units per acre. The purpose of the R1-7 zoning district to provide a range of housing choices to meet the needs of Tooele City residents, to offer a balance of housing types and densities, and to preserve and maintain the City's residential areas as safe and convenient places to live. These districts are intended for well-designed residential areas free from any activity that may weaken the residential strength and integrity of these areas. Typical uses include single-family dwellings, two-family dwellings and multi-family dwellings in appropriate locations within the City. The applicant has requested to maintain the R1-7 zoning district on the southern 24 acres but wishes to amend the zoning map to include a PUD designation. The PUD designation would add a specific set of development criteria to the lots within the designated PUD area. The applicant's desired PUD standards are included in "Exhibit B" in this report.

The purpose of the HDR High Density Residential zone is to "provide an environment and opportunities

for high density residential uses, including single family detached and attached residential units, apartments, condominiums and townhouses." The northern 32 acres are proposed to be re-assigned the HDR zoning district to facilitate the construction of the uses permitted in this district. The location, in and of itself is an appropriate location for higher density residential developments. Developments of higher densities are good buffers between areas of low-density residential uses and areas of higher intensity uses such as industrial and commercial. This proposed higher density residential development is located between areas of medium density residential (Overlake) and the Union Pacific Railroad and large commercial centers. As a matter of planning principle, this is an ideal location for higher density residential uses. Mapping pertinent to the subject request can be found in Exhibit "A" to this report.

There is also a 1.99 acre parcel currently under the ownership of Tooele City. This is a land-locked parcel adjacent to the railroad. Conceptual development plans show the development surrounding the parcel but do not include the parcel in the development plans. The parcel should be included in the rezone and re-assigned a zoning designation similar to that of the surrounding properties for continuity purposes. Regardless of ownership, leaving the parcel zoned other than HDR makes it more difficult to develop or sell. By rezoning the property to HDR, same as the surrounding properties, the property will become more conducive to future development regardless of who owns it.

The property is largely surrounded by Medium Density Residential land uses to the west in the Overlake Subdivision development and future Providences development. To the east, on the adjacent side of the Union Pacific Railroad properties are zoned GC General Commercial and HDR High Density Residential.

Settlement Agreement. The subject properties were once a part of the overall Overlake master development plan. That plan identified the subject properties for usage as park and open spaces. Following the litigation between the City and the developers of the Overlake development, a settlement agreement was reached and executed in August 2014, approved by the City Council as Resolution 2014-37. As a part of that settlement agreement, the applicability of the original development agreement for the Overlake development, at issue in the litigation, was reduced in scope to apply only to those parts of the overall Overlake project that have been approved for development. All other areas of the overall Overlake development were then reassigned to the R1-7 zoning district for development under the standard terms of the City Code, including the possibility reassignment to other zoning districts for differing types and densities of development. This reassignment included all undeveloped properties north of 2000 North, west of 400 West and Clemente Way, and south and east of Berra Boulevard and Aaron Drive, the subject properties included. As a result, although the master development plan for the overall Overlake project identified the subject properties for park and open space, that development plan no longer has bearing or applicability for the subject property and, like all other undeveloped former Overlake development properties, is available for development in any form approved by the City.

Requested PUD Provisions. The applicant has submitted a document requesting specific provisions for the PUD section of the development. That document has been included in this staff report for the Planning Commission's reference. Essentially, the developer is asking for changes to almost all of the current development standards of the R1-7 Residential zoning code regarding setbacks, lot width, lot coverage, building height, lot size and others. The requested changes are as follows:

1. The developer is requesting that a minimum of 50 lots in the PUD portion of the development be developed under the following proposed standards:
    a. *Lot size*: R1-7 zone requires 7,000 square foot lots, the developer is requesting 5,000 square foot lots.
    b. *Lot With and Frontage*: Current requirements are 60 feet with 35 feet of frontage, the developer is asking for 50 feet width and 35 feet of frontage.
    c. *Front Setback*: Current requirements are 25 foot front yard setback. The request

is to have that reduced to 20 feet.

d. *Rear Setback*: Current code requirement is 20 feet for all lots. The developer is requesting 20 feet on interior lots, 15 feet on corner lots.
e. *Side Setback*: Current code is 6 feet on interior lots and 20 feet on corner. The request is to change that to 15 feet on corners and maintain 6 feet on interior lots.
f. *Building Height*: Current standard is 35 feet. There is no change being requested in building height requirements.
g. *Lot Coverage*: The R1-7 zone currently limits lots to 35% building coverage. The applicant is requesting that number be increased to allow 45% coverage.

2. The remaining lots in the PUD portion of the development are requested to be permitted development under the following criteria:

   a. *Lot Size:* The R1-7 zone requires 7,000 square foot lots for single-family residential. The applicant is requesting the PUD overlay reduce the lot size to 2,500 square feet.
   b. *Front Yard Setbacks:* Setbacks in the R1-7 zone are typically 25 foot front yards. The applicant is requesting PUD overlay reduce the front yard setbacks to 15 feet for public streets, 5 feet for private streets and 10 feet for rear loaded dwellings adjacent to a public street.
   c. *Side Yard Setbacks:* Typical side yard setbacks in the R1-7 zone are 6 feet for interior lots and 20 feet on corner lots. The applicant is requesting 3 foot interior setbacks and 10 foot setbacks on corner lots.
   d. *Rear Yard Setbacks:* Typical rear yard setbacks in the R1-7 zone are 20 feet. The applicant is requesting the PUD overlay reduce rear yard setbacks to 10 feet for lots adjacent to a right-of-way and 5 feet for rear loaded single-family dwellings.
   e. *Lot width and Frontage:* The R1-7 zone currently requires lot width of 60 feet at front setback line and a frontage of 35 feet. The applicant wishes to reduce lot width and frontage down to 30 feet.
   f. *Maximum Building Height.* Currently, ordinance limits building height to 35 feet. The applicant is requesting the same 35 foot height requirement but is also requesting 3 stories.
   g. *Lot Coverage.* Current ordinances limit lot coverage in the R1-7 zone to 35%. The applicant wishes to increase the lot coverage amount through the PUD overlay to 70%.
   h. *Open Space.* The applicant is proposing a half acre (21,780 square foot) open space within the development as well as a 700 square foot playground and a 100 square foot covered structure.
   i. *Streets.* All roads within the PUD portion of the development shall be public streets with the exception of privately shared driveways. These roads should meet all requirements of the Tooele City Fire Department for emergency vehicle access.

Criteria For Approval. The criteria for review and potential approval of a Zoning Map Amendment request is found in Sections 7-1A-7 of the Tooele City Code. This section depicts the standard of review for such requests as:

(1) No amendment to the Zoning Ordinance or Zoning Districts Map may be recommended by the Planning Commission or approved by the City Council unless such amendment or conditions thereto are consistent with the General Plan. In considering a Zoning Ordinance or Zoning Districts Map amendment, the applicant shall identify, and the City

Staff, Planning Commission, and City Council may consider, the following factors, among others:

(a) The effect of the proposed amendment on the character of the surrounding area.
(b) Consistency with the goals and policies of the General Plan and the General Plan Land Use Map.
(c) Consistency and compatibility with the General Plan Land Use Map for adjoining and nearby properties.
(d) The suitability of the properties for the uses proposed viz. a. viz. the suitability of the properties for the uses identified by the General Plan.
(e) Whether a change in the uses allowed for the affected properties will unduly affect the uses or proposed uses for adjoining and nearby properties.
(f) The overall community benefit of the proposed amendment.

REVIEWS

Planning Division Review. The Tooele City Planning Division has completed their review of the Zoning Map Amendment submission and has issued a recommendation for approval for the request with the following proposed conditions:

1. The 1.99 Acre Tooele City Parcel be included in the rezone request and be re-assigned the zoning designation of HDR High Density Residential.
2. The developer of the property shall provide an access, per City standards, to the 1.99 acre triangle piece adjacent to the Union Pacific Railroad.
3. Solid barrier style fencing should be considered where the development is adjacent to the Union Pacific Railroad for safety purposes.

Engineering Review. The Tooele City Engineering and Public Works Divisions have completed their reviews of the Zoning Map Amendment submission and have issued a recommendation for approval for the request with the following proposed conditions:

1. The cost of utility upgrades from changes in utility demands resulting from the change from potential park space to high density residential shall be born by the developer of the property.
2. Developer shall provide and maintain provisions to route all offsite storm water through the property per City Code and shall maintain their own storm water run-off on site.

Noticing. The applicant has expressed their desire to rezone the subject property and do so in a manner which is compliant with the City Code. As such, notice has been properly issued in the manner outlined in the City and State Codes.

STAFF RECOMMENDATION

Staff recommends approval of the request for a Zoning Map Amendment by Jack Andrews, representing the Metro West Developers, application number P18-713, subject to the following conditions:

1. That all requirements of the Tooele City Engineering and Public Works Divisions shall be satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.
2. That all requirements of the Tooele City Building Division shall be satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.

3. That all requirements of the Tooele City Fire Department shall be satisfied throughout the development of the site and the construction of all buildings on the site.
4. That all requirements of the geotechnical report shall be satisfied throughout the development of the site and the construction of all buildings on the site.
5. The 1.99 Acre Tooele City Parcel be included in the rezone request and be re-assigned the zoning designation of HDR High Density Residential.
6. The cost of utility upgrades from changes in utility demands resulting from the change from potential park space to high density residential shall be born by the developer of the property.
7. The developer of the property shall provide an access, per City standards, to the 1.99 acre triangle piece adjacent to the Union Pacific Railroad.
8. Developer shall provide and maintain provisions to route all offsite storm water through the property per City Code and shall maintain their own storm water run-off on site.

This recommendation is based on the following findings:

1. The proposed Zoning Map Amendment would meet the intent, goals, and objectives of the Master Plan.
2. The proposed Zoning Map Amendment would meet the intent, goals, and objectives of the Tooele City General Plan.
3. The proposed Zoning Map Amendment would meet the requirements and provisions of the Tooele City Code.
4. The proposed Zoning Map Amendment would meet be deleterious to the health, safety, and general welfare of the general public nor the residents of adjacent properties.
5. The public services in the area are adequate to support the anticipated development.

MODEL MOTIONS

Sample Motion for a Positive Recommendation – "I move we forward a positive recommendation to the City Council for the Berra Boulevard Development Zoning Map Amendment Request by Jack Andrews, representing Metro West Developers for the purpose of reassigning the zoning district for the northern 32 acres, including the 1.99 acre City owned parcel, to HDR High Density Residential, and the southern 24 acres to R1-7 PUD Planned Unit Development , application number P18-713, based on the findings and subject to the conditions listed in the Staff Report dated October 15, 2018:"

1. List any additional conditions and findings…

Sample Motion for a Negative Recommendation – I move we forward a negative recommendation to the City Council for the Berra Boulevard Development Zoning Map Amendment Request by Jack Andrews, representing Metro West Developers for the purpose of reassigning the zoning district for the northern 32 acres, including the 1.99 acre City owned parcel, to HDR High Density Residential, and the southern 24 acres to R1-7 PUD Planned Unit Development , application number P18-713, based on the findings.

1. List any additional findings…

EXHIBIT A

MAPPING PERTINENT TO THE ZONING MAP AMENDMENT

Berra Boulevard Development Zoning Map Amendment

W 2000 N
E 2000 N
W 1970 N
1930 N
20E
W 1900 N
E 1910 N
N 370 W
N 170 W
N 120 W
1970 N
Aparicio Dr
E 1860 N
Progress Way
400 E
Dimaggio Dr
E 1810 N
Brett St
Anson Dr
Pine Canyon Rd
Green Pines Ave
1700 N
1680 N
40 E
Aaron Drive
N 150 E
160 E
N 210 E
Broadway
W 1620 N
Colavito Way
Candelaria Dr
Durocher Ln
Dawson Dr W
Dean Ave
1570 N
36
N 2000
E 1530 N
Berra Blvd
W 1530 N
Tooele City Property
400 N
N 400 W
Clemente Way
1480 N
N 220 W
Subject Property
W 1430 N
1430 N
W 1280 N
E 1280 N
W 1380 N
600 W
Cres View Ln
N 200 W St
N 80 E
W 1160 N
N Main St
Union Pacific
N 200 W
N
112
1000 North
W 970 N

Aerial View

Berra Boulevard Development Zoning Map Amendment

N

R1-7

P (OVERLAKE)

Subject Property R1-7

Subject Property R1-7

1.99 Acre Tooele City Parcel

400 West

Main Street

1000 North

GC

HDR

LI

NC

RR5

RR1

MD

COPPER CANYON

Aerial View

EXHIBIT B

PROPOSED DEVELOPMENT PLANS
APPLICANT SUBMITTED INFORMATION

GRAPHIC SCALE

(IN FEET)
1 inch = 200ft.

OVERALL CONCEPT NARRATIVE

LOCATED IN:	TOOELE CITY, TOOELE COUNTY, UTAH
ORIGINAL PROPERTY	55.78 ACRES
TOTAL UNITS	611
OVERALL DENSITY	10.95 UNITS/ACRE
SINGLE FAMILY AREA	23.90 ACRES
SINGLE FAMILY LOTS	119
SINGLE FAMILY DENSITY	4.98 LOTS/ACRE
MULTI FAMILY AREA	31.88 ACRES
MULTI FAMILY UNITS	492
MULTI FAMILY DENSITY	15.43 UNITS/ACRE

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32 WEST CENTER STREET
MIDVALE, UTAH 84047 PH: (801) 352-0075
www.focusutah.com

BERRA BLVD DEV.

TOOELE, UTAH
CONCEPT PLAN

REVISION BLOCK

#	DATE	DESCRIPTION
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2	----	---
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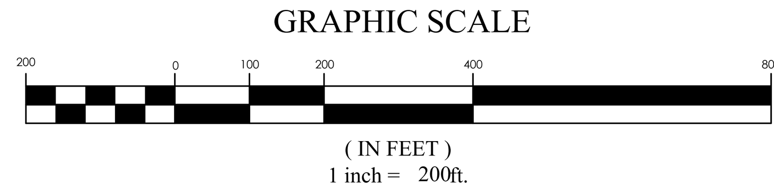
CONCEPT PLAN

Scale: 1"=200'	Drawn: CJG
Date: 09/27/18	Job #: 18-263
Sheet: D	

Z:_2018\18-263 Milner Berra Blvd\design 18-263\dwg\concepts\18-263 Concept D Rendering.dwg

GRAPHIC SCALE



(IN FEET)
1 inch = 200ft.

LEGEND

PROPOSED MEDIUM DENSITY RESIDENTIAL
PRIVATELY-OWNED: 23.90 ACRES

PROPOSED HIGH DENSITY RESIDENTIAL
PRIVATELY-OWNED: 31.88 ACRES
CITY-OWNED: 1.99 ACRES

GENERAL PLAN

1. THE PRESENT LAND USE DESIGNATION OF THE SUBJECT PROPERTY IS MEDIUM DENSITY RESIDENTIAL.
2. THE PROPOSED LAND USE DESIGNATIONS WOULD REMAIN MEDIUM DENSITY RESIDENTIAL (SHOWN IN YELLOW), AND THE HIGH DENSITY RESIDENTIAL (SHOWN IN BROWN) WOULD FEATURE TOWNHOMES AND APARTMENTS NEAR CURRENTLY EXISTING TOWNHOMES TO THE NORTH AND APARTMENT BUILDINGS TO THE SOUTH. THE HIGH DENSITY RESIDENTIAL WOULD ALLOW FOR SMOOTH TRANSITIONS BETWEEN HOUSING TYPES AND COMMERCIAL USES AND PROVIDE A VIBRANT COMMUNITY ATMOSPHERE.
3. THE PROPOSED MEDIUM DENSITY RESIDENTIAL AND PROPOSED HIGH DENSITY RESIDENTIAL DESIGNATIONS WOULD BE USED TO PROVIDE HOUSING COMMUNITIES WITH A VARIETY OF PRODUCT TYPES THAT INCLUDE AMENITIES, OPEN SPACE, AND WALKABILITY.
4. THE PROPOSED LAND USE DESIGNATIONS WOULD IMPROVE OVERALL VISIBILITY TO THE NEARBY OVERLAKE DEVELOPMENT AND PROVIDE HOUSING THAT COMPLIMENTS THE CURRENTLY EXISTING COMMUNITIES. THE PROPOSED LAND USES WOULD BRING DEVELOPMENT AND HELP GENERATE BUSINESS IN TOOELE.
5. THE PROPOSED LAND USE DESIGNATIONS WOULD FOLLOW TOOELE'S COMMUNITY DEVELOPMENT MISSION BY CREATING A QUALITY SINGLE-FAMILY, TOWNHOME, AND APARTMENT NEIGHBORHOOD DESIGN THAT WOULD BOOST NEIGHBORHOOD LIVABILITY AND APPEARANCE, FACILITATE REDEVELOPMENT, ATTRACT BUSINESS, AND RETAIN BUSINESS.

PRIVATE PARCEL
31.88 acres

CITY PARCEL
1.99 acres

PRIVATE PARCEL
23.90 acres

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BERRA BLVD DEV.
TOOELE, UTAH
REZONE EXHIBIT

REVISION BLOCK

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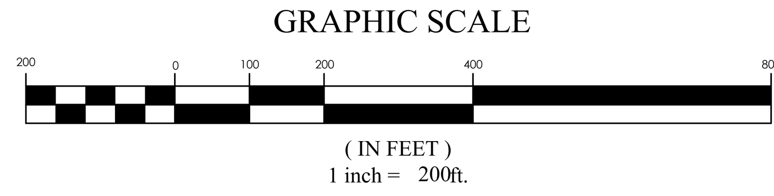
GENERAL PLAN

Scale: 1"=200' Drawn: CJG
Date: 09/27/18 Job #: 18-263
Sheet: 2



LEGEND

- PROPOSED R1-7 PUD ZONE
- PROPOSED HDR ZONE PRIVATELY-OWNED
- PROPOSED HDR ZONE CITY-OWNED

ZONING MAP

1. THE PRESENT ZONING OF THE PROPERTY IS R1-7.
2. THE PROPOSED R1-7 PUD ZONING (SHOWN IN PINK) WOULD MAINTAIN THE CURRENT MEDIUM DENSITY LAND USE DESIGNATION. THE PROPOSED HDR ZONING (SHOWN IN BLUE AND YELLOW) WOULD BE PART OF A NEW HIGH DENSITY RESIDENTIAL DESIGNATION THAT WOULD PROVIDE TOWNHOMES AND APARTMENTS INTENDED TO MIX WELL WITH CURRENTLY EXISTING TOWNHOMES AND APARTMENTS IN ADJACENT AREAS.
3. THE PROPOSED R1-7 PUD ZONING WOULD ALLOW FOR A GREATER VARIETY OF HOME PRODUCTS AND OPEN SPACE WHILE MAINTAINING A DENSITY OF LESS THAN 5.0 UNITS PER ACRE AS INSTITUTED IN THE UNDERLYING R1-7 ZONE. THE PROPOSED HDR ZONING WOULD ALLOW FOR GREATER VARIETY OF HOUSING SUCH AS TOWNHOMES AND APARTMENTS SIMILAR TO EXISTING DEVELOPMENTS TO THE NORTH AND SOUTH OF THE SUBJECT PROPERTY. THE PROPOSED HDR ZONE WOULD ALSO CREATE A BUFFER BETWEEN RESIDENTIAL ON THE WEST AND THE COMMERCIAL ON THE EAST, CREATING A SMOOTH TRANSITION BETWEEN BOTH ZONES.
4. THE PROPOSED ZONING WOULD IMPROVE OVERALL VISIBILITY TO THE NEARBY OVERLAKE DEVELOPMENT AND PROVIDE HOUSING PRODUCTS THAT COMPLIMENT THE CURRENTLY EXISTING COMMUNITIES. THE PROPOSED LAND USES WOULD BRING DEVELOPMENT AND HELP GENERATE BUSINESS IN TOOELE.
5. THE PROPOSED ZONING WOULD FOLLOW TOOELE'S COMMUNITY DEVELOPMENT MISSION BY CREATING A QUALITY SINGLE-FAMILY, TOWNHOME, AND APARTMENT NEIGHBORHOOD DESIGN THAT WOULD BOOST NEIGHBORHOOD LIVABILITY AND APPEARANCE, FACILITATE REDEVELOPMENT, ATTRACT BUSINESS, AND RETAIN BUSINESS.

HDR ZONE
31.88 acres

1.99 acres

R1-7 PUD ZONE
23.90 acres

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BERRA BLVD DEV.

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REZONE EXHIBIT

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ZONING MAP

Scale: 1"=200' | Drawn: CJG
Date: 09/27/18 | Job #: 18-263
Sheet: 1

EXHIBIT C

Rezone Ordinance 2018-21