MEETING NOTICE AND AGENDA
AMENDED

Notice is hereby given that the Kaysville City Council will hold a regular council meeting on Thursday, March 4, 2021, starting at 7:00 P.M. in the **Council Chambers in Kaysville City Hall at 23 East Center Street, Kaysville, UT**.

In consideration of the COVID-19 pandemic, attendance will be monitored by the Kaysville City Police Department and will be limited to less than 50 individuals, including Council, Staff and Applicants. Because of the room occupancy limitation, it is encouraged that those wishing to watch the meeting do so by viewing the meeting online. The meeting will be streamed on YouTube, and the link to the meeting will be posted on www.KaysvilleLive.com. Masks are required, and all of those in attendance will be required to participate in a socially distant manner.

For those wishing to direct comments to the City Council regarding public hearings or items on the agenda can do so in-person, or email comments to publiccomment@kaysvillecity.com. Emailed comments will NOT be read out-loud at the meeting. Members wishing to speak during an Action Items or during Call to the Public must sign-up in person before the meeting to speak.

YOUTH CITY COUNCIL MOCK COUNCIL MEETING – 6:00 P.M.

CITY COUNCIL Q&A – 6:30 P.M.

The City Council will be available to answer questions or discuss any matters the public may have.

CITY COUNCIL MEETING – 7:00 P.M.

The agenda shall be as follows:

1. OPENING
   a. Provided by Council Member Tami Tran.

2. PRESENTATIONS AND AWARDS
   a. Fire Department Report - Paul Erickson, Kaysville City Fire Chief.

3. DECLARATION OF ANY CONFLICTS OF INTEREST

4. CONSENT ITEMS
   a. Approval of Minutes of February 4, 2021.

5. ACTION ITEMS
   a. Interlocal Agreement with Davis County for Paramedic Services.
   b. Preliminary plat approval for the Edge End Hollow 3 Amended Subdivision at 1175 South Haights Creek Drive – Loren Clark.

6. WORK ITEMS
   a. Discussion on Heritage Square Development Agreement.
   b. Discussion on Proposed Purchasing Policy Alterations.
   c. Discussion on Franchise Agreement.
   d. Discussion on Pole Attachment Agreement.
   e. Discussion on Fiber Lease Agreement.
   f. Discussion on Fiber Conduit Rates.

7. CALL TO THE PUBLIC (3 MINUTE LIMIT, MUST SIGN UP IN PERSON)

8. COUNCIL MEMBER REPORTS

9. CITY MANAGER REPORT

10. ADJOURNMENT

Kaysville City is dedicated to a policy of non-discrimination in admission to, access to, or operations of its programs, services, or activities. If you need special assistance due to a disability, please contact the Kaysville City Offices at (801) 546-1235 at least 24 hours in advance of the meeting to be held.

I hereby certify that I posted a copy of the foregoing Notice and Agenda and emailed copies to media representatives on February 26, 2021.

Annemarie Plaizier
City Recorder

KAYSVILLE CITY COUNCIL
February 4, 2021

Minutes of a regular Kaysville City Council meeting held on February 4, 2021 at 7:00 p.m. in the Council Chambers in Kaysville City Hall at 23 East Center Street, Kaysville, UT.

Council Members present: Mayor Katie Witt, Council Member Barber, Council Member Mike Blackham and Council Member Andre Lortz, Council Member Tamara Tran

Excused: Council Member John Swan Adams

Others Present: City Manager Shayne Scott, City Attorney Nic Mills, Deputy City Recorder Maria Devereux, Information Systems Manager Ryan Judd, Community Development Director Lyle Gibson, Police Chief Sol Oberg

OPENING

Council Member Tran opened the meeting with a prayer and led the Pledge of Allegiance.

PRESENTATIONS AND AWARDS

COMMUNITY DEVELOPMENT DEPARTMENT REPORT

Community Development Director Lyle Gibson gave a presentation about the Community Development department. Within the last year Jason Tubbs was hired to fill the second inspector position and Brad Lund was hired to take the position for Code Enforcement. The pandemic has created challenges in their department but feel that they've been able to adapt well. At the end of 2019 they implemented online software for the building permitting process and we've gotten good feedback from our contractors about it. We are still working on the General Plan update. We are seeing steady growth with both residential and businesses through the city, even through the pandemic. Our code enforcement is seeing less weed concerns in the city, which is attributed to being fewer vacant lots in the city. Our Public Works department has also been trying to work with residents to get overgrowing trees trimmed where the utility trucks will drive on the streets. The number of new residential home building permits issued remained about the same from 2019 to 2020. However we issued substantially more permits for remodels, additions and swimming pools because more people were working from home. The amount of commercial building permits were similar from 2019 to 2020. After the windstorm in the fall of 2020, there was a high demand for Generlink installations. In years past we had to limit the number of Generlink switches we could sell, but we've removed that cap and have had well over 100 requests processed after the September windstorm. While the number of licensed businesses in the city remained the same, we saw a number of businesses close that were based off of group interaction, such as consulting, tutoring, etc. Through the pandemic we saw some businesses who did really well and some who have struggled through it. We have had good outreach from our community to our businesses, and the city has used Cares Act funds to try to support our local businesses. In 2021 we anticipate seeing more growth both commercially and residentially. More work will be done on the General Plan to try to get that finished up soon. We have also received a grant to have our current traffic plans for Main Street reviewed and see what options we have to improve and preserve Main Street. UDOT approached the city recently about having this study done and it will likely take about four to six months to complete.

Council Member Tran asked about a mixed use zone.

Lyle Gibson responded that it has been part of discussions by previous commissions and council, but they felt it best to focus on the General Plan revision foremost. We are interested in community vision and feedback to see how residents feel about if a mixed use were implemented in Kaysville.

Mayor Witt added that also being considered is hiring an engineer for the Community Development department.

DECLARATION OF ANY CONFLICTS OF INTEREST

No conflicts were disclosed.

CONSENT ITEMS

Council Member Blackham made a motion to accept the following consent items:

a. Approval of Minutes of December 17, 2020.
b. Approval of Minutes of January 7, 2021.
c. A Resolution accepting approximately 0.028 acres of property from the Talbot Family Revocable Trust located at approximately 1029 North Highway 89.
d. A Resolution authorizing the disposal of cubicles from the Police Department.
e. Approval of Statewide Utility License Agreement Renewal with Utah Department of Transportation.

The motion was seconded by Council Member Lortz.

Council Member Barber asked if the council typically has to approve a resolution when any city property is being disposed of.

Nic Mills responded that Staff felt that this was substantial enough to go through an approval process.

Shayne Scott added that it's also because we are donating the items and we have to declare it as surplus before can be donated.

The vote on the motion was as follows:

Council Member Barber, yea
Council Member Tran, yea
Council Member Lortz, yea
Council Member Blackham, yea

The motion passed unanimously.

WORK ITEMS

ANIMAL CONTROL SERVICES CONTRACT AMENDMENT DISCUSSION

Shayne Scott explained that this item is for an Interlocal Agreement between Kaysville and Davis County for Animal Control Services. This proposed amendment is only intended to be in place through 2021 as we transition to Davis County establishing a tax levy specific to Animal Control Services. If successful, a plan would be put in place to transition cities out of the service altogether. Great things are happening in Davis County Animal Control and this agreement is an important step as we move forward on meeting this important need in our city and in Davis County.

Council Member Lortz made a motion to move the Animal Control Services Contract Amendment to an action item, seconded by Council Member Tran.

Council Member Blackham said that he would like to see some cost amounts for this agreement.

The vote on the motion was as follows:

Council Member Tran, yea
Council Member Lortz, yea
Council Member Blackham, yea
Council Member Barber, yea

The motion passed unanimously.

ELECTRIC VEHICLE PARKING SPOT ORDINANCE DISCUSSION

Nic Mills explained that the city recently installed stations to charge electric and hybrid vehicles. City staff has received some complaints that non-electric or non-hybrid vehicles are parking in these stalls. This proposed ordinance would prohibit this behavior and impose a civil penalty as a sanction for those violating this ordinance.

Council Member Blackham asked if these stalls are marked that they are for electric vehicles only.

Council Member Barber said that those that don't have signs will have them posted shortly.

Nic Mills added that in the proposed ordinance requires that these stalls be clearly marked indicating that they are for electric or hybrid vehicles.

Council Member Lortz asked if we are discriminating them by creating special parking for these vehicles. There may be circumstances where these parking stalls might be needed to be used by others. Is there a way to compromise to allow for limited-time use versus no use for non-electric vehicles?

Nic Mills responded that we could include an exception, but Staff would want some guidance as to how we would administer that kind of exception.

Council Member Lortz said that it seems this exception would only occur during a special event and non-day-to-day. If there's other parking available there's no reason for a non-electric vehicle to use those parking spaces.

Mayor Witt suggested approving the ordinance as written and then it can be amended if needed in the future.

Council Member Tran asked about requiring electric vehicles parked in the stalls to be actively charging while they are parked there.

Nic Mills responded that other cities have required something similar, but it might be hard for our police officers to investigate and might not be worth their time.

Council Member Barber made a motion to move the Electric Vehicle Parking Spot Ordinance to an action item, seconded by Council Member Blackham.

The vote on the motion was as follows:

Council Member Lortz, yea
Council Member Blackham, yea
Council Member Barber, yea
Council Member Tran, yea

The motion passed unanimously.

CALL TO THE PUBLIC

Nothing was brought under this item.

COUNCIL MEMBER REPORTS

Council Member Barber said recently the Independence Day committee met to continue to plan for the celebration this year. The events held this year will be more hybrid because we don't know where we will be at with COVID in July. We can't go back to the large gathering type of events, but we are working towards holding a fireworks show and have already hired our fireworks display contractor. The details surrounding the fireworks show aren't set yet. We also hope to hold a parade of some sort. We won't be able to have everyone congregate around Main Street but will likely do a parade similar to last year's where the parade would go through neighborhoods. Also, the Parks and Recreation Department is obtaining bids for: a new playground at Barnes Park, repaving the rotary trail by Shepard Lane, and for updates to the East Wilderness Park.

Council Member Tran said that the Mayor had put together an Interfaith Council which involves different faiths within our community. We hope this will help to create some connectivity and comradery there, as well as create more communication and opportunities to serve our community.

Council Member Lortz commented that at the next Council meeting the Council will be hearing Comcast, Centurylink and Utopia to come and present to the community about what they are doing to improve connectivity in Kaysville, and their plans for the future.

Mayor Witt said that recently the Council was able to take a trip down to the state capitol with the Youth Council. Mayor Witt added that this upcoming Tuesday, February 9th, the Council will be having a social with the County Commissioners to thank them for what they do.

CITY MANAGER REPORT

Shayne Scott said that the Council has been invited to a city-wide Staff meeting on February 23rd, via Zoom.

ADJOURNMENT

Council Member Barber made a motion to adjourn the City Council meeting at 7:42 p.m., seconded by Council Member Lortz and passed unanimously.

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 4, 2021

TYPE OF ITEM: Action

PRESENTED BY: Chief Paul Erickson/Shayne Scott

SUBJECT/AGENDA TITLE: Paramedic Services Interlocal Agreement

EXECUTIVE SUMMARY:

This agenda item and the included Agreement is an Interlocal Agreement between Kaysville, Davis County and Davis County Cities. This agreement would outline the timing and steps involved in transitioning Paramedic Services from under Davis County control to the control of cities. Each city has been organized into a group by geographical and other factors. Kaysville will be grouped with Farmington and Fruit Heights.

Shayne Scott and Chief Erickson have attended countless meetings about this transition over the past two years and believe this interlocal agreement is ready to be adopted by Davis County and each city in the county. This agreement is a crucial step as we move forward on meeting this important service in our city and in Davis County.

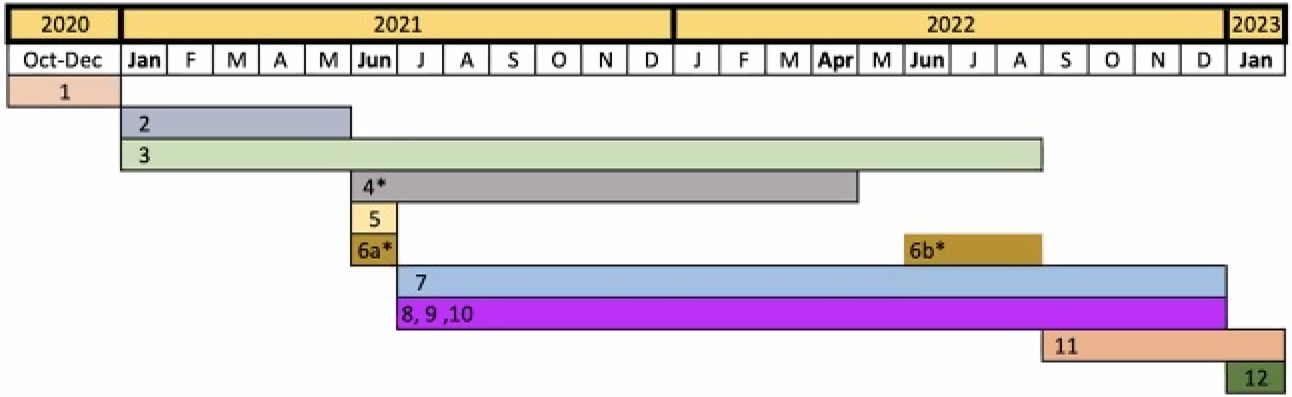
Council Options: 1) Approve the agreement; 2) Approve the agreement with any modifications the Council deems appropriate; 3) Decline to adopt the ordinance and remand to staff with further direction.

Recommended Options: Staff recommends that the City Council approve the interlocal agreement.

Fiscal impact & Fund Source for Recommended Action: Paramedic services will change drastically in Kaysville and surrounding communities and the precise impact financially is still being established.

Attachments: - Agreement

Paramedic Transfer Timeline



1	City Managers, Sheriff and Fire Chiefs educate elected officials in need to move paramedic service from the County to the Cities/Districts
2	Cities sign Interlocal Agreement for the provision of Paramedic Services
3	Cities launch a public relations campaign to inform the public about the need for a change in the provision of Paramedic Services
4	Cities combine through whatever means to create entities to provide service herein called "Entities"
5	County elimnates County Paramedic Funding Levy
6	Entities increase Tax Rates to replace County Paramedic Levy plus any additional revenues needed
7	Entities reimburse County for providing service during transition period
8	Entities apply for and receive paramedic licensure through state BEMS
9	Entities hire and train personnel
10	Entities purchase necessay equipment and vehicles
11	Entities provide paramedic service
12	County terminates paramedic service
*	To be completed by April 2022
**	Cities/Entities will need to committ to tax increase in June but Truth in Taxation Hearing and approval will be in August

AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____________, 2020, by and between a municipal corporation of the State of Utah, **DAVIS COUNTY**, a political subdivision of the State of Utah, (the "County"), **FARMINGTON CITY**, a municipal corporation of the State of Utah, **FRUIT HEIGHTS CITY**, a municipal corporation of the State of Utah, **KAYSVILLE CITY**, a municipal corporation of the State of Utah, **LAYTON CITY**, a municipal corporation of the State of Utah, the **NORTH DAVIS FIRE DISTRICT**, a Utah governmental entity, the **SOUTH DAVIS METRO FIRE SERVICE AREA**, a Utah governmental entity, **SOUTH WEBER CITY**, a municipal corporation of the State of Utah, and **SYRACUSE CITY**, a municipal corporation of the State of Utah.

RECITALS

A. The parties to this Agreement are governmental agencies each with a responsibility to provide public safety services within their jurisdictional boundaries, which services may include paramedic services.

B. The Cities which are parties to the Agreement intend to become licensees to operate and provide paramedic services within their respective jurisdictional boundaries.

C. Previously the County, the South Davis Metro Fire Agency and Layton City entered into an agreement to provide, within their respective boundaries and in a coordinated and effective manner, paramedic services in concert with Davis County.

D. The cities located within the North Davis Fire District have committed and intend that paramedic services be provided through the North Davis Fire District.

E. Davis County, has determined it will cease the provision of paramedic services and the parties, in the interest of supporting a more comprehensive, coordinated and efficient method for the provision of paramedic services, desire to coordinate the assumption of these services by the non-County parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated in this Agreement as substantive terms, as though fully set forth at this point.

2. Definitions. For the purposes of this Agreement:

a. "Paramedic unit" means the vehicle, equipment, personnel, materials, and supportive and administrative services comprising and necessary for a paramedic team to provide adequate and appropriate paramedic services in accordance with the standards established by the State. A paramedic team shall consist of a minimum of two (2) licensed individuals.

b. “Standard Response Time” means an eight-minute response time on at least 90% of calls for service, without regard to jurisdictional authority boundaries.

3. Cessation of County Services. Not later than December 31, 2022, the County will cease the provision of ALS and paramedic services. The County will not surrender the licensing authorizations it has received to provide paramedic services and which it holds as of the date of this Agreement until a new jurisdictional authority is authorized to provide the service. It is contemplated that this provision will require the County to amend its current license from time to time to permit the respective jurisdictional authorities created by this Agreement to receive licenses. The County will not by its legislative authority surrender the taxing authorization it has to levy a tax for the purpose of collecting revenue to provide paramedic services. However, by this Agreement, the County hereby agrees and commits to cease providing paramedic services by the above referenced date and to cease the collection of a tax levy in support of those services within the incorporated portions of the County as has been previously authorized by not later than June 30, 2021. Between the date of this Agreement and the date of December 31, 2022, the County agrees to continue providing paramedic services within the County boundaries and within the separate jurisdictional services areas established in this Agreement until such time as the jurisdictional authority, by separate agreement with the County, agrees to provide paramedic services. It is anticipated that the agreements between jurisdictional authorities and the County will take the forms of separate memorandums of understanding to be negotiated and committed to in writing. Each City or District which is a party to this Agreement agrees to provide a commitment, in writing, to each other party, by not later than June 1, 2021, of the specific means by which the party will provide paramedic services within their respective jurisdiction, with the specific intent that all will begin providing paramedic services by not later than December 31, 2022.

4. Jurisdictional Service Areas. For purposes of this Agreement, and to support the coordinated and efficient provision of paramedic services within the jurisdictional boundaries of each party to this Agreement, the parties hereby create jurisdictional service areas as more particularly shown on Exhibit A, attached hereto and incorporated herein by reference. It is the intention of the parties to create jurisdictional service areas which are consistent with the jurisdictional boundaries of each governmental entity, with the unincorporated areas of Davis County to be located within adjacent jurisdictional authorities’ service areas. It is further the intent of the parties that for those areas of the unincorporated County which are to be located within a jurisdictional service area that Davis County will continue to impose its customary and historic tax levy for paramedic services on properties within the unincorporated areas and to pay over to the jurisdictional authority providing paramedic services, the amount of the tax levy obtained to support the paramedic services to be provided by the jurisdictional service authority. The continued levy of the tax, the remittance of such tax to the jurisdictional authority and the continuation of the levy shall all be the subject of separate agreements between the jurisdictional service authorities and Davis County.

5. Coordinated Response Model. The parties to this Agreement affirmatively assert that the among the purposes for this Agreement, the efficient administration of paramedic services, in the interest of protecting public health, safety and welfare is paramount. In support of this objective, the parties agree that call response shall be provided by the closest available unit, after the local agency's paramedics resources are exhausted, wherever possible, without undue regard to jurisdictional authority.

6. Service Responsibility. Each Party shall be responsible to administer its own paramedic units and services. This administrative responsibility includes:

a. Maintenance of a paramedic unit or units that are separate and distinct from customarily staffed firefighters or peace officers.

b. The maintenance of any current licenses or co-licenses, or the application and qualification for and the obtaining and maintaining of the requisite licenses from the State of Utah and other licensing entities for its paramedic units and personnel.

c. The employment of its paramedic personnel including the establishment and implementation of its own compensation plan and personnel policies and procedures.

d. The training and scheduling of its paramedic personnel.

e. The acquisition, use, and maintenance of its paramedic vehicles and equipment.

f. The keeping of its own records and data.

g. The support and supervisory organization, clerical staff, and policies.

h. Obtaining and maintaining its own liability, errors and omissions, property, and other insurance coverage.

i. Compliance with the paramedic, emergency medical, and other applicable standards established and enforced by the State or other governmental entities having that authority, including all state standards for paramedic units.

j. All other functions necessary for the operation of its paramedic service.

k. Each jurisdictional authority shall retain a qualified medical director as required by State standards.

7. Funding.

a. Each Party shall be responsible to budget from its own General Fund or obtain funding from other sources for any additional funding for the paramedic units allocated to it under this agreement or for any additional paramedic units or services which that Party determines to provide. It is anticipated that services from a jurisdictional authority to unincorporated areas of the County will be compensated through separate arrangements between the County and the servicing jurisdictional authority.

b. It is anticipated by the parties that Davis County will cease it paramedic services on or before December 31, 2022, but will also cease to collect the authorized tax levy prior to cessation of services. It is further anticipated that some or all of the non-County parties will pursue additional tax levies to fund the paramedic operations prior to the beginning of service. In order to support a funded and efficient transfer of the paramedic service, the non-County parties hereby agree to either: (i) consider and impose appropriate and necessary tax levies, or (ii) to otherwise fund the necessary services from other sources within budgets to be approved not later than August 30, 2021. Between the date of June 30, 2021 and December 31, 2022, it is anticipated that the County may continue to provide paramedic services without the support of a corresponding tax levy.

c. Each non-County party agrees to provide quarterly reimbursement to the County for services rendered in Section 7b. of this Agreement at a rate equal to each parties Proposed Tax Rate Value for the tax year that services are rendered, multiplied by the Paramedic Certified Tax Rate calculated for that same tax year.

d. The County agrees to continue the distribution of funds collected from the non-County parties in accordance with the County interlocal agreement 2004-372 through December 31, 2022.

8. Administrative Board. In accordance with *Utah Code Ann.* §11-13-207, a portion of the *Utah Interlocal Cooperation Act*, the cooperative undertaking of this Agreement shall be administered by a joint board comprised of the City Managers of each jurisdictional authority, the Chairs of the Board of Trustees of the North Davis Fire District and the South Davis Metro Fire Agency and a member of the County Commission to be designated by the County Commission by resolution. The Administrative Board shall be tasked with the obligation to adopt and administrate the implementation of rules and procedures on compensation between jurisdictional authorities for extra-jurisdictional response, for the definition of the level of service provided and for other governance issues as they may arise.

9. Davis County EMS Council. The Administrative Board will be supported and aided by the Davis County EMS Council. The Davis County EMS Council shall be tasked with the obligation to advise the Administrative Board on the level of service to be provided and other technical aspects of the paramedic services to be provided.

10. Service Levels.

a. The parties agree that all established units shall meet all state standards for paramedic services and any standards adopted by the Administrative Board.

b. Parties with a single station shall ensure a staffed (1st-due) paramedic unit remains available in addition to regular non-paramedic staffing. Exception to this condition may apply during times of large-scale incidents or other situations that warrant modified staffing practices to ensure continued delivery of emergency medical services.

c. Borderless paramedic services shall be provided via automatic aid agreements and CAD systems employed through dispatch centers with continued emphasis placed on interfaced GPS technology.’

d. The parties agrees that the provision of paramedic services in a consistent and efficient manner and at a standard level of service is one of the underlying purposes for this Agreement, and that the level of services provided has policy implications with significant fiscal consequences for the parties. Therefore, any change in the approved level of service to be provided must be approved by a vote of two-thirds of the members of the Administrative Board present at the meetings, but in no case less than six (6) members.

11. No Separate Entity. This agreement does not create any separate legal or administrative entity for the purpose of implementing or administering the terms and conditions of this agreement.

12. No Property. No property shall be jointly acquired, held, or distributed by and between the parties as part of this agreement.

13. Term and Termination. This agreement shall continue in effect until terminated by mutual consent of the parties, operation of law, or withdrawal as provided in this paragraph, but in no event shall the term of this agreement exceed fifty (50) years.

14. Notices. Any notices given under this agreement shall be delivered to the Parties by delivering to the County Clerk for Davis County, the City Manager for any City which is a party to this Agreement, or to the Chief of the North Davis Fire District or the South Davis Metro Fire Service Area.

15. Resolution of Disputes. The Parties each agree that in the event of a dispute they shall make a good faith effort to resolve the dispute in an amicable manner without the necessity of and before undertaking any legal action.

16. No Relief of Obligation. This agreement does not in any way relieve either party, as a public Agency, of any obligation, duty, or responsibility imposed upon it by law.

17. Indemnification and Hold Harmless. The purpose of this agreement is to provide funding for paramedic services. However, in the event of a claim, legal action, or a judgment, the Parties each agree to indemnify, defend and hold the other Parties and their officers, employees, agents, and representatives harmless from and against any and all losses, liabilities, expenses, claims, costs, suits and damages, including attorney's fees, arising out of the performance of the terms of this agreement or related to the paramedic services of that Party.

18. Governmental Immunity Act of Utah. Because the Parties are each a governmental entity under the *Governmental Immunity Act of Utah*, each Party is responsible and liable for any wrongful acts or negligence committed by its own officers, employees, or agents. No Party waives any defense available to it under the *Utah Governmental Immunity Act*.

19. Record of Agreement. An executed copy of this agreement shall be filed with the keeper of records of each Party.

20. Government Records Access and Management Act. Each Party shall be responsible for compliance with the provisions of the *Governmental Records Access and Management Act* (GRAMA), as set forth in *Utah Code Ann.* § 63G-2-101, et. Seq. or its successor, relating to its records.

21. Other Agreements. This agreement does not abrogate or supersede any existing agreement between the parties unless specifically so provided in this agreement or except to the extent that the provisions of this agreement are in conflict with the provisions of any such existing agreement.

22. Amendments. This agreement may be amended at any time by a written instrument which has been duly approved and executed by the Parties and, if necessary under the provisions of the *Utah Interlocal Cooperation Act*, upon the adoption of resolutions of approval by the legislative bodies of each party.

23. Severability. If any provisions of this agreement are construed or held by a court of competent jurisdiction to be invalid, the remaining provisions of this agreement shall remain in full force and effect.

24. Third Party Beneficiaries. This agreement is intended for the sole benefit of the Parties and does not create or confer, directly or indirectly, any rights, interests, or benefits to or upon any third party.

25. Additional Parties. Additional parties may join in this agreement only upon the unanimous written consent of all Parties and the execution of either a new agreement to replace this agreement or an appropriate amendment to this agreement signed by the Parties and the additional party or parties.

26. Authorization. The individuals signing this agreement on behalf of their Parties confirm that they are the duly authorized representatives of their respective Parties and are lawfully enabled to sign this agreement on behalf of their respective Party.

27. Review by Authorized Authority. In accordance with the provisions of §11-13-202.5(3), *Utah Code Annotated*, this agreement shall be submitted to the attorney authorized to represent each Party for review as to proper form and compliance with applicable law before this agreement may take effect.

28. Governmental Approval, Execution, and Resolutions. This agreement shall be conditioned upon the approval and execution of this agreement by the Parties pursuant to and in accordance with the provisions of the *Interlocal Cooperation Act* as set forth in Title 11, Chapter 13, *Utah Code Annotated*, including the adoption of resolutions of approval if such resolutions are required by the *Interlocal Cooperation Act* by the legislative bodies of the Parties.

29. Effective Date. This agreement shall be effective as of June 1, 2021, provided that by said date this agreement has been duly approved and executed by all Parties in the manner prescribed by applicable law and the executed copies have been filed with the keepers of records of each Party.

30. Full Agreement. This agreement constitutes the full agreement between the Parties.

31. Governing Law. This agreement shall be governed, construed, and enforced by and under the laws of Utah.

IN WITNESS WHEREOF, the Parties hereto have signed this interlocal cooperation agreement in duplicate, each of which shall be deemed an original, on the dates indicated by their respective signatures.

CLINTON CITY

ATTEST:

________________________________ By:___________________________________

City Recorder Mitch Adams, Mayor

Approved and reviewed as to form

____

Attorney for Clinton City

DAVIS COUNTY

ATTEST:

________________________________ By:___________________________________

County Clerk Lorene Miner Kamalu, Chair

Approved and reviewed as to form

____

Attorney for Davis County

FARMINGTON CITY

ATTEST:

________________________________ By:___________________________________

City Recorder H. James Talbot, Mayor

Approved and reviewed as to form

____

Attorney for Farmington City

FRUIT HEIGHTS CITY

ATTEST:

________________________________ By:___________________________________

City Recorder John Pohlman, Mayor

Approved and reviewed as to form

____

Attorney for Fruit Heights City

KAYSVILLE CITY

ATTEST:

________________________________ By:___________________________________

City Recorder Katie Witt, Mayor

Approved and reviewed as to form

____

Attorney for Kaysville City

LAYTON CITY

ATTEST:

________________________________ By:___________________________________

City Recorder Joy Petro, Mayor

Approved and reviewed as to form

____

Attorney for Layton City

NORTH DAVIS FIRE DISTRICT

ATTEST:

______________________________ By:______________________________

District Clerk Chairman Tim Roper

Approved and reviewed as to form

____

Attorney for North Davis Fire District

SOUTH DAVIS METRO FIRE SERVICE AREA

ATTEST:

______________________________ By:______________________________

Secretary Commissioner Rick Earnshaw, Chairman

Approved and reviewed as to form

____

Attorney for South Davis Metro Fire Service Area

SOUTH WEBER CITY

ATTEST:

______________________________ By:______________________________

City Recorder Jo Sjoblom, Mayor

Approved and reviewed as to form

____

Attorney for South Weber City

SYRACUSE CITY

ATTEST:

______________________________ By:______________________________

City Recorder Michael Gailey, Mayor

Approved and reviewed as to form

____

Attorney for Syracuse City

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 4, 2021

TYPE OF ITEM: Action

PRESENTED BY: Community Development Staff

SUBJECT/AGENDA TITLE: - Preliminary Plat for the Edge End Hollow 3 Amended Subdivision at 1175 South Haights Creek Drive for Loren Clark.

EXECUTIVE SUMMARY:

The application is requesting Preliminary Plat Approval for a standard two lot subdivision of his property which includes .409 acres of land. The Preliminary Plat will contains two lots, both facing Haight Creek Drive with one being a corner lot on Haight Creek Drive and Main Street.

Lot 1 is 9,785 square feet in size and has 89 feet of frontage. Lot 1 contains the existing house which will remain.

Lot 2 is 8,027 square feet with 78 feet of frontage along Haight Creek Drive. This lot will be available for new construction of a dwelling. All lots meet frontage and square footage requirements for existing R-1-8 zone.

All right of way improvements are already complete along both Haight Creek Drive and Main Street.

Council Options: Approve, Deny, Table for more information

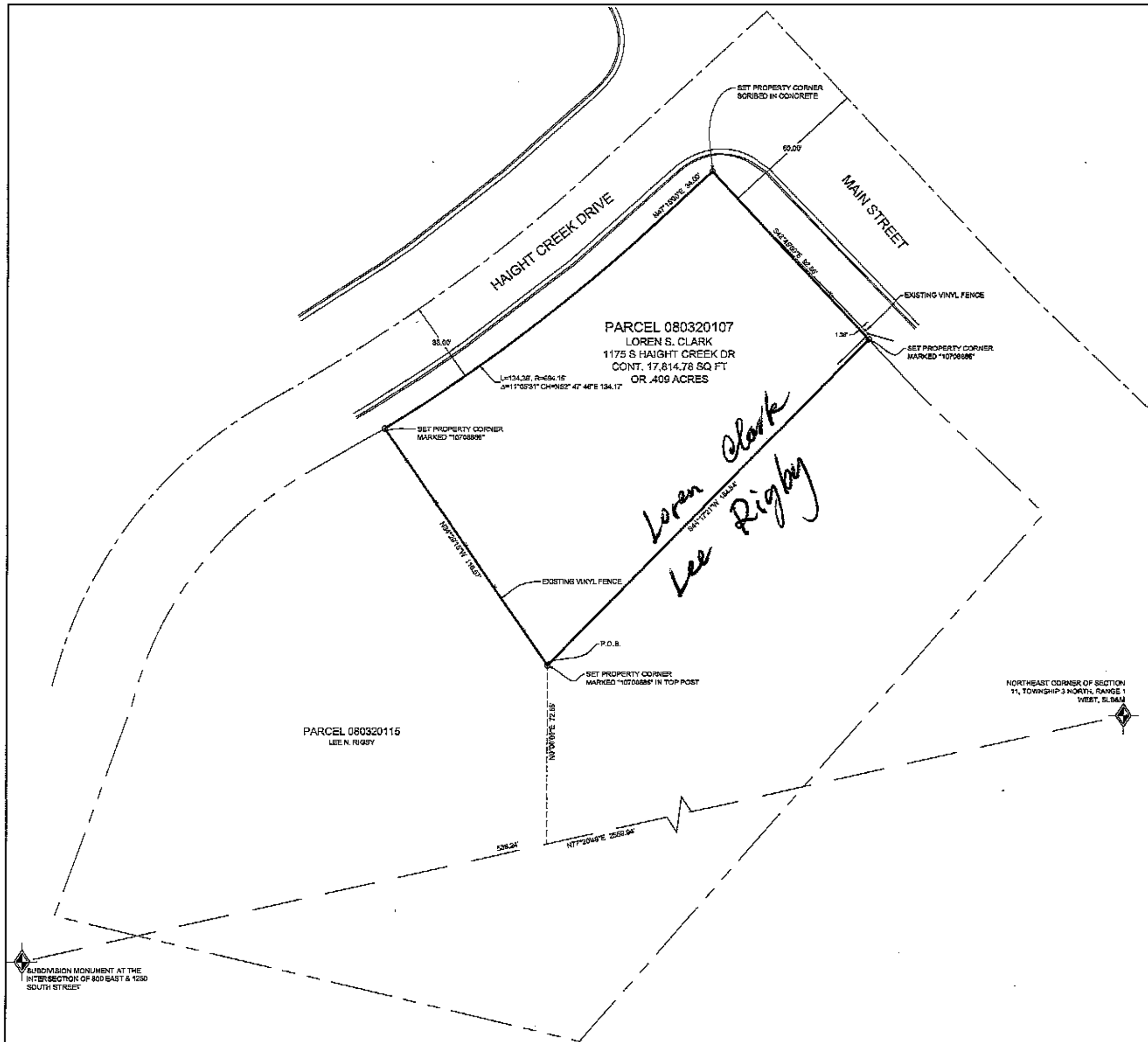
Recommended Options: The Planning Commission reviewed this item in their 2/11/21 meeting where they unanimously recommended approval of the preliminary plat.

Fiscal impact & Fund Source for Recommended Action: N/A

Attachments: Area Map, Preliminary Plat

1175 South Haight Creek Drive

1175 HAIGHT CREEK DRIVE



LEGEND

- DAVIS COUNTY MONUMENT AS NOTED
- PROPERTY CORNER AS DESCRIBED
- LOT BOUNDARY
- ADJACENT PARCEL
- SECTION LINE
- EXISTING FENCE LINE

VESTING BOUNDARY DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALE LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT 5113.56 FEET NORTH 0°00'45" WEST ALONG THE SECTION LINE AND 1909.06 FEET WEST FROM THE SOUTHEAST CORNER OF SAID SECTION 11; SAID POINT IS ALSO THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF HAIGHTS CREEK DRIVE AND THE WESTERLY RIGHT OF WAY LINE OF STATE ROUTE 273; RUNNING THENCE SOUTH 42°45'00" EAST 92.86 FEET ALONG SAID SATE ROUTE RIGHT OF WAY LINE; THENCE SOUTH 44°17'21" WEST 184.54 FEET; THENCE NORTH 34°29'33" WEST 116.57 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OS SAID HAIGHTS CREEK DRIVE; THENCE TWO (2) COURSES ALONG SAID RIGHT OF WAY LINE AS FOLLOWS: NORTHEASTERLY ALONG THE ARC OF A 694.15 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 134.38 FEET (LONG CHORD BEARS NORTH 52°47'46" EAST 134.17 FEET) AND NORTH 47°15'00" EAST 34.00 FEET TO THE POINT OF BEGINNING.

AS-SURVEYED BOUNDARY DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALE LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT BEING LOCATED NORTH 77°20'49" EAST 538.24 FEET AND NORTH 00°00'00" EAST 72.58 FEET FROM THE SOUTH BENCH ESTATE PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET; RUNNING THENCE NORTH 34°29'33" WEST 116.57 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HAIGHT CREEK DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) ALONG THE ARC OF A 694.15 FOOT RADIUS CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS NORTH 52°47'46" EAST 134.17 FEET; (2) NORTH 47°15'00" EAST 34.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 42°45'00" EAST 92.86 FEET; THENCE SOUTH 44°17'21" WEST 184.84 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,814.78 SQUARE FEET.

NARRATIVE

THE PURPOSE OF THE SURVEY WAS TO DETERMINE THE BOUNDARY OF THE LAND SHOWN HEREON. THE BASIS OF BEARING IS THE MONUMENTED LINE BETWEEN THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN AND THE THE SOUTH BENCH ESTATES PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET WHICH BEARS NORTH 77°20'49" EAST.

SURVEYOR'S CERTIFICATE

I, WILLIS D. LONG, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH AND THAT I HOLD CERTIFICATE NO. 10708886 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS ACT; I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS RECORD OF SURVEY PLAT IN ACCORDANCE WITH SECTION 17-23-20 AND HAVE VERIFIED ALL MEASUREMENTS; THAT THE REFERENCE MONUMENTS SHOWN ON THIS RECORD OF SURVEY PLAT ARE LOCATED AS INDICATED AND ARE SUFFICIENT TO RETRACE OR REESTABLISH THIS SURVEY; AND THAT THE INFORMATION SHOWN HEREIN IS SUFFICIENT TO ACCURATELY ESTABLISH THE LATERAL BOUNDARIES OF THE HEREIN DESCRIBED TRACT OF REAL PROPERTY

SIGNED THIS 6TH DAY OF DECEMBER, 2020.

LICENSED PROFESSIONAL SURVEYOR
12/06/2020
WILLIS D. LONG
10708886
STATE OF UTAH

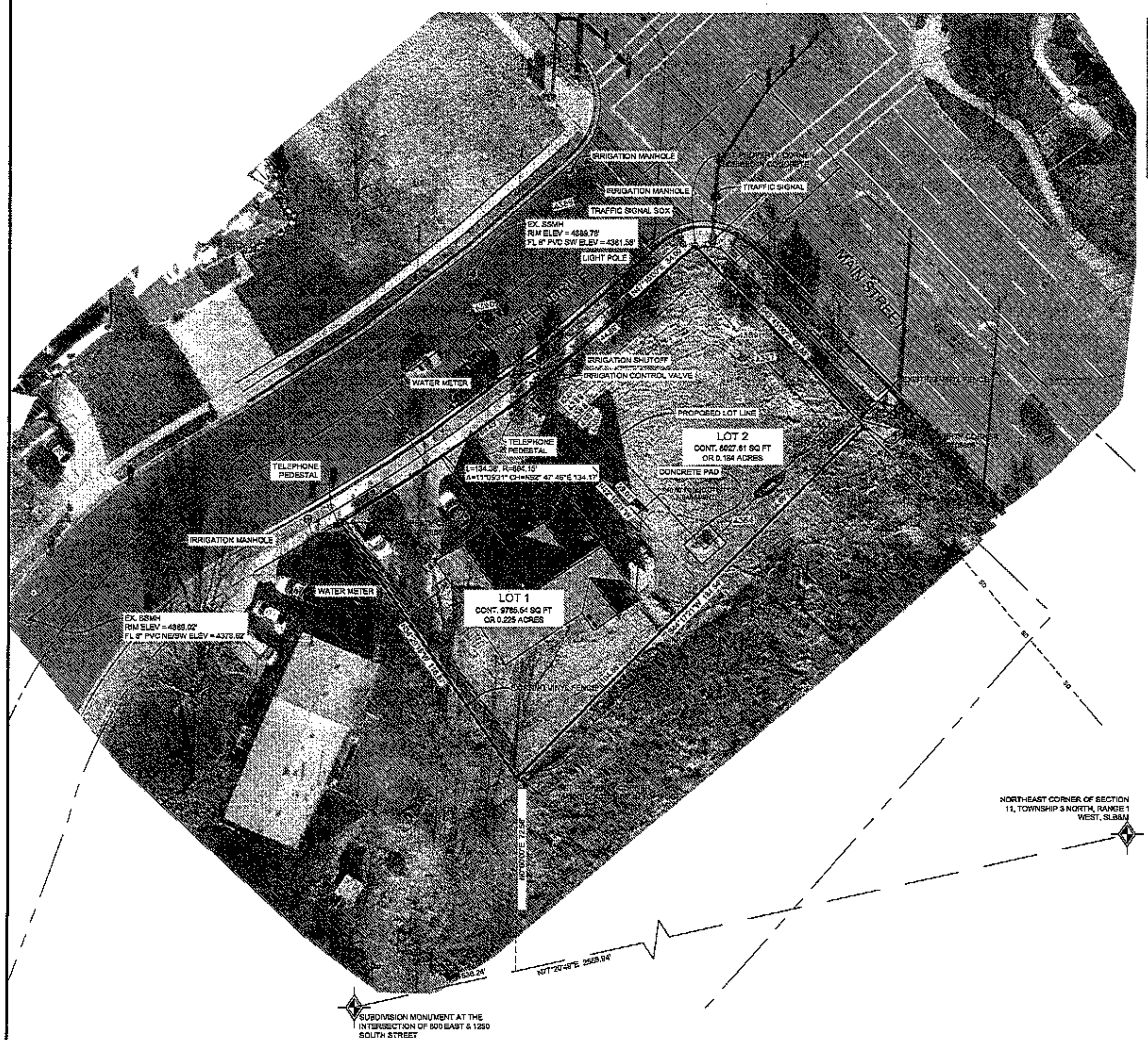
BOUNDARY SURVEY FOR LOREN CLARK	REVISIONS		SCALE: 1"=20'
1175 HAIGHT CREEK DRIVE	DATE	DESCRIPTION	DATE: 12/6/2020
LOCATED IN THE NORTHEAST QUARTER OF SEC. 11			DESIGN: ---
TOWNSHIP 3 NORTH, RANGE 1 WEST, S.L.B. AND M.			DRAWN: MJL
			CHECKED: WDL

LAYTON SURVEYS
Professional Land Surveying
(801)-683-1641 willislong@laytonsurveys.com
8334 W. Wren Crest Way
West Jordan, Ut 84081

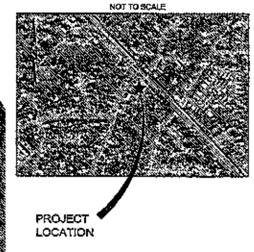
S1
1

PRELIMINARY SUBDIVISION PLAT
EDGE END HOLLOW SUBDIVISION PHASE 3

LOCATED IN THE NORTHEAST QUARTER OF SECTION 11,TOWNSHIP 3 NORTH, RANGE 1 WEST
SALT LAKE BASE AND MERIDIAN,
KAYSVILLE CITY, DAVIS COUNTY, UTAH
DECEMBER 6TH 2020



VICINITY MAP
NOT TO SCALE



N

Scale in Feet
1" =20'

LEGEND

- DAVIS COUNTY MONUMENT AS NOTED
- SET 24" REBAR AND CAP MARKED 10708686
- SUBDIVISION BOUNDARY
- LOT LINE
- ADJACENT PARCEL
- SECTION LINE
- EASEMENT
- EXISTING FENCE LINE
- EXISTING WATER LINE
- EXISTING IRRIGATION LINE
- EXISTING STORM DRAIN
- EXISTING SANITARY SEWER
- EXISTING OVERHEAD POWER
- EXISTING GAS LINE
- EXISTING WATER METER
- EXISTING WATER MANHOLE
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING STORM MANHOLE
- EXISTING CATCH BASIN
- EXISTING SEWER MANHOLE

BOUNDARY DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALE LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT BEING LOCATED NORTH 77°20'49" EAST 536.24 FEET AND NORTH 00°00'00" EAST 72.56 FEET FROM THE SOUTH BENCH ESTATE PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET, RUNNING THENCE NORTH 34°29'33" WEST 116.57 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HAIGHT CREEK DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) ALONG THE ARC OF A 694.15 FOOT RADIUS CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS NORTH 52°47'46" EAST 134.17 FEET; (2) NORTH 47°15'00" EAST 34.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 42°45'00" EAST 92.86 FEET; THENCE SOUTH 44°17'21" WEST 184.84 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,814.78 SQUARE FEET.

SURVEYOR'S CERTIFICATE

I, WILLIS D. LONG, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH AND THAT I HOLD CERTIFICATE NO. 10708686 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS ACT; I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS RECORD OF SURVEY PLAT IN ACCORDANCE WITH SECTION 17-23-20 AND HAVE VERIFIED ALL MEASUREMENTS; THAT THE REFERENCE MONUMENTS SHOWN ON THIS RECORD OF SURVEY PLAT ARE LOCATED AS INDICATED AND ARE SUFFICIENT TO RETRACE OR REESTABLISH THIS SURVEY; AND THAT THE INFORMATION SHOWN HEREIN IS SUFFICIENT TO ACCURATELY ESTABLISH THE LATERAL BOUNDARIES OF THE HEREIN DESCRIBED TRACTS OF REAL PROPERTY. SIGNED THIS ______ DAY OF ____________________, 2020.

12/06/2020
WILLIS D. LONG
10708686

NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO CREATE A PRELIMINARY PLAT FOR A TWO LOT SUBDIVISION ON THE PROPERTY AS SHOWN AND DESCRIBED HEREON. THE SURVEY WAS ORDERED BY LOREN S. CLARK. THE BASIS OF BEARING IS THE MONUMENTED LINE BETWEEN THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN AND THE THE SOUTH BENCH ESTATES PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET WHICH BEARS NORTH 77°20'49" EAST. THE CONTROL USED TO ESTABLISH THE BOUNDARY WAS THE EXISTING DAVIS COUNTY SURVEY MONUMENTATION AS SHOWN AND NOTED HEREON.

DEVELOPER:
LOREN CLARK

S1 / 1

LAYTON SURVEYS
Professional Land Surveying

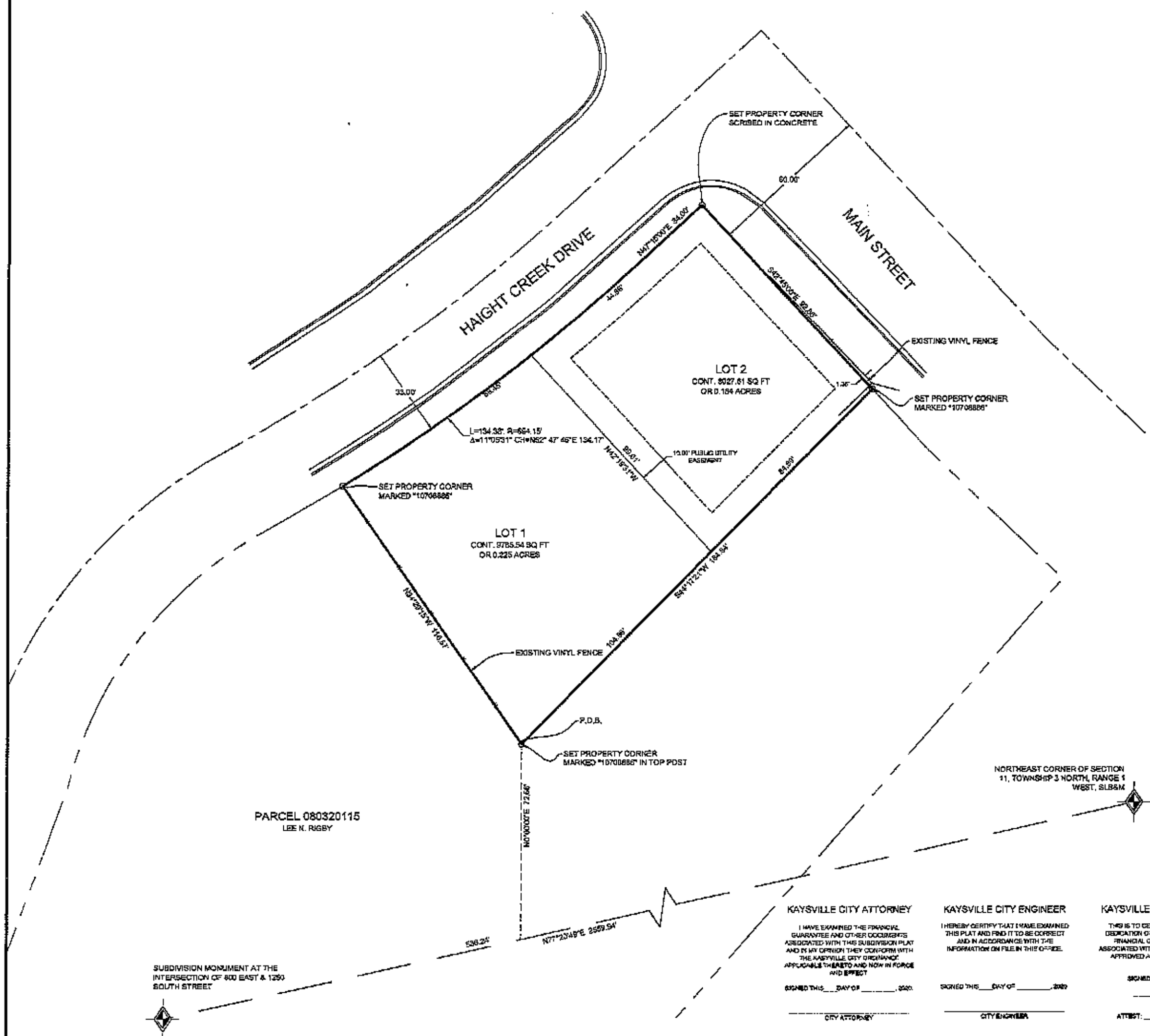
COUNTY RECORDER

ENTRY NO. ________ FEE PAID ________
FILED FOR AND RECORDED __________.
AT ______, IN BOOK ______ OF OFFICIAL
RECORDS, PAGE ____. RECORDED
FOR ______________________

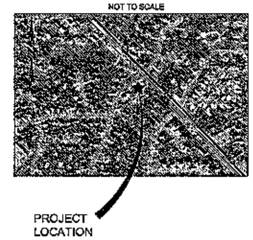
COUNTY RECORDER
BY: ______________________

EDGE END HOLLOW SUBDIVISION PHASE 3

LOCATED IN THE NORTHEAST QUARTER OF SECTION 11,TOWNSHIP 3 NORTH, RANGE 1 WEST
SALT LAKE BASE AND MERIDIAN,
KAYSVILLE CITY, DAVIS COUNTY, UTAH
DECEMBER 6TH 2020



VICINITY MAP
NOT TO SCALE



N

Scale in Feet 1" = 20'

LEGEND

- DAVIS COUNTY MONUMENT AS NOTED
- PROPERTY CORNER AS DESCRIBED
- SUBDIVISION BOUNDARY
- LOT LINE
- EASEMENT
- ADJACENT PARCEL
- SECTION LINE
- EXISTING FENCE LINE

BOUNDARY DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALE LAKE BASE AND MERIDIAN, U S. SURVEY

BEGINNING AT A POINT BEING LOCATED NORTH 77°20'49" EAST 530.24 FEET AND NORTH 00°00'00" EAST 72.56 FEET FROM THE SOUTH BENCH ESTATE PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET; RUNNING THENCE NORTH 34°29'33" WEST 116.57 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HAIGHT CREEK DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) ALONG THE ARC OF A 664.15 FOOT RADIUS CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS NORTH 52°47'46" EAST 134.17 FEET; (2) NORTH 47°15'00" EAST 34.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 42°45'00" EAST 92.68 FEET; THENCE SOUTH 44°17'21" WEST 164.54 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,814.78 SQUARE FEET

SURVEYOR'S CERTIFICATE

I, WILLIS D. LONG, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH AND THAT I HOLD CERTIFICATE NO. 10708886 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS ACT; I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS RECORD OF SURVEY PLAT IN ACCORDANCE WITH SECTION 17-23-20 AND HAVE VERIFIED ALL MEASUREMENTS; THAT THE REFERENCE MONUMENTS SHOWN ON THIS RECORD OF SURVEY PLAT ARE LOCATED AS INDICATED AND ARE SUFFICIENT TO RETRACE OR REESTABLISH THIS SURVEY; AND THAT THE INFORMATION SHOWN HEREIN IS SUFFICIENT TO ACCURATELY ESTABLISH THE LATERAL BOUNDARIES OF THE HEREIN DESCRIBED TRACTS OF REAL PROPERTY. SIGNED THIS ______ DAY OF ____________, 2020.

12/06/2020
WILLIS D. LONG
10708886

OWNER'S DEDICATION

I THE UNDERSIGNED OWNER OF THE HEREON DESCRIBED TRACT OF LAND, HEREBY SET APART AND SUBDIVIDE THE SAME INTO LOTS, PARCELS AND STREETS AS SHOWN ON THIS PLAT AND NAME SAID TRACT: EDGE END HOLLOW SUBDIVISION PHASE 3 AND HEREBY DEDICATE, GRANT AND CONVEY TO KAYSVILLE CITY, DAVIS COUNTY, UTAH ALL THOSE PARTS OR PORTIONS OF SAID TRACT OF LAND DESIGNATED AS STREETS, THE SAME TO BE USED AS PUBLIC THOROUGHFARES FOREVER, AND ALSO GRANT AND DEDICATE A PERPETUAL EASEMENT OVER, UPON AND UNDER THE LANDS DESIGNATED ON THE PLAT AS PUBLIC UTILITY, THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF PUBLIC UTILITY SERVICE LINES, STORM DRAINAGE FACILITIES OR FOR THE PERPETUAL PRESERVATION OF WATER DRAINAGE CHANNELS IN THEIR NATURAL STATE WHICHEVER IS APPLICABLE AS MAY BE AUTHORIZED BY KAYSVILLE CITY, UTAH, WITH NO BUILDINGS OR STRUCTURES BEING ERECTED WITHIN SUCH EASEMENTS. SIGNED THIS ______DAY OF __________, 2020 . ____________________
BY:

ACKNOWLEDGEMENT

STATE OF UTAH)
§
COUNTY OF DAVIS)

On this______day of_____________2020, personally appeared before me LOREN S. CLARK, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the OWNER of EDGE END HOLLOW SUBDIVISION PHASE 3, and that said document was signed by him/her.

STAMP

____
NOTARY PUBLIC

NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO CREATE A TWO LOT SUBDIVISION ON THE PROPERTY AS SHOWN AND DESCRIBED HEREON. THE SURVEY WAS ORDERED BY LOREN S. CLARK. THE BASIS OF BEARING IS THE MONUMENTED LINE BETWEEN THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN AND THE THE SOUTH BENCH ESTATES PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET WHICH BEARS NORTH 77°20'49" EAST. THE CONTROL USED TO ESTABLISH THE BOUNDARY WAS THE EXISTING DAVIS COUNTY SURVEY MONUMENTATION AS SHOWN AND NOTED HEREON.

KAYSVILLE CITY ATTORNEY

I HAVE EXAMINED THE FINANCIAL GUARANTEE AND OTHER DOCUMENTS ASSOCIATED WITH THIS SUBDIVISION PLAT AND IN MY OPINION THEY CONFORM WITH THE KAYSVILLE CITY ORDINANCE APPLICABLE THERETO AND NOW IN FORCE AND EFFECT

SIGNED THIS___DAY OF ________, 2020.

____
CITY ATTORNEY

KAYSVILLE CITY ENGINEER

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE.

SIGNED THIS___DAY OF ________, 2020

____
CITY ENGINEER

KAYSVILLE CITY COUNCIL ACCEPTANCE

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT, THE DEDICATION OF STREETS AND OTHER PUBLIC WAYS AND FINANCIAL GUARANTEE OF PUBLIC IMPROVEMENTS ASSOCIATED WITH THIS SUBDIVISION THEREON ARE HEREBY APPROVED AND ACCEPTED BY THE CITY COUNCIL OF KAYSVILLE CITY, UTAH,

SIGNED THIS___DAY OF ________, 2020

____
MAYOR, KAYSVILLE

ATTEST: ____________________
CITY RECORDER

KAYSVILLE CITY PLANNING COMMISSION

THIS IS TO CERTIFY THAT THIS SUBDIVISION WAS DULY APPROVED BY THE KAYSVILLE CITY PLANNING COMMISSION.

SIGNED THIS___DAY OF ________, 2020.

____
CHAIRMAN, KAYSVILLE CITY PLANNING COMMISSION

DEVELOPER:
LOREN CLARK

S1 / 1

LAYTON SURVEYS
Professional Land Surveying

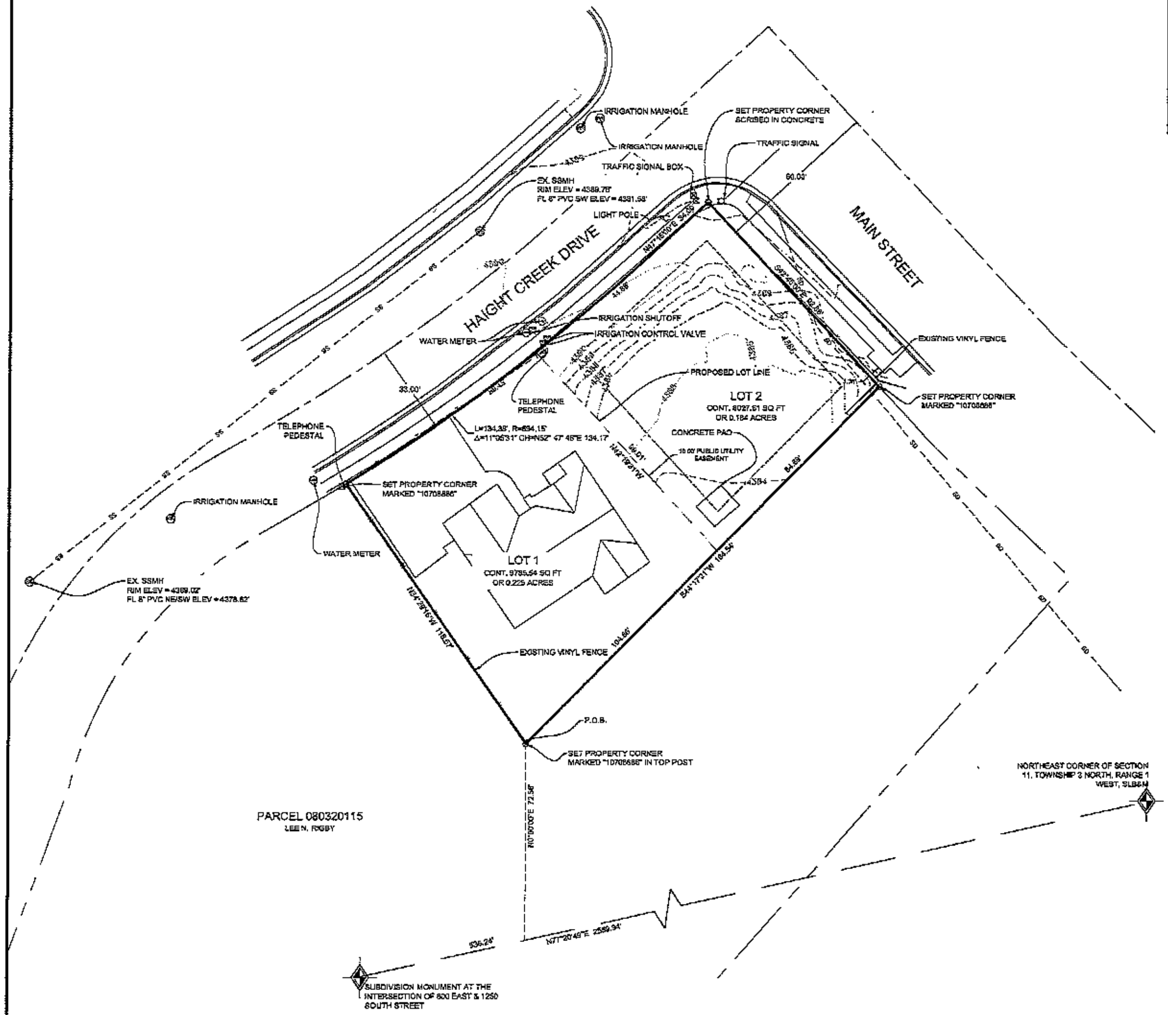
COUNTY RECORDER

ENTRY NO. ________ FEE PAID ______
FILED FOR AND RECORDED ________,
AT _____, IN BOOK _____ OF OFFICIAL RECORDS, PAGE _____. RECORDED
FOR ____________________

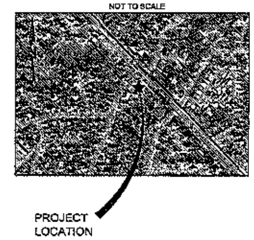
____
COUNTY RECORDER
BY: ____________________

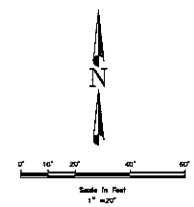
PRELIMINARY SUBDIVISION PLAT
EDGE END HOLLOW SUBDIVISION PHASE 3

LOCATED IN THE NORTHEAST QUARTER OF SECTION 11,TOWNSHIP 3 NORTH, RANGE 1 WEST
SALT LAKE BASE AND MERIDIAN,
KAYSVILLE CITY, DAVIS COUNTY, UTAH
DECEMBER 6TH 2020



VICINITY MAP
NOT TO SCALE





LEGEND

- DAVIS COUNTY MONUMENT AS NOTED
- SET 24" REBAR AND CAP MARKED 10708686
- SUBDIVISION BOUNDARY
- LOT LINE
- ADJACENT PARCEL
- SECTION LINE
- EASEMENT
- EXISTING FENCE LINE
- EXISTING WATER LINE
- EXISTING IRRIGATION LINE
- EXISTING STORM DRAIN
- EXISTING SANITARY SEWER
- EXISTING OVERHEAD POWER
- EXISTING GAS LINE
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- EXISTING WATER MANHOLE
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- EXISTING WATER VALVE
- EXISTING STORM MANHOLE
- EXISTING CATCH BASIN
- EXISTING SEWER MANHOLE

BOUNDARY DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALE LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT BEING LOCATED NORTH 77°20'49" EAST 536.24 FEET AND NORTH 00°00'00" EAST 72.58 FEET FROM THE SOUTH BENCH ESTATE PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET, RUNNING THENCE NORTH 34°20'33" WEST 116.67 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HAIGHT CREEK DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) ALONG THE ARC OF A 694.15 FOOT RADIUS CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS NORTH 52°47'46" EAST 134.17 FEET, (2) NORTH 47°15'00" EAST 34.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 42°45'00" EAST 92.66 FEET; THENCE SOUTH 44°17'21" WEST 184.54 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,814.78 SQUARE FEET.

SURVEYOR'S CERTIFICATE

I, WILLIS D. LONG, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH AND THAT I HOLD CERTIFICATE NO. 10708686 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS ACT: I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS RECORD OF SURVEY PLAT IN ACCORDANCE WITH SECTION 17-23-20 AND HAVE VERIFIED ALL MEASUREMENTS; THAT THE REFERENCE MONUMENTS SHOWN ON THIS RECORD OF SURVEY PLAT ARE LOCATED AS INDICATED AND ARE SUFFICIENT TO RETRACE OR REESTABLISH THIS SURVEY; AND THAT THE INFORMATION SHOWN HEREIN IS SUFFICIENT TO ACCURATELY ESTABLISH THE LATERAL BOUNDARIES OF THE HEREIN DESCRIBED TRACTS OF REAL PROPERTY. SIGNED THIS ______ DAY OF ____________________, 2020.

PROFESSIONAL LAND SURVEYOR 12/06/2020 WILLIS D. LONG 10708686 STATE OF UTAH

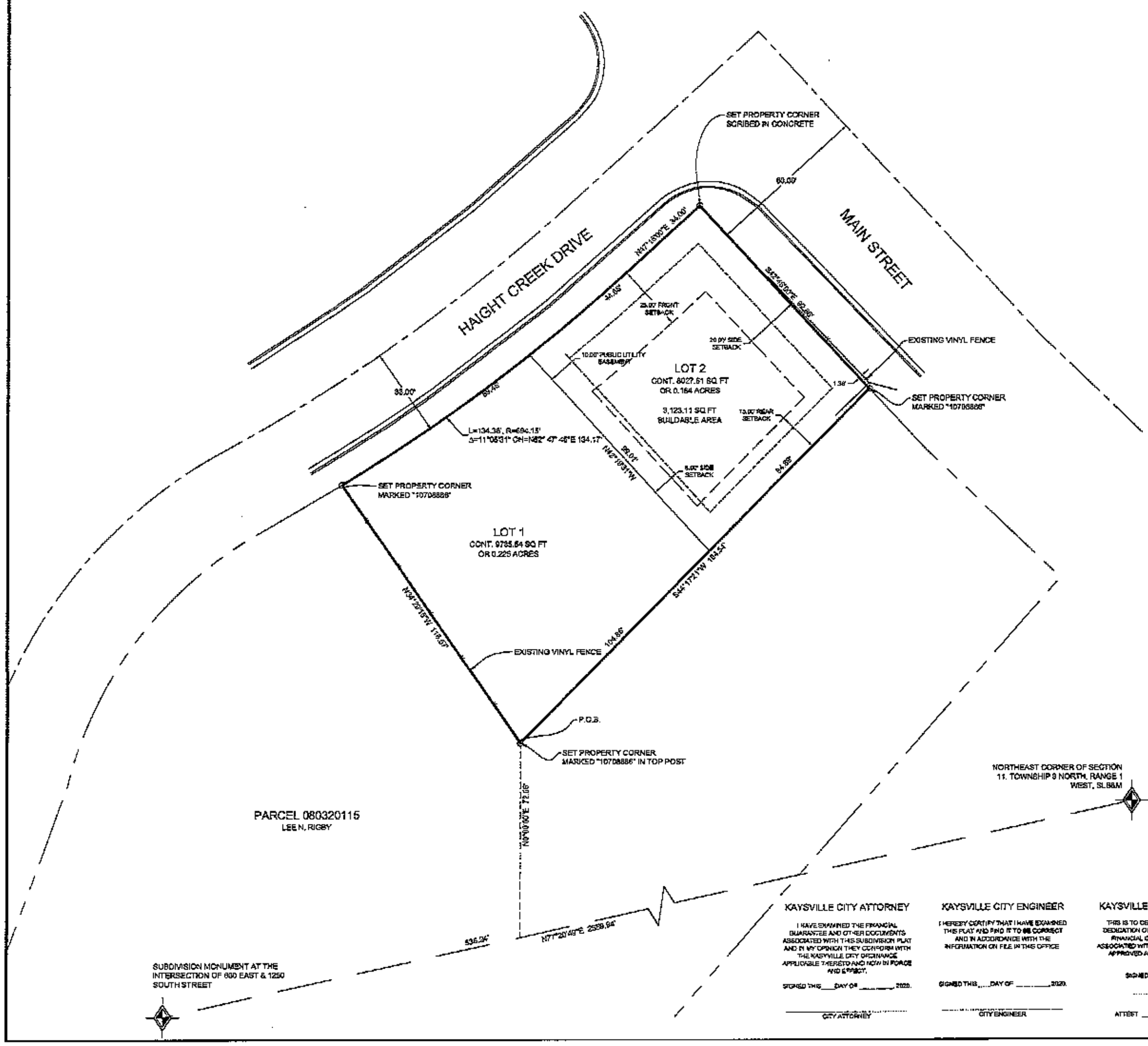
NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO CREATE A PRELIMINARY PLAT FOR A TWO LOT SUBDIVISION ON THE PROPERTY AS SHOWN AND DESCRIBED HEREON. THE SURVEY WAS ORDERED BY LOREN S. CLARK. THE BASIS OF BEARING IS THE MONUMENTED LINE BETWEEN THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN AND THE THE SOUTH BENCH ESTATES PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET WHICH BEARS NORTH 77°20'49" EAST. THE CONTROL USED TO ESTABLISH THE BOUNDARY WAS THE EXISTING DAVIS COUNTY SURVEY MONUMENTATION AS SHOWN AND NOTED HEREON.

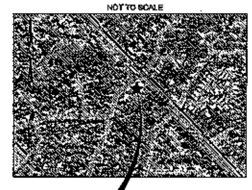
DEVELOPER: LOREN CLARK	S1 / 1	COUNTY RECORDER ENTRY NO. ______ FEE PAID ______ FILED FOR AND RECORDED ______ AT ____ IN BOOK ____ OF OFFICIAL RECORDS, PAGE ____ RECORDED FOR ______ COUNTY RECORDER BY: ______
LAYTON SURVEYS Professional Land Surveying		

EDGE END HOLLOW SUBDIVISION PHASE 3

LOCATED IN THE NORTHEAST QUARTER OF SECTION 11,TOWNSHIP 3 NORTH, RANGE 1 WEST
SALT LAKE BASE AND MERIDIAN,
KAYSVILLE CITY, DAVIS COUNTY, UTAH
DECEMBER 6TH 2020



VICINITY MAP
NOT TO SCALE



PROJECT LOCATION

N

Scale in Feet 1" = 20'

LEGEND

- DAVIS COUNTY MONUMENT AS NOTED
- PROPERTY CORNER AS DESCRIBED
- SUBDIVISION BOUNDARY
- LOT LINE
- EASEMENT
- ADJACENT PARCEL
- SECTION LINE
- EXISTING FENCE LINE

BOUNDARY DESCRIPTION

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BEGINNING AT A POINT BEING LOCATED NORTH 77°20'49" EAST 528.24 FEET AND NORTH 00°00'00" EAST 72.56 FEET FROM THE SOUTH BENCH ESTATE PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET: RUNNING THENCE NORTH 34°29'33" WEST 118.57 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HAIGHT CREEK DRIVE' THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) ALONG THE ARC OF A 684.15 FOOT RADIUS CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS NORTH 52°47'46" EAST 134.17 FEET; (2) NORTH 47°16'00" EAST 24.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 42°15'00" EAST 92.68 FEET; THENCE SOUTH 44°17'21" WEST 184.54 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,814.78 SQUARE FEET.

SURVEYOR'S CERTIFICATE

I, WILLIS D. LONG, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH AND THAT I HOLD CERTIFICATE NO. 10708886 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS ACT; I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS RECORD OF SURVEY PLAT IN ACCORDANCE WITH SECTION 17-23-20 AND HAVE VERIFIED ALL MEASUREMENTS: THAT THE REFERENCE MONUMENTS SHOWN ON THIS RECORD OF SURVEY PLAT ARE LOCATED AS INDICATED AND ARE SUFFICIENT TO RETRACE OR REESTABLISH THIS SURVEY; AND THAT THE INFORMATION SHOWN HEREIN IS SUFFICIENT TO ACCURATELY ESTABLISH THE LATERAL BOUNDARIES OF THE HEREIN DESCRIBED TRACTS OF REAL PROPERTY. SIGNED THIS ________ DAY OF ________________________, 2020.

PROFESSIONAL LAND SURVEYOR 12/06/2020 WILLIS D. LONG 10708886 STATE OF UTAH

OWNER'S DEDICATION

I THE UNDERSIGNED OWNER OF THE HEREON DESCRIBED TRACT OF LAND, HEREBY SET APART AND SUBDIVIDE THE SAME INTO LOTS, PARCELS AND STREETS AS SHOWN ON THIS PLAT AND NAME SAID TRACT: EDGE END HOLLOW SUBDIVISION PHASE 3 AND HEREBY DEDICATE, GRANT AND CONVEY TO KAYSVILLE CITY, DAVIS COUNTY, UTAH ALL THOSE PARTS OR PORTIONS OF SAID TRACT OF LAND DESIGNATED AS STREETS, THE SAME TO BE USED AS PUBLIC THOROUGHFARES FOREVER, AND ALSO GRANT AND DEDICATE A PERPETUAL EASEMENT OVER, UPON AND UNDER THE LANDS DESIGNATED ON THE PLAT AS PUBLIC UTILITY, THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF PUBLIC UTILITY SERVICE LINES, STORM DRAINAGE FACILITIES OR FOR THE PERPETUAL PRESERVATION OF WATER DRAINAGE CHANNELS IN THEIR NATURAL STATE WHICHEVER IS APPLICABLE AS MAY BE AUTHORIZED BY KAYSVILLE CITY, UTAH, WITH NO BUILDINGS OR STRUCTURES BEING ERECTED WITHIN SUCH EASEMENTS. SIGNED THIS ______DAY OF ___________, 2020 . ________________________________
BY:

ACKNOWLEDGEMENT

STATE OF UTAH)
§
COUNTY OF DAVIS)

On this______day of______________2020, personally appeared before me LOREN S. CLARK, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the OWNER of EDGE END HOLLOW SUBDIVISION PHASE 3, and that said document was signed by him/her.

STAMP

____
NOTARY PUBLIC

NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO CREATE A TWO LOT SUBDIVISION ON THE PROPERTY AS SHOWN AND DESCRIBED HEREON. THE SURVEY WAS ORDERED BY LOREN S. CLARK, THE BASIS OF BEARING IS THE MONUMENTED LINE BETWEEN THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN AND THE THE SOUTH BENCH ESTATES PHASE 1 SUBDIVISION MONUMENT AT THE INTERSECTION OF 800 EAST AND 1250 SOUTH STREET WHICH BEARS NORTH 77°20'49" EAST. THE CONTROL USED TO ESTABLISH THE BOUNDARY WAS THE EXISTING DAVIS COUNTY SURVEY MONUMENTATION AS SHOWN AND NOTED HEREON.

KAYSVILLE CITY ATTORNEY

I HAVE EXAMINED THE FINANCIAL GUARANTEE AND OTHER DOCUMENTS ASSOCIATED WITH THIS SUBDIVISION PLAT AND IN MY OPINION THEY CONFORM WITH THE KAYSVILLE CITY ORDINANCE APPLICABLE THERETO AND NOW IN FORCE AND EFFECT.

SIGNED THIS____DAY OF __________, 2020.

____
CITY ATTORNEY

KAYSVILLE CITY ENGINEER

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE

SIGNED THIS____DAY OF __________, 2020.

____
CITY ENGINEER

KAYSVILLE CITY COUNCIL ACCEPTANCE

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT, THE DEDICATION OF STREETS AND OTHER PUBLIC WAYS AND FINANCIAL GUARANTEE OF PUBLIC IMPROVEMENTS ASSOCIATED WITH THIS SUBDIVISION THEREON ARE HEREBY APPROVED AND ACCEPTED BY THE CITY COUNCIL OF KAYSVILLE CITY, UTAH.

SIGNED THIS____DAY OF __________, 2020

____
MAYOR, KAYSVILLE

ATTEST ________________________
CITY RECORDER

KAYSVILLE CITY PLANNING COMMISSION

THIS IS TO CERTIFY THAT THIS SUBDIVISION WAS DULY APPROVED BY THE KAYSVILLE CITY PLANNING COMMISSION.

SIGNED THIS____DAY OF __________, 2020.

____
CHAIRMAN, KAYSVILLE CITY PLANNING COMMISSION

DEVELOPER:
LOREN CLARK

S1 / 1

LAYTON SURVEYS
Professional Land Surveying

COUNTY RECORDER

ENTRY NO.__________ FEE PAID ________
FILED FOR AND RECORDED __________,
AT ______, IN BOOK ______ OF OFFICIAL
RECORDS, PAGE ______, RECORDED
FOR ________________________

____
COUNTY RECORDER

BY: ________________________

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: 3/4/21

TYPE OF ITEM: Work

PRESENTED BY: Community Development Staff

SUBJECT/AGENDA TITLE: Heritage Square Development Agreement

EXECUTIVE SUMMARY:

The Heritage Square property at about 575 West and Mutton Hollow Road was approved for development in 2014 and the project has been built as approved.

The original concept was to have 7 total dwellings built as single family attached units, but due to concern with the number of units the council approved the zone and project limiting the number of units to a total of 4.

The property owner and original developer is interested in reconsidering the potential to add additional units similar to the original concept.

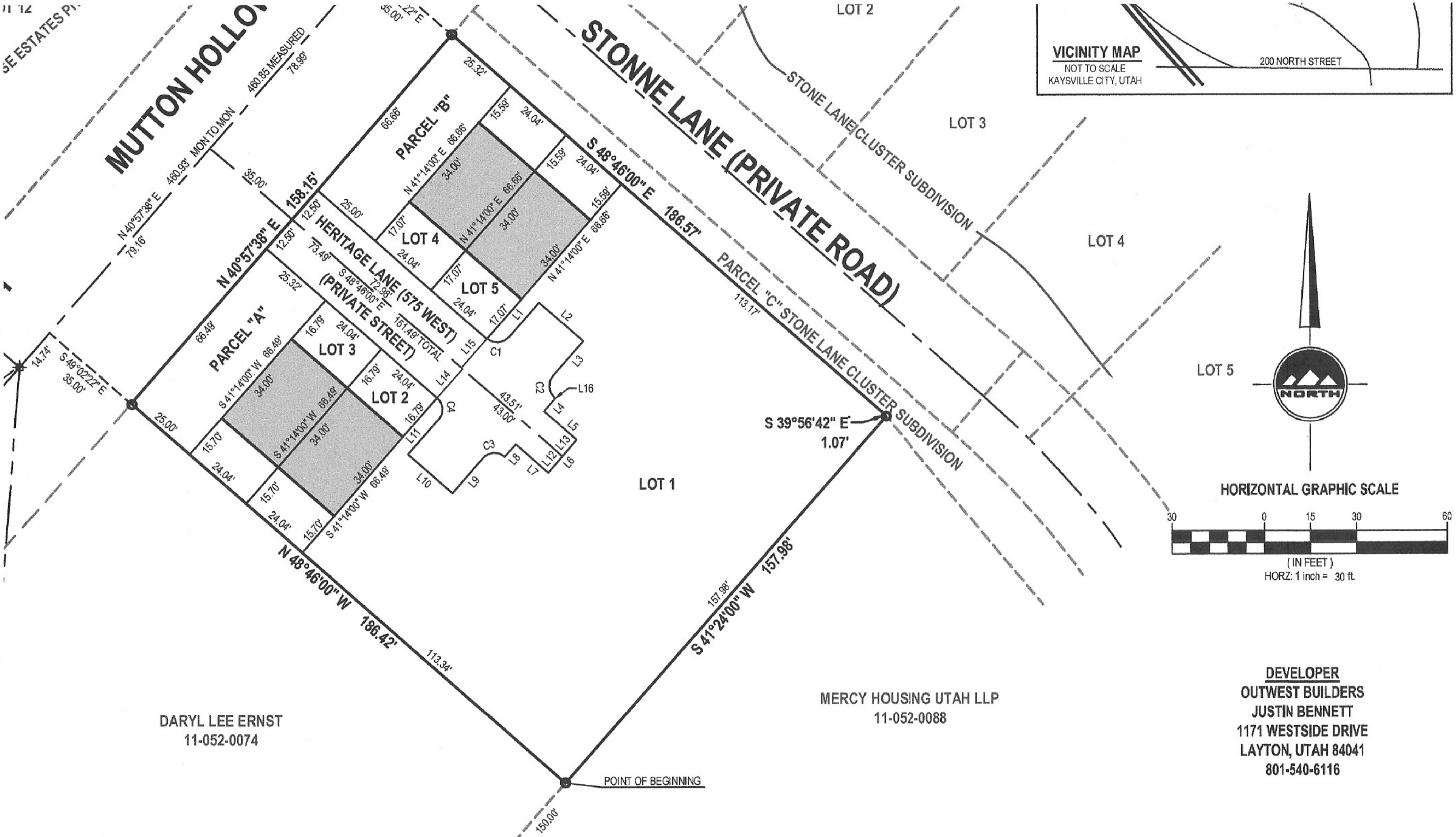
Staff is interested in knowing if the council wants to entertain this further and if so what process would they like to follow.

Council Options: Move to Action Item Agenda with direction as to process to follow. Determine not to pursue consideration of a change.

Fiscal impact & Fund Source for Recommended Action: N/A

Attachments: Approved Plan, Existing Development Agreement

Heritage Square Townhomes Phase 2



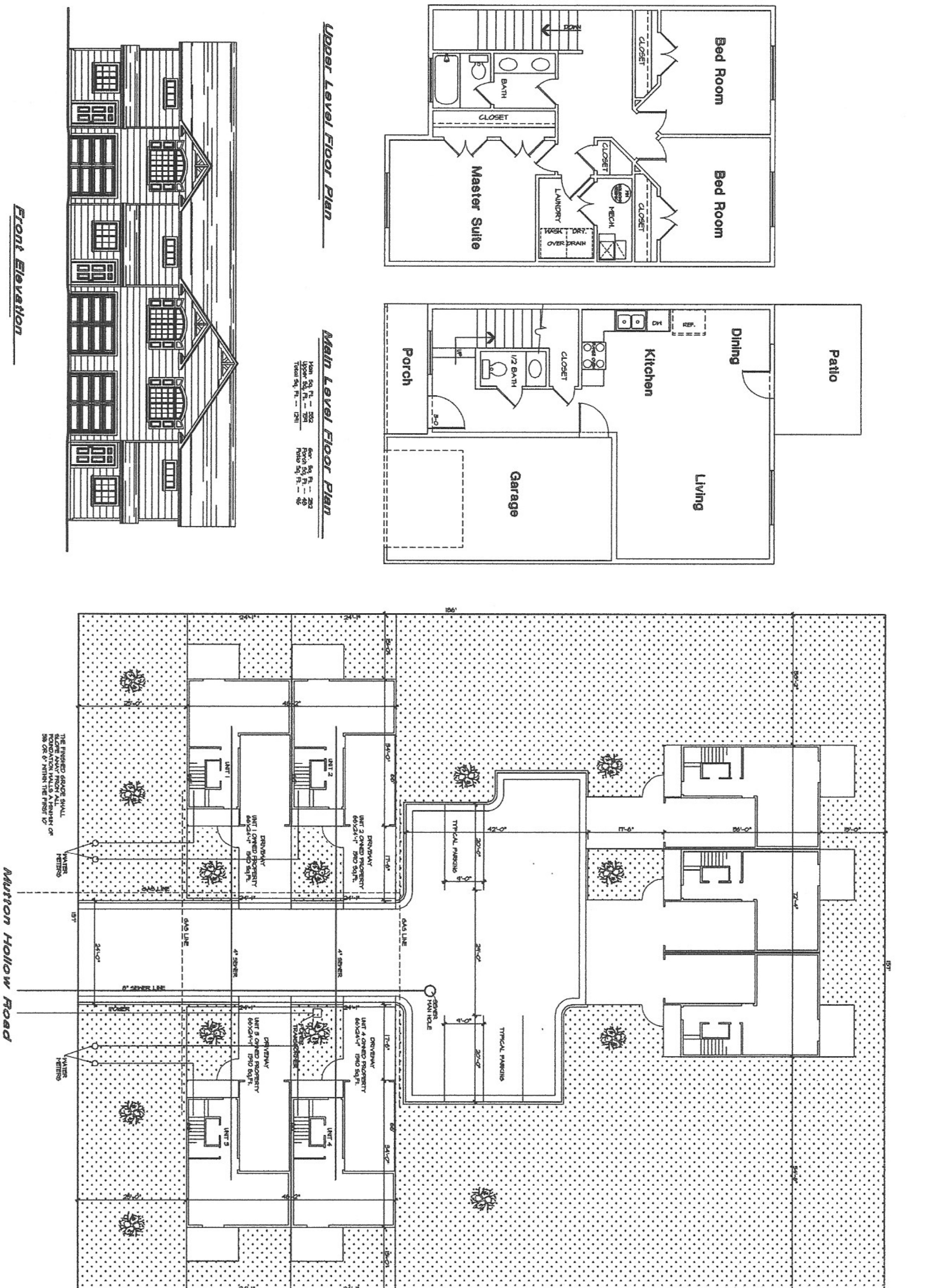
DEVELOPER
OUTWEST BUILDERS
JUSTIN BENNETT
1171 WESTSIDE DRIVE
LAYTON, UTAH 84041
801-540-6116

ADDRESS TABLE

LOT	HOUSE NUMBER	STREET
LOT 1	756 NORTH	HERITAGE LANE (575 WEST)
LOT2	761 NORTH	HERITAGE LANE (575 WEST)
LOT3	767 NORTH	HERITAGE LANE (575 WEST)
LOT 4	770 NORTH	HERITAGE LANE (575 WEST)
LOT 5	762 NORTH	HERITAGE LANE (575 WEST)

LAND USE TABLE

NAME	USE	SQUARE FOOTAGE	PERCENTAGE
PARCEL "A"	OPEN SPACE	1,673 SQ. FT.	5.66%
PARCEL "B"	OPEN SPACE	1,677 SQ. FT.	5.67%
LOT 1	PRIVATE LOT	16,287 SQ. FT.	55.07%
LOT2	PRIVATE LOT	1,598 SQ. FT.	5.40%
LOT3	PRIVATE LOT	1,598 SQ. FT.	5.40%
LOT 4	PRIVATE LOT	1,602 SQ. FT.	5.42%
LOT 5	PRIVATE LOT	1,602 SQ. FT.	5.42%
OUTWEST LANE	PRIVATE STREET	3,539 SQ. FT.	11.96%
TOTAL	-	29,576 SQ. FT.	100.00%



SHEET No. A0

www.zHousePlans.com
KH Design Inc. House Plans
www.KHDesign.com
995 S. STATE ST. # A Ph. 801-774-5913
CLEARFIELD, UT 84015

PROJECT Outwest Builders
No. 1197
Lot 0075 Mutton Hollow Road
Kaysville City, UT

DRAWING Lot Plan

SCALE: See Sheet

DATE: May. '14

DRAWN BY Ken Reed

DEVELOPMENT AGREEMENT
FOR 1.32 ACRES OF PROPERTY AT
566 AND 561 WEST MUTTON HOLLOW ROAD

THIS AGREEMENT is made and entered into this 16 day of July, 2014, by and between Kaysville City, a municipal corporation organized and existing under the laws of the State of Utah (hereinafter the "City"), and Justin Bennett and Daryl Lee Ernst (hereinafter the "Owners;" "Owners" include successors and/or assigns of Justin Bennett and Daryl Lee Ernst), as follows:

RECITALS

WHEREAS, Owners desire to rezone their properties at 566 and 561 West Mutton Hollow Road consisting of 1.32 acres; ~~and~~

WHEREAS, the purpose of this Agreement is to limit the number of dwelling units to four (4) on each parcel in the rezoned property; and

WHEREAS, the City is willing to approve the rezone of the property with a limit on the number of dwelling units which are allowed on the property;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. PROPERTY DESCRIPTION

The property to which this Agreement applies (the "Property") consists of 1.32 acres in two (2) parcels which are specifically described as follows:

Parcel A: Described in Exhibit A attached hereto and incorporated by reference herein.

Parcel B: Described in Exhibit B attached hereto and incorporated by reference herein.

2. LIMIT ON DWELLING UNITS

Owners hereby agree to limit the number of dwelling units on Parcel A to four (4) units and on Parcel B to four (4) units.

3. REZONE OF PROPERTY

The City hereby agrees to rezone the Property R-2 One and Two Family Residential District, as shown on the map attached hereto as Exhibit C and incorporated by reference herein, effective upon the effective date of this Development Agreement, limiting the number of dwelling units to four (4) on each parcel of the Property.

4. ASSIGNMENT

Owners may assign this Agreement to any other third party provided that the City consents to such assignment, which consent shall not be unreasonably withheld.

5. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. ATTORNEYS' FEES

In the event that this Agreement or any provision hereof shall be enforced by an attorney retained by a party hereto, whether by suit or otherwise, the fees and costs of such attorney shall be paid by the party who breaches or defaults hereunder, including fees and costs incurred upon appeal or in bankruptcy court.

7. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

8. CAPTIONS

The section and paragraph headings contained in this Agreement are for the purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

9. GOVERNING LAW

This Agreement and all matters relating hereto, shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

10. ENTIRE AGREEMENT

This Agreement, together with the exhibits attached hereto, constitutes the entire understanding and agreement by and among the parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

11. CONSTRUCTION

As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

OWNERS

JUSTIN BENNETT

DARYL LEE ERNST

KAYSVILLE CITY

By: ______________________
STEVE A. HIATT
Mayor

ATTEST:

By: ______________________
LINDA ROSS
City Recorder

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On the ________ day of ____________, 2014, personally appeared before me STEVE A. HIATT, and LINDA ROSS, who being by me duly sworn did say, each for himself and herself that he, the said STEVE A. HIATT, is the Mayor of Kaysville City, Davis County, State of Utah and that she, the said LINDA ROSS, is the City Recorder of Kaysville City, and that the within and foregoing instrument was signed on behalf of the said Kaysville City by authority of the City Council of Kaysville City and said STEVE A. HIATT and LINDA ROSS, each duly acknowledged to me that the said Kaysville City executed the same and that the seal affixed is the seal of the said Kaysville City.

____
NOTARY PUBLIC

(SEAL)

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On the 16 day of July, 2014, personally appeared before me, JUSTIN BENNETT, the signer of the foregoing Development Agreement, who duly acknowledged to me that he executed the same.

Annemarie Plaizier
NOTARY PUBLIC

(SEAL)

STATE OF UTAH NOTARY PUBLIC
ANNEMARIE PLAIZIER
COMMISSION # 651905
MY COMMISSION EXPIRES:
1/24/2016

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On the 16 day of July, 2014, personally appeared before me, DARYL LEE ERNST, the signer of the foregoing Development Agreement, who duly acknowledged to me that he executed the same.

STATE OF UTAH NOTARY PUBLIC
ANNEMARIE PLAIZIER
COMMISSION # 651905
MY COMMISSION EXPIRES:
1/24/2016

(SEAL)

Annemarie Plaizier
NOTARY PUBLIC

STAFF REPORT

COUNCIL MEETING DATE: March 4, 2021

TYPE OF ITEM: Work

SUBJECT/AGENDA TITLE: A resolution approving alterations to the City's purchasing policy.

EXECUTIVE SUMMARY: The City Council recently noted that donating certain property might be better handled administratively. City Staff has reviewed the purchasing policy based on those observations and propose three alterations along with some minor edits. First, it increases the authority of the City Manager to authorize purchases less than $50,000. Second, it authorizes City Staff to purchase items—regardless of price—that have been approved as line items in the budgeting process. Finally, it sets forth a mirrored valuation structure for City Staff to follow when disposing of city property.

Council Options: 1) Move the resolution to an action item as written; 2) Move the resolution to an action item with any modifications that the Council deems appropriate; 3) Decline to adopt the resolution and remand to staff with further direction.

Recommended Options: Staff recommends that the City Council move the resolution to an action item as written.

Fiscal Impact & Fund Source for Recommended Action: City Staff does not anticipate any costs to the City based on the passage of this resolution.

RESOLUTION 21-XX-XX

A RESOLUTION APPROVING ALTERATIONS TO THE CITY'S PURCHASING POLICY

WHEREAS, the Kaysville City Council desires to effectively use City Council time to address legislative questions; and

WHEREAS, the City Council desires to alter the existing policy to more efficiently purchase city property and equipment and dispose of surplus and unneeded property; and

WHEREAS, the City Council desires to alter and establish a standard operating procedure for purchasing and disposing of property; and

WHEREAS, the City believes that updating this policy will lead to greater value returned to the City; and

WHEREAS, it is deemed to be in the best interest of the citizens of Kaysville City to update and approve the policy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF KAYSVILLE, UTAH:

1. The purchasing policy attached to this resolution is hereby incorporated herein by this reference and approved.

PASSED AND ADOPTED by the City Council of Kaysville, Utah, this **18th day of March, 2021.**

____
Katie Witt, Mayor

ATTEST:

____
Maria Devereux, City Recorder

KAYSVILLE CITY
PURCHASING POLICY AND PROCEDURES

Pursuant to Utah Code Annotated Section 10-6-122 and other pertinent provisions, there is hereby adopted and established the following Purchasing Policy and Procedures for Kaysville City.

SECTION I GENERAL PROVISIONS

Policy
This policy shall establish procedures for capital and non-capital purchases and annual contracts for Kaysville City.

Purpose
The policy and procedures have been created to maximize the use of Kaysville City's financial resources. The purposes of these policies and procedures are:

1. To ensure fair and equitable treatment of all persons who wish to or do conduct business with Kaysville City.

2. To provide for the greatest possible economy and efficiencies in City procurement activities.

3. To foster effective broad-based competition to ensure that the City will receive the best possible service or product at the lowest possible price.

Compliance
These policies and procedures shall not prevent the City from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with the law. When procurement involves the expenditure of federal or state financial assistance funds, the City shall comply with applicable federal or state laws and regulations.

Purchasing Agent
The City Manager shall administer the Purchasing Policy and Procedures. Department Heads shall be considered "purchasing agents" for purposes of this policy. As determined by Department Heads, others within the departments may be authorized to procure goods and services.

SECTION II DEFINITIONS

Unless the context requires otherwise, the terms used in the Purchasing Policy and Procedures, or the rules and regulations adopted pursuant to the Purchasing Policy and Procedures shall have the following meanings:

Adequate Appropriation Balance: A sufficient balance which must exist in the line-item appropriation of the account against which the purchase is to be charged.

Bid: A proposal or price quotation provided to the City as part of the City's procurement process.

Bidding: The procedures used to solicit quotations on price and delivery from various perspective suppliers of supplies, equipment, and contractual services.

Bid Process: The type of procedures used by the City to solicit quotations and award bids or contracts. Examples include over the counter, open market, and formal competitive bidding.

Bid Splitting: The process of breaking up procurement of goods and services into smaller amounts which inhibits fair and open competition unless deemed advantageous to the City as determined by the City Manager.

Bidders List: A list maintained by the Department of known vendors supplying goods and services to the City. Vendors may submit a written request to be placed on a bidders list.

Collusion: When two or more persons act together to circumvent purchasing procedures and inhibits the free and open competition in City procurement.

Contractual Services: Professional services, sought or obtained from sources other than regular City employees, including auditing, consulting, architectural, engineering and/or other consulting services.

Cronyism: A form of favoritism where contracts are awarded, or purchases made based on friendship, familiar association, or political connections rather than fair and open competition.

Department Head: The person who administers a department of the City or their designee as specified in writing. This also includes the City Manager.

Estimates of Requirements: Forecasts of future requirements of supplies, equipment, or contractual services submitted by City Departments upon request of the City Manager or their designee.

Local Bidder: A firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by, or pays business taxes to, Kaysville City.

Lowest Responsible Bidder: A bidder who has submitted the lowest responsive bid to furnish supplies or contractual services to the City, and who meets the standards set forth in this definition. The lowest responsible bidder's bid shall comply with the specifications, delivery terms and conditions, and other qualifications and requirements included in the invitation for bids, and shall be accompanied by any bonds required by the City or other applicable law and when requested, information and data to prove that their financial resources, production or service facilities, service reputation and experience are adequate for the contractual services or work who has not violated or attempted to violate any provisions of the Purchasing Policy and Procedures. In determining the lowest responsible bidder, the City shall give primary emphasis to bid price, but may also consider the complexity of the project in conjunction with the ability and capacity of the bidder.

Professional Services: This includes but is not limited to professional services for auditing, banking, insurance, engineering, architectural services and/or other forms of consulting.

Public Property: Any item of real or personal property owned by the City.

Purchase Requisition: Standard forms used by departments providing detailed information as to quantity, description, price, supplier, and signature authorization for purchases.

Responsive Bid: An offer, submitted by a Responsible Bidder to furnish supplies, material, equipment, or services in conformity with the specification, delivery terms and conditions, and other requirements included in the invitation for bids.

Services: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term does not include employment agreements or Professional Services.

Supplies, Materials, and Equipment: The specific end product(s) identified in the Purchase Requisition or specification prepared by the City.

Surplus Property: Any item of Public Property that is no longer used by the City or no longer usable by the City that is out of date, damaged and cannot be repaired at a cost less than the property's value, has exceeded its useful life, or the City determines is not required to meet the needs or responsibilities of the City.

SECTION III GENERAL PURCHASE PROCEDURES AND BID SELECTION PROCESS

City purchasing shall be a fair and open process to ensure efficient and cost-effective acquisition and procurement of supplies, materials, equipment, and/or services. The following procedures shall be followed:

A. Over the Counter – Purchases less than $5,000

Purchases of less than $5,000 may be authorized by the Department Head. Although no specific purchasing requirements are established for this level of purchase, competitive bidding shall be used whenever practical.

The City Manager may require any acquisitions adhere to a more restrictive purchasing process if in their determination, such action would be in the best interest of the City.

B. Open Market – Purchases between $5,000 and $50,000

Any purchase or acquisition of supplies, material, equipment, improvements, or services of an estimated value of more than $5,000 but less than $50,000 require a solicitation of bids. These purchases or acquisitions shall be made pursuant to the procedures hereinafter prescribed.

1. Solicitation and Minimum Number of Bids – Price quotations shall be solicited from prospective vendors by written or verbal request. Departments shall solicit bids from known vendors, a bidders list maintained by the Department, and a public bidding website whenever possible. Open market purchases shall be based on a minimum of three price quotations whenever possible and shall be awarded to the lowest responsible bidder.

2. Receipt of Price Quotations and Bids – Price quotations and bids shall be provided in writing from prospective vendors. Vendors must submit price quotations via a sealed proposal, FAX, designated purchasing email, or other electronic communication.

3. Purchase Requisitions – Departments shall use Purchase Requisitions when any material, supply, equipment, or service is estimated to cost $5,000 or more and the formal contract procedure will not be followed. All Purchase Requisitions in excess of $10,000 must be countersigned by the City Manager.

4. Use of Local Bidders – Departments will make every effort to use Kaysville Businesses and obtain non-formal bids or price quotations from Local Bidders. At least one of the three price quotations will be requested from a Local Bidder if such bidder is available.

5. Local Bidder Preference – If a bid of a non-local bidder is the lowest and there was a local bidder who also submitted a bid which was within three percent (3%) of the low bid, then the purchase may be awarded to the local bidder if the bidder meets all prescribed requirements and agrees in writing within 48 hours after being notified of the low bid, that the local bidder will meet the low bid price.

6. Budgetary Considerations – All purchases must conform to the annual budget and there must be an adequate balance in the appropriation for the item or service to be procured. Any substantial deviation from the annual budget or any appropriation thereunder shall be approved by the City Manager prior to such procurement.

C. Formal Competitive Bidding – Purchases over $50,000

Purchases of supplies, equipment, or contractual services of an estimated value of $50,000 or more shall be approved by the City Council and by written contract with the lowest responsible bidder pursuant to the procedure hereinafter prescribed. Budget line-item approval of such purchase by the City Council shall constitute authorization to commence the bidding process and enter into a purchase contract pursuant to the requirements set forth herein. Purchases of equipment in excess of $50,000 may be exempt from formal contract procedures, however formal bidding is required.

1. Notice Inviting Bids – Notices inviting bids shall include a general description of the improvements, supplies, materials, equipment, and/or services to be acquired, shall state where plans, specifications and other information may be secured, and shall state the time and place for the opening of bids. Notices shall be delivered to all known responsible prospective suppliers, including those whose names are on a bidders list or who have made a written request that their names be added to the bidders list. At least ten (10) calendar days before the opening of bids, notices inviting bids shall be published on the City's website, professional group association, contractor magazine or database, and posted on a public bidding website.

   Additional Requirements:

   Building Improvements and Public Works Projects: For any building improvement or public works project where the estimated cost exceeds the bid limit, as defined in Utah Code Annotated Section 11-39-101(1), requests for bids shall be published at least twice in a newspaper of general circulation at least five (5) calendar days before the opening of the bids.

   Class C Road Projects: For the construction of any improvement project on Class C Roads where the estimated cost exceeds the bid limit as defined in Utah Code Annotated Section 72-6-109, advertisement for bids shall be published in a newspaper of general circulation at least once a week for three consecutive weeks before the opening of bids.

2. Local Bidder Preference – If a bid of a non-local bidder is the lowest and there was a local bidder who also submitted a bid which was within three percent (3%) of the low bid, then the purchase

may be awarded to the local bidder if the bidder meets all prescribed requirements and agrees in writing within 48 hours after being notified of the low bid, that the local bidder will meet the low bid price.

3. Bid Opening Procedure – Sealed bids shall be submitted as designated in the Notice with the statement “Bid for (Item)” on the envelope. Bids shall be opened in public at the time and place stated in the notice inviting bids. A written description of all bids received shall be available for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

4. Rejection of Bids – The City Council reserves the right to reject any and all bids for any reason. All notices calling for bids should so state. If all bids are rejected and the City Council decides to make the improvement or acquire the supplies, materials, equipment, and/or services, it shall advertise anew in the same manner provided herein, no bid shall be received that is not satisfactory, the City Council may proceed to negotiate or make the improvement or acquisition or enter such other agreements as it deems necessary or desirable.

5. Award of Contracts – Except as otherwise provided herein, it is the intention of the City Council to award the contract to the lowest responsible bidder.

6. Tie Bids – If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit delay or re-advertising for bids, the City Council shall accept the lowest bid made by and after negotiation with the tie bidders after the time of the bid opening.

7. Performance Bonds – Before entering a contract, the City Council shall have authority to require performance and payment bonds to be provided in such amounts as it shall find reasonably necessary to protect the best interests of the City and as required by law. The form and amount of said bonds shall be described in the notice inviting bids.

SECTION IV EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS OF SECTION III

Unless otherwise required by State or Federal law, the bid process requirements set forth in Section III do not apply in the following situations as determined by the City Manager. Purchases over an estimated value of $50,000 are to be reviewed and approved by the City Council.

A. **Professional Services Contracts**
Professional services shall include, but not be limited to the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services. Professional service contracts shall be awarded based on professional qualifications, service ability, cost of service, and other criteria deemed important by the City Council.

B. **Contracts Not Suited to Competitive Bidding**
Contracts which by their nature are not suited to award by competitive bidding shall not be subject to the bidding requirements set forth herein. These contracts include:

1. Contracts for items which may only be purchased from a single or sole source.

2. Contracts for additions to and/or repairs and maintenance of equipment owned by the City which may be more efficiently added to, repaired, or maintained by a particular person or firm.

3. Contracts for equipment which by reason of the training of City Personnel or the inventory or replacement parts maintained by the City, is more compatible with the existing equipment owned by the City

C. **Auction, Close Out, Bankruptcy Sales**
If the City Council determines that supplies, materials, or equipment can be purchased at a public auction, close out sale, bankruptcy, or other similar sale, and if the City Manager determines that such purchase at such auction or sale will be made at a cost below the market cost in the community, a contract or contracts may be let, or purchase made without complying with the competitive bidding requirements set forth herein.

D. **Exchanges**
Exchanges of supplies, material, or equipment between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies.

E. **State Contracts**
The city may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office at the quoted price without any solicitation or price quotation or invitation to bid. For such purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

F. **Utah Correctional Industries Division**
Goods and services produced by the Utah Correctional Industries Division may be purchased from the Division without following any of the bidding requirements set forth herein.

G. **Additional Work (Change Orders)**
Any change orders, scope of work changes, extension of work, or other additions or corrections to existing contracted services, supplies, equipment, or materials, whether constituting a reduction or increase in bid amount, to a current award provided the change order is no more than fifteen percent (15%) of the original bid. The City Council shall be notified of any change orders in excess of fifteen percent (15%).

H. **Interlocal Agreements**
The City shall have the power to enter into joint purchase agreements with any and/or all other public agencies within the State for the purchase of any commodity or service wherein it is determined by the City Council to be in the best interest of the City.

I. **Emergency Procurement**
Notwithstanding any other provision of the Purchasing Policy and Procedures, when there exists a threat to public health, welfare, safety, or ability of the City to provide its services, under emergency conditions as determined by the City, the City Manager may immediately authorize the awarding of contracts for any supply, service, or construction provided said procurement is made with as much competition as

practicable under the circumstances and reasonably limited to the purpose of facilitating accomplishment of an emergency need.

SECTION V DISPOSAL OF SURPLUS PROPERTY

A. **Transfer and Disposition of Surplus Property**
All surplus property is disposed of "as is" and "where is," with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility, or usability of the property. The disposition of property with an estimated value of $5,000 or below may be authorized by Department Heads pursuant to the best interest of the City. The disposition of property with an estimated value between $5,000 and $50,000 shall be authorized by the City Manager after having determined that such disposition is in the best interest of the City. The disposition of property with an estimated value exceeding $50,000 shall require the approval of the City Council. These provisions do not preclude City employees from acquiring surplus property through a fair and open process as described herein. Appropriate methods of disposition of surplus property include:

1. Transfer Between Departments – Surplus property may be transferred between City departments.

2. Trade-in – Property declared as surplus may be offered as a trade-in for credit toward the acquisition of new property.

3. Disposal – Surplus property may be offered for sale by the City. Appropriate methods of sale are as follows:

    a. **Auction –** Surplus property may be sold at public auction. Auctions may be conducted by City staff, or the City may contract with a professional auctioneer or electronic auction site.

    b. **Sealed Bids** – Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner shall be sold to the highest responsible bidder.

    c. **Selling for Scrap** – Surplus property may be sold as scrap if the City deems that the value of its parts exceeds the value of the surplus property as a whole.

    d. **No Value Item** – Where the City determines that property is surplus and of minimal value to the City due to spoilage, obsolescence, or other cause or where the City determines that the cost of disposal of such property would exceed the recovery value, the City shall dispose of the same in such manner as they deem appropriate and in the best interest of the City.

    e. **Donation –** Surplus property may be donated to any other public agency or charitable organization exempt under Section 501(c)(3) of the Internal Revenue Code. "Public Agency" means the State or any agency or subdivision thereof, any city, county, special district, or school district.

B. **Personal Scrapping, Recycling, or Disposal of City Property**
Transferring, selling, donating, scrapping, recycling, or disposing of City property, as defined herein (regardless of monetary value), by City employees for personal gain or to benefit the interest of any person or party other than Kaysville City is in violation of this policy.

City employees are prohibited from claiming ownership of, giving away, recovering, or salvaging for personal use, or the use or interest of any person other than Kaysville City, any materials abandoned, disposed, or stored upon City. City employees are prohibited from taking possession of any surplus property or the proceeds from the sale of surplus property designated for disposal as trash, scrap, or as recyclables except when determined by the City Manager that such property has no value to the City. This prohibition includes giving any such surplus property or proceeds from the sale of such surplus property to any person or party other than for the duly authorized benefit and interest of Kaysville City, or authorizing any other person or party to accept, receive, or take any such surplus property to benefit their own interest, except as provided hereinabove.

C. **Proceeds from Transfer and Disposition of Property**
When so authorized to transfer, sell, donate, recycle, and/or scrap City property, the employee directed to undertake such activity shall remit the entire proceeds from any such activity to the City by check or money order made payable to Kaysville City, and shall be deposited into the appropriate fund.

SECTION VI APPEALS

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the City Manager. An appeal shall be submitted in writing within five (5) business days after the aggrieved person knows or should have known the facts.

The City Manager shall issue a written decision within fourteen (14) calendar days regarding the appeal if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the City Council.

The appeal to the City Council shall be the final appeal authority on the City level.

SECTION VII PROHIBITIONS

A. **Conflicts of Interest**
No member of the City Council or City employee may have an undisclosed pecuniary interest, as per State law, directly or indirectly in any contract entered into by the City. A violation of this provision shall be cause for removal or other disciplinary action. City employees and City Council members shall notify the City Manager of any potential conflict of interest.

B. **Collusion Among Bidders**
Any agreement or collusion among bidders or prospective bidders in restraint of competition by an agreement to bid a fixed price or otherwise shall render such bids void.

C. **Ethics**
It is the intent of the City Council that procurement by Kaysville City comply in all respects with the requirements of the laws of the State of Utah relating to ethics and employees' dealings with the City. Therefore, to the extent applicable, the Utah Municipal Officers' and Employees' Ethics Act, Utah Code Annotated, Title 10, Chapter 3, Part 13, and the Utah Public Employees Ethics Act, Utah Code Annotated, Title 67, Chapter 16, are adopted herein by reference.

D. **Personal Use**

Any purchase of supplies or equipment by the City for the personal use of any official or employee of the City is prohibited. Any person who violates this subsection shall be subject to disciplinary action by the City.

E. **Bidding Preference**

A City Council member, director, or employee with purchasing authority may not take part in any contracting decision: (i) relating to a family member, or (ii) relating to any entity in which a family member is an officer, director, or partner, or in which a family member owns or controls ten percent (10%) or more of the stock of such entity. If a contracting matter arises relating to a family member, then the City Council member must advise the Mayor and City Council and must be recused from all discussions and votes related to the matter. If a contracting matter arises relating to a family member, a director or employee must advise the City Manager of the relationship and must be recused from any and all discussions or decisions relating to the matter.

For the purposes of this policy, "family member" shall mean a party's spouse (including prior spouses), siblings, stepsiblings, siblings-in-law, parents, stepparents, parents-in-law, children, stepchildren, children-in-law, any person residing in the same household of the party, and any individual claimed as a dependent for tax purposes.

SECTION VIII COMPLIANCE

No officer or employee of the City shall make any purchase for or on behalf of the City of any material, goods, supplies, equipment, or services of any kind except through the purchasing procedures as specified in this policy. It shall be considered a breach of duty on the part of any officer or employee to make any purchase in a manner other than through specified purchasing procedures. Officers and employees are subject to disciplinary action as determined by the City Manager for any violation.

STAFF REPORT

COUNCIL MEETING DATE: March 4, 2021

TYPE OF ITEM: Work

SUBJECT/AGENDA TITLE: Discussion on Franchise Agreement

EXECUTIVE SUMMARY: Kaysville City Staff have been discussing some modifications to our existing Franchise Agreement. These discussions have led to proposing a new Franchise Agreement to be utilized with all interested parties that desire to operate a utility service in Kaysville City using Kaysville City Rights-Of-Way and other city facilities. The city currently has a franchise agreement with only one provider and would propose, once adopted, to ensure that all present and future utilities adopt the same agreement.

Council Options: 1) Move the agreement to an action item as written; 2) Move the agreement to an action item with any modifications that the Council deems appropriate; 3) Decline to move the agreement to action at this time and remand to staff with further direction.

Recommended Options: Staff recommends that the City Council move the agreement to an action item as written.

Fiscal Impact & Fund Source for Recommended Action: City Staff does not anticipate any costs to the City based on the passage of this agreement.

FRANCHISE AGREEMENT

KAYSVILLE CITY, UTAH

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between KAYSVILLE CITY, Utah (hereinafter "CITY"}, a municipal corporation and political subdivision of the State of Utah, with principal offices at 23 East Center Street, Kaysville, Utah, 84037, and

____(hereinafter “Franchisee”),

a ____(type of organization)

with its principal offices at ____.

WITNESSETH:

WHEREAS, FRANCHISEE desires to provide telecommunications services, as more particularly defined in the "Municipal Telecommunications License Tax Act," (the "Act"), Utah Code Ann. §§10-1-401, et seq., as amended, and establish a telecommunications network, system and/or facilities in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 11 of the Revised Ordinances of Kaysville City (hereinafter the "Telecommunications Ordinance" or •ordinance") which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in the exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide FRANCHISEE a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, In consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and FRANCHISEE agree as follows:

AGREEMENT

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and FRANCHISEE.

1.2 Ordinance. The CITY has adopted the Telecommunications Ordinance which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. FRANCHISEE acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Ordinance. The parties agree that the provisions and requirements of the

Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Ordinance. The definitions in the Ordinance shall apply herein unless a different meaning Is set forth in the Act or is otherwise indicated. Nothing in this Section shall be deemed to require FRANCHISEE to comply with any provision of the Telecommunications Ordinance which is determined to be unlawful or beyond the CITY's authority.

1.3 Ordinance Amendments. The CITY reserves the right to amend the Ordinance at any time. Provided, however, CITY shall not enact any amendments to the Ordinance that will adversely impact FRANCHISEE without allowing FRANCHISEE 30 days, or such longer time as is necessary if 30 days is insufficient, in which to comply with the amendment. The CITY shall give FRANCHISEE notice and an opportunity to be heard concerning any proposed amendment. If there is any Inconsistency between FRANCHISEE's rights and obligations under the Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, FRANCHISEE agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon FRANCHISEE the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network In, under, above and across the present and future public Rights-of-Way in the City. The franchise does not grant to FRANCHISEE the right, privilege or authority to engage in community antenna (or cable} television business; although, nothing contained herein shall preclude FRANCHISEE from: (1) permitting those with a cable franchise who are lawfully engaged In such business to utilize FRANCHISEE's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained from the City and all other legal requirements have been satisfied·.

1.5 Licenses. FRANCHISEE acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Ordinance.

1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

ARTICLE 2, FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, FRANCHISEE shall pay to the CITY a tax in accordance with the Municipal Telecommunications License Tax Act (Utah Code Ann. 10-1-401 to 10-1- 410 as amended from time to time), less any business license fee or business license tax enacted by the CITY. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

2.2 Equal Treatment. CITY agrees any fees or taxes charged to FRANCHISEE under this Agreement shall be of the same nature and calculation of fees or tax currently charged or charged In the future to other similarly situated entities.

ARTICLE 3. TERM AND RENEWAL

3.1 Term and Renewal. The franchise granted to FRANCHISEE shall be for a period often {10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein may be renewed by FRANCHISEE upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by providing to the CITY's representative designated herein written notice of FRANCHISEE's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 Rights of FRANCHISEE Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between FRANCHISEE and the CITY, or by revocation or forfeiture, FRANCHISEE shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of FRANCHISEE, Immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. POLICE POWERS.

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

ARTICLE 5. CHANGING CONDITIONS AND SEVERABILITY.

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

5.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, Including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain In full force and effect for the term of this Agreement or any renewal or renewals thereof. If the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way ln a manner similar to that provided in this Agreement, the Ordinance, and the City's Excavation Permit Policy. For FRANCHISEE, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Ordinance, and the CITY's Excavation Permit Policy.

ARTlCLE 6. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

6.1 Grounds for Termination. The CITY may terminate or revoke this Agreement and all rights and privileges herein provided, upon ninety (90} days prior notice, for any of the following reasons:

(a} FRANCHISEE fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and doe s not correct such failure within sixty (60) calendar days after written notice by the CITY of such failure;

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

(c) FRANCHISEE becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by FRANCHISEE within sixty (60) days.

6.2 Reserved Rights. Nothing contained herein shall be deemed to preclude

FRANCHISEE from pursuing any legal or equitable rights or remedies It may have to challenge the action of the CITY.

6.3 Remedies at Law. In the event FRANCHISEE or the CITY fails to fulfill any of Its respective obligations under this Agreement, the CITY or FRANCHISEE, whichever the case may be, may assert a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement. In the event of any controversy, claim or action being filed or instituted between the CITY and FRANCHISEE relating to or arising out of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs through all levels of action Incurred by the prevailing party.

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

6.5 Assignment. This Agreement may not be assigned by FRANCHISEE except to a wholly owned subsidiary of FRANCHISEE without the prior written consent of the CITY, which consent shall not be unreasonably withheld.

ARTICLE 7. PARTIES' DESIGNEES.

7.1 CITY designee and Address. The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Ordinance, all notices from FRANCHISEE to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at:

City Manager
23 East Center Street
Kaysville, Utah 84037

or such other officer and address as the CITY may designate by written notice to FRANCHISEE.

7.2 FRANCHISEE Designee and Address. FRANCHISEE's Executive Director or his or her designee(s) shall serve as FRANISEE'S representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Ordinance, all notices from the CITY to FRANCHISEE pursuant to or concerning this Agreement, shall be delivered to FRANCHISEE's offices at

____
Street Address

____
City, State, Zipcode

or such other officer and address as FRANCHISEE may designate by written notice to the CITY.

7.3 Failure of Designee. The failure or omission of the CITY's or FRANCHISEE's representative to act shall not constitute any waiver or estoppels by the CITY or FRANCHISEE.

ARTICLE 8. INSURANCE AND INDEMNIFICATION

8.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, FRANCHISEE shall furnish to the CITY evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that FRANCHISEE is effectively self-Insured if FRANCHISEE has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all Insurance, whether purchased by FRANCHISEE from a commercial carrier, whether provided through a self-Insured program, or whether provided in some other form or other program, shall be In a form, In an amount and of a scope of coverage acceptable to the CITY.

8.2 Indemnification. FRANCHISEE agrees to indemnify, defend and hold the CITY harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from FRANCHISEE's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to FRANCHISEE of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit FRANCHISEE to assume the defense of such with counsel of FRANCHISEES' choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, FRANCHISEE shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY.

ARTICLE 9. INSTALLATION

9.1 Coordinated installation. In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, FRANCHISEE shall coordinate with the CITY and other providers or users of the CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of tines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

9.2 Underground Installation. Notwithstanding the provisions of Article 1.3 of this Agreement, FRANCHISEE expressly agrees to install and maintain all of its underground facilities in accordance with CITY Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement Is entered into and as subsequently amended during the term of this Agreement.

9.3 Aerial Installation: Notwithstanding the provisions of Article 1.3 of this Agreement, FRANCHISEE expressly agrees to install and maintain all of its aerial facilities in accordance with CITY Ordinances regarding the installation of aerial utility lines and pole attachment agreement terms, In effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require FRANCHISEE to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.

9.4 Prior Approval. FRANCHISEE shall not perform any work within CITY rights-of-way without having first obtained a written permit from the CITY authorizing such work.

ARTICLE 10. GENERAL PROVISIONS

10.1 Binding Agreement. The parties represent that: (a} when executed by their respective representatives, this Agreement shall constitute legal and binding obligations of the parties; and {b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to its operation in entering into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

10.2 Governing Law. This Agreement shall be interpreted pursuant to Utah law and jurisdiction and venue for any legal action pertaining to this Agreement shall be In the District Court of Davis County State of Utah.

10.3 Time of Essence. Time shall be of the essence of this Agreement.

10.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require It, the singular number shall be held in include the plural number and vice versa, and the use of any gender shall include the other gender. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 No Presumption. Both parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing this Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

10.6 Entire Agreement and Amendments. This Agreement and all attachments hereto constitute the entire agreement and understanding between the parties and replaces any previous agreement, understanding or negotiation between the parties with respect to its subject matter, and may be modified or amended, supplemented, or changed only by the written agreement of the parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

SIGNED AND ENTERED INTO On the______ day of ______________________, 20__.

"CITY"
KAYSVILLE CITY

By____________________________________
STEVE A. HIATT, Mayor

ATTEST

____
MARIA DEVEREUX,
City Recorder

STATE OF UTAH)
: ss,
COUNTY OF DAVIS)

On the _____day of __________________, 20__, personally appeared before me STEVE A. HIATT, and MARIA DEVEREUX, who being by me duly sworn did say, each for himself that he, the said STEVE A. HIATT, is the Mayor of Kaysville City, Davis County, State of Utah and that she, the said MARIA DEVEREUX, is the City Recorder of Kaysville City, and that the within and foregoing instrument was signed on behalf of the said Kaysville City by authority of the City Council of Kaysville City and said STEVE A. HIATT, and MARIA DEVEREUX, each duly acknowledged to me that the said Kaysville City executed the same and that the seal affixed is the seal of the said Kaysville City.

____

FRANCHISEE

_______________________________________(Name of Company)

____
Signature

____
Printed Name

____
Title

STATE OF __________________)
:ss
COUNTY OF ________________)

On this______ day of_____________, 20 ___, personally appeared before me _________________ ______ who being by me duly sworn did say that he/she is the _______________________ of____ _________________________, a __________ corporation/partnership, and that _____________ ___________________ is the legal property owner of record of the property subject to this Agreement and that the foregoing Agreement was signed in behalf of said corporation/partnership by authority of its Board of Directors/by-laws, and he/she acknowledged to me that said corporation/partnership executed the same.

____
NOTARY PUBLIC

STAFF REPORT

COUNCIL MEETING DATE: March 4, 2021

TYPE OF ITEM: Work

SUBJECT/AGENDA TITLE: Discussion on Pole Attachment Agreement

EXECUTIVE SUMMARY: Kaysville City Staff have been discussing the use of city poles with a specific phone/internet provider for several months now. These discussions have led to proposing a new Pole Attachment Agreement to be utilized with all interested parties that desire to utilize Kaysville City poles to serve area residences and businesses. Part of this process will also be proposing a Pole Attachment Fee to be added to the Consolidated Fee Schedule that is adopted annually by the Kaysville City Council.

Council Options: 1) Move the agreement to an action item as written; 2) Move the agreement to an action item with any modifications that the Council deems appropriate; 3) Decline to move the agreement to action at this time and remand to staff with further direction.

Recommended Options: Staff recommends that the City Council move the agreement to an action item as written.

Fiscal Impact & Fund Source for Recommended Action: City Staff does not anticipate any costs to the City based on the passage of this agreement although revenue to the city will be generated upon passing of a pole attachment fee.

TELECOMMUNICATIONS
JOINT FACILITIES AGREEMENT
BETWEEN
KAYSVILLE CITY
AND
____

KAYSVILLE CITY, a municipal corporation of the State of Utah, hereinafter called "Licensor," and _______________________, licensed to do business in the State of Utah, hereinafter called "Licensee" mutually agree that the terms and conditions of this Agreement, hereinafter called "Agreement", shall govern Licensee's joint use of such facilities owned by Licensor and located in Kaysville City, State of Utah as Licensor may, upon application, permit Licensee to use.

ARTICLE I

OVERHEAD LINE CONSTRUCTION

The terms and conditions of this Agreement are specifically limited to the joint use by Licensee of poles which are designed to carry and are carrying electric lines with line-to-line voltage ratings of 40 kilovolts or less. The joint use by licensee of poles which are designed to carry, or are carrying, electric lines with line-to-line voltage rating above 40 kilovolts shall be covered under separate agreements.

A. Licensee's use of the poles shall be confined to supporting those cables, wires, and other appurtenances, all hereinafter called "Equipment", which Licensor may give Licensee written permission to install. The Equipment shall be used for the purpose of operating a system for the distribution or transmission of telecommunication signals originated by Licensee for business or educational purposes. The Licensee, however is specifically prohibited from subleasing, for any purpose, all or any part of its physical facilities and Equipment attached to Licensor's poles without the prior written consent of the Licensor.

B. Whenever Licensee shall desire to place, overlay, or add Equipment to existing Equipment upon any of Licensor's poles, Licensee shall, at its own sole risk and expense, conduct a Pole Strength, Vertical Clearance, and Guyed Pole Analysis. This analysis must accompany a written application requesting licensor's permission to alter the existing Equipment. The application shall be directed to the Licensor's Power Department. The Power Department shall have sole discretion to determine the feasibility of joint facilities. Licensee shall pay an application fee to Licensor.

C. Upon receiving approval to install the requested Equipment, but not before, Licensee shall have the right to install, maintain, and use its Equipment described in the application upon the pole(s) identified therein, provided, however, that Licensee shall notify Licensor of the time when it proposes to do any work sufficiently in advance thereof so that Licensor may arrange to have its representative inspect such work.

D. Licensee shall not have the right to place, nor shall it place, any equipment in addition to that initially authorized upon any pole used by it hereunder without first making application for and receiving permission to do so. Nor shall Licensee change the position of any Equipment attached to any pole without Licensor's prior written approval.

E. Construction Specifications.

1. Licensee shall, at its own sole risk and expense, place and maintain the Equipment upon the poles in conformity with the requirements and specifications of the National Electrical Safety Code, current edition, and any supplements or revisions thereof, the construction specifications of Licensor's Power Department, and also in conformity with any additional requirements and specifications as Licensor shall from time to time prescribe,. In the event of any conflict between any of the requirements and specifications of the National Electric Safety Code and the requirements and specifications prescribed by Licensor, the more restrictive requirements and specifications shall take precedence. In the event Licensor changes such requirements or specifications, Licensee will not be required to modify existing Equipment unless such modification is necessary to maintain the safety of Licensor's facilities. In the event such requirements or specifications are changed by any laws, regulations, orders or decrees of any lawfully constituted bodies or tribunals, Licensee will be required to modify, at is sole risk and expense, existing Equipment to the extent required by such laws, regulation, orders or decrees. In the event any laws, regulations, orders or decrees of any lawfully constituted bodies or tribunals shall impose more restrictive requirements and specifications pertaining to pole-line construction, including increases in the required clearances for communication cables, such laws, regulations, orders or decrees shall be controlling over any requirements or specifications otherwise hereinabove specified.

2. If any part of Licensee's Equipment is not placed and maintained in accordance with the preceding paragraph, and Licensee has not corrected the violation within thirty (30) days from receipt of written notice thereof from Licensor, Licensor may, at its option and at Licensee's sole risk and expense, correct said condition. Licensor will attempt to notify Licensee in writing prior to performing such work whenever practical. However, when such conditions pose an immediate threat to the safety of Licensor's employees or the public, interfere with the performance of Licensor's service obligations, or pose an immediate threat to the physical integrity of Licensor's facilities, Licensor may perform such work or take such action that it deems necessary without first giving written notice to Licensee and without subjecting itself to any liability. As soon as practicable thereafter, Licensor will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for re-accommodation of Licensee's facilities so affected. Licensee shall be responsible for paying Licensor for all costs incurred by Licensor for all work, action, and re-accommodation performed by Licensor under this subsection within 30 days of being invoiced.

F. Licensee shall complete the installation of its Equipment upon the pole(s) covered by each approved individual application within such reasonable time limit. In the event

Licensee fails to complete the Equipment installation within the time limit, the permission granted by Licensor shall be revoked and Licensee shall not have the right to place the Equipment upon the poles without first reapplying for and receiving written permission to do so.

G. If, in the sole discretion of Licensor, the accommodation of any of Licensee's Equipment necessitates the rearrangement or addition of any facilities on an existing pole or the replacement of any existing pole to provide adequate pole facilities, Licensor will indicate on the application the changes necessary to accommodate the Equipment, and the estimated cost thereof and return it to Licensee; and if Licensee still desires to use the pole and returns the application marked to so indicate, Licensor will provide such new facilities as may be required, and Licensor and any other owners of the facilities shall arrange for and make such transfer, rearrangement, and replacements of existing facilities, and addition of new facilities, as may be required, and Licensee will post a cash bond covering the estimated cost of the work from which Licensor and each other owner may collect the costs for the entire expense actually incurred. In the event that actual costs exceed the estimated costs, Licensee shall pay those costs before installing any equipment. If Licensee elects not to use the pole(s), Licensee shall nevertheless reimburse Licensor for the cost of determining the changes necessary to accommodate the Equipment and the estimated cost thereof within 30 days.

H. If, in Licensor's judgment, Licensee's existing Equipment on any pole interferes with the placing of facilities required by Licensor, Licensor will notify Licensee of the rearrangements of facilities or pole replacement required in order to continue the accommodation of Licensee's Equipment. Licensor shall provide licensee an estimate of the cost of making any such changes prior to commencing any work. If Licensee desires to continue to maintain its Equipment on the pole, they shall notify licensor within 30 days of being notified about the changes and given an estimate. If Licensee has notified licensor that they wish to continue their Equipment, Licensor shall make such rearrangement, transfer or pole replacement, all at the sole risk and expense of Licensee, as may be required. Any other owners of facilities on the pole shall make such rearrangements or transfers, and Licensee will reimburse Licensor and each other owner for the entire expense thereby actually incurred within 30 days of being invoiced. If Licensee does not so notify Licensor, Licensee shall remove its Equipment from such pole within thirty (30) days from such notification by Licensor; provided, however, that Licensor in any emergency may require Licensee to remove its Equipment within the time required by the emergency. If Licensee has not removed its Equipment at the end of the thirty (30) day period, or in emergencies, within the period specified by Licensor, Licensor may remove, at Licensee's sole risk and expense, the Equipment and Licensee will pay Licensor for all costs thereby incurred by Licensor within 30 days of being invoiced.

I. If in the conduct of its business within Kaysville City, Licensee should require Equipment in a location upon any public thoroughfare or other public or private property, and Licensor does not have pole facilities so located as to fulfill Licensee's requirements, Licensee may notify Licensor of its need for such pole facilities in order that Licensor may determine whether it wishes to place pole facilities in such location. If Licensor is willing to erect pole facilities in such location adequate to care for the service requirements of all parties hereto, it shall so notify Licensee and thereupon Licensee shall make application under this agreement for permission to place its Equipment thereon. Upon approval of the application, Licensor may proceed to erect the pole facilities. Licensor shall endeavor to erect the pole facilities within a period of 90 days, unless Licensee shall agree to a longer period.

J. Any poles erected by Licensee shall not interfere or be in-line with Licensor's poles, and shall not create a structure conflict as defined in the National Electrical Safety Code.

K. Nothing in this Agreement shall be construed to obligate Licensor to grant Licensee permission to use any particular poles. However, Licensor shall not unreasonably deny Licensee access to any of Licensor's poles covered by this Agreement. If such permission is refused, Licensee is free to make any other arrangement it may wish to provide for its Equipment at the location in question; and in the construction and maintenance of pole line facilities required therefor, Licensee agrees to conform to the requirements of the National Electrical Safety Code, current edition, and any supplements thereto and revision thereof.

L. Guying and Anchoring Requirements.

1. Licensee must place and maintain guys and anchors of adequate size and strength to hold the loading of Licensee's Equipment upon Licensor's poles, at its sole risk and expense. Licensee's guys shall be insulated from ground.

2. In individual cases, when in the Licensor's sole judgment such procedure is desirable, Licensor may provide adequately sized anchor(s), to hold the loading of its facilities and Licensee's Equipment and Licensee shall pay Licensor all costs Licensor thereby incurs within 30 days of being invoiced.

3. In those cases where guying facilities installed by Licensee are inadequate to hold the loading of Licensee's Equipment, Licensor will give notice to Licensee of such inadequacy. If Licensee fails to cure such inadequacy within thirty (30) days, Licensor may, at Licensee's sole risk and expense, install adequate guying facilities to hold the loading of Licensee's Equipment and Licensee will reimburse Licensor for the entire expense thereby incurred within 30 days of being invoiced. Provided, however, Licensor may perform such work at Licensee's sole risk and expense, without notice, if in Licensor's judgment such work is necessary to maintain the safety of Licensor's facilities.

M. Licensor reserves to itself and to each other owner of facilities upon the poles the right to maintain the poles and to operate their facilities thereon in such manner as will best enable them to fulfill their own service requirements. Neither Licensor nor any such other owner shall be liable to Licensee for any interruption to Licensee's service or for any interference with the operation of Licensee's Equipment arising in any manner from the use of the poles and the facilities thereon by Licensor and each such other owners, or from the removal of Equipment from the poles by Licensor in accordance with the provisions of this Agreement. Licensor will, however, except in cases of emergency, make reasonable efforts to contact Licensee prior to making changes which will affect Licensee's Equipment attached to Licensor's poles.

N. Licensee will be solely responsible for obtaining from other public authorities and private owners of real property and maintaining in effect any and all consents, permits, licenses or grants necessary for the lawful exercise of the permission granted by any application approved hereunder. Prior to or at the time of making application for permission to place the Equipment upon the pole(s), Licensee shall submit a written warranty to Licensor that; (1) identifies the consents, permits, licenses or grants necessary for the lawful exercise of the permission granted by any application approved hereunder; and (2) specifies that Licensee has obtained all such approvals. Licensor may, in addition, require Licensee to provide evidence that it has obtained all such necessary consents, permits, licenses and grants. Licensee agrees not to make any attachments to Licensor's poles until said written warranty and evidence of compliance has been submitted to Licensor. The submission of the written warranty to Licensor and Licensor's request for, or failure to request, evidence of compliance shall in no manner relieve Licensee of its responsibility to obtain and maintain in effect all such necessary approvals. Upon notice from Licensor to Licensee that necessary permission for the use of any pole or poles has not been secured from other public authorities or property owner, the permit covering the use of such pole or poles shall immediately terminate and Licensee shall remove the Equipment from the affected pole or poles within thirty (30) days of said notice. If Licensee has not removed the Equipment within thirty (30) days of said notice, Licensor may remove the Equipment from such pole(s) without incurring any liability and Licensee shall pay Licensor all cost incurred by Licensor for the removal of the Equipment within 30 days of being invoiced.

O. Licensee shall at any time, at its own sole risk and expense, upon notice from Licensor, relocate, replace or repair the Equipment or transfer it to substituted poles, or perform any other work in connection with the Equipment that may be required by Licensor; provided, however, that in cases of emergency, Licensor may, without incurring any liability, relocate or replace the Equipment, transfer it to substituted poles or perform any other work in connection with the Equipment that may be required in the maintenance, replacement, removal or relocation of the poles, or the facilities thereon, or the facilities which may be placed thereon, or for the service needs of Licensor, and Licensee will reimburse Licensor for the entire expense thereby incurred within 30 days of being invoiced. . Upon notice from Licensor to Licensee that relocation or transfer is necessary, Licensee shall have move the Equipment within 30 days of the notice. If the Equipment is not moved within 30 days, Licensor may remove the Equipment from such poles without incurring any liability and Licensee shall pay Licensor all cost incurred by Licensor for the removal of the Equipment within 30 days of being invoiced.

P. Licensee may at any time remove its Equipment from any of the poles, and, in each case, Licensee shall immediately give Licensor written notice of such removal. Removal of the Equipment from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal.

Q. Licensee shall pay to the Licensor, for authorized attachments made to poles covered under this Agreement, a rental rate set forth in the Consolidated Fee Schedule per pole per year. The rate provided for in this paragraph will increase or decrease by the same amount, effective on the same date that Licensor changes its rates for all other users under pole attachment agreements.

Licensor will invoice Licensee annually, in advance for the pro rata portion of rental charges for pole attachments existing during the month prior to invoice. Annual payments shall be made within sixty (60) days of invoice. Licensee may, at its cost, deliver to Licensor an accounting of the number of pole attachments covered by this Agreement. Such accounting shall be subject to verification by Licensor.

R. Should Licensee attach Equipment to Licensor's poles without obtaining prior authorization form Licensor in accordance with the terms of this Agreement, or should Licensee fail to remove its Equipment from Licensor's poles when requested to do so in accordance with the terms of this Agreement, Licensor may, as an additional remedy and without waiving its right to remove such unauthorized Equipment from its poles, assess Licensee an unauthorized attachment charge in the amount set forth in the Consolidated Fee Schedule per pole per month until said unauthorized Equipment has been removed from Licensor's poles. Said unauthorized attachment charge shall be payable to Licensor within thirty (30) days after receipt of the invoice for said charge.

S. No use, however extended, of any of the poles under this Agreement shall create or vest in Licensee any ownership or property rights therein. The right to occupy any particular pole or poles may be terminated at any time by Licensor upon thirty (30) days written notice to Licensee; and Licensee shall remove its Equipment from the pole or poles within such thirty (30) day period. Nothing herein contained shall be construed to compel Licensor to maintain any particular pole or poles for a period longer than demanded by its own service requirements.

T. Licensee shall exercise special precautions to avoid Licensee's causing damage to the facilities of Licensor and other parties facilities supported on the poles; and Licensee shall assume responsibility for any and all loss from such damage and shall reimburse the owner of the damaged facilities for the entire expense incurred in making repairs.

U. Licensor shall have the right to inspect each new installation of Licensee's Equipment and to make periodic inspections, as conditions may warrant, of such of Licensee's Equipment as it deems necessary. Such inspections, whether made or not, shall in no manner impose any obligation, responsibility or liability upon Licensor or in any manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

V. Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Licensor's poles or property solely because of their use by licensee. If Licensee should fail to pay any such tax or assessment on or before such tax or assessment becomes delinquent, Licensor, at its own option, may pay such tax on account of Licensee and Licensee shall reimburse Licensor for the full amount of tax so paid within 30 days of being invoiced.

W. Licensor shall have sole discretion to install any requested upgrades to existing facilities. Licensor has a desire to diminish or maintain the existing aesthetic of the poles. Licensor may, in its sole discretion, decline to install upgraded poles due to height, aesthetics, width, or any other factor. Nothing in this agreement shall be interpreted to require Licensor to install requested upgrades to accommodate additional facilities. Applying for or posting funds to upgrade existing facilities shall not require Licensor to fulfill any requests to upgrade existing facilities.

ARTICLE II

SAFETY AND SECURITY

Licensee agrees as follows:

A. To file with Licensor, a list of the names of all Licensee's contractors who will have occasion to perform work on or about the poles, and file supplemental lists thereof whenever changes in such contractors are made.

B. To cause each such contractor to observe and to comply strictly with all general safety and security rules which Licensor reasonably finds necessary or advisable.

C. Not to assign any work on or about the poles to any such contractor who in the judgment of the Licensor or other competent authority is a bad safety or security risk.

ARTICLE III

INDEMNIFICATION

A. Except for liability caused by the gross negligence or intentional misconduct of Licensor, Licensee shall indemnify, protect and hold harmless Licensor, its successors and assigns, from and against any and all claims, demands, causes of action, costs (including attorney's fees) or other liabilities for damages to property and injury or death to persons which may arise out of, or be connected with; 1) the erection, maintenance, presence, use or removal of Licensee's Equipment, or of structures, guys and anchors, used, installed or placed for the principal purpose of including or supporting Licensee's Equipment; and 2) any act of Licensee on or in the vicinity of Licensor's poles. Except for liability caused by the gross negligence or intentional misconduct of Licensor, Licensee shall also indemnify, protect and save harmless Licensor from and against any and all claims, demands, causes of action, costs (including attorney's fees) or other liabilities arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensor pursuant to or consistent with this Agreement. In addition, Licensee shall, upon demand, and at its own sole risk and expense, defend any and all suits, actions, or other legal proceedings which may be brought or instituted by third persons against Licensor, or its successors or assigns, on any claim, demand, or cause of action arising from any interruption, discontinuance, or interference with Licensor's service which may be caused, or which may be claimed to have been cause, by any action of Licensee; shall pay and satisfy any judgment or decree which may be rendered against Licensor, or its successors or assigns, in any such suit, action, or other legal proceedings; and further, Licensee shall reimburse Licensor for any and all legal expenses, including attorney's fees, incurred in connection therewith, including appeals thereof.

ARTICLE IV

INSURANCE AND BOND

A. Licensee shall comply with all applicable Worker's Compensation and Employers Liability Acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's poles.

B. Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's poles, secure and continuously carry with insurers acceptable to Licensor the following insurance coverage:

Commercial General Liability insurance with a Minimum single limit of $1,000,000. The coverage shall include:

- Bodily Injury and Property Damage Liability,
- Contractual Liability,

To protect against any loss by reason of injury to persons or damage to property including Licensee's own workers and all third persons, and property of Licensor and all third parties based upon and arising out of Licensee's operations hereunder, including the operations of its subcontractors of any tier.

Business Automobile Liability insurance with a minimum single limit of $1,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

The policies required herein shall include i) provisions or endorsements naming Licensor, its officers and employees as additional insureds; and ii) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is excess and not contributory insurance with the insurance required under Article IV-B, and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Licensor.

A certificate in a form satisfactory to Licensor certifying to the issuance of such insurance, shall be furnished to Licensor. Commercial general liability coverage written on a "claims-made" basis, shall not be acceptable. If requested by Licensor, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Licensor.

C. Licensor may require Licensee to furnish a bond to cover the faithful performance by Licensee of its obligation hereunder. Any such bond shall be issued by a commercial bonding company selected by Licensee and satisfactory to Licensor; shall not be subject to termination or cancellation except upon 120 days prior written notice by certified mail to Licensor at the address designated in

Article VI-F; shall be in such form and in such amount as Licensor shall specify from time to time; and, subject to termination or cancellation as aforesaid, shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. Such bond shall be furnished within 90 days of written notice to Licensee. The guarantee shall include, but shall not be limited to, the payment of any sums that may become due to Licensor for rental fees, legal costs and fees, or work performed by Licensor for the benefit of Licensee under the Agreement, including strengthening, anchoring, relocating, replacing or renewing Licensee's Equipment or removing, storing, selling or disposing of the Equipment on termination of this Agreement for any reason.

At any time during the term of this Agreement, Licensee shall, upon Licensor's request, furnish Licensor with a certificate evidencing that the bond is in full force and effect. In the event of cancellation, termination or alteration of the Bond Licensor may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to Licensor to guarantee the performance of its obligations under this Agreement.

The furnishing of a bond shall not relieve Licensee of any of its obligations under this Agreement, and the bond shall not be released until all obligations under this Agreement have been discharged.

ARTICLE V

DEFAULT

A. If Licensee should default in any of its obligations under this Agreement and such default shall continue for 30 days after written notice thereof, Licensor may, by written notice to Licensee, forthwith terminate any or all permits granted by it hereunder, and Licensee shall remove its Equipment form the poles to which said termination applies within 30 days from such notification. If Licensee fails to remove its Equipment from such poles within the30 day period, Licensor may, at Licensee's sole risk and expense, remove Licensee's Equipment from Licensor's poles and Licensee shall pay Licensor all costs incurred by Licensor for the removal of the Equipment within 30 days of being invoiced. Licensor may also, as an additional remedy and without waiving its rights to remove Licensee's Equipment from its poles, assess Licensee an unauthorized attachment charge, as provided above, for each pole to which said termination applies.

B. If Licensee should fail to remove its Equipment from any pole within the time allowed for such removal as required by any provision in this Agreement, Licensor may elect to do such work, and Licensee will reimburse Licensor for the entire expense thereby incurred within 30 days of being invoiced. Licensee releases Licensor from any liability for damage to Licensee's Equipment, or for any interruption, discontinuance or interference with Licensee's service to its customer, caused by or resulting from such removal, including damages cause by Licensor's ordinary negligence.

ARTICLE VI

GENERAL CONTRACT TERMS

A. If either party should bring any suit, action, or other legal proceeding against the other party on account of any matter arising from this Agreement, the prevailing party shall be entitled to recover, in addition to any judgment or decree for costs, such reasonable attorney's fees as it may have incurred in such suit, action, or other legal proceeding.

B. The failure of Licensor to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same nevertheless shall remain in full force and effect.

C. All amounts payable by licensee to Licensor or others under the provisions of this Agreement shall, unless otherwise specified, be payable within 30 days after presentation of bills. Nonpayment of any such amount when due shall constitute a default under this Agreement. An interest charge at the rate of 1.5% per month shall be assessed against all late payments.

D. Nothing herein contained shall be construed as affecting any right or privileges previously conferred by Licensor, by contract or otherwise, to others not parties to this Agreement to use any poles covered by this Agreement; and Licensor shall have the right to continue, modify, amend, or extend such rights or privileges. The Privileges herein granted to Licensee shall, at all times, be subject to all existing contracts and arrangements. Further, nothing herein contained shall be construed as conferring or granting to Licensee the exclusive privilege or right to use any of the poles or other facilities of the Licensor.

E. Licensee shall not assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of Licensor, which consent shall not be unreasonably withheld, but otherwise this Agreement shall insure to the benefit of and be binding upon the successors and assigns of the parties hereto.

F. Wherever in this Agreement legal notice is provided or required to be given by one party hereto to another, such notice shall be in writing and transmitted by United States Mail or by personal delivery to the following addresses, or such other addresses as Licensor and Licensee may designate from time to time:

____
____
____
____

Kaysville City
23 East Center Street
Kaysville, Utah 84037

G. In the event that any part of this Agreement is found to be illegal, or in violation of public policy, or for any other reason, unenforceable in law, such finding shall in no event invalidate the other parts of this Agreement.

H. In the event that legal action is required to enforce this Agreement or any remedy pursuant thereto, it is understood that this Agreement shall be interpreted according to the laws of the State of Utah. Any action at law or judicial proceeding instituted regarding this Agreement shall be instituted only in the state court located in Davis County, Utah.

I. Electric service for amplifiers, and any other electric service supplied to Licensee shall be covered under a separate agreement.

ARTICLE VII

CONTRACT TERM

A. Unless sooner terminated as herein provided, this Agreement shall continue in effect for a term of 5 years from the date hereof, and shall automatically renew for like periods of time, although the rental rate may change. On the date of termination specified in the notice, all rights and privileges of Licensee hereunder shall forthwith cease.

B. Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

C. This Agreement supersedes all prior negotiations, agreements and representations, whether oral or written, between the parties hereto relating to the subject matter of this Agreement, and constitutes the entire agreement between the parties, and may not be amended or altered except by an amendment in writing executed ty the parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed this _____ day of _______________, 20___.

XXXXXXXXXXXXXXXXXXXXXXXX

By:_________________________
Title:_______________________

KAYSVILLE CITY,

By:___________________________
NAME
Mayor

ATTEST:

By:___________________________
NAME
City Recorder

STAFF REPORT

COUNCIL MEETING DATE: March 4, 2021

TYPE OF ITEM: Work

SUBJECT/AGENDA TITLE: Discussion on Fiber Lease Agreement

EXECUTIVE SUMMARY: Kaysville City installed a Fiber ring in various locations throughout the City in 2017. This ring connected several power substations and other city facilities and provided fiber connectivity for automated reporting, monitoring, and other management of these facilities. At the time of installation, conduit and dark fiber were also installed for future city use as well as any other unknown future use that would benefit Kaysville City and Kaysville City residents. An existing local company has recently approached Kaysville City Staff and proposed to lease fiber from Kaysville City. Because this lease would benefit not only the city financially but also would potentially increase connectivity in the city for residents and businesses, staff is proposing the included agreement to be entered in to with any public or private organization that can meet the expectations and obligations of the agreement.

Council Options: 1) Move the agreement to an action item as written; 2) Move the agreement to an action item with any modifications that the Council deems appropriate; 3) Decline to move the agreement to action at this time and remand to staff with further direction.

Recommended Options: Staff recommends that the City Council move the agreement to an action item as written.

Fiscal Impact & Fund Source for Recommended Action: City Staff does not anticipate any costs to the City based on the passage of this agreement.

LEASE AGREEMENT

THIS Lease Agreement is made this_____day of_______________, 20_, by and between the City of Kaysville, Utah, a municipal corporation, and __________, a _(state)_ (corporation, limited liability company, etc.).

RECITALS

A. The City of Kaysville, Utah ("City"), a municipal corporation, owns and operates, for its telecommunications needs and to enhance the services it offers to its residents, a fiber optic cable network.

B. Because it is cost-efficient to the City, when installing fiber optic cable, the City customarily installs the maximum feasible amount of fiber optic cable in its fiber infrastructure and, as a result, possesses surplus dark fiber. Additionally, the City has required installation of conduit in new developments and has Surplus Fiber Infrastructure.

C. In order to eliminate barriers to high-speed fiber-based internet services that exist within the City, the City has adopted a policy whereby it will lease surplus dark fibers and surplus fiber infrastructure to third parties, including private entities, on a competitively-neutral basis, for the purposes of using those surplus dark fibers to provide high-speed fiber-based internet services to businesses and residents of the City.

D. _____________________, a _(state)(corporation, limited liability company, etc.) ("Lessee"), wishes to lease certain surplus dark fibers from the City for the purposes of providing high-speed internet services to businesses and residents of the City (a map showing the surplus dark fibers leased from the City is affixed hereto as Exhibit A and incorporated herein by reference). Lessee has previously executed a Franchise Agreement with the City.

E. The City hereby agrees to lease to Lessee certain surplus dark fibers, as shown in Exhibit A affixed hereto, contingent upon Lessee's execution of this Lease Agreement and compliance with its terms.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Adoption of Recitals. The Recitals set forth above are hereby adopted and incorporated herein by reference as if set forth in full.

SECTION 2. Definitions. The following words, terms, and phrases, when used in this Resolution, shall have the following meanings:

(a) **"Dark Fiber"** shall mean any fiber optic cable not in current use.

(b) **"Fiber Infrastructure"** shall mean City-owned conduits, inner-ducts, vaults, and other facilities through which the City may use, maintain, and repair its fiber optic cable network.

(c) **"Surplus Dark Fiber"** shall mean any City-owned fiber optic cable within its fiber optic cable network that is not currently in use by the City and which the City has not reserved for future use.

(d) **"Symmetrical"** shall mean, in the context of internet services, equal speeds for uploading and downloading data/content from the internet.

(e) "Surplus Fiber Infrastructure" shall mean any City-owned conduit, inner-ducts, vaults, and other paths not currently in use by the City and which the City has not reserved for future use.

(f) "High Speed Internet Service" shall mean internet services provided directly to the home/premise with a minimum symmetrical capacity of 100 megabits per second for both upload and download of data.

(g) "Open Access Network" shall mean a fiber optic network that allows multiple (2 or more) Internet Service Providers to provide High Speed Service to businesses and residents within the City.

SECTION 3. Lease of Surplus Dark Fibers. The City hereby agrees that, in exchange for the payment of the Annual Fee, unless modified in accordance with Section 4(b), *infra*, and the giving of other good and valuable consideration, as further described herein, it will lease to Lessee Surplus Dark Fibers and/or Surplus Fiber Infrastructure as shown in Exhibit A hereto ("Lessee's Fibers").

SECTION 4. Annual Fee.

(a) In consideration for the lease of the Lessor's Fibers as identified on Exhibit A, unless waived by the City pursuant to subsection (b), *infra,* the Lessee shall pay as Rent, an annual fee as set forth in the Consolidated Fee Schedule per. Said annual fee shall be paid as a lump sum to the City Clerk on or before January 1 of each calendar year. Any Annual Fee received after January 15 shall be assessed a 5% late fee.

(b) As an incentive for improving connectivity to businesses and residents of the City, the City hereby agrees to modify the Lessee's Annual Fee for the first five (5) years of this Lease Agreement if the Lessee performs each of the following:

(i) The Lessee provides and sustains service to at least three thousand (3,000) customers within the City who previously did not have access to high-speed internet services on an Open Access Network as of the date of this agreement and achieves that service level within twenty-four (24) months of the Commencement Date of this Lease Agreement. Upon the attainment of that goal, the Lessee shall submit an affidavit to the City certifying that it has met this goal and, upon confirmation, the City will refund to Lessee $3,000/fiber strand of the annual Fee;

(ii) The Lessee provides $20/month internet service to those households within its service area, qualifying for the Home Energy Assistance Target Program in Utah (such discounted service must be at least 25 megabit down/5 megabits up), the lessee shall submit a detailed listing of households being provided this discounted service and upon confirmation, the City will refund $500/fiber strand of the annual Fee, and

(iii) Upon City request, the Lessee provides free fiber optic cables for City use to extend the City Fiber Infrastructure to City facilities (these fiber strands will become part of the City Fiber Infrastructure owned by the City), the City will refund $1,000/fiber strand of the Annual Fee.

(c) In consideration for the lease of the Lessor’s Surplus Fiber Infrastructure as identified on Exhibit A*,* the Lessee shall pay as Rent, an annual fee as set forth in the Consolidated Fee Schedule. Said annual fee shall be paid as a lump sum to the City Clerk on or before January 1 of each calendar year.

SECTION 5. Term. The Initial Term of this Lease Agreement shall be five (5) years, commencing on the date that this Lease Agreement is executed by the parties (“the Commencement Date”) and ending at 12:00 a.m. on January 1, 20_.

SECTION 6. Option Terms. Lessee and the City shall have the mutual option to extend the initial term of this Lease Agreement for two (2) additional and successive five (5) year option periods (individually, “the Option Term” and, collectively, “the Option Terms”). The Lease Agreement shall, at the end of the Initial Term or any Option Term, unless it is the second Option Term, automatically be extended an additional Option Term, unless either party notifies the other party of its intent to terminate or to renegotiate this Lease Agreement at least one hundred eighty (180) days prior to the termination of the then-current Term. Option Terms shall be deemed a continuation of this Lease Agreement and shall not be considered a new Lease Agreement or an amendment hereto.

SECTION 7. Use.

(a) The Lessee shall, at Lessee's sole cost and expense, use the Lessee's Fibers to provide to businesses and residents of the City Symmetrical high-speed fiber-based internet services with a minimum capacity of 100 megabits per second, but can provide slower speeds at the request of the customer, subject to the terms and conditions established in this Lease Agreement. Failure to use the Lessee's Fibers to provide such internet services within one year of the date of this Lease Agreement shall be deemed a default under Section 11 of this Lease Agreement.

(b) The Lessee further agrees that it shall use the Lessee's Fibers in accordance with all applicable federal, state, and local laws.

services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(c) This Lease Agreement is not a franchise agreement under K.S.A. 12-2001 *et seq.* The Lessee hereby acknowledges, however, its obligation to enter into a contract franchise with the City before using the Lessee's Fibers, which are located in the City's conduit in the public rights of way, for the provision of "Cable Services," "Local Exchange Service," or other Telecommunications Services to the City or its inhabitants.

(d) The grant of this Lease Agreement shall not convey title, equitable or legal, to the Lessee in any property of the City, including Lessee's Fibers, the City's Fiber Infrastructure, or the City's public rights of way, and shall only give to the Lessee the right to use the Lessee's Fibers or Surplus Fiber Infrastructure for the purposes and for the period of time stated in this Lease Agreement.

SECTION 8. Inter-connection.

(a) Subject to the terms and conditions of the Lease Agreement, the City will bring the Lessee's Fibers to the demarcation points described in detail in Exhibit B to this Lease Agreement. The Lessee may only inter-connect with the Lessee's Fibers at and outside the described demarcation points. Exhibit B is affixed hereto and is hereby adopted and incorporated herein by reference as if set forth in full.

(b) Any and all of the Lessee's inter-connections with the Lessee's Fibers, including equipment, labor, *etc.*, shall be at the sole cost and expense of the Lessee.

(c) The Lessee may request, in writing, access to the Lessee's Fibers at additional demarcation points in the future. The City agrees to cooperate, to the extent that it is feasible, with such requests. All costs and expenses, including equipment, labor, *etc.*, of additional inter-connections shall be borne solely by the Lessee. In the event, additional demarcation points are created, the parties agree to amend Exhibit B to show the actual location of all demarcation points.

(d) The Lessee may not have access to the Lessee's Fibers, except outside the demarcation points described in Exhibit B or any writing amending Exhibit B. The Lessee is also prohibited from having access to or any physical contact with the City's Fiber Infrastructure, except as outlined herein, and any fiber optic cable owned by the City.

SECTION 9. Maintenance and Repair.

(a) The City, or a City-approved vendor shall be solely responsible for maintaining or repairing the Lessee's Fibers on the City's side of the demarcation point. The Lessee shall cooperate with and assist the City, as reasonably may be required, in performing said maintenance or repairs. In the event of a disruption in service, the City shall begin restoration activities as soon as practicable after the City becomes aware of such disruption.

(b) Notwithstanding anything to the contrary contained herein, the Lessee shall solely be responsible, at its own expense, for the construction, installation, operation, maintenance, repair, and any other activity engaged by or on behalf of the Lessee relating to all light communications transmission equipment and other terminal equipment and facilities required in connection with the use of the Lessee's Fibers beyond the defined point of demarcation.

(c) The City, or a City-approved vendor of Lessee's selection shall be responsible for all necessary splicing of fiber optic cables. Where the City's fiber optic cables connect to the Lessee's Fibers, the associated Addendum or Service Order will detail and describe the Parties' splicing responsibilities. The Lessee may request and the City shall grant access to the Lessee's Fibers at additional access/splice points along the Route, provided that
(i) such access/splice points are technically feasible in the City's reasonable opinion, **(ii)** the Lessee agrees to pay a reasonable splice fee to the City or a City-approved vendor at the time, **(iii)** all work is performed by the City or a City-approved vendor as provided herein, and **(iv)** the agreements governing the City's use and occupancy of the right of way at the access/splice points do not otherwise prohibit such access by parties other than the City.

(d) Should the Lessee perform, authorize, or contract any splices or other work not in accordance with the provisions of this Agreement, the City may at its option correct said condition. The City shall notify the Lessee in writing prior to performing such work whenever practicable. However, when such conditions pose an immediate threat to the physical integrity of the City's facilities, the City may perform such work and take such action that it deems necessary without first giving notice to the Lessee. As soon as practicable thereafter, the City shall advise the Lessee of the work performed and the action taken and shall endeavor to arrange for re-accommodation of the Lessee's Fibers so affected. The Lessee shall promptly reimburse the City forall reasonable costs incurred by the City for all such work, action and re-accommodation performed by the City.

(e) The Lessee shall, at its sole cost and expense, promptly respond to and remediate any Hazardous Discharge to and from the City's Fiber Infrastructure resulting from the Lessee's operations.

(f) The City shall be responsible for obtaining and maintaining from the appropriate public or private authority any pole attachment agreements, franchises, licenses, state, local or right-of-way permits or other authorizations required to enter upon the property where the City's Fiber Infrastructure is located and to operate and maintain the Lessee's Fibers. The Lessee will not engage in any activity which affects the City's right of way interests without the written permission of the City.

(g) The Lessee, at its sole cost and expense, shall **(i)** use Lessee's Fibers and **(ii)** conduct all work in or around the City's Fiber Infrastructure safely and in a manner reasonably acceptable to the City, so as not to physically, electronically, or inductively conflict or interfere or otherwise adversely affect the City's Fiber Infrastructure or the facilities placed therein by the City or by any third party.

(h) The Lessee must obtain prior written authorization, which such authorization shall not be unreasonably withheld, conditioned, or delayed, from the City approving any further work and the party performing such work before the Lessee shall perform any work in or around the City's Fiber Infrastructure.

(i) In the event that the Lessee learns that Lessee's Fibers are damaged, it shall notify the City of said damage by telephone at (801) 497-7030 or by e-mail at rjudd@kaysvillecity.com. In the event that the City learns that the Lessee's Fibers are damaged, the City will notify the Lessee of said damage by telephone. In each case, the caller shall provide the following information:

(i) Name of entity making report.

(ii) Location reporting problem.

(iii) Name of contact person reporting problem.

(iv) Description of the problem in as much detail as possible.

(v) Time and date the problem occurred or began.

(vi) State whether or not the problem presents a jeopardy situation to the City's Fiber System or the Lessee's Fiber Optics.

(j) The City shall designate the particular strands of Surplus Dark Fiber that will constitute the Lessee's Fibers and the location and manner in which they will enter and exit the City's Fiber System. That information shall be contained on each executed Addendum.

(k) If the City moves, replaces or changes the location, alignment or grade of the City's Fiber Infrastructure ("Relocation"), the City shall concurrently relocate the Lessee's Fibers. If the Relocation is because of an event of *Force Majeure* or of any governmental or third party authority, including and taking by right of eminent domain, the Lessee shall reimburse the City for the Lessee's proportionate share of the costs of the Relocation of the City's Fiber Infrastructure. To the extent the City receives reimbursement from a third party which is allocable to a Relocation of the City's Fiber Infrastructure, it will credit or reimburse the Lessee for its proportionate share of the reimbursement. If the City relocates the City's Fiber Infrastructure solely for its own benefit, the Lessee shall not be required to reimburse the City for the costs of the Relocation. The Lessee's proportionate share shall be the combined calculation of: **(i)** a fraction, the numerator of which shall be the number of conduits occupied by the Lessee's Fibers and the denominator of which shall be the total number of conduits affected in the City's Fiber Infrastructure, and **(ii)** a fraction, the numerator of which shall be the number of strands of Lessee's Fibers and the denominator of which shall be the total number of strands in the City's Fiber Infrastructure containing the Lessee's Fibers.

SECTION 10. Reporting Requirements. The Lessee shall submit an annual report to the Governing Body no later than January 31st of each year, reporting on the benefits accruing to the community based on its activities under this Lease Agreement during the preceding calendar year. The report shall include, but not be limited to the following: the location and purpose of each Surplus Dark Fiber (Lessee's Fibers) leased from the City; the extent to which the Lessee improved businesses' and residents' access to high-speed, fiber-based internet services; and shall certify, by affidavit, whether the Lessee has provided services to lower-income residents and the City within its service area.

SECTION 11. Default. If either the City or the Lessee fails to perform or observe any material term, covenant, provision, or condition of this Lease Agreement, then that party will be in default under this Lease Agreement.

SECTION 12. Right to Cure. From the date of written Notice of Default from the other party, the party in default shall have thirty (30) days to cure any default.

SECTION 13. Failure to Cure. If the party in default fails to cure the default in the time prescribed by Section 12, *supra*, then the other party shall have the right to terminate this Lease Agreement and may, at its discretion, pursue any other remedies that may be available to it at law or in equity not otherwise proscribed by the terms of this Lease Agreement.

SECTION 14. *Force Majeure*.

(a) A "*Force Majeure* Event" is any event or cause beyond the reasonable control of the party claiming relief, including any action by or omission of a governmental agency or authority (including any government-imposed moratorium on activities related to this Lease Agreement or any subsequent change in government rules, regulations, codes, ordinances, or laws), material shortages, third-party labor disputes, floods, earthquakes, fires, lightning, epidemic, war, riot, civil disturbance, act of public enemy or enemies, terrorist act, sabotage, or any act of God.

(b) Neither the City nor the Lessee will be considered in default under this Lease Agreement if such party's performance is delayed by virtue of a *Force Majeure* Event. Upon the occurrence of such event, the parties agree to confer in good faith and to agree upon an equitable, reasonable action to continue performance under this Lease Agreement. The City and the Lessee will use commercially reasonable efforts to minimize the delay caused by any *Force Majeure* Event and to resume affected performance when reasonably possible.

(c) In the event that a *Force Majeure* Event prevents either party from performing under the contract for a period of 180 days, then either party, upon written notice to the other, may terminate this Lease Agreement. Upon such termination, all parties will be relieved of performance under this Lease Agreement, except that a party will continue to be liable for any breaches that occurred and were not cured prior to termination.

SECTION 15. Rights upon Expiration or Termination of the Agreement. Upon the expiration or termination of this Lease Agreement, the Lessee's rights to the Lessee's Fibers shall terminate and the Lessee's Fibers shall revert to the City. Upon expiration or termination of this Lease Agreement, the Lessee shall have no continuing rights or obligations hereunder, except that any uncured defaults or any other obligations that are stipulated in this Lease Agreement shall survive the expiration or termination of this Lease Agreement. Any and all equipment furnished or supplied by the Lessee to inter-connect to the Lessee's fibers shall remain the property of the

Lessee. Any and all equipment furnished or supplied by the City under this Lease Agreement shall remain the property of the City.

SECTION 16. Insurance.

(a) The Lessee agrees to obtain and maintain the following insurance: **(i)** Commercial General Liability, including coverage for **(A)** premises/ operations, **(B)** products/completed operations, **(C)** personal and advertising injury, and **(D)** contractual liability, with a combined single limit of not less than $1,000,000.00 each occurrence or the equivalent; **(ii)** Workers' Compensation in amounts required by applicable law and Employer's Liability with a limit of at least $1,000,000.00 each accident; **(iii)** Automobile Liability, including coverage for owned/leased, non-owned, or hired automobiles with combined single limit of not less than $300,000.00 each accident; and **(iv)** umbrella coverage with a limit of at least $1,000,000.00.

(b) The Lessee will obtain and maintain "all risk" property insurance in an amount equal to the full replacement cost of all electronic, optronic, and other equipment that the Lessee will utilize in connection with its inter-connection with and use of the Lessee's Fibers.

(c) Unless otherwise agreed upon by the parties in writing, all insurance policies obtained and maintained by the Lessee shall be with companies rated A or better by Best's Key Rating Guide and the Lessee will, upon request, provide the City with insurance certificate(s) confirming compliance with the terms of this Section.

(d) Notwithstanding anything to the contrary in this Lease Agreement, the City and the Lessee mutually waive their rights of recovery against each other, including against officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors, for any loss arising from any cause covered or that would be covered by fire, extended risk, "all risk," or other insurance required to be carried under this Lease Agreement or currently or hereafter existing for the benefit of the respective parties. The Lessee will obtain from the insurance company providing the coverage required by this Lease Agreement, a waiver of subrogation against the City.

(e) In the event that the Lessee fails to maintain the insurance coverage required by this Lease Agreement and a claim is made or an injury is suffered, the Lessee agrees, in addition to what is set forth in Section 16, *infra*, to indemnify and to hold harmless the City from any and all claims for which the required insurance would have provided coverage.

(f) With respect to all activities under this Lease Agreement, the City will be self-insured.

SECTION 17. Indemnification.

(a) The Lessee, and any successor or assign, agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way associated with the Lessee's use of the Lessee's Fibers and activities taken in the public rights of way under the terms of this Lease Agreement on account of any injury to persons (including death) or any damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence or the City's intentional conduct. This indemnity provision shall extend beyond the termination or expiration of this Lease Agreement.

(b) The City and the Lessee shall promptly advise the other in writing of any known claim or demand against the Lessee or the City related to or arising out of the Lessee's activities under this Lease Agreement.

SECTION 18. Limitation of Liability. Neither party shall be liable to the other for lost profits, special, incidental, punitive, exemplary, or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities, or services, or down time costs, even if advised of the possibility of such damages. Further, the liability of one party to the other for damages under this Lease Agreement, excluding liabilities relating to a party's indemnification obligations as set forth in Section 17, *supra*, or any other damages permitted under this Lease Agreement, is limited to the total amount payable by the Lessee to the City under this Lease Agreement to which the dispute relates.

SECTION 19. Assignment. This Lease Agreement may not be sold, assigned, transferred, or sublet without the prior written approval or consent of the City's governing body.

SECTION 20. Authorization. Each of the persons executing this Lease Agreement, in behalf of the respective parties, represents and warrants that he or she has the authority to bind the party in behalf of whom he or she has executed this Lease Agreement, and that all acts required and necessary for authorization to enter into and to execute this Lease Agreement have been completed.

SECTION 21. Notice. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed by first class mail:

If to the City, to:
Kaysville city
Attn: City Recorder
23 E Center St
Kaysville, UT 84037

With a copy to:
Kaysville City
Attn: Legal Department
23 E Center St
Kaysville, UT 84037

If to Lessee, to:

Either party may change where notices, requests, demands, or other communications are to be given by giving written Notice to the other party of any said change.

SECTION 22. Successors and Assigns. This Lease Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

SECTION 23. Non-waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Lease Agreement or to exercise any of its rights hereunder shall not waive such rights, but the party shall have the right to enforce such rights at any time and to take such action as might be lawful or authorized hereunder, whether in law or equity.

SECTION 24. Personal Immunities. No personal recourse shall be had for the creation of this Lease Agreement, for any claim arising out of this Lease Agreement, nor for any representation, obligation, covenant, or agreement set forth in this Lease Agreement, against any past, present, or future officer, member, employee, or agent of the City, under any rule of law or equity, any statute or constitution, or by the enforcement of any assessment or penalty, or otherwise, and any liability of any such officer, member, employee, or agent is hereby expressly waived and released by the Lessee as a condition of and in consideration for the execution of this Lease Agreement. Furthermore, the Lessee agrees that no past, present, or future officer, member, employee, or agent of the City shall be personally liable to the Lessee, or any successor in interest of the Lessee, for any default or breach under this Lease Agreement by the City.

SECTION 25. Severability. If any section, sentence, clause, or phrase of this Lease Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Lease Agreement.

SECTION 26. Governing Law. This Lease Agreement shall be governed by the laws of the State of Utah.

SECTION 27. Miscellaneous.

(a) This Lease Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and the Lessee with respect to the subject matter hereof. This Lease Agreement may only be amended by a writing signed by all parties.

(b) Exhibits "A" and "B" are incorporated into this Lease Agreement by reference.

(c) The provisions of the Lease Agreement relating to indemnification shall survive any termination or expiration of this Lease Agreement. Any provision of this Lease Agreement that would require performance subsequent to the termination or expiration of this Lease Agreement shall likewise survive any such termination or expiration.

(d) This Agreement is contingent upon the Lessee, or any successor or assign hereunder, obtaining all necessary governmental approvals, permits, or licenses.

(e) This Agreement is contingent upon the Lessee being a corporation in good standing with the utah Secretary of State. Any corporate successor or assign hereunder must also be a corporation in good standing with the Utah Secretary of State (OPTIONAL; If corporation)

(f) This Lease Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.

(g) The prevailing party in any litigation arising hereunder shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and court costs, including the prosecution of any appeal.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Lease Agreement to be executed as of the date noted above.

CITY:
CITY OF Kaysville, Utah, a municipal corporation

____
Shayne Scott
City Manager

ACKNOWLEDGMENT

THE STATE OF UTAH)
) ss:
THE COUNTY OF DAVIS)

BE IT REMEMBERED, that on this ____ day of____________, 20_, before me the undersigned, a notary public in and for the County and State aforesaid, came Shayne Scott, as City Manager of the City of Kaysville, Utah, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

____
Notary Public

My commission expires:

LESSEE:

____
{Name}
{Title}

ACKNOWLEDGMENT

THE STATE OF _______)
) ss:
THE COUNTY OF _________)

BE IT REMEMBERED, that on this_____day of______________, 20_, before me the undersigned, a notary public in and for the County and State aforesaid, came ______________________, as _________________ of __________________________, a _________________________________, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

____
Notary Public

My commission expires: