MEETING NOTICE AND AGENDA

Notice is hereby given that the Kaysville City Council will hold a regular council meeting on Thursday, March 18, 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.

CITY COUNCIL Q&A AND COMMENT PERIOD REGARDING THE HERITAGE SQUARE TOWNHOMES SUBDIVISION PROPOSAL – 6:30 P.M.

The City Council will be available to hear comments and answer questions regarding the Heritage Square Townhomes Subdivision Development Agreement proposal 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 Mayor Katie Witt.

2. PRESENTATIONS AND AWARDS
   a. Proclamation Declaring March 22, 2021 Social Emotional Learning Day.

3. DECLARATION OF ANY CONFLICTS OF INTEREST

4. CONSENT ITEMS
   a. Approval of Minutes of February 18, 2021.
   b. Barnes Park Playground #1 Replacement – Parks and Recreation.
   c. Angel Street Soccer Complex Sidewalk Lighting Upgrades – Parks and Recreation.
   d. An Interlocal Cooperation Agreement for Dispatch Service with Davis County.
   e. A Resolution Accepting a Storm Water Easement from the Old Mill Village Homeowners Association.
   f. UDOT Agreement for Utility Adjustment at Green Road.

5. ACTION ITEMS
   a. Preliminary Plat approval for Webster Farms No. 4 Amended at 686 South Wellington Drive – Steve Bingham.
   b. Amendment to the Heritage Square Townhomes Subdivision Development Agreement.
   c. A Resolution approving alterations to the City's Purchasing Policy.
   d. Amendment of the City's Franchise Agreement.
   e. Pole Attachment Agreement.
   f. City Manager Agreement.

6. WORK ITEMS
   a. Discussion on a Fiber Lease Agreement.
   b. Discussion on Fiber Conduit Lease 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 March 12, 2021.

Annemarie Plaizier
City Recorder

KAYSVILLE CITY
NOTICE

Notice is hereby given that the Kaysville City Council will be meeting on Thursday, March 18, 2021, at 6:30 p.m. in the Kaysville City Council Chambers of the Municipal Building located at 23 East Center Street to consider:

> An amendment to a development agreement in order to allow up to 3 more units at the Heritage Square Townhomes Subdivision.
>
> The property in consideration is identified on the map on the other side of this notice.

While you are welcome to attend the meeting to share comments regarding this matter, we would encourage you to share comments with the city council prior to the meeting by sending an email to mailbox@kaysvillecity.com.

Should you have any questions regarding the item in consideration you may contact the Kaysville City Community Development office at 801-546-1241.

Lyle Gibson
Community Development Director

Heritage Square Townhomes - Heritage Lane and Mutton Hollow Road

Kaysville City
Proclamation

WHEREAS, social emotional learning (SEL) is the process through which all young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions; and

WHEREAS, SEL competencies develop throughout our lives and are essential to success in our schools, workplaces, homes, and communities and allow individuals to contribute meaningfully to society; and

WHEREAS, SEL can be taught and developed throughout childhood, adolescence, and beyond; and

WHEREAS, schools, families and the wider community must be engaged to enhance the strength, depth, and pace of acquisition of SEL competencies; and

WHEREAS, supporting SEL is a wise use of public resources, because there can be long-term social and economic benefits to society from the implementation of evidence-based SEL.

NOW THEREFORE, BE IT PROCLAIMED, that I, Katie Witt, Mayor of Kaysville, Utah, along with the Kaysville City Council members, proclaim the last Friday in March as

SOCIAL EMOTIONAL LEARNING DAY

in Kaysville City and encourage all community members to learn about and share their knowledge of the importance and impact of integrating evidence-based SEL into our schools, organizations and community.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the City of Kaysville this 18th day of March, 2021.

____

Katie Witt, Mayor

KAYSVILLE CITY COUNCIL
February 18, 2021

Minutes of a regular Kaysville City Council meeting held on February 18, 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 John Swan Adams, Council Member Barber, Council Member Mike Blackham and Council Member Andre Lortz, Council Member Tamara Tran

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, Fire Chief Paul Erickson, Police Chief Sol Oberg, Tara Esplin, Eric Jessen, Reed Ferrin, Phil Holland, Karen Erickson, Ray Vine, Daron Vine, Caleb Brown, Aaron Shupe, Cameron McKinnon, Mikell Baron, Chris Montgomery, James Wade, Jason Anderson, Amber Budzynski, Brigg Lewis, Craig Christianson, Jennifer Summers, Jim Farr (via Zoom), Roger Timmerman, Joseph Silverzweig

<u>OPENING</u>

Council Member Adams opened the meeting with a thought and led the Pledge of Allegiance.

<u>PRESENTATIONS AND AWARDS</u>

<u>PRESENTATION OF FIREFIGHTER OF THE YEAR FOR 2020, KELTON VINE</u>

Fire Chief Erickson said that Kelton Vine started with the fire department in 2017 as a part-time firefighter. He was hired as a full-time firefighter in 2018 and he has excelled at many things during the time he’s been with the department. In June of 2019 he was promoted to Engineer and has completed the Fire Officer I course, Incident Commander Course, has finished the paramedic prerequisites and recently applied for the paramedic program through Weber State University. He also has helped assure we have all the medical supplies needed, especially through the pandemic. He is self-motivated, has a great attitude, is hard working, and is professional.

<u>PRESENTATION OF 35 YEARS OF DEDICATED SERVICE AT KAYSVILLE FIRE DEPARTMENT, FLOYD LANDON</u>

Chief Erickson said that Floyd Landon moved to Utah from California in 1983 and started at the Kaysville Fire Department in 1986. Floyd has held numerous positions at the fire department, such as playing Santa Clause, helping with the electric light parade, keeping the drink and candy machines full, maintaining the firefighter accountability system, helping with payroll when the secretary was gone, maintaining their air machine for air packs, organizing the yearly fire department open house, and ordering and restocking medical supplies. He attended the National Fire Academy and was trained as a juvenile fire counselor. Floyd has retired from Western Airlines, United States Air Force, the FAA, and he works one day a week as a volunteer at the Hill Air Force Base Museum. He has done a fabulous job and is a great help for our department.

Mayor Witt thanked Kelton Vine and Floyd Landon for all they do for Kaysville City. Their efforts do not go unnoticed.

INTERNET CONNECTIVITY PRESENTATIONS

Mayor Witt explained that over the last few years we have been looking at how we could improve our internet connectivity in the city. We recently reached out to several franchises and a few of them are here tonight to speak with us about any ideas they might have with our current connectivity issues.

Jennifer Summers, the Director of Government Affairs for CenturyLink, said that she appreciates the invitation to be here and speak with the Council. CenturyLink values the relationship we have with the City and appreciates the open communication we've had over the years. CenturyLink has made significant investments into their network to bring broadband access to every corner of our service territory where it's economically feasible. We are always looking at ways to expand or enhance our broadband services, including working closely with policy makers on public-private partnerships which help to encourage broadband investment. We believe that the best approach remains for state and local governments to explore workable solutions with existing internet service providers. We continue to work closely with communities on creative public-private partnerships that bring high-speed internet services to more homes and businesses. These creative solutions can bring the technologies that communities need and the expertise to run a network in a secure dynamic environment where technology does change rapidly, while limiting the financial risk to your citizens. Additionally CenturyLink is currently trialing new technologies that could benefit the city. Some of the features of these services include future-ready connections that amplify our current internet speeds, offer a download speed of up to 940 MB, they attract and keep tech-savvy residents with power to do multiple high bandwidth activities, they use existing wiring, and this technology allows for minimum or no-cost upgrades. Best of all, this technology could be utilized in existing properties infrastructure and in those hard to reach or expensive to reach brown-filled areas. CenturyLink is also building fiber to the home and they continue to build out in 2021. CenturyLink enables thousands of new developments with fiber to the home in Utah each year. When we are ready to start marketing to the residents of Kaysville, we will immediately reach out to the city with those plans. We know that what we have now doesn't solve the connectivity problems in the city but we have plans coming that we hope will help to improve the situation. We want to continue to be a good partner with the city and continue to keep the lines of communication open as things develop and as technologies develop. We are continually asking about the new technologies and working on the community's behalf. We know the needs and the concerns that the residents have brought before the council.

Council Member Barber asked about CenturyLink's percentage of coverage in Kaysville currently and if they are able to expand at all now.

Jennifer Summers said that the numbers are considered proprietary information. Right now we don't currently have any plans for any immediate growth within the Kaysville boundaries. But as soon as we do we will make them available to the city to review.

Council Member Lortz asked about potential policies within the city to help encourage improvement in broadband access and availability. What is the minimum accepted bandwidth requirement for maintaining a franchisee license in Kaysville?

Jennifer Summers responded that they there is a difficulty with regulating broadband in general and it's not something that we've done in any other franchise agreement, but are willing to discuss this further as we move forward.

Council Member Lortz asked about a most favored nation clause to make sure there is not discriminatory pricing practice within Kaysville versus surrounding communities.

Jennifer Summers responded that she didn't think that the pricing for broadband could be regulated per state statute.

Roger Timmerman, the Executive Director and CEO at Utopia, said that Utopia is a partnership with cities and interlocal entities, and we exist to help meet the needs of our communities. Utopia will finance fiber projects, construct them, operate them and maintain them, and then reinvest that back into these communities. We see these communities as our owners. We report to a board made up of city managers and mayors from various communities in Utah. Years ago we made a presentation to the Kaysville city council regarding a proposed project in the city, but they were turned down. Things have changed since then and Utopia has readjusted their plans. They have already installed some fiber within the city, which has helped to decrease some of their costs. Interest rates are really low right now which makes this a good time for fiber projects. These interest rates make a big difference with the finances of a project. The Utah Infrastructure Agency (UIA), which Utopia is part of, has been very successful at financing fiber projects. When we do a new partnership with a city, the city will enter into an agreement which says that Utopia will take on the debt and bond of about 20 million dollars for the cost of the project with the expectation that there will be a take rate of at least 30% of the city. Utopia would build the project out and then charge each customer for their fiber connection. That revenue is then used to pay off the bond. Residential customers would pay about $30 fee each month. It is our assumption that the network would be built underground. There is a significant cost savings if we are able to incorporate overhead infrastructure installation. The financing cost, taking into account the capitalized interest of a two year period, come out to about $95k a month. The city's obligation would be tied directly to the closed financing terms that we are able to get on the market. We are able to get better terms being partnered with UIA. Utopia has been doing these types of projects for over 20 years and have only seen take rates increase over time. We have a lot of confidence in having the ability to get more take rate than we need and to maintain that rate. The model for this is Utopia wouldn't be the provider but rather this is done with various contracted private partners. We have 30 business providers that use our system. This is a true public-private partnership in the sense that we put in public infrastructure and private partners come in and use that to sell and provide the services to customers. This is a long-term investment and asset that will benefit the community forever. It will solve net-neutrality issues and will bring competitive options. Utopia has the capacity to do this project and there is already fiber in Kaysville that we can piggy-back off from so we can get this to residents faster than any other option out there. We can likely have this project built out in 2 years.

Council Member Adams asked if the city would be a part-owner in this or would Utopia completely own the network once the bond has been paid off.

Roger Timmerman said that UIA owns the assets and would technically own the network. However, they try to work with cities in regards to how much and what kind of ownership they would like. Just because it would be owned by them, it would still be a public asset. There is a lot of liability that comes with ownership. The Utah code prohibits cities from running telecommunications as a profit center or enterprise fund. If we have a surplus of money coming in after the bond is paid off then we will lower our prices for customers. We also have standardized pricing for every city we are working with. Kaysville will benefit from a lower price structure and fiber coming to the community more quickly.

Council Member Adams commented that the city would still be taking a risk because if you don't get the 30% take rate then the city would have to pay the difference. Mr. Adams said that he had spoken with Comcast previously and was told that Comcast currently uses fiber through Kaysville already in order to get coax cable to neighborhoods. You can get 1 GB speed from the coax cable, but you have to dedicate more of the electrical boxes for them. If fiber were installed, would other providers have the capacity to even be able to use it?

Roger Timmerman said that a typical fiber network is designed like a cable network, but fiber has a lot more speed than the cable network. Because Utopia is open access we have to guarantee the speeds and capacities to every customer because their neighbor may be with a competitive provider. Every connection with Utopia has dedicated capacities to that end user and it's a huge different in architecture from the cable network, and it brings an enormous capacity. Businesses would be able to get a 100 GB guarantee. With the Comcast fiber network, they will provide the fiber to a node, but then everyone in that neighborhood shares that same node. Utopia is not only providing the best type of wired network, but it's also the way the fiber is designed with the dedicated connections to every household and business. It leaps ahead of any other fiber network in the state.

Council Member Barber commented that the technology that Utopia is offering is different than what we see from several other providers. Utopia is already offering certain type of services to some of our businesses. We won't ever be able to have fiber going to residential areas without them having a partnership with the city.

Council Member Tran asked about the city's role.

Roger Timmerman said that if we don't get the take rate needed, we therefore won't be getting the revenue needed to pay off the bond. The city would need to loan the money towards paying the bond. However, based on previous experience this scenario is highly unlikely. The commitment to start paying off the bond starts two years from the closing of the finance. This date could be pushed back to 3 years, but that would result in a capitalized interest cost. The city would have to sign a revenue pledge for this project but with this we will get better bond ratings.

Council Member Blackham commented that he has some concern with this model because the citizens just voted against a fiber bond in 2020, and the city would have to sign an agreement committing ourselves to a financial obligation.

Council Member Lortz asked if Utopia would support a right-of-way fee.

Roger Timmerman said that Utopia would, but there are federal laws in place that prohibit internet taxes. We want cities to be compensated for the use of their right-of-way but the regulatory environment is hard to get around.

Joseph Silverzweig, Manager of Government Affairs with Comcast, said that Comcast is a global media technology company and is one of the nation's largest video, high-speed internet and phone providers to residential customers. Comcast is dedicated to research and development and are constantly building and improving the fundamental technology of our products. Comcast is also diversified to be able to incorporate a number of different entertainment products. Currently every customer in Kaysville can get 1/1 symmetrical gig connection. Comcast passes nearly every household in Kaysville. There are some brown areas that we are looking to build out, a full comprehensive ability analysis was just completed as part of this process. We are open to partnering with Kaysville in order to close these remaining gaps. There are some misconceptions about how we build our architecture and deliver speeds to customers. We never throttle speeds and every customer gets the speed that they are contractually obligated for. The network right now is about 98% fiber and we are constantly pushing fiber deeper through the network. We serve many business customers in Kaysville already. Those customers all have access to a 10 gig symmetrical pipe fiber internet. We have a hybrid collapsed technology for our residential customers where the fiber is connected to a node in the neighborhood, which is connected from the node to their homes through coax cable. We can provide up to 100 GB symmetrical connections for our business connections. Comcast has invested a lot of finances and time into improving our customer service resources. Comcast also has a smart city product called MachineQ. It can provide manhole monitoring, leak and pressure detection with utility pipes, monitor waste & recycling, parking, outdoor lighting as well as rodent and pest control. The reality with smart city technology is that you don't have to own your own network and high capacity fiber for most of it. Most of the meters require a low bandwidth long-term connection. Comcast is doing more than we've ever done before to help keep people connected now that it's more important than ever to have that. We have also started creating "lift zones" at community centers which offer free wireless connections. There are dozens of these planned in Utah and we would like to see one in Kaysville as well. These are a 3-year 1 GB Comcast fiber business connection. These locations can support about 25 students or residents at once. Comcast's mission is to help build a global, connected community and we understand that is dependent on access to the internet. We define that mission by inclusion; everyone can get it and use it, regardless of your ability. We also offer a program called Internet Essentials which offers a low-cost high speed internet to low-income people, and also provides access to digital literacy training. Comcast has an ongoing commitment to investing in accessibility so everyone can connect to all of our products in the same way as possible. Comcast is committed to continue to invest in a network that stays at least 12 to 18 months ahead of capacity needs. We will explore partnerships to close coverage gaps and support the community. We will also continue our industry-leading investment in technology innovation so our customers continue to get the speeds and service they need. We want to have further conversations with the city about trying to meet the needs of the community and fill in the brown spots that the city has.

Council Member Lortz asked about the city requiring a minimum acceptable bandwidth requirement.

Joseph Silverzweig said that they wouldn't be concerned about having to meet a minimum bandwidth because their architecture is well ahead of those requirements.

Council Member Lortz asked if there are improvements being made to the current upload speeds and programs. Most citizens in Kaysville are struggling to even get a 6 MB upload limit.

Joseph Silverzweig said that they don't limit their upload speeds. Any customer can come to Comcast to change the contract in order to get better upload speeds.

Council Member Lortz responded that, personally, he has no pricing option on his current plan to increase his upload speed from his home, unless he jumps to a 1 GB service connection. This is likely a similar situation with many of our residents in the city. Council Member Lortz said that the city is also considering implementing a right-of-way fee, which funds would be used to improve access in the city.

Joseph Silverzweig said that he feels that's up to the council to decide if that's what is best for the city. We will handle any fee as long as it meets the city and federal laws.

Council Member Lortz asked about pricing.

Joseph Silverzweig said that Comcast offers consistent pricing across the state.

Council Member Tran asked about franchise fees.

Joseph Silverzweig said that their franchises are based on the Federal Telecommunications Act. It limits both what cities and telecommunication companies are allowed to do.

Council Member Adams said that he struggles with the franchise fee because it just seems like another way to tax residents. As a council we want to protect our citizens from having to pay exorbitant amounts of money for what seems to only be low internet speeds.

Council Member Barber thanked Mr. Silverzweig for providing a coverage map so we can see which areas are being underserved at the moment and what we need to focus on. Council Member Barber asked about providing faster internet speeds.

Joseph Silverzweig responded that if customers are unable to get the speeds they have been contracted with, it's usually a problem with the age of the router or device they are using as well as how compatible it is to be able to handle Comcast's network speeds. Another problem contributing to internet speed is latency.

Council Member Barber asked about data caps.

Jospeh Silverzweig said that Comcast removed the data caps because of the higher internet demand resulting from the pandemic.

Council Member Barber asked about the timeline for rollout and what the city could expect to see.

Joseph Silverzweig said that he was unsure what the timeline would be.

Mayor Witt thanked the presenters for their information and for answering the city's questions.

ROAD FEE UPDATE

City Engineer/Public Works Director Josh Belnap said that his presentation was in regards to what road fee funds are going towards, what projects have been completed, and what projects we have planned for this upcoming year. These funds are comprised of what are called "C-Road" funds, which includes state gas tax based on the number of center lane miles of road in the city. We also receive local active transportation funds and road utility funds. We collect about 2.5 to 2.6 million dollars a year between those 3 sources. During FY 2020 our largest road project was to finish the improvements and repaving on Sunset Drive from Western Drive to the sewer plant property. As part of this project 3.5 miles of connected sidewalk was installed between phases 1 and 2, as well as a dedicated bike lane from end to end. The Angel Street project was finished after 3.5 years in 2020. A lot of time and effort went into this project and we are grateful for all involved to try to get it completed. Because of the pandemic we had a couple of projects that we had postpone. However, the North Davis Sewer District's project at Phillips Street was able to be completed. We were able to partner with them to get good pricing on asphalt, and it was also a project that we didn't have to utilize a lot of staff time or pay for the mobilization costs and engineering costs. Preventative maintenance on our streets has become a big focus for the city as we try to keep roads in good shape. Chip seal is very cost-effective and performs exceptionally well, but we had significant problems with it this year. We haven't been able to identify one particular reason but rather a few contributing factors for this. The neighborhoods in Creekside, King Clarion and Whisperwood Cove saw significant amounts of material coming off the roads and being deposited into curbs, park strips and driveways. The city approached the contractor about this and they immediately brought out a crew to start cleanup and are continuing to do so. They've committed to continuing this until we can evaluate what needs to be done this spring and decide what the best long-term solution will be. To help alleviate future issues with other projects we decided to adjust our technical specifications. A temporary roundabout was installed at the Frontage Road and Burton Lane, and we received a lot of input and feedback about it. This was a small roundabout and it seemed tight, especially for large vehicles. This temporary roundabout was installed to see how it would work at this specific location. It will be further evaluated and we will be incorporating the feedback received into the evaluation to design a permanent roundabout here if we feel it would be beneficial. If a permanent roundabout is installed, the intersection will also be enlarged. If we find it wouldn't be a good location for a roundabout, other alternatives will be reviewed for this intersection. Before the road fee was implemented we didn't have the funding to focus on maintaining our roads, but now our workload has doubled or tripled as a result of the road fund. Our focus has mainly been to fix the main arterial streets, but we are going to start to focus on the inner neighborhood streets. It still will be a slow process but we are working to increase the quality of our roads in Kaysville. In 2021 there will need to be utility work done on Thornfield Drive and therefore we will be repaving the road when the work is done. We also plan to repave 350 East Street and with it be able to utilize some developer contributions from the townhome project here in Farmington. In addition to these repaving projects we have several other preventative maintenance projects around the city. The majority of these will be chip seal projects.

Mayor Witt expressed appreciation to Mr. Belnap and the Public Works Department and thanked them for their hard work

DECLARATION OF ANY CONFLICTS OF INTEREST

No conflicts were disclosed.

CONSENT ITEMS

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

a. Approval of Minutes of January 23, 2021.
b. Approval of purchase for AMI Meters – Kaysville Power Department.
c. Interlocal Cooperation Agreement for Municipal Election Services with Davis County.

The motion was seconded by Council Member Tran.

The vote on the motion was as follows:

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

The motion passed unanimously.

D. A RESOLUTION APPROVING THE COUNTY'S CREATION OF A HAZARD PLAN AND AUTHORIZING THE CITY MANAGER TO TAKE ACTION TO COMPLETE THE CITY'S PARTICIPATION.

Chief Paul Erickson explained that the County has been working with FEMA to create a county-wide hazard plan. As part of that process, FEMA would like the County to obtain official endorsement of the plan. This resolution would officially endorse the on-going efforts of the County to develop a county-wide hazard plan. Further, the resolution would authorize the City Manager to take any steps necessary to complete the city's participation.

Council Member Blackham said that the language of this resolution seems open-ended in regards to the City Manager being authorized to take any action necessary to complete the city's participation.

City Attorney Nic Mills responded that this resolution would authorize the city manager to negotiate and sign the hazard mitigation plan. There will be no expenditure of city resources.

Chief Paul Erickson added that the County hasn't completed the plan yet, which will still take a while to finish. As part of this process the County asked the cities to create a resolution which assures that our city will be part of that plan when complete. The County will continue to work with us for whatever further tasks we will need to complete in order to part of this plan.

Council Member Lortz made a motion to approve a Resolution approving the county's creation of a hazard plan and authorizing the City Manager to take action to complete the city's participation, with the change in the language that the City Manager be authorized to "execute the hazard mitigation plan". The motion was seconded by Council Member Blackham.

The vote on the motion was as follows:

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

The motion passed unanimously.

ACTION ITEM

Mayor Witt asked that Items 5c and 5d be considered next on the agenda.

REZONE OF 2.16 ACRES OF PROPERTY LOCATED AT APPROXIMATELY 990 SOUTH ANGEL STREET FROM THE A-1 (LIGHT AGRICULTURAL) ZONING DISTRICT TO THE R-1-LD (RESIDENTIAL SINGLE FAMILY LOW DENSITY) ZONING DISTRICT TO INCLUDE THE PRUD OVERLAY ZONE FOR PHIL HOLLAND.

PRELIMINARY PLAT FOR THE WATERFRONT ESTATES PRUD SUBDIVISION LOCATED AT APPROXIMATELY 990 SOUTH ANGEL STREET FOR PHIL HOLLAND.

Lyle Gibson explained that a rezone request has been submitted for the property at approximately 990 South Angel Street in order to accommodate a proposed single-family dwelling 4-lot private lane subdivision. The property is currently zoned primarily to accommodate light agricultural uses allowing only one home per acre. The requested R-1-LD zoning district allows for two units per acre. While limiting the total number of homes that could be built, the zone does allow for some flexibility in lot sizes where no lot could be smaller than 12,000 square feet. Phil Holland, the applicant, has provided a site plan and preliminary plat indicating how they anticipate the property would be used. The plan includes a private street to serve the four proposed lots with a Y-shaped turnaround that meets fire code standards. The Planning Commission held a Public Hearing during their meeting on January 28, 2021, after which they voted unanimously to recommend approval of the proposed rezone and preliminary plat with the stipulations that the applicant provide an easement to the ponds on the west for city access in order to maintain the ponds, that this easement be shown on the final plat, and that the FEMA flood plain also be shown on the final plat.

Council Member Blackham commented that we need to make sure that the easement is shown on the final plat before it is approved.

Phil Holland responded that because the easement was requested to be shown on the final plat by the Planning Commission they had not altered the current preliminary plat. After the Planning Commission meeting, Mr. Holland said that he had a discussion with the Public Works Superintendent who discovered that the city already has access to the pond just south of this property and therefore the easement could be unnecessary. However they are willing to acquiesce to the easement if needed, as well as allow the city to dredge the pond.

Josh Belnap added that the dredging work mentioned would be part of a larger project. Back in 2017 the city started coordinating with residents along the ponds because of concerns brought up about the amount of sediment in the ponds and the water quality. A flow control structure was installed in the area with the intent that the structure would help to assist in maintaining the flows through the pond, thereby helping with water quality. A head gate was also installed which allows us to open it up and utilize the flood control structure to help assist in maintain the sediment buildups in the ponds.

Reed Ferrin added that he had worked on this project with the city engineer back in 2017 and it was discussed that boxes be placed upstream to help collect the sediment and prevent it from flowing downstream. If this property were to be dredged correctly now with the right measurements then it is unlikely that it would need to be dredged again.

Josh Belnap said that if the property is dredged correctly than it would not be necessary for a permanent easement to be placed within this proposed subdivision. Also, because of the terrain and typography of the area an easement might not be feasible in this location anyway.

Council Member Adams said that we would hope that we would only need to dredge it once, but would like to see the easement still remain here in case we need to do it again.

Council Member Blackham said that the city shouldn't encumber a piece of property with an easement that would never be used.

Nic Mills responded that the council could approve the preliminary plat subject to the easement being addressed by city staff and that there must be an approval from Public Works to ensure that we are meeting the obligations of the previous agreement to provide the property maintenance that the city was required to do.

Council Member Barber made a motion to extend the meeting past 10:00 p.m. until the end of the agenda, seconded by Council Member Lortz and passed unanimously.

Council Member Lortz commented that the city shouldn't put a prohibition on Mr. Holland's project based upon a city obligation that we had already planned to execute. We need to make sure as a city that we follow through with that obligation.

Council Member Barber made a motion to approve a rezone of 2.16 acres of property located at approximately 990 South Angel Street from the A-1 (Light Agricultural) zoning district to the R-1-LD (Residential Single Family Low Density) zoning district to include the PRUD (Planned Residential Unit Development) overlay zone for Phil Holland. The motion was seconded by Council Member Lortz.

The vote on the motion was as follows:

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

Council Member Adams, nay

The motion passed with a vote of four to one.

Council Member Blackham made a motion to approve the preliminary plat for the Waterfront Estates PRUD Subdivision located at approximately 990 South Angel Street for Phil Holland with the stipulation that the technical issues of the drainage and easement needed for the pond be approved by our Public Works Superintendent to ensure that Kaysville City is covered for the future issues on those ponds. The motion was seconded by Council Member Tran.

The vote on the motion was as follows:

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

The motion passed with a vote of four to one.

AMENDMENT NO. 06 TO INTERLOCAL COOPERATION AGREEMENT FOR ANIMAL CONTROL SERVICES WITH DAVIS COUNTY

Shayne Scott explained that this agreement is between Kaysville and Davis County for animal control services. The 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 this 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 county.

Council Member Tran made a motion to approve Amendment No. 06 to the Interlocal Agreement for animal control services with Davis County, seconded by Council Member Barber.

The vote on the motion was as follows:

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

The motion passed unanimously.

AN ORDINANCE AMENDING SECTION 6-2B-4 “UNLAWFUL PARKING” TO PROHIBIT CERTAIN VEHICLES FROM PARKING IN ELECTRONIC VEHICLE STALLS

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 ordinance would prohibit this behavior and impose a civil penalty as a sanction for those violating this ordinance.

Council Member Lortz made a motion to approve an Ordinance amending Section 6-2B-4 "Unlawful Parking" to prohibit certain vehicles from parking in electronic vehicle stalls, seconded by Council Member Barber.

The vote on the motion was as follows:

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

The motion passed unanimously.

A RESOLUTION VOICING OPPOSITION TO HOUSE BILL 98 – "LOCAL GOVERNMENT BUILDING REGULATIONS" AND AUTHORIZING THE COUNCIL TO CORRESPOND WITH GOVERNOR COX REGARDING THEIR POSITION

Nic Mills explained that House Bill 98 proposes to allow developers to bypass City building inspections and limits some city-required building requirements. This resolution would voice the City's opposition to this bill. The resolution would also authorize the Mayor and City Council to correspond with Governor Cox about this issue.

Council Member Blackham and Council Member Lortz both expressed their opposition to House Bill 98. Council Member Lortz added that it is not in good form to allow someone to be able to approve their own work. If this is passed by the state the ramification would be that everybody wanting to buy or build a home would then have to hire their own private inspector to make sure that they are buying what they asked for.

Mayor Witt said that there are some municipalities that make it hard on homeowners or contractors trying to build within their cities and that is likely why they are considering this bill. However that is not all cities and we should not have to suffer the consequences if this bill were to pass. It also oversteps into municipal authority.

Council Member Adams made a motion to approve a Resolution voicing opposition to House Bill 98 – "Local Government Building Regulations" and authorizing the council to correspond with Governor Cox regarding their position, seconded by Council Member Blackham.

The vote on the motion was as follows:

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

The motion passed unanimously.

WORK ITEMS

DISCUSSION OF AN INTERLOCAL AGREEMENT WITH DAVIS COUNTY FOR PARAMEDIC SERVICES

Chief Paul Erickson explained that this item is to discuss an Interlocal Agreement with 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. City Manager 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 the county.

Shayne Scott said that there is a timeline included in the city council packet which shows that this agreement is only step 2 out of 12, but this an important step and will help to start to address when the financial aspects are switched from the County to the cities. This agreement will help them in making some long-term decisions. This process is going to take a year and a half to complete.

Council Member Blackham commented that most entities have their paramedic program operating under the fire departments, which is where it belongs.

Chief Paul Erickson said that when this program began it worked well for the county and they've done a great job providing these services over the years.

CALL TO THE PUBLIC

Tara Esplin commented on an email sent from the City Manager to city employees. She feels that poor judgement was used for the verbiage of the email. She appreciates that this matter has been taken seriously and feels it is appropriate to direct employees to officials to try to find reliable information.

Eric Jessen said that he is in disagreement with the email sent by Mr. Scott and the comments made about the COVID-19 vaccine. He feels that the email came off as threatening and when people in government authority are given this type of position we get things like the Equal Opportunity Employment Commission which makes it legal to fire someone who doesn't get vaccinated.

Brigg Lewis commented regarding the presentations given by Comcast, Utopia and Centurylink. He said that he feels that the city should have asked more questions, more specifically about internet accessibility if the power goes out. People make a living relying on their internet connection and the reliability of the internet is very important.

Craig Christianson said that he was disappointed with CenturyLink's presentation because they indicated that they had no plans for growth in Kaysville and they seem to have little to no desire to partner with the city. He was excited about the option Utopia presented but the question of ownership will need to be worked out. Comcast blamed poor speeds on customer's devices. This is not true for him because he has tested his devices on other networks and they worked fine. Mr. Christianson said that he had checked Comcast's website and found no 1 GB speed option for his house. Kaysville has more than enough demand to support a solution like Kaysville Fiber. This is still an important issue in Kaysville and Mr. Christianson thanked the Council for giving so much attention to it.

COUNCIL MEMBER REPORTS

Mayor Witt commented that she appreciates our residents sharing their opinions with us and they are important. The Council has to talk about big issues and we appreciate our community being willing to engage with us. Mayor Witt added that there would be a Q&A with Council at 10:00 a.m. on Saturday if any residents had anything they would like to speak about with the council.

ADJOURNMENT

Council Member Barber made a motion to adjourn the City Council meeting at 10:32 p.m., seconded by Council Member Lortz and passed unanimously.

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: CONSENT

PRESENTED BY: - Parks and Recreation – Cole Stephens

SUBJECT/AGENDA TITLE: - Barnes Park Playground #1 Replacement

EXECUTIVE SUMMARY:

This purchase is for the Barnes Park Playground #1 replacement. This project is included in the FY 21 Parks Capital Projects. Project is using Big T Recreation, state contract #MA2569. The existing playground installed in 1998. Playground replacement, delivery and installation costs = $118,887.36. Parks staff will be removing the existing playground prior to the new install.

Council Options: Approve, Deny, Table for more information

Recommended Options: - Approve

Fiscal impact & Fund Source for Recommended Action: - FY 21 Parks Capital Projects

Attachments: - Big T Recreation Quote and Design

QUOTE

Big T Recreation
11618 S. State St #1602
Draper, UT 84020
801-572-0782
taft@bigtrec.com

Date	Quote #
03/05/2021	12729
	Exp. Date
	05/31/2021

Shipping Address

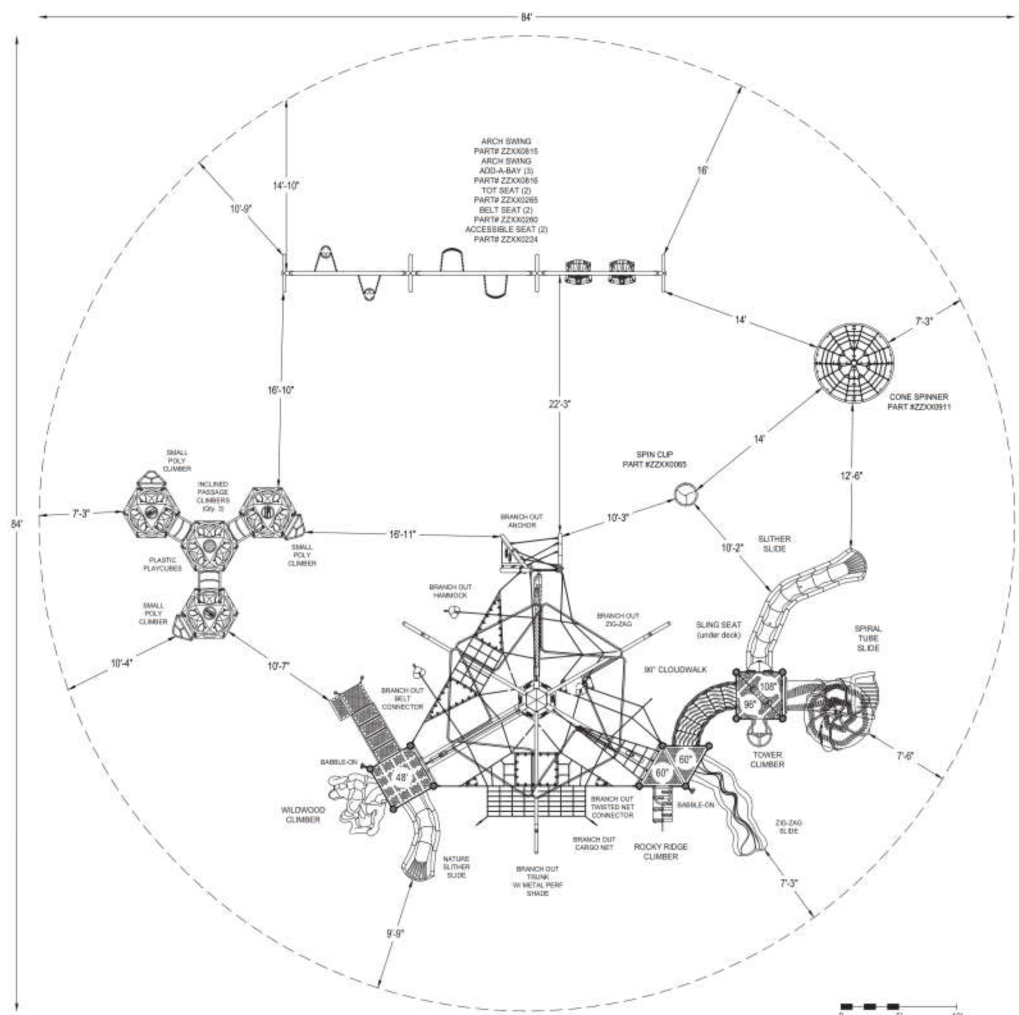
Kaysville City
23 E Center
Kaysville, UT 84037

PRODUCT	DESCRIPTION	QTY	RATE	AMOUNT
	Kaysville City Barnes Park - Playground Replacement Project			
Playground Structure	Custom Layout Playworld Systems Design # 21-4849A Includes: Branch Out Super Structure 3 Bay Swing - Tot, Belt and ADA PlayCubes Climber Spin Cup Cone Spinner	1	92,617.36	92,617.36
Services	Installation by Certified Crew	1	17,988.00	17,988.00
Freight	Freight - Via Direct Truck- Total Weight 11,201 lbs	1	4,782.00	4,782.00
Surfacing	150 CY EWF Top Off Load of Chips: Delivered and Installed Intent is to use reuse portion of existing surfacing chips	1	3,500.00	3,500.00
	Above is available for purchase on State Contract # MA2569			
	Sales Tax has NOT been added to this quote. Sales Tax Exemption Cert Required at time of Order.			
			SUBTOTAL	
			TAX	
			TOTAL	$118,887.36

Accepted By Accepted Date

Acceptance of this quote agrees to the terms and conditions set by Big T Recreation. Please contact us with any questions or concerns P: 801.572.0782, F: 801.216.3077 or E: taft @bigTrec.com or merit@bigTrec.com.

We thank you for your business.



*PLAYGROUND SUPERVISION REQUIRED

PLAYWORLD

BIG T RECREATION
11618 S. State Street #1602
Draper, UT 84020

EQUIPMENT SIZE:
47'5" x 30'0" x 16'5"

USE ZONE:
84' x 84'

AREA: **5,542 SqFt.**
PERIMETER: **264 Ft.**

FALL HEIGHT:
9 Ft.

USER CAPACITY: **119+**
AGE GROUP: **5-12**

ADA SCHEDULE

Total Elevated Play Activities: 9
Total Ground-Level Play Activities: 14

	Accessible Elevated Activities	Accessible Ground-Level Activities	Accessible Ground-Level Play Types
Required	5	3	3
Provided	7	14	5

✓ ASTM F1487-17
✓ CPSC #325

PROJECT NO: **21-4849A**
SCALE: **3/32"=1'-0"**
DRAWN BY: **CHIP ZECHMAN**
DATE: **03-MAR-2021**
Paper Size **B**

BARNES PARK
KAYSVILLE, UT

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: CONSENT

PRESENTED BY: - Parks and Recreation – Cole Stephens

SUBJECT/AGENDA TITLE: - Angel Street Soccer Complex Sidewalk Lighting Upgrades

EXECUTIVE SUMMARY:

This purchase is for upgrading the sidewalk lighting at the Angel Street Soccer Complex with new LED fixture heads. There are 57 fixture heads being replaced. Power House Electrical, LLC was the low bid of $25,830 out of the 3 bids received. Bid includes removing existing lamp head and replacing with new LED fixture. Project is included in the FY 21 Parks Capital Projects.

Power House Electrical = $25,830
Northern Utah Electric = $30,600
D&A Johnson Electric = $36,150.66

Council Options: Approve, Deny, Table for more information

Recommended Options: - Approve

Fiscal impact & Fund Source for Recommended Action: - FY 21 Park Improvements

Attachments: - Power House Electrical, LLC Quote

Power House Electrical LLC

Centerville, UT 84014
office@pheutah.com
1110 W 650 N

Estimate

Date	Estimate No.
2/18/2021	1465

Customer
Kaysville Parks/Rec 85 N 100 E Kaysville, UT 84037

Project
Angel Street Lighting Replacement

Description	Qty
Demo existing light fixture heads and install new Lithonia Lights	57
Lift	1
Lighting Package	1

Total	$25,830.00

INTERLOCAL COOPERATION AGREEMENT
(DISPATCH SERVICES)

This agreement is between Davis County, a political subdivision of the state of Utah (the "County"), and Kaysville City, a municipal corporation of the state of Utah (the "City").

Recitals

A. The parties are authorized to enter into in this agreement pursuant to the Utah Interlocal Cooperation Act, which is codified at Title 11, Chapter 13, Utah Code Annotated (the "Act").
B. The County provides dispatch services within the limits of Davis County through the 9-1-1 communications center (the "Center"), which is operated by the Davis County Sheriff's Office (the "DCSO").
C. The City desires to benefit from the services of the County, the DCSO, and the Center as specified in this agreement.
D. The County desires to permit the City to benefit from the services of the County, the DCSO, and the Center as specified in this agreement.

The parties therefore agree as follows:

1. Services.

   A. The County, through the DCSO and the Center, shall provide dispatch services and emergency dispatch services to the City for police, fire, and EMS services twenty-four hours per day, seven days per week, and three hundred and sixty-five days per year. These services shall include dispatching appropriate response units to and from an incident, acting as the central point of ordering and dispatching resources, and providing accurate incident reports. These services will be dispatched over the radio, 2-tone paging system, the Alpha-Numeric-Paging system, and the Station Pre-Alerting system.
   B. The County, through the DCSO and the Center, will utilize the UCA 800 MHz radio system for all radio communications and will assign specific operations channel(s) (Ops) to be used upon dispatch.
   C. The County, through the DCSO, the Center, and the current Spillman CAD system, will maintain a record of all telephone and radio calls involving the City and record all call times and radio transmissions on the appropriate Police, Fire, and EMS incident.
   D. The County, through the DCSO, shall provide contingency dispatch services and planning in the event that there is a disruption of services at the Center.
   E. The County, through the DCSO and the Davis County Human Resources Department, shall have and maintain the sole responsibility for the recruitment, employment, and supervision of the employees assigned to the Center. If the City has any personnel concerns regarding the Center, the City shall address such personnel concerns through the following chain of command: (a) the Center shift supervisor; (b) the assistant Center manager; (c) the Center manager; (d) the Chief Deputy assigned to assist the Center; (e) the Sheriff; (f) the County Human Resources Director; and finally (g) the County Commission.

2. Equipment.

   A. All equipment located within the Center on or before June 30, 2017 is owned and will continue to be owned by the County (the "County Equipment"). As the owner of the County Equipment, the County shall derive all profits (e.g. revenues from sale, replacement, or otherwise) and all losses (e.g. expenses due to maintenance, replacement, or otherwise) regarding the County Equipment.
   B. On or after July 1, 2017, all equipment utilized for police, fire, and EMS dispatching is subject to the following:

1) Prior to equipment being connected to the County's dispatching system for use, the entity or entities responsible for such equipment shall provide all requested records relating to the equipment to and obtain written approval from the Davis County Information Systems Director, Utah Communications Authority, the radio vendor (e.g. Motorola), and the County representative responsible for the County's radios;
2) Upon approval as required in Section 2.2.1, it shall be the sole obligation and responsibility of the entity or entities responsible for the dispatching equipment to adequately and reasonably maintain such equipment, which may require being a party to a valid County maintenance agreement that covers the maintenance of such equipment;
3) Unless access to the dispatching equipment is necessary due to a bona-fide emergency (e.g. the dispatching equipment fails in a manner that precludes necessary dispatching services from being performed), the entity or entities responsible for the dispatching equipment and/or their employees, agents, contractors, or otherwise shall arrange access to the dispatching equipment with the County, through the DCSO and the Center, at least twenty-four hours in advance of the time they desire to gain access to the dispatching equipment. In the event of a bona-fide emergency, as much notice as reasonably possible shall be provided to the County, through the DCSO and the Center, and, upon receiving such notice, the County, through the DCSO and the Center, will permit access to the dispatching equipment; and
4) Notwithstanding anything herein to the contrary, the County has no obligation to maintain and shall not be responsible or held responsible for maintenance, replacement, or any other expenses arising from, in connection with, or relating in any way to such dispatching equipment.

This section shall survive the termination of this agreement.

3. Compensation. For the 2022 fiscal year (July 1, 2021 through June 30, 2022), the City shall pay the County as follows for the services provided by the County to the City under this agreement:

A. The City fire fees are calculated by the number of calls for each city/agency utilizing a five-year average (See Table Below):

KAYSVILLE CITY FIRE

2016	**2017**	**2018**	**2019**	**2020**	**Total**	**5 Year Average**	**Price Per Call**	**Total (July 2021 – June 2022)**
1,508	1,686	1,572	1,527	1,671	7,964	1,592	$32.45	$51,660.40

B. The City police fees are charged per officer (See Table Below):

KAYSVILLE CITY POLICE

Officers	**Price Per Officer**	**Total (July 2021-June 2022)**
32	$2499.00	$79,968.00

The City shall pay to the County the obligations set forth in Subsections 3.A and 3.B of this agreement in equal monthly payments within thirty calendar days of receipt of a monthly invoice from the County.

4. Effective Date of this Agreement. The Effective Date of this agreement shall be on the earliest date after this agreement satisfies the requirements of Title 11, Chapter 13, Utah Code Annotated (the "Effective Date").

5. Term of Agreement. The term of this agreement shall begin as of July 1, 2021 and shall, subject to the termination and other provisions set forth herein, terminate at the conclusion of June 30, 2022 (the "Term"). The parties may, by written amendment to this agreement, extend the Term of this agreement; however, this agreement may not extend more than fifty years from the commencement of the Term.

6. Termination of Agreement. This agreement may be terminated prior to the completion of the Term by any of the following actions:

   A. The mutual written agreement of the parties;
   B. By either party:

      1) After any material breach of this agreement; and
      2) Thirty calendar days after the non-breaching party sends a written demand to the breaching party to cure such material breach, and the breaching party fails to timely cure such material breach; provided however, the cure period shall be extended as may be required beyond the thirty calendar days, if the nature of the cure is such that it reasonably requires more than thirty calendar days to cure the breach, and the breaching party commences the cure within the thirty calendar day period and thereafter continuously and diligently pursues the cure to completion; and
      3) After the written notice to terminate this agreement, which the non-breaching party shall provide to the breaching party, is effective pursuant to the notice provisions of this agreement;

   C. By either party, with or without cause, six months after the terminating party mails a written notice to terminate this agreement to the non-terminating party pursuant to the notice provisions of this agreement; or
   D. As otherwise set forth in this agreement or as permitted by law, ordinance, regulation, rule or similar authority.

   NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THIS AGREEMENT IS SUBJECT TO ANNUAL APPROPRIATIONS BY THE PARTIES AND THE PARTIES SHALL EACH HAVE THE RIGHT TO TERMINATE THIS AGREEMENT, AT ANY TIME UPON WRITTEN NOTICE TO THE OTHER PARTY, IF ANNUAL APPROPRIATIONS, AS PART OF THE PARTY'S ANNUAL PUBLIC BUDGETING PROCESS, ARE NOT MADE BY THE PARTY TO ADEQUATELY OR SUFFICIENTLY PAY FOR THE OBLIGATIONS UNDER THIS AGREEMENT, WITHOUT FURTHER OBLIGATION OR LIABILITY TO THE TERMINATING PARTY UNDER THIS AGREEMENT.

7. Notices. Any notices that may or must be sent under the terms and/or provisions of this agreement should be delivered, by hand delivery or by United States mail, postage prepaid, as follows, or as subsequently amended in writing:

To the City:	To the County:
Kaysville City Attn: Shayne Scott, City Manager 23 East Center Street Kaysville, Utah 84037	Davis County Attn: DCSO Administrative Chief Deputy P.O. Box 618 Farmington, UT 84025

8. Governmental Immunity. The parties recognize and acknowledge that each party is covered by the Governmental Immunity Act of Utah, which is codified at Sections 63G-7-101 through 63G-7-904, Utah Code Annotated. Nothing herein is intended to waive or modify any rights, defenses or provisions of the parties provided in the Governmental Immunity Act of Utah. Officials, employees, and/or volunteers who perform services arising from, in connection with, or relating to this agreement shall be deemed officials, employees, and/or volunteers of the party directing their services for purposes of this agreement and the Utah Governmental Immunity Act, even if the services are performed outside of the territorial limits of such party. Each party shall be responsible for and shall defend the actions and/or omissions of its own

officials, employees, and/or volunteers, which arise from, are in connection with, or relate relating to this agreement, whether negligent or otherwise. The section shall survive the termination of this agreement

9. No Separate Legal Entity. No separate legal entity is created by this agreement.

10. Review; Approval; and Filing. This agreement shall be submitted to an authorized attorney for each party for review in accordance with Section 11-13-202.5 of the Act. This agreement shall be approved by the executive or the executive body or each party in accordance with Section 11-13-202.5 of the Act. A fully executed version of this agreement shall be filed with the keeper of records for each party in accordance with Section 11-13-209 of the Act.

11. Benefits. The parties acknowledge, understand, and agree that each of their respective officials, employees, and volunteers are not in any manner or degree officials, employees, or volunteers of the other party and shall have no right to and shall not be provided with any benefits from the other party. The County's officials, employees, and/or volunteers, while providing or performing services under or in connection with this agreement, shall be deemed officials, employees, and/or volunteers of the County for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits. The City's officials, employees, and/or volunteers, while providing or performing services under or in connection with this agreement, shall be deemed officials, employees, and/or volunteers of the City for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits.

12. Waiver. The rights of and available to each of the parties under this agreement may only be waived or released by an instrument in writing that is signed by the party whose rights will be diminished or adversely affected by such waiver or release.

13. Entire Agreement, Amendment. This agreement, including all attachments, if any, constitutes the entire understanding between the parties with respect to the subject matter in this agreement. Unless otherwise set forth in this agreement, this agreement supersedes all other agreements, whether written or oral, between the parties with respect to the subject matter in this agreement. An amendment to this agreement is only effective if it is in writing and signed by both parties.

14. Force Majeure. In the event that either party shall be delayed or hindered in or prevented from the performance of any act required under this agreement by reason of acts of God, acts of the United States Government, the State of Utah Government, fires, floods, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inclement weather, restrictive governmental laws, ordinances, rules, regulations or otherwise, delays in or refusals to issue necessary governmental permits or licenses, riots, insurrection, wars, pandemics, epidemic, or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under this agreement, then performance of such act(s) shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, without any liability to the delayed party.

15. Assignment Restricted. The parties agree that neither this agreement nor the duties, obligations, responsibilities, or privileges in this agreement may be assigned, transferred, or delegated, in whole or in part, without the prior written consent of both of the parties. Any purported transfer in violation of this section will be void.

16. Choice of Law. Utah law governs any action, suit, claim, investigation, or proceeding, whether in a judicial, administrative, or alternative dispute resolution forum, brought by one party against the other party arising out of, in connection with, or relating to this agreement.

17. Severability. The parties acknowledge that if a dispute between the parties arise out of, in connection with, or relating to this agreement or the subject matter of this agreement, then the parties desire the decision maker to interpret this agreement as follows:

A. With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; and
B. If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the contract will remain in effect as written.

18. Counterparts. This agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all such counterparts taken together shall constitute one and the same agreement.

Each party is signing this agreement on the dates set forth below.

KAYSVILLE CITY	DAVIS COUNTY
______________________ Mayor Dated:______________	______________________ Chair, Board of County Commissioners Dated:______________
ATTEST: ______________________ Recorder Dated:______________	ATTEST: ______________________ Clerk/Auditor Dated:______________
REVIEWED AND APPROVED AS TO PROPER FORM AND COMPLIANCE WITH APPLICABLE LAW: ______________________ Attorney Dated:______________	REVIEWED AND APPROVED AS TO PROPER FORM AND COMPLIANCE WITH APPLICABLE LAW: ______________________ Attorney's Office Dated:______________

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: CONSENT

PRESENTED BY: Community Development Staff

SUBJECT/AGENDA TITLE: RESOLUTION ACCEPTING A STORM WATER EASEMENT FROM THE OLD MILL VILLAGE HOMEOWNERS ASSOCIATION

EXECUTIVE SUMMARY:

In March of 2016 Kaysville City entered into an agreement with the Old Mill Village HOA where they were allowed to dissolve some specific portions of their open space. One of those areas is identified as Open Space A on Phase 2A of the development. The association has been working for some time with residents in this area to consider absorbing the open space into their private back yards.

As no new lots are being created, staff has been reviewing the proposal administratively as a Lot Adjustment project. A plan has been prepared where only a part of the open space would be absorbed into private lots. Kaysville City staff is okay with the adjustment but has requested clarification to the easement in order to ensure continued use and access for the existing storm water facilities in the area.

Staff is asking the council to approve the attached resolution that will allow the city to accept the easement that accomplishes this purpose.

Council Options: Approve, Deny, Table for more information

Recommended Options: Adopt the attached resolution

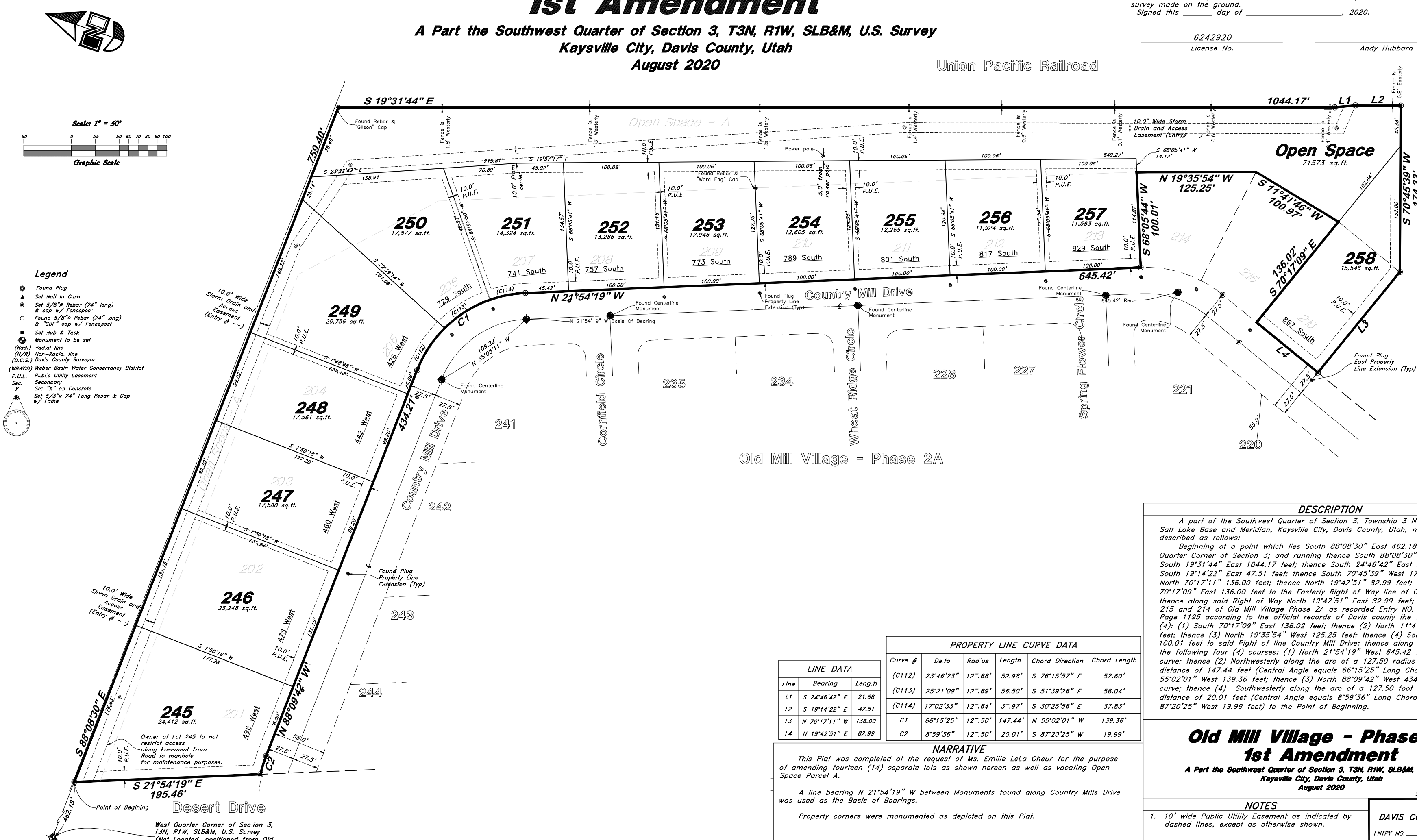
Fiscal impact & Fund Source for Recommended Action: N/A

Attachments: Location Map, Plat demonstrating proposed adjustment and location of easement, easement to be granted to Kaysville City, Resolution to accept the easement.


OLD MILL SUBDIVISION
-Open Space Requirement-
Open Space A
(Phase 2A)
Grain St
Water Mill Way
Wind Mill Ln
Cornfield Cir
Kays Dr
Wind Mill Ln
Country Mill Dr
Greenbelt Cir
Barley Ln
15
OLD MILL SUBDIVISION
Total Acres: 145.86 (114.84 without roads)
Total Building Lots: 265 (266 with church property)
Required Open Space: 21.6 Acres
Provided Open Space: 29.63 Acres

Old Mill Village - Phase 2A
1st Amendment

A Part the Southwest Quarter of Section 3, T3N, R1W, SLB&M, U.S. Survey
Kaysville City, Davis County, Utah
August 2020



SURVEYOR'S CERTIFICATE

I, Andy Hubbard, a Professional Land Surveyor in the State of Utah, do hereby certify that this plat of Old Mill Village – 2A– 1st Amendment, in Kaysville City, Davis County, Utah has been correctly drawn to the designated scale and is a true and correct representation of the following description of lands included in said subdivision, based on data compiled from records in the Davis County Recorder's Office and of a survey made on the ground.
Signed this _______ day of __________________________, 2020.

6242920
License No.

Andy Hubbard

LINE DATA

Line	Bearing	Length
L1	S 24°46'42" E	21.68
L2	S 19°14'22" E	47.51
L3	N 70°17'11" W	136.00
L4	N 19°42'51" E	82.99

PROPERTY LINE CURVE DATA

Curve #	Delta	Radius	Length	Chord Direction	Chord Length
(C112)	23°46'23"	127.68'	52.98'	S 76°15'57" E	52.60'
(C113)	25°21'09"	127.69'	56.50'	S 51°39'26" E	56.04'
(C114)	17°02'33"	127.64'	37.97'	S 30°25'56" E	37.83'
C1	66°15'25"	127.50'	147.44'	N 55°02'01" W	139.36'
C2	8°59'36"	127.50'	20.01'	S 87°20'25" W	19.99'

DESCRIPTION

A part of the Southwest Quarter of Section 3, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Kaysville City, Davis County, Utah, more particularly described as follows:

Beginning at a point which lies South 88°08'30" East 462.18 from said West Quarter Corner of Section 3; and running thence South 88°08'30" 759.40 feet, thence South 19°31'44" East 1044.17 feet; thence South 24°46'42" East 21.68 feet, thence South 19°14'22" East 47.51 feet; thence South 70°45'39" West 174.33 feet; thence North 70°17'11" 136.00 feet; thence North 19°42'51" 82.99 feet; thence South 70°17'09" East 136.00 feet to the Easterly Right of Way line of Country Mill Drive; thence along said Right of Way North 19°42'51" East 82.99 feet; thence along lots 215 and 214 of Old Mill Village Phase 2A as recorded Entry NO. 2235505 Book 4198 Page 1195 according to the official records of Davis county the following four courses (4): (1) South 70°17'09" East 136.02 feet; thence (2) North 11°41'46" East 100.97 feet; thence (3) North 19°35'54" West 125.25 feet; thence (4) South 68°05'44" West 100.01 feet to said Right of line Country Mill Drive; thence along said Right of way the following four (4) courses: (1) North 21°54'19" West 645.42 feet to a tangent curve; thence (2) Northwesterly along the arc of a 127.50 radius curve to the left a distance of 147.44 feet (Central Angle equals 66°15'25" Long Chord bears North 55°02'01" West 139.36 feet; thence (3) North 88°09'42" West 434.21 feet to a tangent curve; thence (4) Southwesterly along the arc of a 127.50 foot radius to the left a distance of 20.01 feet (Central Angle equals 8°59'36" Long Chord bears South 87°20'25" West 19.99 feet) to the Point of Beginning.

NARRATIVE

This Plat was completed at the request of Ms. Emilie LeLa Cheur for the purpose of amending fourteen (14) separate lots as shown hereon as well as vacating Open Space Parcel A.

A line bearing N 21°54'19" W between Monuments found along Country Mills Drive was used as the Basis of Bearings.

Property corners were monumented as depicted on this Plat.

Old Mill Village - Phase 2A
1st Amendment

A Part the Southwest Quarter of Section 3, T3N, R1W, SLB&M, U.S. Survey
Kaysville City, Davis County, Utah
August 2020

Sheet 1 of 2

NOTES

1. 10' wide Public Utility Easement as indicated by dashed lines, except as otherwise shown.

KAYSVILLE CITY PLANNING COMMISSION APPROVAL

Reviewed by the Kaysville City Planning and Zoning Commission on the _____ day of _________________, 2020.

Chairperson

KAYSVILLE CITY ENGINEER'S APPROVAL

Approved by the Kaysville City Engineer on this _____ day of _________________, 2020.

Signature

KAYSVILLE CITY ATTORNEY'S APPROVAL

Approved by the Kaysville City Attorney on this _____ day of _________________, 2020.

Signature

KAYSVILLE CITY COUNCIL APPROVAL

This is to certify that this plat and dedication of this plat were duly approved and accepted by the City Council of Kaysville City, Utah this _______ day of ____________________, 2020.

Mayor

FEE PAID

DAVIS COUNTY RECORDER

ENTRY NO.______________ , AT ____________ FILED FOR RECORD AND RECORDED__________ IN BOOK________ OF OFFICIAL RECORDS, PAGE__________. RECORDED FOR______________

DAVIS COUNTY RECORDER

BY:______________

DEPUTY

GREAT BASIN ENGINEERING INC
5746 South 1475 East Ogden, Utah 84403
Main (801)394-4515 S.L.C (801)521-0222 Fax (801)392-7544
www.greatbasinengineering.com

WHEN RECORDED RETURN TO:

____

____

GRANT OF EASEMENT

Old Mill Village Homeowners Association, a Utah Corporation, hereinafter referred to as **"HOA"**, as Grantor, is the owner of the fee simple interest in and to real property located in **Davis County, State of Utah, the "Subject Property", more particularly described as:**

Open Space "A" Old Mill Village--Phase 2A,
Kaysville City, Davis County, Utah,
according to the official plat thereof.

Kaysville City, a Municipal Corporation, hereinafter referred to as **"City"**, is desirous of obtaining a perpetual, non-exclusive easement over and across a portion of the "Subject Property" property owned by the Grantors. The real property, hereinafter the "Easement Estate", is more particularly described on Exhibit "A" and by reference is made a part herewith.

"HOA" is in agreement with the conveyance of the "Easement Estate", predicated upon certain terms and conditions. **"City"** is in agreement with conveyance of the "Easement Estate", predicated upon the following terms and conditions.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, **"HOA " as Grantor does hereby grant, convey and warrant to "City" as Grantee the following:**

1. **A perpetual and non-exclusive Easement, Ten Feet, (10), on, over and underneath a portion of the "Subject Property". more particularly described on Exhibit "A", the "Easement Estate".**
2. **Area located within the Easement estate is for the purposes of the installation, construction, operation, maintenance and repair of a Storm Drain located or to be located within the "Easement Estate".**
3. **The right to excavate and use the underground portion of the "Easement Estate" for the delivery and transportation of storm water.**
4. **The right of ingress and egress over and across the real property described on Exhibit "A" is limited to vehicles, equipment and personnel required to install, construct or maintain the "Easement Estate".**

This rights of the Grantee in the "Easement Estate", are subject to and predicated upon the following terms, conditions and stipulations:

1. **The Easement Estate will only be used for the purposes stated herein.**
2. **The "Easement Estate" will not be used for storage of materials, vehicles or equipment other than materials, vehicles or equipment necessary to construct, install and maintain the facilities and equipment in the "Easement Estate".**

3. **Any damage done to the real property described in either Exhibit "A" or the real property owned by the Grantor which abuts the real property described in Exhibit "A", as a result of the use of the Easement Estate will be the obligation of the Grantee, its successors and assigns to pay in order to restore the property to the state it was in prior to the use of the Easement Estate.**
4. **Grantee understands, stipulates and acknowledges that the grant of the "Easement Estate" is not to be considered a Lease with Option to Purchase or an Equitable Interest in and to the real property described on Exhibit "A".**

This grant shall inure to the benefit of the Grantor, the Grantee, their successors, transferees, assigns or heirs of the same.

In the event that any term, condition or stipulation made herein, should be in valid or in conflict with the laws of the State of Utah, that term, condition or stipulation shall be removed. All other terms, conditions and stipulations shall survive.

In the event of any default, of any term, condition or stipulation of this grant, by either the Grantor or the Grantee, the offended party shall be entitled to reimbursement of any and all fees, costs or expenses, including but not limited to attorneys, expended in order to perfect this agreement.

Old Mill Village Homeowners Association, Inc., a Utah Corporation

by: ____
Name **Date**
President
"Grantor"

Kaysville City, a Municipal Corporation

by:____
Name **Date**
Its Mayor

Attest to:

____
Name **Date**
City Recorder
"Grantee"

State of Utah
County of Davis

On this the ________ day of ________________, 2020, ________________________________ as ________________________________ of the Homeowners Association of Old Mill Village Phase 2A, acknowledged to me, a Notary Public in the State of Utah, that this document was signed by the same, in the capacity stated and in accordance with a resolution passed by board of directors of said corporation.

____
Notary Public

State of Utah
County of

On this the day of June 2020, ________________________ and ______________________ in the capacity of Mayor and City Recorder of Kaysville City, a Municipal Corporation, acknowledged to me, a Notary Public in the State of Utah, that they executed this document, in the capacities stated and did so in accordance with a resolution passed by the board of directors of said municipal corporation.

____
Notary Public

EXHIBIT "A"
DESCRIPTION OF THE EASEMENT ESTATE

GREAT BASIN ENGINEERING INC

8/19/2020

Old Mill Village – Phase 2A 1st Amendment

10.00-Foot-Wide Storm Drain Easement

A 10.00 foot wide Storm drain easement located in part of the Southwest Quarter of Section 3, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Kaysville City, Davis County, Utah, more particularly described as follows:

Beginning at a point which lies 462.18 feet South 88°08'30" East and 8.78 feet South 21°54'19" East from said West Quarter Corner of Section 3; and running thence South 88°30'52" 96.70 feet; thence South 88°16'49" East 508.36 feet; thence South 75°28'06" East 105.25 feet; thence South 23°22'47" East 584.89 feet; thence South 19°24'40 East 452.75 feet; thence South 86°32'56" East 19.55 feet; thence South 24°46'42" East 11.35 feet; thence North 86°32'56" West 31.55 feet; thence North 19°24'40" West 459.04 feet; thence North 23°22'47" West 579.66 feet; thence North 75°28'06" West 99.24 feet; thence North 88°16'49" West 507.22 feet; thence North 88°30'52" West 92.35 feet; thence North 21°54'19" West 10.90 feet to the Point of Beginning.

TEL (801) 394-4515 • FAX (801) 392-7544 • 5746 South 1475 East • Ogden, Utah 84403 • www.greatbasinengineering.com

RESOLUTION 21-XX-XX

ACCEPTING A STORM WATER EASEMENT FROM THE OLD MILL VILLAGE HOMEOWNERS ASSOCIATION

WHEREAS, Kaysville City (hereinafter "City") maintains a storm drain system through the Old Mill Subdivision; and

WHEREAS, the Homeowner's association would like to reconfigure its lots and grant some property in fee simple to the abutting residents; and

WHEREAS, the City has required the Homeowner's Association to grant this storm water easement to maintain the City's current function and future maintenance; and

WHEREAS, the City, in exercise of its management of public property, believes that it is in the best interest of the public to continue this storm water use, access, and maintenance.

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

1. That the City accept this storm water easement from HOA, which is attached hereto and incorporated herein by this reference.

2. That the Mayor is authorized to execute any necessary documents.

3. Any performance heretofore undertaken in furtherance of this resolution is hereby ratified.

PASSED AND ADOPTED by the City Council of Kaysville, Utah, this **15th day of April 2020**.

____
Katie Witt, Mayor

ATTEST:

____
Annemarie Plaizier, City Recorder

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: Consent

PRESENTED BY: Josh Belnap

SUBJECT/AGENDA TITLE: UDOT Agreement for Utility Adjustment at Green Rd

EXECUTIVE SUMMARY:

Kaysville City owns a 3-acre parcel of property in Fruit Heights that was purchased for the installation of a future 1-million gallon water tank, and some of the pipe work for this tank was installed near the site about 10 years ago.

This pipe installation included running a transmission line from near 50 W up Burton Ln to Main St, and up Laurelwood and under Highway 89. The pipe was terminated short of our property, and it currently ends under the east shoulder of Highway 89, on the west side of the future frontage road. Furthermore, Weber Basin has been working with the City for 3 years to explore purchasing a portion of this property to install a well and treatment system. The parcel is significantly larger than what is needed for the tank site, so the sale would not negatively affect the tank site, and would reduce the area maintained by the parks department by nearly 40%

Extending the pipe 350 ft to the north east would help to keep our piping out of property being looked at by Weber Basin and would get it across the frontage road, behind the sidewalk and onto our property. Performing this work now will help us avoid the future additional costs of traffic control, contractor mobilization, asphalt removal/repave and concrete tear out/replacement.

We started talking to the department in December about UDOT extending the pipe and covering the costs, but were told the extension does not qualify for UDOT payment. By making some value engineering adjustments from the first proposal, we have been able to reduce the price from over $130,000 to under $50,000 to have UDOT's contractor perform the pipe work for us.

Even when excluding the costs for asphalt and concrete, for the work to be done by the City or a hired contractor, the cost would most certainly be higher than the UDOT proposal. UDOT will be doing this work this spring, but it wouldn't be invoiced until the fall, so it would be budgeted for in the FY22 budget.

Council Options: Approve/Other

Recommended Options: Approve

Fiscal Impact & Fund Source for Recommended Action: Water Enterprise Funds

Attachments: UDOT Agreement

KAYSVILLE CITY
THIRD-PARTY RELOCATION AGREEMENT
KVCY-08_Nicholls and Main

THIS RELOCATION AGREEMENT, is made by and between the Utah Department of Transportation ("UDOT"), and Kaysville City Corporation ("Third-Party"), a Municipality in the State of Utah. Each as party, ("Party") and together as parties, ("Parties").

RECITALS

WHEREAS, UDOT has awarded a contract for the highway project identified as US-89; Farmington to I-84 in Davis and Weber Counties, Utah ("Project"); and

WHEREAS, UDOT's design-build contractor ("Design-Builder") will complete the design and administer construction of the Project; and

WHEREAS, Project construction necessitates relocating, adjusting or protecting the Third-Party facilities ("Third-Party Work").

THIS AGREEMENT is made to set out the terms and conditions where under the Third-Party work shall be performed.

AGREEMENT

Now therefore, the Parties agree as follows:

1. **Contact Information**

   UDOT's Resident Engineer is Bret Krebs, telephone number (435) 994-9064, and email bkrebs@utah.gov, or their designated representative, as assigned.

   UDOT's Utility Leader is J Tucker Doak telephone number (801) 648-5425, and e-mail jdoak@utah.gov.

   UDOT's Field Representative contact person is Brandon Wilson, telephone number (385) 235-0800, and e-mail brandon@dserio.com.

   Design-Builder's contact person is Ryan Pittson, telephone number (385) 268-3669, and e-mail rpittson@wadsco.com.

   Third-Party's contact person is Josh Belnap, telephone number (801) 544-8112, and e-mail jbelnap@kaysvillecity.com.

2. Scope of Third-Party Work

A copy of the detailed Third-Party Work plans, including specifications, is included in Exhibit "A" that is incorporated by reference.

This agreement covers:

A. Protection in place of existing Third-Party pipelines and casings
B. Solution S2199
   i. Extend 30-inch casing on an existing 22-inch Third-Party HDPE Water Line five feet (and associated appurtenances) at Green Road, from US-89 mainline Sta. 1117+40.70 to plan Sta. 11+63.00.
C. Solution S2211
   i. Cut existing 22-inch HDPE Water Line and install an 18-inch PVC C900 Water Line at US-89 mainline Sta. 1117+42.72.

UDOT will perform the following Third-Party Betterment Work

A. Solution S2211
   i. Cut existing 22-inch HDPE Water Line and install an 18-inch PVC C900 Water Line at US-89 mainline Sta. 1117+42.72 as shown on sheet KVCY-NS-WPP-01 in Exhibit A.

The lump sum cost of the Third-Party Betterment Work is included in Exhibit "B" that is incorporated by reference.

3. Third-Party Work Schedule

UDOT will perform Third-Party Work between September 1, 2021 and October 8, 2021. A schedule for Third-Party Work is included as Exhibit "B" that is incorporated by reference.

4. Conformance with Utah Administrative Code R930-7

The design and construction of the Third-Party Work, access for future maintenance and servicing of Third-Party's property located on the right-of-way of the Project, will be in conformance with Utah Administrative Code R930-7, and any supplements or amendments.

5. Design-Builder to Notify UDOT and the Third-Party Before Beginning Third-Party Work and Upon Completion of Third-Party Work

The Design-Builder will notify the Third-Party and UDOT's Field Representative at least **2 business days** in advance of beginning Third-Party Work described in this Agreement. The Design-Builder will give subsequent notifications of when and where the Design-Builder will be performing Third-Party Work to the Third-Party on a day-to-day basis. Such subsequent notifications can be informal. Upon completion of the Third-Party Work the Design-Builder will provide notification to the Third-Party and UDOT's Field Representative within **2 business days**.

6. Traffic Control and Flagging

UDOT will provide Maintenance of Traffic and traffic control for Third-Party Work at no cost to the Third-Party. Except in the case of emergencies, Third-Party Work will be scheduled and comply with the requirements of the Limitation of Operations contained in UDOT's contract with respect to lane closures, peak hour work restrictions, holiday and special event limitations, etc.

7. Discovery of Historical Objects

The Third-Party, while engaged in the relocation of its Facilities, shall comply with UDOT's Standard Specifications, Section 01355, Subpart 3.8, Discovery of Historical, Archeological or Paleontological Objects, Features, Sites, or Human Remains.

8. Daily Record Keeping

UDOT and the Third-Party will each keep daily records of onsite activities. The Third-Party's daily records will be completed on a form that has been preapproved by UDOT's Contracts, Compliance and Certification Manager. The daily records shall be signed by UDOT's Field Representative or their authorized representatives and by the Third-Party or its authorized representatives. Copies of the daily records shall be retained by the Parties to this Agreement. When emergencies occur, requiring the Third-Party's work forces to leave the job, the record keeping shall be resumed upon return to the Project.

9. Reimbursement for Third-Party Work

UDOT will perform Third-Party Work at 0% cost share to the Third-Party and will perform Third-Party Betterment Work at 100% cost to the Third-Party as required by Utah Code §72-6-116. An estimate of the Third-Party Betterment Work is included as Exhibit "B".

Total Cost of UDOT-Performed Third-Party Betterment Work	$49,298.40
Total Amount of Third-Party Betterment Participation @ 100%	$49,298.40
Total Amount Due from Third-Party for Betterment Work	$49,298.40

10. Payment

The total lump sum cost of the Betterment Work shall be paid within 60 days of this agreement being executed. The Third-Party shall remit payments to UDOT's Comptroller's Office located at:

UDOT/Comptroller
4501 South 2700 West, Box 141510
Salt Lake City, UT 84119-1510

Include Agreement Charge ID Number 72194 and Agreement Number with your remittance.

11. Maintenance

The Third-Party agrees that, upon completion and final inspection of the project construction, to accept, own and maintain the betterment work covered herein at no further cost to UDOT.
The Third-Party agrees that if it modifies or cancels this Agreement at any time after it has been signed, the Third-Party agrees to pay any cancellation penalties or costs incurred by UDOT as a result of the betterment work scope being modified or cancelled. In the event the Third-Party fails to reimburse UDOT for the costs included in this Agreement, funding for other Third-Party projects or B&C road funds may be withheld until the entire payment is made.

12. Change in Scope and Schedule

The Third-Party recognizes that if its project Betterment scope or schedule changes from the terms of this Agreement, Third-Party will notify the UDOT Project Utility Leader or Resident Engineer prior to changes being made. Any costs incurred by UDOT as a result of these scope or schedule changes will be the responsibility of the Third-Party. In the event there are changes in the scope of the work, extra work, or changes in the planned work covered by this Agreement, a signed written modification to this Agreement is required prior to the start of work on the changes or additions.

13. Inspection

The Third-Party shall provide on-call engineering support by the Third-Party engineer or appropriate representative for design review, schedule coordination, or to correct or clarify issues during Third-Party Work, and to perform the necessary inspection on the Third-Party's Facilities installed by UDOT.

A. The Third-Party engineer and/or inspector shall work with and through UDOT's Field Representative and shall give no orders directly to UDOT's Design-Builder unless authorized in writing to do so. UDOT will accomplish the Third-Party Work covered herein on Third-Party's Facilities in accordance with the plans and specifications provided and/or approved by the Third-Party, including changes or additions to the plans and specifications, which are approved by the Parties hereto.
B. The Third-Party shall immediately notify UDOT's Field Representative of any deficiencies in the Third-Party Work on the Third-Party's Facilities. The Third-Party shall follow up with written detail to UDOT's Project Representative of its findings within 24-hours of making its initial notification.
C. UDOT will respond to Third-Party's concerns within 24-hours of written notification.
D. The Third-Party, through its inspection of the Third-Party Work, will provide UDOT's Field Representative with information covering any problems or concerns the Third-Party may have with acceptance of the facilities upon completion of the Third-Party Work.

Any periodic plan and specification review or construction inspection performed by UDOT arising out of the performance of the Third-Party Work does not relieve the Third-Party of its duty in the performance of the Third-Party Work or to ensure compliance with applicable standards.

14. Changes in the Third-Party Work

In the event there are changes in the scope of the Third-Party Work, extra Third-Party Work, or changes in the planned Third-Party Work covered by this Agreement, a modification to this Agreement signed by the Parties is required prior to the start of Third-Party Work on the changes or additions.

15. Access and Maintenance

Access for maintenance and servicing of Third-Party's Facilities located on the right-of-way of the Project will be allowed only by permit issued by UDOT. The Third-Party will obtain the permit and abide by conditions thereof for policing and other controls in conformance with Utah Administrative Code R930-7.

16. CFR 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

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

17. Miscellaneous

a. The permitted use and occupancy of right-of-way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public.

b. The failure of either Party to insist upon strict compliance of any of the terms and conditions, or failure or delay by either Party to exercise any rights or remedies provided in this Agreement, or by law, will not release either Party from any obligations arising under this agreement.

c. Each Party agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purpose of the Agreement at the request of the other Party.

d. This Agreement does not create any type of agency relationship, joint venture, or partnership between UDOT and Third-Party.

e. This Agreement shall be deemed to be made under and shall be governed by the laws of the State of Utah in all respects. Each person signing this Agreement warrants that the person has full legal capacity, power and authority to execute this Agreement for and on behalf of the respective Party and to bind such Party.

f. If any provision or part of a provision of this Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision. Each provision shall be deemed to be enforceable to the fullest extent under applicable law.

g. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were made upon the same instrument. This Agreement may be delivered by facsimile or electronic mail.

h. This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by authorized representatives of each Party.

i. The date of this Agreement is the date this Agreement is signed by the last Party.

****

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

Kaysville City Corporation

____

Title: ______________________________

Date: ______________________________

. . . .

Recommended for Approval

____

Title: Utility and Railroad Leader

Date: ______________________________

Utah Department of Transportation

____

Title: Project Director

Date: ______________________________

UDOT Comptroller Office

____

Title: Contract Administrator

Date: ______________________________

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: Action

PRESENTED BY: Community Development Staff

SUBJECT/AGENDA TITLE: Webster Farms No 4 Amended Preliminary Plat at 686 South Wellington Drive.

EXECUTIVE SUMMARY:

The subject property is located in the recently rezoned R-1-14 zoning district which allows for development of lots 14,000 sq. ft. in size or larger. The applicant at the time of rezone submitted a concept plan showing the division of an existing lot to include 1 lot with the existing home on the corner and a second lot facing Leola Street.

The total property includes 0.65 acres of land with a 14,065 sq. ft. lot and a 14,061 sq. ft. lot. Each lot exceeds the 90 ft. frontage requirement of the R-1-14 zone. The density, lot size, frontage, and public street improvements shown on the plat are all in compliance with applicable ordinances. All street, curb, gutter, and sidewalk improvements are in place so service to this lot is a matter of running utility laterals for which an easement has been provided on the plat.

Recommended Options: The Planning Commission voted unanimously to recommend approval of the preliminary plat for the Webster Farms No. 4 Amended Subdivision as proposed.

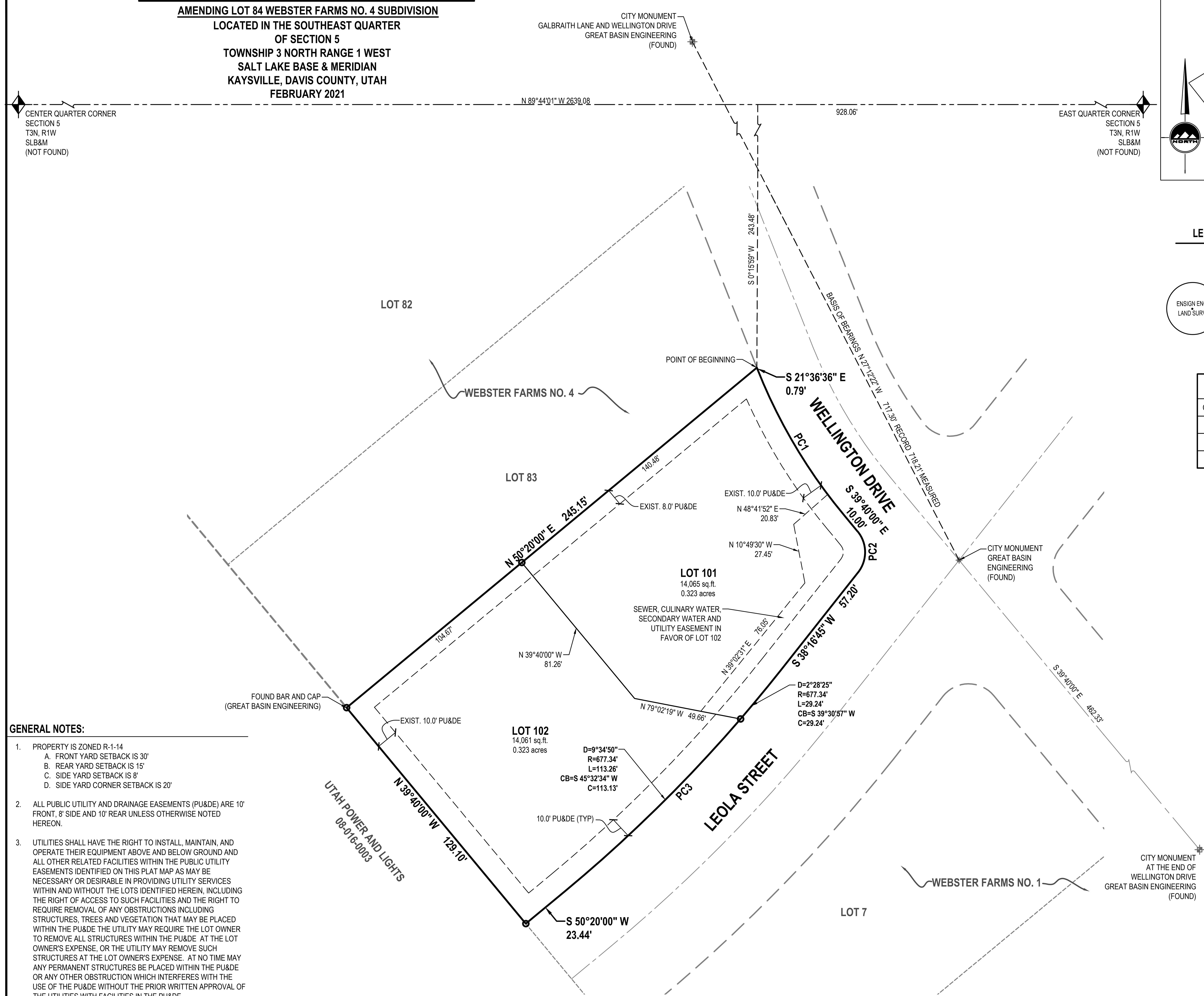
Fiscal impact & Fund Source for Recommended Action: N/A

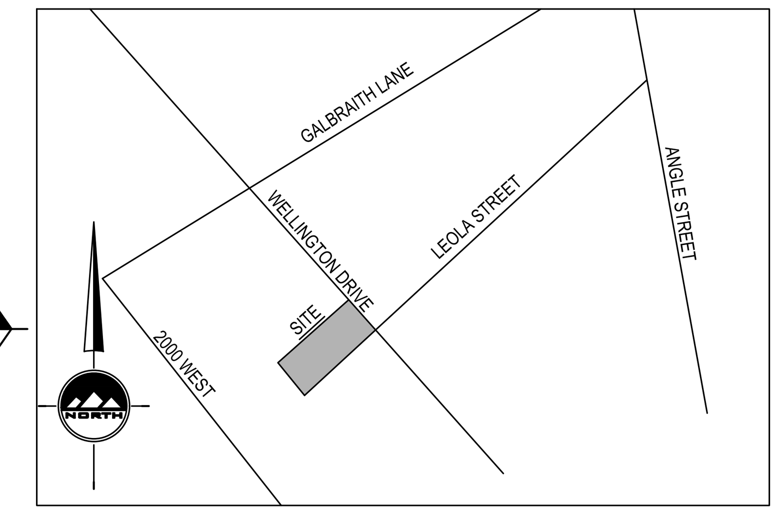
Attachments: Location Map, Subdivision Plat

686 S. Wellington Dr. - Rezone to R-1-14

WEBSTER FARMS NO. 4 AMENDED PLAT

AMENDING LOT 84 WEBSTER FARMS NO. 4 SUBDIVISION
LOCATED IN THE SOUTHEAST QUARTER
OF SECTION 5
TOWNSHIP 3 NORTH RANGE 1 WEST
SALT LAKE BASE & MERIDIAN
KAYSVILLE, DAVIS COUNTY, UTAH
FEBRUARY 2021





VICINITY MAP
NO SCALE
KAYSVILLE, DAVIS COUNTY, UTAH

LEGEND

- SECTION CORNER
- EXISTING STREET MONUMENT
- PROPOSED STREET MONUMENT
- ENSIGN ENG. LAND SURV. — SET 5/8" REBAR WITH YELLOW PLASTIC CAP, OR NAIL STAMPED "ENSIGN ENG. & LAND SURV."
- PU&DE — PU&DE= PUBLIC UTILITY & DRAINAGE EASEMENT

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD
PC1	247.78'	78.09'	18°03'24"	S30°38'18"E	77.76'
PC2	15.00'	20.41'	77°56'45"	S0°41'38"E	18.87'
PC3	677.34'	142.50'	12°03'15"	S44°18'22"W	142.24'

HORIZONTAL GRAPHIC SCALE

30 0 15 30 60

(IN FEET)
HORZ: 1 inch = 30 ft.

DEVELOPER
STEVE BINGHAM
707 SOUTH WELLINGTON DR.
KAYSVILLE, UTAH 84037
801-721-5460

SURVEY RECORDING DATA

DATE:

DRAWING No.

GENERAL NOTES:

1. PROPERTY IS ZONED R-1-14
   A. FRONT YARD SETBACK IS 30'
   B. REAR YARD SETBACK IS 15'
   C. SIDE YARD SETBACK IS 8'
   D. SIDE YARD CORNER SETBACK IS 20'
2. ALL PUBLIC UTILITY AND DRAINAGE EASEMENTS (PU&DE) ARE 10' FRONT, 8' SIDE AND 10' REAR UNLESS OTHERWISE NOTED HEREON.
3. UTILITIES SHALL HAVE THE RIGHT TO INSTALL, MAINTAIN, AND OPERATE THEIR EQUIPMENT ABOVE AND BELOW GROUND AND ALL OTHER RELATED FACILITIES WITHIN THE PUBLIC UTILITY EASEMENTS IDENTIFIED ON THIS PLAT MAP AS MAY BE NECESSARY OR DESIRABLE IN PROVIDING UTILITY SERVICES WITHIN AND WITHOUT THE LOTS IDENTIFIED HEREIN, INCLUDING THE RIGHT OF ACCESS TO SUCH FACILITIES AND THE RIGHT TO REQUIRE REMOVAL OF ANY OBSTRUCTIONS INCLUDING STRUCTURES, TREES AND VEGETATION THAT MAY BE PLACED WITHIN THE PU&DE THE UTILITY MAY REQUIRE THE LOT OWNER TO REMOVE ALL STRUCTURES WITHIN THE PU&DE AT THE LOT OWNER'S EXPENSE, OR THE UTILITY MAY REMOVE SUCH STRUCTURES AT THE LOT OWNER'S EXPENSE. AT NO TIME MAY ANY PERMANENT STRUCTURES BE PLACED WITHIN THE PU&DE OR ANY OTHER OBSTRUCTION WHICH INTERFERES WITH THE USE OF THE PU&DE WITHOUT THE PRIOR WRITTEN APPROVAL OF THE UTILITIES WITH FACILITIES IN THE PU&DE.
4. 5/8" X 24" REBAR AND CAP WILL BE PLACED AT ALL REAR LOT CORNERS AND FRONT LOT CORNERS WILL BE MARKED WITH A NAIL OR RIVET AT THE EXTENSION IN THE CURB.
5. PROTECT ALL EXISTING SECTION CORNERS AND STREET MONUMENTS. COORDINATE ALL SURVEY STREET MONUMENT INSTALLATION, GRADE ADJUSTMENT AND ALL REQUIRED FEES AND PERMITS WITH THE COUNTY SURVEYOR PRIOR TO DISRUPTION OF ANY EXISTING MONUMENTS

SURVEYOR'S CERTIFICATE

I, ____TRENT R. WILLIAMS____ do hereby certify that I am a Licensed Land Surveyor, and that I hold certificate No.____8034679____as prescribed under laws of the State of Utah. I further certify that by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land into lots and streets, hereafter to be known as____WEBSTER FARMS NO. 4 AMENDED PLAT____, and that the same has been correctly surveyed and staked on the ground as shown on this plat. I further certify that all lots meet frontage width and area re-quirements of the applicable zoning ordinances.

BOUNDARY DESCRIPTION

A parcel of ground located in the southeast quarter of Section 5, Township 8 North, Range 1 West of the Salt Lake Base and Meridian Described as Follows:

Beginning at the East corner of Lot 83, Webster Farms No. 4 Subdivision said point being also along the southwesterly line of Wellington Drive, said point being North 89°44'01" West 928.06 feet along the section line and South 0°15'59" West 243.48 feet from the East Quarter Corner, Section 5, Township 3 North, Range 1 West Salt Lake Base and Meridian, and running;

Thence South 21°36'36" East 0.79 Feet along the Southeasterly right of way line of Wellington drive;

Thence southeasterly 78.08 feet along the arc of a 247.78 foot radius curve to the left, (center bears North 68°23'22" East and long chord bears South 30°38'18" East 77.76 feet, with a central angle of 18°03'20") along the south line of Wellington Drive;

Thence South 39°40'00" East 10.00 feet along the south line of Wellington Drive:

Thence southeasterly 20.41 feet along the arc of a 15.00 foot radius curve to the right, (center bears South 50°19'47" West and long chord bears South 0°41'38" East 18.87 feet, with a central angle of 77°57'10") along the south line of Wellington Drive to the north side of Leola Street;

Thence South 38°16'42 West 57.20 feet along the North line of Leola Street;
thence southwesterly 142.50 feet along the arc of a 677.34 foot radius curve to the left, (center bears North 51°43'16" West and long chord bears South 44°18'22" West 142.24 feet, with a central angle of 12°03'15") along the north line of Leola Street to the southwest corner of Webster Farms No. 4 subdivision;

thence South 50°20'00" West 23.44 feet to the west line of Webster Farms No. 4 subdivision;

thence North 39°40'00" West 129.10' along the west line of Webster Farms No. 4 subdivision to the south west corner of lot 83 Webster Farms No. 4 subdivision;

thence North 50°20'00" East 245.15' along the south line of lot 83 Webster Farms No. 4 subdivision to the point of beginning,
contains 28,126 square Feet, 0.646 acres 2 lots.

Trent R. Williams
License No. 8034679

Date

OWNER'S DEDICATION

Known all men by these presents that I / we, the under- signed owner (s) of the above described tract of land, having caused same to be subdivided, hereafter known as the

WEBSTER FARMS NO. 4 AMENDED PLAT

do hereby dedicate for perpetual use of the public all parcels of land shown on this plat as intended for Public use.
In witness whereof I / we have hereunto set our hand (s) this________day of__________________________A.D., 20_______.

By:

By:

By:

By:

INDIVIDUAL ACKNOWLEDGMENT

STATE OF UTAH
County of Davis }S.S.

On the ______ day of ________________________ A.D., 20______, ______________________________________, personally appeared before me, the undersigned Notary public, in and for said County of ____________________________ in said State of Utah, who after being duly sworn, acknowledged to me that He/She/They signed the Owner's Dedication,_______ in number, freely and voluntarily for the purposes therein mentioned.

MY COMMISSION EXPIRES:______________________________________,

____ RESIDING IN___________________________ COUNTY.
NOTARY PUBLIC

WEBSTER FARMS NO. 4 AMENDED PLAT

LOCATED IN THE SOUTHEAST QUARTER
OF SECTION 5
TOWNSHIP 3 NORTH RANGE 1 WEST
SALT LAKE BASE & MERIDIAN
KAYSVILLE, DAVIS COUNTY, UTAH

DAVIS COUNTY RECORDER

ENTRY NO. _______________ FEE
PAID _____________ FILED FOR RECORD AND
RECORDED THIS______ DAY OF_______, 20_________,
AT _______ IN BOOK_________ OF OFFICIAL RECORDS
PAGE

DAVIS COUNTY RECORDER

BY _______________________________
DEPUTY RECORDER

ENSIGN
LAYTON
1485 W. Hillfield Rd. Ste 204
Layton UT 84041
Phone: 801.547.1100
Fax: 801.593.6315
WWW.ENSIGNENG.COM
SALT LAKE CITY Phone: 801.255.0529
TOOELE Phone: 435.843.3590
CEDAR CITY Phone: 435.865.1453
RICHFIELD Phone: 435.896.2983

CITY ATTORNEY'S APPROVAL

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE KAYSVILLE CITY ATTORNEY.

KAYSVILLE CITY ATTORNEY

PLANNING COMMISSION APPROVAL

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE CITY PLANNING COMMISSION APPROVAL

CHAIRMAN, KAYSVILLE CITY PLANNING COMMISSION

CITY ENGINEER'S APPROVAL

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE KAYSVILLE CITY ENGINEER

KAYSVILLE CITY ENGINEER

CITY COUNCIL APPROVAL

APPROVED THIS ________ DAY OF ____________________, 20________, BY THE KAYSVILLE CITY COUNCIL

CITY RECORDER CITY MAYOR

SHEET 1 OF 1

PROJECT NUMBER : 10334
MANAGER : C.PRESTON
DRAWN BY : A.SHELBY
CHECKED BY : T.WILLIAMS
DATE : 2/12/21

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: Action

PRESENTED BY: Community Development Staff

SUBJECT/AGENDA TITLE: Heritage Square Development Agreement.

EXECUTIVE SUMMARY:

After discussing this matter in a work session during the last City Council meeting, direction was given to notify residents of the request under consideration in order to give neighboring property owners a chance to provide input to the council. Notice has been mailed to property owners within 500 feet of the Heritage Square development and there is opportunity on this agenda for the public to provide comment.

…

Background
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 on this and the neighboring property to the west.

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

…
Options
1. The City Council may determine it is appropriate to keep the limitations outlined in the existing development agreement.
2. The Council may determine to dissolve the development agreement allowing both the Heritage square property and the neighboring property the potential to develop the maximum amount allowed by the existing zoning. (7 units in Heritage Square and 6 units on the property to the west – based on lot size and 1 unit per 4,000 sq. ft. of property)
3. The Council may agree to a different limit than is outlined in the development agreement. This may continue to restrict both properties at a different level or address each property individually with unique restrictions.

Any proposed change to the agreement must be accepted by both the city and the developer.

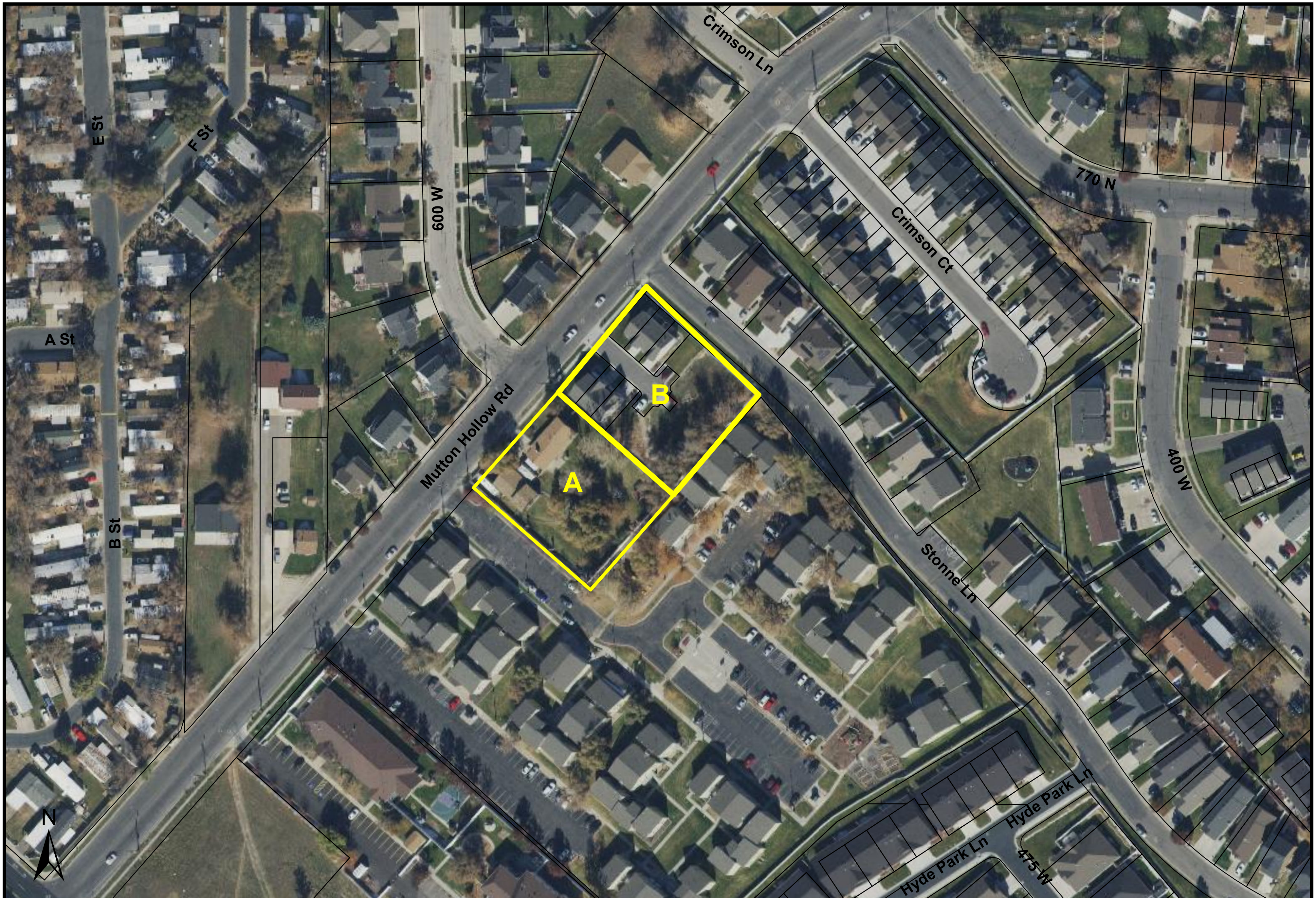
Council Options: Approve an option as outlined above or table for more information

Recommended Options: Staff recommends that the council direct the City Manager to execute any appropriate documentation to accomplish the councils preferred option.

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

Attachments: Location Map, Development Agreement, Proposed Project Drawings

Development Agreement Properties



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

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

(SEAL)

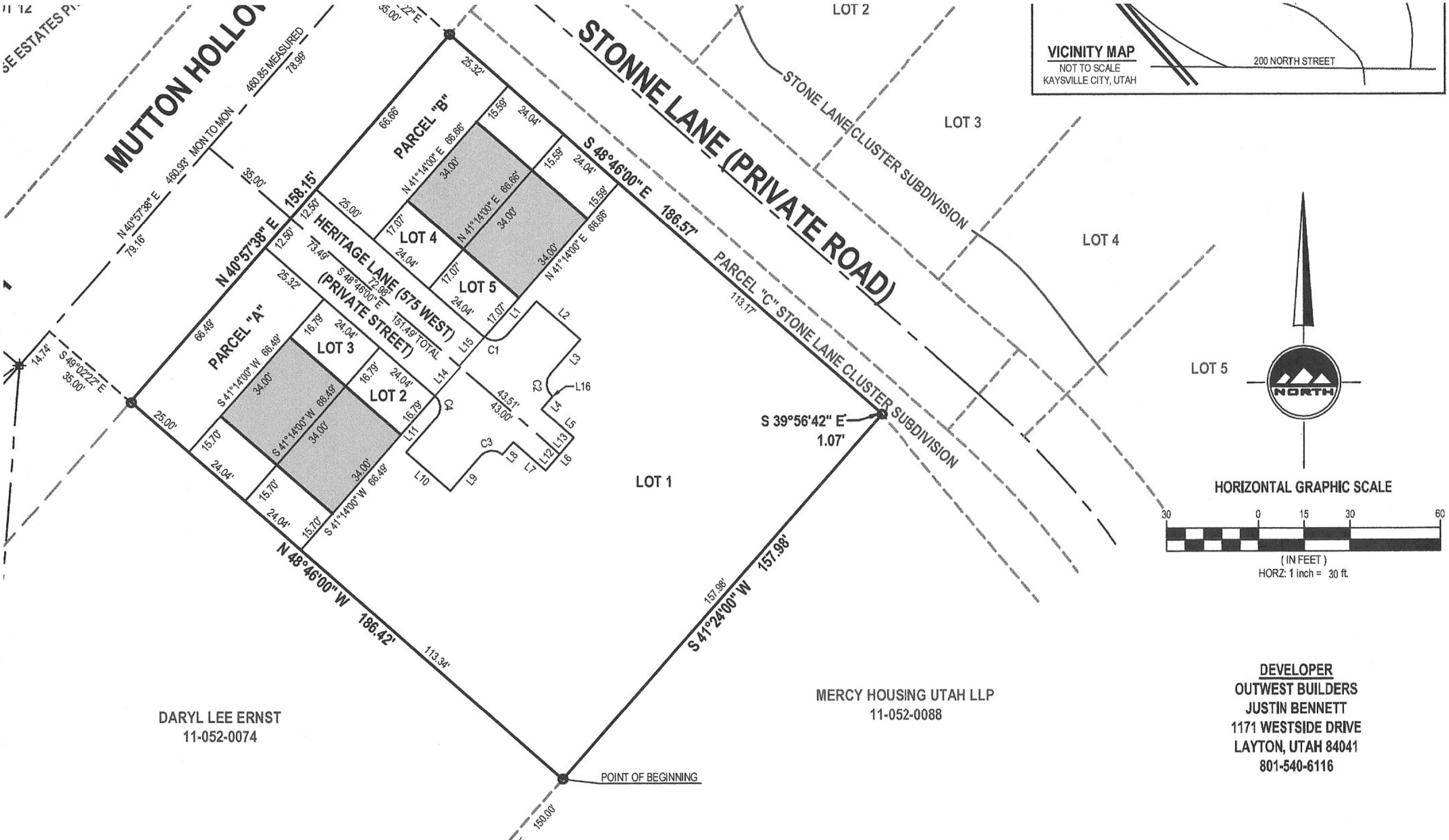
STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

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



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

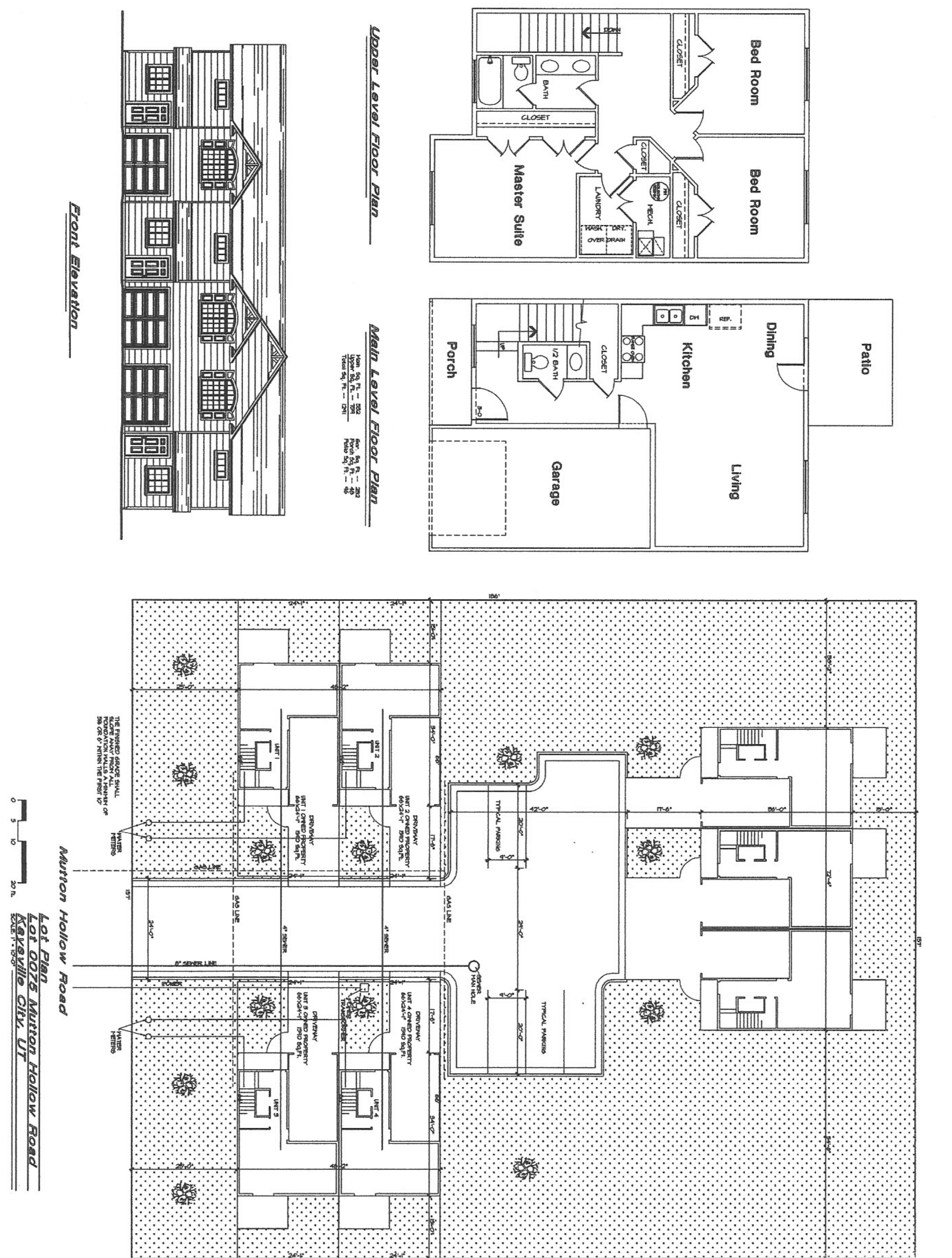
ADDRESS TABLE

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%

X:\JOBS\1197_outwest\1197-2a0.dwg, 1/14/2016 3:24:52 PM, (c) KH Design Inc. 801-774-5913



SHEET No. A0	www.zHousePlans.com KH Design House Plans www.KHDesign.com 995 S. STATE ST. # A Ph. 801-774-5913 CLEARFIELD, UT 84015	DRAWING Lot Plan	DATE: May. '14 DRAWN BY Ken Reed
	PROJECT Outwest Builders No. 1197 Lot 0075 Mutton Hollow Road Kaysville City, UT	SCALE: See Sheet	

STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: Action

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 two alterations along with some minor edits. First, it authorizes City Staff to purchase items—regardless of price—that have been approved as line items in the budgeting process. Second, it sets forth a valuation structure for City Staff to follow when disposing of city property.

Council Options: 1) Approve the resolution altering the City's purchasing policy as written; 2) Approve the resolution 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 approve the resolution 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 $25,000

Any purchase or acquisition of supplies, material, equipment, improvements, or services of an estimated value of more than $5,000 but less than $25,000 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 $25,000

Purchases of supplies, equipment, or contractual services of an estimated value of $25,000 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 $25,000 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, having received no satisfactory bids, 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 $25,000 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 $25,000 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 $25,000 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. Transfer of property between departments shall not require City Council approval.

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 18, 2021

TYPE OF ITEM: Action

SUBJECT/AGENDA TITLE: 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.

After a good discussion in Work last council and some follow-up from Nic Mills, this agreement seems to be ready for adoption.

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

Recommended Options: Staff recommends that the City Council adopt the agreement 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 ____.

<u>WITNESSETH</u>:

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:

<u>AGREEMENT</u>

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 18, 2021

TYPE OF ITEM: Action

SUBJECT/AGENDA TITLE: 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.

A good discussion took place last council meeting during Work and this item was deemed ready to discuss as an Action item for possible ratification.

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

Recommended Options: Staff recommends that the City Council adopt the agreement 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.

POLE ATTACHMENT 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 receipt of the application, Licensor may proceed to erect the pole facilities. Licensor shall endeavor to erect the pole facilities within a period of ninety (90) days, unless Licensee shall agree to a longer period.~~

Commented [NM1]: This section was removed per the council's direction.

~~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~~J. 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~~K. 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.

L~~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~~M. 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~~N. 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~~O. 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~~P. 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~~Q. 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.

R~~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.

S~~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.

T~~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.

U~~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.

Formatted: Normal

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.

J. This agreement may be executed in conjunction with the City's franchise agreement. In such case, any discrepancies between requirements in this agreement of the franchise agreement shall be resolved in the City's favor. This agreement may be attached and incorporated into the terms of the franchise agreement.

ARTICLE VII

CONTRACT TERM

A. Unless sooner terminated as herein provided, this Agreement shall continue in effect for a term of 10 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	KAYSVILLE CITY,
By:_______________________ Title:_____________________	By:_________________________ NAME Mayor
	ATTEST:
	By:_________________________ NAME City Recorder

CITY COUNCIL STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: ACTION

PRESENTED BY: - Shayne Scott/Nic Mills

SUBJECT/AGENDA TITLE: - City Manager Agreement

EXECUTIVE SUMMARY:

This agenda item is an Agreement between Kaysville City and Shayne Scott to continue to serve as City Manager. This is the third contact in almost 5 years between Kaysville and Scott. The last agreement has an expiration date of June 2021. If ratified, this agreement would start March 1, 2021 and would supersede all previous agreements.

This agreement was introduced at the City Council Retreat on January 23, 2021 and after being reviewed and altered some by Nic Mills, appears to be ready for adoption.

Council Options: Adopt the attached Agreement
Remand the Agreement back to Staff with further instructions

Recommended Options: - Adopt the Attached Agreement

Fiscal impact & Fund Source for Recommended Action: None beyond negotiated personnel costs

Attachments: - Agreement

City Manager Employment Agreement

This agreement is made and entered into on this 1 day of April, 2021, by and between Kaysville City ("the City") and Shayne Scott ("the Manager"), and

WHEREAS, the City desires to employ the services of said Shayne Scott as City Manager of Kaysville City, and it is the desire of the Kaysville City Council ("the Council"), to provide certain benefits, establish certain conditions of employment and to set general working conditions of the Manager; and

WHEREAS, it is the desire of the Council to (1) secure and retain the services of the Manager and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by encouraging the Manager's good morale and provide assurances with respect to future security and (3) to provide a just means for terminating the Manager's services at such time as he may be unable to adequately discharge his duties or when the City may otherwise desire to terminate his employ; and

WHEREAS, the Manager desires to accept employment as City Manager of Kaysville City.

NOW, THEREFORE, in consideration of mutual covenants contained herein, the City and the Manager agree as follows:

SECTION 1. DUTIES

The City hereby agrees to employ Shayne Scott as City Manager of the City to perform the functions and duties specified by existing ordinances, regulations and this agreement, and to perform other legally permissible and proper duties and functions as the Council requests, and be responsible for managing and directing the day-to-day operations of all City departments. All city employees, including department heads, shall be responsible to the Manager. The Manager shall advise the Mayor and Council on matters of policy, procedure and business affecting the City.

SECTION 2. TERMS

A. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of the Manager at any time, subject only to the provisions set forth in Section 3 of this agreement.

B. Manager agrees to remain in the employ of the City and shall not accept other full-time employment or become employed by any other employer without proper written approval of the Mayor. Approval shall not be necessary in opportunities to teach, write, consult, or conduct personal business affairs not in conflict with employment with the City, performed on time off, provided that the performance of any of these activities in no way interferes with the proper performance of the duties as City Manager.

C. This contract is without term and per Utah State Code expressly rejects any other agreements between the parties to enter into an employment contract that contains an automatic renewal provision.

D. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Manager to resign at any time from his position with the City, provided Manager gives the City at least thirty (30) days written notice of his intent to resign.

E. Manager is not required to live within the Kaysville City limits but must reside no more than thirty (30) miles from Kaysville City limits.

F. With written approval of the Mayor, Manager may also telecommute or work for home at least one day each week as long as it is deemed to be in the best interest of the City and Manager to do so.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. In the event the Manager retires or leaves his position with the City, giving at least thirty (30) days written notice of intent, he shall receive a cash payout of 100% of his unpaid, earned vacation leave and any other separation payout afforded to other Kaysville City Employees at the time of separation.

B. In the case the Manager is terminated by the Council, the City agrees to pay the Manager the following as a severance package: a lump sum cash payment, or a continuation of salary on the existing basis, equal to six (6) months plus one additional month for every two years of service with the City not to exceed twelve (12) months base salary; together with 100% of his unused earned vacation leave and any other separation payout afforded to other Kaysville City Employees at the time of separation, and full benefits as enumerated in this agreement, including health insurance, for the established period of severance as outlined in this agreement.

C. The Manager shall not be removed during the first 180 days following any change in membership of the City Council or Mayor.

D. Manager may be terminated at any time without obligation to pay the severance package because of criminal conviction involving moral turpitude or criminal conviction involving serious misconduct.

E. In the event the City, at any time during the term of this agreement, reduces the salary of the Manager from its then current level, except as part of an across the board reduction for all department heads of the City, or in the even the City refuses, following written notice, to extend the Manager any non-salary benefit provided for in this agreement or customarily available to all department heads, or in the event that the Manager resigns following a request by the City Council that he resign, then, in those events, the Manager, at his option, be deemed to be terminated at the date of such reduction or such refusal to extend or such request of resignation and the severance pay set forth above shall be paid by the City to Manager.

F. In the event the Council fails to budget for the salary of the Manager as payable under this agreement, thereby making it impossible to make payment hereunder, that act shall be considered a termination of this agreement and the severance pay set forth above shall be paid by the City.

G. In the event the City changes its ordinances or regulations or otherwise changes to a form of government wherein the position of City Manager is eliminated and the City cannot perform its obligations pursuant to this agreement, that action shall be considered a termination of the Manager and the severance pay set forth above shall be paid by the City.

H. The City may terminate this Contract without cause by at least a 4 of 6 vote of the Mayor and Council and by giving the Manager written notice of termination at least 180 days prior to the termination date.

SECTION 4. DISABILITY TERMINATION

If the manager is permanently disabled or otherwise unable to perform his duties because of a non-work-related sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued leave, or for twenty (20) working days over a thirty (30) work-day period, the City shall have the option to terminate this agreement, subject to the severance package requirements of Section 3 herein.

SECTION 5. SALARY AND BENEFITS

A. The City agrees to pay the Manager for his services rendered pursuant hereto the annual base salary in effect on the day of execution of this contract. This salary shall be payable in installments at the same time as other employees of the City are paid. At any time while the Manager is employed for the City, the City and the Manager may, by mutual written agreement, change the terms of the salary or any other provisions of this agreement. The Mayor will establish a procedure to evaluate the performance of the manager annually. The Manager shall be eligible for regular COLA or MERIT based increases made available to all other Kaysville City Employees.

B. The Manager, in addition to his base salary, will receive five-hundred fifty ($550) dollars per month for a personal vehicle allowance, intended to cover travel expenses for City business within Davis County, Utah. All travel by the manager outside of Davis County, Utah will be reimbursed according to approved City Travel Policy. The Manager may use city owned Electric Vehicle charging stations, if applicable, for charging of the personal vehicle that is used for travel for Kaysville City Business.

C. The Manager shall receive additional benefits on the same basis as other management employees unless otherwise specified in this document. These benefits shall include, but not be limited to: Social Security contributions, retirement contributions, health and life insurance benefits, vacation and sick leave benefits, and generally such other benefits including merit increases, and pay considerations given in lieu of salary. The basic monthly cost of benefits for the Manager and family, including health, life insurance, disability, accidental death & dismemberment, shall be paid by the City on the same basis as other benefitted employees unless otherwise designated in this agreement. Any cost incurred beyond basic benefit shall be the responsibility of the Manager, and shall be deducted from his paycheck unless otherwise noted.

D. The Manager shall receive one-hundred and sixty (160) hours of vacation leave per year.

E. The Manager will have the option to use a City provided data phone or provide a personal phone for City use. The Manager will be paid a $100.00 a month phone allowance if a personal phone is provided. The Manager will be obligated under the same rules and guidelines as would if they were using a city owned cell phone including being available, appropriate use of city email and network security, etc.

SECTION 6. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Manager at least once annually during the first half of the calendar year. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City and the Manager. Said criteria may be added to or deleted from as the Council may, from time to time, determine, in consultations with the Manager. The evaluation shall be generally the same standard evaluation as given to all other employees. Further, the Mayor shall provide the Council and Manager with a summary of the evaluation.

B. Annually, the Council and the Manager in the budget and/or strategic planning process shall define such goals and performance objectives which they determine necessary for the proper operation of the City. The attainment of the Council's policy objectives shall establish a relative priority among those various goals and objectives. The goals should be realistically attainable within the time limitations as specified and as budgeted by the Council in the annual operating and capital budgets and appropriations.

SECTION 7. PROFESSIONAL STATUS

A. The Manager should be involved with organizations which will increase his professional skills and permit him to maintain a current understanding of managerial activities and therefore presently believes that membership in the International City Management Association (ICMA) and the Utah City Managers Association (UCMA) should be encouraged and paid for by the City. The Manager should also be encouraged and paid to travel to and attend both the ICMA annual conference as well as the various UCMA conferences and business meetings throughout the year. In addition, it is anticipated that certain seminars and training and educational programs may be desirable and in that event are encouraged activities of the Manager with payment to be made by the City as approved in each annual budget. In the event that the Manager is unable to attend the aforementioned conference meetings, they shall inform the Kaysville City Mayor and supply rationale for not being able to attend.

B. It is also anticipated that the Manager will be involved in certain promotional activities providing business lunches and entertainment which are intended to be for the direct benefit of the City and should be paid for by the City. The Manager should submit these anticipated expenses of the City for the above-named approved activities to the Council during the annual budgetary process.

C. The City acknowledges the value of having the Manager participate and be directly involved in local civic clubs or organizations. Accordingly, the City shall pay for the membership fees and/or dues to enable the Manager to become an active member in local civic clubs or organizations.

SECTION 8. INDEMNIFICATION

The City shall defend, save harmless and indemnify the Manager, including the cost of counsel against any tort, professional liability claim or demand or other legal action, claim or claims, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Manager's duties as Manager within the scope of employment. The City will defend, compromise or settle any such claim or suit and pay any judgment rendered thereon on behalf of the Manager or his estate or heirs.

SECTION 9. BONDING

The City shall pay the cost of a fidelity bond or other bonds required of the Manager or deemed advisable to obtain.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Council, in consultation with the Manager, may fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, city ordinance or state or federal law.

B. The Council recognizes that the Manager is required to work and perform on behalf of the City other than on an "eight to five" basis. As City Manager, he is subject to call at any time, is required to attend various night meetings in addition to City Council, and is required to participate in various other activities that benefit the City, often working long hours and at time that are not typically considered normal working hours. Manager should schedule vacation and other time off around City Council Meetings to the best of his ability. Absence from City Council Meeting should be a rare occasion. The Kaysville City Council provides general schedule flexibility and expects Manager to manage their schedule and working hours using good professional judgement in establishing flexible working hours.

SECTION 11. NOTICES

Notices pursuant to this agreement shall be given by personal delivery or by sending an email with a delivery receipt as follows:

The City: Kaysville City Mayor and Council
mailbox@kaysvillecity.com

The Manager: Shayne Scott
sscott@kaysvillecity.com

Notice shall be deemed given as of the date of personal delivery or as of the date the email was received. In the event either party changes addresses, notification of the other party of the changed address shall be given in accordance with this section.

SECTION 12. GENERAL PROVISIONS

The text herein shall constitute the entire agreement between the parties and any changes shall be reduced to writing and agreed upon by both parties.

This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Manager. This agreement shall become effective commencing immediately upon signing by both parties.

If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

In the event of default under the terms of this agreement, the defaulting party agrees to pay all costs of enforcement, including a reasonable attorney's fee.

IN WITNESS WHEREOF, the City of Kaysville has caused this agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Recorder, and the Manager has signed and executed this agreement, both in duplicate, the day and year first written above.

______________________________	______________________________
Shayne Scott	Katie Witt
City Manager	Mayor

ATTEST: ______________________________
Annemarie Plaizier
City Recorder

STAFF REPORT

COUNCIL MEETING DATE: March 18, 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 intent of this agreement is to lease the City's existing fiber network only. Nothing in this agreement should be construed to imply that the City is entering into, or has interest to enter into, a public-private partnership to operate a fiber optic network. The intent of this agreement is merely to leverage the value of existing infrastructure.

Commented [NM1]: This has been added at the request of the Council.

F. 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:

STAFF REPORT

COUNCIL MEETING DATE: March 18, 2021

TYPE OF ITEM: Work

SUBJECT/AGENDA TITLE: Discussion on Fiber Lease Rates

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. City staff is proposing rates to be associated with this lease as follows:

Fiber Ring - $5,000/strand for Franchisee's, $1,000/strand for interlocals that provide no High Speed Internet Service (private network only)
Other fiber strands (spurs or extensions) - $0.20/foot
Annual Excess Fiber Infrastructure (conduit) rate - $0.20/foot
Annual Pole Attachment Fee - $18/pole

Once adopted, these rates will live in the Consolidated Fee Schedule to be reviewed by the council annually and adjusted from time to time as the city council sees fit.

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.