

WEST HAVEN CITY
COUNCIL AGENDA

AMENDED

July 20, 2022 6:00 P.M.
City Council Chambers
4150 South 3900 West, West Haven, UT 84401

NOTICE IS HEREBY GIVEN THAT ON **July 20, 2022** THE COUNCIL OF WEST HAVEN CITY WILL HOLD THE FOLLOWING PUBLIC MEETINGS: **5:00 PM: COUNCIL WORKSHOP 6:00 PM: REGULAR WEDNESDAY CITY COUNCIL MEETING**. JOIN US DIGITALLY FOR THE WORK SESSION AND COUNCIL MEETING AT [HTTPS://US06WEB.ZOOM.US/J/81581435918](https://us06web.zoom.us/j/81581435918). WATCH LIVE AT [HTTPS://WWW.YOUTUBE.COM/CHANNEL/UCeeqNqBTFzJwTGOPhMCNCBA](https://www.youtube.com/channel/UCeeqNqBTFzJwTGOPhMCNCBA).

1. MEETING CALLED TO ORDER: Mayor Vanderwood
2. OPENING CEREMONIES
 - A. PLEDGE OF ALLEGIANCE Councilmember Swapp
 - B. PRAYER/MOMENT OF SILENCE Councilmember Dixon
3. PUBLIC PRESENTATION: Resident(s) attending this meeting will be allotted 2 minutes to express a concern or ask a Question about any issue that **IS NOT ON THE AGENDA** No action can or will be taken on any issue(s) presented.

*****AGENDA ACTION ITEMS*****

4. ACTION ON CONSENT AGENDA

A. CITY COUNCIL MINUTES	MEETING HELD	July 6, 2022
B. WEBER COUNTY TRANSFER STATION	\$25,149.54	Inv.#022-01362602-022-01375041
C. WASTE MANAGEMENT	\$29,512.04	Inv.#2083571-2682-9
5. ACTION ON PLANNING COMMISSION MEETING RECOMMENDATION(S)

There are no Planning Commission items.
6. DISCUSSION AND POSSIBLE ACTION-FIREWORK RESTRICTIONS
7. ACTION ON RESOLUTION 21-2022-AGREEMENT BETWEEN WEST HAVEN CITY AND WEBER BASIN WATER FOR ALLOTMENT OF WATER FOR CITY HALL
8. PUBLIC HEARING-For the purpose of receiving public input on the use of American Rescue Plan Act funds up to \$80,000 for a mobile generator.
9. ACTION ON PUBLIC HEARING-ACTION ON RESOLUTION 22-2022-THE USE OF AMERICAN RESCUE PLAN ACT FUNDS UP TO \$80,000 FOR A MOBILE GENERATOR
10. DISCUSSION AND POSSIBLE ACTION ON RESOLUTION 22-2022-AGREEMENT BETWEEN WEST HAVEN CITY AND UTOPIA FOR FIBER OPTICS
11. DISCUSSION AND POSSIBLE ACTION-POSSIBLY OPENING THE GENERAL PLAN MAP
12. EXECUTIVE SESSION- The Council will consider a motion to enter into a closed meeting for the purpose of a strategy session to discuss the purchase, exchange, or lease of real property; and the character and professional competence of an individual to be held in accordance with the provisions of Utah Code 52-4-205.
13. UPCOMING EVENTS

Senior Lunch Bunch-July 27, 2022-11:30 AM
Howdy Hall with Mayor and Friends-July 27, 2022-5:30-6:30 PM
Touch A Truck-August 29, 2022-6:00 PM-8:00 PM
14. COUNCIL UPDATES
15. ADJOURNMENT

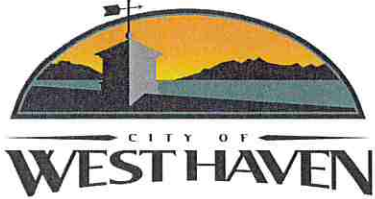
Emily Green

Emily Green, City Recorder

In compliance with the Americans with Disabilities Act, persons needing special accommodations, including auxiliary communicative aids and services, for this meeting should notify the city recorder at 731-4519 or by email: emilyg@westhavencity.com at least 48 hours in advance of the meeting.

CERTIFICATE OF POSTING

The undersigned, duly appointed city recorder, does hereby certify that the above notice and agenda has been posted in the West Haven City Recorder's office; at the West Haven City Complex on the Notice Board and at westhavencity.com; emailed to the Standard-Examiner with a request that it be posted in their Wednesday night meeting section; mailed and emailed to the West Haven City Mayor and each West Haven City Council Member who has email capacity and to the city attorney



**WEST HAVEN CITY
PRE-COUNCIL WORKSHOP AGENDA
HELD PRIOR TO CITY COUNCIL MEETING
WEDNESDAY JULY 20, 2022**

@

5:00 PM – In City Council Chambers

*NO ACTION CAN OR WILL BE TAKEN ON ANY CITY COUNCIL MEETING AGENDA ITEMS DISCUSSED DURING
PRE-COUNCIL WORKSHOP - DISCUSSION OF SUCH ITEMS IS FOR CLARIFICATION OF AGENDA ITEMS.*

MEETING TO ORDER:

MAYOR VANDERWOOD

REPORTS AND DISCUSSION AS FOLLOWS:

1. Discussion-Open Space Zone
2. Discussion-Purchasing Policy

CHAPTER 16

PROCUREMENT OF SUPPLIES, EQUIPMENT AND SERVICES

SECTION:

1-16-1: Statutory Authority

1-16-2: Purpose Of Provisions

1-16-3: Definitions

1-16-4: Purchasing Agent

1-16-5: Department Heads To Determine Items To Be Purchased

1-16-6: Purchasing Categories And Authorization

1-16-7: Invitation For Bids Procedures

1-16-8: Construction Contracting Management

1-16-9: Use Of Request For Proposals In Lieu Of Invitation For Bids

1-16-10: Rules And Guidelines For Request For Proposals

1-16-11: Exemptions

1-16-12: Value Amounts

1-16-13: Change Orders

1-16-14: Emergency Purchases

1-16-15: Subdivision Of Purchase Prohibited

1-16-16: Interlocal Cooperation

1-16-17: Computer Hardware And Software Purchases; Additional Requirements

1-16-18: Prohibited Practices

1-16-19: Documentation And Retention Of Bids

1-16-20: Protests

1-16-1: STATUTORY AUTHORITY:

The statutory authority for enacting this chapter is Utah Code Annotated sections 10-6-122, and 10-6-121 as amended.

1-16-2: PURPOSE OF PROVISIONS:

The purpose of this chapter is to provide for the procuring of supplies, equipment or services by departments and agencies of West Haven City in a manner that promotes the best interests of the public; establishing the duties, obligations and operational procedures of the City purchasing agent and his/her assistants; including appointment procedures and the rules relating to procurement and other related functions.

1-16-3: DEFINITIONS:

DEPARTMENT HEAD: The head of any City department or elected official.

INVITATION FOR BIDS: A process of soliciting sealed written bids for goods or services after ten (10) days' notice posted in the City Hall and publicly distributed through one of the following methods: use of internet purchasing websites, the City website and/or

published in a newspaper of general circulation in the City. Invitation for bids shall be opened by the purchasing agent at the time and place stated in the public notice.

LOCAL VENDOR:

- A. A business having:
 - 1. A commercial office, store, distribution center, or other place of business located within the boundaries of the City, with an intent to remain on a permanent basis;
 - 2. A current business license in the City; and
 - 3. At least one employee physically present at the local business outlet having published hours of business.
- B. The principal place of business of a local vendor may be elsewhere as long as a local branch meeting the above criteria is present. The domicile of one or more partners, owners, associates, directors, employees or agents shall not qualify as constituting a local vendor in the absence of a physical local business outlet within the City.

OFFICIAL: Any City department head, agency head, or elected official making purchases on behalf of City.

OPEN MARKET: Purchasing goods or services on the open market from private vendors.

PURCHASE: The acquisition, by contract or otherwise, of goods or services, by an official on behalf of City.

PURCHASE ORDER: A City generated document that authorizes a purchase transaction. A purchase order sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific seller.

PURCHASE REQUISITION: A request by a department head (or his/her authorized agent) to the purchasing agent to purchase for the requesting department supplies, equipment or services.

PURCHASING AGENCY: Any City department, other than the purchasing office, that is authorized by this chapter or its implementing regulations, or by way of delegation from the purchasing agent, to enter into contracts.

PURCHASING AGENT: The individual duly appointed and qualified to act under the direction of the City Manager to negotiate the purchase of or contract for supplies, equipment or services required by the City.

PURCHASING CARD: A credit or debit card issued by a credit card company, bank, or other financial institution and provided by the City to City employees for the purpose of making purchases on behalf of departments of the City.

REQUESTS FOR PROPOSALS: A process of soliciting goods or services through requests for proposals delivered to known responsible suppliers and publicly posted in the City Hall.

1-16-4: PURCHASING AGENT:

- A. Appointment: Pursuant to Utah Code Annotated section 17-53-307, as amended, and subsection 1-14-10(c)(9), the City Manager may appoint with the advice and consent of the City council, a City purchasing agent (hereinafter "purchasing agent"). The purchasing agent shall act under the direction and supervision of the City Manager, to

review, coordinate, recommend, and authorize all City purchases or encumbrances as set forth in this chapter.

- B. Powers: The purchasing agent shall have the following powers:
1. Work cooperatively with and assist City departments, offices and agencies to comply with the purchasing, and procurement regulations as may be established by the City council and City Manager.
 2. Review and approve, pursuant to the requirements outlined in section 1-16-6 of this chapter, purchase requisitions and contracts for the acquisition of supplies, equipment or services for purchases in excess of five thousand dollars (\$5,000.00).
 3. Assure compliance with bidding and purchasing procedures provided in this chapter.
 4. Provide for the transfer of surplus or unused supplies and equipment between departments wherever it can be done effectively.
 5. Maintain adequate bidders' lists, vendors' catalog files, and such other records as may be necessary for efficient purchasing activities.
 6. Recommend to the City Council, under the direction of the City Manager, for adoption of such rules and regulations as may be reasonable and necessary to clarify and implement the provisions hereof, including additional procedures that may be desirable.
 7. Prescribe and update from time to time such forms as may be reasonably necessary for the implementation of this chapter, including, but not limited to, requisitions, purchase orders and bid forms.
 8. Revise requisitions or estimates of a department's requirements of supplies and contractual services as to quantity, quality, or estimated cost, whenever revision is approved by the department head and deemed to be in the best interests of the City.
- C. Delegation Of Authority: The purchasing agent may delegate in writing such authority as deemed appropriate to any employees of the office of the purchasing agent or of a purchasing agency, respectively, upon approval of the City Manager. Such delegation shall remain in effect unless modified or until revoked in writing.

1-16-5: DEPARTMENT HEADS TO DETERMINE ITEMS TO BE PURCHASED:

- A. All department heads shall determine what items shall be purchased for their respective departments. Once a determination has been made regarding the items to be purchased, and if the items to be purchased are expected to exceed five thousand dollars (\$5,000.00), the department head shall inform the purchasing agent of the items to be purchased by submitting a purchase requisition. The purchasing agent will work cooperatively with the department head to locate such items at the best available value.

1-16-6: PURCHASING CATEGORIES AND AUTHORIZATION:

- B. Purchasing Categories: The City classifies purchasing categories. These categories are based on the dollar amount and type of purchases. Each category establishes a separate purchasing limit, authorization level, and procedure.

Category	Limitation	Authorization
Small purchases	Less than \$5,000.00	Department head
Intermediate purchases	\$5,000.00 to \$50,000	Purchasing Agent
Major purchases	\$50,000.00 or more	City Council
Professional services	Less than \$10,000	City Manager
	\$10,000 or more	City Council
Change orders	\$10,000.00 or less	City Manager
	\$10,000.00 or more	City Council

C. Purchasing Authorization:

1. Small purchases: Purchases of supplies, equipment or services less than five thousand dollars (\$5,000.00) may be made by the department head (or his/her authorized agent) on the open market. The department head (or his/her authorized agent) is responsible to check for competitive pricing for all purchases and shall retain documentation of pricing and/or proposals for each transaction for a period of thirty-six (36) months.
2. Intermediate purchases: In cooperation with the department head, the purchasing agent shall make purchases of supplies, equipment or services between five thousand dollars (\$5,000.00) and up to fifty thousand dollars (\$50,000.00). At the option of the purchasing agent, purchases may be made following one of the following three (3) alternatives:
 - a. Request for quote; or
 - b. Invitation for bids; or
 - c. Request for proposals.

Such bids shall be obtained in writing prior to the acquisition of the requested supplies, equipment or services.
3. Major purchases: In cooperation with the department head, the purchasing agent shall prepare, review, and present recommendations to the City Manager for purchases of supplies, equipment or services in the amount of between fifty thousand dollars (\$50,000.00) and up to five hundred thousand dollars (\$500,000.00). At the option of the City Manager, purchases may be made following one of the following alternatives:
 - a. Invitation for bids; or
 - b. Request for proposals.
4. Capital and special purchases: In cooperation with the department head, the City Manager shall prepare, review, and present recommendations to the City council for purchases exceeding the amount of five hundred thousand dollars (\$500,000.00). At the option of the City Manager, with the consultation of the council, purchases may be made following one of the following alternatives:
 - a. Invitation for bids; or
 - b. Request for proposals.

- D. Purchase Order Required: Purchase orders shall accompany all purchases with the exception of those made by use of a City issued purchasing card. (Ord. 822-A, 5-13-2015)

1-16-7: INVITATION FOR BIDS PROCEDURES:

- A. Where invitation for bids is required, the lowest responsive and responsible bidder shall be determined as follows:
1. Bid Opening: 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. A tabulation of all bids received shall be open for public inspection during regular business hours.
 2. Rejection Of Bids: The City shall have the authority to reject any or all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed bid for any reason allowed by law, including, but not limited to, situations where the low responsive and responsible bid exceeds available funds as certified by the appropriate City officer, or when the public interest will be served thereby. Where a bid exceeds available funds and time or economic considerations preclude resolicitation of work or purchase of a reduced scope or quantity, the City may, at its sole discretion, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible bidder, in order to bring the low bid within the amount of available funds.
 3. Tie Bids: If two (2) or more bids received are for the same total amount from equally responsive and responsible bidders, the City may, at its sole discretion, negotiate with the tie bidders, award the bid by lot, or readvertise the bid.
 4. Local Preference: If a low bid is submitted by a nonlocal vendor, the bid may be awarded to a responsive and responsible local vendor if the local vendor's bid is within five percent (5%) of the low nonlocal vendor's bid, and if the local vendor agrees, in writing, within seventy two (72) hours after notification, to meet the low bid. Such notice shall contain the exact bid submitted by the nonlocal bidder, and the City shall not enter into a contract until seventy two (72) hours have elapsed after notification to the local vendor.
 5. Lowest Responsive And Responsible Bidder: In determining who is the lowest responsive and responsible bidder, in addition to price, the City may consider factors relevant to the successful operation of the City's business and the best interests of the City as a whole. (Ord. 822-A, 5-13-2015)

1-16-8: CONSTRUCTION CONTRACTING MANAGEMENT:

- A. Construction Manager/General Contractor Selection: Pursuant to Utah Code Annotated section 11-39-107, City may use as one method of construction contracting management a construction Manager/general contractor ("CMGC"), as defined in Utah Code Annotated section 63G-6a-103. If City elects to authorize the use of a CMGC, said CMGC may be selected through a sealed invitation for bids procedure, or sealed request for proposals in lieu of bids. If sealed proposals are used in lieu of bids, proposals shall be solicited through a request for proposals, which shall state the relative importance of

price and other evaluating factors. Public notice of the request for proposals, describing the position sought and the criteria for the position, shall be given a reasonable time before the date for the opening of the bids. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

- B. Subcontracts While Using A CMGC: When entering into any subcontract that was not specifically included in the CMGC's cost proposal, the CMGC shall procure the subcontractor by using sealed invitation for bids or sealed request for proposals.
- C. Prequalification: Bidders for the position of CMGC may be required to "prequalify" by presenting their state contractor's license, performance bond and other qualifications (e.g., length of time in the business, list of jobs previously done, and written permission to contact previous employers, etc.) at the time they submit their bids.
- D. Design Build Provider: A design build provider, as defined in Utah Code Annotated section 63G-6a-103, may be used as one method of construction contracting management for a City building construction project. (Ord. 822-A, 5-13-2015)

1-16-9: USE OF REQUEST FOR PROPOSALS IN LIEU OF INVITATION FOR BIDS:

- A. When the purchasing agent determines in writing that the use of invitation for bids is either not practicable or not advantageous to City, a contract may be entered into by use of a request for proposals. Request for proposals may be used for the procurement of services of consultants or professionals, whether or not the determination described in this section has been made. (Ord. 822-A, 5-13-2015)

1-16-10: RULES AND GUIDELINES FOR REQUEST FOR PROPOSALS:

- A. Public notice of the request for proposals shall be publicly advertised through one of the following methods: use of internet purchasing websites, the City website and/or a newspaper published or of general circulation in the City at least ten (10) days before opening the proposals and shall state the date that proposals shall be submitted. This notice requirement shall not apply in instances of emergency repairs.
- B. Proposals shall be opened in public, but the contents of the proposals shall not be disclosed to competing offerors during the process of negotiation except in the case of a local vendor preference under subsection 1-16-7A4 of this chapter. The City may disclose to the public the names of those who have submitted proposals to the City.
- C. A register of proposals shall be prepared and filed in the office of the City purchasing agent, which shall be open for public inspection after the contract is awarded.
- D. The request for proposals shall state the relative importance of price and other evaluating factors, and shall state the period of time in which the submitted proposal must remain valid.
- E. Discussions may be conducted with responsible offerors who submit proposals for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.
- F. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- G. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.
- H. Revisions may be permitted after submissions and before the contract is awarded for the purpose of clarifying the offeror's proposal, or obtaining the best and final offers.
- I. The contract shall be awarded to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.
- J. The contract file shall contain the basis on which the award is made. (Ord. 822-A, 5-13-2015)

1-16-11: EXEMPTIONS:

- A. To the extent set forth herein or as otherwise required by law, the following purchases are exempt from the requirements of section 1-16-6 of this chapter:
 - 1. Contracts for the repair, alteration or construction of building improvements and public works projects, which must conform to the requirements of Utah Code Annotated section 11-39-101 et seq., as amended.
 - 2. Contracts for the management, maintenance, operation or construction of jails, which must conform to the requirements of Utah Code Annotated section 17-53-311, as amended.
 - 3. Existing contracts for goods or services negotiated prior to enactment of this chapter.
 - 4. Contracts which by their nature are not suited to award on a competitive basis.
 - 5. Purchases that a City official determines can be made at below market cost at a public auction, closeout sale, bankruptcy sale or other similar sale.
 - 6. Exchanges with other public agencies that a City official determines can be made at a savings to the taxpayer.
 - 7. Purchases from vendors on the state of Utah purchasing office bid list or in the NAACO purchasing program.
 - 8. Purchases of supplies, equipment or services produced by Utah correctional industries.
 - 9. Purchases of goods or services approved by the City Manager as necessary to meet an emergency need.
 - 10. Joint purchase agreements with other public agencies and organizations when the City Manager determines the joint purchase agreement to be in the best interest of the City.
 - 11. Professional service contracts for external auditor as administered through the City auditor office.

1-16-12: VALUE AMOUNTS:

- A. Value amounts used herein refer to both unit cost and combined multiple unit cost and a determination of the estimated value of supplies, equipment or services that have been requested by purchase requisition shall be made by the purchasing agent in

determining the applicability of the bidding procedure after review of the pertinent purchase requisition and specifications. (Ord. 822-A, 5-13-2015)

1-16-13: CHANGE ORDERS:

- A. A change order form must document any change order for an approved contract. Change orders shall require the following authorizations:
1. When a change of condition or additional work is required to continue the orderly progression of an authorized project, a change order shall be prepared by the department head directing the work to be accomplished at contract unit prices, an agreed upon lump sum price or as provided for by contract.
 2. Change orders, either singly or in aggregate, or in aggregate with adjustments in individual bid items, for less than twenty thousand dollars (\$20,000.00) or up to ten percent (10%) of the contract price, whichever is greater, and within the appropriated budget, may be authorized by the department head and the purchasing agent.
 3. Change orders, either singly, or in aggregate, or in aggregate with adjustments in individual bid items, in excess of the limits placed in subsection A2 of this section, must be preauthorized by the City Manager. However, such change orders may be approved by the department head and the purchasing agent and submitted to the City Manager for ratification under the following circumstances:
 - a. The failure to immediately issue a change order may result in significant project cost increases or an unacceptable project delay due to work stoppage or other inefficiencies; and
 - b. Funding for the change order is currently available within the appropriated budget. Additional contract work outside the scope of work as defined in the contract or in excess of the appropriated budget requires approval by the City council and a supplemental appropriation.
 4. Notwithstanding the above change order authorizations, the department head and purchasing agent may authorize emergency changes in work outside the original scope of work or in excess of the appropriated contract. For the purpose of this subsection, an emergency condition will exist if the failure to act immediately will endanger the public health, safety or welfare or will jeopardize the fiscal position of City. Such emergency action shall be reported in full to the City Manager within seventy two (72) hours. (Ord. 822-A, 5-13-2015)

1-16-14: EMERGENCY PURCHASES:

- A. In certain situations, such as, but not limited to, during the declaration of an emergency, it may be necessary to make emergency purchases, which shortcut the preapprovals required for intermediate or major purchases, as outlined in this chapter. An emergency purchase may be made when there is an immediate need to acquire a particular good or service not already available to City staff. For purposes of this section, an emergency situation is one in which there is an immediate threat to life or property or in which there is or would be a complete disruption of a vital public service. The emergency must

be of such a nature and severity that the department head would be immediately notified, regardless of time of day.

- B. An emergency purchase of up to twenty thousand dollars (\$20,000.00) or less must be preapproved verbally by the appropriate department head. An emergency purchase over twenty thousand dollars (\$20,000.00) must be preapproved verbally by the department head and either the City Manager or purchasing agent. After an emergency purchase has been made, a purchase order shall be requested from and prepared by the auditor's office on the next working day. Documentation signed by the department head should include a description of the emergency.
- C. In all cases, the City Manager shall be notified within seventy two (72) hours of any and all emergency purchases. (Ord. 822-A, 5-13-2015)

1-16-15: SUBDIVISION OF PURCHASE PROHIBITED:

- A. No contract or purchase shall be subdivided so as to avoid the requirements of this chapter.

1-16-16: INTERLOCAL COOPERATION:

- A. Wherever the public benefit can be maximized and costs minimized by entering into joint agreements with other public agencies or organizations for the purchase or construction of any commodity, service or public work, the City shall have the power to so agree, upon approval and action by the City Manager.

1-16-17: COMPUTER HARDWARE AND SOFTWARE PURCHASES; ADDITIONAL REQUIREMENTS:

- A. To ensure compatibility with the City's existing computer and communication systems, all hardware and software purchases will be reviewed and preapproved by the Director of Information Technology.

1-16-18: PROHIBITED PRACTICES:

- A. It shall be unlawful for any officer, agent or employee of the City, or any outside party or entity dealing or seeking to deal with the City to engage in any of the following practices:
 - a. Collusion or other agreement among bidders or prospective bidders, in restraint of freedom of competition, to fix or in any way rig prices or bids. In addition, any bid tainted with such collusion shall be voidable at the option of the City.
 - b. Disclosure in advance of the opening of bids of the amount or content of one bid to another bidder or potential bidder. If the City Manager deems such disclosure sufficiently material, he shall void the bidding process and require a new advertisement or invitation for bids.
 - c. Tender or acceptance of any gratuity in the form of cash, merchandise or other thing of value by a bidder, vendor or contractor to an officer, agent or employee of the City, whether before or after a bid opening or the execution of a contract, which could reasonably be expected to influence him/her in the performance of

his/her duties or was intended as a reward for any official action on his/her part.

- d. Purchase of supplies or equipment for the personal use of an officer, agent or employee of the City in the name of the City, whether part of a City purchase or contract or separate, and whether paid for with City funds or personal funds of the purchaser. Sole exception shall be where the item or items purchased are required parts of a worker's equipment or uniform and necessary to the successful performance of his/her duties as a City officer or employee, although personally owned by him/her.

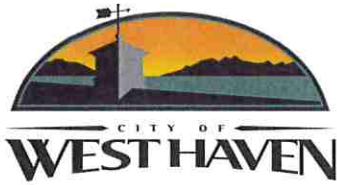
1-16-19: DOCUMENTATION AND RETENTION OF BIDS:

- A. Whenever the City is required by this chapter to receive bids for purchases, construction, repairs, or any other purchase requiring the expenditure of funds, the City department who is in receipt of the bids shall keep all bids received, together with proof of advertisement by publication or otherwise, for at least three (3) years following the letting of any contract pursuant to those bids or three (3) years following the first advertisement for the bids, if all bids pursuant to that advertisement are rejected. Utah Code Annotated section 17-53-225(2).

1-16-20: PROTESTS:

- A. A person who is an actual or prospective bidder, offeror, or contractor that is aggrieved in connection with a procurement or award of a contract may protest to the City Manager as follows:
 1. File a written protest with the City Manager setting forth the protestor's name, physical mailing address, e-mail address, and a concise statement of the grounds upon which the protest is made.
 2. The written protest must be received by the City Manager before the opening of bids or the closing date for proposals. However, if the person did not know and should not have known of the facts giving rise to the protest before the bid opening or the closing date for proposals, then the person must file the written protest within seven (7) calendar days after the day on which the person knows or should have known of the facts giving rise to the protest.
 3. A person who fails to timely file a written protest under this section may not bring a protest, action, or appeal challenging a solicitation or award of a contract before the City Manager, the council, a court, or any other forum.
 4. The City Manager may enter into a settlement agreement to resolve a protest.
- B. After a timely written protest is filed in accordance with subsection A of this section, the City Manager shall consider the protest and may hold a hearing on the protest.
 1. The City Manager may subpoena witnesses and compel their attendance at a protest hearing.
 2. The City Manager may subpoena documents for production at a protest hearing.
 3. The rules of evidence do not apply to a protest hearing.
 4. The City Manager may allow intervention of other parties into a protest.

5. If a hearing on a protest is held, the City Manager shall record the hearing and preserve all evidence presented at the hearing.
 6. Regardless of whether a hearing on a protest is held, the City Manager shall preserve all records and other evidence relied upon in reaching the written decision described in subsection B8 of this section.
 7. The records described in subsections B5 and B6 of this section may not be destroyed until the written decision, and any appeal of the written decision, becomes final.
 8. The City Manager shall promptly issue a written decision regarding any protest or contract controversy if it is not settled by mutual agreement. The written decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the council. The City Manager shall mail, e-mail or otherwise immediately furnish a copy of the written decision to the protestor, contractor, or prospective contractor.
 9. If the City Manager does not issue the written decision regarding a protest within thirty (30) calendar days after the day on which a written request for a final decision is filed with the City Manager by the protestor, or within a longer period as may be agreed upon by the parties, the protestor, contractor or prospective contractor may proceed as if an adverse decision had been received.
 10. A decision described in subsection B8 of this section is effective until stayed or reversed on appeal.
 11. The City Manager may dismiss a protest which is not filed in accordance with the requirements of this chapter.
- C. A written appeal setting forth the grounds for the appeal must be filed with the City Council within ten (10) calendar days of the date of the written decision of the City Manager.
1. The City Council shall presume that the written decision of the City Manager is valid and determine only whether or not the decision is arbitrary or capricious.
 2. The City Council's review is limited to the City Manager's administrative record. The council may not accept or consider any evidence outside of the City Manager's administrative record.
 3. The City Council shall issue a written decision regarding any appeal.
 - a. The written decision shall state the reasons for the action taken and inform the protestor, contractor or prospective contractor of the right to appeal this final decision of the City to district court within thirty (30) calendar days of the date of the written decision.
 - b. The district court's review is limited to the council's appellate record in the determination of whether or not the council's written decision is arbitrary or capricious.



WEST HAVEN CITY COUNCIL MEETING MINUTES

July 6, 2022 6:00 P.M.
City Council Chambers
4150 South 3900 West, West Haven, UT 84401

Present: Carrie Call Mayor Pro Tem
Ryan Saunders Councilmember
Nina Morse Councilmember
Kim Dixon Councilmember
Ryan Swapp Councilmember

Staff Present: Emily Green City Recorder
Matthew Jensen City Manager
Amy Hugie City Attorney
Shari Phippen Community Development Director

Excused: Rob Vanderwood Mayor

5:00 Council Workshop

Mayor Pro Tem Call brought the meeting to order.

Matthew Jensen went over the road standards that are currently in place and why we may want to modify for rural areas.

Matthew Jensen went over the LKL Subdivision and the cost sharing options for the city.

Shari Phippen went over the landscaping ordinance.

1. MEETING BROUGHT TO ORDER:

The Council met at their regularly scheduled meeting held in the Council Chambers.
Mayor Pro Tem Call brought the Meeting to order at 6:01 pm. and welcomed those in attendance.

2. OPENING CEREMONIES

- A. Lead by Councilmember Morse
- B. Lead by Councilmember Swapp

3. PUBLIC PRESENTATION

Jeff Reed who lives in Fields at Green Farm said that they are suffering from a lack of amenities that were promised by the developer.

Joseph Landon is concerned about the landscaping of the regional trail because the Master Development Agreement requires it and there hasn't been any landscaping yet and there is quite a bit of debris as well.

Daniel Smith would like to propose that ordinance 62.10.03 be changed to allow people to live in their camper on properties.

4. ACTION ON CONSENT AGENDA

A. CITY COUNCIL MINUTES	MEETING HELD	June 15, 2022
B. UTAH LOCAL GOVERNMENT TRUST	\$43,284.28	Inv.#F1600001-1600004
C. GARDNER ENGINEERING	\$30,235.25	Inv.#0522172-0522179
D. CXT INCORPORATED	\$197,955.00	Inv.#90044559

Councilmember Morse made a motion to approve the consent agenda. **Councilmember Swapp seconded** the motion. **Roll Call:** Councilmember Call, aye; Councilmember Dixon, aye; Councilmember Morse, aye; Councilmember Saunders, aye; Councilmember Swapp, aye; **Vote was unanimous.**

5. **ACTION ON PLANNING COMMISSION MEETING RECOMMENDATION(S)**

A. ACTION ON ORDINANCE 12-2022-REZONE FROM C-2 TO M-1-NORTH EAST CORNER OF 1900 W AND WILSON LANE (PARCEL NUMBERS 150700028, 15070029, 15070041, 15070042, 15070043, 150690039, 150690040, 150690042)-MILLER FUNDING GROUP

Councilmember Swapp asked about the aesthetics of the building.

Brook Morris said they will all follow the same theme.

Councilmember Dixon asked if they are running the property as well as developing and how many businesses.

Mr. Morris confirmed they will be running the property and that there will be 4-6 businesses

Mayor Pro Tem Call said that she does not want to give up commercial on 1900 W.

Councilmember Swapp asked if there is any room in the design for commercial up front.

Mr. Morse said the current design does not allow for it and Utah Department of Transportation will only allow one access.

Councilmember Morse made a motion to adopt ordinance 12-2022. **Councilmember Saunders seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, nay; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Motion passes 4:1.**

B. PRELIMINARY SUBDIVISION APPROVAL-SUNSET FARMS SUBDIVISION-3417 S 2700 W-TYLER PETERSON

Councilmember Morse asked if they were removing the front house.

Ken Peterson said they are not removing the house just renovating it.

Mayor Pro Tem Call asked if this includes improvements on 2700 W.

Mr. Peterson confirmed it does.

Councilmember Swapp asked if they are not doing a sidewalk on the south side.

Mr. Peterson confirmed there will not be a sidewalk on the south side.

Councilmember Dixon made a motion to give preliminary subdivision approval. **Councilmember Morse seconded** the motion. Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

C. PRELIMINARY SUBDIVISION APPROVAL-THE VILLAGE AT GREEN FARMS-APPROX. 3700 S 4450 W (PARCEL NUMBERS 080370238, 080370206, 080370222, 080370207, 080370120, 080370072)-NILSON HOMES

Councilmember Morse said there is not a site plan for the open space which is required by the Master Development Agreement.

Jake Jones said they could come back with a site plan.

Councilmember Morse said there is supposed to be a neighborhood park on parcel C and asked about the temporary road through Kaneville Meadows and why it is still there.

Mr. Jones said that the road to the west has not been completed and that's why they have not taken out the temporary road to Kanesville Meadows.

Mayor Pro Tem Call said that the roads are only listed as 27 feet but our standards require 28 feet.

Mr. Jones said they will fix that.

Councilmember Swapp made a motion to deny preliminary subdivision approval. **Councilmember Morse seconded** the motion. Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

D. ACTION ON ORDINANCE 13-2022-LANDSCAPING STANDARDS AND REQUIREMENTS

Mayor Pro Tem Call suggested a notification in advance.

Shari Phippen said we could at 7-10 days written notice to the property owner.

Councilmember Morse made a motion to adopt ordinance 13-2022 with the following changes: on page 5 section 1 remove subsections b and c, on page 8 irrigation design standards section 2 change the first sentence to Landscaped areas shall utilize a smart automatic irrigation controller, on the same page section 4 the first sentence will be changed to Drip emitters or a bubbler shall be used for each tree, on page 9 under irrigation design standards section 10 remove the last sentence of the paragraph, on page 10 in tree & shrub regulations for public ways and places section 4 add to the sentence the city shall have the right, as determined by its sole discretion, and after attempting to contact property owners and the same thing added to page 11 in the same section under subsection 7. **Councilmember Dixon seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, nay; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Motion passes 4:1.**

6. ACTION ON RESOLUTION 16-2022-LOCAL TRANSPORTATION FUNDING AGREEMENT BETWEEN WEST HAVEN CITY AND WEBER COUNTY-1800/2100 S

Councilmember Swapp made a motion to adopt resolution 16-2022. **Councilmember Morse seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

7. ACTION ON RESOLUTION 17-2022-LOCAL TRANSPORTATION FUNDING AGREEMENT BETWEEN WEST HAVEN CITY AND WEBER COUNTY 3300/3600 S

Councilmember Morse made a motion to adopt resolution 17-2022. **Councilmember Dixon seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

8. ACTION ON RESOLUTION 18-2022-LOCAL TRANSPORTATION FUNDING AGREEMENT BETWEEN WEST HAVEN CITY AND WEBER COUNTY-2700 W

Councilmember Saunders made a motion to adopt resolution 18-2022. **Councilmember Swapp seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

9. DISCUSSION AND POSSIBLE ACTION-ESTABLISHING A COMMITTEE TO REVIEW THE PERSONNEL POLICY

Councilmember Dixon and Mayor Pro Tem Call volunteered for this committee.

Councilmember Dixon made a motion to proceed with the committee. **Councilmember Morse seconded** the motion. Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

10. DISCUSSION AND POSSIBLE ACTION-USE OF ARPA FUNDS FOR PURCHASE OF A MOBILE GENERATOR

Councilmember Morse made a motion to deny the use of ARPA funds for purchase of a mobile generator. **Councilmember Swapp seconded** the motion. Councilmember Saunders, nay; Councilmember Call, nay; Councilmember Swapp, aye; Councilmember Dixon, nay; Councilmember Morse, aye; **Motion fails 2:3.**

Councilmember Saunders made a motion to approve the use of ARPA Funds for purchase of a mobile generator and set the public hearing to July 20, 2022. **Councilmember Dixon seconded** the motion. Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, nay; Councilmember Dixon, aye; Councilmember Morse, nay; **Motion passes 3:2.**

11. **EXECUTIVE SESSION**-The Council will consider a motion to enter into a closed meeting for the purpose of a strategy session to discuss the character and professional competence of an individual to be held in accordance with the provisions of Utah Code 52-4-205.

Councilmember Swapp made a motion to enter into an executive session. **Councilmember Morse seconded** the motion. Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

Mayor Pro Tem Call said that the executive session was used to discuss the character and professional competence of an individual to be held in accordance with the provisions of Utah Code 52-4-205.

Councilmember Dixon left the meeting at 8:11 PM.

Councilmember Saunders left the meeting at 8:11 PM.

Councilmember Swapp made a motion to leave the executive session. **Councilmember Morse seconded** the motion. Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Morse, aye; **Vote was unanimous.**

Councilmember Dixon entered the meeting at 8:15 PM.

Councilmember Saunders entered the meeting at 8:15 PM.

12. **ACTION ON RESOLUTION 19-2022-CONTRACT FOR PROFESSIONAL LEGAL SERVICES WITH AMY HUGIE AND WEST HAVEN CITY**

Councilmember Swapp made a motion to adopt resolution 19-2022. **Councilmember Saunders seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

13. **ACTION ON RESOLUTION 20-2022-CONTRACT FOR PROFESSIONAL LEGAL SERVICES WITH JOAN TOONE AND WEST HAVEN CITY**

Councilmember Dixon made a motion to adopt resolution 20-2022. **Councilmember Morse seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Vote was unanimous.**

14. **DISCUSSION AND POSSIBLE ACTION**-Notify public of pending rezones to Country Haven, Holmes Estates, Seicrist Acres, Joni Acres, Stonefield, Haven Estates, Seclusion Meadows, and Windsor Farms subdivisions within the Cit to correct an administrative error regarding those subdivisions' zoning designations; and that the city will not be accepting any building permit applications for primary residences or ADU's, subdivision applications, or site plans for commercial parcels until those rezones have occurred.

15. **ACTION ON ORDINANCE 14-2022-FIREWORK RESTRICTIONS**

Councilmember Swapp made a motion to adopt ordinance 14-2022 with the addition of through August 31, 2022, and adding the city parks to the map. **Councilmember Morse seconded** the motion. **Roll Call:** Councilmember Saunders, aye; Councilmember Call, nay; Councilmember Swapp, aye; Councilmember Dixon, aye; Councilmember Morse, aye; **Motion passes 4:1.**

16. **UPCOMING EVENTS**

Senior Lunch Bunch-July 27, 2022-11:30 AM

Howdy Hall with Mayor and Friends-July 27, 2022-5:30-6:30 PM

17. **COUNCIL UPDATES**

Councilmember Dixon gave a youth council update.

18. ADJOURNMENT

Councilmember Swapp moved to adjourn at 9:58 PM. Councilmember Saunders seconded the motion. Councilmember Morse, aye; Councilmember Dixon, aye; Councilmember Call, aye; Councilmember Swapp, aye; Councilmember Saunders, aye; **Vote was unanimous.**

Emily Green
City Recorder

Date Approved: _____

DRAFT

CITY COUNCIL

Meeting Date: July 20, 2022
Agenda Item: WBWCD Contract
Secondary Water for City Hall
Requested by: Brock Randall
Staff Review: Matt Jensen



EXECUTIVE SUMMARY

When City Hall was built, a formal agreement for secondary water was never finalized. A contract and connection fee for service is required by Weber Basin Water Conservancy District. This is similar to the situation that occurred with the Country Park which the Council reviewed and approved on October 20, 2021. City staff coordinated with Weber Basin to hold off on the City Hall connection until July so the FY2023 budget could be implemented.

REVIEW

To facilitate this connection, a Petition for an Allotment of Water needs to be completed. If approved and granted, the initial fee would be \$16,166.86 followed by an annual connection cost starting at \$1,200.16 along with a \$150 inspection fee. Additionally, a Single Lot Takeover Agreement will need to be signed. Two water shares of Wilson Irrigation will need to be transferred to Weber Basin as well.

These agreements were reviewed by the City Attorney. They consulted with a water rights attorney to confirm appropriateness. It was affirmed that this is standard practice for additional water connections.

COUNCIL ACTION REQUESTED

- Pass resolution to approve the Petition for an Allotment of Water and Single Lot Takeover Agreement.
- Direct staff to explore other options

EXHIBIT A – Agreement Documents

See attached pages

Resolution No. 21-2022

RESOLUTION OF WEST HAVEN CITY AUTHORIZING ADOPTION OF THE SERVICE CONNECTION TAKEOVER AGREEMENT AND ADOPTION OF THE PETITION FOR THE ALLOTMENT OF WATER BETWEEN THE CITY AND WEBER BASIN WATER CONSERVANCY DISTRICT; AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS ON BEHALF OF THE CITY; AUTHORIZING THE CITY MAYOR TO SIGN THIS RESOLUTION; AND, PROVIDING FOR AN EFFECTIVE DATE.

SECTION I – RECITALS:

WHEREAS, the City Council of West Haven City (herein "City") is a municipal corporation duly organized and existing under the laws of the State of Utah; and,

WHEREAS, in conformance with the provisions of UCA § 10-3-717, the governing body of the City may exercise all administrative powers by resolution including, but not limited to entering into agreements with state agencies regarding protecting the health, safety, and welfare of the public; and,

WHEREAS, the City Council wishes to enter into a Service Connection Takeover Agreement ("Agreement") and a Petition for the Allotment of Water ("Petition") with Weber Basin Water Conservancy District; and,

WHEREAS, the City Council desires to provide secondary water irrigation for the property around West Haven City Hall ("City Hall"); and

WHEREAS, the City Council desires to enter into the Agreement and the Petition with Weber Basin Water Conservancy District in order to provide secondary water irrigation for City Hall; and

WHEREAS, the City Council feels that the best way to accomplish these goals is to adopt this Agreement and Petition; and

WHEREAS the City Council now desires to adopt this Agreement and Petition by accepting the terms thereof; and,

WHEREAS, the City finds that the public convenience and necessity requires the actions herein contemplated,

NOW, THEREFORE, BE IT RESOLVED by the City of West Haven as follows:

SECTION II. AGREEMENT :

1. That the Service Connection Takeover Agreement and the Petition for the Allotment of Water between Weber Basin Water Conservancy District, a copy of both

documents which are attached as Attachment A to this Resolution, is hereby adopted by the City Council.

2. That the City Manager is authorized to sign any and all documents necessary to effect this Agreement and Petition, including signing the Agreement and Petition themselves.
3. That the Mayor is authorized to sign this Resolution.

SECTION III. PRIOR ORDINANCES AND RESOLUTIONS:

The body and substance of any and all prior Resolutions, together with their specific provisions, where not otherwise in conflict with this Resolution, are hereby reaffirmed and readopted.

SECTION IV. REPEALER OF CONFLICTING ENACTMENTS:

All orders, and Resolutions with respect to the changes herein enacted and adopted which have heretofore been adopted by the City, or parts thereof, which are in conflict with any of the provisions of this Resolution, are, to the extent of such conflict, hereby repealed, except that this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

SECTION V - SAVINGS CLAUSE:

If any provision of this Resolution shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable for any reason, such reason shall not have the effect of rendering any other provision or provisions hereof invalid, inoperative or unenforceable to any extent whatever, this Resolution and the provisions of this Resolution being deemed to be the separate independent and severable act of the City Council of West Haven City.

SECTION VI. DATE OF EFFECT

This Resolution shall be effective immediately upon its passage on the 20th day of July, 2022.

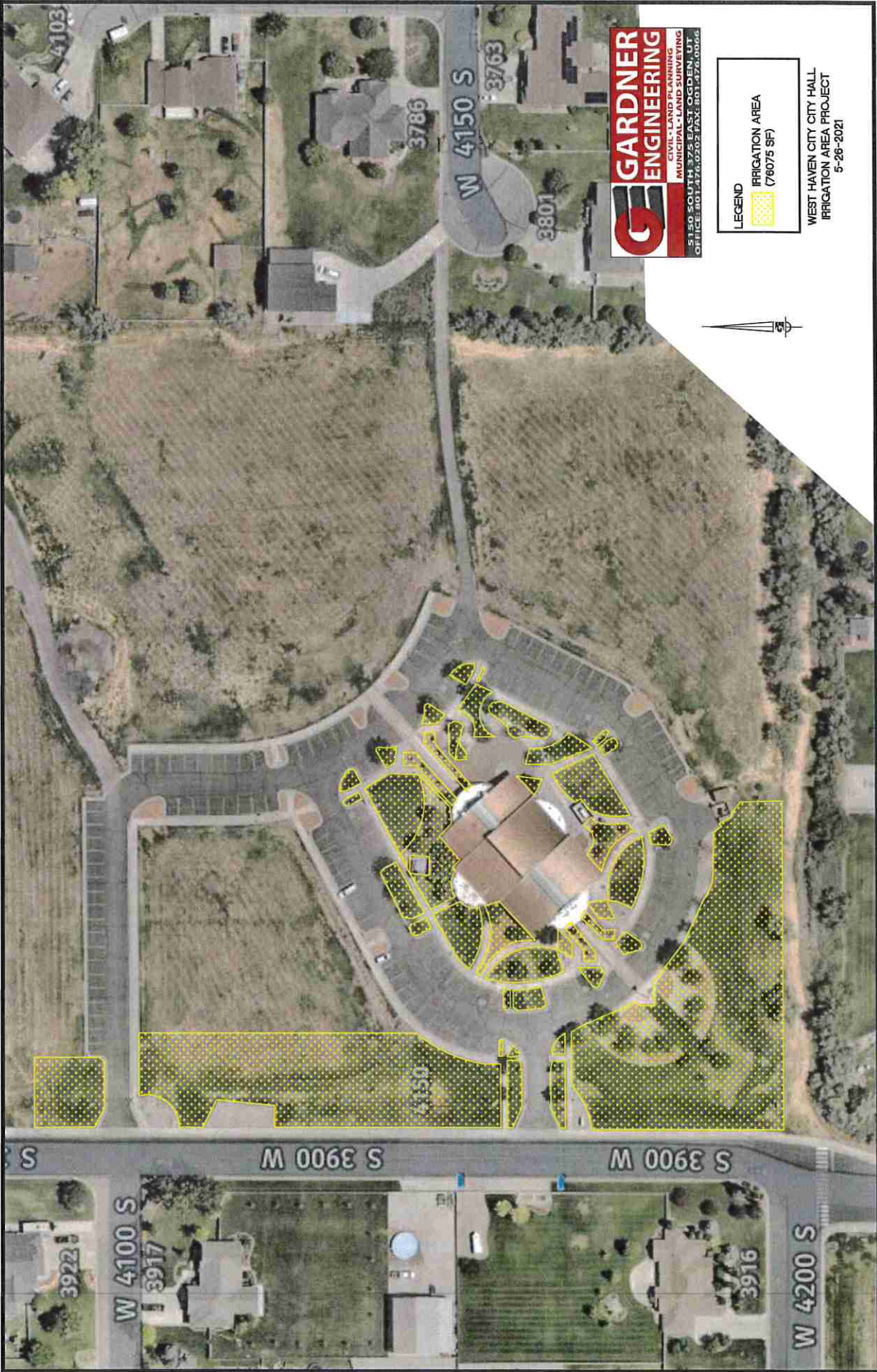
PASSED AND ADOPTED BY THE CITY COUNCIL OF WEST HAVEN CITY, STATE OF UTAH, on this 20th day of July, 2022.

WEST HAVEN CITY

Mayor Rob Vanderwood

ATTEST:

City Recorder



GARDNER ENGINEERING
 CIVIL-LAND PLANNING
 MUNICIPAL-LAND SURVEYING
 2510 SOUTH STATE STREET
 OFFICE: 801.462.0030 FAX: 801.474.0066



LEGEND
 IRRIGATION AREA
 (76075 SF)

WEST HAVEN CITY HALL
 IRRIGATION AREA PROJECT
 5-26-2021

WEBER BASIN WATER CONSERVANCY DISTRICT

SERVICE CONNECTION TAKEOVER AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20__, between, West Haven City as the first party, hereinafter called Owner, and WEBER BASIN WATER CONSERVANCY DISTRICT, as second party, hereinafter called District.

RECITALS:

WHEREAS, Owner is the owner of a secondary water service connection consisting of a main connection, service lateral, and meter through which owner will receive Weber Basin Secondary Water at West Haven City Hall, in West Haven, Weber County, Utah. WHEREAS, the service connection has been installed in accordance with District specifications, passed a final construction inspection, and declared as complete by the District.

WHEREAS, the Owner is desirous to have the District take over the system including operation and maintenance of the water service connection, and the District is agreeable to accepting the transfer and conveyance to it, subject to the terms and conditions hereinafter set out.

NOW THEREFORE, in consideration of the premises, it is agreed between the parties hereto as follows:

1. The Owner hereby transfers and conveys to the District, following the warranty period described in Paragraph 3 hereof, that certain secondary water service connection presently owned by Owner and serving property at West Haven City Hall, in West Haven City, Weber County, Utah, together with the main connection, lateral, meter and all facilities constituting the connection, excluding any features that are outside and downstream of the meter enclosure and towards the Owner's side of the system.
2. District accepts the transfer and conveyance to it of the water service connection described in Paragraph 1 above, and agrees, subject to the provisions of Paragraph 3 hereof, to operate and maintain it at District's expense.
3. The Owner hereby warrants and guarantees that the secondary water connection provided for and every part thereof, shall remain in good operating condition for a minimum period of one (1) year following the Initial Charging Date as defined herein, and agrees to make all repairs to and maintain the system and every part thereof in good condition during that time with no expense to the District. If, at the end of this warranty period, the service connection is acceptable to the District by virtue of it passing a final takeover inspection, the District shall assume all responsibilities for the system as stated herein. During the Owner's warranty period, the service connection shall remain fully operational during any concurrent irrigation season and all necessary repairs shall be performed in a timely manner. If said repairs are not made within a reasonable amount of time as determined by the District, the

District reserves the right to perform the repairs at the expense of the Owner or to take other action as it deems appropriate. However, such action taken by the District will in no way relieve the Owner from its obligation to maintain the secondary system for the remainder of the warranty period and no claims shall be made against the District for work it performs.

4. Owner agrees to indemnify and hold District harmless against and in respect of any liabilities of whatever nature arising prior to the takeover of the system by the District as a result of the construction, blue staking, maintenance, and/or operation of said service connection.
5. Owner warrants the said system to be in all respects free from liens and encumbrances.
6. The Initial Charging Date is defined as the date that the connection is fully charged to its operating pressure and successfully placed into service to the satisfaction of the District for the first time. Said date shall occur during the irrigation season. The District shall notify the Owner of this date in writing once the system has been successfully charged.

WITNESS the hands of the parties hereto, the date and year first above written.

*OWNER:

Signature: _____

Title: _____

*DISTRICT:

TAGE I. FLINT: _____

Title: General Manager

*Notarizations on following page.

STATE OF UTAH)

: ss

COUNTY OF _____)

On the ___ day of _____, 20___, personally appeared before me _____, who acknowledged to me that he/she executed the foregoing as Owner.

Notary Public
My commission expires
Residing at

STATE OF UTAH)

: SS

COUNTY OF _____)

On the _____ day of _____, 20_____, personally appeared before me _____, of the WEBER BASIN WATER CONSERVANCY DISTRICT, who being by me duly sworn did say that he is the _____ of said District and that said instrument was signed in behalf of said Weber Basin Water Conservancy District by authority of a resolution of the Board of Directors, and the said acknowledged to me that the said Weber Basin Water Conservancy District executed the same.

_____ Notary Public
My commission expires
Residing at

Initial Charging Date : _____.

District Takeover Date: _____.

Area: West Haven
Original Petitioner: _____
Current Petitioner: West Haven City
Development: West Haven City Hall
WCS Number: 08-050-0006

Not billed thru taxes Security Required

**PETITION TO WEBER BASIN WATER CONSERVANCY DISTRICT
FOR THE ALLOTMENT OF WATER**

West Haven City, (herein "Petitioner") hereby applies to the Weber Basin Water Conservancy District (herein "District") for the allotment of untreated water for the Irrigation of land situated in Weber county, Utah described as follows (the "Land" or the "Lands"):

Section 9, Township 5N, Range 2W, 11.48 Acres

Serial Tax I.D. No.(s):

Parcel No.(s): 08-050-0006

Description of Lands:

PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING 758.77 FEET EAST AND SOUTH 00D52'24" WEST 628.11 FEET FROM THE NORTHWEST CORNER OF NORTHEAST QUARTER RUNNING THENCE SOUTH 691.89 FEET, THENCE WEST 759 FEET, THENCE NORTH 692.73 FEET, THENCE SOUTH 89D15'11" EAST 755.39 FEET TO THE POINT OF BEGINNING. EXCEPTING THERE FROM ANY PART THAT IS WEST OF THE STREET.

1. APPROVAL BY DISTRICT. In the event that the District grants this petition by executing the Order on Petition, attached hereto, this instrument shall be a Contract between the Petitioner and the District (sometimes referred to herein as the "Contract"), which Contract shall be effective on the date upon which the District enters the Order on Petition. (the "Land" or the "Lands")

2. OBLIGATION TO PAY. In Consideration of such allotment and upon condition that this petition is granted by the District, Petitioner agrees:
 - 2.1. To pay for the right to use District allotted water annually, which payment initially shall be \$1,200.06, as such payment amounts may thereafter be adjusted annually by the District's Board of Trustees, as outlined herein below. A portion of the above payment amount is to be applied to the extent required on the District's obligations under bonds or other government-District Contracts or capital expenditures and is to be fixed from time to time by the District's Board of Trustees. The remainder of the above payment amount is to apply to the District's general operation, maintenance, and repair and replacement expenses and other special expenses and costs incurred in operating, maintaining, repairing and replacing the separate facilities of the District used or required in servicing this Contract, hereinafter referred to as "OM&R". Such fair OM&R amounts shall be estimated each year by the Board of Trustees of the District, and any such determination shall be final and conclusive and binding on all parties. If such estimate is more than the actual cost thereof, an appropriate adjustment will be made in the annual OM&R amount for the year following the year for which the estimate was made.
 - 2.2. The amount so fixed shall be paid whether or not Petitioner actually takes or uses the water allotted.
 - 2.3. The first payment of the amount so fixed shall be a tax lien upon the above described Lands. The Petitioner shall be bound by the rules and regulations of the District's Board of Trustees. Nothing contained in this paragraph shall be construed to exempt the Petitioner from paying the taxes levied.
 - 2.4. The charges specified in this paragraph (2) shall remain effective against the Lands herein described, provided however that (i) the District may reallocate the water allotted pursuant to this petition, and the charges specified in this paragraph (2), to parcels of said land in separate ownership in accordance with the rules and regulations of the District; and (ii) further provided that the District is expressly entitled to, as a condition to the continued receipt of water on the Lands require any subsequent purchaser and/or owner of the Lands, or any portion of the Lands, to execute a new Contract, assignment, and/or assumption agreement containing water purchase Contract terms that are consistent with the then prevailing District policies and procedures.

- 2.5. Notwithstanding any of the forgoing, the District shall be entitled to change the charging structure of this Contract, including the amounts charged under this Contract, as determined from time to time by the District's Board of Trustees. The District may, in its sole and absolute discretion, change the billing structure outlined herein, including but not limited to changing the billing structure so that the Petitioner is billed based on the amounts of water used ("bill for use"), such that the District may choose to charge by the unit or gallon delivered or used, and may institute tiers that provide for increasing charges for each such unit based on the total use. As outlined in this Contract, Petitioner is obligated to install appropriate metering and measuring devices. Petitioner agrees that any such meter will satisfy all requirements of the District and will properly measure water usage, which measurements may be used by the District in determining any overuse, as outlined below, and in determining the appropriate charge under any bill for use payment structure adopted by the District under this paragraph.
- 2.6. The volume District allotted water shall be determined on an annual basis by the District, in its sole and absolute discretion. This volume will be based on the District's determination of the appropriate water volume for the Lands, considering then existing land size, landscaping and hardscape, efficient watering practices and irrigation technologies. The District shall be entitled to change the volume of District allocated water as determined from time to time by the District's Board of Trustees to reflect advancing irrigation technologies, changing landscaped and improvements to irrigation practices that may result in more efficient irrigation practices.
3. PENALTY FOR DELINQUENCY. Every installment or charge required to be paid to the District under this Contract, which shall remain unpaid after its due date, shall bear interest from date of delinquency at a rate of 18% APR.
4. REMEDIES IN CASE OF DEFAULT. If the Petitioner shall fail to make any payment due hereunder on or before the due date, or in the event that the petitioner shall violate any of the terms of this Contract, the District may refuse the delivery of water, or upon written notice to Petitioner, cancel this Contract in its entirety, but either or both of these remedies are not exclusive. The District may exercise any other remedy given by this Contract or by law to enforce collection of any payment due hereunder.
5. DELIVERY OF WATER. District water so allotted shall be delivered and measured at a point or points designated by the District. It shall not be the responsibility of the

District to provide facilities to convey the water from such point or points to the place of use. The District may use any water available to the District to the extent that it can be delivered at points where it can be used. Petitioner agrees to bear a pro rata share of all conveyance and evaporation losses. Petitioner shall install, at their own cost and at no cost to the District, a water meter, a customer value, and all other equipment necessary to meet current District standards.

6. SECURITY. The District may, as a condition of this Contract, require security to be pledged and committed by the Petitioner in addition to that security required in this Contract in order to insure and secure payments so required in this Contract. The sufficiency and form of security shall be determined by the District. Petitioner hereby agrees to commit to the District sufficient security as determined by the District and to supply whatever documentation is required by the District prior to this Contract becoming effective, wherein such commitment and documentation shall be a condition precedent to this Contract.
7. OVERUSE. The amount of water to which the Petitioner is entitled annually shall be determined annually by the District and be based on efficient watering practices and landscape needs. The Petitioner's water use shall not exceed the allotted amount as described above. In the event that Petitioner receives water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the Petitioner may be billed for the excess water at a rate or rates fixed from time to time by the Board of Trustees of the District and/or have service discontinued for the remainder of the year, in such manner as outlined in the District's then existing Policies and Procedures. Payment for use of water in excess of the allotted amount shall be paid within 30 days from notification by the District. Failure to make payment in full by the due date may result, at the District's sole discretion, in the discontinuation of service until payment in full is received by the District. Additionally, the repeated and/or excessive exceeding of the allotted amount, may result, at the District's sole and absolute discretion, in the discontinuation of service.
8. WATER SHORTAGE. In the event there is a shortage of District water caused by drought, inaccuracy in distribution not resulting from negligence, hostile diversion, prior or superior claims, or other causes not within the control of the District, no liability shall accrue against the District, or the United States, or any of their respective officers, agents, or employees for any damage, whether direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortages,

allocations of drinking water for municipal and domestic use and treated and untreated water for industrial use shall have first priority.

9. WATER CONSERVATION. The Petitioner shall, at a minimum, take the following actions to conserve and protect water: (i) keep water use within the District's conservation goals (ii) follow all applicable water use restrictions for landscape watering; (iii) follow all applicable landscape ordinances.
10. PERIODS OF DELIVERY. In no event shall the District be required to make deliveries of water hereunder other than during the irrigation seasons, the extent of which shall be determined solely by the District.
11. BENEFICIAL USE. The basis, the measure and the limit of the right of the Petitioner in the use of water shall rest perpetually in the beneficial application thereof, and the Petitioner agrees to put the water allotted Petitioner hereby to beneficial use in accordance with law. The Petitioner shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.
12. COMPLIANCE WITH LAW. The Petitioner agrees to comply fully with all applicable federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants.
13. INDEMNIFICATION. Petitioner agrees to indemnify, protect, and save and hold the District harmless against and in respect of any and all claims, losses, liabilities, damages, costs, deficiencies or expenses (including attorney's fees) resulting from any claim for any rights under the Contract or from the non-fulfillment of any covenant or agreement on the part of Petitioner under or relating to this instrument, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees and other expenses incident to any of the foregoing.
14. NUMBER AND JOINT LIABILITY. In this instrument, the singular number includes the plural and the plural number includes the singular. If this instrument is executed by more than one person, firm, partnership or corporation, the obligations of each such person, firm, partnership or corporation hereunder shall be joint and several.
15. NO THIRD-PARTY BENEFICIARIES. Nothing herein shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any person other than the District and

the Petitioner and their respective successors and permitted assigns, as specifically provided for in Paragraph 19, below.

16. **GOVERNING LAW; JURISDICTION.** This instrument shall be governed by and construed in accordance with domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the Status of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Petitioner submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this instrument and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Petitioner waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the District with respect thereto.
17. **INTERPRETATION.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this instrument. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.
18. **WAIVER.** No failure or delay in exercising any right, power or privilege under this instrument, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
19. **SUCCESSION AND ASSIGNMENT.** The Contract shall be binding upon and inure to the benefit of the parties named herein. Petitioner may not assign the Contract or any of its rights, interests, or obligations thereunder without the prior written approval

of the District. Any party that acquires title to any portion of the Lands described in this Contract (whether by purchase, conveyance or otherwise) shall do so subject to the terms and conditions of this Contract; provided however that the District is expressly entitled to, as a condition to the continued receipt of water on the Lands) require any such subsequent purchaser and/or owner of the Lands, or any portion of the Lands, to execute a new Contract, assignment, and/or assumption agreement containing water purchase Contract terms that are consistent with the then prevailing District policies and procedures.

20. FURTHER ACTS. The parties hereby agree for themselves and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of the Contract.
21. INCORPORATION OF RECITALS. The recitals set forth in this instrument are incorporated herein by reference and made a part hereof.
22. INTEGRATION. This instrument sets forth the entire understanding of the parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a party hereto or by any one acting on behalf of a party, shall be deemed to be merged in and superseded by this instrument and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this instrument. This instrument may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the parties.
23. AMENDMENTS. This instrument may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this instrument shall be valid or binding unless reduced to writing and signed by both the District and the Petitioner. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the parties that no provisions of this instrument, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by both the District and the Petitioner.
24. EXPENSES OF ENFORCEMENT. In any proceeding to enforce, interpret, rescind or terminate this instrument or in pursuing any remedy provided hereunder or by

applicable law, the prevailing party shall be entitled to recover from the other party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing party" shall include, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

25. **EFFECTIVE DATE.** This Contract shall become effective upon approval hereof by the District, as indicated by its endorsement herein below.
26. **REUSE.** The reuse of water delivered pursuant to this Contract shall not be allowed without permission of the District. The waste, seepage, or return flow from water delivered pursuant to this Contract shall belong to the United States or the District for the use and benefit of the District.
27. **NOTICE.** Any notice herein required to be given to the Petitioner shall be sufficiently given if sent by mail addressed to the Petitioner at the address listed below, or if sent by electronic mail address to the Petitioner listed below, if any such email address is listed, or through public notice, and to the District office if delivered to 2837 East Highway 193, Layton, Utah 84040.
28. **AUTHORIZED EXECUTION:** The individuals signing below each represent and warrant (i) that they are authorized to execute this instrument for and on behalf of the party for whom they are signing; (ii) that such party shall be bound in all respects hereby; and (iii) that such execution presents no conflict with any other agreement of such party.
29. **CONTRACT ASSESSMENTS.** This Petition is governed by the provisions of Utah Code Section 17B-2a-1007, titled "Contract Assessments", together with the rules and regulations of the District's Board of Trustees relating to Contract assessments.
30. **SUPERSEDES PRIOR AGREEMENTS.** Upon execution, this Contract shall supersede in its entirety any and all prior agreements or Contracts relating to the delivery of water by the District to or on the subject Lands.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

Petitioners and Owners of Land Above Described:

Address: _____

Email Address: _____

STATE OF)
 : ss.
COUNTY OF)

On the _____ day of _____, 20____, personally appeared before me

_____ the signer(s) of the above instrument, who
duly acknowledged to me that he executed the same.

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

Notary Public

(SEAL)

ORDER ON PETITION

DUE NOTICE having been given and hearing had, IT IS ORDERED that the foregoing petition of West Haven City be granted and an allotment of water is hereby made to the lands therein described, upon the terms, at the rates, and payable in the manner as in said petition set forth.

DATED this ___ day of _____, 20_.

WEBER BASIN WATER CONSERVANCY DISTRICT

BY _____
Marlin K. Jensen, President

ATTEST:

Scott W. Paxman, Secretary

(SEAL)

FOR INTERNAL USE ONLY

Account Number: _____
WCS Number: 08-050-0006
Original Petitioner: _____
Service Area: West Haven
District Inventory: 5.90 /WH
CTDI/Type: -5.90/WH

Resolution No. 22-2022

RESOLUTION OF WEST HAVEN CITY AUTHORIZING THE PURCHASE OF A GENERATOR USING AMERICAN RESCUE PLAN ACT (“ARPA”) FUNDS; AUTHORIZING THE CITY MANAGER TO MAKE THE PURCHASE ACCORDING TO UTAH STATE PROCUREMENT POLICIES AND PROCEDURES; AND AUTHORIZING THE MAYOR TO SIGN THIS RESOLUTION; AND, PROVIDING FOR AN EFFECTIVE DATE.

SECTION I – RECITALS:

WHEREAS, the City Council of West Haven City (herein "City") is a municipal corporation duly organized and existing under the laws of the State of Utah; and,

WHEREAS, in conformance with the provisions of UCA § 10-3-717, the governing body of the City may exercise all administrative powers by resolution including, but not limited to, purchasing equipment for the City; and,

WHEREAS, the City finds that it is necessary to purchase a generator to provide for the health and welfare of the citizens during emergencies and other times where it is needed; and

WHEREAS, the City has received American Rescue Plan Act funds; and

WHEREAS, the purchase of a generator is an acceptable use of the funds under the requirements of ARPA; and

WHEREAS, the City Council feels that the best way to accomplish its goals of providing for the health and the welfare of its citizens is to purchase a generator at this time using ARPA funds; and

WHEREAS, the City finds that the public convenience and necessity requires the actions herein contemplated,

NOW, THEREFORE, BE IT RESOLVED by the City of West Haven as follows:

SECTION II. AGREEMENT:

1. That the purchase of a generator using ARPA funds is hereby adopted by the City Council.
2. That the City Manager is authorized to purchase the generator using the State of Utah’s procurement policies and procedures.
3. That the Mayor is authorized to sign this Resolution.

SECTION III. PRIOR ORDINANCES AND RESOLUTIONS:

The body and substance of any and all prior Resolutions, together with their specific provisions, where not otherwise in conflict with this Resolution, are hereby reaffirmed and readopted.

SECTION IV. REPEALER OF CONFLICTING ENACTMENTS:

All orders, and Resolutions with respect to the changes herein enacted and adopted which have heretofore been adopted by the City, or parts thereof, which are in conflict with any of the provisions of this Resolution, are, to the extent of such conflict, hereby repealed, except that this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

SECTION V - SAVINGS CLAUSE:

If any provision of this Resolution shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable for any reason, such reason shall not have the effect of rendering any other provision or provisions hereof invalid, inoperative or unenforceable to any extent whatever, this Resolution and the provisions of this Resolution being deemed to be the separate independent and severable act of the City Council of West Haven City.

SECTION VI. DATE OF EFFECT

This Resolution shall be effective immediately upon its passage on the 20th day of July, 2022.

PASSED AND ADOPTED BY THE CITY COUNCIL OF WEST HAVEN CITY, STATE OF UTAH, on this 20th day of July, 2022.

WEST HAVEN CITY

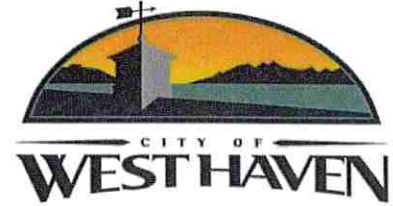
Mayor Rob Vanderwood

ATTEST:

City Recorder

CITY COUNCIL

Meeting Date: July 20, 2022
Agenda Item: UTOPIA Contract
Citywide Broadband Network
Requested by: Council
Staff Review: Matt Jensen



EXECUTIVE SUMMARY

Staff has concluded extensive discussions with broadband providers. UTOPIA has been determined as the optimal solution for providing affordable broadband service to the entire City, including future growth. This contract is the first step in providing this service.

REVIEW

UTOPIA proposes to provide a citywide broadband network that residents can enroll. Estimated cost for initial infrastructure is \$17,600,000 which will include four network hubs located through the City and broadband connection available to every resident and business. This requires a commitment from the City to cover \$1,300,000 in bond coverage. This can be satisfied by having 3,612 subscribed end-users.

The unique situation of West Haven presents an opportune situation for subscribers. Many areas of the City are currently not serviced by high speed internet let alone broadband. Additionally, the current growth projections do not affect the 3,612 enrollment point and approved subdivisions can be required to facilitate lower cost infrastructure installations.

The one consideration is the commitment to cover bonding for \$1,300,000 is at least a 30-year commitment. This limits the City's ability to bond for other projects. However, the City currently does not have any bond issues and has healthy reserve and capital funds in place. Additionally, the City does not have a property tax in place if additional funds were required.

The success of other cities in using UTOPIA shows a path to provide broadband connectivity to all residents rather than relying on a franchise agreement that would generally pick only profitable areas to provide coverage. The possibility of a citywide broadband infrastructure positions the City for continued growth and commercial development.

COUNCIL ACTION REQUESTED

- Pass resolutions to approve the contracting with UTOPIA for broadband services.
- Direct staff to explore other options

EXHIBIT A – Agreement Documents

See attached pages

West Haven, Utah

July 20, 2022

The City Council (the "Council") of the City of West Haven, Utah (the "City"), met in regular session in West Haven, Utah, on Wednesday, July 20, 2022, at 6:00 p.m., with the following being present:

Rob Vanderwood	Mayor
Carrie Call	Councilmember
Kim Dixon	Councilmember
Nina Morse	Councilmember
Ryan Saunders	Councilmember
Ryan Swapp	Councilmember

Also present:

Emily Green	City Recorder
Matthew Jensen	City Manager

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, a Certificate of Compliance with Open Meeting Law with respect to this July 20, 2022 meeting was presented to the Council, a copy of which is attached hereto as Exhibit A.

The following resolution was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____, adopted by the following vote:

Those voting AYE:

Those voting NAY:

The resolution was then signed by the Mayor. The resolution is as follows:

RESOLUTION NO. 23-2022

A RESOLUTION AUTHORIZING AND APPROVING A CONTRACT BETWEEN THE CITY OF WEST HAVEN, UTAH (THE “CITY”) AND UTAH INFRASTRUCTURE AGENCY (“UIA”) FOR UIA TO PROVIDE CERTAIN SERVICES TO THE CITY; AUTHORIZING THE MAYOR OF THE CITY OR OTHER DESIGNATED OFFICER OF THE CITY TO EXECUTE AND DELIVER THE SAME.

WHEREAS, the City of West Haven, Utah (“City”) is a body corporate and politic duly and regularly created, established, organized and existing under and by virtue of the provisions of the Constitution of the State of Utah; and

WHEREAS, Utah Infrastructure Agency (“UIA”) is an interlocal cooperative entity and a political subdivision of the State of Utah regularly created, established, organized and existing under and by virtue of the provisions of the Interlocal Cooperative Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Interlocal Act”); and

WHEREAS, pursuant to the Interlocal Act and Section 10-8-14, Utah Code Annotated 1953, as amended (collectively, the “Acts”), certain municipalities (the “Members”) organized UIA to provide for the construction, maintenance and operation of a fiber-optic network (the “Network”) within the Members, all of which benefit each of the Members; and

WHEREAS, the City has determined that there is a need within the City to provide services afforded by the Network (the “Connection Services”) to its residents; and

WHEREAS, UIA has determined that it has excess capacity in the Network to provide the Connection Services and desires to offer such excess capacity to the City; and

WHEREAS, the City now desires to cause to be acquired, installed, constructed and completed an advanced fiber optic communications network to serve residents of the City (the “City Network”) through the undertaking of the improvements contemplated hereby (as more fully described herein, the “Improvements”) and desires further that UIA shall acquire and install said Improvements and to pledge to UIA and remit certain revenues to accomplish the objectives set forth herein; and

WHEREAS, it is the intention of both UIA and the City that the Improvements that will provide the Connection Services will be operated and managed for the mutual benefit of both entities and that the City will pay or cause to be paid, fees for those services, pursuant to the terms of the Fiber Communication Service and Acquisition Contract substantially in the form attached hereto as Exhibit B (the “Service Contract”); and

WHEREAS, the Connections Services provided under this Service Contract are not Cable Television Services or Public Telecommunications Services as defined in the Municipal Cable Television or Public Telecommunications Services Act, Title 10, Chapter 18, Utah Code Annotated 1953, as amended; and

WHEREAS, the City desires to publish a Notice of Execution of a Service Contract, as permitted by the Act; and

WHEREAS, the City Council of the City (the "Council") hereby determines that it is in the best interest of the City to enter into the Service Contract for the purpose of providing Connection Services to the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST HAVEN, UTAH AS FOLLOWS:

Section 1. All terms defined in the recitals hereto shall have the same meaning when used herein. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Council and by the officers of the City directed toward the execution and delivery of the Service Contract are hereby ratified, approved and confirmed.

Section 2. The Council hereby finds and determines, pursuant to the Constitution and laws of the State of Utah, that entering into a Service Contract with the City and UIA is in furtherance of its governmental and proprietary purposes and is in the best interest of the City.

Section 3. The Service Contract, in substantially the form presented to this meeting and attached hereto as Exhibit B, is in all respects approved, authorized, and confirmed, and the Mayor or the City Manager is authorized to approve the final terms thereof and to execute and deliver the Service Contract in the form and with substantially the same content as attached hereto for and on behalf of the City with such changes as are approved by the Mayor or the City Manager, the execution of which Service Contract to serve as evidence of the acceptance of any such changes. The Service Contract shall not become effective until the City Attorney for the City shall signify approval of the Service Contract.

Section 4. The Mayor, the City Manager or the City Attorney are hereby authorized to make any alterations, changes, or additions in the Service Contract herein approved and authorized necessary to correct errors or omissions therein, to remove ambiguities therefrom, or to conform the same to other provisions of the Service Contract, to the provisions of this Resolution, to the understanding of the parties thereto or the provisions of the laws of the State of Utah or the United States, or to facilitate any financing undertaken in connection with the acquisition of the City Network, the approval of all such alterations, changes, or additions to be conclusively established by the execution thereof. Provided, however, that no such alterations, changes or additions shall materially adversely impact the interests of the City as determined by the Mayor, the City Manager or the City Attorney.

Section 5. If any provisions of this Resolution (including the exhibits attached hereto) should be held invalid, the invalidity of such provisions shall not affect any of the other provisions of this Resolution or the Exhibits.

Section 6. The City Recorder is hereby authorized to attest to all signatures and acts of any proper official of the City, and to place the seal of the City on the Service

Contract. The Mayor, the City Recorder and other proper officials of the City and each of them, are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 7. The City will publish once in the *Ogden Standard Examiner*, a Notice of Execution of a Service Contract, and post (i) on the Utah Public Notice Website (<http://pmn.utah.gov>) and (ii) on the Utah Legal Notices website (www.utahlegals.com) created under Section 45-1-101, Utah Code Annotated 1953, as amended. The “Notice of Execution of a Service Contract” shall be in substantially the following form:

NOTICE OF EXECUTION OF A COMMUNICATIONS SERVICE CONTRACT

NOTICE IS HEREBY GIVEN that the City of West Haven, Utah (the “City”) intends to enter into a Fiber Communications Service and Acquisition Contract (the “Service Contract”) between the City and the Utah Infrastructure Agency (the “Agency”). The Service Contract provides that the City will receive certain connection services from the Agency and the City will be obligated to pay certain fees for said connection services. To secure the City’s obligations under the Service Contract, the City will allocate and lend certain sales and excise tax revenues received by the City. The Service Contract is expected to remain in effect for a maximum term of 35 years.

A copy of the resolution authorizing the Service Contract and the Service Contract, are on file at the City’s offices, at 4150 South 3900 West, West Haven, Utah, where they may be examined during regular business hours of the City from 8:00 a.m. to 5:00 p.m. Monday through Friday, for a period of at least thirty (30) days from and after the date of publication of this notice.

NOTICE IS FURTHER GIVEN that a period of thirty (30) days from and after the date of the publication of this notice is provided by law during which any person in interest shall have the right to contest the legality of the Service Contract or the resolution authorizing the Service Contract or any provision made for the security and payment of the Bonds, and that after such time, no one shall have any cause whatsoever.

DATED this July 20, 2022.

/s/ Emily Green
City Recorder

Section 7. All regulations, orders, and resolutions of the City or parts thereof inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any regulation, order, resolution or ordinance or part thereof.

Section 8.
by the Council.

This Resolution shall become effective immediately upon adoption

DRAFT

PASSED, APPROVED, and MADE EFFECTIVE this July 20, 2022.

(SEAL)

CITY OF WEST HAVEN, UTAH

Mayor

ATTEST:

City Recorder

DRAFT

(Other business not pertinent to the foregoing appears in the minutes of the meeting.)

Upon the conclusion of all business on the agenda, the meeting was adjourned.

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
City Recorder

DRAFT

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH
OPEN MEETING LAW

I, Emily Green, the undersigned City Recorder of the City of West Haven, Utah (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the July 20, 2022, public meeting held by the City Council of the City (the "Council") as follows:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the principal offices of the City at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting;

(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be delivered to the *Ogden Standard Examiner* at least twenty-four (24) hours prior to the convening of the meeting; and

(c) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be posted on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2021 Annual Meeting Schedule for the Council (attached hereto as Schedule 2) was given specifying the date, time, and place of the regular meetings of the Council to be held during the year, by causing said Notice to be (a) posted on _____, at the principal office of the City, (b) provided to at least one newspaper of general circulation within the City on _____, and (c) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this July 20, 2022.

(SEAL)

By: _____
City Recorder

SCHEDULE 1 – NOTICE OF MEETING
SCHEDULE 2 – ANNUAL MEETING SCHEDULE

EXHIBIT B

FORM OF SERVICE CONTRACT

DRAFT

FIBER COMMUNICATIONS SERVICE AND ACQUISITION CONTRACT

Dated as of [REDACTED], 2022

between

UTAH INFRASTRUCTURE AGENCY

and

CITY OF WEST HAVEN, UTAH

DRAFT

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FIBER COMMUNICATIONS SERVICE AND ACQUISITION CONTRACT

This Fiber Communications Service and Acquisition Contract (the “Contract”) is entered into as of [REDACTED], 2022 by and between the Utah Infrastructure Agency (“UIA”), an interlocal cooperative and separate legal entity, body politic and corporate and a political subdivision of the State of Utah, organized under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, and the City of West Haven, Utah (the “City”), a municipal corporation and a political subdivision of the State of Utah (UIA and the City are sometimes referred to individually as a “Party” and collectively as “Parties” herein).

RECITALS

1. Pursuant to Section 10-8-14, Utah Code Annotated 1953, as amended, cities may construct, maintain, and operate telecommunication lines and cable television lines.
2. Pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Interlocal Act”), cities may exercise and enjoy jointly with other cities any power, privileges or authority exercised or capable of exercise by a city.
3. The Interlocal Act permits cities to make the most efficient use of their power by enabling them to cooperate with other cities on the basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs of development of local communities and will provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the State of Utah.
4. Pursuant to the Interlocal Act, certain municipalities organized UIA to provide for the acquisition, construction, and installation of facilities, fiber wires and equipment together with related improvements for the purpose of connecting properties within such municipalities and elsewhere to an advanced fiber optic communications network (the “UIA Network”).
5. UIA is a separate legal entity, body politic and corporate and a political subdivision of the State of Utah regularly created, established, organized and existing under and by virtue of the provisions of the Interlocal Act and of the Constitution of the State of Utah.
6. The City has determined that there is a need within the City to provide Connection Services (as herein defined) to its residents.
7. UIA has determined that it has excess capacity in the UIA Network to provide the Connection Services and desires to offer such excess capacity to the City.
8. The City now desires to cause to be acquired, installed, constructed and completed an advanced fiber optic communications network to serve residents of the City

through the undertaking of the improvements contemplated hereby (as more fully described herein, the “Improvements”) and desires further that UIA shall acquire and install said Improvements and to pledge to UIA and remit to the hereinafter defined Trustee an amount of its Sales Tax Revenues (as hereinafter defined) to accomplish the objectives set forth herein.

9. The Improvements will be owned by UIA (as more particularly described herein, the “UIA-Owned Improvements”).

10. It is the intention of the Parties that the Improvements to provide the Connection Services be operated and managed for the mutual benefit of the Parties and that the City will pay or cause to be paid fees to UIA calculated in accordance with Section 3.1 of this Contract. The amounts paid by the City hereunder do not constitute a purchase of any assets or facilities owned by UIA, and are made solely in consideration for the Connections Services provided by UIA to the City.

11. The Connections Services provided under this Contract are not Cable Television Services or Public Telecommunications Services as defined in the Municipal Cable Television or Public Telecommunications Services Act, Title 10, Chapter 18, Utah Code Annotated 1953, as amended (the “Telecommunications Act”).

DRAFT

AGREEMENT

In consideration of the acquisition and installation of the Improvements and the Connection Services herein provided, the benefit the City shall receive from such activities and the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I DEFINITIONS

In addition to the defined terms defined in the recitals and elsewhere in this Contract, the following terms, whether in the singular or in the plural, when used herein and in the exhibits hereto, shall have the meanings set forth below:

“Aggregation Site(s)” means the real property or easement on real property on which the West Haven Fiber Hut(s) will be located.

“Agreed Upon End Users” means the number of End Users to be provided services pursuant to this Contract to satisfy the City’s obligation to meet the UIA Revenue Requirement, which shall be 3612 End Users. UIA estimates that the Agreed Upon End Users are expected to produce approximately \$1,300,000 of Revenues annually.

“Capital Costs” means (a) the payment of any obligations incurred by UIA to finance or refinance the costs of the Improvements, and (b) amounts required to be deposited from time to time into required reserves established in connection with any financing referenced in (a) above.

“City” means the City of West Haven, Utah.

“City Fees” means fees paid by the City to UIA for the provision of Connection Services to City owned facilities or resources at the Product Catalog wholesale rates of UIA pursuant to Section 3.19 below.

“City Fiber Hut(s)” means the shelter(s), electronics, switches, routers, fiber terminations, conduits, cables, racking, generator, UPS units, cooling systems, and other support systems to support the Mainline System, Interconnect(s), and other future potential interconnects located on the Aggregation Site.

“City Network” means fiber optic lines, connection lines and related improvements acquired and constructed by UIA together with the acquisition by UIA of access rights and capacity in the UIA Network and UTOPIA Network and access rights and capacity in other networks within the City or for the benefit of the City.

“Communications Enterprise” means the enterprise established by the City pursuant to the Uniform Fiscal Procedures Act for Utah Cities, Title 10, Chapter 6, Utah Code Annotated 1953, as amended, to facilitate the providing of high speed communications services through the City Network to new End Users within the City pursuant to this Contract.

“Connection Services” means the wholesale services provided by UIA to the City pursuant to this Contract whereby End Users within the City have access to the Improvements through which they may contract with private providers to receive the Cable Television Services and Public Telecommunication Services (as those terms are defined in the Telecommunications Act) provided through the City Network. The term Connection Services includes Connection Services Capacity and is more particularly described in Exhibit A attached hereto and incorporated herein.

“Connection Services Capacity” means the access rights to and capacity in the City Network.

“Contract” means this Fiber Communications Service and Acquisition Contract dated as of _____, 2022, as it may be amended from time to time in accordance with Section 5.15 herein.

“End Users” means those residential end users to be provided services pursuant to this Contract.

“Fiscal Year” means a period commencing on July 1 and ending on the next succeeding June 30.

“Hook-up Lease Revenues” means the revenues that are generated pursuant to the Hook-up Leases.

“Hook-up Leases” means any and all agreements between the City or UIA and each End User that allows such End User to connect to the City Network.

“Improvements” means those facilities, improvements, and access, lease, use and/or capacity rights acquired, constructed, and/or installed, operated and maintained by UIA within the City or elsewhere in the UIA Network undertaken in whole or in part for the benefit of the City to provide Connection Services to and within the City to the End Users pursuant to this Contract, as more fully described in Exhibit B attached hereto, and incorporated herein.

“Indenture” means that certain General Indenture of Trust dated as of [____], 2022 between UIA and the Trustee.

“Interconnect” means the fiber route(s) between the UTOPIA Network backbone and the connection point to the Mainline System.

“Mainline System” means all of the newly installed fiber, conduits, handholes restorations and other materials along the roads and within the City limits as depicted in Exhibit C hereto.

“Non-residential Fees” means fees paid to UIA for non-residential services on the City Network. Recipients of Non-residential services will not be required to enter into a Hook-up Lease. Non-residential Fees do not include fees paid to UIA for non-residential

services provided within the boundaries of the City via connections to the UIA Network that were constructed prior to the date of full execution of this Contract.

“Operating Contingency” means an unplanned event or circumstance, a series of events or circumstances, or any restriction or condition imposed by any governmental authority which reduces and materially adversely affects access to the Improvements.

“Original Term” has the meaning ascribed to such term in Section 5.16 hereof.

“Revenues” means the Service Fees, City Fees, and the Hook-up Lease Revenues generated from services through the City Network to End Users within the City pursuant to this Contract.

“Sales Tax Revenues” means all sales tax revenues that the City collects under Sections 59-12-Part 2 of the Utah Code Annotated 1953, as amended, in an amount up to \$1,610,000 annually.

“Service Fees” means all fees (other than fees relating to the Hook-up Leases) that may be charged by or on behalf of the City to the End Users of the Improvements. The Service Fees of the City shall be payable to UIA in consideration for the Connection Services provided by UIA to the City pursuant to this Contract. The Service Fees shall be calculated and paid pursuant to Article III of this Contract. Service Fees do not include any Hook-up Lease Revenues.

“Trustee” means the entity serving as trustee under the Indenture.

“UIA” means the Utah Infrastructure Agency, a separate legal entity, body, politic and corporate and a political subdivision of the State of Utah, created pursuant to the Interlocal Act.

“UIA Network” means fiber optic lines, connection lines and related improvements and facilities acquired, constructed and owned by UIA, including all access rights and capacity in the UTOPIA Network and access rights and capacity in other networks.

“UIA-Owned Improvements” means the City Fiber Hut(s), Interconnect(s), conduits, fiber cables, enclosures, and electronics constructed within the City under the terms of this Contract.

“UIA Revenue Requirement” means the sum of all Capital Costs of UIA relating to the Improvements during each Fiscal Year or other applicable period. The annual UIA Revenue Requirement is not expected to exceed \$1,610,000.

“Uncontrollable Forces” means any cause beyond the control of the Party affected, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbances, labor disturbance, sabotage, and restraint by court or public authority.

“UTOPIA” means the Utah Telecommunication Open Infrastructure Agency, a separate legal entity, body, politic and corporate and a political subdivision of the State of Utah, created pursuant to the Interlocal Act.

“UTOPIA Network” means UTOPIA’s wholesale telecommunications network, together with any additions, repairs, renewals, replacements, expansions, extensions and improvements to said network.

“UTOPIA Product Catalog” means the catalog of products and services maintained by UIA.

ARTICLE II CONNECTION SERVICES AND ACQUISITION OF IMPROVEMENTS

Section 2.1 Connection Services. UIA shall provide to and within the City and the City shall receive from UIA, Connection Services, including Connection Services Capacity, sufficient to allow not less than the Agreed Upon End Users benefitting from the Improvements within the City to connect to the City Network.

Section 2.2 Availability. UIA shall provide continuous Connection Services barring only emergency or scheduled downtime, curtailments, and Operating Contingencies.

Section 2.3 Acquisition, Date of Commencement and Substantial Completion.

(a) UIA shall undertake and perform all of the work associated with the acquisition, installation, construction and completion of the Improvements. The date of commencement of the work relating to the Improvements shall be the date of full execution and delivery of this Contract or if provision is made for a later date to be fixed in a notice to proceed issued by the City, that fixed date.

(b) The City shall provide a parcel of real property or an easement to a parcel of real property to site each of the required Aggregation Sites, and all required City Fiber Huts, within 30 days from the date of commencement.

(c) The City shall provide UIA the perpetual right to use all telecommunications conduit that is owned by the City. UIA’s use of any telecommunications conduit owned by the City shall not unreasonably interfere with the existing use of the telecommunications conduit by the City or any other entity as of the date of full execution and delivery of this Contract. UIA will have the right to re-locate, terminate, enclose, or repair the telecommunications conduit to accommodate the installation and maintenance of the City Network.

(d) UIA shall achieve substantial completion of the Improvements, which will allow at least 90% of the End Users within the area depicted on Exhibit C to sign up and schedule installation for services under UIA’s typical process and timeframes, not later than 24 months from the date of commencement. In the event that UIA is not able to complete construction in any area depicted on Exhibit C as

a result of circumstances beyond the control of UIA, including but not limited to delays by third-parties in granting necessary permits, UIA will use its best efforts to complete construction as soon as possible.

(e) UIA agrees to construct extensions of the City Network into areas annexed by the City after the execution of this Contract whenever at least 50% of such extension may be completed through open trench opportunities or conduit placed by a developer. UIA may evaluate and construct extensions of the City Network under other conditions as UIA deems feasible in its sole discretion.

Section 2.4 Price of Improvements. The City and UIA agree that the Guaranteed Maximum Price (the “GMP” or the “Contract Sum”) for the Contract will be Seventeen Million Six Hundred Thousand (\$17,600,000). This GMP is based on the acquisition, installation, construction and completion of the Improvements more particularly set forth in Exhibit B hereto.

Section 2.5 Cost Overruns. UIA shall be solely responsible for the acquisition, installation, construction and completion of the Improvements and Connection Services and shall also be responsible for any cost overruns above and beyond the GMP set forth in Section 2.4 hereof.

Section 2.6 Residential Installations. UIA will perform residential installations to subscribed locations within the City Network as part of the Hookup Lease entered into with an End User. Installations include the typical signup process available through UIA’s online ordering system, scheduling, materials and labor for the placement of drop conduit, fiber cable, splicing, indoor fiber termination electronics, and a single Cat5e installation to the subscriber’s router. Only a standard UIA installation based on a lowest-cost-path is included. Alternative routes, cable fishing, or subscriber preferences that increase the expense of UIA’s standard installation may be negotiated with UIA or a UIA approved contractor on a case-by-case basis at the subscriber’s expense.

Section 2.7 Non-Residential Installations. Non-residential customers are not End Users, and UIA will perform non-residential (i.e. business) installations at its own expense based on the terms of the then-current UTOPIA Product Catalog.

Section 2.8 Acceptance. UIA will provide as-built drawings, inspection reports, and test documentation of the completed Improvements.

Section 2.9 Repair. UIA will be responsible for repairing or replacing any conduit, fiber, or system electronics that become damaged or defective from normal wear and use of City Network assets. In the event that another party is responsible for the damage, including but not limited to traffic accidents, construction, and relocations, UIA will pursue compensation from the responsible party. In the event that repair/replacement costs are not recoverable from a third party, including but not limited to vandalism, natural disaster, acts of God, or inability to identify responsible party, UIA will be responsible for costs associated with the electronics replacement and other repair costs.

Section 2.10 Electronics Maintenance. UIA is responsible for maintaining the electronics of the City Network, including aggregation switches, subscriber demarcation devices, and transceivers.

UIA is responsible for maintaining the support systems including cabinet, battery backup systems, generator, transfer switches, and air conditioners.

UIA will perform regular maintenance on the electronics and support systems including configuration updates, code updates, firmware updates, cleanings (as necessary), refueling, battery replacement, and other tasks needed to keep the City Network in working condition.

Section 2.11 Electronics Replacement. UIA agrees to keep the electronics components of the City Network current with industry standards and competitive options. UIA commits that all electronics components of the City Network are new or like-new condition and meet current standards at the time of installation. All electronics components of the City Network will support 1 Gbps speeds throughout the City Network. The City Network will also be designed so that 10 Gbps service can be available anywhere within the City Network with only a change of electronic interfaces so that the option to upgrade to 10 Gbps service is available anywhere in the City.

During the term of this Contract, UIA agrees to upgrade or replace at its own expense the electronics components of the City Network as necessary to support the same product availability as is generally available in other UIA member or partner cities.

Section 2.12 Utility Locating. UIA will provide utility locating services directly or via sub-contractor for the City Network through the duration of this Contract.

Section 2.13 Ownership of Improvements. It is agreed and understood that all real and personal property constituting the Improvements shall be owned by UIA.

ARTICLE III

PAYMENT FOR CONNECTION SERVICES; DISTRIBUTION OF REVENUES

Section 3.1 Determination of Payment/Revenue Distribution.

(a) In consideration for all of the services provided by UIA hereunder, the City agrees to pay or have paid an amount to UIA equal to the UIA Revenue Requirement.

(b) In consideration for the providing of Connection Services by UIA, the City shall pay or have paid to UIA or its successor or assigns for each Fiscal Year, if then due and owing, all of the Revenues received for such services during said Fiscal Year, to be paid and remitted to UIA or its successor or assigns on a monthly basis in accordance with Section 3.3. Subject to Section 3.2(b) hereof, such Revenues are anticipated to commence when the City is provided with Connection Services related to the Improvements and when one or more Agreed

Upon End Users have been charged for Hookup Leases or Service Fees. The City or UIA on behalf of the City shall charge or caused to be charged to all End Users Hookup Leases and Service Fees and shall remit or UIA on behalf of the City shall collect and remit all Revenues to UIA on a monthly basis and in accordance with Section 5.12 hereof.

(c) Upon receipt of the City Fees, UIA will apply the City Fees toward the payment of the UIA Revenue Requirement.

(d) UIA shall on behalf of the City, impose and collect fees and charges for the Hook-up Leases and will apply such Hook-up Lease Revenues toward the payment of the UIA Revenue Requirement.

(e) Upon receipt of the Non-residential Fees, UIA will apply 50% of the Non-Residential Fees toward the payment of the UIA Revenue Requirement.

(f) Upon termination of this Contract in accordance with Section 5.16 hereof, all Revenues will become revenues of and belong to UIA.

(g) UIA will account for Revenues received during the period of time when capitalized interest is used to pay the UIA Revenue Requirement (the "Preliminary Revenues"). In the event that the Revenues under Section 3.1(c)-(e) are insufficient to meet the UIA Revenue Requirement, UIA will apply the Preliminary Revenues toward the payment of the UIA Revenue Requirement consistent with Section 3.1(c)-(e) in the amount necessary to compensate for any deficiency between the Revenues and the UIA Revenue Requirement. Once the full amount of the Preliminary Revenues have been applied to the UIA Revenue Requirement or the Revenues under Section 3.1(c)-(e) are sufficient to meet the UIA Revenue Requirement, UIA will be under no obligation to account for the Preliminary Revenues or apply the Preliminary Revenues to the UIA Revenue Requirement.

Section 3.2 Obligation is Absolute.

(a) The City hereby pledges the Revenues, the Sales Tax Revenues and grants a security interest in and a first irrevocable lien on the Revenues, the Sales Tax Revenues as security for payment of the UIA Revenue Requirement and the City hereby agrees to apply the Revenues, the Sales Tax Revenues as payment for the UIA Revenue Requirement.

(b) Subject to the provisions of Section 3.3 hereof limiting the sources of payment hereunder, the City's payment obligations hereunder to UIA for Connection Services and other services hereunder and related to the Improvements pursuant to this Article III shall be irrevocable, absolute and unconditional and shall not be subject to any reduction, whether by defense, recoupment, counterclaim, set off, termination, or offset or otherwise, and shall not be conditioned upon the construction, performance or non-performance of the Improvements by UIA, the

remedy for non-performance being limited to mandamus, specific performance or equitable remedy. Notwithstanding the foregoing, it is not intended that the City by this Contract assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any obligations incurred by UIA with respect to the Improvements.

Section 3.3 Special Limited Obligation. The City agrees to pay the Revenues due to UIA for Connection Services and other services hereunder related to the Improvements in monthly installments. Subject to Section 3.5 herein, the City's obligations to make monthly payments pursuant to this Section 3.3 shall constitute an obligation payable solely from Revenues. In no event shall the obligations of the City hereunder be construed as a general obligation or indebtedness of the City within the meaning of any constitutional or statutory limitation or provision or payable from ad valorem property taxes of the City. The Parties acknowledge and agree that such payments shall be made out of the enterprise fund established with respect to the City's Communications Enterprise. Each monthly installment shall be due and payable by the City to UIA not later than the fifteenth day of the next succeeding month. A final accounting of all transactions between UIA and the City in each Fiscal Year shall be rendered to the City by UIA on or before the 90th day of the succeeding Fiscal Year. The final accounting shall specify the amount, if any, which the City must pay to UIA to reconcile total monthly payments with actual amounts due UIA with Revenues indicated by an underpayment or overpayment to be made by the City or UIA respectively, which amount shall be payable to UIA no later than 30 days after the receipt of the final accounting.

Section 3.4 Default in Payment. If the Revenues are not paid in full on or before the close of business on the fifteenth day of the month in which said Revenues are due, an interest charge will be made at the rate of ten percent (10%) per annum or the maximum rate of interest legally chargeable, whichever is less. If all or a portion of the Revenues remain unpaid subsequent to the fifteenth day of the month in which the Revenues are due, UIA may, upon giving thirty (30) days' advance written notice calculated from the date of receipt of such notice by the City, discontinue Connection Services and other services hereunder to the City unless, and may refuse to resume said services to said City until, the delinquent installment has been paid. From and after the effective date of such notice, UIA may, in its sole discretion, not provide Connection Services or other services hereunder to the City. Any interruption of service under this Section 3.4 will not limit the obligations of the City under Section 3.5.

Section 3.5 Use of Sales Tax Revenues.

(a) In the event and to the extent there shall be a shortfall in the amounts identified in Section 3.1(c)-(e) (a "Shortfall"), such that UIA shall not have sufficient moneys from the amounts identified in Section 3.1(c)-(e) to pay the UIA Revenue Requirement when due, and if UIA shall for any reason fail to cure such Shortfall on behalf of the City, the City hereby pledges and agrees to advance to UIA its Sales Tax Revenues by remitting such Sales Tax Revenues to the Trustee to cure such Shortfall.

(b) On or prior to each January 1 and July 1 commencing January 1, 2022, UIA shall determine:

(i) the UIA Revenue Requirement due on the next succeeding March 15 or September 15, as applicable, and

(ii) the amount of Revenues UIA reasonably believes will be available for payment of the UIA Revenue Requirement on said March 15 or September 15. In addition, UIA shall inform the Trustee and the City of any Shortfall and shall, on or prior to each January 15 or July 15 as applicable, submit a request to the City to remit to the Trustee, Sales Tax Revenues equal to the Shortfall described and calculated in accordance with the provision set forth above. The City agrees to pay the Shortfall to the Trustee no later than the next succeeding March 15 or September 15, as applicable. UIA covenants to take such other action as it lawfully may take to assure that the City remits to the Trustee from Sales Tax Revenues any Shortfall pursuant to this Contract.

(c) If for any reason UIA or the City fails to comply with their obligations under Section 3.5(b) of this Contract, the Trustee pursuant to Section 5.2(b) of the Indenture will, at any time during which a Shortfall exists, submit a request to the City to remit the Sales Tax Revenues equal to the Shortfall described and calculated in accordance with the provision set forth above. The City agrees to pay the Shortfall to the Trustee no later than the next succeeding March 15 or September 15, as applicable.

(d) The City may create or incur additional debt or other obligations secured by sales tax revenues on a parity with the pledge created pursuant to this Section 3.5 so long as the sales tax revenues generated during the Fiscal Year immediately preceding the Fiscal Year in which the additional parity debt or obligation is to be issued or incurred, as appropriate, are not less than 150% of the maximum annual debt service in any given Fiscal Year on the sum of (i) the debt service on the additional parity debt or obligation plus (ii) debt service on any debt or other parity obligation previously issued or incurred by or for the benefit of the City and payable from or secured by sales tax revenues, as appropriate, and outstanding plus (iii) the debt service on any bonds or other parity obligations issued by UIA and payable from amounts paid or received under this Contract, tested for the period of such additional debt or other parity obligation.

(e) All Sales Tax Revenues paid by the City to the Trustee or UIA or its designee pursuant to this Section 3.5 shall constitute a loan by the City to UIA which shall be paid by UIA at the time and in the manner as provided in the form of a promissory note attached hereto as Exhibit D from future revenues of UIA. The City shall be entitled to interest on each loan advance from the date said advance is made by the City to the Trustee or UIA or its designee, at the per annum rate equal to the rate of return at the Utah Public Treasurer's Investment Fund in effect at the time of execution and delivery of the promissory note, unless by

agreement of the City and UIA a lesser interest rate is set forth in the executed promissory note for said loan. The City acknowledges that the loan obligation incurred by UIA herein shall be repaid only from Revenues generated from the City Network and shall be subordinate and junior to UIA's other payment obligations. Payment obligations represented by a promissory note shall survive termination of this Contract until paid in full or otherwise extinguished.

(f) During the term of this Contract, the City covenants that it will not, unless directed to do so by the State of Utah or a court of competent jurisdiction, reduce the rate of the tax from which it derives Sales Tax Revenues.

Section 3.6 Succession Proceedings. UIA or its designee shall have the right from time to time to begin and maintain successive proceedings against the City for the recovery of all Revenues or Shortfalls required to be made under this Contract by the City and to recover the same upon the liability of the City herein provided. Nothing herein contained shall be deemed to require UIA to defer commencement of any such proceeding until the end of the term of this Contract.

Section 3.7 Remedies. UIA or its designee may take whatever action at law or in equity may appear necessary or desirable to collect the amounts payable by the City hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the City under the provisions of this Contract. Such action may include, but is not limited to, suspension or termination of services to the City for City purposes. The City may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of UIA under the provisions of this Contract.

Section 3.8 No Exclusive Remedy. No right or remedy herein conferred upon or reserved to UIA or its designee or the City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing. The failure of UIA or its designee or the City to insist at any time upon the strict observance or performance by the other parties to this Contract of any of the provisions of this Contract, or to exercise any right or remedy provided for in this Contract, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the Trustee, UIA or its designee of any payments required to be made under this Contract with knowledge of the breach of any provisions of this Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Contract, UIA or its designee or the City shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Contract, or to a decree concerning performance of any of the provisions of this Contract, or to any other remedy legally allowed. If any proceeding shall be brought for the enforcement of any right or remedy provided for in this Contract in which it shall be determined that the City shall have failed and continued to fail to make a payment of Fees due under this Contract at the time of commencement thereof, the City shall pay UIA or its designee all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees and expenses. In like manner, if it should

become necessary for the City to bring legal proceedings against UIA or its designee to enforce any right given it hereunder, the City shall have the right, if it is successful in such proceedings, to the payment by UIA of all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees, and expenses.

Section 3.9 Right of Designee to Exercise Remedies. At any time UIA or its designee is entitled to enforce any of the rights or remedies provided for in this Contract, the designee may proceed, either in its own name and as trustee of any express trust or otherwise, to protect and enforce its rights and those of UIA under this Contract, whether or not UIA shall have complied with any of the provisions hereof or proceeded to take any action authorized or permitted under applicable law. Such rights and remedies as are given UIA hereunder shall also extend to its designee and the designee shall be entitled to the benefit of all covenants and agreements in this Contract contained.

Section 3.10 City not Obligated for UIA Debt. All obligations of UIA are payable solely by UIA and are not a debt or other obligation of the City; *provided however*, that nothing in this Section 3.10 shall be construed as limiting the City's obligations under Section 3.5 of this Contract.

Section 3.11 Billing and Collection by UIA. For purposes of expediency and efficiency, UIA will provide billing and collection services for Connection Services and Hook-up Leases to the End Users on behalf of the City. Revenues received by UIA from such activities are properly allocable and will be allocated to UIA as provided in this Contract.

Section 3.12 Disposition at Termination. After this Contract has expired in accordance with its terms, unless otherwise agreed to by the Parties, all Revenues shall belong solely to UIA, less payments due to the City under any Promissory Note or other obligation arising out of this Contract.

Section 3.13 Exclusive Use. UIA will have exclusive use of the City Network for purposes of providing services directly or in partnership with service providers approved by UIA to subscribers of the City Network. Third parties may only utilize the system in partnership with UIA.

Section 3.14 System Capacity.

(a) UIA has determined that it has excess capacity in the UIA Network to provide the Connection Services and that it will make such capacity available to the City.

(b) UIA agrees to provide a minimum of 20 Gbps of network capacity to the City Fiber Hut(s) upon acceptance of the completion of the City Fiber Hut(s). UIA agrees to maintain at least 30% headroom of unused capacity to the Aggregation Site and will at its own expense monitor and upgrade the capacity to the Aggregation Site of the City Network if it exceeds 70% utilization based on a 95%/5min interval monthly calculation.

Section 3.15 Service Providers. UIA will make the City Network available to all of its contracted service providers under the same terms and conditions as other cities in UIA's Northern Utah Marketplace. Such service providers are not obligated to provide services within the City.

Section 3.16 Network Operations Center (NOC) Services. UIA agrees to provide monitoring of the City Network on a 24/7 basis from its NOC. This includes device monitoring, outage notifications, configuration of devices, diagnostics, repair dispatch, and other services as generally provided by the NOC.

Section 3.17 Network Engineering Services. UIA will maintain the configurations, code, and design of the City Network to ensure that it meets the needs of the City Network. Additionally, UIA agrees to provide network design services to the City for the purposes of interconnecting the City.

Section 3.18 Field Technician Services. Field technician services will be provided by UIA during the term of this Contract. Such services include dispatch and resolution services.

Section 3.19 City Connections. The City is entitled to receive services from UIA at the Product Catalog wholesale rates of UIA.

Section 3.20 Customer Service. UIA staffs a customer service call center for sales, information, and other miscellaneous issues. For outages, technical support, and billing issues, subscribers are generally expected to call their contracted service provider. In the event a service provider determines the issue is related to problems with the City Network and not the service provider or in-home equipment, then the service provider may refer the issue to UIA.

Section 3.21 Technical Support. UIA is responsible for providing technical support for the connection up to the demarcation switch in each home or business. Technical support for customer routers, in-home wiring, computers, and in-home Wifi is not service that UIA provides. Such services are generally expected to be handled by the subscriber's contracted service provider based on their terms of service.

Section 3.22 IT Systems. UIA will be responsible for incremental costs for software licensing expenses incurred for managing the City Network including device monitoring, billing software, configuration management, and automated provisioning systems.

Section 3.23 Geographic Information System (GIS). UIA will be responsible for maintaining GIS data for the City Network, including the costs for any software licensing, hardware, and data archival expenses.

ARTICLE IV

APPROVAL AND PUBLICATION REQUIREMENTS

Section 4.1 Submission to Authorized Attorney. This Contract shall constitute an agreement for joint and cooperative action pursuant to the Interlocal Act. In accordance with the requirements of Section 11-13-202.5 of the Interlocal Act, as amended, this Contract shall be submitted for approval to the governing bodies of UIA and the City and to an authorized attorney for UIA and for the City who shall approve this Contract if such attorney determines that it is in proper form and compatible with the laws of the State of Utah.

Section 4.2 Publication. In accordance with the requirements of Section 11-13-219 of the Interlocal Act, as amended, the governing body of UIA shall provide for the publication of the resolution adopted by it pursuant to the requirements of Section 11-13-202 of the Interlocal Act, as amended, in the official newspaper or the newspaper published within its boundaries, or if no newspaper is so published, then in a newspaper having general circulation therein.

ARTICLE V

GENERAL PROVISIONS

Section 5.1 Acquisition and Construction of the Improvements. UIA represents that it will acquire or cause to be acquired all permits, licenses, rights and privileges, structures, equipment, and facilities with respect to the acquisition and construction of the Improvements necessary for the performance by UIA of this Contract. UIA shall maintain and defend such permits, licenses, and rights and privileges and shall not voluntarily permit any change therein that would result in impairment of the performance by UIA of its obligation under this Contract.

Section 5.2 Risk of Loss. Each Party is solely responsible for the risk of loss of, or damage to, equipment of that Party (regardless of where located), unless the loss or damage results from the negligence or fault of the other Party.

Section 5.3 Several Obligations. Except where specifically stated in this Contract to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Contract shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Contract and shall not be liable for any obligation of the other.

Section 5.4 Liability Dedication. Nothing in this Contract shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Contract.

Section 5.5 Books and Records. UIA agrees that it shall maintain separate bank accounts, books and records relating to the Improvements and that proper and equitable allocations of revenues and expenses will be made with respect to the operations of the Improvements. The City shall receive from UIA a monthly statement on the accounting and disposition of Hook-up Leases and City Fees. Also, UIA shall submit to the City such supporting data with respect to all annual budgets and yearly accounting reconciliations as are reasonably necessary to enable the City to effect proper accounting therefor. All bank records, books of account and accounting records of UIA relating to this Contract shall be available for inspection and utilization by a duly authorized officer or designee of the City at all reasonable times. UIA shall cause such books of account of the Improvements to be audited annually by independent public accountants experienced in utility accounting. A copy of each such annual audit, including any recommendations of the accountants with respect thereto, shall be promptly made available by UIA to the City.

Section 5.6 Relationship to Other Instruments. It is recognized that UIA must comply with all licenses, permits and regulatory approvals necessary for the ownership, acquisition, construction and operation of the Improvements, and it is, therefore, agreed that this Contract is made subject to the terms and provisions of such licenses, permits and regulatory approvals, except that the City shall not be bound by any term or provision of any license, permit, or regulatory approval, which may contradict or vary the terms hereof unless it expressly consents in writing to be so bound. The City agrees that it will not revise or amend its fees charged to End Users under its Communications Enterprise in any manner that would adversely affect the priority of or the security for the payments to be made thereunder to UIA without the mutual consent of the Parties.

Section 5.7 Liabilities. The City, its officers, designees, and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from the ownership, acquisition, construction and operation by UIA of the Improvements. UIA, its officers, designees, and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from the performance by the City under this Contract.

Section 5.8 Assignment. Except for security purposes in connection with any obligations incurred by UIA, neither this Contract nor any part hereof shall be assigned by any Party without prior written consent of the other.

Section 5.9 Furnishing Service to Others. UIA, by entering into this Contract, does not hold itself out to provide the Improvements or similar service to any other person or entity.

Section 5.10 Uncontrollable Forces. No Party shall be considered to be in default in respect to any obligation hereunder, other than under Article III, if prevented from fulfilling such obligation by reason of an Uncontrollable Force. If a Party is rendered unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such inability with all reasonable dispatch and shall keep the other Parties fully informed of changes and conditions as far in advance as possible.

Section 5.11 Communications Enterprise. The City will operate and maintain, or cause to be operated and maintained, its Communications Enterprise in good operating order and will fix, charge, and collect rates, fees, and charges in accordance with Section 5.12 herein.

Section 5.12 Imposition and Collection of Fees. The City has previously established or will establish a Communications Enterprise and hereby represents that it charges or causes to be charged on its behalf all End Users within the City through its Communications Enterprise monthly fees for each connection to the City Network in consideration for the Connection Services and other communications services provided by the City. The City shall establish or cause to be established such enforcement procedures as may be necessary to collect such fees. Said fees, when collected, shall be used by the City to pay its obligations under this Contract.

Section 5.13 Cable Television Services and Public Telecommunications Services. The Parties hereto acknowledge and represent that neither party, by entering into this Contract, shall provide or be required to provide Cable Television Services or Public Telecommunications Services as defined in the Telecommunications Act, nor is either party capable of providing said services. Furthermore, the Parties hereby acknowledge and represent that to the best of their knowledge, the City is paying for the full cost of providing the Connection Services or other services received by it pursuant to this Contract.

Section 5.14 Entire Agreement. This Contract constitutes the entire agreement among the Parties with respect to the subject matter hereof. No change, variation, termination, or attempted waiver of any of the provisions of this Contract shall be binding on the Parties unless executed in writing by the other Party. This Contract shall not be modified, supplemented, or otherwise affected by course of dealing.

Section 5.15 Amendments. This Contract shall not be amended, modified, or otherwise altered in any manner without the consent of the parties hereto, which consent shall not be unreasonably withheld; provided however, that Section 3.5, Section 5.16, Section 5.18, and Section 5.19 hereof shall not be amended until such time that any obligations issued by UIA and payable from amounts paid or received hereunder shall have been retired in accordance with their terms.

Section 5.16 Effective Date and Original Term; Termination. This Contract shall be effective as of the date hereof and shall continue in effect until October 15, 2049 (the "Original Term"), or such later time when any obligations issued by UIA and payable from amounts hereunder shall have been retired in accordance with their terms.

Section 5.17 Notice. Any notice, demand, or request provided for in this Contract shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

UIA: UTOPIA
5858 South 900 East
Murray, UT 84121
Attn: Chief Executive Officer

West Haven, UT _____
Attn: City Recorder

The Parties may, at any time, by notice to the other designate different or additional persons or different addresses for the giving of notice hereunder.

Section 5.18 Third-Party Beneficiaries. The terms and provisions of this Contract shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns, including the Trustee, and is made for their benefit. Further, the Trustee is an intended third-party beneficiary for purposes of Section 3.5 hereof, including without limitation its rights to Sales Tax Revenues in the event of any Shortfall and to pursue all remedies related thereto. No other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third-party beneficiary or otherwise.

Section 5.19 Governing Law. This Contract shall be interpreted, governed by, and construed under the laws of the State of Utah.

Section 5.20 Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.21 Severability. If any provision of this Contract shall be held or be deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatsoever.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this contract the day and year herein first above written.

UTAH INFRASTRUCTURE AGENCY

(SEAL)

By: _____

CEO

ATTEST AND COUNTERSIGN:

By: _____

Secretary

(SEAL)

WEST HAVEN, UTAH

By: _____

Mayor

ATTEST AND COUNTERSIGN:

By: _____

City Recorder

Pursuant to Section 11-13-202.5 of the Utah Code Annotated 1953, as amended, the foregoing Contract is hereby approved.

Attorney for Utah Infrastructure Agency

Attorney for _____, Utah

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EXHIBIT A

CONNECTION SERVICES

Strategic Partner Management

Recruit and manage strategic partnerships, which will include but not be limited to Business and Residential Service Providers and Services Providers. Attract new technologies to the network to facilitate new service offerings on the network and leverage the City's existing network and its communities.

UIA will negotiate on behalf of the City the contract and contract amendments, enforce contracts with Providers and ensure Service Level Agreements are met according to business and contractual obligations.

Product Management

Recommend, develop wholesale pricing model along with the City and strategic partners. This will include new wholesale pricing for newly developed products brought by UIA and its Strategic Partners.

Present developed model and any changes the City and strategic partners for rollout on the Network. Maintain, modifying and bring to end-of-life wholesale products on the network.

Planning, Design and Implementation

UIA will provide planning, design and implementation of the City's network as requested. A full outside plant design, network design and operational impact review will be provided along with a project implementation plan timeline, along with associated budget for the plan. The plan will include:

- Creation/Import of city records into GIS system
- Estimated cost for the outside plant build requested area
- Estimated cost for the network engineering build
- Project Engineer to interact and answer questions about the proposals and presentations
- Support for submittal of change orders for any changes on the design plan
- Supporting production map(s) and documentation for proposed build areas
- Extract of information in supported format provided by UIA

Marketing/Advocate Awareness Program

UIA will instigate and oversee any marketing and communications efforts that are necessary to the network's success. This could include campaigns within city governments, residential markets, multi-dwelling unit markets, business markets, or with community and national thought leaders, policy makers and other audiences. In particular, UIA will seek opportunities to develop and educate about future quality-of-life, public safety, and economic development opportunities on the network, working to build the network's reputation as necessary public infrastructure.

UIA will recruit and manage personnel and/or contractors to assist in promoting the network and growing the subscriber base. The City may assist with the promotion activities as long as it receives the prior written approval from UIA to do so.

GIS Services

Upon implementation of new network designs UIA will create, manage and maintain a Geo-spatial database to track the build of the City's network. UIA will provide a conversion method to import engineering documentation (CAD Conversion) and modify the geo-spatial database to include AS-Built updates as reported.

Continued support will be offered by taking GPS data collection for key OSP elements, recording that information into the database, providing and tracking fiber assignments made for provisioning services and when requested, provide an extract of the database for the Cities in an available format.

Outside Plant Services

During construction UIA will appoint a Project Manager to oversee all approved construction for the specific project. They will manage the RFP process using UIA standard policies to award construction bids and select qualified contractors. They will provide management over employees and contractors during the construction process by assigned construction work packages and ensuring industry best practices and consistent engineering specifications are met.

The Project Manager will ensure:

- Budget tracking and reporting is available for the City
- Obtain necessary field permits and obligations
- Issues are tracked and brought to resolution for the City or its residents
- RMA process is followed
- Inventory is managed and accounted for
- Maintaining necessary levels of inventory to complete work packages
- Ensure construction work through Quality Assurance procedures

Field Services

UIA will provide field crews and/or contractors to be deployed in the field to manage the physical plant which is constructed for the City. UIA will maintain physical huts and cabinets on the network. During the event of an issue the Field Services Group will respond to any actual damage to physical plant and manage and execute the repair needed for restoring the physical plant as deemed necessary by UIA.

Network Engineering Services

UIA will provide network engineers and/or contractors to evaluate, recommend the needed electronics to provide wholesale services on the network. These Network engineers will:

- Test and certify network electronics for deployment
- Create, maintain physical and logical topology of the Network
- Configure and install the necessary devices in the network as needed
- Resolve any issues with these devices and replace parts or device as needed
- RMA through standard processes
- Research and Development of new technologies along with strategic partners
- Capacity planning of the network

Operations Management

UIA will provide management oversight of operational support of the network. This will include:

Integration: Integration of strategic partners onto the network, establishing standard interfaces and operational methods and procedures with these partners. UIA will assist strategic partners in understanding integration points of products and services on the network.

Operational Methods and Procedures: Develop supporting methods and procedures to coordinate delivery of services to customers.

Network Operations Center (NOC): 24x7 NOC to monitor health of devices and services on the network. Respond to Strategic Partner requests, manage to resolution reported issues on the network.

Network Repair and Maintenance: Detect, record (through a UIA a trouble ticketing solution) and respond to network maintenance and issues. Record and dispatch appropriate teams into the field for issue resolution.

Order Management System: Provide systems to allow the ordering and activation of wholesale services on the network, track customer acquisition and produce invoices, as needed, of wholesale services for cities so that they may invoice residents and UIA may invoice Service Providers.

Reporting: Provide reporting of the total number of residential and non-residential customers on the network. During construction, this reporting will be updated monthly and include an estimated percentage of the project completed.

Invoicing: Provide information to the City to allow the invoicing of applicable wholesale services on the network, if the City handles its own invoicing.

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EXHIBIT B

DESCRIPTION OF IMPROVEMENTS

Physical Improvements

Fiber Optic Communication lines will be deployed throughout the City. These lines will be constructed both overhead and underground in each of the city's "rights of way" following all local, state and federal regulations using industry best practices to deploy the most efficient and cost-effective infrastructure.

Elements of the infrastructure include 3 separate categories: Backbone or middle mile construction, access level or last mile construction and drop level construction.

Additional Fiber Optic Communication lines will be deployed in locations outside of the City in order to provide redundancy, increased capacity, and other improvements as may be necessary or advantageous, in whole or in part, for the benefit of the city.

Backbone or Middle Mile Construction

Consists of both overhead and underground paths, communication shelters to house distribution switches, fiber optic patch panels, uninterruptable power supplies (UPS) and generators. The communication shelters will serve as distribution points within the City and will be connected diversely with ring architecture. Other elements include fiber optic cable, conduit, strand, pole mounting hardware, vaults, splice closures and all other items necessary to construct and operate the network. The testing and certification of the improvements will be in accordance with national industry standards and UTOPIA's Engineering Standards document.

Access Level or Last Mile Construction

Consists of both overhead and underground paths to every subscribed address within the build area. Elements of this type of build include fiber optic cable, conduit, strand, pole mounting hardware, vaults, splice closures and all other items necessary to construct and operate the network. This infrastructure will facilitate and serve as network access points for subscribers to UIA.

Drop Level Construction

Consist of drop fiber and/or conduit being placed from a network access point to the demarcation point within the subscriber's premise where a network interface device will be placed. Elements of this type of build include three quarter inch drop conduit, drop fiber, aerial attachment hardware, network interface device (NJD), UPS, fiber pigtail, optical transceiver/receiver, power cord and all other items necessary to construct and operate the network. UIA understands that it is the City's preference that underground construction, not aerial attachment, be used whenever possible. In some instances, UIA

will also be responsible for installing cat5 cable within the homes to provide a connection for the services ordered.

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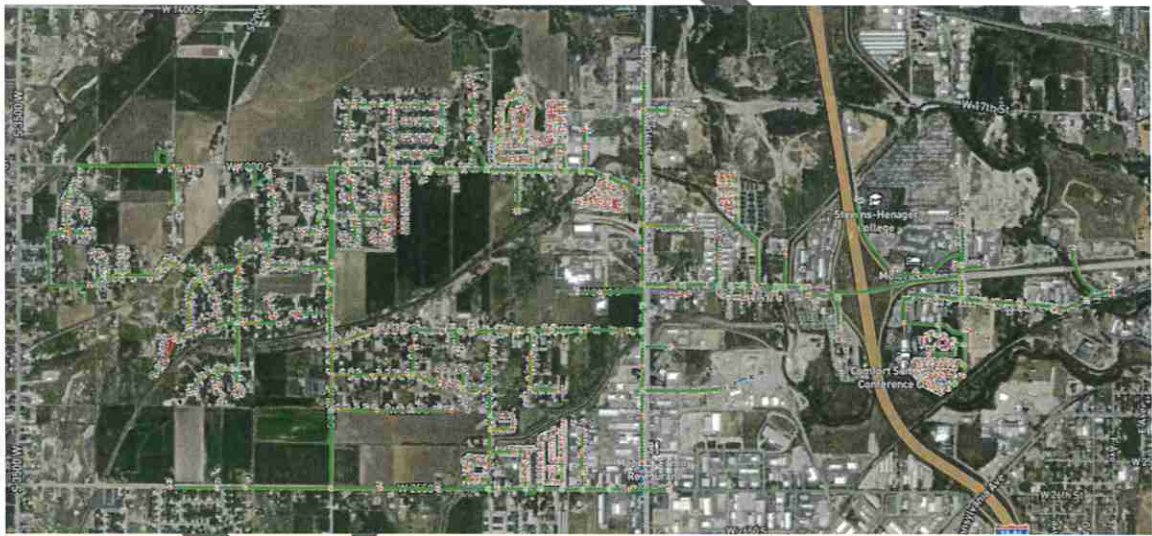
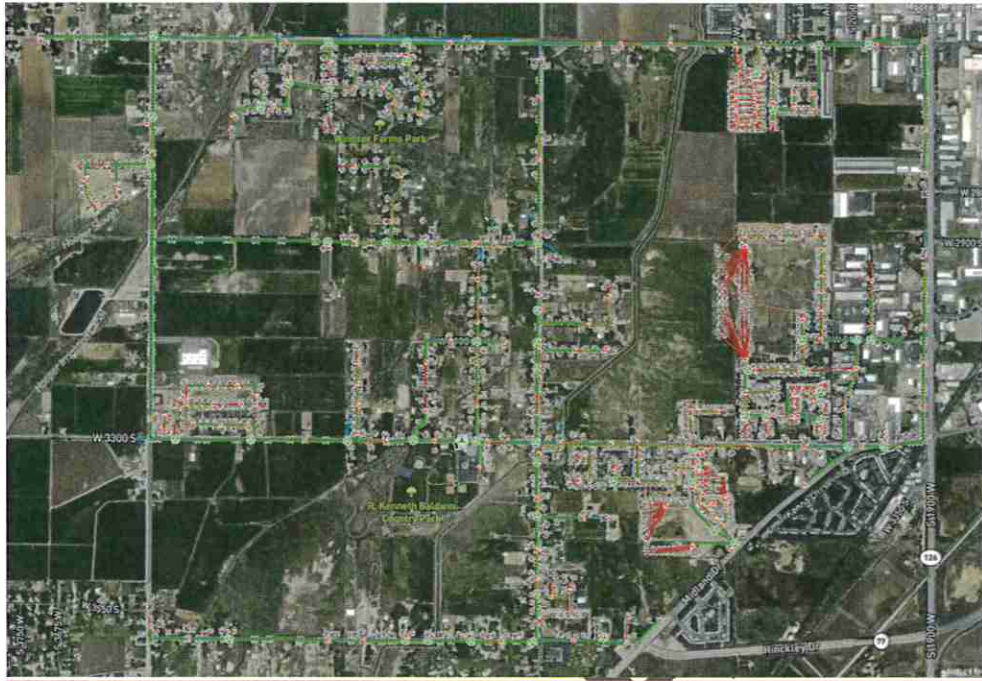


EXHIBIT D

FORM OF PROMISSORY NOTE

\$ _____

(date)

FOR VALUE RECEIVED, the undersigned, Utah Infrastructure Agency (“Borrower”), promises to pay to the order of _____, Utah (“Lender”), the principal sum of _____ (\$ _____) together with all subsequent loan advances made, expenditures authorized and additional payments provided for in this Promissory Note and pursuant to the Fiber Communications Service and Acquisition Contract dated as of [_____], 20__, between Borrower and Lender (the “Contract”).

1. Definitions. As used in this Note, the following terms shall have the meanings set forth below:

“Effective Date” means the date the terms of this Note, including the accruing rate of interest and the payment obligations described herein, become effective, which date shall be the date the proceeds of the Loan are disbursed to or for the benefit of Borrower.

“Event of Default” means failure by Borrower to pay timely any installment of principal or interest on this Note.

“Loan” means the loan advanced by Lender to Borrower under the terms and upon the conditions contained in the Contract in the principal amount of _____ (\$ _____).

“Maturity Date” means _____.

“Month” means a calendar month.

“Note” means this Promissory Note and any extensions, renewals or modifications thereof.

“Payment Date” means the _____ day of each Month on which Borrower shall pay to Lender accrued interest, or principal and accrued interest, on the outstanding principal of this Note, as required by the terms of this Note.

“Principal Indebtedness” means at any time and from time to time during the term of this Note all advances, disbursements, expenditures, and payments made by Lender after the date of this Note pursuant to the terms of this Note or the Contract.

2. Security. Security for this Note and repayment by Borrower will be limited exclusively to the Revenues, as defined in the Contract, that are generated under the Contract. Borrower’s obligation to repay the Note is contingent upon the availability of Revenues generated under the Contract in excess of the UIA Revenue Requirement, as

defined in the Contract. Borrower is not obligated to utilize any other funds to repay this Note.

3. Interest Accruals. The unpaid principal balance will bear interest at the rate set forth in Section 3.5(e) of the Contract.

4. Interest Calculation Basis. All interest accruing under this Note shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

5. Payments of Principal and Accrued Interest.

(a) Beginning on _____, Borrower shall make monthly installment payments to Lender of principal and accrued interest on the unpaid Principal Indebtedness in the amount of _____ (\$ _____) each.

(b) The entire unpaid Principal Indebtedness, together with all accrued and unpaid interest thereon, if not sooner paid, shall be due and payable in full on the Maturity Date.

6. Place of Payment. All payments under this Note shall be made in lawful money of the United States of America at Lender's offices at _____ Utah, or at such other place as Lender may from time to time designate. All payments on this Note shall, at the option of Lender, be applied first to the payment of accrued interest and after all such interest has been paid, any remainder shall be applied toward the reduction of the Principal Indebtedness.

7. Default Rate of Interest. During any period of time which an Event of Default has occurred and is continuing, interest shall accrue against the outstanding Principal Indebtedness evidenced hereby at a rate equal to the otherwise effective rate of interest under this Note plus five percent (5.0%) per annum, calculated on the basis of a 360-day year for the actual number of days elapsed.

8. Prepayment. Borrower may prepay all or a portion of the amount owed earlier than it is due.

9. Late Fee Charges. If any payment required by this Note not received by Lender within ten (10) days after such payment is due, a late fee charge equal to five percent (5.0%) of such late payment shall be due and payable.

10. Incorporation of Contract. The terms, conditions, covenants, provisions, stipulations and agreements of the Contract are hereby made a part of this Note by reference to such document in the same manner and with the same effect as if the Contract were fully set forth herein. Borrower hereby covenants and promises to abide by and comply with each and every covenant and condition set forth in this Note and the Contract.

11. Application of Payments. All payments on this Note shall, at the option of Lender, be applied first to the payment of accrued interest and after all such interest has been paid, any remainder shall be applied toward repayment of any additional advances

Lender has made hereunder which have not already been added to the Principal Indebtedness then outstanding, and the balance, if any, toward the reduction of the Principal Indebtedness.

12. Waivers, Substitution of Security. Borrower waives presentment for payment, notice of dishonor and protest, and consents to any extension of time with respect to any payment due under this Note, to any substitution or release of collateral, and to the addition or release of any party. No waiver of any payment under this Note shall operate as a waiver of any other payment. No delay or failure of Lender in the exercise of any right or remedy provided for under this Note shall be deemed a waiver of such right by Lender, and no exercise of any right or remedy shall be deemed a waiver of any other right or remedy which Lender may have.

13. Governing Law. This Note is to be construed in accordance with the laws of the State of Utah, without giving effect to principles of conflicts of laws.

14. General. Time is of the essence hereof. Upon the occurrence and continuance of an Event of Default, Lender shall have, in addition to all rights and remedies available to Lender at law or in equity, all rights and remedies allowed under Utah law.

DATED effective as of the date first above written.

[Signatures appear on following pages.]

BORROWER:

UTAH INFRASTRUCTURE AGENCY

By: _____
Chair

LENDER:

UTAH

By: _____
Mayor

(SEAL)

ATTEST AND COUNTERSIGN:

By: _____
City Recorder

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