



NIBLEY CITY COUNCIL MEETING AGENDA
Thursday, February 25, 2021 – 6:30 p.m.

In accordance with Utah Code Annotated 52-4-207 and Nibley City Resolution 12-04, this meeting may be conducted electronically. The anchor location for the meeting will be Nibley City Hall, 455 West 3200 South, Nibley, Utah. The public may also participate in the meeting via the Zoom meeting link provided at www.nibleycity.com. Public comment should be submitted to cheryl@nibleycity.com by 6:30 p.m. and will be read into the public record.

1. Opening Ceremonies (Councilmember Bernhardt)
2. Call to Order and Roll Call (Chair)
3. Approval of the previous Meeting Minutes and Current Agenda (Chair)
4. Public Comment Period¹ (Chair)
5. Planning Commission Report
6. **Department Report:** Planning Department – Budget and Action Items
7. **Discussion & Consideration** – Determination of the Process for Hiring a New City Manager
8. **Discussion & Consideration** – Ordinance 21-03: Commercial Zoning Standards (Second Reading)
9. **Discussion & Consideration** – Resolution 21-05: Transportation Master Plan Map Amendments (First Reading)
10. **Discussion & Consideration** – Revision to Development Plans and Development Agreement for Nibley Meadows Residential Planned Unit Development, located at approximately 1000 W 3200 S, proposing 273 units on 54.6 acres (Applicant: Westates Companies, LLC)
11. **Discussion & Consideration** – Ordinance 21-04: An Ordinance Granting Digital First Telecom LLC a Franchise Agreement with Nibley City (First Reading)
12. **Council and Staff Report**
13. **Adjourn to Closed Session** – To Discuss personnel pursuant to Utah Code 52-4-205

In compliance with the Americans With Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance, please call (435) 752-0431.

¹ Public input is welcomed at all City Council Meetings. 15 minutes have been allotted to receive verbal public comment. Verbal comments shall be limited to 3 minutes per person. A sign-up sheet is available at the entrance to the Council Chambers starting 15 minutes prior to each council meeting and at the rostrum for the duration of the public comment period. Commenters shall identify themselves by name and address on the comment form and verbally for inclusion in the record. Comment will be taken in the order shown on the sign-up sheet. Written comment will also be accepted and entered into the record for the meeting if received prior to the conclusion of the meeting. Comments determined by the presiding officer to be in violation of Council meeting rules shall be ruled out of order.

² Items on the Consent Agenda are considered to be routine and/or non-controversial, and will be approved in one vote.



Agenda Item #6

Description	Department Report: Planning Department – Budget & Action Items
Department	Planner
Presenter	Levi Roberts, Nibley City Planner
Recommendation	Receive the presentation. Give direction on proceeding.
Reviewed By	Mayor, City Manager

Background:

The City Planner is going to review the draft budget for the Planning & Building Department for FY 2020-2021. In his presentation, he will review accomplishments for 2020 and proposed goals for 2021. The City Council will give direction on the proposed goals, initiatives and budget items.

Agenda Item #7

Description	Discussion & Consideration – Determination of the Process for Hiring a New City Manager
Presenter	Mayor Dustin
Recommendation	Discuss and Consider Process
Reviewed By	Mayor

Background:

The Council will discuss the process for hiring a New City Manager. The Council should discuss scheduling for first interviews via Zoom during the first week of March.

Agenda Item #8

Description	Discussion & Consideration – Ordinance 21-03: Commercial Zoning Standards (Second Reading)
Department	Planning
Presenter	Levi Roberts, Planner
Recommendation	Move to approve Ordinance 21-03: Commercial Zoning Standards.
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Planning Commission

Background:

The Planning Commission is recommending specific changes related to commercial zoning standards related to setback requirements and the site plan review process.

The first recommended change addresses requirements for site plan review for new commercial and industrial development. Currently, NCC 19.14.050 (M) provides a process for site plan review, which includes a concept presentation, preliminary approval (of Planning Commission and City Council) and a final approval (of Planning Commission and City Council). The Planning Commission and City Staff believe that for most developments, this process is overly arduous for applicants and should be simplified. It should also articulate in which instances a new development should go through the site plan review process and should be inclusive of industrial development, as well. During the December 3 meeting, the Planning Commission recommended developing thresholds for approval authority for site plans. For buildings less than 500 sq ft, the City Planner would be the approval authority. For buildings greater than 500 sq ft and less than 10,000 sq ft, the Planning Commission would be the approval authority. For buildings greater than 10,000 sq ft, the City Council would be the approval authority with a recommendation from the Planning Commission. For developments of this scale

(greater than 10,000 sq ft), a concept presentation would also be required to be made to the planning commission prior to final approval.

The second change addresses mitigating impact when commercial uses are adjacent to residential uses. When approving the recent annexation of Malouf, the City Council expressed the concern of new commercial development creating shadows and having other impacts if buildings are in close proximity to homes. This can be addressed through setback requirements of 19.22, which already has additional setback requirements in industrial zones. In the December 3 and 17 meeting, it was discussed to have a minimum setback requirement when a commercial zone abuts a residential zone or dwelling, with additional setback needed when the height exceeds the minimum setback. There was some concern about the potential negative impact this may have on economic development in the City and Staff was directed to submit some examples of commercial building setbacks which are adjacent to residential zones. Within Cache Valley, it appears that there are limited examples of commercial buildings directly adjacent to residential, which have minimal setbacks. In some cases, it does appear that they are out of scale with the context of the neighborhood and additional setback requirements may mitigate potential negative impacts. Based upon the discussion, Staff recommends that in Commercial zones, there should be a minimum setback of 30 feet for additional buildings with one additional foot of required setback for buildings higher than 30 feet. In neighborhood commercial zones, staff recommends a lower minimum setback of 20 feet. This is more appropriate, as neighborhood commercial development already has other restrictions related to square footage and height restrictions and are meant to integrate into residential neighborhoods. That said, some uses may have detrimental impacts upon adjacent housing, which can be mitigated with additional setback requirements.

Planning Commission Recommendation

Approval of 21-03: Commercial Zoning Standards (with the addition that developments of over 10,000 sq ft will require a concept presentation).

Recommended Findings

- The recommended changes improve the clarity and appropriateness of the site plan review process for commercial, industrial and institutional development
- Commercial development may have detrimental impacts when adjacent to residential development that may be mitigated by additional setback standards

ORDINANCE 21-03
COMMERCIAL ZONING STANDARDS

WHEREAS, Nibley City regulates zoning standards, including setback standards and a process to review commercial, industrial and institutional development within the City; and

WHEREAS, commercial development may have detrimental impacts when adjacent to residential development that may be mitigated by additional setback standards; and

WHEREAS, the recommended changes improve the clarity and appropriateness of the site plan review process for commercial, industrial and institutional development.

NOW, THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL OF NIBLEY, UTAH THAT:

1. The proposed amendments to NCC 19.14, 19.16 and 19.22 be adopted.
2. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
3. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
4. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS _____ DAY OF _____, 2021.

Shaun Dustin, Mayor

ATTEST: _____
David Zook, City Recorder

19.14 Commercial And Neighborhood Commercial Zoning Standards

19.14.010		Purpose
19.14.020	Use	Regulations
19.14.030	Space	Requirements
19.15.040	Parking	Requirements

19.14.050 Neighborhood Commercial Zone C-N

HISTORY

Adopted by Ord. 20-09 on 5/14/2020

19.14.010 Purpose

The purpose of the commercial zone is to provide suitable areas for the location of commercial activities needed to serve the people and commerce of the city. Retail commercial activities which serve the residents of the city will be encouraged.

19.14.020 Use Regulations

See NCC 19.20

19.14.030 Space Requirements

See NCC 19.22

19.14.040 Parking Requirements

See NCC 19.24.160.

19.14.050 Site Plan Review

A. Site Plan Review and Approval Process: Any proposed development of commercial, institutional or industrial uses, including new buildings, expansion of or addition to existing buildings, or change in type use of existing buildings, must meet the requirements of design standards for commercial and institutional uses, as applicable, and the provisions of this title and other applicable standards.

1. Approval Process: All proposed development described in this section are subject to the following site plan approval process. At each stage of the process, applicants shall be required to submit relevant application forms and pay applicable fees.

a. Preapplication Conference: Prior to submitting a site plan application, developers shall meet with the City Planner to become acquainted with the development requirements, procedures and schedules, and to discuss potential issues with the project. At this time, developer shall present the city planner with a general site plan and inform the City Planner of plans for the development.

b. Concept Presentation: Following determination of compliance at the preapplication conference, all proposals for development, redevelopment or additions to buildings greater than 10,000 sq ft shall be required to present and receive approval of a concept plan from the planning commission.

At this time, the planning commission may give preliminary input on the development concept. This input shall be based on the concept's compliance with the Nibley City general plan and all applicable state and local ordinances.

c. Site Plan Review: For all commercial, institutional and industrial development, including new buildings, expansion of or addition to existing buildings, or change

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Use

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Each Commercial Development and Use shall obtain a business license from Nibley City. Commercial Uses as listed in NCC 19.20 as a conditional use shall also obtain a Conditional Use Permit before construction of new developments or operation of a business for existing commercial developments and buildings.¶

Traffic and Connectivity¶

Roadways and intersections shall maintain a Level of Service (LOS) C. Commercial applicants may be required to make any road updates in order to ensure the roadway will maintain LOS C.¶

Site plans must comply with the Transportation and Trails Master Plan.¶

Applicants may be required to provide an additional vehicle access to the site for one or more of the following reasons¶

There is only one vehicle access road to the site¶

Allow for greater emergency access to the site¶

Provide for better connectivity and enhance the safety of surrounding roadways and intersections.¶

Construction access to minimize impact to existing homes and infrastructure¶

Utilities¶

Prior to the issuance of a business license or conditional use permit, utility lines shall be updated to comply with water, sewer and stormwater master plans within the application property and adjacent rights-of-way.¶

A business license or conditional use permit shall only be granted if the City can reasonably supply water and sewer services to the applicant for their proposed use. The City may require an applicant to surrender water shares or water rights.¶

Applicants shall connect to service lines needed to supply the use of an application and shall be responsible for all associated costs.¶ ... [1]

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in the type of use of existing buildings, developer is required to receive approval from the following bodies, as set forth:

1. For development, redevelopment, or additions to buildings which are below 500 sq ft, the City Planner shall be the site plan approval authority.
 2. For development, redevelopment, or additions to buildings which are greater than 500 sq ft and less than 10,000 sq ft, the Planning Commission shall be the site plan approval authority.
 3. For development, redevelopment, or additions to buildings which are greater than 10,000 sq ft, the City Council shall be the site plan approval authority. Such site plans shall only be presented to the City Council after a recommendation of the Planning Commission.
2. Site Plan Specifications: The site plan shall be prepared, submitted and reviewed in accordance with the Nibley City Code and Standards, as applicable, including Design Standards for Commercial and Institutional Development.
- a. At the time of site plan application, developer shall be required to submit the following plans, drawn to a scale not to exceed one inch equals three hundred feet (1" = 300'):
 1. Overall site plan, including location of buildings, open space, parking, landscaping and pedestrian and traffic circulation, all existing residences, buildings, existing streets and proposed streets within three hundred feet (300') of the site in all directions.
 1. Architectural renderings and elevations, demonstrating building materials and colors.
 2. General drainage and utility layout with topography, showing all topographic features.
 2. As part of the site plan application, the developer shall be required to submit construction drawings that are compliant with the Nibley City Design Standards and Specifications.
 3. As part of the site plan application, the developer shall describe the source, layout, and availability of utilities and utility connections. In particular, the developer shall describe the anticipated water requirements of the proposed development and the developer's plan for supplying water to the site.
 - b. Site Plan Modifications and Amendments: Except as may be provided for elsewhere in this chapter, no element of an approved site plan shall be changed or modified substantially without first obtaining approval of the proposed amendment with the same procedure of the original site plan approval. Substantial modification shall include the change in use of a structure, as defined in 19.20.020, or any modification that changes at least five percent (5%) of the total area in the approved site plan.
 - c. Time Limitations: Developer shall have one year from the date of final site plan submittal to obtain final plan approval. Extensions of time may be granted by the planning commission and/or city council for a period of not longer than one year upon submittal of a request for extension of time, and showing of good cause prior to the expiration of the initial approval or an approved extension of time. A second time extension may be requested, and if granted, the extension can be no longer than six (6) months. No other time extensions shall be granted. Developer shall have to start the design review process over. Self-imposed and economic hardships shall not be a basis for granting an extension.
3. Applicants which require a Conditional Use Permit may submit a site plan at the time they submit a conditional use permit and need not submit a separate application.

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19.14.060 Commercial Zone Requirements

A. Use Permit

1. Each Commercial Development and Use shall obtain a business license from Nibley City. Commercial Uses as listed in NCC 19.20 as a conditional use shall also obtain a Conditional Use Permit before construction of new developments or operation of a business for existing commercial developments and buildings.

B. Traffic and Connectivity

1. Roadways and intersections shall maintain a Level of Service (LOS) C. Commercial applicants may be required to make any road updates in order to ensure the roadway will maintain LOS C.
2. Site plans must comply with the Transportation and Trails Master Plan.
3. Applicants may be required to provide an additional vehicle access to the site for one or more of the following reasons
 - a. There is only one vehicle access road to the site
 - b. Allow for greater emergency access to the site
 - c. Provide for better connectivity and enhance the safety of surrounding roadways and intersections.
 - d. Construction access to minimize impact to existing homes and infrastructure

C. Utilities

1. Prior to the issuance of a business license or conditional use permit, utility lines shall be updated to comply with water, sewer and stormwater master plans within the application property and adjacent rights-of-way.
2. A business license or conditional use permit shall only be granted if the City can reasonably supply water and sewer services to the applicant for their proposed use. The applicant shall be required to supply necessary water rights or shares in accordance with NCC 21.12.020.
3. Applicants shall connect to service lines needed to supply the use of an application and shall be responsible for all associated costs.
 - a. If no utility lines are available or current utility lines and services are determined to be insufficient for the proposed use by the City Engineer, the applicant shall build or install the needed infrastructure before a business license or conditional use permit may be granted.

D. Each Commercial building shall be built to the standards in Nibley City Design Standards for Commercial and Institutional Uses except for Remodeled Residential Units as stated within this chapter.

E. All commercial buildings shall comply with fire code and are subject to inspection of the Fire Marshall before a business license or conditional use permit is granted. New commercial buildings shall also be inspected by the Fire Marshal before a certificate of occupancy can be given. All commercial buildings shall be subject to an annual inspection by the Fire Marshal, and any license, permit, or certificate issued for a building or use may be revoked for failure to comply with fire code.

F. All site plans shall be approved by the City's Engineer and Public Works departments. All site plans shall comply with Nibley City Design Standards and all projects located in Commercial and Neighborhood Commercial Zone shall comply with Nibley City Design Standards for Commercial and Institutional Use.

G. Residential Units Remodeled for Commercial Use:

1. Nibley City Design Standards for Commercial and Institutional Use facade treatments shall not apply to single family homes that have been remodeled for commercial use. Such homes may be referred to as "Remodeled Residential Units."

- 2. Remodeled Residential Units must comply with landscaping, parking, fire code, the Americans with Disability Act (ADA) requirements, building permit requirements, inspections, and all other standards and requirements described within this title.
- 3. Any business taking place in a remodeled residential unit is considered a conditional use and shall obtain a conditional use permit prior to beginning operations, regardless of the use within the building. Any change in the business or use of the Remodeled Residential Unit shall require a new conditional use permit.
- 4. The Commercial Use shall be the primary use of the building.
- 5. The exceptions for Remodeled Residential Units shall only apply to buildings on lots which front collector or arterial streets, as defined by the Nibley City Master Streets Plan.
- H. The City may require the placement of fences or walls to enhance security and mitigate aesthetic or other impacts at facilities adjacent to residential areas.
- I. In Commercial Zones, warehousing and storage may be allowed as part of business if it is attached to offices, retail, or other permitted or conditional use allowed within a Commercial Zone.
- J. All Commercial developments shall comply with landscaping code within NCC 19.24.170.

19.14.050 Neighborhood Commercial Zone C-N Requirements

B. Purpose

- 1. The neighborhood commercial zone C-N is established to provide areas in which the primary use of land is for commercial and service uses to:
 - a. Serve the daily convenience needs of the adjacent residential neighborhoods.
 - b. Provide economic stability.
 - c. Enhance property values.
 - d. Establish strategies for achieving good community design.
 - e. Stabilize areas/zones.
 - f. Reduce traffic congestion and promote walkable communities.
 - g. Promote the policies of the general plan.
- 2. This C-N zone shall be located in areas deemed appropriate and approved by the city council for services to the residents of the city. The zone will create a minimum of detriment, hazard, noise or inconvenience to surrounding residential development.
- 3. The C-N zone shall be characterized by harmonious grouping and architectural offset of building mass of commercial stores and shops which will be architecturally designed for, and will function as, an integrated unit. Clean parking lots and attractive well maintained shops with appropriate landscaping will also be characteristic of this zone.
- 4. Lighting will be of low intensity, low profile and fully shielded to protect the surrounding residential areas. The architectural design and character will be compatible with that of the surrounding residential environment.
- 5. Heavy commercial uses within this zone have been excluded and are not permitted.

C. Permitted Uses: See NCC 19.20.

D. Conditional Uses:

- 1. Regular Conditional Uses: See NCC 19.20.
- 2. Temporary Accessory Uses: Temporary accessory uses and structures are permitted in the C-N zone, provided they are incidental to, and do not substantially alter the character of, the permitted use or structure. Such permitted accessory uses and structures include, but are not limited to, the following: Storage of materials used for construction of a building, including the contractor's temporary office, provided that such use is on the building site or immediately adjacent thereto and provided further that such shall be permitted only during construction period and thirty (30) days thereafter.
- 3. Use Limitations: All other uses not listed are not permitted.
- 4. Residential Units Remodeled for Commercial Use:

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- a. Nibley City Design Standards for Commercial and Institutional Use facade treatments shall not apply to single family homes that have been remodeled for commercial use. Such homes may be referred to as “Remodeled Residential Units.”
 - b. Remodeled Residential Units must comply with landscaping, parking, fire code, the Americans with Disability Act (ADA) requirements, building permit requirements, inspections, and all other standards and requirements described within this title.
 - c. Any business taking place in a remodeled residential unit is considered a conditional use and shall obtain a conditional use permit prior to beginning operations, regardless of the use within the building. Any change in the business or use of the Remodeled Residential Unit shall require a new conditional use permit.
- E. ~~Lot Coverage: No building, structure, or group of buildings with their accessory buildings shall cover more than seventy percent (70%) of the lot or parcel.~~
- F. ~~Parking: Where possible, parking areas shall be located to the side or rear of building. On corner lots, parking shall be avoided on side yards contiguous to the street.~~
- G. Building Size: The maximum size building footprint allowed shall not exceed a total of fifteen thousand (15,000) square feet.
- H. Commercial Condominiums
 - 1. Commercial Condominiums, shall be a permitted use in the Neighborhood Commercial zone, as set forth herein.
 - 2. All shared or common properties, landscaping, parking lots, roadways, and other non-public amenities or improvements that serve the commercial condominium shall be maintained by an owners association, pursuant to duly adopted and recorded agreements.
 - 3. If a development chooses to build condominiums, they must provide sufficient parking and landscaping for each unit, consistent with current City Commercial standards at the time of the rezone application.
 - 4. Front, rear, and side setbacks shall be measured from the foundation walls of the building.
 - 5. There shall be a maximum of five commercial condominium units per acre.
- I. Off Street Parking, Loading, And Access:
 - 1. The requirements of design standards for commercial and institutional uses and NCC 19.24.160, "Parking Requirements", shall apply.
 - 2. The site shall be developed to provide for shared access.
 - 3. The developer/owner of a neighborhood commercial development located along a state-owned highway will cause the required traffic impact study to be performed in conformance with the requirements of the Utah Department of Transportation and provide to the city a valid copy of the UDOT letter of approval.
- J. Signs: The requirements of design standards for commercial and institutional uses shall apply to this zone. Only monument signage will be allowed, and only in the twenty foot (20') front yard setback.
- K. ~~Fencing and Screening: Fencing and screening shall meet the requirements of design standards for commercial and institutional uses; NCC 19.22.010(E), "Fences and walls maximum height"; NCC 19.24.090, "Fence Regulations"; and NCC 19.24.170(C), "Commercial And Industrial Zones" (landscape requirements), shall be required of all fences and landscape screening in this zone.~~
- L. Storage; Displays: All materials, supplies, merchandise, or other similar matter not on display for direct sale, rental or lease to the ultimate consumer or user, not able to be stored within the commercial structure shall be stored in a completely enclosed building.
- M. Storage; Trash:

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Deleted: <#> Density Requirements: Each single lot or parcel of land in the C-N zone shall contain a minimum of one-fourth (1/4) acre to allow for the building, site development, parking, required landscaping and stormwater detention. Stormwater detention can be planned as one shared basin.¶
Lot Frontage: The combined, contiguous parcels or lot of land in the C-N zone shall abut a public street for a minimum distance of one hundred feet (100'). ¶

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Front Yard: Each yard or parcel in the C-N zone shall have a store front yard of not less than twenty feet (20'). ¶
Side Yard: Each yard or parcel of land in the C-N zone shall have a side yard of not less than ten feet (10'). The minimum side setback from an adjacent residential zone shall be ten feet (10'). ¶
Side Yard; Corner Lots: On corner lots the side yard contiguous to the street shall not be less than twenty feet (20') in width and shall not be used for vehicular parking

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Rear Yard: Each lot or parcel of land in the C-N zone shall have a rear yard of not less than five feet (5'), but at a minimum shall match the space requirements for the rear yard setback of the adjoining zone except the rear yard setback shall be thirty feet (20') adjacent to a residential zone. ¶ ... [2]

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Moved up [2]: <#>At this time, developer shall present a general site plan and inform the city planner of plans for

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1. No trash, garbage, used materials or wrecked, inoperable or abandoned vehicles or equipment shall be stored in an open area. All such materials shall be kept in an enclosed building(s) or structure.
2. All structures built to accommodate the storage shall be constructed using a design compatible with the primary structure and meeting all the architectural design standards outlined in the design standards for commercial and institutional uses. Within a development of multiple structures, a common structure shall be constructed suitable for use by all tenants or businesses.

N. Development Standards: The development standards of the C-N zone shall conform to design standards for commercial and institutional uses.

O. Utilities

1. Prior to the issuance of a business license or conditional use permit, utility lines shall be updated to comply with water, sewer and stormwater master plans within the application property and adjacent rights-of-way.
2. A business license or conditional use permit shall only be granted if the City can reasonably supply water and sewer services to the applicant for their proposed use. The applicant shall be required to supply necessary water rights or shares in accordance with NCC 21.12.020.
3. Applicants shall connect to service lines needed to supply the use of an application and shall be responsible for all associated costs.
 - a. If no utility lines are available or current utility lines and services are determined to be insufficient for the proposed use by the City Engineer, the applicant shall build or install the needed infrastructure before a business license or conditional use permit may be granted.

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19.16 Industrial Zone I

19.16.010		Purpose
19.16.020	Use	Regulations
19.16.030	Space	Requirements
19.16.040	Parking	Requirements

19.16.010 Purpose

The purpose of the industrial zone is to provide suitable areas that will accommodate the need for industry and industrial-related uses.

19.16.020 Use Regulations

See NCC 19.20.

19.16.030 Space Requirements

See NCC 19.22.

19.16.040 Parking Requirements

See NCC 19.24.160.

19.16.050 Site Plan Review All proposed commercial, institutional, or industrial development, including new buildings and expansion of or addition to existing buildings, or change in the type of use of existing buildings, are subject to the site plan review requirements of NCC 19.14.050

19.22 Space Requirements Chart

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19.22.010 Space Requirements Chart

		A	R-E	R-1	R-1A	R-2	R-2A	C	C-N	I
A.	Minimum lot area	5 acres	2 acres	1 acre	3/4 acre	1/2 acre	12,000 sq. ft. (10) See note 9	--	<u>¼ acre</u>	--
	Minimum lot width, measured at setback line	200	200	200	150	100	100	--	<u>100</u>	--
B.		Setback principal uses								
	Front yard	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	20	<u>20</u>	50
	Side yard, interior	15 ³	15	10	10	10	10	0(10) ³ (<u>30*</u>) ¹¹	<u>10</u> (<u>20*</u>) ¹¹	0(50) ⁴
	Side yard, street	25(35) ³	25(35) ³	25(35) ³	25(35) ³	25(35) ³	25(35) ³	20	<u>20</u>	25(35) ³
	Rear yard	30	30	30	30	25	25	0(10) ³ (<u>30*</u>) ¹¹	<u>5</u> (<u>20*</u>) ¹¹	0(50) ⁴
C.		Setback accessory uses								
	Front yard	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	20	<u>20</u>	50
	Side yard, interior	10(3) ⁵	10(3) ⁵	10(3) ⁵	10(3) ⁵	10(3) ⁵	10(3) ⁵	0(10) ⁴	<u>0(10)⁴</u>	0(10) ⁴
	Side yard, street		25(35) ³	25(35) ³	25(35) ³	25(35) ³	25(35) ³	20	<u>20</u>	25(35) ³

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	Rear yard	1(10) ⁶	1(10) ₆	1(10) ₆	1(10) ₆	1(10) ₆	1(10) ⁶	1(10) ⁴	1(10) ⁴	1(10) ⁴
D.		Height maximum								
	Principal uses	40	40	40	40	40	40	40	35 ¹²	50(70) ₀ ¹
	Accessory uses	30	30	30	30	20	20	30	20	30
E.		Fences and walls maximum height								
	Front yard, property line to setback line	4	4	4	4	4	4	4	4	4
	Rear yard	7(8)8	7(8)8	7(8)8	7(8)8	7(8) ₈	7(8)8	7(8)8	7(8)8	7(8)8
	Side yard	7(8)8	7(8)8	7(8)8	7(8)8	7(8) ₈	7(8)8	7(8)8	7(8)8	7(8)8
	Corner lots	See NCC 19.24.090(B)								

Notes:

1. In all zones in a platted subdivision, lot width is 100 feet minimum, at setback line, but lot area must be 1/2 acre.
2. All measurements are in feet unless otherwise specified.
3. Greater distance required where yard faces arterial road.
4. Greater distance required where property line is adjacent to residential zone or residential dwelling unit.
5. Lesser distance allowed where accessory building is at least 10 feet behind the rear of main building and not less than 10 feet from any dwelling unit on adjacent property.
6. Greater distance required where rear yard faces side yard of adjacent property.
7. Principal use is defined as a dwelling unit in R-E, R-1 and R-2.
8. 8 foot height allowed for a transparent fence, e.g., chainlink, as defined in NCC 19.24.090.
9. The average lot size for the entire subdivision phase and portion thereof shall average at least fourteen thousand (14,000) sq. ft.
10. Greater maximum height allowed if building is at a minimum of 300' from a residential zone.
11. When abutting a residential zone or existing residential dwelling unit, minimum setback is 30 feet for commercial zones and 20 feet for neighborhood commercial zones. The minimum setback shall be increased one additional foot for every additional one foot in height of the building in a commercial zone.

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HISTORY

Adopted	by	Ord.	No	Source	on	6/3/1993
Amended	by	Ord.		03-08	on	4/17/2003
Amended	by	Ord.		<u>06-04</u>	on	6/15/2006
Amended	by	Ord.		<u>17-06</u>	on	3/16/2017
Amended by Res. <u>19-10</u> on 6/27/2019						

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19.14 Commercial And Neighborhood Commercial Zoning Standards

19.14.010 Purpose

19.14.020 Use Regulations

19.14.030 Space Requirements

19.15.040 Parking Requirements

19.14.050 Neighborhood Commercial Zone C-N

HISTORY

Adopted by Ord. 20-09 on 5/14/2020

19.14.010 Purpose

The purpose of the commercial zone is to provide suitable areas for the location of commercial activities needed to serve the people and commerce of the city. Retail commercial activities which serve the residents of the city will be encouraged.

19.14.020 Use Regulations

See NCC 19.20

19.14.030 Space Requirements

See NCC 19.22.

19.14.040 Parking Requirements

[See NCC 19.24.160.](#)

19.14.050 Site Plan Review

- A. Site Plan Review and Approval Process: Any proposed development of commercial, institutional or industrial uses, including new buildings, expansion of or addition to existing buildings, or change in type use of existing buildings, must meet the requirements of design standards for commercial and institutional uses, as applicable, and the provisions of this title and other applicable standards.
 1. Approval Process: All proposed development described in this section are subject to the following site plan approval process. At each stage of the process, applicants shall be required to submit relevant application forms and pay applicable fees.
 - a. Preapplication Conference: Prior to submitting a site plan application, developers shall meet with the City Planner to become acquainted with the development requirements, procedures and schedules, and to discuss potential issues with the project. At this time, developer shall present the city planner with a general site plan and inform the City Planner of plans for the development.
 - b. Concept Presentation: Following determination of compliance at the preapplication conference, all proposals for development, redevelopment or additions to buildings greater than 10,000 sq ft shall be required to present and receive approval of a concept plan from the planning commission.

At this time, the planning commission may give preliminary input on the development concept. This input shall be based on the concept's compliance with the Nibley City general plan and all applicable state and local ordinances.

- c. Site Plan Review: For all commercial, institutional and industrial development, including new buildings, expansion of or addition to existing buildings, or change in the type of use of existing buildings, developer is required to receive approval from the following bodies, as set forth:
 1. For development, redevelopment, or additions to buildings which are below 500 sq ft, the City Planner shall be the site plan approval authority.

2. For development, redevelopment, or additions to buildings which are greater than 500 sq ft and less than 10,000 sq ft, the Planning Commission shall be the site plan approval authority.
 3. For development, redevelopment, or additions to buildings which are greater than 10,000 sq ft, the City Council shall be the site plan approval authority. Such site plans shall only be presented to the City Council after a recommendation of the Planning Commission.
2. Site Plan Specifications: The site plan shall be prepared, submitted and reviewed in accordance with the Nibley City Code and Standards, as applicable, including Design Standards for Commercial and Institutional Development.
 - a. At the time of site plan application, developer shall be required to submit the following plans, drawn to a scale not to exceed one inch equals three hundred feet (1" = 300'):
 1. Overall site plan, including location of buildings, open space, parking, landscaping and pedestrian and traffic circulation, all existing residences, buildings, existing streets and proposed streets within three hundred feet (300') of the site in all directions.
 1. Architectural renderings and elevations, demonstrating building materials and colors.
 2. General drainage and utility layout with topography, showing all topographic features.
 2. As part of the site plan application, the developer shall be required to submit construction drawings that are compliant with the Nibley City Design Standards and Specifications.
 3. As part of the site plan application, the developer shall describe the source, layout, and availability of utilities and utility connections. In particular, the developer shall describe the anticipated water requirements of the proposed development and the developer's plan for supplying water to the site.
 - b. Site Plan Modifications and Amendments: Except as may be provided for elsewhere in this chapter, no element of an approved site plan shall be changed or modified substantially without first obtaining approval of the proposed amendment with the same procedure of the original site plan approval. Substantial modification shall include the change in use of a structure, as defined in 19.20.020, or any modification that changes at least five percent (5%) of the total area in the approved site plan.
 - c. Time Limitations: Developer shall have one year from the date of final site plan submittal to obtain final plan approval. Extensions of time may be granted by the planning commission and/or city council for a period of not longer than one year upon submittal of a request for extension of time, and showing of good cause prior to the expiration of the initial approval or an approved extension of time. A second time extension may be requested, and if granted, the extension can be no longer than six (6) months. No other time extensions shall be granted. Developer shall have to start the design review process over. Self-imposed and economic hardships shall not be a basis for granting an extension.
 3. Applicants which require a Conditional Use Permit may submit a site plan at the time they submit a conditional use permit and need not submit a separate application.

19.14.060 Commercial Zone Requirements

A. Use Permit

1. Each Commercial Development and Use shall obtain a business license from Nibley City. Commercial Uses as listed in NCC 19.20 as a conditional use shall also obtain a Conditional Use Permit before construction of new developments or operation of a business for existing commercial developments and buildings.

B. Traffic and Connectivity

1. Roadways and intersections shall maintain a Level of Service (LOS) C. Commercial applicants may be required to make any road updates in order to ensure the roadway will maintain LOS C.
2. Site plans must comply with the Transportation and Trails Master Plan.
3. Applicants may be required to provide an additional vehicle access to the site for one or more of the following reasons
 - a. There is only one vehicle access road to the site
 - b. Allow for greater emergency access to the site
 - c. Provide for better connectivity and enhance the safety of surrounding roadways and intersections.
 - d. Construction access to minimize impact to existing homes and infrastructure

C. Utilities

1. Prior to the issuance of a business license or conditional use permit, utility lines shall be updated to comply with water, sewer and stormwater master plans within the application property and adjacent rights-of-way.
2. A business license or conditional use permit shall only be granted if the City can reasonably supply water and sewer services to the applicant for their proposed use. The applicant shall be required to supply necessary water rights or shares in accordance with NCC 21.12.020.
3. Applicants shall connect to service lines needed to supply the use of an application and shall be responsible for all associated costs.
 - a. If no utility lines are available or current utility lines and services are determined to be insufficient for the proposed use by the City Engineer, the applicant shall build or install the needed infrastructure before a business license or conditional use permit may be granted.

D. Each Commercial building shall be built to the standards in Nibley City Design Standards for Commercial and Institutional Uses except for Remodeled Residential Units as stated within this chapter.

E. All commercial buildings shall comply with fire code and are subject to inspection of the Fire Marshall before a business license or conditional use permit is granted. New commercial buildings shall also be inspected by the Fire Marshal before a certificate of occupancy can be given. All commercial buildings shall be subject to an annual inspection by the Fire Marshal, and any license, permit, or certificate issued for a building or use may be revoked for failure to comply with fire code.

F. All site plans shall be approved by the City's Engineer and Public Works departments. All site plans shall comply with Nibley City Design Standards and all projects located in Commercial and Neighborhood Commercial Zone shall comply with Nibley City Design Standards for Commercial and Institutional Use.

G. Residential Units Remodeled for Commercial Use:

1. Nibley City Design Standards for Commercial and Institutional Use facade treatments shall not apply to single family homes that have been remodeled for commercial use. Such homes may be referred to as "Remodeled Residential Units."
2. Remodeled Residential Units must comply with landscaping, parking, fire code, the Americans with Disability Act (ADA) requirements, building permit requirements, inspections, and all other standards and requirements described within this title.

3. Any business taking place in a remodeled residential unit is considered a conditional use and shall obtain a conditional use permit prior to beginning operations, regardless of the use within the building. Any change in the business or use of the Remodeled Residential Unit shall require a new conditional use permit.
 4. The Commercial Use shall be the primary use of the building.
 5. The exceptions for Remodeled Residential Units shall only apply to buildings on lots which front collector or arterial streets, as defined by the Nibley City Master Streets Plan.
- H. The City may require the placement of fences or walls to enhance security and mitigate aesthetic or other impacts at facilities adjacent to residential areas.
- I. In Commercial Zones, warehousing and storage may be allowed as part of business if it is attached to offices, retail, or other permitted or conditional use allowed within a Commercial Zone.
- J. All Commercial developments shall comply with landscaping code within NCC 19.24.170.

19.14.050 Neighborhood Commercial Zone C-N Requirements

B. Purpose

1. The neighborhood commercial zone C-N is established to provide areas in which the primary use of land is for commercial and service uses to:
 - a. Serve the daily convenience needs of the adjacent residential neighborhoods.
 - b. Provide economic stability.
 - c. Enhance property values.
 - d. Establish strategies for achieving good community design.
 - e. Stabilize areas/zones.
 - f. Reduce traffic congestion and promote walkable communities.
 - g. Promote the policies of the general plan.
2. This C-N zone shall be located in areas deemed appropriate and approved by the city council for services to the residents of the city. The zone will create a minimum of detriment, hazard, noise or inconvenience to surrounding residential development.
3. The C-N zone shall be characterized by harmonious grouping and architectural offset of building mass of commercial stores and shops which will be architecturally designed for, and will function as, an integrated unit. Clean parking lots and attractive well maintained shops with appropriate landscaping will also be characteristic of this zone.
4. Lighting will be of low intensity, low profile and fully shielded to protect the surrounding residential areas. The architectural design and character will be compatible with that of the surrounding residential environment.
5. Heavy commercial uses within this zone have been excluded and are not permitted.

C. Permitted Uses: See NCC 19.20.

D. Conditional Uses:

1. Regular Conditional Uses: See NCC 19.20.
2. Temporary Accessory Uses: Temporary accessory uses and structures are permitted in the C-N zone, provided they are incidental to, and do not substantially alter the character of, the permitted use or structure. Such permitted accessory uses and structures include, but are not limited to, the following: Storage of materials used for construction of a building, including the contractor's temporary office, provided that such use is on the building site or immediately adjacent thereto and provided further that such shall be permitted only during construction period and thirty (30) days thereafter.
3. Use Limitations: All other uses not listed are not permitted.
4. Residential Units Remodeled for Commercial Use:
 - a. Nibley City Design Standards for Commercial and Institutional Use facade treatments shall not apply to single family homes that have been remodeled for

commercial use. Such homes may be referred to as “Remodeled Residential Units.”

- b. Remodeled Residential Units must comply with landscaping, parking, fire code, the Americans with Disability Act (ADA) requirements, building permit requirements, inspections, and all other standards and requirements described within this title.
 - c. Any business taking place in a remodeled residential unit is considered a conditional use and shall obtain a conditional use permit prior to beginning operations, regardless of the use within the building. Any change in the business or use of the Remodeled Residential Unit shall require a new conditional use permit.
- E. Lot Coverage: No building, structure, or group of buildings with their accessory buildings shall cover more than seventy percent (70%) of the lot or parcel.
- F. Parking: Where possible, parking areas shall be located to the side or rear of building. On corner lots, parking shall be avoided on side yards contiguous to the street.
- G. Building Size: The maximum size building footprint allowed shall not exceed a total of fifteen thousand (15,000) square feet.
- H. Commercial Condominiums
 - 1. Commercial Condominiums, shall be a permitted use in the Neighborhood Commercial zone, as set forth herein.
 - 2. All shared or common properties, landscaping, parking lots, roadways, and other non-public amenities or improvements that serve the commercial condominium shall be maintained by an owners association, pursuant to duly adopted and recorded agreements.
 - 3. If a development chooses to build condominiums, they must provide sufficient parking and landscaping for each unit, consistent with current City Commercial standards at the time of the rezone application.
 - 4. Front, rear, and side setbacks shall be measured from the foundation walls of the building.
 - 5. There shall be a maximum of five commercial condominium units per acre.
- I. Off Street Parking, Loading, And Access:
 - 1. The requirements of design standards for commercial and institutional uses and NCC 19.24.160, "Parking Requirements", shall apply.
 - 2. The site shall be developed to provide for shared access.
 - 3. The developer/owner of a neighborhood commercial development located along a state-owned highway will cause the required traffic impact study to be performed in conformance with the requirements of the Utah Department of Transportation and provide to the city a valid copy of the UDOT letter of approval.
- J. Signs: The requirements of design standards for commercial and institutional uses shall apply to this zone. Only monument signage will be allowed, and only in the twenty foot (20') front yard setback.
- K. Fencing and Screening: Fencing and screening shall meet the requirements of design standards for commercial and institutional uses; NCC 19.22.010(E), "Fences and walls maximum height"; NCC 19.24.090, "Fence Regulations"; and NCC 19.24.170(C), "Commercial And Industrial Zones" (landscape requirements), shall be required of all fences and landscape screening in this zone.
- L. Storage; Displays: All materials, supplies, merchandise, or other similar matter not on display for direct sale, rental or lease to the ultimate consumer or user, not able to be stored within the commercial structure shall be stored in a completely enclosed building.
- M. Storage; Trash:
 - 1. No trash, garbage, used materials or wrecked, inoperable or abandoned vehicles or equipment shall be stored in an open area. All such materials shall be kept in an enclosed building(s) or structure.

2. All structures built to accommodate the storage shall be constructed using a design compatible with the primary structure and meeting all the architectural design standards outlined in the design standards for commercial and institutional uses. Within a development of multiple structures, a common structure shall be constructed suitable for use by all tenants or businesses.
- N. Development Standards: The development standards of the C-N zone shall conform to design standards for commercial and institutional uses.
- O. Utilities
1. Prior to the issuance of a business license or conditional use permit, utility lines shall be updated to comply with water, sewer and stormwater master plans within the application property and adjacent rights-of-way.
 2. A business license or conditional use permit shall only be granted if the City can reasonably supply water and sewer services to the applicant for their proposed use. The applicant shall be required to supply necessary water rights or shares in accordance with NCC 21.12.020.
 3. Applicants shall connect to service lines needed to supply the use of an application and shall be responsible for all associated costs.
 - a. If no utility lines are available or current utility lines and services are determined to be insufficient for the proposed use by the City Engineer, the applicant shall build or install the needed infrastructure before a business license or conditional use permit may be granted.
- P.

19.16 Industrial Zone I

19.16.010 Purpose

19.16.020 Use Regulations

19.16.030 Space Requirements

19.16.040 Parking Requirements

19.16.010 Purpose

The purpose of the industrial zone is to provide suitable areas that will accommodate the need for industry and industrial-related uses.

19.16.020 Use Regulations

See NCC 19.20.

19.16.030 Space Requirements

See NCC 19.22.

19.16.040 Parking Requirements

See NCC 19.24.160.

19.16.050 Site Plan Review All proposed commercial, institutional, or industrial development, including new buildings and expansion of or addition to existing buildings, or change in the type of use of existing buildings, are subject to the site plan review requirements of NCC 19.14.050

19.22 Space Requirements Chart

19.22.010 Space Requirements Chart

19.22.010 Space Requirements Chart

		A	R-E	R-1	R-1A	R-2	R-2A	C	C-N	I
A.	Minimum lot area	5 acres	2 acres	1 acre	3/4 acre	1/2 acre	12,000 sq. ft. (10) See note 9	--	1/4 acre	--
	Minimum lot width, measured at setback line	200	200	200	150	100	100	--	100	--
B.		Setback principal uses								
	Front yard	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	20	20	50
	Side yard, interior	15 ³	15	10	10	10	10	0(10) ³ (30*) ¹¹	10(20*) ¹¹	0(50) ⁴
	Side yard, street	25(35) ³	25(35) ³	25(35) ³	25(35) ³	25(35) ³	25(35) ³	20	20	25(35) ³
	Rear yard	30	30	30	30	25	25	0(10) ³ (30*) ¹¹	5(20*) ¹¹	0(50) ⁴
C.		Setback accessory uses								
	Front yard	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	30(35) ³	20	20	50
	Side yard, interior	10(3) ⁵	10(3) ⁵	10(3) ⁵	10(3) ⁵	10(3) ⁵	10(3) ⁵	0(10) ⁴	0(10) ⁴	0(10) ⁴
	Side yard, street		25(35) ³	25(35) ³	25(35) ³	25(35) ³	25(35) ³	20	20	25(35) ³
	Rear yard	1(10) ⁶	1(10) ⁶	1(10) ⁶	1(10) ⁶	1(10) ⁶	1(10) ⁶	1(10) ⁴	1(10) ⁴	1(10) ⁴

D.		Height maximum								
	Principal uses	40	40	40	40	40	40	40	35 ¹²	50(70) ₀ ¹
	Accessory uses	30	30	30	30	20	20	30	20	30
E.		Fences and walls maximum height								
	Front yard, property line to setback line	4	4	4	4	4	4	4	4	4
	Rear yard	7(8)8	7(8)8	7(8)8	7(8)8	7(8) ₈	7(8)8	7(8)8	7(8)8	7(8)8
	Side yard	7(8)8	7(8)8	7(8)8	7(8)8	7(8) ₈	7(8)8	7(8)8	7(8)8	7(8)8
	Corner lots	See NCC 19.24.090(B)								

Notes:

1. In all zones in a platted subdivision, lot width is 100 feet minimum, at setback line, but lot area must be 1/2 acre.
2. All measurements are in feet unless otherwise specified.
3. Greater distance required where yard faces arterial road.
4. Greater distance required where property line is adjacent to residential zone or residential dwelling unit.
5. Lesser distance allowed where accessory building is at least 10 feet behind the rear of main building and not less than 10 feet from any dwelling unit on adjacent property.
6. Greater distance required where rear yard faces side yard of adjacent property.
7. Principal use is defined as a dwelling unit in R-E, R-1 and R-2.
8. 8 foot height allowed for a transparent fence, e.g., chainlink, as defined in NCC 19.24.090.
9. The average lot size for the entire subdivision phase and portion thereof shall average at least fourteen thousand (14,000) sq. ft.
10. Greater maximum height allowed if building is at a minimum of 300' from a residential zone.
11. When abutting a residential zone or existing residential dwelling unit, minimum setback is 30 feet for commercial zones and 20 feet for neighborhood commercial zones. The minimum setback shall be increased one additional foot for every additional one foot in height of the building in a commercial zone.
12. Limited to two stories

HISTORY

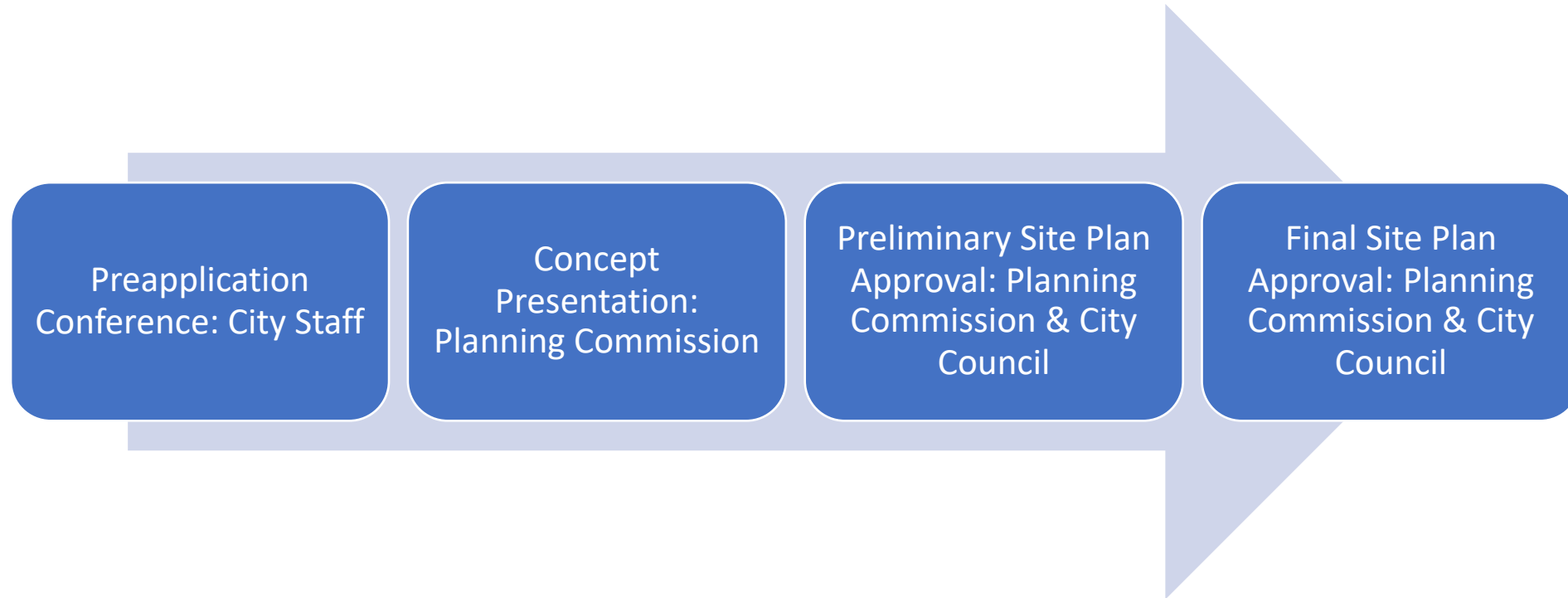
<i>Adopted</i>	<i>by</i>	<i>Ord.</i>	<i>No</i>	<i>Source</i>	<i>on</i>	<i>6/3/1993</i>
<i>Amended</i>	<i>by</i>	<i>Ord.</i>		<i>03-08</i>	<i>on</i>	<i>4/17/2003</i>
<i>Amended</i>	<i>by</i>	<i>Ord.</i>		<u>06-04</u>	<i>on</i>	<i>6/15/2006</i>
<i>Amended</i>	<i>by</i>	<i>Ord.</i>		<u>17-06</u>	<i>on</i>	<i>3/16/2017</i>

Amended by Res. [19-10](#) on 6/27/2019

Commercial Zoning Standards

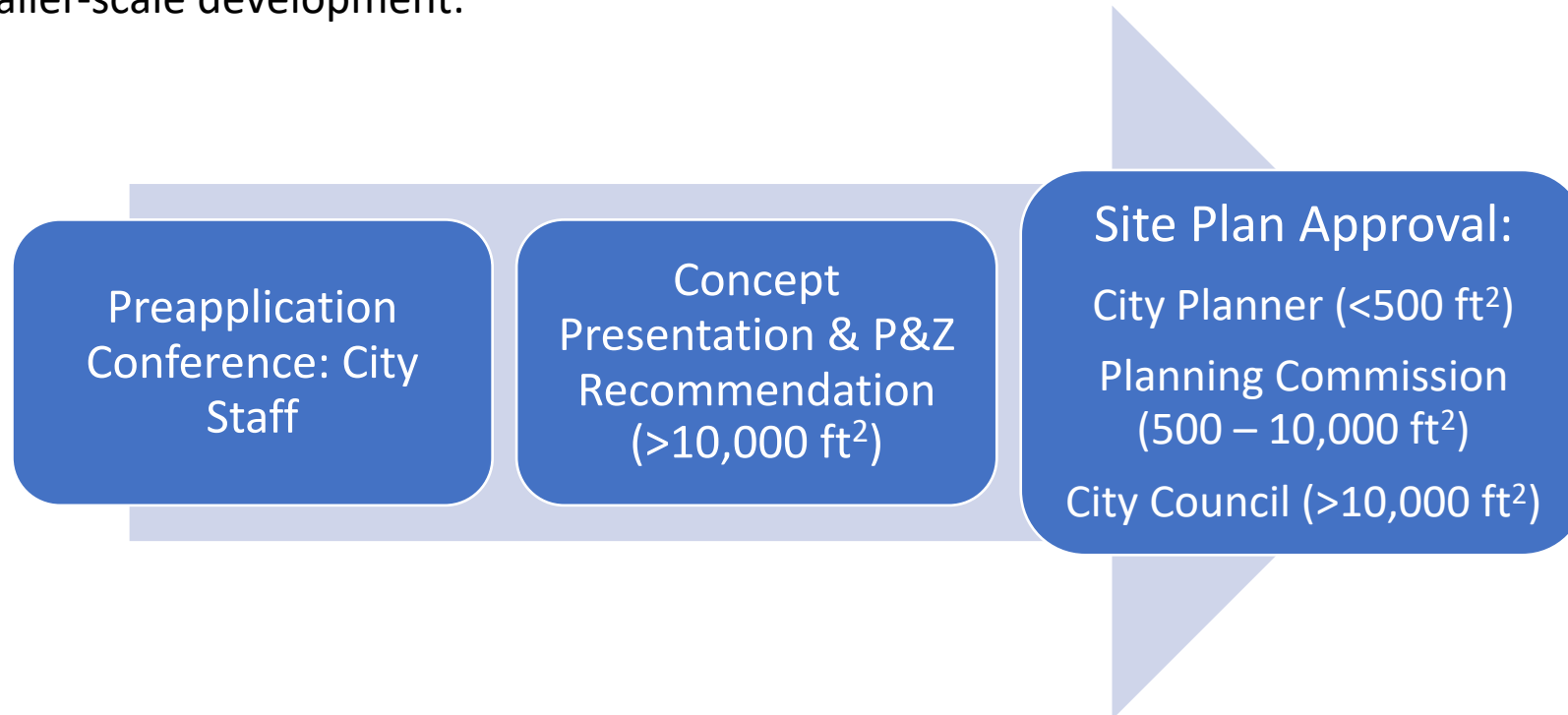
Site plan review process

Current process as noted in 19.14.050(M):



Commercial Zoning Standards

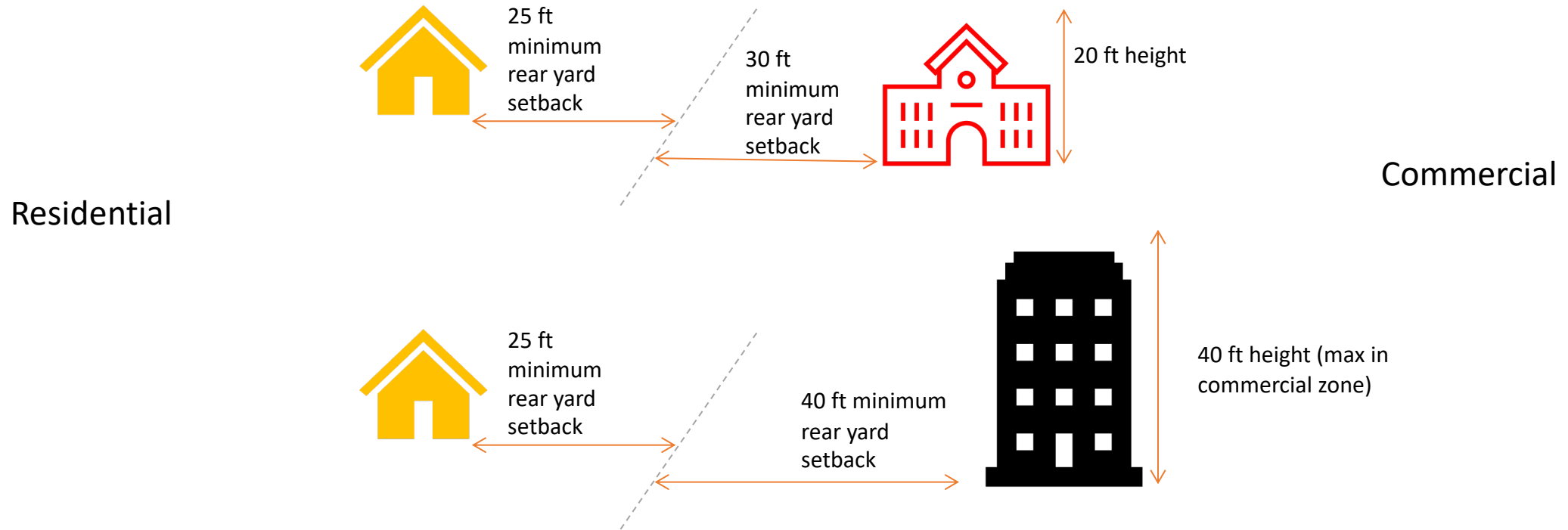
- Current process is overly cumbersome for site plan review
- Recommendation: simplify process and streamline for smaller-scale development:



Commercial Zoning Standards

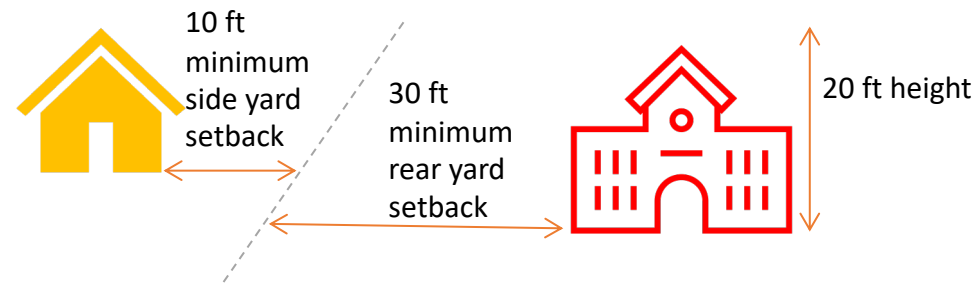
- With future commercial growth, concern about mitigating potential impacts on adjacent residential neighborhoods.
 - Currently no setback for side and rear yards in commercial zones. Doesn't change when abutting residential.
 - Recommendation: graduated setback standards based on height to preserve views and light and alleviate impacts related to noise, etc.
 - Minimum setback of 30 feet for commercial that abuts residential. Minimum setback of 20 feet for neighborhood commercial zones.

Rear yard setbacks

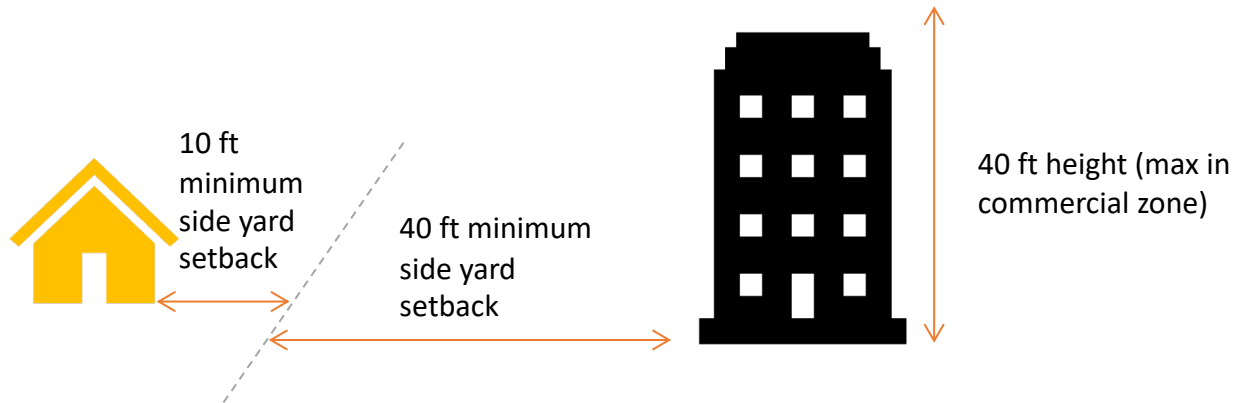


Side yard setbacks

Residential



Commercial





550 W 1375 North





© 2021 Google

Google Earth

41°43'36.43" N 111°50'59.46" W elev 4508 ft eye alt 4712 ft

600 West 200 South



1000 North 550 West



200 North 700 West

Google Earth



600 West 350 South



1000 North 650 West



1420 East Canyon Rd





400 East 1300 North

Commercial Zoning Standards

Summary of Recommended Changes

- Setback Requirements
 - Increase minimum side yard and rear yard setback to 30 ft for commercial zone development and 20 feet for neighborhood commercial zone development when abutting residential zone, increase by 1 ft for every 1 ft increase in height above the minimum.
- Site Plan Review Process
 - Clarify that site plan review is required for any commercial, institutional or industrial development which includes a new building or adds onto square footage of existing building.
 - Clarify that site plan review may be conducted at the time of CUP for conditional uses. Separate application is not needed.
 - Set thresholds of approval authority based upon square footage:
 - Less than 500 sq ft – City Planner
 - 500-10,000 sq ft- Planning Commission
 - Greater than 10,000 sq ft- City Council with Planning Commission Recommendation
 - Streamline process by removing concept presentation for development less than 10,000 sq ft and preliminary site plan approval for all commercial development.

Agenda Item #9

Description	Discussion & Consideration – Resolution 21-05: Transportation Master Plan Map Amendments (First Reading)
Department	Public Works-Streets, Planning
Presenter	Levi Roberts, City Planner
Recommendation	Discuss proposed changes in preparation for public hearing and consideration for adoption
Reviewed By	Mayor, City Manager, Public Works Director, City Planner, City Engineer

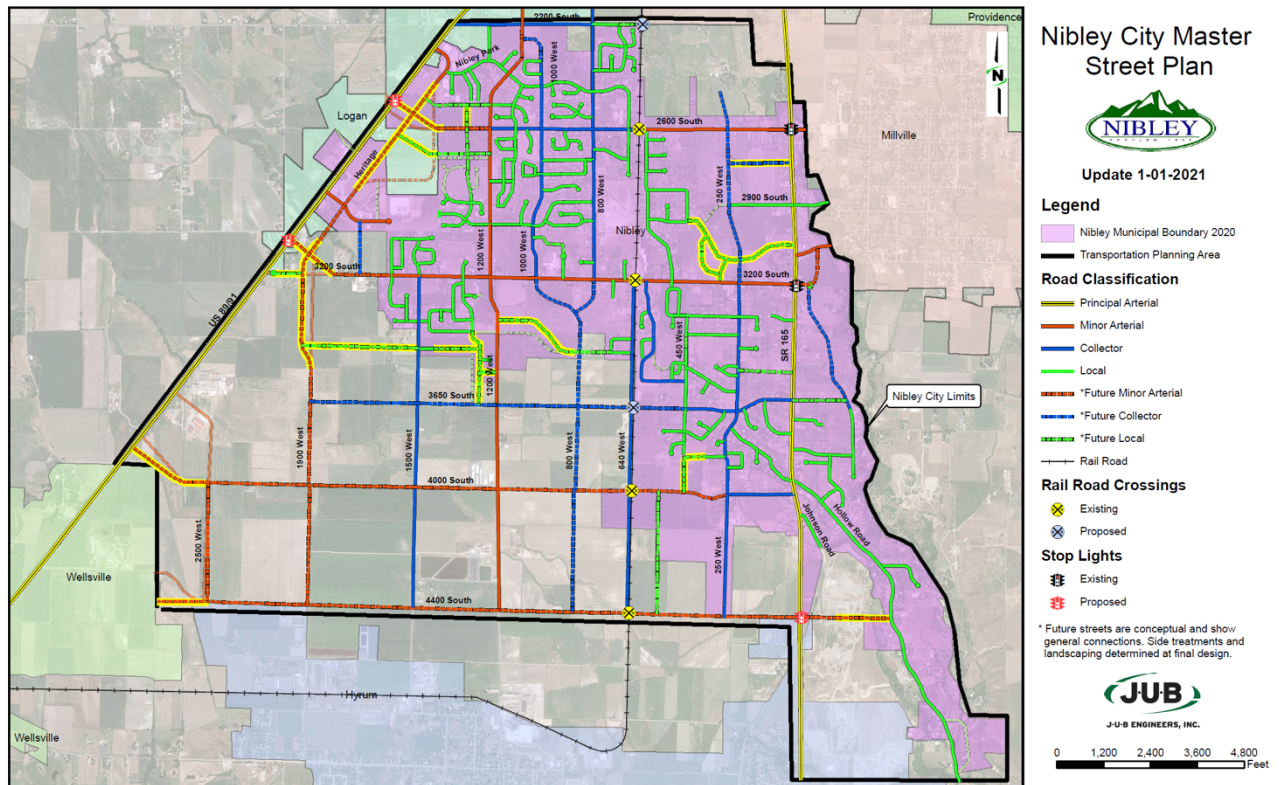
Background:

The Transportation Master Plan was last adopted in January 2019. The overall purpose of this plan is to coordinate future transportation facilities with land use. The Plan includes a Master Streets Plan, which recommends alignments, right of way widths and facility types for future streets. Future streets are improved as development occurs. The Mayor and the City Staff has expressed the need to consider updating some alignments of streets in the plan to improve connectivity and reflect recent development changes. Specific recommendations include:

- **450 West-** extend 450 W from its existing terminus at 3800 S to connect to 4000 S to improve street connectivity and traffic circulation as this area develops. This connection was previously taken out, as the area south of the existing 450 W may have a permanent conservation easement. However, this has not occurred and it is advised to include this connection for the time that this area may develop.
- **Meadowview Lane-** extend Meadowview Ln to connect to the planned 450 W to improve connectivity in this area and provide appropriate emergency access.
- **3200 South-** realign 3200 S to intersect with 2000 W at a signalized intersection with Hwy 89/91 in accordance with the ongoing study for the intersection. This allows for more efficient traffic flow and improves safety.

- **Heritage Drive** – realign Heritage Dr to stay parallel with Hwy 89/91. This provides a more direct connection and more efficient traffic flow. The existing plan includes an alignment that follows the edge of Tri H Farms. This alignment was made at the request of the landowner of Tri H Farms. In exchange, the landowner agreed to annex into Nibley City. However, this has not occurred.
- **2965 South extension** – The existing plan includes a connection from 2965 S in Elkhorn Estates to 2900 South at Main St. Rather than connecting this street to 2900 S, the approved plan for Ridgeline Park is to curve the roadway to the south and connect to Main St at the Maverik Driveway. This alignment avoids impacts to existing wetlands while retaining the connectivity. 2900 S would retain a connection between Main St and 250 W.
- **2750 South-** A connection is recommended at 2750 S between Main St and 250 West to improve accessibility and connectivity as the town center develops.
- **2700 South-** A local connection is recommended between 1200 W and Heritage Dr to improve local connectivity when this area develops.
- **4400 South** – To improve connectivity and safety, an extension of 4400 South to Hollow Rd is recommended. This connection could divert traffic at the existing offset intersection of Hollow Rd and Main St.
- **3410 South** – Given the future land use plans of areas south of 3200 S and west of 1500 W, a local extension of 3410 S between 1500 W and 1900 W is recommended to improve street connectivity in the area.
- **Stonebridge local streets** – The existing Transportation Master Plan includes the local roads approved as part of the Stonebridge subdivision. As phase 3 and 4 of this subdivision has not yet developed, there may be an opportunity to improve the circulation in this area. The through street at Stonebridge Dr is retained to connect to future development to the north, but the remaining cul-de-sacs are recommended to be excluded from the plan. This would not prevent Stonebridge from developing as originally approved but allows for more flexibility in the street design.
- **Ridgeline Park and Nibley Farms local streets.** The streets approved as part of the approved final plat for these subdivisions are included to reflect the planned streets for each neighborhood.

The Map below highlights the proposed changes.



Planning Commission Recommendation

Approve Resolution 21-05 Transportation Master Plan Map Amendments, adopting the proposed amended map.

Recommended Finding

- The recommended changes to the Transportation Master Plan will help ensure a more efficient, connected transportation system as development occurs.

RESOLUTION 21-05

TRANSPORTATION MASTER PLAN MAP AMENDMENTS

WHEREAS, Utah law allows municipalities to create and plan for local infrastructure and transportation needs; and

WHEREAS, Nibley City has established a transportation system and network for its residents and other traffic to travel through the City; and

WHEREAS, Nibley City wishes to update the Transportation Master Plan Map or Master Streets Plan to plan for future growth and traffic patterns within Nibley City; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF NIBLEY CITY, STATE OF UTAH, AS FOLLOWS:

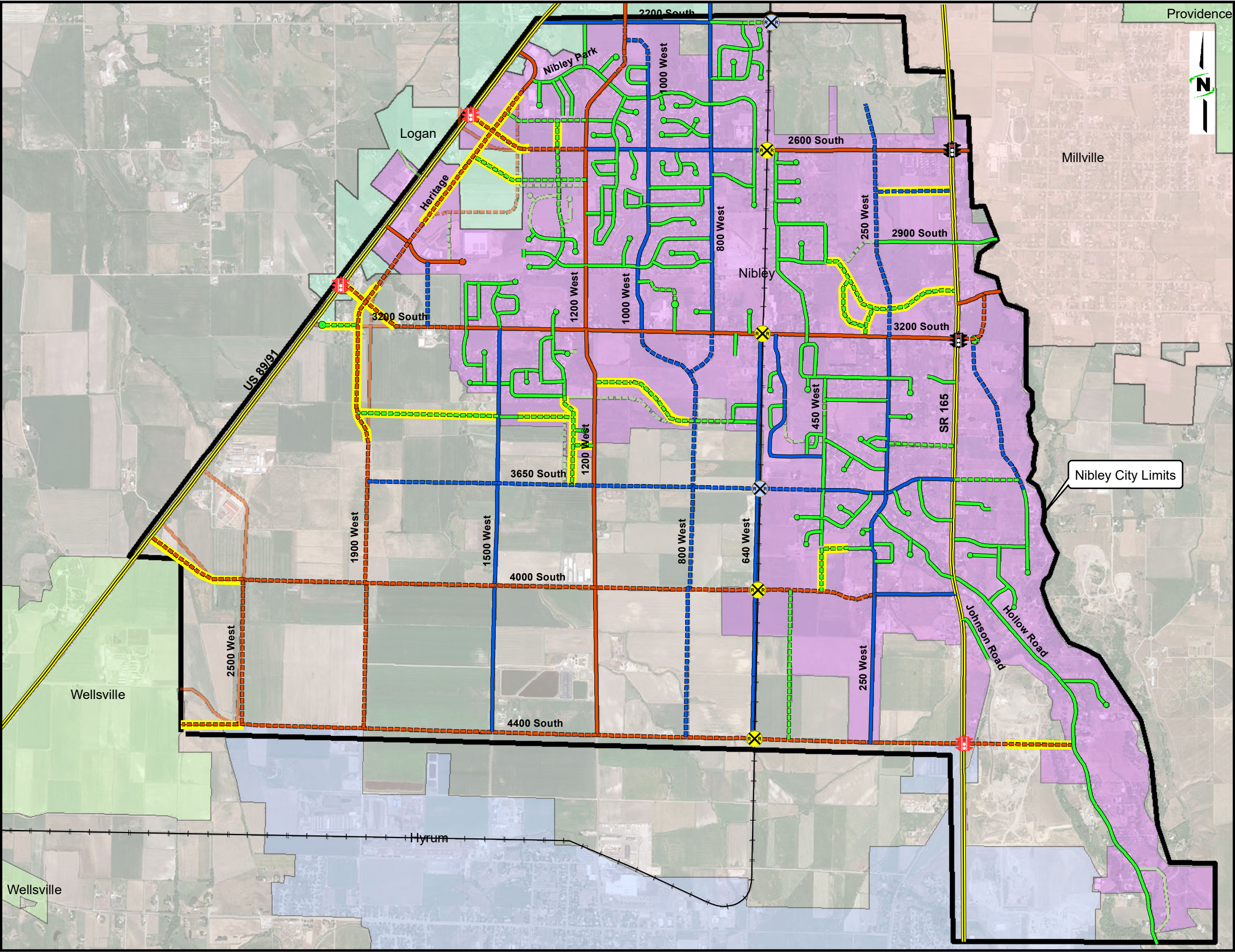
1. That the attached Transportation Master Plan Map is adopted by the Nibley City Council.
2. This map shall replace the previously adopted Transportation Master Plan Map.

Dated this ____ day of _____ 2021

Shaun Dustin, Mayor

ATTEST

David Zook, City Recorder



Nibley City Master Street Plan



Update 1-01-2021

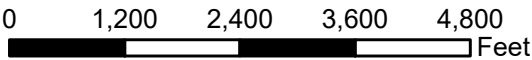
Legend

- Nibley Municipal Boundary 2020
- Transportation Planning Area
- Road Classification**
 - Principal Arterial
 - Minor Arterial
 - Collector
 - Local
 - *Future Minor Arterial
 - *Future Collector
 - *Future Local
 - Rail Road
- Rail Road Crossings**
 - Existing
 - Proposed
- Stop Lights**
 - Existing
 - Proposed

* Future streets are conceptual and show general connections. Side treatments and landscaping determined at final design.



J-U-B ENGINEERS, INC.



Transportation Master Plan Map Amendments

Background & Purpose

- TMP last updated in 2018
- Amendments to street alignments proposed due to new development and changing circumstances to improve functionality, connectivity and circulation.

Nibley City Transportation Master Plan

Nibley City Master Street Plan

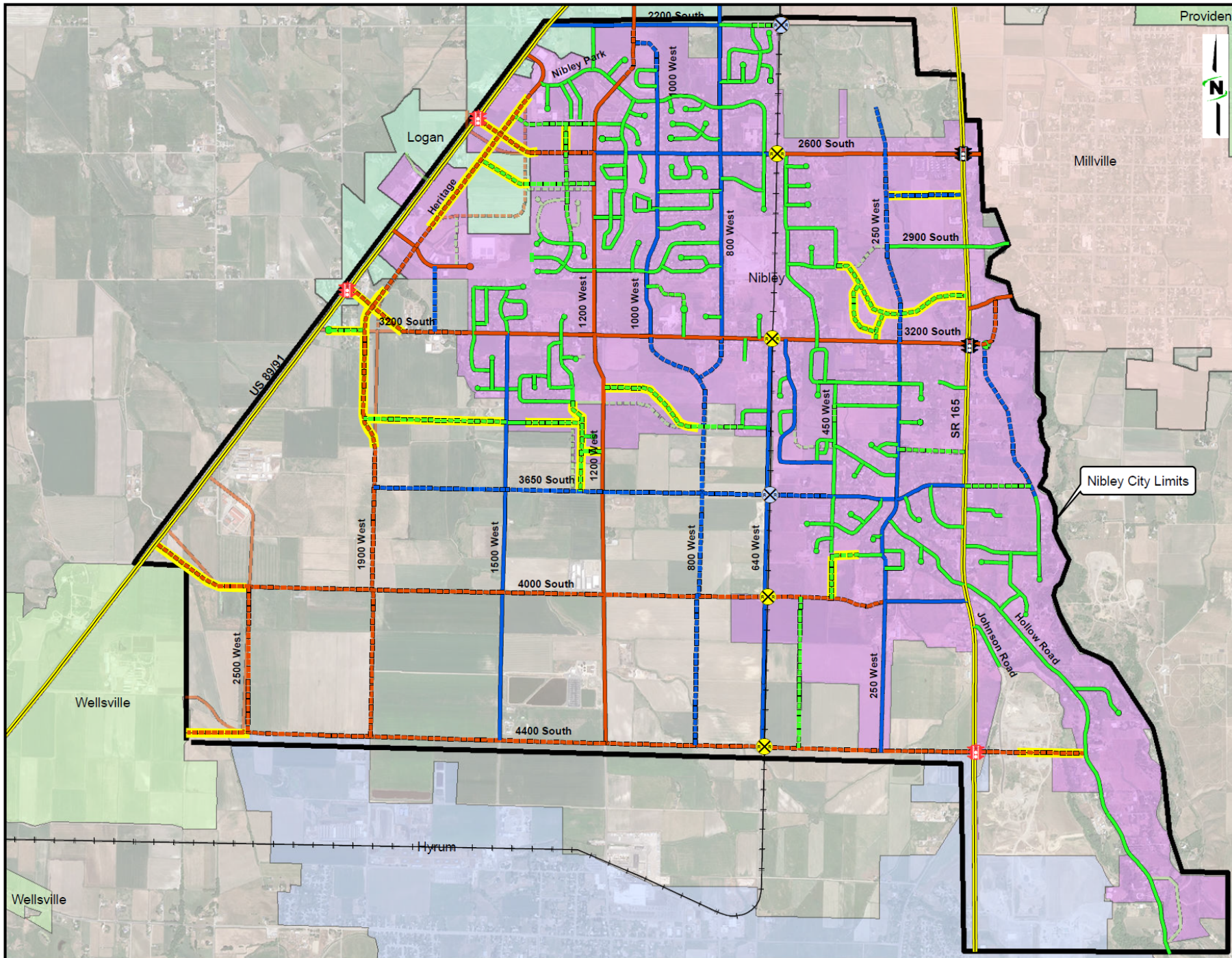
Legend

- Principal Arterial
- Minor Arterial
- Collector
- Local
- Rail Road
- Future Minor Arterial
- Future Collector
- Future Local

*Future streets are conceptual and show general connections.
Side treatments and landscaping determined at final design.



0 1,350 2,700 5,400
Feet



Nibley City Master Street Plan



Update 1-01-2021

Legend

- Nibley Municipal Boundary 2020
- Transportation Planning Area

Road Classification

- Principal Arterial
- Minor Arterial
- Collector
- Local
- *Future Minor Arterial
- *Future Collector
- *Future Local
- Rail Road

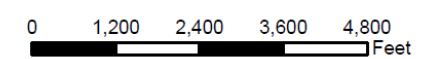
Rail Road Crossings

- X Existing
- X Proposed

Stop Lights

- ⦿ Existing
- ⦿ Proposed

* Future streets are conceptual and show general connections. Side treatments and landscaping determined at final design.



Planning Commission Recommendation

Approval of Resolution 21-05: Transportation Master Plan Map Amendments with the finding:

- The recommended changes to the Transportation Master Plan will help ensure a more efficient, connected transportation system as development occurs.

Agenda Item #10

Description	Discussion & Consideration – Revision to Development Plans and Development Agreement for Nibley Meadows Residential Planned Unit Development, located at approximately 1000 W and 3200, proposing 273 units on 54.6 acres (Applicant: Westates Companies, LLC)
Department	Planning
Presenter	Levi Roberts, City Planner
Recommendation	Move to approve the Revisions to Development Plans and Development Agreement for Nibley Meadows Residential Planned Unit Development, located at approximately 1000 W and 3200, proposing 273 units on 54.6 acres (Applicant: Westates Companies, LLC)
Reviewed By	Public Works Director, City Planner, City Attorney, Planning Commission

Background:

On August 13, 2020, The Nibley City Council approved a Residential Planned Unit Development Overlay Zone, which included a development agreement and development plans. The applicant has since applied to amend the development plans which were approved at that time. In considering this amendment to the development plans, it is important to note that this is a legislative decision for the Planning Commission and City Council to consider and that approval of this amendment should be based on standards that were in place at the time that the original application was made, not the recently amended ordinance.

The proposed development plans do not change the number of units, density, or housing type mix, compared to the application which was previously approved. However, there are some notable changes to the housing configuration, street layout, open space and amenities which are described in detail below.

[Nibley City Code 19.32.70](#) lists the following for consideration for an R-PUD:

D. R-PUD Considerations: In approving with conditions, denying or approving an R-PUD proposal, the Planning Commission and City Council shall consider the following in addition to all other considerations required by law:

- 1. Design of Buildings: The architectural design of buildings and their relationship on the site and their relationship to development beyond the boundaries of the development.*
- 2. Streets and Parking: Which streets shall be public, and which shall be private, the entrances and exits to the development, and the provisions for internal and external traffic circulation and off-street parking.*
- 3. Type, Size, and Location of amenities.*
- 4. Landscaping and Screening: The landscaping and screening as related to the several uses within the development and as a means of its integration into its surroundings.*
- 5. Signs: The size, location, design and nature of signs, if any, and the intensity and direction or area of floodlighting.*
- 6. Ability to Complete Project: The demonstrated ability of the proponents of the R-PUD to financially carry out the proposed project under total or phase development proposals within the time limit established.*
- 7. Criteria for Issuing Conditional Use Permit: Criteria used in NCC 19.28 of this title.*

The proposed development plans do not change many of components that were considered with the original application. For the proposed amendment, the pertinent items are included below.

Design of Buildings & Lot Configuration

The applicant does not propose any changes to the design of buildings that was submitted previously.

Although there is no change the number of units and housing types, the applicant proposes to reconfigure the location of some of the housing units. Specifically, the applicant proposes to move some of the townhome units to the south end of the development, moving some units to the north area, near Heritage Elementary. In addition, in place of a stub road adjacent to the proposed City Park, there is an open space/stormwater basin. These changes are anticipated to improve vehicle traffic circulation as more traffic will be shifted toward the intersection of 1200 W & 3200 S, rather than 1000 W & 3200 S. In addition there is more cohesiveness with the provided open space.

Streets and Parking

The streets in the proposed development plan provide adequate circulation for the proposed housing. In addition, the streets included in the Nibley City Transportation Master Plan are provided in the proposed amended development plan. The applicant proposes a couple of changes to the street configuration. Firstly, this lay-out does not include a dead-end stub road connecting the road on the south side of the park space to the north. In its place, there is a stormwater basin, adjacent to the proposed park space. In addition, on the south end of the development, the applicant proposes to include a private lane to access a set of re-configured townhomes and a cul-de-sac with single-family homes on the southeast corner of the development. In accordance with NCC 21.12.060 (b), The cul-de-sac includes a pedestrian pathway linking the end of the cul-de-sac with the trail. In addition, the applicant has demonstrated that they meet pedestrian connectivity standards of 19.32.080 including providing a pedestrian connection on the border of the development at minimum intervals of 660 ft.

NCC 19.32.080(B)(5) provides that each townhome unit needs to provide 2 parking spaces for each unit and one additional guest parking space for each unit. The applicant has demonstrated that they meet this standard.

Utilities

The proposed amendment does not significantly change the provision of utilities. Nibley City Public Works Director and the City Engineer have reviewed the proposed number of units and have determined that the utility lines in the area are able to support the development.

Sensitive Lands and Canal

There are no sensitive lands contained within the proposed development. There are a few canals, but most of the canals are small ditches used to water the property. There is a canal that runs along the northern boundary that is adjacent or goes through open space.

Open Space and Trails

The applicant has submitted a general open space plan which includes parks, green space, trails, and buffer areas, which has been updated from the original version. They are proposing that a total of 47.2% (20.62 acres) of the net developable area be maintained as green space, exceeding the standard of NCC 19.32.050.

The plan is that the majority of the green space be owned and maintained by a homeowners association, with some trails and even park space being dedicated to Nibley City. The applicant also has sufficient park space as required by [Nibley City Code 19.32.050 Open Space Amenities](#).

The applicant has indicated that the approximately 4.5 acre park on 1200 W could be dedicated as a public park. In the development agreement for Nibley Farms, the City Council stipulated that up to 50% of park impact fees would be used to improve this park space. Staff has determined that this continues to be appropriate as the applicant meets the minimum open space requirements without this park dedication.

The proposed amended plan includes minimum required amenities within the development, including 3 playgrounds, two pavilions, a sports field, and a splash pad. The splash pad is proposed to be located in the park area. Therefore, Staff recommends that the applicant provide this improvement or a fee to the City to build this improvement as part of park improvements outside of park impact fees, as this is needed to meet minimum requirements for the overlay zone.

The applicant has also included all trails as shown on Nibley's Trail Master Plan. The Trail Master plan shows that the 1100 W right-of-way should be turned into trail space. The applicant has shown the trail space following along 1100 W right-of-way. In addition, an east/west trail is provided through the development along the southern border, connecting to the trail approved as part of the Nibley Farms development.

Planning Commission Recommendation

Approve the Revisions to Development Plans for Nibley Meadows Residential Planned Unit Development, located at approximately 1000 W and 3200, proposing 273 units on 54.6 acres (Applicant: Westates Companies, LLC) with the findings noted below.

Recommended Findings

- The applicant meets the minimum requirements of the R-PUD overlay zone.
- The splash pad in the park should be provided independent of park impact fees to meet minimum open space amenity requirements.



PROJECT NOTES:

GENERAL PROJECT DESCRIPTION: THE DEVELOPMENT WILL INCLUDE A MIX OF SINGLE-FAMILY AND TOWNHOME DWELLINGS. THE DEVELOPMENT WILL CONTAIN MORE THAN 35% OPEN SPACE THAT WILL INCLUDE POCKET PARKS, LINEAR PARKS, AND TRAILS. VARIOUS AMENITIES WILL ALSO BE PROVIDED.

CULINARY WATER SYSTEM: WATER MAINS WILL BE INSTALLED IN ALL PUBLICLY DEDICATED RIGHTS-OF-WAY AND MAJOR PRIVATE DRIVES. WATER MAINS WILL CONNECT TO CITY SYSTEM IN 3200 SOUTH AND IN 3500 SOUTH (THE SOUTHERNMOST EAST-WEST ROAD).

SEWER SYSTEM: THE NORTHERN 10 ACRES OF THE PROJECT MAY DRAIN TO THE EXISTING LINE IN 3200 SOUTH OR SOUTH TO THE NEW SEWER LINE. THE REMAINING SOUTH PORTION OF THE PROJECT WILL DRAIN TO THE SEWER STUB ON THE WEST OF THE PROJECT CURRENTLY BEING INSTALLED AS PART OF THE NIBLEY FARMS SUBDIVISION.

SECONDARY WATER SYSTEM: NOT PROPOSED.

SOLID WASTE: INDIVIDUAL TRASH PICKUP IS PROPOSED FOR ALL UNITS CONTAINED WITHIN THE DEVELOPMENT.

STORM WATER: THE 100-YR 24-HR STORM WILL BE DETAINED ON SITE. GIVEN EXTREMELY SHALLOW GROUNDWATER (APPROXIMATELY 2-FT DEPTH), IT MAY NOT BE FEASIBLE TO FULLY RETAIN THE 90TH-PERCENTILE STORM. THE REQUIRED DETENTION VOLUME WILL BE STORED IN OPEN SPACE AREAS THROUGHOUT THE SITE AND THEN RELEASED AT THE PRE-DEVELOPMENT RUNOFF RATE INTO EXISTING ADJACENT DITCHES. ROADSIDE SWALES COULD ALSO SERVE AS A POTENTIAL STORAGE LOCATION FOR STORM WATER RUNOFF.

PARKS & RECREATION: THE PROPOSED TRAIL AND OPEN SPACES THAT ARE BEING PROPOSED WILL INTEGRATE WITH THOSE PROPOSED TO THE WEST AS PART OF THE NIBLEY FARMS SUBDIVISION AND TO OTHER FUTURE MASTER-PLANNED TRAILS. THE OPEN SPACE PLAN IS COMPATIBLE WITH THE CITY PARKS AND OPEN SPACE MASTER PLAN.

ROADWAYS: 1000 WEST/9000 WEST, A MASTER PLANNED ROADWAY, WILL BE CONSTRUCTED IN ACCORDANCE WITH STANDARD CITY CROSS SECTION "TS-7". COLLECTOR: 2-LANE STREET, ON-STREET PARKING PERMITTED, 66' ROW'. ALL OTHER PUBLICLY DEDICATED ROADS WILL BE STANDARD CITY CROSS SECTION "TS-13". LOCAL: 2-LANE LOCAL, 60' ROW'; A HALF WIDTH WILL BE CONSTRUCTED ON 3200 SOUTH PER THE STANDARD CITY CROSS SECTION "TS-13". A FULL WIDTH WILL BE CONSTRUCTED ON 1200 WEST PER STANDARD CITY CROSS SECTION "TS-3". ARTERIAL: 2-LANE STREET, BUFFERED BIKE LANE & TRAIL FACILITY, 80 FT RIGHT OF WAY." PRIVATE ROADS WILL BE CONSTRUCTED TO FIRE CODE REQUIREMENTS.

SENSITIVE LANDS: THE PROJECT CONTAINS NO SENSITIVE LANDS.

PARKING: STREET PARKING ON PUBLIC STREETS WILL NOT BE USED TO MEET PARKING REQUIREMENTS.

DATA TABLE

- TOTAL AREA: 54.60 ACRES
- NET DEVELOPABLE LAND (80%): 43.68 ACRES
- OLD CODE
 - TOTAL ALLOWABLE UNITS: 524 UNITS
 - MAXIMUM TOWNHOMES: 419 UNITS
 - MINIMUM SINGLE FAMILY HOMES: 105 HOMES

- TOTAL UNITS PROPOSED: 273 UNITS
- TOWNHOMES PROPOSED: 153 UNITS
- SINGLE FAMILY HOMES PROPOSED: 120 UNITS
- RATIO 56% TOWNHOMES: 44% SINGLE FAMILY

DENSITY AND RATIO - REQUESTED AMENDMENT

- NEW CODE (REFERENCE ONLY)

- TOTAL ALLOWABLE UNITS: 436 UNITS
- MAXIMUM TOWNHOMES: 262 UNITS
- SINGLE FAMILY HOMES: 174 HOMES
- REQUESTED AMENDMENT
 - TOTAL UNITS PROPOSED: 273 UNITS
 - TOWNHOMES PROPOSED: 153 UNITS
 - SINGLE FAMILY HOMES PROPOSED: 120
 - RATIO 56% TOWNHOMES: 44% SINGLE FAMILY

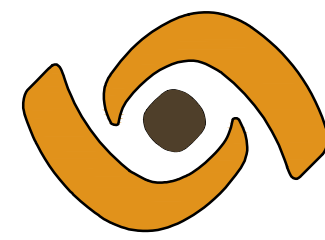
OPEN SPACE

- APPROVED RPUD:
 - REQUIRED: 15.29 ACRES (35% OF NET DEVELOPABLE LAND)
 - PROVIDED INCLUDING SIDEWALK & PARK STRIP: 21.97 ACRES (50.3% OF NET DEVELOPABLE LAND)
 - PROVIDED EXCLUDING SIDEWALK & PARK STRIP: 17.47 ACRES (40.2% OF NET DEVELOPABLE LAND)
- REQUESTED AMENDMENT:
 - REQUIRED: 15.29 ACRES (35% OF NET DEVELOPABLE LAND)
 - PROVIDED INCLUDING SIDEWALK & PARK STRIP: 20.62 ACRES (47.2% OF NET DEVELOPABLE LAND)
 - PROVIDED EXCLUDING SIDEWALK & PARK STRIP: 17.54 ACRES (40.2% OF NET DEVELOPABLE LAND)

PARKING FOR TOWNHOMES

- PRIVATE GARAGE STALLS PROVIDED: 306
- GUEST STALLS REQUIRED: 51
- GUEST STALLS PROVIDED: 134

civilsolutionsgroupinc.



CACHE VALLEY | P: 435.213.3762
SALT LAKE | P: 801.216.3192
UTAH VALLEY | P: 801.874.1432
info@civilsolutionsgroup.net
www.civilsolutionsgroup.net

NIBLEY MEADOWS
1000 WEST 3200 SOUTH
NIBLEY, UT

[illegible]

PROJECT #:	19-368
DRAWN BY:	J. HENDRICKSON
PROJECT MANAGER:	J. HENDRICKSON
ISSUED:	02.04.21

AMENDMENT
TO R-PUD

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF CIVIL SOLUTIONS GROUP, INC. AND SHALL NOT BE PHOTOCOPIED, RE-DRAWN, OR USED ON ANY OTHER PROJECT OTHER THAN THE PROJECT SPECIFICALLY DESIGNED FOR, WITHOUT WRITTEN PERMISSION. THE OWNERS AND ENGINEERS OF CIVIL SOLUTIONS GROUP, INC. DISCLAIM ANY LIABILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS OR THE DESIGN THEREON WITHOUT THEIR CONSENT. THESE PLANS ARE DRAWN TO SCALE WHEN PLOTTED ON A 24" X 36" SHEET OF PAPER. THESE PLANS ARE PRODUCED IN COLOR AND SHOULD BE PLOTTED AS SUCH.

PROJECT NOTES:

GENERAL PROJECT DESCRIPTION: THE DEVELOPMENT WILL A INCLUDE A MIX OF SINGLE-FAMILY AND TOWNHOME DWELLINGS. THE DEVELOPMENT WILL CONTAIN MORE THAN 35% OPEN SPACE THAT WILL INCLUDE POCKET PARKS, LINEAR PARKS, AND TRAILS. A CLUBHOUSE AND VARIOUS AMENITIES WILL ALSO BE PROVIDED.

CULINARY WATER SYSTEM: WATER MAINS WILL BE INSTALLED IN ALL PUBLICLY DEDICATED RIGHTS-OF-WAY AND MAJOR PRIVATE DRIVES. WATER MAINS WILL CONNECT TO CITY SYSTEM IN 3200 SOUTH AND TO MASTER-PLANNED 10" WATER MAIN IN 3500 SOUTH (THE SOUTHERNMOST EAST-WEST ROAD).

SEWER SYSTEM: THE NORTH THIRD OF THE PROJECT WILL DRAIN TO THE EXISTING LINE IN 3200 SOUTH. THE REMAINING SOUTH TWO THIRDS OF THE PROJECT WILL DRAIN TO THE SEWER STUB ON THE WEST OF THE PROJECT CURRENTLY BEIN INSTALLED AS PART OF THE NIBLEY FARMS SUBDIVISION.

SECONDARY WATER SYSTEM: NOT PROPOSED.

SOLID WASTE: INDIVIDUAL TRASH PICKUP IS PROPOSED FOR ALL UNITS CONTAINED WITHIN THE DEVELOPMENT.

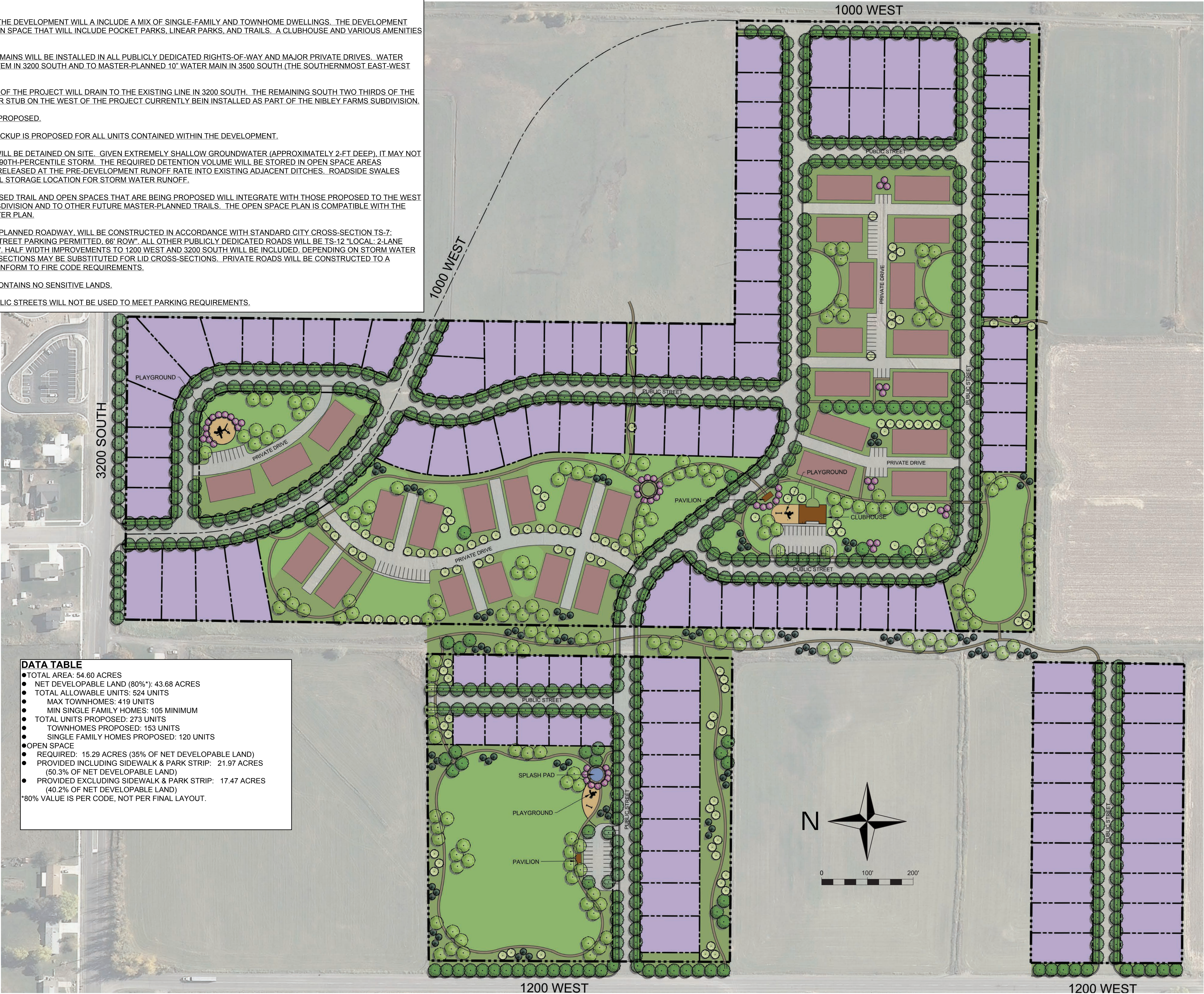
STORM WATER: THE 100-YR 24-HR WILL BE DETAINED ON SITE. GIVEN EXTREMELY SHALLOW GROUNDWATER (APPROXIMATELY 2-FT DEEP), IT MAY NOT BE FEASIBLE TO FULLY RETAIN THE 90TH-PERCENTILE STORM. THE REQUIRED DETENTION VOLUME WILL BE STORED IN OPEN SPACE AREAS THROUGHOUT THE SITE AND THEN RELEASED AT THE PRE-DEVELOPMENT RUNOFF RATE INTO EXISTING ADJACENT DITCHES. ROADSIDE SWALES COULD ALSO SERVE AS A POTENTIAL STORAGE LOCATION FOR STORM WATER RUNOFF.

PARKS & RECREATION: THE PROPOSED TRAIL AND OPEN SPACES THAT ARE BEING PROPOSED WILL INTEGRATE WITH THOSE PROPOSED TO THE WEST AS PART OF THE NIBLEY FARMS SUBDIVISION AND TO OTHER FUTURE MASTER-PLANNED TRAILS. THE OPEN SPACE PLAN IS COMPATIBLE WITH THE CITY PARKS AND OPEN SPACE MASTER PLAN.

ROADWAYS: 1000 WEST, A MASTER PLANNED ROADWAY, WILL BE CONSTRUCTED IN ACCORDANCE WITH STANDARD CITY CROSS-SECTION TS-7: "COLLECTOR: 2-LANE STREET, ON-STREET PARKING PERMITTED, 66' ROW". ALL OTHER PUBLICLY DEDICATED ROADS WILL BE TS-12 "LOCAL: 2-LANE STREET, NO BIKE FACILITY, 60' ROW". HALF WIDTH IMPROVEMENTS TO 1200 WEST AND 3200 SOUTH WILL BE INCLUDED, DEPENDING ON STORM WATER DESIGN APPROACH. THESE CROSS-SECTIONS MAY BE SUBSTITUTED FOR LID CROSS-SECTIONS. PRIVATE ROADS WILL BE CONSTRUCTED TO A MINIMUM WIDTH OF 26' AND WILL CONFORM TO FIRE CODE REQUIREMENTS.

SENSITIVE LANDS: THE PROJECT CONTAINS NO SENSITIVE LANDS.

PARKING: STREET PARKING ON PUBLIC STREETS WILL NOT BE USED TO MEET PARKING REQUIREMENTS.



NIBLEY CITY

NIBLEY MEADOWS MASTER PLAN

JULY 21, 2020

NIBLEY CITY PARK DEVELOPMENT AGREEMENT

THIS PARK DEVELOPMENT AGREEMENT (“Agreement”), entered into this _____ day of _____, 20____, between _____, hereinafter referred to as “Developer” and Nibley City, here in after referred to as “City”, and

WHEREAS, Nibley Meadows, hereinafter referred to as “the Development” has obtained approval for a Residential Planned Unit Development (“R-PUD”) overlay zone under Nibley City Code Title 19, Chapter 32 (“R-PUD Ordinance”); and

WHEREAS, the Development Agreement for Nibley Meadows (“Development Agreement”) provides that The City and Developer shall enter into a separate Park Development Agreement for improvement of an 4.5 acre City park space (“Park Space”), as described in Exhibit A; and

WHEREAS, the Parties intend to establish the specific terms, conditions, plans, phasing, and requirements that will govern the improvement of the Park Space.

NOW, THEREFORE, to induce Nibley City to approve the proposed PARK DEVELOPMENT AGREEMENT, the Developer does hereby unconditionally promise and agree with Nibley City as follows:

1. The Development Agreement and this Agreement shall govern the development of the Park Space. To the extent there is a conflict between this Agreement and the Development Agreement regarding the Park Space or the development thereof, this Agreement shall govern.

2. Funding: Prior to issuance of building permits, the Developer shall pay Park Impact Fees as set forth in Nibley City’s consolidated fee schedule and as described below and in Exhibit C. The City shall design, develop, and construct the Park Space through park impact fees generated from the Development and paid to the City, as described herein. Up to 50% of park impact fees generated from the Development shall be used to fund the design, development, and construction of the City Park Space.

- a. The City may withhold building permits if the required impact fees have not been paid.
- b. Developer shall not be entitled to interest earned on any impact fees held by the City.
- c. The use of park impact fee funding shall be limited to improvements directly related to the construction and improvement of the park, as described herein,

including construction of infrastructure, landscaping, amenities, trails, and supportive parking. Developer acknowledges and agrees that park impact fees cannot and shall not be used to construct any non-park improvements, such as construction of any roadways, utilities, or other improvements to be constructed as part of the development. Nothing in this Agreement modifies or limits Developer's obligation to pay all other impact fees and other fees and costs required under Nibley City Code.

- d. Developer and the City agree that improvements directly related to the construction and improvement of the park space, with the exception of the improvements described in subsection (e), are the responsibility of the City under this Agreement but will be funded with park impact fees generated from the Nibley Meadows development project. These improvements include any and all improvements contemplated or constructed inside the Park Space such as grading, landscaping, additional parking, lighting, irrigation, playgrounds, sports fields, bathrooms, pavilions, boardwalks, drinking fountains, lights, and any other improvement that the City deems appropriate beyond or in addition to the improvements required to be provided by the Developer.
- e. The Developer shall pay for the first 25 parking stalls serving the Park Space, all road cross-section improvements (graded and paved), as approved on the final construction drawings for phase 3 of the subdivision, to the access road, located at approximately 3370 S, and 1200 West adjacent the park, all trails within the park (graded and paved), sewer stubs for the restroom, \$150,000 toward a park splash pad and \$60,000 towards the park restroom independent of and without recourse to any impact fees. The Developer is required to make such improvements to the park or make a payment to the City in lieu of such improvements before obtaining a building permit for the 100th unit in the development.

3. Upon Developer receiving final plat approval of Phase 1 of the Development, Developer shall dedicate the 4.5 acres of Park Space to the City as consideration for this Agreement and the Development Agreement. Such dedication shall transfer fee title to the Park Space to the City, free, clear, and unencumbered, as described in Exhibit A. Developer shall hold harmless and indemnify the City for any injuries, damages, or losses arising out of Developer's and Developer's agents', contractors', and representatives' work, construction, development, and improvement of and on the Park Space.

4. Developer shall supply the City with water rights or shares for the Park as set forth in Nibley City Code Section 21.12.020, as determined by the Nibley City Engineer.

5. This Agreement may be revised or amended only upon the approval of the Nibley City Council.

6. Developer shall comply with all applicable federal, state, county and City requirements, regulations and laws for each aspect of this Development, including payment of

fees, provision of bonds and other guarantees, and compliance with design and construction standards. Nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such applicable laws, ordinances and requirements as now existing and as enacted and/or amended prior to construction. In the event of a conflict between this Agreement and any applicable federal, state, county, or city requirement, regulation, or law, the federal, state, county, or city requirement, regulation, or law shall prevail to the extent of such conflict.

7. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns including all parties who acquire title to any portion of the Development; provided, however, that this Agreement cannot be otherwise assigned, transferred or conveyed by either party, without the express, written consent of the other party.

8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

9. Time is of the Essence. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

10. Mutual Drafting. Each party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.

11. Entire Agreement. This Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

12. No Third Parties. This Agreement, and all Exhibits thereto, is intended for the sole benefit of the named parties thereto. No third party, except for permitted successors and assigns, shall have any right to enforce any of the terms or obligations herein.

13. Recordation and Running with the Land. This Agreement shall be recorded in the chain of title for the Development. This Agreement shall be deemed to run with the land and bind all future owners of any part of the Development.

14. Attorney Fees. Both Parties shall pay for their own attorney fees and costs arising out of or connected in any way to the execution of this Agreement. Any Party that prevails in any legal proceeding, including court proceedings, arbitration, and administrative proceedings, to enforce this Agreement or adjudicate any issues under or in connection with this Agreement will be entitled to recover its reasonable attorney fees, costs, and expenses of such proceedings.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

NIBLEY CITY

DEVELOPER

By: DAVID N. ZOOK
Its: City Manager

By:
Its:

STATE OF UTAH)
 : ss
County of Cache)

On this ____ day of _____, 2020, personally appeared before me DAVID N. ZOOK, City Manager, the signer of the within instrument, who duly acknowledged to me that he executed the same as City Manager for Nibley City Corporation.

NOTARY PUBLIC

STATE OF UTAH)
 : ss
County of Cache)

On the ____ day of _____, 2020, personally appeared before me, _____, Developer, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC

Exhibit A
Park Space Legal Description

Agenda Item #11

Description	Discussion & Consideration – Ordinance 21-04: An Ordinance Granting Digital First Telecom, LLC a Franchise Agreement with Nibley City (First Reading)
Department	Administration
Presenter	Justin Maughan, Public Works Director
Recommendation	Move to approve Ordinance 21-04: An Ordinance Granting Digital First Media Company a Franchise Agreement with Nibley City, and wave second reading.
Reviewed By	Mayor, City Manager, Public Works Director, City Attorney

Background:

Discussions began last year about installing a fiber optic line to City Hall and the Public Works Building to increase internet capacity and reliability, especially in light of additional remote work requirements due to the pandemic. The cost for connecting fiber to both buildings was approved in last year's budget to be paid with Covid relief funds. The company that was selected to install the line and provide the service is Digital First Telecom. They have submitted plans for approval to run the line from HWY 89/91 to City Hall. Most of this line will be hung on existing Rocky Mountain power poles, with some locations being bored, including under US89 and under the railroad tracks. Installing this line will allow them the capability to provide service to more customers than just Nibley City, therefore as with all other utilities, the city should enter into a franchise agreement, which would allow the company to operate in the city and in the City's rights-of-way.

State and federal laws authorize cities to charge franchise fees. Franchises are the right to use the public right-of-way for private businesses. Franchises are granted to private utility companies to use roads and easements to provide services to residents.

This would be the first franchise agreement entered into with Digital First Telecom LLC. It is for a ten year term, and renewable in five year increments thereafter.

The agreement has been reviewed by the city attorney and his suggested changes have been made.

The agreement includes the following key provisions:

- A non-exclusive right to construct, operate and maintain communication lines in the public ways within the city.
- Provider must restore disturbed property after construction.
- Provider must relocate their lines if we need them moved for our other utilities.
- Provider will pay the city 3% of annual gross revenue from any future customers in Nibley. This is governed by State law, and would be difficult to alter, and is the same in other franchise agreements we have entered into for similar services.
- The City may review or audit the books and records of Provider.
- Provider must maintain insurance and indemnify the City.

Financial Impact

Funds received through franchise fees may be used for any purpose and are posted as revenue into the City's general fund. It is anticipated that the revenue will be very minimal in the near future, as Nibley will be the only customer being provided service.

ORDINANCE 21-04
AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND
GENERAL UTILITY EASEMENT
TO
FIRST DIGITAL TELECOM LLC.

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THIS FRANCHISE AGREEMENT ("Agreement") is entered into by and between the Nibley City, Utah, a municipal corporation and political subdivision of the State of Utah ("CITY"), with its principal offices at 455 West 3200 South, Nibley City, Utah 84321, and FirstDigital Telecom, LLC, a Utah Limited Liability Company ("PROVIDER"), with its principal offices at 90 South 400 West Suite M100, Salt Lake City, Utah 84101

WITNESSETH:

WHEREAS, PROVIDER desires to provide telecommunications transmission services within CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of CITY: and

WHEREAS, the City, pursuant to *Utah Code Ann.* §10-8-11, as amended, the City's inherent authority, Title 13, Chapter 10 of the Nibley City Code, and other statutory authority, regulates the use of City Right-of-Way for the benefit of its residents; and

WHEREAS, CITY, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public for PROVIDER to have a nonexclusive franchise to operate a telecommunications network in CITY.

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

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE

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

1.2 Ordinance. CITY has adopted the Telecommunications System Franchises Ordinance, Title 13, Chapter 10 of the Nibley City Code, incorporated herein by reference. PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunication System Franchises Ordinance. The parties agree that the terms of this Agreement are intended to, and that each party hereby agrees to be contractually bound to, comply with the terms of the Telecommunication System Franchises Ordinance. The definitions in the Telecommunication System Franchises Ordinance shall apply herein unless a different meaning is specifically indicated herein. Nothing in this Section shall be deemed to require PROVIDER to comply with any provision of the Telecommunication System Franchises Ordinance which is determined to be unlawful or beyond CITY's authority.

1.3 Ordinance Amendments. CITY reserves the right to amend Telecommunication System Franchises Ordinance at any time. CITY shall give PROVIDER notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between PROVIDER's rights and obligations under the Telecommunication System Franchises Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, PROVIDER agrees to comply with any such amendments.

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

1.5 Licenses. PROVIDER acknowledges that it has obtained the necessary approvals, licenses, or permits required by federal and state law to fulfill its obligations consistent with the provisions of this Agreement and with the Telecommunication System Franchises Ordinance.

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

ARTICLE 2. FRANCHISE TAX

2.1 Municipal Telecommunications License Tax. For the Franchise granted herein, PROVIDER shall pay to CITY a municipal telecommunications license tax pursuant to the Municipal Telecommunications License Tax Act adopted by the State. UCA § 10-1-401 *et seq.* and CITY'S Municipal Telecommunications License Tax Ordinance, Nibley City Code 5.06.030. PROVIDER shall make payments to the Utah State Tax Commission and comply with all rules, requests, and auditing requirements imposed by the Utah State Tax Commission and governing law regarding this tax.

2.2 Equal Treatment. CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, CITY will either impose and collect from such third party a fee or tax on gross revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of CITY, or waive collection of the fees provided for herein that are subject to such competition.

ARTICLE 3. TERM AND RENEWAL

3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of

this Agreement, the franchise granted herein may be renewed by PROVIDER upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by providing to CITY's representative designated herein written notice of PROVIDER's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

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

ARTICLE 4. PUBLIC USE RIGHTS

4.1 CITY Uses of Poles and Overhead Structures. CITY shall have the right, without cost, to use all poles owned by PROVIDER within CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by CITY shall be for activities owned, operated, or used by CITY for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require PROVIDER to alter the manner in which PROVIDER operates and maintains its equipment. Such CITY attachments, if any, shall be installed and maintained in accordance with the reasonable requirements of PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. CITY's use rights shall also be subject to the parties reaching an agreement regarding CITY's maintenance of CITY attachments.

ARTICLE 5. POLICE POWERS

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

ARTICLE 6. CHANGING CONDITIONS, SEVERABILITY, AND ASSIGNMENT

6.1 Meet to Confer. PROVIDER and CITY recognize that many aspects of PROVIDER's business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way PROVIDER conducts its business and the way CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, PROVIDER and CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend

this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications System Franchise Ordinance is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, “material consideration” for CITY is its ability to collect a municipal telecommunications license tax during the term of this Agreement and its ability to manage its affairs in a manner similar to that provided in this Agreement, the Telecommunications System Franchise Ordinance, and CITY’S Excavation Permit Ordinance. For PROVIDER, “material consideration” is its ability to use the City rights-of-way for telecommunication purposes in a manner similar to that provided in this Agreement, and CITY’S Ordinance regulating CITY’s rights-of-way.

6.3 Assignment. If PROVIDER is the subject of a sale, merger, transfer or assignment, or is disposed of in whole or in part by ordinary sales, consolidation, or otherwise such that its successor entity is obligated to inform or seek the approval of the Public Service Commission of Utah, PROVIDER or its successor shall notify CITY of the nature of the transaction. The notification shall include the successor entity’s certification that it unequivocally agrees to all of the terms of this Agreement. Upon receipt of a notification in accordance with this section CITY shall send notice affirming the transfer/assignment of the Agreement to the successor entity. If CITY has good cause to believe that the successor entity may not comply with this Agreement, it may require an application for the transfer/assignment.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE, AND OTHER REMEDIES

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

7.1.1 PROVIDER fails to make timely payments of the franchise tax required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by CITY of such failure;

7.1.2 PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within PROVIDER’s control, and with respect to which redress is not otherwise herein provided. In such event, CITY, acting by or through its city council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving PROVIDER notice of such determination, PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions

identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day period provided above, CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of PROVIDER; or

7.1.3 PROVIDER becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities installed along the public rights-of-way within CITY should be sold under an instrument to secure a debt and is not redeemed by PROVIDER within sixty (60) days.

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

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

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

ARTICLE 8. PARTIES' DESIGNEES

8.1 CITY Designee and Address. City Manager or his or her designee(s) shall serve as CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or elsewhere required by statute or ordinance, all notices from PROVIDER or CITY pursuant to or concerning this Agreement, shall be addressed and delivered to CITY's representative at Nibley City Manager, 455 West 3200 South, Nibley City, Utah 84321, or such other officer and address as CITY may designate by written notice to PROVIDER.

8.2 PROVIDER Designee and Address. PROVIDER's designee(s) shall serve as PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or subsequently changed by written notice to CITY, all notices from CITY to PROVIDER, pursuant to or concerning this Agreement, shall be delivered to Brandon Balmforth,

90 South, 400 West, Suite M100 Salt Lake City, Utah 84101, or such other officer and address as PROVIDER may designate by written notice to CITY.

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

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Insurance. Prior to commencing operations in CITY pursuant to this Agreement, PROVIDER shall obtain and furnish to CITY evidence that it has adequate general liability and property damage insurance, in such form, amount and scope of coverage acceptable to the CITY. PROVIDER agrees to provide evidence of insurance upon reasonable request by CITY during the term of this Agreement.

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

ARTICLE 10. INSTALLATION AND MAINTENANCE

10.1 Permits and General Obligations. PROVIDER shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair its telecommunication facilities and services, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the telecommunication facilities by PROVIDER shall be performed in a safe, thorough and reliable manner using materials of good and durable quality in accordance with federal, state, and CITY regulations. All transmission and distribution structures, poles, other lines, and equipment installed by PROVIDER shall be located so as to minimize the interference with the proper use of the CITY Rights-of-Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

10.2 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within CITY's rights-of-way, PROVIDER shall coordinate with CITY and other providers or users of CITY's rights-of-way, when such cuts and excavations will be made. When possible, installation, repairs or maintenance of lines and facilities within CITY's rights-of-way shall be made in the same trench and at the time other installations, repairs, or maintenance of facilities are conducted within CITY's rights-of-way. CITY will give PROVIDER a schedule

of street repairs in advance of CITY work which schedule may be subject to change based upon funding. In addition, CITY will hold regular meetings with PROVIDER to provide updates to road projects and opportunities to share costs on burying lines.

10.3 Underground Installation. Unless otherwise provided, all of PROVIDER's facilities within CITY shall be constructed underground. PROVIDER may be permitted to install facilities overhead if: (1) it is infeasible to go underground at the time; (2) lines can be placed on already existing poles; and (3) PROVIDER agrees to move its facilities underground at PROVIDER's own expense when CITY directs and so long as CITY, at the same time, directs other franchisees with overhead facilities in the same location to move their facilities underground.

10.4 Restoration of Rights-of-Way. If in connection with the construction, operation, maintenance, or repair of PROVIDER's telecommunication facilities, PROVIDER disturbs, alters, or damages any CITY Right-of-Way, PROVIDER agrees that it shall at its own cost and expense replace and restore any such Right-of-Way to a condition reasonably comparable to the condition of the Right-of-Way existing immediately prior to the disturbance.

10.5 Relocation of Facilities. PROVIDER agrees to relocate its facilities or lines as follows:

10.5.1 CITY Requests. If the grades or lines of any CITY Right-of-Way are lawfully changed at any time during the term of this Agreement, PROVIDER is given not less than sixty (60) calendar days advance written notice to arrange for such temporary relocation and no less than one hundred twenty (120) business days for a permanent relocation. PROVIDER shall at its own cost and expense, protect or promptly alter or relocate its telecommunication network, facilities, lines, and any part thereof, so as to conform with the changed CITY Right-of-Way or such alternate CITY Right-of-Way that is reasonably acceptable to CITY and PROVIDER. In the event that CITY requests relocation efforts from PROVIDER solely for aesthetic reasons, then CITY agrees to pay all costs associated with relocation.

10.5.2 Other Requests. Upon reasonable prior written request of any other person holding a permit issued by the CITY, PROVIDER shall move any line or facility provided (i) PROVIDER may impose a reasonable charge on the person for the movement of any such line or facility and may require such charge to be paid in advance of the movement of the line or facility; and (ii) PROVIDER is given not less than sixty (60) calendar business days advance written notice to arrange for such temporary relocation and no less than one hundred twenty (120) business days for a permanent relocation.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and

(b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

11.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

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

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

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

11.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

11.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

[SIGNATURE PAGE FOLLOWS]

SIGNED AND ENTERED INTO THIS _____ day of _____, 2021.

“CITY”

Nibley City, a Utah Municipal Corporation

By: _____

Mayor

ATTEST: _____

City Recorder

Approved as to Form:

Attorney for City

State of Utah)

ss:

County of Salt Lake)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021,
by _____, the Mayor of the City of Nibley City, a Utah municipal corporation, on behalf
of said municipal corporation by authority of its City Council.

Notary Public

My commission expires:

Residing at:

“PROVIDER”

FirstDigital Telecom, LLC A Utah Limited Liability Company

By: _____

(Print name and title above)

State of _____)

ss:

County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021,
by _____, the _____ of FirstDigital Telecom, a
Utah Limited Liability Company, on behalf of the company.

Notary Public

Notary registration number:

My commission expires: