



NIBLEY CITY COUNCIL MEETING AGENDA

Thursday, July 13, 2023 – 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 June 22, 2023, Regular and Executive Session City Council Meeting Minutes and the Current Agenda (Chair)
4. Planning Commission Report
5. Public Comment Period¹ (Chair)

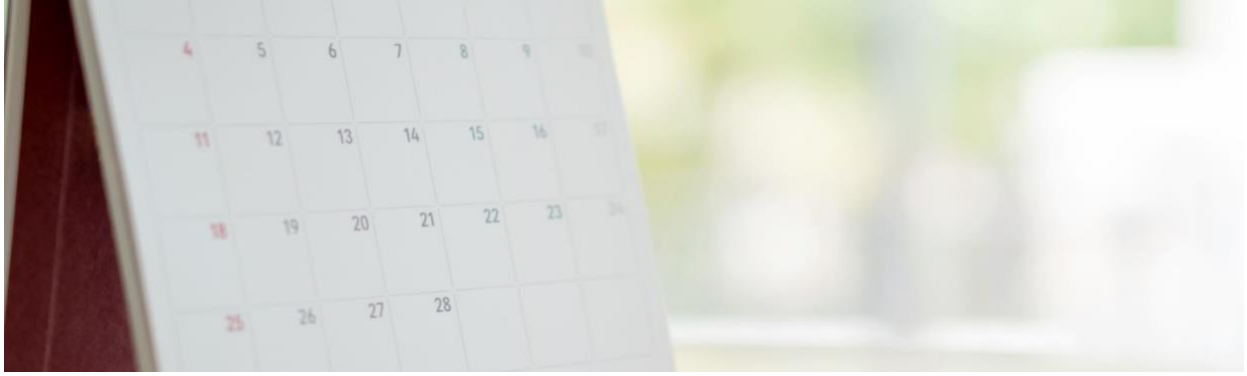
6. **Presentation:** Report on the Nibley Children's Theatre
7. **Presentation:** Report on the Nibley Royalty
8. **Discussion & Consideration:** Ordinance 23-27 – Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks (First Reading)
9. **Discussion & Consideration:** Ordinance 23-29 - Adjusting Logan City Waste Water Treatment Impact Fee for Larger than One Inch Meters (First Reading)
10. **Discussion & Consideration:** A Franchise Agreement with All West/Utah, Inc.
11. Council and Staff Report

Adjourn

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.

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

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7-13-23 Council Meeting Change Summary
(changes made to the agenda item report since 7-7-23)

- Agenda Item Report (AIR) was updated for items 6, 7,9, and 10.
- #7,1—Nibley City Pageant 2023 was added to the Channel
- #10,2—Logan Sewer Impact Fee Ordinance Changes was added to the Channel

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Agenda Item #6

Description	Presentation: Report on the Nibley Children's Theater
Presenter	Emily Rigby, NCT Director
Staff & Planning Commission Recommendation	Listen to the presentation. Ask pertinent questions and offer feedback.
Reviewed By	

Background:

Emily Rigby will report on the 2023 Nibley Children's Theater.

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Agenda Item #7

Description	Discussion & Consideration: Report on the Nibley Royalty
Presenter	Wendy Sanders, 2023 Pageant Director
Staff & Planning Commission Recommendation	Listen to the presentation. Ask pertinent questions and offer feedback.
Reviewed By	

Background:

Wendy Sanders will report on the 2023 Nibley City Royalty Pageant program.

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Agenda Item #8

Description	Discussion & Consideration: Ordinance 23-27— Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks (First Reading)
Presenter	Levi Roberts, City Planner
Staff & Planning Commission Recommendation	Move to approve Ordinance 23-27— Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks, for first reading
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Planning Commission

Background:

One of the Planning Commission goals for 2023 is to review and update the land use chart, which designates permitted, conditional and not permitted uses in each Nibley City zone. The Planning Commission has reviewed and discussed each use listed in the land use chart in a series of workshops to draft appropriate modifications in support of the purposes of each zone and the General Plan. In preparation for the discussion, individual Planning Commissioners reviewed the land-use chart and provided input regarding the appropriate designation for each use by zone. Staff then facilitated a discussion to review, redesignate, and add uses to the chart, as applicable. Several amendments to the Land Use Chart and some of the associated definitions are recommended, based upon this discussion. Recommended changes to the ordinance include the following:

- Removing residential uses from commercial and industrial zones as conditional uses, with the exception of the town center area if part of a mixed-use project. In such areas residential development of up to 10 units/acre is allowed if part of a mixed-use project.
- Consolidating Nursing home and assisted living center designation
- Adding 'Catering/Commercial kitchen' and 'Meal preparation & assembly' to the chart of allowed uses in several zones. These are emerging uses that there has been interest in establishing.
- Remove temporary vendor/food trucks from chart. Replace with Food trucks/mobile business section in compliance with recent state code changes.

- Food trucks/mobile businesses can operate within same zones as same permanent uses. Business license required if not obtained in other jurisdiction.
 - Must submit site plan if operating for longer than 10 hours per week.
- Removing the following designations from the chart which were deemed to be unnecessary: home office (covered by home occupation) and building moved from another site
- Changing the following additional Not permitted uses to Conditional or Permitted:
 - Bed and Breakfast Inn within R-2 and R-2A zones
 - Group Living Facility in C and C-N Zones
 - Home Occupation in C, C-N and I Zones
 - Farmers' Market in R-1A zones
 - Bus/Transit Terminal in R-M zones
 - College/University in C-N zones
 - Hospital in C-N zones
 - Construction Sales & Service in A and C-N zones
 - Low Power Radio Service/Cell Tower in A zones
 - General Repair Service in A zones
 - Light Manufacturing in C zones
 - Sports Facilities in A zones
 - Commercial Daycare/Preschool in P/S zones
- Changing the following additional Conditional or Permitted Uses to Not Permitted
 - Assisted Living Facility/ Nursing Home in A and R-E zones
 - Short-Term Rentals in I zones
 - ADU in I or P/S zones
 - Garden Center/Nursery in R-M zones
 - Funeral Home in R-M zones
 - Liquor Store in R-M zones
 - Corporate Office in A zones
- Changing the following Permitted Uses to Conditional
 - Assisted Living Facility/Nursing Home in R-M zones
 - Bed and Breakfast Inn in R-M zones
 - Garden Center/Nursery in C-N zones
 - Veterinary Clinic in A zones
 - Cemetary in P/S zones
 - Government Services in A zones
 - Beauty Salon in R-M zones

ORDINANCE 23-27

**AMENDING NCC 19.20.010 LAND USE CHART AND 19.04.010 DEFINITIONS AND ADOPTING
NCC 19.20.030 MIXED USE AND NCC 19.24.270 MOBILE BUSINESSES AND FOOD TRUCKS**

WHEREAS, Nibley City regulates land use within Nibley City boundaries; and

WHEREAS, Certain uses are compatible within certain zoning districts while others are incompatible; and

WHEREAS, Nibley City Moderate Income Housing Plan provides that the City should allow for apartments and condominiums within Neighborhood Commercial Zones attached to commercial buildings in the Town Center Area; and

WHEREAS, UCA 11-56 provides regulations for mobile businesses and food trucks.

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

1. The attached Nibley City Code 19.20.030 and 19.24.270 be adopted and amendments to Nibley City Code 19.20.010, 19.04.010 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 13 DAY OF July, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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19.20.010 Classification Of New And Unlisted Uses

For those uses not listed or described in the following chart as a permitted or conditional use, the applicant may petition the city council to amend the zoning title to specify and locate an appropriate zone or zones for the new use.

19.20.020 Land Use Chart
Nibley City Land Use Chart

Key

P:	Permitted Use
NP:	Not Permitted Use
C:	Conditional use
A:	Agriculture Zone
R-E:	Rural Estate Zone
R-1:	Residential Zone R-1
R-1A:	Residential Zone R-1A
R-2:	Residential Zone R-2
R-2A:	Residential Zone R-2A
R-M:	Mixed Residential Zone

P/S:	Park/School
C:	Commercial Zone
C-N:	Neighborhood Commercial Zone
I:	Industrial Zone

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Residential											
Assisted Living Facility / Nursing Home	NP	NP	NP	NP	NP	NP	C	NP	C	C	NP
Artisan Shop	C	C	C	C	C	C	C	NP	C	C	C
Bed and Breakfast Inn	C	C	C	C	C	C	C	NP	C	C	NP
Group Living Facility ¹	C	C	C	C	C	C	C	NP	C	C	NP
Home Occupation	C	C	C	C	C	C	C	NP	C	C	C

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Housing, Short-Term Rental ⁴	P	P	P	P	P	P	P	NP	P	P	NP
Housing, Single-Family	P	P	P	P	P	P	P	NP	C ⁶	C ⁶	NP
Housing, Multi-Family	NP	NP	NP	NP	NP	NP	P	NP	C ⁶	C ⁶	NP
Housing, Two-Family ⁵	P	P	P	P	P	P	P	NP	C ⁶	C ⁶	NP
Temporary Office/Model Home	P	P	P	P	P	P	P	NP	C	C	C
Accessory Dwelling Unit ³	P	P	P	P	P	P	P	NP	P	P	NP
Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Agricultural/Animal											
Ag Implement Sales and Service	C	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Agricultural Production	P	P	P	P	P	P	P	P	C	C	C

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Animal Crematorium	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Arboretum/Nature Center	C	C	C	C	C	C	C	C	C	C	C
Farmers' Market	C	C	C	C	NP	NP	C	C	C	C	C
Floral Shop	C	C	C	C	NP	NP	P	NP	P	P	P
Garden Center/Nursery	C	C	NP	NP	NP	NP	NP	NP	C	C	C
Pet Services	NP	NP	NP	NP	NP	NP	NP	NP	C	C	C
Veterinary Clinic, Large Animal	C	NP	NP	NP	NP	NP	C	NP	C	NP	C
Veterinary Clinic, Small Animal	C	NP	NP	NP	NP	NP	C	NP	C	C	C
Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Public, Institutional, and Civic Uses											
Bus/Transit Terminal	NP	NP	NP	NP	NP	NP	C	P	C	C	C
Cemetery	C	C	C	C	C	C	C	C	NP	NP	NP

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Church/Places of Worship	C	C	C	C	C	C	C	C	C	C	C
Club/Service Organization/Lodge	NP	NP	NP	NP	NP	NP	C	C	C	NP	C
College/University	C	NP	NP	NP	NP	NP	C	P	C	C	C
Government Services	C	NP	NP	NP	NP	NP	P	P	P	NP	P
Hospital	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Public Park	P	P	P	P	P	P	P	P	P	P	P
Private Park	P	P	P	P	P	P	P	P	P	P	P
Utility Substation	C	C	C	C	C	C	C	C	C	C	C
School	C	C	C	C	C	C	C	P	P	C	P
Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Commercial											
Auditorium	NP	NP	NP	NP	NP	NP	C	P	C	C	C

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Bail Bonds/Pawnbroker	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Bakery	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Banks/Financial Institutions	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Beauty Salon/Spa	NP	NP	NP	NP	NP	NP	C	NP	P	P	P
Business Equipment Sales and Service	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Car Wash	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Catering/Commercial Kitchen	C	C	C	C	C	C	C	NP	C	C	C
Check Cashing/Credit Services	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Construction Sales and Service	C	NP	NP	NP	NP	NP	NP	NP	C	C	C
Daycare/Preschool, Commercial	NP	NP	NP	NP	NP	NP	P	P	P	P	P
Funeral Home	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Gasoline Service Station	NP	NP	NP	NP	NP	NP	C	NP	P	P	P

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Gasoline, Wholesale	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Hotel/Motel	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Laundry Service	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Liquor Store	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Low Power Radio Service/Cell Tower	C	NP	NP	NP	NP	NP	C	NP	C	NP	C
Medical/Dental Offices and Clinic	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Medical Sales and Service	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Personal Instruction Services	C	C	C	C	C	C	C	C	C	C	C
Motor Vehicle Sales and Service	NP	NP	NP	NP	NP	NP	NP	NP	C	C	C
Office, Corporate	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Offices, Professional	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Parking, Commercial	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Plumbing Services	NP	NP	NP	NP	NP	NP	C	NP	P	C	P

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Printing/Copying, Commercial	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Protective Services	NP	NP	NP	NP	NP	NP	C	NP	C	NP	C
Recreation/Entertainment, Commercial	NP	NP	NP	NP	NP	NP	C	C	C	C	C
Restaurant	NP	NP	NP	NP	NP	NP	C	C	P	P	P
Retail	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Repair Service, General	C	NP	NP	NP	NP	NP	C	NP	C	C	C
Research and Development	C	NP	NP	NP	NP	NP	C	NP	C	NP	C
Research Service	NP	NP	NP	NP	NP	NP	C	NP	C	NP	C
Sexually Oriented Business	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Transportation Services	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Meal Preparation & Assembly	C	C	C	C	C	C	C	NP	C	C	P
Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Industrial											

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Junk/Salvage Yard	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Manufacturing, Heavy	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Manufacturing, Industrial	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Manufacturing, Light	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Mineral Extraction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Pest Control	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Recycling Collection Facility	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Sign Shop	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Sports Facilities	C	NP	NP	NP	NP	NP	C	C	C	NP	C
Storage Facility	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Warehousing	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Warehousing, Residential Storage	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Welding/Machine Shop	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C

Notes

1. Group living facilities are governed by NCC 19.42
2. Any land use not listed is not permitted
3. Accessory dwelling units are governed by NCC 19.24.250
4. Short-term rental housing is governed by NCC 19.24.260
5. For Two-family housing, one of the units shall be owner-occupied, except for bona fide temporary absences
6. Housing is only allowed within the Town Center Area as described in NCC 19.32.030(B), in Neighborhood Commercial and Commercial areas within a mixed-use residential/commercial project, as described in NCC 19.20.030.

19.20.030 Mixed Use

- A. Any mix of permitted or conditional uses listed in this section is allowed within the same lot or parcel, whether within the same building or in a permitted accessory building, provided that all setbacks and other applicable standards of this Title are adhered to for each use. Buildings containing mixed uses shall comply with the most restrictive standard among the standards applicable to the uses within the building.
- B. Within the Town Center Area, as described in NCC 19.32.030(B), housing is allowed within Commercial and Neighborhood Commercial Zones when attached to a commercial building. Within such developments, at least 50% of land must be dedicated to commercial uses. The 50% use may include the entirety of the ground floor area of buildings with commercial uses on the ground floor or horizontally separated uses where commercial uses occupy an entire building. For buildings with partial commercial uses on a floor or vertically separated uses, only the ground floor area of the portion dedicated to commercial uses may be counted. The portion of land that is apportioned as a commercial use shall include the ground floor area of commercial uses, as described above, and supportive uses, including parking and landscaping. Parking for a mixed-use building that is required for residential uses shall not be included as part of the land apportioned as commercial use. The maximum residential density shall be ten (10) units per net developable acre with additional density allowable through transfer of development rights as described in NCC 19.48. The residential density shall be calculated based upon the area that is dedicated to residential uses, including any mixed-use buildings.

19.04.010 Definitions

CATERING/COMMERCIAL KITCHEN: A business with a kitchen that has durable equipment designed for mass food production which provides food wholly or in part owned by the caterer for a specific event at a location other than the food establishment, on a contractual, prearranged basis to a subset of the public.

FOOD TRUCK: A food truck, as defined by state law (11-56-102). Food trucks shall be permitted in any zone in which restaurants are permitted, subject to the regulations for food trucks and mobile businesses under NCC X.

MEAL PREPARATION & ASSEMBLY: A business which prepares and assembles individual meals to deliver to individuals and families, but not larger groups. This includes preparing, packaging and freezing such individual meals. This does not include large scale packaged food assembly.

MOBILE BUSINESS: An enclosed mobile business, as defined by state law (11-56-102).

PERSONAL INSTRUCTION SERVICES: A business which trains individuals or groups in the arts, personal defense, crafts or other subjects of a similar nature.

19.24.270 Mobile Businesses and Food Trucks.

A. Location.

1. Mobile businesses are permitted in any zone in which a similar, non-mobile use is listed as a conditional or permitted use, and food trucks are permitted in any zone in which restaurants are listed as a permitted or conditional use, subject to the regulations set forth in this section. A conditional use permit is not required for mobile businesses and food trucks. Mobile businesses and food trucks are not permitted to operate open to the public in any other zone.
2. Mobile businesses and food trucks are not permitted to operate or store their vehicles upon any public right-of-way.
3. Mobile businesses and food trucks shall be required to provide a site plan showing culinary water facilities and connections, wastewater facilities, connections and management, parking, access, and other details required for site plans for similar uses if the mobile business or food truck operates on the same private lot or parcel for ten (10) hours or more per week.

B. Licensure and Approval.

1. A mobile business or food truck shall obtain, for each truck, a business license from the city if the operator does not hold a current business license from another political subdivision in Utah. A mobile business or food truck may operate without a business license at events on private property that are not open to the public.

2. A mobile business or food truck shall obtain or provide proof of a current health department permit, if required for the business.
 3. A mobile business or food truck shall obtain or provide proof of passing a fire safety inspection, if required for the business.
- C. Nothing herein waives any requirement regarding special event or mass gathering permits.

Agenda Item #9

Description	Discussion & Consideration: Ordinance 23-29— Adjusting Logan city Wastewater Treatment Impact Fee for Larger Than One-Inch Meters (First Reading)
Presenter	Justin Maughan, City Manager
Staff Recommendation	Move to approve Ordinance 23-29—Adjusting Logan city Wastewater Treatment Impact Fee for Larger Than One-Inch Meters, for first reading. A public hearing will be held for this ordinance at the next Nibley City Council meeting.
Reviewed By	Mayor, City Manager

Background:

When the original Waste Water Treatment Impact Fee was established, Nibley City was primarily constructing single family homes. Since that time, a shift has occurred to multifamily units, which require larger meters. As this occurred, mistakes were made in the amount of money that was being charged for the Impact Fee. Staff are working through the issue with Logan City, to correct the error, and return the amount of money that was overpaid to the developers. To correct the issue moving forward, the proposed changes to the ordinance will make it clearer what should be charged for the larger sized meters and will help staff avoid erroneous charges.

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ORDINANCE 23-31

AN ORDINANCE ADJUSTING LOGAN CITY WASTEWATER TREATMENT IMPACT FEES FOR LARGER THAN ONE-INCH METERS

WHEREAS, the City of Nibley (the "City") is a political subdivision of the State of Utah, authorized and organized under applicable provisions of Utah law; and

WHEREAS, the City has legal authority, pursuant to Title 11, Chapter 36a of the Utah Code Annotated, as amended ("Impact Fees Act" or "Act"), to impose development impact fees as a condition of development approval, which impact fees are used to defray capital infrastructure costs attributable to new Development Activity; and

WHEREAS, the City does not currently charge an impact fee for wastewater treatment;

WHEREAS, wastewater treatment service for the City is provided by Logan City Corporation ("Logan City") pursuant to interlocal agreements; collectively referred to as the "Logan City Agreements"; and

WHEREAS, the City desires to implement an impact fee for wastewater treatment, referred to hereafter as "Wastewater Impact Fee" in accordance with applicable provisions of the Impact Fees Act in order to appropriately assign capital infrastructure costs to development in an equitable and proportionate manner as more particularly provided herein; and

WHEREAS, the proposed Wastewater Impact Fee is based upon Logan City's Regional Wastewater Impact Fees Facilities Plan and Impact Fee Analysis, a copy of which is attached as Exhibit A, which the City Council hereby finds to be a reasonable plan that otherwise complies with the common law and the Act; and

WHEREAS, the proposed Wastewater Impact Fee established by this ordinance is reasonable related to the cost of providing such public facilities necessitated by anticipated future growth within the City or are reasonably related to public facility costs previously incurred by the City and/or Logan City and said fee does not exceed the highest fee justified by the Impact Fee Analysis prepared by Logan City; and

WHEREAS, the City has provided the required notice and public hearing requirements as established under the Act and related statutes; and

WHEREAS, a public hearing was held before the City Council on January 23, 2020 to receive public input and comment regarding the proposed Wastewater Impact Fee.

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

1. The attached Nibley City Code 17.08 be adopted.
2. Nibley City accepts the impact fee analysis.

ADOPTED and PASSED by the Nibley City Council this _____ day of _____, 2023.

Larry Jacobsen, Mayor Pro Tem

ATTEST:

Cheryl Bodily, City Recorder

17.08 Impact Fee Facilities Plans And And Impact Fee Enactment For Wastewater

17.08.010 Definitions

17.08.020 Impact Fee Analysis, Service Area

17.08.030

17.08.040 Wastewater Impact Fee

17.08.050 Accounting, Expenditure

17.08.060 Administrative Challenges And Appeals Procedure

17.08.070 Amendments, Inconsistencies, Severability, Establishment

HISTORY

Adopted by Ord. 20-03 on 3/12/2020

17.08.010 Definitions

1. "System Improvements" means:
 1. Existing public facilities that are:
 1. Identified in the Impact Fee Analysis ("IFA"), attached as Exhibit "A"; and
 2. Designed to provide services to the service areas within the community at large; and
 2. Future public facilities that are intended to provide services to service areas within the community at large.
2. "Equivalent Residential Unit" means that unit of demand that has an impact on the wastewater treatment infrastructure of Logan City that is equivalent to a single-family residence with a flow of 245 gallons per day.
3. "Public Facilities" for purposes of this ordinance means only the following impact fee related facilities that have a life expectancy of 10 or more years and are owned by Logan City, and which are operated on behalf of the City:
 1. Wastewater collection and treatment facilities

17.08.020 Impact Fee Analysis, Service Area

1. The City Council hereby adopts the Impact Fee Facilities Plan (IFFP) and Impact Fee Analysis (IFA) prepared for Logan City by Lewis Young Robertson & Burningham, Inc.
2. A copy of the IFA is included as Exhibit "A".
3. The entire area of the City is hereby designated as one service area with respect to wastewater treatment facilities.

17.08.030

The IFFP and IFA as set forth in Exhibit "A" is hereby adopted in its entirety by the City in accordance with applicable provisions of the Impact Fees Act.

17.08.040 Wastewater Impact Fee

1. A Wastewater Impact Fee is hereby established and imposed as a condition of the issuance of a building permit by the City for any development activity which creates additional demand and need for public facilities in accordance with the Act. The Wastewater Impact Fee shall be:

One Inch Meter: \$2,433.00

Two Inch Meter: \$7,786

Four Inch Meter: \$24,327Larger than Four: Inch Estimated Usage divided by 245 GPD multiplied by \$2433.T

2. Nibley City will assess the Wastewater Impact Fee at the time of building permit application. All impact fees must be paid in full before a building permit is issued.
3. Logan City and/or the Logan City Environmental Director is authorized to adjust the standard impact fee described above at the time the fee is paid in order to:
 - A. Respond to:
 1. Unusual circumstances in specific cases; or
 2. A request for a prompt and individualized impact fee review for the development activity of the state, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected; and
 - B. Ensure that the impact fee is imposed fairly.
4. The amount of the Wastewater Impact Fee to be imposed on a particular development may be adjusted by Logan City and/or the Logan City Environmental Director.
5. Applications for exceptions are to be filed with Logan City and/or the Logan City Environmental Director at the time the applicant first requests the extension of service to the applicant's development or property.
6. Subject to approval by the Logan City and/or the Logan City Environmental Director, developers, including a school district or a charter school, may be allowed a credit against Impact Fees or proportionate reimbursement of Impact Fees if the developer 1) dedicates land for a System Improvement, 2) builds and dedicates some or all of a System Improvement, or 3) dedicates a public facility that Logan City and the developer agree will reduce the need for a System Improvement; provided that the System Improvement is: (i) identified in the Logan City Impact Fee Facility Plan; and (ii) is required by Logan City as a condition of approving the Development Activity. To the extent required in Section 11-36a-402 of the Act, the City, subject to the approval of Logan City and/or the Logan City Environmental Director, shall provide a credit against Impact Fees for any dedication of land for, improvements to, or new construction of any System Improvements provided by the developer if the facilities, 1) are a System Improvement; or 2) are dedicated to the public and offset the need for an identified System Improvement.

HISTORY

Amended by Ord. [20-15](#) on 8/13/2020

17.08.050 Accounting, Expenditure

1. Logan City shall account for, expend, and refund Wastewater Impact Fees pursuant in accordance with provisions of the Act.

17.08.060 Administrative Challenges And Appeals Procedure

1. Any person or entity required to pay a Wastewater Impact Fee imposed by Logan City who believes the fee does not meet the requirements of law may file a written request for information with Logan City and/or the Logan City Environmental Director as provided by law.
2. Within two weeks after the receipt of the request for information, Logan City and/or the Logan City Environmental Director shall provide the person or entity with the written impact fee analysis required by the Act and with any other relevant information relating to the impact fee.

17.08.070 Amendments, Inconsistencies, Severability, Establishment

1. This ordinance and fee schedule may be amended by subsequent ordinances, subject to approval by Logan City and/or the Logan City Environmental Director.
2. The City may adopt policies consistent with this ordinance and any resolutions passed by the City Council to assist in the implementation, administration and interpretation of this ordinance related to Impact Fees.
3. Any parts or portions of previous ordinances, resolutions, rules, and regulations which are inconsistent or in conflict with this ordinance are hereby repealed.
4. Prior policies, ordinances, rules, and regulations of the City regarding Wastewater Impact Fees that are not in conflict with this ordinance remain in effect.
5. If any part of this Ordinance is declared invalid by a court of accepted jurisdiction, the remainder shall not be affected thereby.
6. As required by Section 401(2) of the Act, this ordinance shall become effective 90 days after passage by the City Council and public notice as required by law.

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Agenda Item #10

Description	Discussion & Consideration: A Franchise Agreement with All West/Utah Inc.
Presenter	Justin Maughan, City Manager
Staff Recommendation	Move to approve the Franchise Agreement with All West/Utah Inc.
Reviewed By	Mayor, City Manager

Background:

Founded in 1912, All West Communications is a regional service provider that offers technologically advanced communications to the communities they serve. They provide internet, TV streaming and phone service to rural areas stretching from northeast Utah to southwest Wyoming.

All West Communications has requested a non-exclusive franchise agreement to allow them to provide fiber to the homes throughout Nibley. This franchise agreement has been modeled after other franchise agreements that the City has in place with other telecom providers, and they would be under the same obligations as other utilities.

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**NibleyCITY, UTAH
FRANCHISE AGREEMENT WITH
AND ALL WEST/UTAH, INC.**

Nibley City, a municipal corporation of the State of Utah and All West/Utah, Inc., a Utah corporation (“All West”) hereby enter into an agreement granting to All West and its affiliates a non-exclusive franchise to install, operate and maintain a communications system in, on, over, upon, along, and across the public rights of way of Nibley City.

WHEREAS, All West, has requested that the City grant it the right to install, operate, and maintain a communications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. “Affiliate” means the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

B. “City” means Nibley City, Utah.

C. “Communication(s) Service” shall mean any communications services, communications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an

electronic signal over fiber optic cable, copper cable, or wireless antennas. Communication Service shall also include wireless and non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. “Communication System” or “Facilities” shall mean the Franchisee’s fiber optic and/or copper cable and/or wireless system constructed and operated within the City’s public ways and shall include all cables, wires, fibers, antennas, conduits, ducts, pedestals, and any associated converter, equipment, enclosures, or other facilities within the City’s public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the City, through this Agreement or subsequently adopted agreement, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

G. “Franchisee” means All West/Utah, Inc., a Utah corporation, or the lawful successor, transferee, assignee, or affiliate thereof.

H. “Person” means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

I. “Public Way” shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way which within their proper use and meaning, entitle the City and the Franchisee the use thereof for the purposes of installing or transmitting the Franchisee’s Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System.

J. “Service Area” means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee's Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee's Communications System, and to provide Communications Service.

Section 3. Construction Permits Required.

A. Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain a Right of Way permit, and pay associated fee's pursuant to the ordinances of the City presently existing or as amended from time to time.

B. Unless otherwise provided in said permit, the Franchisee shall give the City at least 48 hours' notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this franchise shall be for a period of thirty (30) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days' notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future Franchisee to physically interfere with the Franchisee's Communication Facilities. In the event that such physical interference or disruption occurs, the City Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public

ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Section 7. Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital copies in a format specified by the City Engineer.

Section 8. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties in locations as approved by the City so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities and joint trenching projects. By June 1 of each calendar year, or such other date as the City and the Franchisee may agree upon from year to year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

Section 9. Restoration after Construction. The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the public ways restore the surface of said public ways and any other City-owned property that may be disturbed by the work to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the City in accordance with the applicable ordinances of the City.

Section 10. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City Hall is open for business.

Section 11. Relocation. In the event that at any time during the period of this franchise, the City shall lawfully elect to alter or change any street, trail, alley, public utility easement, bridge, culvert or other public way requiring the relocation of Franchisee's Facilities, then in such event, Franchisee, within 90 days of written notice by the City, shall remove, relay and relocate the same at its own expense; except that Franchisee shall, in all cases, have the right, in Franchisee's sole discretion, to abandon its Facilities in place, in lieu of relocation.

In the event the City requests relocation efforts from the Franchisee for aesthetic purposes, the City agrees to pay all costs associated with relocation. Franchisee shall not be required to pay for the relocation of Franchisee's Facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is request solely for aesthetic purposes, in cases where the original location of the Franchisee Facilities was approved by the City through the permitting process.

Franchisee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building, provided: (a) the expense of such temporary removal shall be paid by the person(s) requesting the same, and Franchisee shall have the authority to require payment in advance; and (b) the Franchisee is

given not less than five (5) business days' advance notice to arrange for such temporary line changes.

Section 12. Trimming. Franchisee shall have the authority to trim trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with Franchisee's Facilities. Franchisee shall, when practical, provide notice to the City and to any property owner before commencing such work. Franchisee shall not be required to provide notice in advance of such work in emergency conditions.

Section 13. Dangerous Conditions. Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or City-owned property, the City Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the City for the reasonable costs thereof.

Section 14. Non-Liability of City for Acts of Franchisee. The City shall not at any time become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise.

Section 15. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide to the City for its inspection an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any facilities pursuant to this franchise. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than (1) \$2,000,000.00 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.

C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 16. Abandonment and Removal of the Franchisee's Communication Facilities. Upon the expiration or termination of the rights granted under this franchise, the Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the City within ninety (90) days or abandon the Facilities in place. Upon permanent abandonment and Franchisee's agreements to transfer ownership of the Communication Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the City.

Section 17. Municipal Telecommunications License Tax. For the Franchise granted herein, Franchisee shall pay to the City, in accordance with the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated, of three and a half percent (3.5%) of Franchisee's gross receipts from telecommunications services attributed to the City as set forth in the Municipal Telecommunications License Tax Act, less any business license fee or business license tax enacted by the City. All payments shall be made to the Utah State Tax Commission:

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

Section 18. Modification. The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification.

Section 19. Forfeiture and Revocation.

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the City, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 20. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

Section 21. Survival. All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 13 Dangerous Conditions; 14 Non-Liability of City for Acts of Franchisee; 15 Insurance; 16 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 22. Severability. If any section, sentence, clause or phrase of this franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.

Section 23. Assignment. This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this franchise

without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to another, provided that Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.

Section 24. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City:
[city name]
[address]
[City/State/Zip code]

All West/Utah, Inc
50 West 100 North
Kamas, UT 84036

Notice shall be deemed given upon receipt in the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

Section 25. Entire Franchise. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise.

Section 26. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

Section 27. Governing Law/Venue. This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the City is located, or with respect to any federal question, with the United States District Court for the District of Utah in Salt Lake City, Utah.

Section 28. Effective Date. This Agreement takes effect on the date is signed by the last party to sign.

[signature pages to follow]

_____ CITY

Name: _____

Title: _____

Date: _____

ATTEST:

City Clerk
(SEAL)

ALL WEST/UTAH, INC.

Name: _____

Title: _____

Date: _____