



Regular Council Meeting

Tuesday, October 20, 2020 at 7:00 pm

- 1) Call to order.
 - 2) Pledge of Allegiance.
 - 3) Invocation.
 - 4) Roll call: Ward I: Kyle Larson, Cory Rota
Ward II: Karla Borders, Rebecca Schatza
Ward III: Mike Bailey, Tim Hancock
 - 5) Declaration of quorum.
 - 6) Approval of the Agenda.
 - 7) Communication from the Floor – Citizen’s Comments.
 - 8) Consent Agenda:
 - Approval of the Minutes – October 6, 2020 Regular Council Meeting.
 - Approval of the Minutes – October 20, 2020 Finance Committee Meeting.
 - Approval of the Finance Committee Recommendations – October 20, 2020.
 - Re-plat: City Subdivision, Lots 1 & 2A Re-plat, Petitioner: Caprine Investments, LLC.
 - 9) Retirement Recognition: Harold “Doug” Hobbie.
 - 10) Bid Award: Tub Grinder.
 - 11) Consideration of Ordinance No. 20-007, 2nd Reading: Visionary Communications, Inc. Franchise Agreement.
 - 12) Consideration of Ordinance No. 20-009, 2nd Reading: Contact Communications, Inc. Franchise Agreement.
 - 13) Consideration of Ordinance No. 20-008, 2nd Reading: RMC 10.04 Right of Way Closures.
 - 14) 2020 Construction Report.
- Reports and Comments:
- 15) Council Committee Reports and Council Members’ Roundtable.
 - 16) City Administrator’s Report.
 - 17) Mayor’s Comments.
 - 18) Executive Session – If needed.
 - 19) Adjourn.

RIVERTON CITY COUNCIL
Minutes of the
Regular Council Meeting
Held October 6, 2020
7:00 PM

The regular meeting of the Riverton City Council was held on the above date and time, duly convened by Mayor Richard P. Gard at 7:00 p.m. City Council Members present were Karla Borders (telephonically), Tim Hancock, Mike Bailey, Rebecca Schatza, and Cory Rota. Council Member Hancock led the pledge of allegiance and Council Member Bailey conducted the invocation.

Roll call was conducted. Council Member Schatza moved, seconded by Council Member Bailey to excuse Council Member Kyle Larson from tonight's meeting. Motion passed unanimously. Mayor Gard declared a quorum of the Council.

City Staff present: City Administrator Tony Tolstedt (telephonically), City Clerk/Human Resource Director Kristin Watson, Public Works Director Kyle Butterfield, Chief of Police Eric Murphy, Finance Director Mia Harris, Community Development Director Eric P. Carr, and Administrative Assistant/Deputy City Clerk Megan Sims.

Approval of the Agenda – Council Member Rota moved, seconded by Council Member Schatza to approve the agenda as presented. Motion passed unanimously.

Communication from the Floor/Response to Citizen's Comments – Former Mayor Ron Warpness approached the Council in regards to the optional one percent tax that is on the ballot for the general election. Karin Broemer approached the Council with her concerns regarding the optional taxes on both the primary and general ballots.

Consent Agenda – City Clerk/Human Resource Director Kristin Watson read the consent agenda items by title only: Approval of the Minutes – September 15, 2020 Regular Council Meeting; Approval of the Minutes – October 6, 2020 Finance Committee Meeting; Approval of the Finance Committee Recommendations – October 6, 2020 claims to be paid in the amount of \$660,774.82, manual check in the amount of \$1,300.00, payroll/liabilities for 9/11/2020 and 9/25/2020 in the amount of \$672,197.93 for a total of \$1,334,272.75; and Approval of the Municipal Court Report for the month of September 2020. Council Member Schatza moved, seconded by Council Member Bailey to approve the consent agenda as presented. Motion passed unanimously.

Mayor's Proclamation: Support of Riverton Police Officers – Mayor Richard Gard read a proclamation which expresses sincere thanks to the Riverton Police Department and all Police Departments throughout the Nation for their diligent and good service to our communities. This proclamation was signed by Mayor Gard on the 6th day of October 2020.

Introduction of New Dispatchers; Introduction and Oath of Office of New Police Officers – Police Chief Eric Murphy introduced recently hired dispatchers to the Council: Meagan Ayers and Kaityln Girgen. Also recently hired at the Police Department were Investigative Technician Lisa Looper and Executive Administrative Assistant Summer Cassady. The newly hired police officers that were hired and introduced by Chief Murphy were: Taggart Harmelink, Preston Richardson, Sean Tatro, and Arnulfo Zertuche. Mayor Gard administrated the oath of office to Officers Harmelink, Richardson, Tatro, and Zertuche; and Dispatchers Ayers and Girgen.

Public Hearing & Consideration of Transfer of Location & Ownership of a Retail Liquor License, from The Topsy Tulip, LLC to Starting Gate, LLC - City Clerk/Human Resource Director Kristin Watson reported of a retail liquor license transfer of ownership and location from Starting Gate, LLC to operate at 1409 W Main St. This liquor license is currently held by The Topsy Tulip, LLC operating at 409 E Main St. Council Member Schatza moved, seconded by Council Member Bailey to open the public hearing. Motion passed unanimously. Steve Wocicki with Starting Gate, LLC approached the Council in regards to the liquor license transfer request. There being no others to

address the Council, Council Member Bailey moved, seconded by Council Member Schatza to close the public hearing. Motion passed unanimously. Council Member Schatza moved, seconded by Council Member Rota to approve the retail liquor license transfer of location and ownership to Starting Gate, LLC located at 1409 W Main St. Motion passed unanimously.

Public Hearing for Ordinance Nos. 20-007 & 20-009: Franchise Agreements for Visionary Communications, Inc. & Contact Communications, Inc. – City Clerk/Human Resource Director Kristin Watson presented Ordinance No. 20-007 as well as Ordinance No. 20-009 which establishes franchise agreements with Visionary Communications, Inc. and Contact Communications, Inc., respectively. City Clerk/Human Resource Director Kristin Watson read both Ordinance Nos. 20-007 and 20-009 by title only. Council Member Schatza moved, seconded by Council Member Bailey to open the public hearing. Motion passed unanimously. Steve Mossbrook with Contact Communications and Brian Worthen with Visionary Broadband Communications both expressed their gratitude in developing a franchise agreement with the City. There being no others to address the Council, Council Member Bailey moved, seconded by Council Member Hancock to close the public hearing. Motion passed unanimously.

Consideration of Ordinance No. 20-007, 1st Reading: Visionary Communications, Inc Franchise Agreement – Council Member Bailey moved, seconded by Council Member Schatza to adopt Ordinance No. 20-007 on first reading, with the ability to allow work to proceed immediately. Motion passed unanimously.

Consideration of Ordinance No. 20-009, 1st Reading: Contact Communications, Inc Franchise Agreement – Council Member Bailey moved, seconded by Council Member Schatza to adopt Ordinance No. 20-009 on first reading, with the ability to allow work to proceed immediately. Motion passed unanimously.

Public Hearing and Consideration of Ordinance No. 20-008, 1st Reading: RMC 10.04 Right of Way Closures – Public Works Director Kyle Butterfield presented Ordinance No. 20-008 which amends Riverton Municipal Code chapter 10.04. City Clerk/Human Resource Director Kristin Watson read Ordinance No. 20-008 by title only. Council Member Schatza moved, seconded by Council Member Rota to open the public hearing. Motion passed unanimously. There being no one to address the Council, Council Member Rota moved, seconded by Council Member Bailey to close the public hearing. Motion passed unanimously. Council Member Rota moved, seconded by Council Member Schatza to adopt Ordinance No. 20-008 on first reading. Motion passed unanimously.

Memorandum of Understanding: Blue Sky Renewable Energy Grant – Community Development Director Eric P. Carr reported on the previously submitted application, on the behalf of the Riverton Senior Citizen's Center, to Rocky Mountain Power for the Blue Sky Renewable Energy Grant for solar panels at the Senior Center. Mr. Carr stated the City received notification that the grant was approved for the full amount requested and presented the Memorandum of Understanding with Rocky Mountain Power to utilize the funds received for the project. Council Member Schatza moved, seconded by Council Member Hancock to approve the Rocky Mountain Power: Blue Sky Renewable Energy Grant Memorandum of Understanding.

Council Committee Reports & Council Members' Roundtable – Council Member Rota reported on the Fremont County School District #25 Recreation Board meeting he attended and commented on the City of Riverton website; Council Member Schatza commented on the sale of the old Days Inn and commented on the Christmas tree lighting; Council Member Bailey commented on the Fall Harvest Festival and reported on the Airport Board Meeting he attended; Council Member Hancock commented on the diligent work of the community members volunteering throughout the town.

City Administrator's Report – City Administrator Tony Tolstedt also attended the Fall Festival and enjoyed his time; commented on the current enplanements at the airport; and expressed his appreciation to call in for the meeting.

Mayor's Comments – Mayor Richard P. Gard reported of meeting with the County Commissioners; commented on the FCAG meeting he attended; thanked the FAST committee as well as everyone involved in their diligent work in

achieving over 700 passengers for the month of September; commented on the current Coronavirus numbers; and commented on the Fall Festival. Mayor Gard also briefly discussed the optional 1% tax.

Adjourn – There being no further business to come before the Council, Mayor Gard adjourned the Regular Council meeting at 8:18 p.m. There was no objection from the Council.

CITY OF RIVERTON, WYOMING

Richard P. Gard
Mayor

ATTEST:

Kristin S. Watson
City Clerk/Human Resource Director

Publication Date:

CITY COUNCIL STAFF REPORT

TO: His Honor the Mayor and Members of the City Council

FROM: Eric P. Carr, P.E. – Director of Community Development

THROUGH: Tony Tolstedt – City Administrator

DATE: October 20, 2020

SUBJECT: City Subdivision, Lots 1 and 2A Re-plat

PETITIONER: Caprine Investments, LLC

Recommendation: The City Council approve the City Subdivision, Lots 1 and 2A Re-plat, located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, T.1N., R4E., W.R.M., City of Riverton, Fremont County, Wyoming.

Background: The City of Riverton owned and platted the City Subdivision into seven (7) lots in January of 2011. It was the old hospital block prior to the subdivision's creation. Lot 1 was sold to Caprine Investments shortly after the plat was created. Lot 1 is where the Soldier's House moved their current building. Habitat for Humanity developed Lots 3, 4, 5, and 6 along the east side of the block. Lots 2 and 7 were left as big lots for future development. Umphlett Investments bought Lot 2 and Lot 7 in April 2014. Lot 2, City Subdivision was re-platted into 4 lots and Lot 7 was re-platted into 5 lots in October 2014. Out-lot A was then dedicated for public access, utilities, and drainage.

Discussion: This re-plat is proposing to combine Lot 1 and Lot 2A. There is an easement between Lot 1 and Lot 2A, but this will be eliminated on this plat to allow the petitioner full access to both lots without encroaching easements. There were no utilities in this easement and there are existing easements on the north and west sides of proposed Lot 1A.

Easements for all existing utilities have been included on the plat. The utility companies that have their utilities in the easement have approved this proposed layout. The Planning Commission reviewed this re-plat at their October 8, 2020 meeting and recommended approval unanimously.

Alternatives:

- Approve with amendments or stipulations.

Budget Impact: There is no immediate budget impact resulting from the staff recommendation.

CERTIFICATION OF OWNERSHIP AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT CAPRINE INVESTMENTS, A LIMITED LIABILITY COMPANY, OWNER OF LOT 1, CITY SUBDIVISION, CITY OF RIVERTON, FREMONT COUNTY, WYOMING, AND LOT 2A, REPLAT OF LOTS 2 AND 7 AND OUTLOT A, CITY SUBDIVISION, CITY OF RIVERTON, FREMONT COUNTY, WYOMING; HAS LAID OUT, PLATTED AND SUBDIVIDED THE SAME INTO 1 LOT AS SHOWN HEREON AND DESIGNATED THE SAME AS CITY SUBDIVISION, LOTS 1 AND 2A, REPLAT, CITY OF RIVERTON, FREMONT COUNTY, WYOMING; AND DO HEREBY GRANT FOR PUBLIC USE THE UTILITY EASEMENTS SHOWN HEREON; THE ABOVE AND FOREGOING PLAT OF THE ABOVE DESCRIBED LANDS AS APPEAR ON THIS PLAT, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER.

EXECUTED THIS _____ DAY OF _____, 2020.

JENNIFER WILSON, PRESIDENT

STATE OF WYOMING)
COUNTY OF FREMONT) SS

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2020, BY JENNIFER WILSON, PRESIDENT OF CAPRINE INVESTMENTS, LLC.

WITNESS MY HAND AND OFFICIAL SEAL:

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

CERTIFICATE OF SURVEYOR

STATE OF WYOMING)
COUNTY OF FREMONT) SS

I, JOHN D. HART, A DULY LICENSED LAND SURVEYOR IN THE STATE OF WYOMING, DO HEREBY CERTIFY THAT THIS IS A TRUE, CORRECT AND COMPLETE PLAT OF REPLAT OF CITY SUBDIVISION, LOTS 1 AND 2A, REPLAT, CITY OF RIVERTON, FREMONT COUNTY, WYOMING; THAT THE SAME WAS ACCURATELY SURVEYED AND PLATTED BY ME IN OCTOBER OF 2019; THAT THE NAMES OF ALL STREETS, AVENUES, EASEMENTS AND OTHER LANDS DEDICATED TO PUBLIC USE AND THE NUMBERS OF ALL LOTS AND BLOCKS ARE AS SHOWN HEREON; AND ALL MONUMENTS ARE AS INDICATED AND ALL DATA SHOWN FROM WHICH TO MAKE FUTURE RESURVEYS.

PLANNING COMMISSION CERTIFICATE

THIS SUBDIVISION PLAT APPROVED BY THE CITY OF RIVERTON PLANNING COMMISSION THIS _____ DAY OF _____, 2020.

ROBERT SCHEIDEMANTEL, P.E., PLANNING COMMISSION CHAIRMAN

APPROVAL - CITY COUNCIL

THIS SUBDIVISION PLAT APPROVED BY THE CITY COUNCIL OF RIVERTON, WYOMING THIS _____ DAY OF _____, 2020.

RICHARD P. GARD, MAYOR

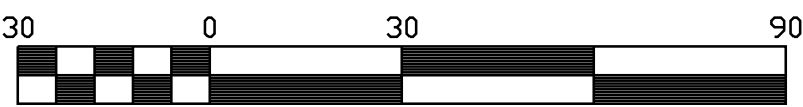
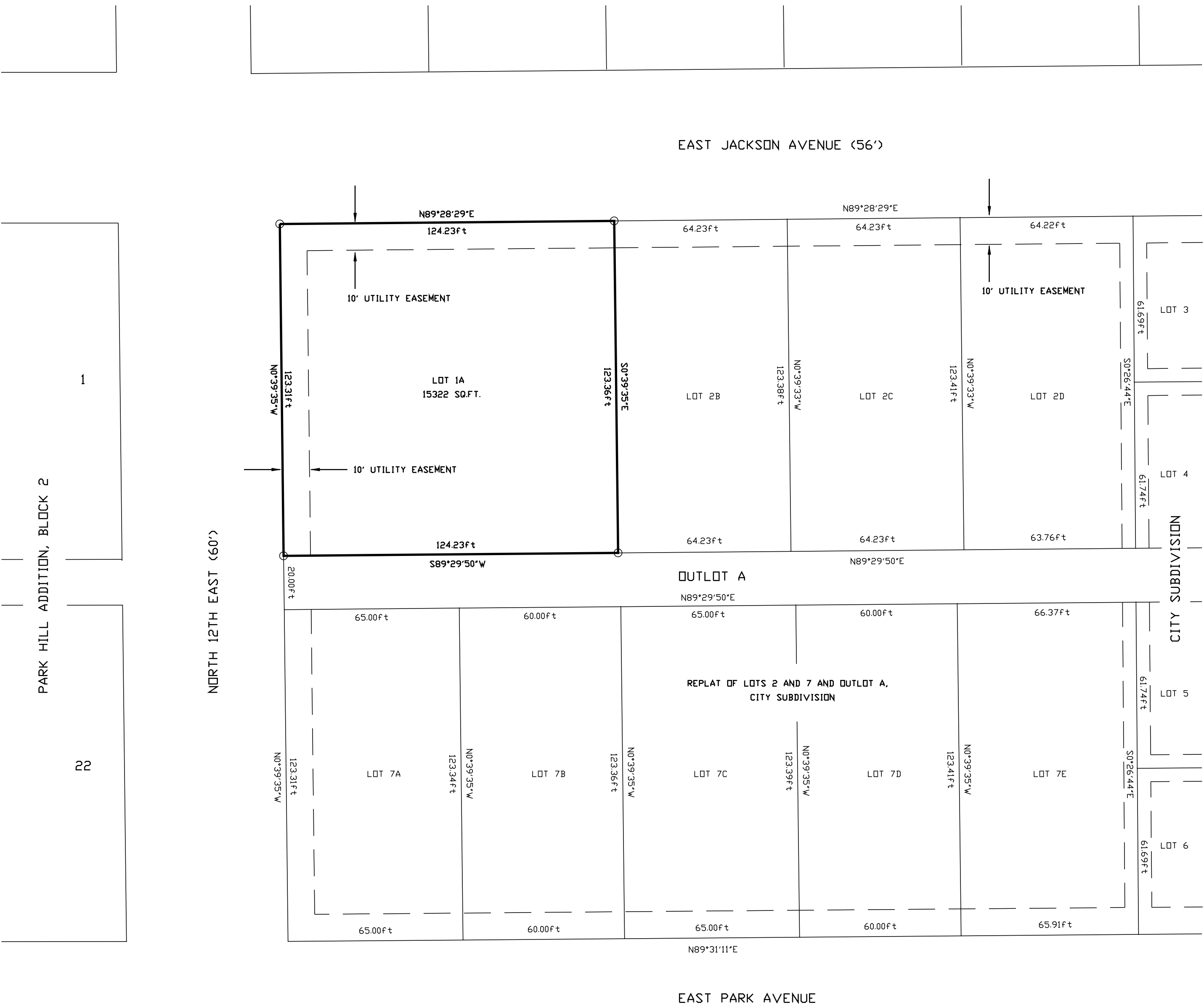
KRISTIN S. WATSON, HR DIRECTOR/CITY CLERK

CLERK AND RECORDER'S CERTIFICATE

THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER THIS _____ DAY OF _____, 2020, AT _____ O'CLOCK _____, AND IS DULY RECORDED IN PLAT CABINET _____ PAGE _____. AND AS DOCUMENT NO. _____

CLERK

DEPUTY



Scale 1" = 30 ft

SEPTEMBER 11, 2020

○ = existing aluminum cap



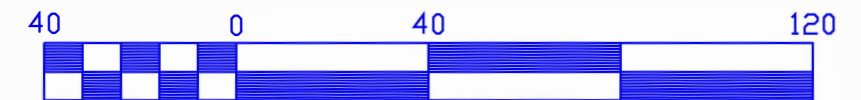
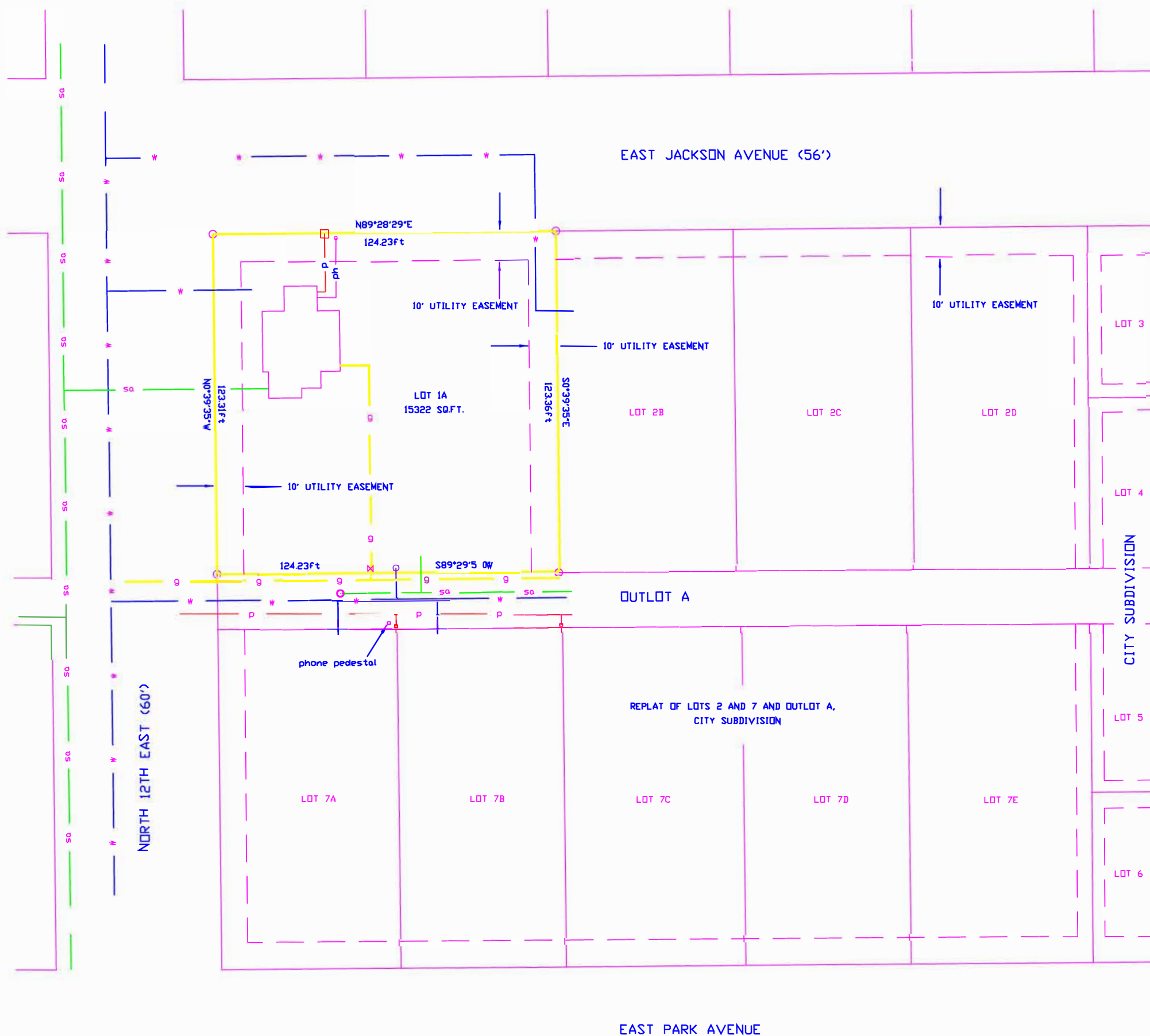
LOCATION MAP

Scale 1" = 100'

NOTE: Outlot A as shown hereon has been dedicated for public access, utilities and drainage

CITY SUBDIVISION
LOTS 1 AND 2A, REPLAT

LOCATED IN THE SE1/4SW1/4 OF SECTION 26,
TOWNSHIP 1 NORTH, RANGE 4 EAST, WIND RIVER MERIDIAN,
CITY OF RIVERTON, FREMONT COUNTY, WYOMING.



Scale 1" = 40 ft

FEBRUARY 18, 2020

- = existing aluminum cap
- sa — = sewer line
- w — = water line
- p — = power
- g — = gas line
- ph — = phone




NOTE: Outlot A as shown hereon is dedicated for public access, utilities and drainage

EXISTING UTILITY LAYOUT REPLAT OF LOTS 1 AND 2A, CITY SUBDIVISION

LOCATED IN THE SE1/4SW1/4 OF SECTION 26,
TOWNSHIP 1 NORTH, RANGE 4 EAST, WIND RIVER MERIDIAN,
CITY OF RIVERTON, FREMONT COUNTY, WYOMING.

CITY COUNCIL STAFF REPORT

TO: His Honor the Mayor and Members of the City Council

FROM: Kyle J. Butterfield, Public Works Director 
Brian Eggleston, Operations Division Manager

THROUGH: Anthony Tolstedt, City Administrator

DATE: October 20, 2020

SUBJECT: Industrial Tub Grinder Bid Award

Recommendation: The City Council awards one (1) 2020 Duratech 6010 Industrial Tub Grinder to Titan Machinery in the amount of \$567,280.51.

Background: The Tub Grinder Division of the Sanitation Enterprise Fund collects green waste from residences and businesses from spring to fall each year. City sponsored green waste collection began in the early 2000's as a first-come-first-served pilot program due to limited staff and available resources to support the program. By 2002, the program grew into a full green waste program that included both collection and processing activities. Presently, it includes seasonal residential green waste collection, private deposits at the green waste facility, material processing, and the sale of compost and wood chips. Furthermore deliveries from individuals during the off-season are allowed but must be scheduled in advance.

While the green waste program is popular among community members, it ultimately serves to divert materials from the landfill waste stream. This diversion reduces cumulative tons of waste collected and deposited by the solid waste arm of the Sanitation Fund. Consequently, space in the landfill is preserved and fees paid by the city for solid waste delivery are reduced. The table below represents tons of green waste diverted from the landfill for calendar years 2012 to 2019.

	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
2019	0.7	0	0.04	228	280.3	347.6	256.32	213.66	239.6	245.6	128.3	0.34	1940
2018	2.85	2.32	10.8	204.5	355.1	325.49	207.09	266.63	191	252.78	155.54	1.8	1976
2017	2.22	0.5	18.4	193.2	311	363.7	257.6	328.4	261.7	244.2	153.8	4.1	2139
2016	0	10.2	59.1	251.9	286.4	294.6	229	286.8	226.5	297.9	193.3	0	2136
2015	1.5	53.8	40.9	209.9	283.1	366.8	277.4	286	268.8	200	121.4	0	2110
2014	3.8	0.9	39.3	439.5	327.3	332.6	267.6	220.1	228.4	181.1	72.3	4.1	2117
2013	0	0	5.3	258	438.8	120.3	107.8	113.3	114.3	137.8	97.8	0	1393
2012	0	0	70.8	101.9	113.9	118.4	104.1	110	85.9	125.1	70	0	900

After applying a landfill fee of \$80 per ton, the table below represents the annual cost of depositing green waste materials into the landfill for calendar years 2012 to 2019.

	Total Tons	Cost Per Ton	TOTAL
2019	1,940	\$ 80.00	\$ 155,236.80
2018	1,976	\$ 80.00	\$ 158,072.00
2017	2,139	\$ 80.00	\$ 171,105.60
2016	2,136	\$ 80.00	\$ 170,856.00
2015	2,110	\$ 80.00	\$ 168,768.00
2014	2,117	\$ 80.00	\$ 169,360.00
2013	1,393	\$ 80.00	\$ 111,472.00
2012	900	\$ 80.00	\$ 72,008.00

The Tub Grinder Operations subdivision of the Sanitation Enterprise Fund employs three operators and seasonal employees when appropriate. Equipment in the subdivision includes a tub grinder, refuse collection truck, and a front-end loader. The table below denotes fiscal year operating expenses of the Tub Grinder Operations cost center. It also compares the operating expenses against the above-mentioned savings from the diversion of green waste from the landfill.

Month	FY18	FY19	FY20
July	257.6	201.09	256.32
August	328.4	266.63	213.66
September	261.7	191	239.6
October	244.2	252.78	245.6
November	153.8	155.54	128.3
December	4.1	1.8	0.34
January	2.85	0.7	0
February	2.32	0	0
March	10.8	0.04	5.5
April	204.5	228	242.68
May	355.1	280.3	450.19
June	325.49	347.6	165.57
TOTAL GREEN WASTE TONS	2,150.86	1,925.48	1,947.76
Savings from Diverted Landfill Waste			
	\$ 172,068.80	\$ 154,038.40	\$ 155,820.80
FY20 Budget to Provide Service			
	\$ 184,440.00	\$ 180,970.00	\$ 180,970.00
LANDFILL SAVINGS V. COST			
	\$ (12,371.20)	\$ (26,931.60)	\$ (25,149.20)

As stated previously, the green waste program includes the sale of mulch and wood chips. The table below references the cubic yards sold and associated revenue produced from fiscal years 2017 to 2020.

	TOTAL CY SOLD	REVENUE
FY20	927	\$ 12,593.00
FY19	575	\$ 11,700.00
FY18	1,145	\$ 14,688.00
FY17	1,213	\$ 12,691.00
TOTAL	3,860	\$ 51,672.00

On June 16, 2020, a fire consumed the 2005 industrial tub grinder trailer and the 1989 tractor. The green waste facility has been closed since that time for private deliveries. That being said, the city has maintained the curbside collection program, along with the sale of compost and wood chip.

Directly following the fire and loss of equipment, the city filed a claim with its property insurance provider to replace the value of the tub grinder and tractor. The claim was processed and approved with the following information:

Insurance will reimburse 50% RCV (Replacement Cash Value) for the tub grinder = \$290,086.63

Insurance will reimburse ACV (Actual Cash Value) for the semi-truck = \$8,100.00

Insurance will withhold the deductible and surcharge = (20,000)

TOTAL reimbursement from insurance is \$278,186.63

Discussion: Vehicle specifications and bid documents were prepared for the replacement of the industrial tub grinder pursuant to city policy and state statute. A request for proposal was advertised on September 18, 2020. One bid was received and publically opened on October 8, 2020 with the following result:

VENDOR	Product Supplied	UNIT PRICE
Titan Machinery	Duratech 6010 Industrial Tub Grinder	\$567,280.51

Budget Impact: As the replacement purchase of a tub grinder was unanticipated, it was not included in the fiscal year 2021 budget. If awarded, the unit will be procured using unassigned cash from the Sanitation Fund. To date, the fund has \$2,538,302, which includes the \$278,186.63 received from the city's insurer.

If the bid submittal for a replacement tub grinder is awarded, staff will work to secure a used tractor to transport the unit. Initial investigation leads staff to believe the tractor can be purchased for less than \$35,000. Consequently, staff will solicit three informal quotes prior to its purchase pursuant to the city's existing procurement policy. Similar to the tub grinder, the tractor will be procured using unassigned cash.

As a point of information, a replacement tub grinder was included in the city's five-year capital plan. Staff was aware that due to the age of the unit lost to fire, a replacement would be required in the near future.

CITY COUNCIL ACTION MEMO

TO: His Honor the Mayor and Members of the City Council

FROM: Anthony Tolstedt, City Administrator

DATE: October 16, 2020

SUBJECT: Ordinance Nos. 20-007 and 20-009

Recommendation: That Council approve Ordinance Nos. 20-007 and 20-009 on *second* readings as presented.

Background: Franchise agreements represent an agreement between a municipality and a utility or business for the purposes of allowing the entity to operate within the rights of ways (ROW) within the City limits. In exchange for the ability to operate within said ROW, the utility or business seeking the agreement agrees to pay franchise fees associated with service provision taking place within the City limits. The franchise agreement rate is associated with the agreement is imposed on those items listed in Addendum A of the provided agreements.

The City recently employed a telecommunications attorney to refresh our existing franchise documents for consistency and compliance with both state and federal laws. Modifications to the agreements were consistent among the agreements and the two agreements are proposed for Council consideration simultaneously in an effort to not only move the items forward but to also establish a consistent standard/form for future agreements.

Discussion: Staff has coordinated with the two proposed companies in an effort to move the items forward. At this time, both company representatives have agreed to the proposed language or consideration. The main notable departure from previous agreements is the term, which is denoted as five years that continues thereafter until a six (6) month notice of intent to terminate/renege is provided by either party. This was done to allow review, consideration, and appropriate modifications on a more regular basis. The same or similar term will likely be recommended on other future franchise agreements for the sake of consistency and equity.

Alternatives: Council may propose changes to the agreements, as they deem appropriate. However, as the agreements are identical, it is recommended that any change applied to one agreement be afforded or imposed on the other in an effort to promote equity within our ongoing franchise agreements.

Budget Impact: Each of the proposed agreements represent an initial payment to the City of Riverton of \$2,500.00. This is in addition to any monies collected via the proposed franchise rate.

Council Goals: Ultimate approval of the proposed Ordinances supports *Council Goal #5 Upgrade Technological Resources to Improve Service Delivery, Council Goal # 6: Promote Economic Development, and Council Goal #7: Maintain Fiscal Stability.*

PROPOSED ORDINANCE NO. 20-007

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO VISIONARY COMMUNICATIONS, INC. WITHIN THE RIGHTS-OF-WAY OF THE CITY OF RIVERTON, WYOMING.

WHEREAS, Visionary Communications, Inc. (d/b/a “Visionary Broadband”), hereinafter “Company”, a corporation created and existing under the laws of the State of Wyoming, desires to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the City of Riverton (“City”) a system for the provision of telecommunication services; and,

WHEREAS, the City desires to grant to Company a non-exclusive Franchise to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the City, a system for transmission of telecommunications services, and to provide for compensation to the City for management of its rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIVERTON, STATE OF WYOMING:

Section 1. Non-exclusive Franchise.

That Company is hereby granted a non-exclusive Franchise (“Franchise”) to construct, erect, renew, repair, maintain, upgrade and operate a system for transmission of telecommunications services in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the City.

Section 2. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. All terms not otherwise defined herein are defined pursuant to 47 U.S.C. §153 (“Definitions”).

“City” means the City of Riverton.

“City Council” means the governing body of the City.

“Right-of-Way” means any highway, street, road, sidewalk, alley, or other public right-of-way or public utility easement under the jurisdiction and control of the City, which has been acquired, established, dedicated, or devoted to such purposes.

“Telecommunications System” or “System” means those Facilities necessary for Company to provide Telecommunications Service.

Section 3. Grant of Authority.

(a) This Ordinance grants permission and authority to Company, upon the terms and subject to the conditions of this non-exclusive Franchise, to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys and all other public rights-of-way of the City for a period of five (5) years from and after its acceptance by Company and thereafter until terminated by at least six (6) months prior written notice either by the City to the Company or by the Company to the City, a Telecommunications System, including but not limited to lines, poles, anchors, wires, cable, conduit, vaults, hand holds, laterals and other fixtures and equipment (the "Facilities"), and to use said System for the transmission of sound, signals, data, or other means of Telecommunications.

(b) Any rights, privileges, and authority granted to Company under this Franchise are subject to the rights of the police power of the City.

(c) Nothing in this Franchise excuses Company of its obligation to obtain use and development authorization and permits from the City before entering, occupying, or using rights-of-way to construct, install, operate, maintain, repair, or remove such Facilities.

(d) Nothing in this Franchise excuses Company of its obligation to comply with applicable codes, rules, regulations, and standards, subject to verification by the City of such compliance.

(e) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Company of any obligation to pay lawfully imposed charges or fees.

(f) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of Facilities or to modify rights-of-way to accommodate Company's Facilities.

(g) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third-party user of Company's Facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

Section 4. Location of Facilities.

(a) In the event the location of Company's Facilities and the Telecommunications System, and the construction thereof, or any change or extension (or the removal thereof), shall necessitate the disturbance of any street, alley, or other public right-of-way, then such shall be subject to the approval of the City.

(b) The Company shall place on file with the City plans showing the location and character of each pole and each conduit to be erected or laid, and the number of ducts in each conduit and the location of manholes, handholds, vaults, or other openings to gain access to said conduit; and no portion of the Telecommunications System or associated Facilities shall be erected, constructed, or laid upon, under or over any street, alley, or other public right-of-way,

until a permit therefore has issued, subject to the approval of the City, which shall indicate the time, manner and place of laying, constructing or erecting the said Telecommunications System.

(c) In any instance (except as hereinafter expressly otherwise provided) where the City requires construction in the public right-of-way for purposes of repair, widening, repaving, regrading or any other relevant purpose where Company's Telecommunications System and associated Facilities are installed, the Company shall, as soon as commercially reasonable, upon written notice from the City, remove or relocate its Facilities to conform with the City's written notice. Any portion of public right-of-way disturbed by Company's removal or relocation of its Telecommunications System and associated Facilities, shall be restored by Company to the condition existing prior to Company's construction. Company shall, upon receipt of written notice from the City, for a period of twelve (12) months following Company's removal, relocation, and restoration of public rights-of-way subject to this sub-section, repair any damaged, uneven, or settled sections of right-of-way caused by Company's removal or relocation of its Facilities.

(d) In any instance where the City requests Company to move Company's Telecommunications System and associated Facilities due to a request of a third party, Company shall request such third party reimburse Company for its full cost of such relocation and Company shall not be required to relocate its Telecommunications System and associated Facilities until Company receives an executed reimbursement agreement from such third party. City shall not be required to compel such agreement.

(e) Company may place its Facilities underground or above ground subject to the approval of the City, and provided that Company must place its Facilities in a manner that is non-discriminatory to other Telecommunications Service providers. Subject to the terms and conditions of this Franchise and the City Code, Company may place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead Facilities, if approved by the owner of the utility poles and if approved by the City.

(f) Company's Facilities shall not interfere with the use of rights-of-way or City property by the City, the general public, or other persons authorized to enter, occupy, or use rights-of-way or City property. Whenever new Facilities will exhaust the capacity of a right-of-way to reasonably accommodate future users or Facilities, the Company shall provide nondiscriminatory access to its conduit to future users and Facilities subject to the approval of the Company and third-party users. However, Company shall not permit installations by others in its conduit in the City without written approval of the City, which approval shall not be in lieu of a franchise or other requirements of the City and shall not abrogate Company's responsibility for compliance with this Franchise by third party users of the Telecommunications System.

(g) Upon receipt of reasonable notice by the City, Company shall relocate its Facilities at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

Section 5. Poles, Conduit, Structures, and Property Owned by Others.

Company shall obtain written approval from the owners of utility poles, conduit, structures, and property not owned by Company, prior to attaching to or otherwise using such poles, conduit, structures or property, and shall provide proof of such approval to the City. The installation of Facilities by Company on the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use rights-of-way. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the rights-of-way either expires, terminates, or is cancelled, the authority of Company to construct, install, operate, maintain, and repair Company's Facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs of removal of Facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use rights-of-way for any reason whatsoever. However, the City shall seek alternative placement of said Facilities, while working with the Company, so that the Company can maintain its service to the citizens.

Section 6. Construction and Installation Requirements.

(a) The technical performance of the Facilities must meet or exceed all applicable industry standards.

(b) All Facilities shall be installed in accordance with the best engineering, quality, and construction practices and standards of the telecommunications industry.

(c) All Facilities shall be constructed and installed in such manner and at such points so as not to inconvenience the City or public use of the rights-of-way or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City.

(d) Company's installations and operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Company must cease work immediately, if the City reasonably determines that Company is not in compliance with such codes, rules, regulations, standards or laws and may not begin or resume work until the City determines that Company is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(e) Company shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof, including right-of-way use permits.

(f) Any tree trimming shall be in accordance with all of the provisions of the City Code.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Company of any duty, obligation, or responsibility for the design, construction, and installation of its Facilities. Company is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, subcontractors or agents.

(h) Except as to emergency repairs, Company shall, prior to excavating within any street, alley or other public place and installing any conduit, overhead cable or equipment therein, file with the City plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Company shall conform to all requirements of the City Code and regulations adopted pursuant thereto, as such requirements and regulations currently exist or may be amended. Upon completion of the work, Company shall provide the City with as-built maps compatible with City software showing the final location of the Facilities.

(i) All construction and maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued.

(j) In the event of an emergency requiring immediate action by Company for the protection of the Facilities, City property, or other persons or property, Company may proceed without first obtaining the normally required permits. In such event Company must: (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities or any part thereof, City property, or other persons or property and to protect the public health, safety, and welfare; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the permit.

(k) Whenever necessary, after construction or maintenance of any of Company's Facilities within the right-of-way, the Company shall, without delay and at Company's sole expense, remove all debris and restore the surface disturbed by Company as nearly as possible to as good or better condition as it was in before the work began. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications.

(l) Company shall provide the City with GIS level maps showing the size and location of the Facilities within the City in a format acceptable to the City, subject to the City's agreement to maintain the confidentiality of such information to the extent allowed by law. The City agrees that it will comply with applicable state law regarding public disclosure of Company's maps and information and will withhold such disclosure from any third party to the extent allowed by law. Any map or information furnished to the City pursuant to this Franchise shall remain the Company's proprietary information for all purposes to the extent allowed by law. Company shall provide locates to mark its Facilities at no cost to the City.

(m) Company shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City, including safety of all persons and property during the performance of any work.

(n) Company shall restore the right-of-way to pre-construction condition. Company agrees to pay all costs and expenditures required on rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Company. Favorable weather conditions permitting, Company agrees to commence repairing the rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting

from excavations made by the Company within five (5) business days of its receipt of notice. If Company fails to undertake such repairs as herein provided, the City may perform the repairs at Company's expense.

Section 7. Coordination of Construction and Installation Activities and Other Work.

(a) Company shall coordinate its construction and installation activities and other work with the City and other users of the rights-of-way as determined by the City.

(b) Company shall conduct its construction and installation activities at all times so as to avoid conflicts with the facilities of other users, occupants, utilities, franchisees, or permittees of the rights-of-way.

Section 8. Safety and Maintenance Requirements.

(a) All work authorized and required under this Franchise shall be performed in a safe, thorough, and workmanlike manner.

(b) Company, in accordance with applicable federal, state, and local safety requirements, shall at all times employ necessary care and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to occur. All Facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If the City finds that Company is responsible for a violation of a safety code or other applicable regulation, upon Company's receipt of written notice, the City may, after discussion with Company, establish in writing a commercially reasonable time for Company to make necessary repairs. If the repairs are not made within the established written time frame, the City may make the repairs itself at the cost of the Company or have them made at the cost of Company.

(c) If Company fails to timely commence, pursue, or complete any work as required by law, permit, or this Franchise, the City may at its discretion cause the work to be done. Company shall pay to the City the reasonable and documented actual costs of the work in an itemized invoice provided by the City to Company within 30 days after receipt of such invoice.

(d) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a right-of-way or other public place occupied by Company. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Company for any damage except to the extent of the City's negligence, but nothing herein shall relieve any other person or entity from the responsibility for damages to Company's Facilities. The City will use its best efforts to provide Company with reasonable advance notice of plans by other persons to open the rights-of-way.

(e) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner, or in violation of the terms of any

applicable permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Company shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing the work or post it on the work site. A copy of the order shall be sent to Company, and the order shall indicate the nature of the alleged violation or unsafe condition and the conditions under which Company may resume work.

Section 9. Removal of Unauthorized Facilities.

Within thirty (30) days following written notice from the City, Company shall, at its expense, remove unauthorized Facilities and restore the rights-of-way and other property to as good a condition as existed prior to construction or installation of its Facilities. Any plan for removal of said Facilities must be approved by the City prior to such work.

Section 10. Abandonment of Facilities.

The City may in its sole discretion allow Company to abandon its Facilities in place, provided that no Facilities may be abandoned in place without the express written consent of the City. Upon abandonment in place of Facilities, the Facilities shall become property of the City, and Company shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such Facilities. The failure of Company to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

Section 11. Restoration of Rights-of-Way and Other Property.

(a) When Company, or any person acting on its behalf, does any work in or affecting any right-of-way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Company's cost, such right-of-way and property to as good a condition as existed before the work was undertaken.

(b) If weather or other conditions do not permit the complete restoration required by this section, the Company shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the Company's cost, and Company shall promptly undertake and complete the required permanent restoration, when the weather or other conditions no longer prevent such permanent restoration.

(c) All restoration work is subject to inspection and final approval by the City. The affected rights-of-way and property shall be restored to a comparable condition by the Company. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Company or have it made at the cost of Company.

Section 12. Compensation.

(a) Federal law confirms the authority of a State or local government to manage the public rights-of-way and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such

government (see 47 U.S.C. §253(c)). Therefore, as consideration for costs incurred by the City for managing the public rights-of-way occasioned by Company's use and occupancy of public rights-of-way for the provision of Telecommunications Services, Company shall pay to the City the sum of two thousand five hundred dollars (\$2,500) upon Company's acceptance of this Franchise, and five percent (5%) of its local exchange access service's annual Gross Revenues (as defined in Appendix A hereto) commencing on the effective date of this Franchise (or a higher percentage of annual gross revenues if agreed to in writing between the City and telecommunications provider after the effective date of this Franchise) derived from the operation of its Telecommunications System and Facilities in the City. Company's initial payment shall be due within thirty (30) days after final approval of this Franchise by the City Council. Subsequent payments shall be due within thirty (30) days after the anniversary date of final approval and acceptance hereof. Company and the City mutually acknowledge the foregoing sums to be fair and reasonable compensation for management of Company's use and occupancy of the public rights-of-way.

(b) If Company, with the consent of the City Council, should allow others to utilize its Facilities located within the City, Company shall pay to the City five percent (5%) of the revenue generated by allowing others use of the Facilities where said use is not for the purposes of service delivery within the City. Company also agrees that the use of Facilities by others to provide services within the City shall only be allowed when those others have executed a franchise agreement with the City.

Section 13. Compliance with Existing Law.

This Franchise is contingent for its existence and continuance upon Company's continued compliance with all relevant state and federal statutes and regulations, including rules and regulations promulgated by the Wyoming Public Service Commission.

Section 14. Indemnification.

(a) The Company shall, at its own expense, defend, indemnify, save and hold harmless the City from any and all claims, actions, causes of action, suits, liabilities, damages, judgments, settlements, costs and expenses of every kind, including attorneys' fees and expenses, which may arise or result by reason of or in consequence of the acts, omissions or negligence of the Company, its employees or agents.

(b) The Company hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against the City arising from or growing out of any damages to the property of the Company resulting from any act or omission of the City, its agents and employees, occurring prior to, on and after the date of the passage and acceptance of this Franchise.

Section 15. Insurance.

(a) Company shall obtain and maintain, at its cost, worker's compensation insurance in accordance with State law requirements and the following liability insurance policies insuring Company and, including as additional insureds as their interest may appear under this

Franchise, the City, the City's elected officials, employees and agents, against claims for injuries to persons or damages to property, which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Company:

1. Commercial General Liability Insurance, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence for bodily injury (including death) and for damage to property.

2. Commercial Automobile Liability Insurance for owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 for each accident for bodily injury and property damage.

3. Umbrella Insurance in the amount of \$1,000,000.

(b) The liability insurance policies required by this section shall be maintained by Company throughout the term of this Franchise, such other periods of time during which Company's Facilities occupy rights-of-way, and while Company is engaged in the removal of its Facilities. Company shall provide an insurance certificate, together with a blanket additional insured endorsement evidencing the City, and its elected officials, employees and agents as additional insureds as their interest may appear under this Franchise, to the City prior to the commencement of any construction or installation of any Facilities pursuant to this Franchise or other work in the right-of-way. Payment of deductibles and self-insured retentions shall be the sole responsibility of Company. Company's insurance shall be primary insurance with respect to the City, its elected officials, employees and agents. Any insurance maintained by the City shall be in excess of the Company's insurance and shall not contribute to it.

(c) Within thirty (30) days of the renewal of any insurance required hereunder, Company shall provide the City with a certificate of insurance evidencing renewal.

Section 16. Additional Ducts and Conduits.

Whenever Company is constructing, relocating, or placing conduits in the right-of-way and whenever the City has made a request for ducts or conduits in advance of such installation, Company shall construct and install ducts and conduits when and where requested by the City and related structures necessary to access the ducts and conduits, subject to the separate mutual written agreement of the parties to include charges paid by the City for Company's incremental costs. The conduits and ducts shall remain the property of the Company unless the City requests the installation of separate conduit to be paid for and owned by the City. Such Company ducts and conduits shall be readily accessible and available for use as delineated in that certain separate mutual written agreement of the parties.

Section 17. Records.

(a) The City will have access to, and the limited right to inspect only those documents and records of Company reasonably related to the City's management of its rights-of-way related to this Franchise and the payment of compensation by the Company to the City.

(b) If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Company may request, in writing within ten (10) days of the City's request, that the City inspect them at Company's local office. If any documents or records of Company are not kept in a local office or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary to its management of the rights-of-way subject to this Franchise, then reasonable travel and related costs and expenses incurred in making such examination shall be paid by Company.

Section 18. Default.

In the event that the Company shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this Franchise, and if any such default or defaults shall continue for a period of thirty (30) days (exclusive of all times during which the Company may be delayed or interfered with by unavoidable accidents, acts of God, labor strikes, or the orders or judgment of any commission or court entered in any suit or proceeding) after written notice thereof to the Company from the City is received by Company, stating the alleged default on the part of the Company, then and in each and every such case, the City, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Company in and by this Ordinance and Franchise, and all rights and privileges of the Company under this Franchise shall thereupon be at an end.

Section 19. Notices.

Any notice required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City: City of Riverton
816 N. Federal Boulevard
Riverton, WY 82501
Attn: City Administrator

Company: Visionary Communications, Inc
1001 S. Douglas Hwy Ste 201
P.O. Box 2799
Gillette, WY 82717
Attn: ROW Manager

Section 20. Miscellaneous.

(a) Non-Waiver. The failure of either party to this Franchise to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the party and shall not prevent the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

(b) Governing Law. This Franchise will be governed by federal law, the laws of the State of Wyoming, and local law.

(c) Descriptive Headings. The headings of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

(d) Costs and Attorneys' Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its costs and attorneys' fees, as well as costs and attorneys' fees on appeal, in addition to such other relief as the court may deem proper.

(e) No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner that would indicate any such relationship with the other.

(f) Actions of the City or Company. In performing their respective obligations under this Franchise, the City and Company will act in a reasonable, expeditious, and timely manner.

(g) Time Is of the Essence. Whenever this Franchise sets forth a time for any act to be performed by Company, such time shall be deemed to be of the essence, and any failure of Company to perform within the allotted time may be considered a breach of this Franchise and sufficient grounds for the City to invoke any relevant remedy.

(h) Counterparts. This Franchise may be executed in one or more counterparts, all of which together shall constitute one original.

(i) Severability. If any section, sentence, clause or phrase of this Franchise is for any reason declared to be illegal, invalid, unconstitutional or void by a court of competent jurisdiction, all other provisions hereof shall be and remain in full force and effect.

(j) Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

(k) Modification. The parties may alter, amend or modify the terms and provisions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(l) No Third Party Beneficiaries. This Franchise is entered into by the parties for their sole benefit, and is not intended to be for the benefit of any third party.

Section 21. Effective Date.

This Ordinance shall take effect from and after its adoption and publication as required by law and the ordinances of the City of Riverton.

Section 22. Prohibition on Assignment.

This Franchise and the rights and privileges granted hereunder cannot be assigned by the Company without the prior written consent of the City. That consent can be withheld, in the sole discretion of the City, for any reason. Any purported assignment in violation of this Franchise is void and ineffective.

Section 23. Retention of Governmental Immunity.

By entering into this Franchise the City does not waive its Governmental Immunity, as provided by any applicable law including W.S. Section 1-39-101 et seq. Further, the City fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law based on this Franchise.

Section 24. Repeal.

All ordinances or parts of ordinances in conflict with this Franchise are hereby repealed to the extent of such conflict.

PASSED ON FIRST READING October 6, 2020

PASSED ON SECOND READING _____

PASSED ON THIRD READING _____

PASSED, APPROVED and ADOPTED this ____ day of _____, 2020.

CITY OF RIVERTON, WYOMING:

Richard P. Gard, Mayor

Attest:

Kristin S. Watson
City Clerk/Human Resource Director

ACCEPTED AND APPROVED this ____ day of _____, 2020.

VISIONARY COMMUNICATIONS, INC. d/b/a VISIONARY BROADBAND

Title: _____

ATTESTATION

I, Kristin S. Watson, Clerk of the City of Riverton, attest that Ordinance No. 20-007 was passed, approved, and adopted by the Governing Body of the City of Riverton on the _____ day of _____, 2020. I further certify that the above proclamation ran at least once in the Riverton Ranger, a newspaper of general circulation within Riverton, Wyoming, the effective date of publication, and therefore the effective date of enactment being _____.

Kristin S. Watson
City Clerk/Human Resource Director

APPENDIX A

LISTING OF SERVICE CATEGORIES INCLUDED IN "GROSS REVENUE" FOR CALCULATION OF FRANCHISE FEES

Business Local Access—including Flat Rate, Multiparty, and Extended Area Service

Business Measured Usage Local Access Service

Flat Usage Local Access Trunks

Low Income Telephone Assistance Program Local Access

Measured Rate Local Access Trunk Usage

Message Rate Local Access Trunk Usage

Public Access Line (PAL) Service

Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service

Residential Measured Usage

Session Initiated Protocol Trunking

Hosted Voice Services

**THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF
REVENUE NOT REPRESENTING THE RETAIL SALE OF LOCAL ACCESS
SERVICES AND THEREFORE EXCLUDED FROM THE DEFINITION OF "GROSS
REVENUES" AND, THEREFORE, ARE NOT INCLUDED IN THE CALCULATION
OF ANY FEE DUE TO THE CITY:**

Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks

Bad debt write-offs and customer credits

Revenue from directory advertising

Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including, but not limited to, support for the hearing impaired

Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments

Revenues from internet access

Revenues from digital or other electronic content, such as computer software, music and video downloads

Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service

PROPOSED ORDINANCE NO. 20-009

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CONTACT COMMUNICATIONS, INC. WITHIN THE RIGHTS-OF-WAY OF THE CITY OF RIVERTON, WYOMING.

WHEREAS, **Contact Communications**, hereinafter “Company”, a corporation created and existing under the laws of the State of Wyoming, desires to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the **City of Riverton** (“City”) a system for the provision of telecommunication services; and,

WHEREAS, the City desires to grant to Company a non-exclusive Franchise to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the City, a system for transmission of telecommunications services, and to provide for compensation to the City for management of its rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIVERTON, STATE OF WYOMING:

Section 1. Non-exclusive Franchise.

That Company is hereby granted a non-exclusive Franchise (“Franchise”) to construct, erect, renew, repair, maintain, upgrade and operate a system for transmission of telecommunications services in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the City.

Section 2. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. All terms not otherwise defined herein are defined pursuant to 47 U.S.C. §153 (“Definitions”).

“City” means the City of Riverton.

“City Council” means the governing body of the City.

“Right-of-Way” means any highway, street, road, sidewalk, alley, or other public right-of-way or public utility easement under the jurisdiction and control of the City, which has been acquired, established, dedicated, or devoted to such purposes.

“Telecommunications System” or “System” means those Facilities necessary for Company to provide Telecommunications Service.

Section 3. Grant of Authority.

(a) This Ordinance grants permission and authority to Company, upon the terms and subject to the conditions of this non-exclusive Franchise, to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys and all other public rights-of-way of the City for a period of five (5) years from and after its acceptance by Company and thereafter until terminated by at least six (6) months prior written notice either by the City to the Company or by the Company to the City, a Telecommunications System, including but not limited to lines, poles, anchors, wires, cable, conduit, vaults, hand holds, laterals and other fixtures and equipment (the "Facilities"), and to use said System for the transmission of sound, signals, data, or other means of Telecommunications.

(b) Any rights, privileges, and authority granted to Company under this Franchise are subject to the rights of the police power of the City.

(c) Nothing in this Franchise excuses Company of its obligation to obtain use and development authorization and permits from the City before entering, occupying, or using rights-of-way to construct, install, operate, maintain, repair, or remove such Facilities.

(d) Nothing in this Franchise excuses Company of its obligation to comply with applicable codes, rules, regulations, and standards, subject to verification by the City of such compliance.

(e) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Company of any obligation to pay lawfully imposed charges or fees.

(f) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of Facilities or to modify rights-of-way to accommodate Company's Facilities.

(g) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third-party user of Company's Facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

Section 4. Location of Facilities.

(a) In the event the location of Company's Facilities and the Telecommunications System, and the construction thereof, or any change or extension (or the removal thereof), shall necessitate the disturbance of any street, alley, or other public right-of-way, then such shall be subject to the approval of the City.

(b) The Company shall place on file with the City plans showing the location and character of each pole and each conduit to be erected or laid, and the number of ducts in each conduit and the location of manholes, handholes, vaults, or other openings to gain access to said conduit; and no portion of the Telecommunications System or associated Facilities shall be erected, constructed, or laid upon, under or over any street, alley, or other public right-of-way,

until a permit therefore has issued, subject to the approval of the City, which shall indicate the time, manner and place of laying, constructing or erecting the said Telecommunications System.

(c) In any instance (except as hereinafter expressly otherwise provided) where the City requires construction in the public right-of-way for purposes of repair, widening, repaving, regrading or any other relevant purpose where Company's Telecommunications System and associated Facilities are installed, the Company shall, as soon as commercially reasonable, upon written notice from the City, remove or relocate its Facilities to conform with the City's written notice. Any portion of public right-of-way disturbed by Company's removal or relocation of its Telecommunications System and associated Facilities, shall be restored by Company to the condition existing prior to Company's construction. Company shall, upon receipt of written notice from the City, for a period of twelve (12) months following Company's removal, relocation, and restoration of public rights-of-way subject to this sub-section, repair any damaged, uneven, or settled sections of right-of-way caused by Company's removal or relocation of its Facilities.

(d) In any instance where the City requests Company to move Company's Telecommunications System and associated Facilities due to a request of a third party, Company shall request such third party reimburse Company for its full cost of such relocation and Company shall not be required to relocate its Telecommunications System and associated Facilities until Company receives an executed reimbursement agreement from such third party. City shall not be required to compel such agreement.

(e) Company may place its Facilities underground or above ground subject to the approval of the City, and provided that Company must place its Facilities in a manner that is non-discriminatory to other Telecommunications Service providers. Subject to the terms and conditions of this Franchise and the City Code, Company may place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead Facilities, if approved by the owner of the utility poles and if approved by the City.

(f) Company's Facilities shall not interfere with the use of rights-of-way or City property by the City, the general public, or other persons authorized to enter, occupy, or use rights-of-way or City property. Whenever new Facilities will exhaust the capacity of a right-of-way to reasonably accommodate future users or Facilities, the Company shall provide nondiscriminatory access to its conduit to future users and Facilities subject to the approval of the Company and third-party users. However, Company shall not permit installations by others in its conduit in the City without written approval of the City, which approval shall not be in lieu of a franchise or other requirements of the City and shall not abrogate Company's responsibility for compliance with this Franchise by third party users of the Telecommunications System.

(g) Upon receipt of reasonable notice by the City, Company shall relocate its Facilities at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

Section 5. Poles, Conduit, Structures, and Property Owned by Others.

Company shall obtain written approval from the owners of utility poles, conduit, structures, and property not owned by Company, prior to attaching to or otherwise using such poles, conduit,

structures or property, and shall provide proof of such approval to the City. The installation of Facilities by Company on the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use rights-of-way. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the rights-of-way either expires, terminates, or is cancelled, the authority of Company to construct, install, operate, maintain, and repair Company's Facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs of removal of Facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use rights-of-way for any reason whatsoever. However, the City shall seek alternative placement of said Facilities, while working with the Company, so that the Company can maintain its service to the citizens.

Section 6. Construction and Installation Requirements.

(a) The technical performance of the Facilities must meet or exceed all applicable industry standards.

(b) All Facilities shall be installed in accordance with the best engineering, quality, and construction practices and standards of the telecommunications industry.

(c) All Facilities shall be constructed and installed in such manner and at such points so as not to inconvenience the City or public use of the rights-of-way or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City.

(d) Company's installations and operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Company must cease work immediately, if the City reasonably determines that Company is not in compliance with such codes, rules, regulations, standards or laws and may not begin or resume work until the City determines that Company is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(e) Company shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof, including right-of-way use permits.

(f) Any tree trimming shall be in accordance with all of the provisions of the City Code.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Company of any duty, obligation, or responsibility for the design, construction, and installation of its Facilities. Company is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, subcontractors or agents.

(h) Except as to emergency repairs, Company shall, prior to excavating within any street, alley or other public place and installing any conduit, overhead cable or equipment therein,

file with the City plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Company shall conform to all requirements of the City Code and regulations adopted pursuant thereto, as such requirements and regulations currently exist or may be amended. Upon completion of the work, Company shall provide the City with as-built maps compatible with City software showing the final location of the Facilities.

(i) All construction and maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued.

(j) In the event of an emergency requiring immediate action by Company for the protection of the Facilities, City property, or other persons or property, Company may proceed without first obtaining the normally required permits. In such event Company must: (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities or any part thereof, City property, or other persons or property and to protect the public health, safety, and welfare; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the permit.

(k) Whenever necessary, after construction or maintenance of any of Company's Facilities within the right-of-way, the Company shall, without delay and at Company's sole expense, remove all debris and restore the surface disturbed by Company as nearly as possible to as good or better condition as it was in before the work began. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications.

(l) Company shall provide the City with GIS level maps showing the size and location of the Facilities within the City in a format acceptable to the City, subject to the City's agreement to maintain the confidentiality of such information to the extent allowed by law. The City agrees that it will comply with applicable state law regarding public disclosure of Company's maps and information and will withhold such disclosure from any third party to the extent allowed by law. Any map or information furnished to the City pursuant to this Franchise shall remain the Company's proprietary information for all purposes to the extent allowed by law. Company shall provide locates to mark its Facilities at no cost to the City.

(m) Company shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City, including safety of all persons and property during the performance of any work.

(n) Company shall restore the right-of-way to pre-construction condition. Company agrees to pay all costs and expenditures required on rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Company. Favorable weather conditions permitting, Company agrees to commence repairing the rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Company within five (5) business days of its receipt of notice. If Company fails to undertake such repairs as herein provided, the City may perform the repairs at Company's expense.

Section 7. Coordination of Construction and Installation Activities and Other Work.

(a) Company shall coordinate its construction and installation activities and other work with the City and other users of the rights-of-way as determined by the City.

(b) Company shall conduct its construction and installation activities at all times so as to avoid conflicts with the facilities of other users, occupants, utilities, franchisees, or permittees of the rights-of-way.

Section 8. Safety and Maintenance Requirements.

(a) All work authorized and required under this Franchise shall be performed in a safe, thorough, and workmanlike manner.

(b) Company, in accordance with applicable federal, state, and local safety requirements, shall at all times employ necessary care and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to occur. All Facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If the City finds that Company is responsible for a violation of a safety code or other applicable regulation, upon Company's receipt of written notice, the City may, after discussion with Company, establish in writing a commercially reasonable time for Company to make necessary repairs. If the repairs are not made within the established written time frame, the City may make the repairs itself at the cost of the Company or have them made at the cost of Company.

(c) If Company fails to timely commence, pursue, or complete any work as required by law, permit, or this Franchise, the City may at its discretion cause the work to be done. Company shall pay to the City the reasonable and documented actual costs of the work in an itemized invoice provided by the City to Company within 30 days after receipt of such invoice.

(d) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a right-of-way or other public place occupied by Company. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Company for any damage except to the extent of the City's negligence, but nothing herein shall relieve any other person or entity from the responsibility for damages to Company's Facilities. The City will use its best efforts to provide Company with reasonable advance notice of plans by other persons to open the rights-of-way.

(e) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Company shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing the work or post it on the work site. A copy of the order shall be sent to Company, and the order shall indicate

the nature of the alleged violation or unsafe condition and the conditions under which Company may resume work.

Section 9. Removal of Unauthorized Facilities.

Within thirty (30) days following written notice from the City, Company shall, at its expense, remove unauthorized Facilities and restore the rights-of-way and other property to as good a condition as existed prior to construction or installation of its Facilities. Any plan for removal of said Facilities must be approved by the City prior to such work.

Section 10. Abandonment of Facilities.

The City may in its sole discretion allow Company to abandon its Facilities in place, provided that no Facilities may be abandoned in place without the express written consent of the City. Upon abandonment in place of Facilities, the Facilities shall become property of the City, and Company shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such Facilities. The failure of Company to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

Section 11. Restoration of Rights-of-Way and Other Property.

(a) When Company, or any person acting on its behalf, does any work in or affecting any right-of-way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Company's cost, such right-of-way and property to as good a condition as existed before the work was undertaken.

(b) If weather or other conditions do not permit the complete restoration required by this section, the Company shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the Company's cost, and Company shall promptly undertake and complete the required permanent restoration, when the weather or other conditions no longer prevent such permanent restoration.

(c) All restoration work is subject to inspection and final approval by the City. The affected rights-of-way and property shall be restored to a comparable condition by the Company. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Company or have it made at the cost of Company.

Section 12. Compensation.

(a) Federal law confirms the authority of a State or local government to manage the public rights-of-way and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government (see 47 U.S.C. §253(c)). Therefore, as consideration for costs incurred by the City for managing the public rights-of-way occasioned by Company's use and occupancy of public rights-of-way for the provision of Telecommunications Services, Company shall pay to the City the sum of two thousand five hundred dollars (\$2,500) upon Company's acceptance of this Franchise, and

five percent (5%) of its local exchange access service's annual Gross Revenues (as defined in Appendix A hereto) commencing on the effective date of this Franchise (or a higher percentage of annual gross revenues if agreed to in writing between the City and telecommunications provider after the effective date of this Franchise) derived from the operation of its Telecommunications System and Facilities in the City. Company's initial payment shall be due within thirty (30) days after final approval of this Franchise by the City Council. Subsequent payments shall be due within thirty (30) days after the anniversary date of final approval and acceptance hereof. Company and the City mutually acknowledge the foregoing sums to be fair and reasonable compensation for management of Company's use and occupancy of the public rights-of-way.

(b) If Company, with the consent of the City Council, should allow others to utilize its Facilities located within the City, Company shall pay to the City five percent (5%) of the revenue generated by allowing others use of the Facilities where said use is not for the purposes of service delivery within the City. Company also agrees that the use of Facilities by others to provide services within the City shall only be allowed when those others have executed a franchise agreement with the City.

Section 13. Compliance with Existing Law.

This Franchise is contingent for its existence and continuance upon Company's continued compliance with all relevant state and federal statutes and regulations, including rules and regulations promulgated by the Wyoming Public Service Commission.

Section 14. Indemnification.

(a) The Company shall, at its own expense, defend, indemnify, save and hold harmless the City from any and all claims, actions, causes of action, suits, liabilities, damages, judgments, settlements, costs and expenses of every kind, including attorneys' fees and expenses, which may arise or result by reason of or in consequence of the acts, omissions or negligence of the Company, its employees or agents.

(b) The Company hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against the City arising from or growing out of any damages to the property of the Company resulting from any act or omission of the City, its agents and employees, occurring prior to, on and after the date of the passage and acceptance of this Franchise.

Section 15. Insurance.

(a) Company shall obtain and maintain, at its cost, worker's compensation insurance in accordance with State law requirements and the following liability insurance policies insuring Company and, including as additional insureds as their interest may appear under this Franchise, the City, the City's elected officials, employees and agents, against claims for injuries to persons or damages to property, which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Company:

1. Commercial General Liability Insurance, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence for bodily injury (including death) and for damage to property.

2. Commercial Automobile Liability Insurance for owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 for each accident for bodily injury and property damage.

3. Umbrella Insurance in the amount of \$1,000,000.

(b) The liability insurance policies required by this section shall be maintained by Company throughout the term of this Franchise, such other periods of time during which Company's Facilities occupy rights-of-way, and while Company is engaged in the removal of its Facilities. Company shall provide an insurance certificate, together with a blanket additional insured endorsement evidencing the City, and its elected officials, employees and agents as additional insureds as their interest may appear under this Franchise, to the City prior to the commencement of any construction or installation of any Facilities pursuant to this Franchise or other work in the right-of-way. Payment of deductibles and self-insured retentions shall be the sole responsibility of Company. Company's insurance shall be primary insurance with respect to the City, its elected officials, employees and agents. Any insurance maintained by the City shall be in excess of the Company's insurance and shall not contribute to it.

(c) Within thirty (30) days of the renewal of any insurance required hereunder, Company shall provide the City with a certificate of insurance evidencing renewal.

Section 17. Additional Ducts and Conduits.

Whenever Company is constructing, relocating, or placing conduits in the right-of-way and whenever the City has made a request for ducts or conduits in advance of such installation, Company shall construct and install ducts and conduits when and where requested by the City and related structures necessary to access the ducts and conduits, subject to the separate mutual written agreement of the parties to include charges paid by the City for Company's incremental costs. The conduits and ducts shall remain the property of the Company unless the City requests the installation of separate conduit to be paid for and owned by the City. Such Company ducts and conduits shall be readily accessible and available for use as delineated in that certain separate mutual written agreement of the parties.

Section 18. Records.

(a) The City will have access to, and the limited right to inspect only those documents and records of Company reasonably related to the City's management of its rights-of-way related to this Franchise and the payment of compensation by the Company to the City.

(b) If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Company may request, in writing within ten (10) days of the City's request, that the City inspect them at Company's local office. If any documents or records

of Company are not kept in a local office or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary to its management of the rights-of-way subject to this Franchise, then reasonable travel and related costs and expenses incurred in making such examination shall be paid by Company.

Section 19. Default.

In the event that the Company shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this Franchise, and if any such default or defaults shall continue for a period of thirty (30) days (exclusive of all times during which the Company may be delayed or interfered with by unavoidable accidents, acts of God, labor strikes, or the orders or judgment of any commission or court entered in any suit or proceeding) after written notice thereof to the Company from the City is received by Company, stating the alleged default on the part of the Company, then and in each and every such case, the City, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Company in and by this Ordinance and Franchise, and all rights and privileges of the Company under this Franchise shall thereupon be at an end.

Section 20. Notices.

Any notice required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City: City of Riverton
816 N. Federal Boulevard
Riverton, WY 82501
Attn: City Administrator

Company: Contact Communications

Attn: ROW Manager

Section 21. Miscellaneous.

(a) Non-Waiver. The failure of either party to this Franchise to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the party and shall not prevent the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

(b) Governing Law. This Franchise will be governed by federal law, the laws of the State of Wyoming, and local law.

(c) Descriptive Headings. The headings of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

(d) Costs and Attorneys' Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its costs and attorneys' fees, as well as costs and attorneys' fees on appeal, in addition to such other relief as the court may deem proper.

(e) No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner that would indicate any such relationship with the other.

(f) Actions of the City or Company. In performing their respective obligations under this Franchise, the City and Company will act in a reasonable, expeditious, and timely manner.

(g) Time Is of the Essence. Whenever this Franchise sets forth a time for any act to be performed by Company, such time shall be deemed to be of the essence, and any failure of Company to perform within the allotted time may be considered a breach of this Franchise and sufficient grounds for the City to invoke any relevant remedy.

(h) Counterparts. This Franchise may be executed in one or more counterparts, all of which together shall constitute one original.

(i) Severability. If any section, sentence, clause or phrase of this Franchise is for any reason declared to be illegal, invalid, unconstitutional or void by a court of competent jurisdiction, all other provisions hereof shall be and remain in full force and effect.

(j) Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

(k) Modification. The parties may alter, amend or modify the terms and provisions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(l) No Third Party Beneficiaries. This Franchise is entered into by the parties for their sole benefit, and is not intended to be for the benefit of any third party.

Section 22. Effective Date.

This Ordinance shall take effect from and after its adoption and publication as required by law and the ordinances of the City of Riverton.

Section 23. Prohibition on Assignment.

This Franchise and the rights and privileges granted hereunder cannot be assigned by the Company without the prior written consent of the City. That consent can be withheld, in the sole discretion of the City, for any reason. Any purported assignment in violation of this Franchise is void and ineffective.

Section 24. Retention of Governmental Immunity.

By entering into this Franchise, the City does not waive its Governmental Immunity, as provided by any applicable law including W.S. Section 1-39-101 et seq. Further, the City fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law based on this Franchise.

Section 25. Repeal.

All ordinances or parts of ordinances in conflict with this Franchise are hereby repealed to the extent of such conflict.

PASSED ON FIRST READING October 6, 2020

PASSED ON SECOND READING _____

PASSED ON THIRD READING _____

PASSED, APPROVED and ADOPTED this ____ day of _____, 2020.

CITY OF RIVERTON, WYOMING:

Richard P. Gard, Mayor

Attest:

Kristin S. Watson
City Clerk/Human Resource Director

ACCEPTED AND APPROVED this ____ day of _____, 2020.

_____. d/b/a _____

Title: _____

ATTESTATION

I, Kristin S. Watson, Clerk of the City of Riverton, attest that Ordinance No. 20-009 was passed, approved, and adopted by the Governing Body of the City of Riverton on the _____ day of _____, 2020. I further certify that the above proclamation ran at least once in the Riverton Ranger, a newspaper of general circulation within Riverton, Wyoming, the effective date of publication, and therefore the effective date of enactment being _____.

Kristin S. Watson
City Clerk/Human Resource Director

APPENDIX A

LISTING OF SERVICE CATEGORIES INCLUDED IN "GROSS REVENUE" FOR CALCULATION OF FRANCHISE FEES

Business Local Access—including Flat Rate, Multiparty, and Extended Area Service

Business Measured Usage Local Access Service

Flat Usage Local Access Trunks

Low Income Telephone Assistance Program Local Access

Measured Rate Local Access Trunk Usage

Message Rate Local Access Trunk Usage

Public Access Line (PAL) Service

Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service

Residential Measured Usage

Session Initiated Protocol Trunking

Hosted Voice Services

THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF REVENUE NOT REPRESENTING THE RETAIL SALE OF LOCAL ACCESS SERVICES AND THEREFORE EXCLUDED FROM THE DEFINITION OF "GROSS REVENUES" AND, THEREFORE, ARE NOT INCLUDED IN THE CALCULATION OF ANY FEE DUE TO THE CITY:

Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks

Bad debt write-offs and customer credits

Revenue from directory advertising

Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including, but not limited to, support for the hearing impaired

Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments

Revenues from internet access

Revenues from digital or other electronic content, such as computer software, music and video downloads


Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service

CITY COUNCIL STAFF REPORT

TO: His Honor the Mayor and Members of the City Council

FROM: Kyle J. Butterfield, Public Works Director 

THROUGH: Tony Tolstedt, City Administrator

DATE: October 20, 2020

SUBJECT: Ordinance 20-008 – Amending Chapter 10.04

Recommendation: The City Council adopts on second reading Ordinance No. 20-008 to amend Chapter 10.04 of the Riverton Municipal Code (RMC).

Background: Title 10 of RMC centers on vehicle and traffic regulations. Chapter 4 addresses the administration and enforcement of ordinances contained in Title 10. Several sections in this chapter are out-of-date and do not reflect operational practices.

Discussion: Ordinance 20-008 repeals the existing language of RMC and replaces it with verbiage to reflect current practices. Specifically, it authorizes the public works department in addition to the police department to implement temporary traffic control measures to mitigate emergencies, weather conditions, or large gatherings. Doing so appropriately covers the control measures required for water breaks, construction, or other operational concerns. The proposed ordinance also removes the requirement for City Council consent in order to apply traffic markings or install permanent traffic control measures. Outdated terms like policeman and street sprinklers were additionally updated.

City staff recently streamlined the application process to permit gatherings and events affecting city rights-of-way. Ordinance 20-008 makes reference to this process in Section 10.04.010.B. The new language coincides with the application requirements and makes clear the city's expectation of individuals or organizations looking to close streets or affect traffic. It also allows the City Council to establish a fee to close public streets and affect the flow of traffic.

Proposed changes associated with Ordinance 20-008 are listed below.

ARTICLE I. In General

10.04.010 Temporary traffic and parking regulations ~~by chief of police.~~

- A.** In cases of emergency, of hazardous road or weather conditions, or of large public gatherings, parades and other like occasions or whenever the chief of police *or the public works director* deems it necessary, the chief of police *or public works director* is authorized and empowered to make such temporary traffic and parking regulations as the chief of police *or public works director* may deem proper and necessary for the protection of life, limb and property, for the duration of such occasions; and all persons shall obey and follow

such regulations in their use of the public streets, alleyways, easements, rights-of-way or any property under management or control of the city, during such time as such regulations are in force. (Prior code § 13-5)

- B. Organizations or individuals requesting temporary traffic or parking variations as part of a gathering or event affecting rights-of-way or property under management or control of the city shall complete an application that contains the location, event map, traffic control plan, neighborhood notification plan, and any other pertinent information requested by the chief of police or the public works director, or their designees. The fee for such closure shall be set forth by city council and may be modified from time to time by resolution.*

10.04.020 Alteration of modification of traffic movement prohibited without approval.

No person, firm or corporation shall alter, modify, regulate or control, in any way, traffic movement or traffic patterns within the city without the prior approval of the chief of police *or public works director*; providing, further, that in the event such prior approval is granted, any alteration, modification, regulation or control of traffic movement or traffic patterns within the city shall be in strict compliance with the directives established by the chief of police *or public works director*. (Prior code § 13-5.1)

10.04.030 Emergency orders-of police.

In case of emergency, the provisions of this chapter may be superseded by orders of members of the police department *or public works department* in charge of traffic. The discretion of the ~~police~~ *officer or public works employee* on duty at the particular point where such emergency may arise shall be exercised so as to prevent accidents, blockades or any impeding of traffic. (Prior code § 13-6)

10.04.040 Applicability of chapter to city ~~street sprinklers or trucks~~ *equipment*.

The provision of this chapter respecting the operating or parking of motor vehicles on the streets of the city shall not apply to the city's ~~street sprinklers or~~ *vehicles*, trucks, *or equipment* operated by the city. (Prior code § 13-7)

10.04.050 Determining ownership of motor vehicle.

In any controversy respecting the identity or ownership or control of a motor vehicle, the registration number borne by it shall be prima facie evidence that it was owned and operated by the person to whom the certificate of registration thereof was issued. If a certificate of registration shall be issued to any person other than the owner, it shall be invalid, and such motor vehicle shall be deemed to be maintained and operated without a certificate of registration. (Prior code § 13-8)

10.04.060 State registration of vehicles required.

It is unlawful for any person to operate any motor vehicle upon the streets of the city unless such motor vehicle is at the time of such operation properly registered pursuant to the laws of the state pertaining to the registration of motor vehicles. (Prior code § 13-9)

~~ARTICLE II. Traffic Control Devices~~

10.04.070 Authority to install *traffic control devices*.

The public works director *or his or her designee* shall ~~have the street department~~ place and maintain such traffic control devices upon the streets and alleys *and rights of way* of the city as he or she may deem necessary to indicate and carry out the provisions of this chapter or to regulate, warn and guide traffic; ~~provided that he or she shall do so only with the knowledge and consent of the city council.~~ (Ord. 18-002 § 2, 2018; prior code § 13-10)

10.04.080 ~~Marking of bus stops, taxi stands, etc.~~ *parking and traffic regulations*—Defacing signs.

- A. The public works director or his or her designee shall mark, in visible and suitable manner, such bus stops, taxi stands, stop streets, “No Left-turn,” “No U-turn,” speed limits, lines to indicate required manner of parking, and such other traffic regulations as may from time to time be deemed advisable; ~~provided that he or she shall do so only with the knowledge and consent of the city council.~~
- B. It is unlawful for any person to deface, move, obstruct or interfere with any such official sign or designation. (Ord. 18-002 § 4, 2018; prior code § 13-11)

As an informative reference, street sprinklers were invented in the 1850s as a means to suppress airborne dust on unpaved roads. Street sprinkling was necessary because physicians considered the accumulation of animal waste and other contaminants on unpaved roads a hazard to the health of the general public. As shown in the adjacent photo, streets sprinklers were originally drawn by horse and cart and consisted of a water barrel and spray nozzles. Street sprinklers are now obsolete and have been replaced by modern street sweepers.



Budget Impact: None

ENROLLED ORDINANCE NO. 20-008

AN ORDINANCE AMENDING TITLE 10 “VEHICLES AND TRAFFIC” TO REVISE CHAPTER 10.04 “ADMINISTRATION AND ENFORCEMENT” OF THE RIVERTON MUNICIPAL CODE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIVERTON, FREMONT COUNTY, WYOMING:

Section 1. Chapter 10.04 of the Municipal Code for the City of Riverton, Wyoming is hereby amended to read as follows:

~~ARTICLE I. In General~~

10.04.010 Temporary traffic and parking regulations ~~by chief of police.~~

- A. In cases of emergency, of hazardous road or weather conditions, or of large public gatherings, parades and other like occasions or whenever the chief of police ~~or the public works director~~ deems it necessary, the chief of police ~~or public works director~~ is authorized and empowered to make such temporary traffic and parking regulations as the chief of police ~~or public works director~~ may deem proper and necessary for the protection of life, limb and property, for the duration of such occasions; and all persons shall obey and follow such regulations in their use of the public streets, alleyways, easements, rights-of-way or any property under management or control of the city, during such time as such regulations are in force. (Prior code § 13-5)*
- B. Organizations or individuals requesting temporary traffic or parking variations as part of a gathering or event affecting rights-of-way or property under management or control of the city shall complete an application that contains the location, event map, traffic control plan, neighborhood notification plan, and any other pertinent information requested by the chief of police or the public works director, or their designees. The fee for such closure shall be set forth by city council and may be modified from time to time by resolution.*

10.04.020 Alteration of modification of traffic movement prohibited without approval.

No person, firm or corporation shall alter, modify, regulate or control, in any way, traffic movement or traffic patterns within the city without the prior approval of the chief of police ~~or public works director~~; providing, further, that in the event such prior approval is granted, any alteration, modification, regulation or control of traffic movement or traffic patterns within the city shall be in strict compliance with the directives established by the chief of police ~~or public works director~~. (Prior code § 13-5.1)

10.04.030 Emergency orders ~~of police.~~

In case of emergency, the provisions of this chapter may be superseded by orders of members of the police department ~~or public works department~~ in charge of traffic. The discretion of the ~~police officer~~ ~~officer or public works employee~~ on duty at the particular point where such emergency may arise shall be exercised so as to prevent accidents, blockades or any impeding of traffic. (Prior code § 13-6)

10.04.040 Applicability of chapter to city ~~street sprinklers or trucks~~ *equipment.*

The provision of this chapter respecting the operating or parking of motor vehicles on the streets of the city shall not apply to the city's ~~street sprinklers or vehicles~~, trucks, ~~or equipment~~ operated by the city. (Prior code § 13-7)

10.04.050 Determining ownership of motor vehicle.

In any controversy respecting the identity or ownership or control of a motor vehicle, the registration number borne by it shall be prima facie evidence that it was owned and operated by the person to whom the certificate of registration thereof was issued. If a certificate of registration shall be issued to any person other than the owner, it shall be invalid, and such motor vehicle shall be deemed to be maintained and operated without a certificate of registration. (Prior code § 13-8)

10.04.060 State registration of vehicles required.

It is unlawful for any person to operate any motor vehicle upon the streets of the city unless such motor vehicle is at the time of such operation properly registered pursuant to the laws of the state pertaining to the registration of motor vehicles. (Prior code § 13-9)

~~ARTICLE II. Traffic Control Devices~~

10.04.070 Authority to install *traffic control devices.*

The public works director ~~or his or her designee~~ shall ~~have the street department~~ place and maintain such traffic control devices upon the streets and alleys ~~and rights of way~~ of the city as he or she may deem necessary to indicate and carry out the provisions of this chapter or to regulate, warn and guide traffic; ~~provided that he or she shall do so only with the knowledge and consent of the city council.~~ (Ord. 18-002 § 2, 2018; prior code § 13-10)

10.04.080 Marking of bus stops, taxi stands, etc. ~~parking and traffic regulations~~—Defacing signs.

- A. The public works director or his or her designee shall mark, in visible and suitable manner, such bus stops, taxi stands, stop streets, “No Left-turn,” “No U-turn,” speed limits, lines to indicate required manner of parking, and such other traffic regulations as may from time to time be deemed advisable; ~~provided that he or she shall do so only with the knowledge and consent of the city council.~~
- B. It is unlawful for any person to deface, move, obstruct or interfere with any such official sign or designation. (Ord. 18-002 § 4, 2018; prior code § 13-11)

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. This ordinance shall take effect from its adoption and publication as required by law and the ordinances of the City of Riverton.

PASSED ON FIRST READING October 6, 2020

PASSED ON SECOND READING _____

PASSED ON THIRD READING _____

PASSED AND APPROVED this ____ day of _____, 2020.

CITY OF RIVERTON, WYOMING

By: _____
Richard P. Gard
Mayor

ATTEST:

Kristin S. Watson
City Clerk/Human Resource Director

ATTESTATION

I, Kristin S. Watson, Clerk of the City of Riverton, attest that Ordinance No. 20-008 was passed, adopted, and approved by the Governing Body of the City of Riverton on the ____ day of _____, 2020. I further certify that the above proclamation ran at least once in the Riverton Ranger, a newspaper of general circulation within Riverton, Wyoming, the effective date of publication, and therefore the effective date of enactment being _____.

Kristin S. Watson
City Clerk/Human Resource Director