



NOTICE AND AGENDA

NOTICE IS HEREBY GIVEN TO THE HILDALE CITY COUNCIL AND THE PUBLIC, THAT THE HILDALE CITY COUNCIL WILL HOLD A WORK SESSION COUNCIL MEETING ON TUESDAY THE 3RD DAY OF MARCH 2020 AT HILDALE CITY HALL, 320 EAST, NEWEL AVENUE, WHICH MEETING SHALL BEGIN AT 6:30 P.M. MDT.

THE AGENDA SHALL BE AS FOLLOWS:

1. WELCOME, INTRODUCTION AND PRELIMINARY MATTERS
2. PLEDGE OF ALLEGIANCE
3. CONFLICT OF INTEREST DISCLOSURES
4. PUBLIC COMMENT
5. INFORMATIONAL SUMMARIES
6. COUNCIL COMMENTS
7. PRESENTATION OF AWARD TO CHRISTIAN KESSELRING
8. WORK SESSION
 - A. PRIORITIZATION OF WORK SESSION ITEMS
 - B. OHV ORDINANCE
 - C. HILDALE CITY WEBSITE
9. NEW COUNCIL BUSINESS
 - A. FIBER OPTIC MASTER AGREEMENT FOR INTERNET SERVICE PROVIDERS
 - B. CANCELATION OF AGREEMENT WITH EZRA NIELSON
10. EXECUTIVE SESSION (AS NEEDED)
11. ADJOURNMENT

Agenda items and any variables thereto are set for consideration, discussion, approval or other action. Council Members may be attending by telephone. Agenda is subject to change up to 24 hours prior to the meeting. Individuals needing special accommodations should notify the City Recorder at 435-874-2323 at least three days prior to the meeting.

Council Work Session Items

Priority No.	Work Session Items	Status	Sponsor
	Animals Ordinance	Management is working with Colorado City to update	Maha Layton
	Attracting 4 New Businesses	Management is tracking results	Stacy Seay
	Branding Campaign	Logo updated - what next?	Maha Layton
	Creation of Economic Committee	?	Jvar Dutson
	Creation of Tourism and Recreation Committee		Donia Jessop
	Curfew Ordinance	Sent back to regular meeting for final action	Stacy Seay
	Dark skies ordinance	?	Maha Layton
	Development of Water Treatment Facility	In progress through utilities	Maha Layton
	Downtown Hildale City Center	Postponed to 2020	Maha Layton
	Hildale Residential Mail Delivery	?	Stacy Seay
	Lease Renewal and Expansion of Maxwell Park	Lease Application has been submitted. Follow up planned for 3/15/2020	Stacy Seay
	Maxwell Water Sales	On hold pending Utility Department work on water sources	Jvar Dutson
	Police Building	?	Stacy Seay
	Welcome Center	On hold pending branding	Lawrence Barlow
	Welcome Sign	On hold pending branding	Lawrence Barlow



☎ 435-874-2323

📠 435-874-2603

🌐 www.hildalecity.com

From: John Barlow, Hildale City Manager
To: Mayor and Council
Date: January 27th, 2020
Subject: Options for Website

“Why now?”

Hildale City has gone through some efforts to rebrand.

Hildale City had a group of children activists tell the City Council that there are some functional problems with Hildale City’s website that make it difficult to navigate and search for relevant ordinances, meetings, etc.

Hildale City recently purchase MuniCode’s online publishing platform that allows the administration to make updates to code without sending it to the codifiers (which can be costly). MuniCode offers templated websites for municipalities and there can be some cost savings by buying both products in bundle.

Options:

1. Continue with current website.
2. Custom Website
3. Templated Website

Current Website:

Our current website is a WordPress site. WordPress is an open source website system. This allows you to pick among free or paid for templates and the platform allows you to interact with the website (e.g. change basic information).

There is nothing “wrong” with our website. It meets all of the basic needs of the city; however, it does have some real functional limitations. The biggest limitations are aesthetics, searchability, and it can be functionally clunky. This is because the website operates on “plugins” which are developed by different companies. When you put it all together it walks and talks, but looks and acts a little like Frankenstein.

There is one small legal problem with staying on the current website. It is not ADA compliant (e.g. it is not navigable by the seeing impaired). There has been reported cases of activist or inversely impacted locals suing cities; however, I would not let this be a determining factor in your decision. As a way to

Mayor: Donia Jessop
City Council: Maha Layton, Lawrence Barlow
Stacy Seay, JVar Dutson, Jared Nicol

320 East Newel Ave.
P.O. Box 840490
Hildale, UT 84784



gauge how important this is, Washington City’s website is only partially navigable by the visually impaired.

Custom Website:

The City could pay a web developer to design a better-looking website and buildout better plug-ins. This would enhance your website’s appearance and functionality. The searchability of our website would likely not be fixed with this option.

Templated Options:

There are two major players the municipal website business; MuniCode and CivicPlus. I did get a demo from CivicPlus; however, it looks like their platform is very similar to MuniCode.

MuniCodes website platform would give the City a fully functional platform. Because they specialize in municipal websites it is built out and includes tool specific to municipalities. This would make our website ADA compliant. It would give a separate landing page for each department. It would be highly functional. The biggest benefit would be that all notices, ordinances, resolutions, policies and procedures would be searchable from the home screen.

Financial Impact:

See estimates below;

	Current Year Costs	Ongoing Costs/Yr
Current Website		\$ 1,200.00
Custom Website	\$ 16,000.00	\$ 1,200.00
Templated Website*	\$ 16,000.00	\$ 5,000.00

We negotiated MuniCode down to \$11,000 for setup and \$4,450 per year; however, we will need to spend some additional money to make the website compliant with DOJ requirements.

Legal Impact:

All of the options are legally safe. I will work with Christian in order to ensure whatever the Council chooses is implanted in a legal and regulatory compliant way.



Website Redesign, Hosting, and Support

Quote for Hildale, Utah



Bob Geiger

PO Box 2235 Tallahassee, FL 32316
850-692-7132 bgeiger@municode.com

LETTER OF INTEREST

02/25/20

Dear Website Selection Team:

Thank you for the opportunity to present our quote for website redesign, hosting, and support services. It is our goal to deliver a mobile-friendly website that is professional, easy-to-use, and easy-to-maintain.

Our team has developed a portfolio of online services that are tailored for local government agencies. We have worked with cities, towns, villages, counties and other local government agencies for over sixty-five years continually striving to make your job easier. When it comes to posting content on the web, our solution is simple and straight-forward.

Our websites make it easier for your community to find content by providing multiple navigation paths to each page. Our designs reinforce self-service to enable 24x7 online access to your organization's services.

We create your website using Drupal, an industry-leading content management system. Since Drupal is open-source, your website is truly yours unlike those of many other government redesign companies that use their own proprietary software.

We are thrilled at the opportunity to partner on such an important initiative.

Sincerely,



Brian Gilday
President, Website Division

CONTENTS

Letter of Interest 2

Contents..... 3

Company Profile..... 4

References and Design Examples 6

Website Content Management System (CMS) Features..... 9

Meeting and Agenda Management (Optional)..... 10

Policies and Procedures Management (Optional) 11

Project Timeline and Approach 12

Hosting, Maintenance, and Customer Support..... 15

Project Costs 17

Payment Schedule..... 18

Services Agreement..... 19

COMPANY PROFILE

History, Mission, and Team

With over 65 years of experience, Municode's mission is to connect public sector organizations with their communities. Our solutions promote transparency and efficiency - such as custom website design, meeting and agenda management, online payment portals, the legal codification process, and our robust suite of online legislative search tools.

Municode has been in business for over sixty-five years and partners with more than 4,000 government agencies across all fifty states. Municode is a privately-owned corporation and is financially sound with no debt. Our leadership focuses on improving Municode through investments in its people and its technology. Our culture is conducive to the longevity of our employees; Our clients can establish a long-term partnership with our experienced and stable workforce.

Municode is home to over 230 employees (most of whom enjoy a 10+ year tenure). Our headquarters in Tallahassee, Florida includes four buildings totaling 56,000 square feet. Our West Coast office is in Portland, Oregon. We also have individual team members working in several states across the country.

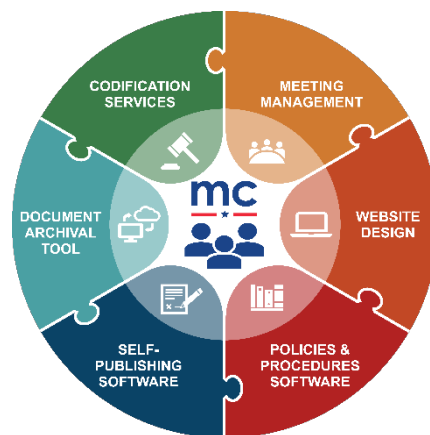


Our Vision: Simple, Seamless Integration

Our vision is to create seamless integration between our service offerings. The goal is to reduce staff workload, while at the same time, increasing the ability for municipalities to connect with their communities.

The following example integration points are either in place today or envisioned in our future strategic roadmap.

- Unified search across all platforms (website, meetings, online codes)
- Auto-publish agendas and minutes from the Meetings platform to the Website
- Ordinance auto-publishing from the Meetings platform to your online code, queued for supplementation, Code of ordinance cross-references to legislative voting history, minutes, and video/audio



Project Team

We have a highly-skilled team with a customer service focus.



Jarrod - Project Sponsorship / Project Management / Customer Service

Jarrod has a Bachelor of Science degree in Mathematics and Business Administration from the University of Oregon. Jarrod is the Director of Professional Services and leads all aspects of project development and customer support.



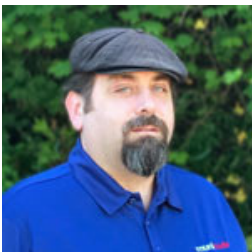
Dave - Project Management / User Experience

Dave has a Bachelor of Arts degree in Communications from California State University. In addition to project and design leadership, Dave will participate in various analytical, site configuration, content migration, and training activities.



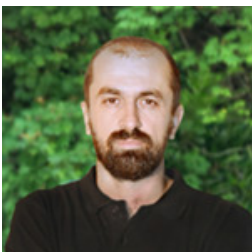
Mary Joy – Project Management / User Experience

Mary Joy has that unique ability to put technical concepts into easy-to-understand terms with clients such as Dunkin Donuts, Gillette, Fidelity, and Osram Sylvania. A Bentley graduate with a Bachelor of Science in CIS, Mary Joy leads our customer support efforts and content migration.



Paul – Development / Systems Architecture / QA

Paul has been working on software systems for years and is a strong member of our team. We will turn to Paul for any custom development work that might be required. In addition, Paul has many years of experience in quality assurance testing, so he will be acting as Municode’s lead tester for the engagement.



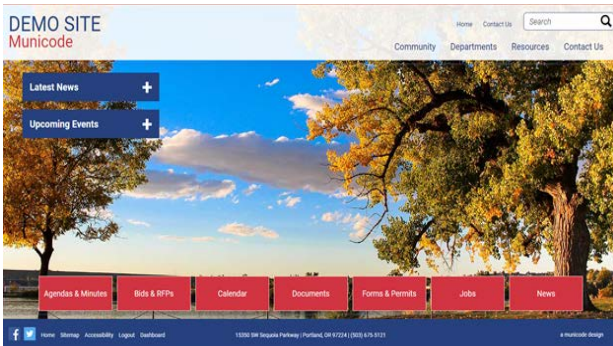
Drago - Graphic Design

Drago's work speaks for itself. He has the unique ability to capture the essence of your branding and communication requirements and transform them to stunning web designs.

REFERENCES AND DESIGN EXAMPLES

Standard Designs

Our standard designs come as part of our base price and are a great option for those who want a professional, mobile friendly design without the added expense of custom graphic design work. You choose from one of our standard layouts and still get to customize the color palette and background photos.



- ★ Same features and systems as custom design.
- ★ Customize your images.
- ★ Your logo.
- ★ Customize the header bar color.
- ★ Customize your menus.
- ★ Customize your quick links.
- ★ Customize your button colors.
- ★ Customize the footer bar color.

Del Rey Oaks California

<https://www.delreyoaks.org>

Population: 1,624

Kim Carvalho, Assistant to the City Manger/Deputy City Clerk
 (831) 394-8511 Ext. 110
kcarvalho@delreyoaks.org



Mount Carmel Illinois

<https://cityofmtcarmel.com/>

Population: 7,284

Mike Gidcumb, City Inspector
 618-262-4822
mgidcumb@cityofmtcarmel.com



St. Leo Florida

<https://www.townofstleo.org/>

Population: 1,340

Andrea Calvert, Town Clerk
 352-588-2622
townclerk@townofstleo.org



Custom Designs

There is a reason why we have loyal customers! It is because we have a great solution, we take care of our customers, and we are committed to working with you for the long haul. When you pick up the phone and call us, we answer! When you email, we respond quickly – usually within 30 minutes. When you need us, we will be there for you. **But don't take our word for it, ask our clients.**

Brownsville Oregon

<http://www.ci.brownsville.or.us>

Population: 1,668

Scott McDowell, City Administrator
541-466-5880
admin@ci.brownsville.or.us



Skagway Alaska

<http://www.skagway.org/>

Population: 1,057

Emily Deach, Municipal Clerk
907-983-9706, 9079832297
e.deach@skagway.org



Harlem Georgia

<https://harlemga.org>

Population: 2,666

Debbie Moore, Clerk
706-556-3448
dmoore@harlemga.org



Freeport Florida

<http://freeportflorida.gov>

Population: 1,787

Becky Podraza, City Clerk
850-835-1978
cityclerk@freeportflorida.gov

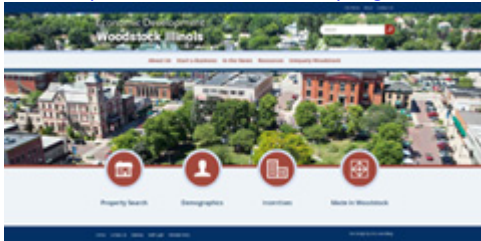


Specialty Sub-Site Graphic Designs

We also offer the option of having graphic designs for sub-sites that require specialized branding. We call these 'specialty sub-sites'. We leverage your main CMS and database, which allows us to offer these sub-sites with the same functionality as your main site yet with a completely different look and feel.

Economic Development

www.choosewoodstock.com
<https://www.fluvannacounty.org/ced>



Parks & Recreation

www.cprdnewberg.org
www.cityofvancouver.us/parksrec



Festivals

www.wintermusicfestival.org



Libraries

www.woodstockpubliclibrary.org



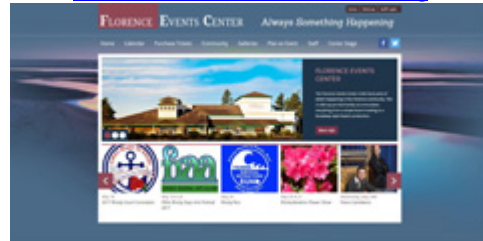
Police and Fire

www.mvfpd.org
www.quincypd.org
www.co.benton.or.us/sheriff



Event Centers / Cultural Centers

www.eventcenter.org
www.woodstockoperahouse.com
www.sherwoodcenterforthearts.org



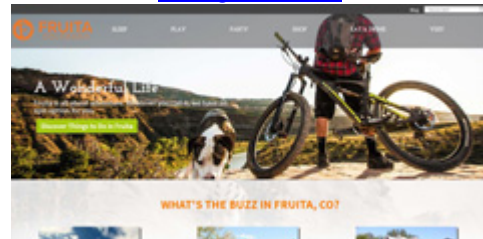
Golf Courses

www.meadowlakesgc.com



Tourism

www.gofruita.com



WEBSITE CONTENT MANAGEMENT SYSTEM (CMS) FEATURES

Municode Web was designed for local governments by experts in local government. It utilizes Drupal, an open source platform, that powers millions of websites and is supported by an active, diverse, and global community. We are the Drupal experts for local government!

Key Project Deliverables

- ★ WEBSITE DESIGN
- ★ CONTENT MIGRATION
- ★ TRAINING
- ★ HOSTING
- ★ SUPPORT

Standard Features

- ⊙ Responsive Mobile Friendly Design
- ⊙ Simple Page Editor
- ⊙ Best-in-Class Search Engine
- ⊙ Social Media Integration
- ⊙ Web Page Categories - create a page once, have it show up in multiple places
- ⊙ Department Micro-sites (sites-within-a-site)
- ⊙ Rotating Banners and Headline Articles
- ⊙ Online Job Postings
- ⊙ Online Bid/RFP Postings
- ⊙ Photo Album Slideshows
- ⊙ Google Maps Integration
- ⊙ Resource/Document Center
- ⊙ Image auto-scaling and resizing
- ⊙ Site Metrics (Google Analytics)
- ⊙ Scheduled Publish On/Off Dates
- ⊙ Unlimited User logins
- ⊙ Unlimited Content
- ⊙ Word-like WYSIWYG Editor
- ⊙ Private Pages – staff view only
- ⊙ Unlimited Online Fillable Forms
- ⊙ Emergency Alerts
- ⊙ Meeting Agendas/Minutes/Videos
- ⊙ Event Calendar
- ⊙ Page Versioning / Audit Trail
- ⊙ Latest News / Press Releases
- ⊙ Anti-spam controls
- ⊙ Email Harvesting Protection
- ⊙ Broken Link Finder
- ⊙ Dynamic Sitemap
- ⊙ Support for Windows, Mac, Linux
- ⊙ Video integration (YouTube, Vimeo, etc.)
- ⊙ Client owns rights to all data
- ⊙ Organization/Staff Directory
- ⊙ Frequently Asked Questions (FAQs)
- ⊙ Ordinances and Resolutions
- ⊙ Share This Button (Facebook/Twitter)
- ⊙ Secure Pages / SSL
- ⊙ Printer Friendly Pages
- ⊙ RSS Feeds Inbound/Outbound

Optional Features/Services

- ⊙ Email Subscriptions / Notifications
- ⊙ Projects Directory
- ⊙ Parks and Trails Directory
- ⊙ Property Directory (Commercial/Industrial)
- ⊙ Business Directory
- ⊙ Facility Reservations
- ⊙ Specialty Sub-site Graphic Designs
- ⊙ Custom Feature Development

MEETING AND AGENDA MANAGEMENT (OPTIONAL)

Municode Web includes a standard feature to post meeting agendas and minutes. Many organizations seek the additional features of an agenda management solution such as agenda item approval workflow, auto-generated PDF/Word agendas, live council voting/roll call, and audio/video integration.

Municode Meetings is the easiest-to-use and most modern agenda management system in the industry. It is a 100% cloud-based offering that will greatly reduce the staff time and effort required to create and publish online agendas and minutes.

Key Project Deliverables

- ✦ BOARD/COMMITTEE SETUP - configure as many boards as you need - no limit
- ✦ MEETING TEMPLATE DESIGN - design one or more meeting templates to your custom specifications
- ✦ TRAINING
- ✦ WORKFLOW - setup custom agenda item approval workflows
- ✦ USERS/ROLES/PERMISSIONS - create and configure unlimited user accounts
- ✦ ANNUAL SERVICE - 99.95% up-time guarantee, data backups, disaster recovery
- ✦ SUPPORT - 8AM to 8PM Eastern phone and email support; 24x7x365 emergency support

Standard Features

- ⦿ Unlimited Meetings and Agenda Templates
- ⦿ Unlimited Meeting Agenda Templates
- ⦿ Unlimited Users
- ⦿ Create Meetings
- ⦿ Submit/Add Agenda Items
- ⦿ Attach agenda item files
- ⦿ Create Agendas
- ⦿ Create Agenda Packets
- ⦿ Create Meeting Minutes
- ⦿ Approve Items with Approval Workflow
- ⦿ Auto Publishing Agenda, Agenda Packet, Minutes to the web
- ⦿ Self-service YouTube video time stamping
- ⦿ Integration with Swagit Video (coming soon)
- ⦿ Voting/Roll Call
- ⦿ Integration with Municode Web calendar

Service and Support

We will guarantee service uptime of 99.95%. In the event this service level is not met within a given month, you will receive a credit for that month's service.

We will provide you contact numbers to reach us 24x7x365 for catastrophic site issues. We will also be available from Monday to Friday 8AM-8PM EST via email and phone to handle routine questions from staff.

We will perform security upgrades and other optimizations during off-hours, typically between the hours of 12-3AM PST, if such work requires your meetings to be off-line. We will provide at least 14 days' notice for any non-emergency maintenance that requires down-time.

Our auto-monitoring software continually monitors performance and instantly alerts us when problems occur. We act as soon as possible and no later than two hours after problems are detected.

POLICIES AND PROCEDURES MANAGEMENT (OPTIONAL)

Municode Web includes a standard feature to post policy and procedure documents. Many organizations seek the additional features of a policy and procedures management solution, such as approval workflow, automated PDF generation, and historical tracking. Examples of policy and procedure manuals include fire codes, general plans, financial reports, and proclamations. Municode’s Self-Publishing Software facilitates these needs.

Key Project Deliverable

- ★ SOFTWARE LICENSE – Annually, includes up to five (5) authorized users
- ★ CONVERSION – Convert your current Word/Folio manuals to our software database for in-house publication, updates and maintenance
- ★ WORKFLOW – Provides organized, systematic execution of updates, corrections, new clauses, new codes, etc.
- ★ ONLINE BOOK HOSTING – Published in HTML format
- ★ SERVICE LEVEL - 99.95% up-time guarantee, data backups, disaster recovery
- ★ SUPPORT - 8AM to 8PM Eastern phone and email support; 24x7x365 emergency support

Standard Features

- ⦿ Policy/Amendment drafting tool
- ⦿ Automated code, policy and publication updates
- ⦿ Automated approval and signature workflow
- ⦿ Automated PDF generation for backup/printing
- ⦿ Historical tracking tool
- ⦿ Online training and customer service

Service and Support

We will guarantee service uptime of 99.95%. In the event this service level is not met within a given month, you will receive a credit for that month's service.

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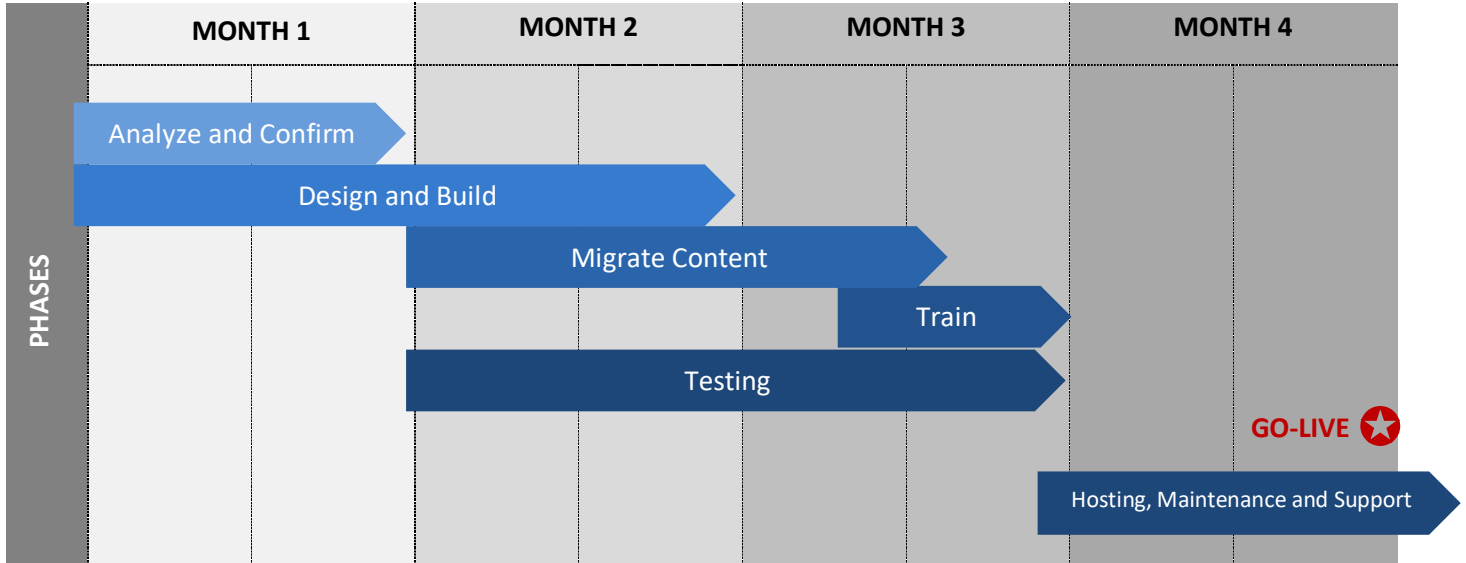
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PROJECT TIMELINE AND APPROACH

The typical project takes from 3 to 7 months. The high-level timeline below is an approximation. We will finalize the schedule once we meet with you:

Project Timeline Sample



Client Responsibilities

The client's responsibility and the key to a smooth on-time deployment is providing the initial information and approving proofs quickly.

- ☑ The Client will make available to Municode relevant images, photos, logos, colors, and other branding material as well as an inventory of existing applications, websites, and content at the start of this effort. The Client will create new content copy as needed.
- ☑ The Client will assign a single point of contact for Municode to interact with that will be responsible for coordinating the schedules of other project stakeholders.
- ☑ The Client will review any deliverables requiring formal approval within 5 business days and return all comments/issues at or before those 5 days have elapsed.
- ☑ The Client will assign one person who will act as the "ultimate decision maker" in the case where consensus among the team cannot be reached.
- ☑ The Client must agree to applicable terms of services for Google related services such as Google Analytics and Google Maps to access those features. Municode is not responsible for Google's decisions related to discontinuing services or changing current APIs.

Project Phase Descriptions

Phase 1: Analyze and Confirm Requirements	Deliverables
<p>Website Assessment:</p> <p>Municode will complete an analysis of your current website(s) to assess the existing navigation, features/functions, and quality of content.</p>	<ul style="list-style-type: none">① Summary assessment sheet
<p>Organizational Overview Inventory/Survey:</p> <p>Municode will provide an organizational overview document for you to complete as part of this assessment.</p>	<ul style="list-style-type: none">① Organization Survey
<p>Website Design Meeting:</p> <p>Municode will conduct a design meeting with a client-defined web advisory team. We recommend the advisory team be limited to a maximum of 6 members. This design meeting will allow the website advisory team to provide input regarding the overall design of the new website, including the site branding as well as high-level site navigation. This team will act as the initial review team for website design concepts. In addition, this team will act as the final review team for the website before it is approved for go-live.</p>	<ul style="list-style-type: none">① Website design specification sheet (graphic design and information / navigation design)
Phase 2: Design and Build phase	Deliverables
<p>Design Concept Creation and Approval (Custom Designs):</p> <p>Municode will complete home page design concepts for the Home Page and inner pages. These design concepts will incorporate all the graphical elements as well as the high-level sitemap. You will select a winning concept after going through a series of iterative design revision meetings. We allow for a total of 6 revisions.</p>	<ul style="list-style-type: none">① Design concepts① Finalized design (Sketch, Figma, or Photoshop)
<p>Website Setup, Configure, and Customization:</p> <p>Municode will create a fully functional website that includes the functional elements described in this proposal. As part of the website setup, Municode will finalize any remaining elements to the approved design and navigation.</p>	<ul style="list-style-type: none">① Functional beta website with approved design① Content migration

Phase 3: Migrate Content

Deliverables

Content Finalization and Departmental Acceptance

Municode migrates initial content and your trained staff finalizes prior to go-live. See pricing section for specific number of included pages.

Meeting Agendas and Minutes: Client completes an excel template with information regarding each meeting plus corresponding files. Municode will then auto-import that content. Files must be provided with a standard naming convention to allow for auto parsing of date. (i.e. minutes_061516.pdf, etc.)

Standard Web Pages: A standard web page is defined as a page that contains a title, body text, and up to a total of 5 links, file attachments, or images. If you require migration of more complex pages, we can provide a custom quote.

Directory pages (Staff Directory, Projects, Commercial/Industrial Properties, Business Directory, Ordinances/Resolutions): Client completes manually or may request a custom quote. For custom quotes, client completes an excel template with directory data and Municode auto-imports directory content.

- ⦿ Content creation and migration
- ⦿ Departmental content 'signoff'

Phase 4: Staff Training

Deliverables

Staff Training

Throughout the development and after launch, our customers have access to training, resources and educational opportunities that help them thrive. Our initial training is offered to administrators and content contributors.

- ⦿ On-site (if applicable)
- ⦿ Web teleconference
- ⦿ Videos and User guides

Phase 5: Testing

Deliverables

Municode Functional Testing

Municode will perform a series of tests across multiple browser and operating system versions to confirm site functionality. These tests will confirm proper functionality of all features documented in this proposal.

- ⦿ Completing Testing Checklists

Acceptance Testing

Staff will review the website for completeness. Municode will have completed functional testing and cross-browser compatibility testing.

- ⦿ Site acceptance by client

Go Live ★

Deliverables

Go-Live

We will work with you to make the appropriate 'A' Record DNS entry changes to begin the process of propagating the new production web server IP address.

- ⦿ Accepted Final Live Website

HOSTING, MAINTENANCE, AND CUSTOMER SUPPORT

Hosting

We provide first-class hosting services in a secure data center. We take cyber security seriously. Your website will be secure from multiple perspectives:

Data Center

We host your website in a secure data center. The data center is manned 24x7x365. Your website is maintained using firewalls, load balancers, multiple web application servers, and a database server. We apply security updates to the entire web server stack on a regular basis.

Data transmission

We guarantee up to 1 Terabyte of data transfer per month.

Redundant high-availability failover (optional):

We have the capability of providing premium hosting service levels by offering a mirrored copy of your site on a separate infrastructure and geographic location. We would need to talk through the required service levels and bandwidth to provide pricing for this item.

Web CMS software security

We apply security updates to your Drupal-based CMS whenever updates are posted. Your website is built on Drupal software that has the confidence of millions of websites in both the private sector and public sector, including whitehouse.gov, the City of Boston and the City of Los Angeles. Several built-in security mechanisms are in place to prevent cross-site scripting attacks.

Web transmission security

Your website is secured with SSL to encrypt transmission of data. We SSL-enable every page on your website for maximum security.

User authentication security

Our solution is configured with granular role-based permissions, and each user is required to login with a unique user id and password. We also offer a [two-factor authentication option](#) using Google Authenticate if that should be something you are interested in pursuing.

Data Backup

We back up your data in multiple geographic locations. We backup daily, weekly, monthly, and up to 7 years of annual data backups.

Guaranteed Uptime

Municode guarantee web server uptime of 99.95%. In the event this service level is not met within a given month, you will receive a credit for that month's service

Maintenance and Customer Support

24x7 Customer support:

We will provide you contact numbers to reach us 24x7x365 for catastrophic site issues. We will also be available from Monday to Friday 8AM-8PM EST via email and phone to handle routine website operation questions from staff.

Security upgrades:

Municode will apply security upgrades to your solution's core and contributed modules ensuring that your website stays secure. Municode will perform security upgrades and other web server and website optimizations during off-hours, typically between the hours of 9PM-3AM Pacific, if such work requires taking the website off-line. We will provide at least 14 days' notice for any non-emergency maintenance that requires down-time.

Site Monitoring and Site Recovery:

Municode will install auto-monitoring software routines that continually monitor website performance and alert us when problems occur. We will act as soon as possible and no later than two hours after problems are detected.

Free feature upgrades:

As we update our base Municode features, you receive those upgrades for FREE.

PROJECT COSTS

Design, Development, and Implementation Phase

\$7,100

- Fully functional Municode CMS with all base features
- Responsive mobile-friendly website with **custom** design
- Content migration; up to 100 pages and 5 years meeting minutes
- **One Specialty Subsite Included (al a carte pricing below)**
- Training: web teleconference, video, user guides

Annual Hosting, Maintenance, and Customer Support

\$4,450 / year

- 80GB disk space and up to 1 terabyte data transfer per month
- 99.95% up-time guarantee, telephone support 8AM-8PM Eastern
- Email support with one-hour response time during working hours
- Emergency 24x7 support
- Up to 3 hours' webinar refresher trainings per year

Check which one of the two below that you prefer to include at the above price:

- Email Subscriptions / Notifications
- Business Directory

Total Year 1 Costs

\$11,550

Select Additional Website Options

- | | |
|---|--|
| <input type="checkbox"/> Email Subscriptions / Notifications | \$600 per year |
| <input type="checkbox"/> Projects Directory | \$200 per year |
| <input type="checkbox"/> Parks and Trails Directory | \$200 per year |
| <input type="checkbox"/> Property Listings (Commercial/Industrial) | \$200 per year |
| <input type="checkbox"/> Facility Reservations | \$1500 setup + \$900 per year |
| <input type="checkbox"/> Business Directory | \$750 setup + \$600 per year |
| <input type="checkbox"/> Specialty sub-site graphic designs | \$3500 + \$600 per year (per design) |
| <input type="checkbox"/> Site graphic redesign every 4th year | \$600 per year (per design) |
| <input type="checkbox"/> Additional on-site visits (training, consultation, etc.) | \$1500 day 1, \$1000 per day (days 2+) |
| <input type="checkbox"/> Custom Feature Development | \$150 per hour or fixed bid quote |
| <input type="checkbox"/> Meeting and Agenda Management (Municode Meetings) | \$2,400 per year |
| <input type="checkbox"/> Policies and Procedures Management | ask for quote |

PAYMENT SCHEDULE

Payment Schedule

Year 1

Sign contract	50% of one-time costs (\$3,550)
Implement design and features	50% of one-time costs (\$3,550)
Conduct training (site moved to production / annual support begins)	annual hosting and support (\$4,450)

Notes

- No long-term commitments required. We will earn your trust. You may cancel service at any time.
- Guaranteed pricing. Hosting and Support fees will not increase for first three years.
- Payment schedule will be adjusted accordingly based on selected optional features.
- Annual hosting and support fees starting year four will increase according to the previous year-ending *Consumer Price Index (CPI) for All Urban Consumers*.

SERVICES AGREEMENT

This agreement ("AGREEMENT") is entered between Hildale, Utah ("CLIENT") and Municipal Code Corporation ("CONSULTANT").

1. Term of AGREEMENT. This AGREEMENT shall commence effective the date signed by the CLIENT. It shall automatically renew annually. This AGREEMENT shall terminate upon the CLIENT's providing CONSULTANT with sixty (60) days' advance written notice.

2. Compensation. It is understood and agreed by and between the parties hereto, that the CLIENT shall pay the CONSULTANT for services based on the payment schedule provided as set forth in the section marked "Payment Schedule". Payment will be made to CONSULTANT within thirty (30) days of the receipt of approved invoices for services rendered.

3. Scope of Services. CONSULTANT's services under this AGREEMENT shall consist of services as detailed in the attached proposal including appendices ("SERVICES"). SERVICES may be amended or modified upon the mutual written AGREEMENT of the parties.

4. Integration. This AGREEMENT, along with the SERVICES to be performed contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

5. Warranty. CONSULTANT warrants that any services provided hereunder will be performed in a professional and workmanlike manner and the functionality of the services will not be materially decreased during the term.

6. Liability. CONSULTANT's total liability arising out of any acts, omissions, errors, events, or default of CONSULTANT and/or any of its employees or contractors shall be limited by the provisions of the AGREEMENT and further limited to a maximum amount equal to the fees received by CONSULTANT from CLIENT under this AGREEMENT.

7. Termination. This AGREEMENT shall terminate upon the CLIENT's providing CONSULTANT with sixty (60) days' advance written notice. In the event the AGREEMENT is terminated by the CLIENT's issuance of said written notice of intent to terminate, the CONSULTANT shall pay CLIENT a pro-rated refund of any prepaid service fees (for the period from the date of the termination through to the end of the term). If, however, CONSULTANT has substantially or materially breached the standards and terms of this AGREEMENT, the CLIENT shall have any remedy or right of set-off available at law and equity.

8. Independent Contractor. CONSULTANT is an independent contractor. Notwithstanding any provision appearing in this AGREEMENT, all personnel assigned by CONSULTANT to perform services under the terms of this AGREEMENT shall be employees or agents of CONSULTANT for all purposes. CONSULTANT shall make no representation that it is the employee of the CLIENT for any purposes.

9. Confidentiality. (a) Confidential Information. For purposes of this AGREEMENT, the term "Confidential Information" means all information that is not generally known by the public and that: is obtained by CONSULTANT from CLIENT, or that is learned, discovered, developed, conceived, originated, or prepared by CONSULTANT during the process of performing this AGREEMENT, and relates directly to the business or assets of CLIENT. The term "Confidential Information" shall include, but shall not be limited to: inventions, discoveries, trade secrets, and know-how; computer software code, designs, routines, algorithms, and structures; product information; research and development information; lists of clients and other information relating thereto; financial data and information; business plans and processes; and any other information of CLIENT that CLIENT informs CONSULTANT, or that CONSULTANT should know by virtue of its position, is to be kept confidential.

(b) **Obligation of Confidentiality.** During the term of this AGREEMENT, and always thereafter, CONSULTANT agrees that it will not disclose to others, use for its own benefit or for the benefit of anyone other than CLIENT, or otherwise appropriate or copy, any Confidential Information except as required in the performance of its obligations to CLIENT hereunder. The obligations of CONSULTANT under this paragraph shall not apply to any information that becomes public knowledge through no fault of CONSULTANT.

10. Assignment. Neither party may assign or subcontract its rights or obligations under this AGREEMENT without prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this AGREEMENT in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of its assets.

11. Cooperative Purchasing. CONSULTANT and CLIENT agree that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without CONSULTANT or CLIENT incurring any financial or legal liability for such purchases.

12. Governing Law. This AGREEMENT shall be governed and construed in accordance with the laws of the State of Utah without resort to any jurisdiction's conflicts of law, rules or doctrines.

Submitted by:

Municipal Code Corporation

By: *Brian Gilday*

Title: Brian Gilday - President, Website Division

Accepted by:

By: _____

Title: _____

Date: _____



From: John Barlow, Hildale City Manager
To: Mayor and Council
Date: February 26th, 2020
Subject: Cancellation of Agreement with Mr. Ezra Nielsen

Orientation:

The Utility Department over many years has invested in and maintained a fiber optic system. As with most public infrastructure projects in this town, it (by hearsay) involved the help in one manner or another of a lot of individuals and/or entities. After it came to my attention that there could possibly be any dispute over ownership or use rights, I did a thorough review of Hildale City's records and based on that analysis, the only person that Hildale City had any record of contributing to the system (and therefore the only person that could make a credible claim of ownership) was Mr. Nielsen.

Hildale City has records that show there were some costs shared with Ezra Nielsen when some of the fiber optic lines were put in. Additionally, there was a memorandum of understanding between Mr. Nielsen and the Hildale City that outlined some rights of use "throughout the community" with "unfettered" access.

In 2018, Hildale City administration reviewed the current state of ownership and access to the fiber system and determined that there was some exposure to the City by the loose agreement with Mr. Nielsen. I contacted Mr. Nielsen and found that he was living in Idaho at the time, was not at that time using the fiber system, but did exert some rights to it.

History with Mr. Nielsen

After explaining to Mr. Nielsen that the administration would like clean up any agreements or exerted rights to the fiber system, Mr. Nielsen was very willing to make a new agreement with Hildale City. On April 20th, 2018, I signed an agreement with Mr. Nielsen that limited the access and use of the fiber system and moved the relationship from a potential claim of partial ownership to that of profit share (conditioned on Council approval). The Hildale City Council approved this agreement on July 11th, 2018.

In 2019 Hildale City officially established a fiber optic department. More analysis has been done the financial viability of different options for the use of the fiber optic system and none of these options are likely to be very lucrative. Additionally, the staff became aware of some of the real problems with public private partnerships in providing utilities (or utility like service) to the public.

Mayor: Donia Jessop
City Council: Maha Layton, Lawrence Barlow
Stacy Seay, JVar Dutson, Jared Nicol

320 East Newel Ave.
P.O. Box 840490
Hildale, UT 84784

In February of 2020, the Mayor and I met with Mr. Nielsen, and again explained the Cities' situation and some of the difficulties that naturally occur when trying to best use the fiber optic system. We how those things are exacerbated when it involves a public private partnership.

We explained that there is a conflict of interest between for-profit private entities and public utility providers. Utility providers have the objective of providing the service at the least cost possible (i.e. without a profit) and private entities are (presumably) in it to make money (i.e. a profit).

We also explained that private partnerships can complicate our tax-exempt status.

Lastly, we explained that Hildale City and the Utility Department are not in a position to try and make Mr. Nielsen fully whole for all of the time and money he presumably spent on the fiber optic system. We appealed to his desire to see the asset benefit the public rather than pursue the amount of financial gain that he might feel he has a right to. I posed that if he would be willing to fully release any claim to the fiber optic system in Hildale and Colorado City, then the City may be willing to do small gesture (e.g. pay his internet bill for a time) in return for, and in recognition of, his investment.

He was extremely receptive and expressed that, although he has made significant investments in the system, his primary objective is to see it benefit the public and see the system used at its full potential.

Later that day, we discussed over email possible options, and decided that the present value of 10 years of internet service at his work and residence was approximately \$10,000.00. He agreed to release all claims to the systems (Hildale City and TOCC) for that amount, in hopes that it would help the Cities use the system to its full potential.

Decision Point

The City Council can:

1. Continue with the profit-share agreement in place. This will likely not cost the City very much money; however, it creates legal and ethical complications because this type of public-private partnerships are difficult.
2. Cancel the Agreement and pay Mr. Nielsen \$10,000.00 to release any claim to the system (Hildale and TOCC).
3. Legally dispute any ownership or rights to the system that may be asserted by Mr. Nielsen.

May 5, 2006

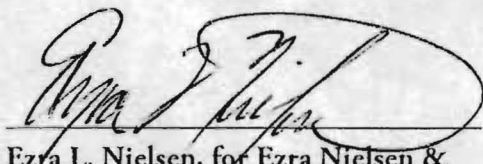
Memorandum of Understanding Between:

Ezra L. Nielsen & Associates and Hildale City

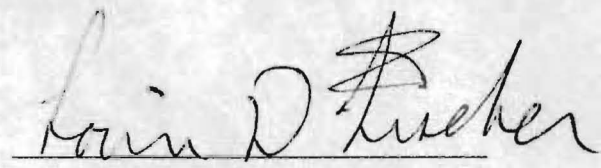
RE: Fiber Optic Cables in Hildale and Colorado City

In recognition of the fact that Ezra Nielsen and Associates and related companies have substantially invested into the development of the fiber optic system since its inception we agree as follows:

- That Ezra Nielsen & Associates has extensive use of the fiber system, has many connections throughout the community and that many strands of fiber being used are in cables shared with other users.
- That Ezra Nielsen and Associates may continue to use the fiber optic system free of any tariffs and may have free and unfettered access to the "dark" strands of fiber that Ezra Nielsen and Associates are using.
- That Ezra Nielsen and Associates will maintain, at their own expense, the fibers they are using and that the City will allow access to the street pedestals upon reasonable notice.
- The City will maintain Blue Staking and damage prevention program of the conduits.
- Future expansion of the system will be allowed as agreed upon by the parties.



Ezra L. Nielsen, for Ezra Nielsen &
Associated Companies



Lorin D. Fischer, for Hildale City



HILDALE CITY

P.O. BOX 840490 320 E. NEWEL AVE. HILDALE, UTAH 84701-0490 ESTABLISHED 1963 FAX: 435-874-2603

March 3, 2017

Ezra Nielsen
ezra@agricolor.us

RE: Fiberoptic Network

Dear Ezra,

The City would like to have a good relationship going forward with the fiberoptic network and right now there are many unanswered questions and the relationship is unclear. The City understands that there was a Memorandum of Understanding that acknowledged value in using the system to Ezra L. Nielson & Associates. The City also relies upon the system for public service, emergency responses, critical infrastructure monitoring, public safety, and so forth. It is important to the City to ensure that the system is usable and in working order.

In a good faith effort to reach a clear path forward, we hope you are willing to work together. To that end, the City is going to move forward with an appraisal to define the system. There is some information that will be needed from you as reflected in the three questions below:

- Who were the entities involved in Ezra L. Nielsen & Associates at the time of the 2006 memo? Have there been any additions or deletions from that list since that time?
- Where did you have connections on the system previously? What connections are you currently using?
- Do you have any records of any of your monetary investment into the fiber system? If so please provide it to the City.

The answers to these questions will be very helpful in defining a clearer path forward. Propagating an ambiguous relationship is not in either party's best interests. Rather than opening up a whole new set of issues and impacts on the system, please understand that the City will not agree to expand the system by making new connections until the current questions and issues are worked out. This includes not allowing a contractor to tamper with the system or access pedestals.

We estimate that the appraisal will be completed within 30 days. After the appraisal is complete, we would like to meet with you and discuss how to define a sustainable relationship that is clear, understandable, and works for everyone involved.



HILDALE CITY

P.O. BOX 840490 320 E. NEWEL AVE. HILDALE, UTAH 84784 PHONE: 435-874-2323 FAX: 435-874-2603

Sincerely,

Philip Barlow
Hildale City Mayor

cc: Blake Hamilton

AGREEMENT

for

PUBLIC-PRIVATE PARTNERSHIP TO IMPROVE AND EXPAND THE HILDALE CITY, UTAH FIBER OPTIC NETWORK

This Agreement is made and entered into as of the first date set forth below, between Hildale City, a municipal corporation of the State of Utah ("Hildale") and Ezra L. Nielsen, d/b/a Ezra Nielsen & Associates ("ENA"). This Agreement may refer to Hildale or ENA herein as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, Hildale owns a network of fiber optic conduits, cables and other hardware in and around Hildale City, Utah and Colorado City, Arizona (the "Fiber Optic Network"), previously developed in partnership with United Communications Group, Inc., a now-defunct Utah corporation.

WHEREAS, ENA and affiliated entities have contributed substantial materials and labor to the planning, installation and maintenance of the Fiber Optic Network.

WHEREAS, Hildale has previously agreed to allow ENA to use and maintain certain fiber strands on the Fiber Optic Network without charge.

WHEREAS, the Parties each desire to enable future improvement and expansion of the Fiber Optic Network through a continued partnership with clear delineation of rights and responsibilities.

TERMS AND CONDITIONS

In consideration of the covenants and representations set forth below, the Parties hereby agree to be bound by the following terms and conditions:

1. Value of Existing Infrastructure. The parties agree and acknowledge that, as of the date of this Agreement, the value of the Fiber Optic Network is one million dollars (\$1,000,000) (the "2018 System Value"), determined by reference to a good faith estimate of replacement cost at current prices.
2. Guaranteed Use. Hildale guarantees that ENA shall have unrestricted, exclusive use of two (2) fiber strands in the Fiber Optic Network (the "Guaranteed Lines") for the duration of this Agreement. ENA agrees that it will be responsible for ensuring that its use complies with any and all applicable state and federal regulations, and does not in any way adversely affect the Fiber Optic Network.

3. Maintenance Access. Hildale agrees to allow ENA, upon reasonable notice under the circumstances, to access Hildale's street pedestals and other fiber facilities for the purpose of maintaining its Guaranteed Lines.
4. No Commercial Use. ENA agrees that it shall not engage in any commercial use, defined as selling fiber optic service to an end user for compensation, of its Guaranteed Lines except with Hildale's express written consent, which Hildale may give or withhold in its sole discretion.
5. Profit Sharing. In the event that Hildale realizes a profit from selling, leasing, or otherwise granting to another any portion of or right to the Fiber Optic Network, the Parties agree that ENA shall receive a share of the profits ("ENA's Profit Share"), "profits" being defined as the net remaining after deducting from revenue any and all reasonable expenses incurred by Hildale to generate the revenue. The parties agree that ENA's Profit Share shall initially be forty percent (40%), subject to adjustment as provided herein.
6. Adjustments to Profit Sharing. If, after the date of this Agreement, Hildale expends public funds or incurs public indebtedness to materially improve or expand the Fiber Optic Network, or to interconnect the Fiber Optic Network with an external network, ENA's Profit Share shall be adjusted accordingly, as follows. ENA's Profit Share percentage shall at all times equal the result of dividing (a) four hundred thousand dollars (\$400,000) into (b) the sum of the 2018 System Value plus the cumulative amount of Hildale's future expenditures.
7. Profit Sharing Payments. Hildale shall pay over ENA's Profit Share to ENA on a quarterly basis, within 30 days following the end of each calendar quarter.
8. Non-Competition. ENA agrees that it shall not, for the duration of this Agreement, engage in, or solicit another to engage in, any business within the boundaries of Hildale City, Utah and Colorado City, Arizona that competes with the Fiber Optic Network. Specifically, any business that provides fiber optic connections or internet access to end users.
9. Binding Effect and Assignment. The rights and obligations of each Party under this Agreement shall be binding upon and inure to the benefit of its successors and permitted assigns. ENA may not assign this Agreement, in whole or in part, without Hildale's prior written consent. Any attempted assignment without Hildale's prior written consent shall be null and void. Notwithstanding, Hildale may assign this agreement, in whole or in part, in its sole discretion without ENA's consent.
10. Termination. The duration of this Agreement shall be for as long as ENA continues to exist and remains solvent under applicable bankruptcy law, and shall automatically terminate if ENA (a) becomes subject to any voluntary or involuntary bankruptcy or insolvency proceedings that are not dismissed within thirty (30) days, (b) makes an assignment for the benefit of its creditors, (c) appoints a receiver, trustee, custodian or liquidator for all, or a substantial portion of, its property, assets or business, or (d) resolves to, or becomes subject to a court order to, wind up or dissolve its business.

11. Governing Law and Venue. This Agreement shall be governed by Utah law. Any legal action arising out of the performance or breach of this agreement shall be brought only in a state or federal court located within the State of Utah.
12. Entire Agreement. This Agreement represents the Parties' entire agreement regarding the issues covered herein.
13. Waiver and Modification. No amendment, modification or waiver of this Agreement shall be valid or enforceable unless made in a writing signed by the Parties.
14. Counterparts. The Parties may sign this Agreement in one or more counterparts, and facsimile copies shall have the same force and effect as originals.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their authorized officers.

EZRA NIELSEN & ASSOCIATES

4/20/2018
DATE


EZRA NIELSEN, OWNER

HILDALE CITY

4/20/2018
DATE


JOHN BARLOW, CITY MANAGER

Hildale City Council Meeting

320 East Newel Avenue, Hildale, Utah 84784
Wednesday, February 6, 2019 6:30 p.m.

Present:

Mayor: Donia Jessop
Council Members: Stacy Seay, JVar Dutson, Jared Nicol, Maha Layton, Lawrence Barlow
City Recorder: Vincen Barlow
City Manager: John Barlow
Staff: John Barlow, Christian Kesselring, Harrison Johnson, Vincen Barlow, Officer Robb Radley, Weston Barlow, Ralph Johnson Jr., Mariah La Corti
Court Monitor: Roger Carter
Public: Vance Barlow, Willie Jessop, Tracy Barlow, Charles Hammon, Joan Barlow, Mayor Joseph Allred, Lorin Zitting, Dean Kingsley (this list may be incomplete)

#1 Call to Order

Meeting called to order at 6:30 p.m. Roll taken, quorum present.

#2. Pledge of Allegiance

Jared led the crowd in the pledge of allegiance.

#3. Public Comment

Willie Jessop addressed the Board about a project he would like to bring to the city. He will be bringing Engineers from the project to the next council meeting to discuss details, he requested to be on the agenda that date. He is looking for input from the City Council to make sure he has their support. He would like to re-record the lots. JVar asked him to bring this before the Planning and Zoning Commission prior to next meeting. Willie explained that he is unhappy with the zoning that they put in place. Mayor Jessop informed him that the re-zone process is a simple one and invited him to sit down with her and the City Manager to go through the process.

In addition, he requested that the City identify themselves with a "Welcome to Hildale City" sign and bring amenities to town for the individuals staying at his hotel. He will be bringing a beer license application for this business back to the City for re-consideration and will also be asking to put some kind of concessions across from the hotel. He has a company willing to assist in putting in donated playground equipment when the City gets ready for such.

Maha Layton addressed the council as a citizen, and thanked the council, administration, and public for their work within the last year. She is very excited about the positive things that the council is working on now.

#4. Hinton Burdick – Auditors Presentation

Mike Spilker with Hinton and Burdick reviewed the audit. Overall, their opinion is that we are in compliance with generally accepted accounting principles. He noted a few specific

improvements from FY2017. He walked the council through revenues and expenses for Hildale City and Hildale/Colorado City Utility Department.

JVar asked his feelings on interfund transactions. Mike stated that this is scrutinized closely by the state and has requirements that must be met.

#5. Oversight Items

A. Financial and Check Registry Review and Approval

John Barlow presented. He walked the council through revenues and expenditures with comparison to budget for the month ending January 31, 2019. A check registry was provided for approval.

JVar Dutson moved to pay the bills as they become due and the funds become available.

Maha Layton seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

B. Approval of Minutes of Previous Meetings

JVar Dutson moved to approve the minutes of the January 2, 2019 Meeting.

Stacy Seay seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

JVar Dutson moved to ratify the minutes of the November 27, 2018 Utility Board Meeting.

Stacy Seay seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		

JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

C. Discussion on Managers Report

John Barlow presented. He recapped a number of positive things that happened in 2018. The Department Heads and City Managers have scheduled a time each month to get together to collaborate.

John is in the Army Reserves and has been asked to go on a 9-month deployment. He and the Mayor are working on a plan on what should happen during his absence. Councilmembers expressed their support of him and thanked him for his service.

Jared expressed concerns about the lack of policies and procedures for the Community Outreach Department. John explained that this Department is ran completely by volunteers, although some staff time has been spent assisting when needed. He invited councilmembers to take the initiative to create an organizational structure and allocate some funds toward the department, if possible, if they feel the need.

Jared brought up discussion on a paid internship agreement with Water Canyon School. John gave a review of the details on this.

#5. Consent Items

A. Consideration on FY2018 Homeland Security Grant Articles of Agreement

JVar Dutson moved approve proceeding with the FY2018 Homeland Security Grant.

Stacy Seay seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

B. Ratification of Local Consent for Beer License for Colorado City Music Festival

The City is supporting this event by including it under our insurance, having a city representative there to make sure things are going well and risks are mitigated. As a thank you, the music festival has offered a number of tickets to the city.

Maha expressed concerns about Hildale City providing insurance for this private event.

John was asked to research if there are any ordinances that may influence this decision.

Stacy Seay moved to Ratify the Local Consent for a Beer License for the 2019 Colorado City Music Festival, pending staff approval and oversight.

Jared Nicol seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton		X	
Jared Nicol	X		

Motion carried.

C. Consideration of Expenditure to Remove Blight

John Barlow presented. He explained how it is hard to attract economic development when looking at Hildale City’s current state. This specific blight removal example was requested by a company looking into purchasing the New Era building. The question for the council is if they would like to spend city money to remove blight to attract new businesses to town.

John has talked to the property owner who is in agreement with this. Jared felt it would be worth a conversation to ask the realtor to split the cost. He also expressed his concerns that there are other properties in the area that are just as bad, if not worse. John pointed out that the council is wanting to attract new businesses to town and that this may be an important step in that. Maha agreed that John is following directive to do what is necessary to attract businesses.

Stacy suggested that this be worked into the budget for future years, and the decision on what blight is be left up to the City Manager. There was brief discussion on strategic vs. operational.

Lawrence wanted it acknowledged that this property owner is giving up this property value for the betterment of this city.

Lawrence Barlow moved to approve the expenditure for the demolition of the blight located at 865 North Pinion Street.

Stacy Seay seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson		X	
Maha Layton	X		
Jared Nicol		X	

Motion carried.

D. Consideration and Possible Action on Endorsing Local Agricultural Business; Baskets and Bowls

The owner of the business Baskets and Bowls, Dean Kingsley, was invited to speak to the council. They are asking the City to endorse them legally growing medical marijuana in Hildale City. Utilities would benefit from the services they will be using. They will be heavily monitored on the state level. They will be required by the State of Utah to have cameras running 24 hours a day, so there should be no crime issues. They anticipate bringing 25-30 good paying jobs for the residents of surrounding areas, with projected growth. Their cannabis will not be sold locally, it will be sold to the State of Utah to be sold at their dispensaries.

Stacy asked why he needs endorsement from the City. He explained that the State of Utah will only allow 10 licenses and having City support now will put them at the forefront of receiving one of those.

Jared brought up a house bill that makes it impossible for a city to reject this type of business. Dean described why he chose to locate his business in Hildale, why the city endorsement is important, and what the plan for his business is.

Lawrence asked about the processing of the cannabis and what effect it would have on the environment. Dean responded that if endorsed, there will be guidelines put into place by the State that they understand they will be required to follow.

Stacy Seay moved to endorse Baskets and Bowls effort to legally grow medical marijuana in Hildale City.

JVar Dutson seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

E. Consideration and Possible Action on Memorandum of Understanding with Washington County Drug Task Force

Several law enforcement agencies in Washington County have maintained a drug task force to efficiently investigate and prosecute controlled substance abuse. The Washington County Commission is requiring this Memorandum of Understanding be signed by participating agencies in order to continue their operations.

JVar Dutson moved to approve the Memorandum of Understanding with Washington County Drug Task Force and direct Mayor Jessop and City Recorder to sign.

Maha Layton seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

7. Strategic Items

A. Development of Strategic Objective

- i. Curfew
- ii. Creation of Economic Committee
- iii. Maxwell Water Sales

Sponsoring councilmembers discussed their desire to add items to the pipeline.

JVar Dutson moved to add Curfew, Creation of Water Sales and creation of an Economic Committee to the pipeline to be addressed at the March Work Session. Lawrence Barlow seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

- iv. Welcome Sign
- v. Welcome center
- vi. Branding Campaign

These items were discussed at the work session on February 5, 2019 and are not ready for formal action at this time.

B. Strategic Direction Request from Administration

i. Approval of Resolution Dropping Impact Fees

The Utility Department, by direction of the Utility Board, asked the cities to drop the impact fee, the city council directed administration to go through the necessary process. John explained one recommendation by the Court Monitor was to work with Colorado City on the timing. Vance

Barlow, Town Manager of Colorado City explained that their city council approved the concept. They are in the process of working with their attorney and reducing the fee to the same level.

**Maha Layton moved to approve Resolution Number 2019-02-001 and direct Mayor Jessop and City Recorder to sign.
Lawrence Barlow seconded. Roll call vote:**

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

- ii. Pursue Creating Fiber Fund Under Utility Department**
- iii. Pursue \$150,000 Intergovernmental Loan to Fiber Fund**
- iv. Pursue Drafting Contract with Ezra Nielsen to Operate Fiber Assets with Utility Supervision**

There is about a million dollars worth of fiber assets existing in the cities. The city being in charge of this infrastructure and making it available to all ISP’s, rather than a private entity, will make service and costs more competitive.

This is a concept proposed by the Utility Department. The Utility Board, after an extensive discussion, agreed to recommend that the cities pursue this. There are several things that will need to be worked out. The question before the council is if they would like to direct administration to pursue this.

Mayor Allred was invited to share his feelings. He stated that he sees no problem with moving forward with discussions, he just has an overall concern regarding ownership. He expressed worries regarding public/private partnerships and control of this asset.

**Jared Nicol moved to direct administration to pursue creating a Fiber Department, an Intergovernmental Loan and contract with Ezra Nielsen.
JVar Dutson seconded. Roll call vote:**

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

D. Executive Session

Lawrence Barlow moved to go into Executive Session for the Discussion on Acquisition of Real Property and Indemnification Agreement. Maha Layton seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

Roger Carter, John Barlow, Vincen Barlow and Christian Kesselring were invited to attend.

Lawrence Barlow moved to close the Executive Session and Reconvene the Regular Meeting. JVar Dutson seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		
Maha Layton	X		
Jared Nicol	X		

Motion carried.

Mayor Jessop called the regular meeting back to order at 10:29 p.m.

ii. Consideration and Possible Action on Indemnification Agreement

Christian Kesselring presented. The title company is asking for this because of liens that touch the property. The risk is low enough that he recommends proceeding. If approved, if the title company ends up having to pay any legal fees associated with this, the city would have to pay them. The title company is insuring any loss concerning this. The deal will be closed with approval of the agreement

Lawrence Barlow moved to issue the Indemnification and authorize the Mayor and City Recorder to sign it. JVar Dutson seconded. Roll call vote:

	YES	NO	ABSTAIN
Lawrence Barlow	X		
Stacy Seay	X		
JVar Dutson	X		

Maha Layton	X		
Jared Nicol	X		

Motion carried.

Lorin Zitting, from Canaan Mountain Holdings, thanked Christian for his great work.

8. Reports from Mayor and Council

None

9. Adjournment

With no other business, meeting adjourned at 10:35 p.m.

I verify that a copy of the notice and agenda was delivered to the Mayor and City Council members and posted at the City Hall, 320 E. Newel Avenue, Hildale, Utah and sent to the Utah State Public Meeting Notice coordinator.

Minutes were approved at the City Council Meeting on March 6, 2019.

Vincen Barlow

Vincen Barlow, City Recorder



RELEASE AGREEMENT

This Release Agreement is hereby made by and between Ezra L. Nielsen, d/b/a Ezra Nielsen & Associates (“ENA”) and the City of Hildale, Utah (The “City”). ENA and Hildale are referred to herein respectively as a “Party” or, collectively, as the “Parties.”

RECITALS

WHEREAS, the City, together with the Town of Colorado City, owns a network of fiber optic conduits, cables and other hardware in and around Hildale City, Utah and Colorado City, Arizona (the “Fiber Optic Network”), previously developed in partnership with United Communications Group, Inc., a now-defunct Utah corporation.

WHEREAS, ENA and affiliated entities have contributed substantial materials and labor to the planning, installation and maintenance of the Fiber Optic Network.

WHEREAS, the City has previously made agreements with ENA regarding the Fiber Optic Network, including a Memorandum of Understanding dated May 5, 2006 and an Agreement for Public-Private Partnership dated April 20, 2018 (the “Hildale Agreements”).

WHEREAS, ENA desires to release the City from any and all liability related to the Fiber Optic Network, and to cancel any and all agreements heretofore made regarding the Fiber Optic Network, on the terms and conditions set forth herein.

TERMS AND CONDITIONS

In consideration of the promises and representations made herein, ENA and the City hereby agree to be bound by the following terms and conditions:

1. Payment. The City agrees to pay ENA the sum of \$10,000 by demand draft within 30 days after the Effective Date.
2. Lease. The City agrees to lease one strand of dark fiber on its Fiber Optic Network within Hildale City (the “Leased Fiber”) to ENA at no cost for the duration of Ezra Nielson’s life. Title to the Leased Fiber shall remain with the City. ENA agrees that it will be responsible for ensuring that its use complies with any and all applicable state and federal regulations and does not in any way adversely affect the Fiber Optic Network. ENA shall not use or allow any other person to use the Leased Fiber for any commercial purpose, defined as selling fiber optic service to an end user for compensation, except with the City’s express written consent, which the City may give or withhold in its sole discretion.
3. Maintenance. The City shall generally maintain the Leased Fiber in good working order and shall respond to requests for service by ENA in a prompt and commercially reasonable manner. The City does not, however, guarantee uninterrupted and error-free operation of the Leased Fiber. ENA shall not, and shall not permit others to, access, rearrange, disconnect, remove, attempt to

- repair, or otherwise tamper with the City's Fiber Optic Network, without the prior written consent of the City, which consent shall not be unreasonably withheld.
4. Release. ENA, on behalf of itself and, as applicable, its successors, heirs, assigns, executors, agents, trustees, attorneys, employees, and representatives, hereby fully and irrevocably release, acquit, and forever discharge the City of Hildale and the Town of Colorado City and their successors, assigns, officials, officers, agents, attorneys, employees, representatives and insurers from any and all liabilities, claims, causes of action, suits, losses, damages, costs, expenses and demands arising out of or related to the Fiber Optic Network, of any kind, nature, character, type, or description and whether known or unknown, which heretofore exists or may exist, including but not limited to any claim or potential claim against the City of ownership or any other legal or equitable rights in the Fiber Optic Network (the "Released Claims"). Releasors further covenant to not bring any legal action based on the Released Claims.
 5. Contract Cancellation. ENA agrees that the Hildale Agreements and any other prior agreements made by or with ENA in relation to the Fiber Optic Network are hereby cancelled, terminated, and superseded, and shall henceforth be of no further force or effect. This section shall not affect the contractual rights of ENA or any other party with regard to this Release Agreement or any future agreement.
 6. Binding Effect and Assignment. The rights and obligations of each Party under this Agreement shall be binding upon and inure to the benefit of its successors and permitted assigns. ENA may not assign this Agreement, in whole or in part, without Hildale's prior written consent. Any attempted assignment without Hildale's prior written consent shall be null and void. Notwithstanding, Hildale may assign this agreement, in whole or in part, in its sole discretion without ENA's consent.
 7. Governing Law and Venue. This Agreement shall be governed by Utah law. Any legal action arising out of the performance or breach of this agreement shall be brought only in a state or federal court located within the State of Utah.
 8. Entire Agreement. This Agreement represents the Parties' entire agreement regarding the issues covered herein.
 9. Waiver and Modification. No amendment, modification or waiver of this Agreement shall be valid or enforceable unless made in a writing signed by the Parties.
 10. Counterparts. The Parties may sign this Agreement in one or more counterparts, and facsimile copies shall have the same force and effect as originals.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their authorized officers.

EZRA NIELSEN & ASSOCIATES

DATE

EZRA NIELSEN, OWNER

HILDALE CITY

DATE

DONIA JESSOP, MAYOR

ATTEST:

RECORDER



From: John Barlow, Hildale City Manager
To: Mayor and Council
Date: February 26th, 2020
Subject: Staff Summary on Fiber Optic System

Orientation:

The Cities own a fiber optic system that is being managed by the Utility Department. The fiber system is mostly being used by the utility department to operate utility systems; however, the Cities have agreed, in isolated incidents, to allow some use of the fiber for commercial use. The Cities have not authorized anyone to use the municipally owned fiber infrastructure for the purposes of providing commercial internet directly to customers.

Providing Internet:

There are some economic and quality of life benefits to having high-speed commercial internet available to the public. In most parts of Hildale City, residents and businesses rely on radio to get internet which comes with speed and quality limitations.

The Utility Department and Hildale City Administration briefly considered the possibility of providing internet directly to customers; however, it became quickly evident that it would be financially costly and legally tenuous. Additionally, I feel like there is strong public sentiment against the City providing internet directly.

For the reasons stated above, Hildale City staff has not fully pursued the idea of directly providing internet with the fiber optic system.

Options Considered:

The City has expended resources to consider the following options;

1. continue to use the system as we are,
2. allow Internet Service Providers (ISPs) to use the fiber system to provide commercial internet, and
3. turn the system over to experts through an RFP process or transfer the system to a government entity that specializes in fiber systems.

Option 1: Continue as We Are:

Hildale City is at the least possible financial and legal risk by continuing to operate the system as we currently are. The major benefit to not changing anything would be that very little money would be



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📠 435-874-2603

🌐 www.hildalecity.com

spent on maintaining and upgrading the system and there would be very legal risk because we would not be working within the telecommunications world or with other partners.

The two major costs to continuing to operate the way we are (i.e. not allowing the system to be used to provide commercial internet), is that 1) our system will become less valuable overtime as ISPs build up parallel systems, and 2) the economic and well-being opportunity cost from not having high-speed internet immediately available to the public.

Although, both costs are very difficult to quantify, they are both very real.

Option 2: Allow System to be Used Competitively by ISPs:

As a strong alternative to the cities actually providing internet, the cities could allow ISPs to use the system. This would create a competitive platform on which ISPs could offer internet service to residents and businesses. The City would offer a master fiber agreement (i.e. the same agreement to every ISP) to anyone who would like to provide internet.

Master fiber agreement key points:

1. The cities are paid about 30% of what the ISP charges the customer.
2. The cities own and maintain the fiber system.
3. The cities are not required to keep the system at any service level.
4. When/If the ISPs elect to expand the system, the new portions of the system will be deeded to the cities (like other utilities); however, the ISP that expands the system will forever only pay 15% for the customers connected on the expanded line.
5. The ISP, **NOT THE CITY**, will be the internet provider and the only contact for internet customers. ISPs would be required to maintain a call center and the City would only communicate with the ISPs.
6. **If the City terminates the agreement without the consent of the ISP, the ISP will be conveyed one strand of the system.**

Benefits of Option 2:

Fiber optic internet will almost instantly be available to residents. This will likely have a positive impact on Hildale City's economy and will likely over the next decade or two have a marginal impact on the City's tax revenue.

The cities fiber system will likely be maintained and expanded. It will likely, at least, keep the asset from devaluing.

Drawbacks of Option 2:

The City will be operating in a new area, and with that comes new financial, operational, and legal risk.

Mayor: Donia Jessop
City Council: Maha Layton, Lawrence Barlow
Stacy Seay, JVar Dutson, Jared Nicol

320 East Newel Ave.
P.O. Box 840490
Hildale, UT 84784

The legal and operational risk is hard to quantify. One consideration is that the Cities' role would be very small, and once a customer is set up there would be very little maintenance or customer interaction required. Another consideration; however, is the ISP business is not extremely lucrative and therefore tends to attract dynamic and aggressive personalities; thereby, enhancing the Cities' legal risk. After discussing these risks with the fiber superintendent (Weston Barlow), the Utility Director (Harrison), and the City Attorney (Christian), we are confident that the potential risks (although they are very real) are manageable.

Option 3: Turn System Over

For mostly informational reasons, the we investigated ways to maximize the use of the system while outsourcing the operational, legal, and financial risk. Below are some possible options:

1. Sell the system to a private company with contracts built in to meet the municipal needs.
 - a. Benefit: No legal, financial, or operational risk.
 - b. Drawback: Creates a monopoly for fiber optic internet services and the City would be unlikely to recover the sunk costs that the City incurred putting the infrastructure in from the sale.
2. Hand the System over to a government type entity that does fiber exclusively. This would essentially be doing option 2; however, another (more specialized) government entity would own and operate it.
 - a. Benefit: There would be competitive internet provided on a very professionally ran system. No legal or operational risk.
 - b. Drawback: The cities would have to agree to take all the financial risk. It would be politically difficult to make happen.

UEP Involvement:

Although the Hildale City administration and the utility department were working toward a proposal and developing options for the fiber system, other matters were prioritized, and progress was slow.

ISPs (namely Tom Knudson), business, and residents were becoming increasingly frustrated with the lack of action from the City. The City would queue that they are looking into using the system for internet in one manner or another, and that would scare off investment, but then nothing would happen. This is not to anyone's fault; it is just the nature of the City being under resourced but also knowing that at some point the system should be used more productively.

In 2019, Tom Knudson went to the UEP Board and asked for easements through the UEP's property to work around the City. The UEP, recognizing that would make an absolute mess, directed Jeff Barlow to see if there was a better solution. Jeff talked with Tom Knudson and with the city staff (Christian and Harrison) and developed an outline for a possible agreement that worked for both parties (and future ISPs).

After I returned as City Manager, I met with Christian and Harrison, Tom Knudson, and Jeff Barlow. I reviewed a draft version of the master fiber agreement and recommend some changes which are now reflected.

“Why now?”

Z Fiber, a new company, has put in a fiber line from Hurricane, Utah, at a significant financial risk. Presumably, part of their financial analysis involved providing internet in one manner or another to Hildale City customers. I further presume, that the reason Tom Knudson (DBA TKS) is pushing the City to act, is because of that financial risk; although, I do not know the relationship between Z Fiber and TKS.

Conflict of interest disclosure:

Tom Knudson is my Uncle and I have done some very limited tax work for his business (TKS) in the past; however, this project has been the most interaction I have had with him. The Council should be aware that he is my uncle, but I do not believe that has interfered with my objectivity in this analysis.

Jeff Barlow, Director of the UEP, is my brother. While the UEP was involved with this preparing the master agreement (option 2), they do not directly benefit from any possible action the City Council could take. I do not believe that has interfered with my objectivity in this analysis.

Legal Review:

The City Attorney has been heavily involved in the development of option two, and options one and three have very little legal risk.

The City Attorney will verbally give more details at the work session; however, the City Council needs to know that there are legal risks (albeit they are estimated to be manageable) associated with option two.

For the Councilmembers that have construction experience, I will liken it to the first time you did a federal job. You knew that you would be able to manage it and deal with things as they arise, but you by know means thought, “I know exactly what I am in for legally.”

Any action taken with fiber is likely to be more legally risky than what we are doing—mostly using the system for City operations and not making it available, generally.

Financial Review:

Option 1: Very little financial risk, unless you consider opportunity cost.



Option 2: The master fiber agreement was designed to give the city almost complete control of when, and if, the City spends money on fiber. There will, although not always expressly required by the agreement, costs to the City. Outlined below are very rough best- and worst-case projections.

Worst Case Estimate			
	Month	Year	
Revenue from ISPs (80 End Users)	\$ 2,400.00	\$	28,800.00
Maintenance Costs			
Labor	\$ (5,000.00)	\$	(60,000.00)
Materials	\$ (1,000.00)	\$	(12,000.00)
Misc.	\$ (1,000.00)	\$	(12,000.00)
Net Loss	\$ (4,600.00)	\$	(55,200.00)

Best Case Estimate			
	Month	Year	
Revenue from ISPs (250 End Users)	\$ 7,500.00	\$	90,000.00
Maintenance Costs			
Labor	\$ (5,000.00)	\$	(60,000.00)
Materials	\$ (1,000.00)	\$	(12,000.00)
Misc.	\$ (1,000.00)	\$	(12,000.00)
Net Gain	\$ 500.00	\$	6,000.00

Option 3: All financial risk would be born by the City. If the City chooses this option, more financial analysis would have to be done.

Hildale/Colorado City Fiber Optic Department

Introduction

The Hildale/Colorado City fiber optic system was originally established by Twin City Power as a small link from their office to the power plant. They saw the opportunity to establish the link if they would install some conduit in the trench that was being dug to install new natural gas lines in Hildale. The original conduit that was used was a one inch thin black poly pipe. When the fiber was pulled into this it was very difficult and it was determined that bigger and better conduit was needed if the system was expanded. About this same time a company called UCG approached TCP (Twin City Power) about continuing the system as a loop around the community for other networking needs. They also approached the public school about providing a link from the old school to the new facility. This looked promising and TCP could see that it would be beneficial to have network ability for the city functions throughout the community. TCP agreed to provide the conduit to install in the gas trench as it continued to grow through the community if when UCG pulled fiber into the conduit they would guarantee four fibers for city use. Somewhere in this time Ezra Nielson approached the two entities about the use of the fiber for some network needs he had. He was also willing to invest into the fiber purchase for some of its use. Though the link for the public school never was established, UCG, Ezra, and The city all used the system very effectively for the networking they needed.

In about 2005 UCG went out of business and turned all of their fiber assets over to the city. At this time Ezra was concerned about losing his privileges to the system and wrote a letter stating his interest in the system and requested that he still be able to use his existing links. This was agreed to. Since that time there has been no other users on the system and it has been maintained by the city for the network and scada needs of the city.

Recently there has been more interest from private entities in using the fiber system for various networking needs. The city can see how this could be a

great blessing and asset for the communities and would like to have it grow into a usable system. In an effort to make the system work for all and not having a budget or personnel to establish a “network” for the public, the following guidelines are established:

Principle of Operations

The city would like to maintain the cable system that is within the city streets and is willing to provide point to point dark fiber to the public as it is available. The city is not interested in providing networking services for the public. If fiber is available for use by the public it will be provided for a very minimal fee. If the fiber is all used for the area where the public entity needs service, that entity will have to pay all costs of upgrading the system to establish the needed service. The city will maintain and repair any fiber optic lines in the city streets. The city will also establish some standards for all new construction or expansion of the system.

Establishing Service

When a member of the public would like to use the fiber optic system for a networking need, they will need to come to the utility office and fill out an application which will also let the city know where the service is needed. The city will review if fiber is available in the area needed and what construction will be needed to establish the service. A report will be written and the costs of the new service presented to the customer within one week.

City Responsibilities

The city is responsible for all repair and maintenance of the fiber optic cable in the city streets. They will not take responsibility for any networking down time or associated costs of those down times for any reason.

The city is responsible for any blue staking and public education about the system.

The city is responsible for any system expansion or new construction.

The city is responsible to provide usable ends on the dark fiber requested by the customer if it is available.

The city is responsible for any mapping and documentation of the system in the city streets.

Customer responsibilities

The customer is responsible to protect their network from any other entity.

The customer is responsible to notify the city if it appears that another entity has attached to their network without their approval.

The customer is responsible to pay a monthly user fee as established by the utility board.

The customer is responsible to notify the city if and when they would like to discontinue service.

User Fees

The city will charge the customer a five dollar per month fee for every end provided. This fee will be added to the customers utility bill.

New construction and expansion

It is the customers responsibility to pay for any new construction or expansion of the system in order to meet there needs. Any expansion in a commercial area will have a minimum of a 48 strand fiber installed. Any expansion in a residential area will have a minimum of a 24 strand fiber installed. All new construction or expansion of the system will be done by the city or a subcontractor of the city.

**NON-EXCLUSIVE NETWORK ACCESS AND USE
AGREEMENT**

Between

**[CITY OF HILDALE, UTAH]/
[TOWN OF COLORADO CITY, ARIZONA]**

and

Effective as of _____

NON-EXCLUSIVE NETWORK ACCESS AND USE AGREEMENT

This Non-Exclusive Network Access and Use Agreement (“**Agreement**”), is made and entered into as of the ____ day of _____, 20__ (“**Effective Date**”), by and between the [City of Hildale, Utah]/[Town of Colorado City, Arizona] (“**CITY**”), a municipal corporation and a political subdivision of the State of Utah and _____, a _____ (“**Service Provider**”).

RECITALS:

A. CITY desires that residents, businesses, and other entities within its coverage area have convenient and competitively priced access to high speed, broadband fiber optic services, including voice, video and high-speed data transmission and Internet access.

B. CITY will operate and maintain a wholesale fiber optic network and provide end users access to capacity on the Network, as defined and described herein, across which private service providers will be able to offer a variety of competitive high-speed broadband services.

C. The Network will increase competitive access to consumers of services by building high performance fiber optic connections between service provider interconnections and the residences, businesses, and other various entities.

D. Service Provider desires to enter into this Agreement to use the Network to provide Services, on a non-exclusive basis, within the available areas. The Parties understand that CITY, at its sole discretion, may enter into agreements with other service providers and entities.

E. CITY, on the terms, covenants and conditions contained in this Agreement, is willing to grant Service Provider the right to use the Network, to provide Services to Subscribers.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in this Agreement, CITY and Service Provider mutually agree as follows:

**ARTICLE I
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms used in this Agreement shall have the meanings set forth below:

1.1 “Agreement” means this Agreement and incorporates any Exhibits, Appendices, or other attachments referenced herein.

1.2 “CUE Agreement” shall have the meaning set forth in Section 4.6.

1.3 “Public Records Law” refers to Title 63G, Chapter 2 of the Utah Code, or Title 39, Chapter 1 of the Arizona Revised Statutes, as applicable.

1.4 “Immunity Act” refers to Title 63G, Chapter 7 of the Utah Code, or Title 12, Chapter 7, Article 2 of the Arizona Revised Statutes, as applicable.

1.5 “License” or “Property Access License” shall have the meaning set forth in Section 4.6.

1.6 “Network” means and includes, without limitation, all cables, collocation space, conduits, innerducts, manholes, nodes, optical fiber strands, patch panels, splices, switches, transmitters, junctions, terminals, internal power sources, access portals, battery backups, fault alarm systems, structures, shelters, poles or pole line attachments, similar equipment, business and operations support systems, and all articles of personal property owned or leased by CITY in connection with its fiber optics system that is used to provide Wholesale Services, as any or all of the same may be updated, supplemented, replaced or expanded, from time to time. Demarcation on the Network shall be defined as the Service Provider facing port on the CITY provider access switch and the Subscriber facing ports on the access portal installed at the Subscriber premises.

1.7 “Network Services” shall mean those services listed in CITY’s Product Catalog.

1.8 “Payment Due Date” shall have the meaning set forth in Section 5.1.

1.9 “Product Catalog” shall mean CITY’s network services and pricing, which services and pricing may be amended from time to time by CITY.

1.10 “Services” means the various services that Service Provider offers to its Subscribers over the Network.

1.11 “Subscriber(s)” means end-user residential or business customers who are being served by Service Provider through the Network.

1.12 “Service Provider” means any entity that has entered into a Service Provider agreement with CITY.

1.13 “Term” means either the Initial Term or the then-applicable Renewal Term.

1.14 “CITY’s Asset Manager” means the entity with whom CITY contracts for Network management and day-to-day operation.

1.15 “Service Level Agreement” means the document maintained by CITY which defines Network performance, operating parameters, and guarantees for Services on the Network.

ARTICLE II DESCRIPTION, TERM OF AGREEMENT

2.1 Service Provider Services. Service Provider shall use the Network to provide Services to the extent the Network is available to Subscribers. Nothing in this Agreement shall require Service Provider to use CITY’s Network exclusively.

2.2 Term. Unless sooner terminated as provided in ARTICLE XII, this Agreement shall have an initial term of one (1) year from the Effective Date (“**Initial Term**”), and shall renew in additional one (1) year terms (“**Renewal Term**”) that will each commence automatically unless either party at its sole discretion elects not to renew this Agreement by providing the other party at least ninety (90) days written notice of termination prior to the expiration of the applicable Term.

ARTICLE III NETWORK

3.1 Existing Network and Additional Phases. CITY owns the Network currently in place as of the Effective Date of this Agreement (the “Existing Network”), which is depicted on the Existing Network Map attached hereto as Exhibit “D”, and shall be provided as-is at the service level actually existing as of the Effective Date, without regard to Service Level Agreement specifications. Exhibit “D” shall be subject to revision in CITY’s sole discretion, if CITY reasonably determines that a portion of the Existing Network has inadvertently been omitted. Any undertaking to deploy additional phases of the Network shall be at Service Provider’s cost and expense. Except as provided in section 12.3 below, CITY will own any additional Network phases deployed and installed by Service Provider.

3.2 Network Design. Service Provider shall, at its own cost and expense, be solely responsible for Network design of any additional phases. The Network shall be designed to deliver according to Service Level Agreement specifications. Service Provider must include multiple Ethernet Network entry points. Service Provider may, at its sole discretion, select one or redundant entry points to connect into the Network. Service Provider shall be solely responsible for its costs to meet Network entry points including, but not limited to, interconnect costs, collocation space, rack rental, power, and other interfacing costs.

3.3 Installation of Network. Except as otherwise provided herein, Service Provider shall, at its own cost and expense, be solely responsible for additional phases of Network installation, including, without limitation, procuring rights-of-way or easements, and purchasing and installing facilities and equipment required to light and operate the Network.

3.4 Network Testing. Service Provider shall, at its own cost and expense, test each Network segment after installation to assure Network operations conform with CITY Service Level Agreement specifications. Upon CITY’s written request, Service Provider shall provide CITY a copy of the testing results.

3.5 Network Ownership. Except as provided in section 12.3, CITY shall own all Network structures, extensions, improvements and components, including those installed and deployed by Service Provider. This Agreement shall not confer on Service Provider any ownership or possessory interest in the Network, or any of its related facilities, equipment, easements or rights-of-way, or any other CITY property. Service Provider shall warranty any Network segments it installs against defects for a period of one year after installation.

3.6 Intellectual Property. In designing, installing, and operating the Network, neither party will use any third party intellectual property, except under appropriate licenses. Service

Provider is responsible for obtaining all intellectual property licenses and rights with respect to Service Provider's own equipment, software, and the like used in connection with the Network; and where applicable, is responsible for obtaining any intellectual property license or right from a third party to facilitate Network design and installation. Service Provider is not responsible for obtaining any intellectual property license or right from a third party to facilitate Network operation.

ARTICLE IV NETWORK OPERATIONS

4.1 Network Control. CITY shall have autonomy and control over the day-to-day operation of the Network, including, but not limited to, managing the platform and functionalities available over the Network. CITY shall provide primary management and control for the Network from its network operations center. Service Provider and CITY shall cooperate with each other to coordinate service turn-ups and Service deployment.

4.2 Maintenance Responsibilities. During the Term, CITY, at its cost and expense, shall be responsible for Network maintenance. CITY shall at all times maintain the Network in good working order and repair and in a safe condition, in conformity with service level agreements and all applicable laws and regulations, subject to section 3.1 above.

4.3 Troubleshooting. CITY shall respond to Network issues in accordance with its responsibilities set forth in Sections 4.4 and 4.5.

4.4 Customer Service. Service Provider shall maintain a call center to field all customer service inquiries from its Subscribers. Service Provider shall be responsible for addressing and rectifying customer service inquiries that do not involve the Network. CITY shall maintain a call center accepting calls from Service Provider to resolve customer service inquiries involving repair, maintenance or other contact with the Network. CITY shall establish procedures for tracking trouble reports and escalating resolution of inquiries as provided in Section 4.5.

4.5 Repair Timing. CITY shall restore damaged or malfunctioning portions of the Network in a timely manner. CITY acknowledges the importance of uninterrupted Network operation and shall arrive at repair sites with necessary personnel, equipment and materials and restore Network services in accordance with the service level agreements in the form attached hereto as **Exhibit A**. To the extent repairs are required to the Network to fix damage caused by Service Provider, Service Provider shall pay the repair costs. To the extent damage is caused by any other customer, CITY shall recover the repair expenses from the customer, and if the customer is Service Provider's Subscriber, Service Provider will assist CITY in making the recovery by directly billing the Subscriber for such expenses. CITY may also directly bill Service Provider's Subscribers for any such damages.

4.6 Customer Connection to Network. CITY shall provide its services to Service Provider to enable Service Provider to provide its Services to Service Provider's Subscribers. Prior to providing Services to a business Subscriber, Service Provider shall obtain from such business Subscribers either the business Property Access License, the tenant Property Access

License, or both, as the case may be, in the form attached hereto as **Exhibit B** (or such other form as may be provided by CITY). In the event Service Provider offers residential Services, Service Provider shall obtain from each Subscriber such covenants as reasonably required by CITY.

ARTICLE V

PRICING AND PAYMENTS

5.1 Network Services. In consideration of CITY's provision of the Network to be used by Service Provider for Services, and as long as Service Provider remains a Provider in Good Standing, Service Provider shall pay to CITY the prices and fees identified in the Product Catalog for Network Services, attached as **Exhibit C**. The Service Provider will be billed for services at the beginning of the service period. Invoiced fees will be due in twenty-five (25) calendar days from receipt of an invoice ("**Payment Due Date**"). In the event Service Provider disputes any fees invoiced in good faith, the details supporting such dispute must be submitted to CITY in writing prior to the Payment Due Date. If Service Provider fails to dispute all or any portion of an invoice by the Payment Due Date, the invoice shall be deemed valid by the parties and Service Provider shall have voluntarily waived all rights to dispute the same. Service Provider's obligation to pay CITY is not contingent on whether Service Provider actually received payment for the services it provided to Subscribers. Service Provider is responsible for its own collection of accounts receivable, the non-collection of which shall not impute any liability to CITY, nor relieve Service Provider of its obligations under this Agreement.

5.2 Subscriber Audits. Within 30 days after reasonable request by CITY, Service Provider shall provide copies of any and all accounting records, contracts and other documentation as the CITY may reasonably require to enable it to review and confirm the accuracy of Subscriber and Service data furnished by Service Provider for billing purposes. CITY shall not conduct a Subscriber audit more frequently than once per calendar quarter. Service Provider's failure to maintain and timely provide complete documentation as reasonably requested by CITY shall be grounds for termination of this agreement under section 12.1(a) below.

5.3 Local Fees. Service Provider shall bill for and remit to each municipality, county, or state, all applicable fees for Services imposed by those entities for Services within their jurisdictions, in the manner required by law, the actual or equivalent of applicable franchise fees, business license taxes, municipal telecommunications license taxes, E911 surcharges and other similar charges that Service Provider would have been required to pay if Service Provider were supplying Services to Subscribers utilizing its own fiber infrastructure without use of the Network, and Service Provider as allowed by law, is permitted to recover such fees, taxes, and charges by charging those fees to Service Provider's Subscribers.

5.4 Other Taxes and Fees. Service Provider shall be solely responsible for the collection and remittance of all applicable federal, state and local taxes, including, without limitation, income taxes, sales taxes, privilege taxes, or universal service fees.

5.5 Failure to Pay. If Service Provider fails to make any payments under this ARTICLE V by the Payment Due Date, in addition to all other remedies at law or in equity, CITY may collect interest on unpaid amounts at the rate of one percent (1%) per month or such lesser amounts permitted by law until Service Provider is current on all payments.

5.6 Service Suspension. Any Services with non-disputed outstanding payments exceeding 30 days past their Payment Due Date, are subject to be suspended by CITY. Charges for suspended services will continue until a service disconnect order is received by CITY. Services will be restored only upon payment of all outstanding, non-disputed amounts, that have exceeded the Payment Due Date.

ARTICLE VI MARKETING

6.1 Service Provider Marketing Efforts. Throughout the term, and any renewal thereof, Service Provider may promote its Services and the Network to acquire Subscribers, and to maintain good business relationships with Subscribers. If utilizing CITY's name, logos, or other marketing resources, Service Provider shall provide CITY: (a) a written summary of its plan for marketing Services on the Network; and (b) a non-binding twelve (12) month forecast of Subscribers and Services. Service Provider shall provide an updated non-binding forecast prior to the end of each calendar quarter during the term of this Agreement. Nothing in this Agreement shall restrict or limit CITY's ability to independently promote all or any portion of the Network, its Service Providers, and/or the service offered across the Network.

6.2 Network Service Claims. Service Provider shall not make any representations or statements regarding the Network that are inconsistent with representations or statements made in this Agreement.

6.3 Service Provider's Use of CITY's Brand Name and/or Logo. Each party may use the other party's brand name and/or logo in such party's marketing materials, advertisements and/or press releases, provided that such use shall be in accordance with the other party's brand use guidelines that are provided from time to time. Service Provider shall request written consent for any press releases using CITY's brand names and/or logos before publication. Such consent, if granted, shall be granted within ten (10) business days and not unreasonably withheld.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 CITY's Representations and Warranties. CITY represents and warrants to Service Provider as follows:

(a) Authority. CITY is a municipal corporation and a political subdivision of the State of Utah or Arizona, as applicable, and possesses all requisite power and authority to enter into and to perform in accordance with the terms, covenants and conditions contained in this Agreement.

(b) Restrictions. The execution and delivery of this Agreement, any instrument or document required by this Agreement, and the consummation of the

transactions contemplated by this Agreement will not violate any restriction contained in CITY's organizational documents, or any statute, ordinance, law, order, ruling, certificate or license, regulation, judgment or demand of any court, regulatory agency or other tribunal to which CITY is subject.

(c) Binding Obligation. This Agreement, when duly executed by CITY, shall constitute a valid, legal, and binding obligation of CITY, and shall be enforceable in accordance with its terms. The individual executing this Agreement on behalf of CITY has been duly authorized to sign this Agreement.

(d) Compliance with Government Requirements. To the best of its knowledge, CITY has not violated any rule, order or regulation issued by any government authority with respect to any license, permit, or franchise which may materially and adversely affect CITY's right or ability to execute, and perform in accordance with the terms of, this Agreement.

(e) Proceedings. To the best of its knowledge, no litigation or government proceeding is pending or threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or CITY's rights under, or ability to perform pursuant to the terms of, this Agreement.

(f) Financing Restrictions. This Agreement does not violate any terms, covenants, conditions or restrictions in any mortgages, bonds and other indentures of CITY.

(g) Resources and Capacity. CITY possesses sufficient financial, managerial and technical capacity and resources to perform its obligations under this Agreement.

7.2 Service Provider's Representations and Warranties. Service Provider represents and warrants to CITY as follows:

(a) Authority. Service Provider is an entity duly organized, validly existing and in good standing under the laws of the state of its formation, and possesses all requisite power and authority to enter into and to perform in accordance with the terms, covenants and conditions contained in this Agreement.

(b) Restrictions. The execution and delivery of this Agreement, any instrument or document required by this Agreement, and the consummation of the transactions contemplated by this Agreement will not violate any restriction contained in Service Provider's organizational document, or any statute, ordinance, law, order, ruling, certificate or license, regulation, judgment or demand of any court, regulatory agency or other tribunal to which Service Provider is subject.

(c) Binding Obligation. This Agreement, when duly executed by Service Provider, shall constitute a valid, legal, and binding obligation of Service Provider, and shall be enforceable in accordance with its terms. The individual executing this Agreement on behalf of Service Provider has been duly authorized to sign this Agreement.

(d) Resources and Capacity. Service Provider possesses and shall, at all times during the term, and any renewal thereof, maintain sufficient financial, managerial, and technical capacity and resources to perform its obligations under the terms of this Agreement.

(e) Compliance with Government Requirements. To the best of its knowledge, Service Provider has not violated any rule, order or regulation issued by any government authority with respect to any license, permit, or franchise which may materially and adversely affect Service Provider's right or ability to execute, and perform in accordance with the terms of, this Agreement.

(f) Proceedings. To the best of its knowledge, no litigation or government proceeding is pending or threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or Service Provider's rights under, or ability to perform pursuant to the terms of, this Agreement.

(g) Financing Restrictions. This Agreement does not violate any terms, covenants, conditions or restrictions in any mortgages, bonds or other indentures of Service Provider.

7.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CITY MAKES NO WARRANTIES REGARDING THE NETWORK, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE NETWORK WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION.

ARTICLE VIII COVENANTS

8.1 Conduct of Business. CITY will support the Network in accordance with engineering specifications, will operate the Network in a safe manner, and will use its best efforts to comply in all material respects with applicable laws, regulations and government orders applicable to the Network and its operation. Service Provider will use its best efforts to comply in all material respects with applicable laws, regulations and government orders applicable to Service Provider's use of the Network to provide Services. Service Provider and its end users will comply with CITY's Acceptable Use Policies which CITY may modify from time to time in its sole discretion.

8.2 Public Records Law Compliance.

(a) CITY is subject to the disclosure requirements of the Public Records Law. CITY generally considers agreements, including this Agreement, contract documents and all accompanying material to be public and subject to disclosure. A written claim of confidentiality and a concise written statement of reasons supporting the claim must accompany any material considered by Service Provider to be proprietary. Blanket claims that this entire Agreement or entire contracts are confidential will be

denied by CITY. CITY cannot guarantee that any information will be held confidential.

(b) Under the Public Records Law, Service Provider may make a claim that other records are subject to business confidentiality provisions. Upon receipt of a request, CITY will determine whether the material should be classified as public or protected, and will notify Service Provider of any determination not to classify such records as protected. CITY agrees to hold all information classified as protected in confidence and to protect it from public disclosure to the greatest extent permitted by the Public Records Law; provided, however, that if CITY's classification is challenged, CITY shall provide Service Provider written notice of such challenge and Service Provider shall be required to pay all costs, including attorney fees and court costs, in seeking to uphold such classification.

(c) Service Provider is entitled under the Public Records Law to appeal an adverse determination regarding the classification of information. CITY is not required to notify Service Provider of a request for non-protected information, and will not consider a claim of business confidentiality unless Service Provider's claim of business confidentiality is made on a timely basis and in accordance with the Public Records Law.

8.3 CITY Confidentiality. CITY believes that all information pertaining to the Network, the Agreement, and Network information subsequently submitted to Service Provider by CITY constitute trade secrets, are otherwise commercially sensitive, or relate to general security or public safety information. Disclosure of such information can be reasonably expected to result in unfair injury to CITY. Service Provider shall not disclose any information pertaining to the Network or Network operations, without CITY's prior written authorization. Service Provider agrees to strictly maintain the confidentiality of the Confidential Information, which obligation shall survive the expiration or termination of this Agreement. As used herein, "Confidential Information" includes, without limitation, the following information of CITY regardless of whether or not such information may otherwise be classified as "public" under the Public Records Law: know-how, trade secrets, business plans, personnel information, financial information, marketing plans, pricing information, product information, customer information, building plans, computer systems, software code, system logic and systems, and network architecture and layout. Service Provider acknowledges that unauthorized disclosure or use of the Confidential Information will cause substantial and irreparable injury to CITY, that money damages will not adequately compensate for such injury, and that CITY is entitled to obtain, among other remedies, immediate injunctive and other equitable relief for any breach of this Article, without any requirement to post a bond. This Section 8.3 shall survive the termination of this Agreement and shall be binding upon Service Provider irrespective of whether the Confidential Information may be otherwise publicly available under any statute or other theory of law. In the event Service Provider breaches, or threatens to breach, its obligations of confidentiality, CITY shall be entitled to injunctive relief requiring Service Provider to specifically perform and abide by its obligations of confidentiality as set forth in this Article, without the need to post a bond.

8.4 Privacy of Customer Information. Service Provider and CITY shall comply with all applicable federal, state, and local laws, regulations and ordinances regarding the protection and use of customer information.

8.5 Electronic Surveillance in Support of Law Enforcement. The parties acknowledge that Service Provider and CITY from time to time may be required to provide a Law Enforcement Agency (LEA) with the capability to conduct electronic surveillances on the Subscribers. Where CITY is providing the underlying network facilities for on-net local voice calls between Service Provider's customers on CITY's Network, CITY agrees to provide Service Provider access to any necessary elements of its Network required to comply with federal, state and local electronic surveillance requirements; provided, however, that the implementation and provision of any such electronic surveillance with respect to the Subscribers shall be Service Provider's sole responsibility and implemented by Service Provider's employees or agents, unless otherwise required by law or to fulfill Service Provider's compliance with such law. The Parties further agree no later than ninety (90) days after the Effective Date to document a method and procedure that fully sets forth the roles, responsibilities, methods, and procedures of the Parties for handling security and electronic surveillance issues related to the Subscribers. Service Provider shall be responsible for filing any and all reports with all applicable governmental agencies related to compliance with the provisions of this Section 8.5. On those occasions when Service Provider receives a court order that requires the assistance of CITY to capture or monitor on-net activity, and recognizing the non-disclosure obligations that may be contained therein, Service Provider shall advise the issuing authority that CITY's assistance is required and the issuing authority shall direct and serve the court order upon CITY. If either CITY or Service Provider receives an initial inquiry from the LEA, prior to the issuance of a court order, which will require the assistance of the other party to capture or monitor on-net activity, that Party shall request the LEA to name and serve both CITY and Service Provider.

8.6 Quality of Service Standards. Service Provider shall comply with the most restrictive of applicable federal, state, and local laws, regulations and ordinances regarding quality of service standards for all of its Services to assure uniformity of service to all customers connected to the Network.

8.7 Damage or Destruction. In the event any segment of the Network is damaged or destroyed, CITY or Service Provider shall give immediate notice to the other party of the occurrence of the damage or destruction. CITY and Service Provider shall cooperate with each other to reroute or substitute services delivered by means of the affected portion of the Network to allow for continued and least interrupted service to customers. CITY shall have sole repair obligation and shall use its best efforts to restore or reroute service as quickly as possible so that the use of the Network is minimally disrupted.

8.8 Service Provider Government Approvals. Service Provider has all necessary government approvals to enter into and perform its obligations under this Agreement, and, if applicable, shall comply with all rules and regulations of the Utah or Arizona Public Service Commission, as applicable, and of the Federal Communications Commission.

8.9 CITY Government Approvals. CITY has all necessary government approvals to enter into and perform its obligations under this Agreement, and, if applicable, shall comply with all rules and regulations of the Federal Communications Commission.

8.10 Insurance. During the term of this Agreement, Service Provider and CITY shall at all times, at their own cost and expense, procure and maintain insurance or some other type of comparable security as necessary to cover their respective duties assumed under this Agreement, including workers compensation, commercial general liability and property damage insurance, as well as such other insurance as may be required by law. CITY and Service Provider shall require their respective contractors, subcontractors and agents to maintain adequate insurance coverage to respond to the types and degree of risk posed by the work performed by such parties. The Parties shall have the right to self-insure.

8.11 Regulatory Reporting Requirements. CITY will provide Service Provider all information and documents, within CITY's control, as necessary to permit Service Provider to comply with regulatory reporting requirements.

8.12 Cooperation With CITY's Asset Manager. CITY, at its sole discretion, may contract with a third party or parties ("Asset Manager") to manage CITY's assets, including the Network. Service Provider shall cooperate with CITY's Asset Manager with respect to the obligations hereunder.

ARTICLE IX ASSIGNMENT AND SECURITY INTERESTS

9.1 CITY Financings. To finance Network operations, CITY reserves the right to grant security interests in the Network to one or more third parties. Service Provider, at the request of CITY, shall execute such acknowledgments, subordinations and estoppel agreements as may be required in connection with CITY's financings.

9.2 Attornment. In the event that title to the Network changes pursuant to Section 9.1, Service Provider's obligations under this Agreement shall remain in force and in effect, and shall attorn to the benefit of the successor in title; provided, however, that any such successor in title maintains sufficient financial, managerial, and technical capacity and resources to perform its obligations under the terms of this Agreement, and such successor meets all of CITY's obligations and representations under this Agreement.

9.3 Assignment by Service Provider. Service Provider shall have the right to assign or transfer its interest in this Agreement with CITY's prior written consent which shall not be unreasonably withheld, conditioned or delayed, provided that any assignee or transferee hereunder: (1) assumes all of Service Provider's obligations under this Agreement; (2) holds all necessary government authorizations, certifications and permits to provide Services in the State of Utah or Arizona, as applicable; and (3) in the reasonable judgment of CITY, possesses sufficient financial, managerial and technical capacity to perform under the terms and conditions of this Agreement. An assignment or transfer of Service Provider's interest in this Agreement in

violation of this Section 9.3, at CITY's option, shall be void, or, give CITY, in its sole discretion the right to declare a termination event under Section 12.1 of this Agreement.

9.4 No Ownership Interest. Except as provided in section 12.3, Service Provider has no ownership interest in the Network and shall not have the right to grant a security interest in or to transfer an interest in the Network to any creditor or third party.

ARTICLE X LIABILITY AND INDEMNIFICATION

10.1 CITY Indemnity. To the extent permitted by law, CITY shall indemnify, defend and hold harmless Service Provider, its officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, Subscribers, employees of CITY or Service Provider, and damage or destruction of property, including, but not limited to, property of Subscribers, CITY or Service Provider, arising out of: (a) negligent or willful acts or omissions of CITY, its agents, officers, directors, employees or contractors; (b) the exercise by CITY of the privileges or rights given herein; and (c) the performance by CITY of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Service Provider in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. CITY shall pay any cost that may be incurred by Service Provider in enforcing this indemnity, including reasonable attorney fees. CITY's obligations pursuant to this Section 10.1 shall not extend to claims, demands, lawsuits or actions for liability attributable to the negligence or willful action of Service Provider, its directors, officers, employees, contractors, successors or assigns. Nothing in this Agreement shall be construed to limit CITY's rights under the Immunity Act.

10.2 Service Provider Indemnity. Service Provider shall indemnify, defend and hold harmless CITY, its officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, Subscribers, employees of Service Provider or CITY, and damage or destruction of property, including, but not limited to, property of Subscribers, Service Provider or CITY, arising out of: (a) negligent or willful acts or omissions of Service Provider, its agents, officers, directors, employees or contractors; (b) the exercise by Service Provider of the privileges or rights given herein; and (c) the performance by Service Provider of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by CITY in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Service Provider shall pay any cost that may be incurred by CITY in enforcing this indemnity, including reasonable attorney fees. Service Provider's obligations pursuant to this Section 10.2 shall not extend to claims, demands, lawsuits or actions for liability attributable to the negligence or willful action of CITY, its directors, officers, employees, contractors, successors or assigns.

10.3 Intellectual Property Indemnity by CITY. To the extent permitted by law, CITY shall indemnify, defend, and hold harmless Service Provider from and against any loss, cost, expense or liability arising out of a claim that Service Provider's use, pursuant to the terms of this Agreement, of the Network infringes, misappropriates or otherwise violates the intellectual

property rights of any third party. CITY will promptly inform Service Provider of any pending or threatened intellectual property claims relating to the Network of which CITY is aware, and will provide Service Provider periodic and timely updates of such notification so that Service Provider receives maximum notice of any intellectual property risks that it may want to address.

10.4 Intellectual Property Indemnity by Service Provider. Service Provider shall indemnify, defend, and hold harmless CITY from and against any loss, cost, expense or liability arising out of a claim that Service Provider's use of its own equipment, software, and the like used by Service Provider in connection with CITY's Network, infringes, misappropriates or otherwise violates the intellectual property rights of any third party. Service Provider will promptly inform CITY of any pending or threatened intellectual property claims relating to Service Provider's use of its own equipment, software and the like used by Service Provider in connection with CITY's Network, of which Service Provider is aware, and will provide CITY periodic and timely updates of such notification so that CITY receives maximum notice of any intellectual property risks that it may want to address. This indemnification shall only apply to intellectual property third party claims solely related to Service Provider's equipment, software and the like and not related to intellectual property third party claims covering a combination of Service Provider's equipment, software and the like with CITY's Network. The parties will cooperate with each other in the defense of any third-party claims covering a combination of Service Provider's equipment, software and the like with CITY's Network.

10.5 No Consequential Damages; Direct Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER CITY, SERVICE PROVIDER NOR THEIR RESPECTIVE AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, PUNITIVE OR INDIRECT DAMAGES ARISING OUT OF THIS TRANSACTION WHETHER BY REASON OF CONTRACT, INDEMNITY, STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY OR FROM BREACH OF THIS AGREEMENT, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT, EACH PARTY HEREBY RELEASES THE OTHER PARTY OF SUCH CLAIMS. CITY'S TOTAL LIABILITY TO SERVICE PROVIDER SHALL BE LIMITED TO THE LESSER OF THOSE AMOUNTS DUE PURSUANT TO THE PRODUCT CATALOG, OR THE TOTAL AMOUNTS ACTUALLY PAID BY SERVICE PROVIDER TO CITY DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE ALLEGED DAMAGE OR CLAIM.

(a) NOTHING CONTAINED IN THIS SECTION 10.5 SHALL LIMIT CITY'S OR SERVICE PROVIDER'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING NEGLIGENCE) OR (ii) BODILY INJURY, DEATH OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY CITY'S OR SERVICE PROVIDER'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, NOR SHALL ANYTHING CONTAINED IN THIS SECTION 10.5 LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED IN THIS AGREEMENT. FOR PURPOSES OF THIS SECTION,

AMOUNTS DUE AND OWING TO CITY PURSUANT TO ARTICLE V SHALL NOT BE CONSIDERED TO BE INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE OR SPECIAL DAMAGES.

(b) In the event of a breach of this Agreement that is not otherwise cured pursuant to Section 12.2, and subject to the indemnification obligations in this Agreement, the parties shall be liable to each other only for direct damages. Service Provider and CITY, respectively, shall be entitled to all monies due and owing to pursuant to Exhibit "B" and ARTICLE V, without limitation. In all other events a Party's aggregate liability for direct damages shall be limited to the lesser of (i) actual proven damages; or (ii) the average monthly Wholesale Services billing to Service Provider for the twelve (12) months preceding the party's breach of this Agreement.

10.6 Waiver of Subrogation. To the extent such a waiver will not invalidate a party's insurance policies, each party hereby releases and waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise with respect to the property insurance policies required by Section 8.10. The foregoing release and waiver shall not apply to losses actually paid under such policies if the releasing party's insurance policies do not contain provisions acknowledging such release and waiver. Each party shall use its commercially reasonable efforts to secure such provisions in its policies. If either party self-insures losses to its property, the waiver of subrogation shall apply as if the party maintained an insurance policy covering loss or damage to its property.

10.7 Defense of Claims. Either party, as the indemnifying party hereunder, shall have the right to defend the other by counsel of the indemnifying party's selection reasonably satisfactory to the indemnified party, with respect to any claims within the indemnification obligations of this ARTICLE X. CITY and Service Provider shall give each other prompt notice of any asserted claims or actions indemnified against, shall cooperate with each other in the defense of any such claims or actions, and shall not settle any such claims or actions without the other party's prior written consent.

10.8 Third Party Claims. Except as set forth in Sections 10.1 and 10.2, nothing in this Agreement shall be construed to create rights in, or duties or liabilities to, or any standard of care with reference to, or to grant remedies to, any person or entity not a party to this Agreement. By entering into this Agreement the parties do not hold themselves out as furnishing like or similar services to any other person or entity.

10.9 Limitation of CITY Liability. Service Provider shall have sole responsibility for the provision of Services to its Subscribers. CITY shall in no way be deemed to guarantee the adequacy of Service Provider's Services for such Subscribers' needs or requirements; subject, however, to CITY meeting the quality and reliability specifications for the Network as specifically set forth in Exhibit "A."

10.10 Applicability of Liability Limitations. The waivers and disclaimers of liability, releases from liability, exclusive remedy provisions, and (except as expressly stated to the contrary therein) indemnity and hold harmless provisions expressed throughout this Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability, or

breach of contract of the party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, or who is indemnified or held harmless, and shall extend to their respective affiliates and its and their respective partners, directors, officers, employees and agents. Such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation or rescission of this Agreement, or termination of the rights and privileges granted by this Agreement. No officer, director, employee, agent or other individual representative of either CITY or Service Provider shall be personally responsible for any liability arising under this Agreement.

ARTICLE XI FORCE MAJEURE

11.1 Excuse of Performance. Notwithstanding anything in this Agreement to the contrary, neither party shall be liable or responsible for a delay or failure in performing its obligations (other than Service Provider's obligations to make payments for Network Services already provided by CITY) under this Agreement caused by Force Majeure (as defined below).

11.2 Definition. The term "Force Majeure" as used in this Agreement shall mean any cause beyond the reasonable control of CITY or Service Provider, as applicable, or beyond the reasonable control of any of their respective contractors, subcontractors, suppliers or vendors, including without limitation:

(a) Acts of God. Acts of God, including, but not necessarily limited to, lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, utility outages, inability to secure materials, terrorist acts, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots or civil disturbances;

(b) Labor Disputes. Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages or labor disruptions, labor or material shortages, or delays or disruptions of transportation;

(c) Court Orders. Orders and judgments of any federal, state or local court, administrative agency or governmental body;

(d) Change in Law. The adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the Effective Date; or

(e) Government Approvals. Any suspension, termination, interruption, denial or failure to issue or renew by any government authority or other party having approval rights of any approval required or necessary hereunder for the construction, installation or operation of the Network or for either party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the party claiming the occurrence of an event of Force Majeure.

11.3 Continuance after Force Majeure Event. If either CITY or Service Provider cannot fulfill any of its obligations under this Agreement by reason of Force Majeure, such party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this Section 11.3 shall be construed as requiring CITY or Service Provider to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other approval on terms deemed unacceptable to such party, or to enter into any contract or other undertaking on terms which the party deems to be unduly burdensome or costly. If the nature or duration of the Force Majeure event is such that either party is irreparably harmed to the extent that both parties agree that the affected party is unable to perform its obligations under this Agreement, then the affected party shall be held harmless and have the right to terminate this Agreement in accordance with ARTICLE XII.

ARTICLE XII BREACH AND TERMINATION

12.1 Termination Events. The occurrence and continuance of the following events may result in the termination of this Agreement, at the terminating party's sole discretion, subject to this ARTICLE XII:

(a) Breach or Default. A material breach or a material default under the terms, covenants and conditions of this Agreement by either CITY or Service Provider, including, without limitation, the Service Provider's failure to make payments pursuant to ARTICLE V when due, and Service Provider's failure to comply with Section 6.1.

(b) Change in Law. A change in any federal, state or local law, regulation or rule, or the issuance of an Order by the Federal Communication Commission, that materially impacts CITY's ownership or operation of the Network, or Service Provider's use, or the terms for Service Provider's use, of the Network. Upon a party's notice of termination under this Section 12.1(b), each party's sole liability in such case is limited to meeting their respective obligations set forth in Section 12.3, as applicable, and as permitted under such change in law.

(c) Bankruptcy or Insolvency. Immediately without delivery of notice, upon: (1) the insolvency of Service Provider, as determined by Service Provider's inability to pay its debts to creditors as they become due, (2) the filing by Service Provider of a voluntary petition in bankruptcy, (3) the involuntary commencement against Service Provider of any proceedings under any law (whether United States or foreign) relating to insolvency or bankruptcy which is not vacated within 30 days, (4) adjudication of Service Provider as bankrupt or insolvent pursuant to an involuntary petition, (5) the appointment by any court of competent jurisdiction of a temporary or permanent receiver, custodian, trustee or other officer having similar powers for Service Provider or Service Provider's business, who is not removed within 30 days, (6) any levy under attachment, garnishment, execution or any other similar process against

Service Provider which is not vacated within 30 days or removed by payment or bonding, or (7) any assignment by Service Provider for the benefit of its creditors. Service Provider shall immediately notify CITY in writing upon the occurrence of any of the above-listed events. Failure to do so shall constitute a breach of this Agreement.

12.2 Right to Cure. If the termination event is a breach or default described in Section 12.1(a), the non-defaulting party shall give written notice of such occurrence to the defaulting party. The defaulting party shall be given a reasonable time to cure any breach or default as follows:

(a) In the case of a monetary default for undisputed charges, the defaulting party shall have ten (10) calendar days after receipt of written notice to effect a cure.

(b) In the case of a nonmonetary default, the defaulting party shall have sixty (60) calendar days after receipt of written notice to effect a cure. If the nonmonetary default cannot be corrected within such sixty (60) calendar day period, the defaulting party shall have an additional reasonable time in which to effect a cure, provided the defaulting party commences corrective action within the original sixty (60) calendar day period and thereafter diligently prosecutes the corrective action to completion. If the defaulting party does not timely cure the breach or default within the time periods specified above, the non-defaulting party may elect to terminate this Agreement by providing written notice of such election to the defaulting party.

12.3 Rights upon Termination. Upon the termination of this Agreement, except as otherwise limited by this Section 12.3, the parties shall continue to abide by the terms of the Agreement, including the payment obligations set forth in ARTICLE V. The termination period shall last a maximum period of two (2) weeks following the date of termination notice. CITY shall, upon notice of termination by CITY for reasons other than pursuant to section 12.1(a) or 12.1(c), convey to Service Provider ownership of one strand of dark fiber from the Network as it exists at the time of termination. Service Provider shall have the right to use the Network to deliver Services during the termination period only as necessary to continue service to existing Subscribers until such Subscribers are migrated to Service Provider's dark fiber line or to any alternative service provider. Service Provider shall use best commercial efforts to transition its Subscribers to its dark fiber line or to another service provider using the Network, if available, within two weeks after the date of termination notice. Following the two week period after the date of termination notice, CITY may directly transfer Service Provider's Subscribers to alternative service providers, or to any other alternative solution reasonably necessary to maintain the Subscribers continuity of services, and CITY may take such other reasonable actions that may be necessary to prevent service disruptions to Subscribers as a result of the termination of this Agreement.

ARTICLE XIII MISCELLANEOUS

13.1 Final Agreement – Counterparts. This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall

supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

13.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of CITY, Service Provider and their respective successors and assigns.

13.3 Waivers. The failure by either party at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements or covenants contained in this Agreement shall not waive, affect or diminish any right of either party to demand strict compliance and performance therewith. None of the undertakings, agreements or covenants of the parties under this Agreement shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by the party to be charged specifying such waiver.

13.4 Notices. Unless otherwise specifically provided in this Agreement, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, or sent by courier or United States certified mail and shall be deemed to have been given when delivered in person or by courier service, or five (5) days after deposit in the United States mail, with postage prepaid and properly addressed, as follows:

If to CITY, to:

If to Service Provider, to:

Such addresses may be changed by notice to the other party given in the same manner as above provided.

13.5 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

13.6 Interpretation. Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article, section and paragraph headings contained in this Agreement are for

purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof. All references in this Agreement to articles, sections and paragraphs, unless expressly noted otherwise, are to articles, sections and paragraphs contained in this Agreement. Unless the context requires otherwise, references in this Agreement to “party” shall be to either CITY or Service Provider, as applicable, and references to “parties” shall be to both CITY and Service Provider.

13.7 Independent Contractor Status. CITY and Service Provider reserve no control whatsoever over the employment, discharge, compensation of or services rendered by the employees or contractors of each other. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent status and relationship or as creating or implying a partnership or joint venture between CITY and Service Provider.

13.8 Governing Law. This Agreement shall be governed by the laws of the State of Utah, except as specifically stated otherwise herein.

13.9 Jurisdiction and Venue. For all litigation which may arise with respect to this Agreement, the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction and venue (and waive any claim of *forum nonconveniens*) of the United States Federal District Court for the District of Utah if in federal court or the Fifth District Court in and for Washington County, State of Utah, if in state court.

13.10 Commissions. No brokerage, finder’s or other fee, commission or compensation shall be paid by either party in connection with the transaction contemplated by this Agreement. The parties shall indemnify and hold each other harmless (including attorney fees and costs) from and against any and all claims for brokerage and finder’s fees or commissions which may be asserted against the other based on the actions or omissions of the indemnifying party.

13.11 Costs. Except as otherwise set forth in this Agreement, each party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement.

13.12 Construction and Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm’s length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

13.13 Immunity Act. CITY retains all of its rights and immunities under the Immunity Act.

13.14 Attorney Fees. If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable

attorney fees and costs, incurred by the non-defaulting party to protect its rights hereunder, regardless of whether an action is commenced or prosecuted to judgment.

13.15 Survival. In the event of termination or upon expiration of this Agreement, at least Sections 5.1, 5.2, 5.3, 5.4, 8.2, 8.3, 8.4, 9.1, 9.2, 12.3 and ARTICLES X and XIII hereof will survive and continue in full force and effect.

ENTERED INTO as of the Effective Date written above.

CITY:

SERVICE PROVIDER:

Mayor

Company Name

Date

Authorized Representative Name Printed

ATTEST:

Authorized Representative Title

Recorder/Clerk

Authorized Representative Signature

Date

List of Exhibits

- “A” Service Level Agreement
- “B” Property Access License
- “C” Product Catalog for Network Services
- “D” Existing Network Map