



CITY OF ELKO
CITY MANAGER
1751 COLLEGE AVENUE
ELKO, NEVADA 89801
(775) 777-7110/FAX (775) 777-7119

PUBLIC MEETING NOTICE

The Elko City Council will meet in regular session on Tuesday, October 27, 2020
at 4:00 P.M.–7:00 P.M., P.D.T. utilizing [GoToMeeting.com](https://global.gotomeeting.com)

Please join my meeting from your computer, tablet or smartphone.

GoToMeeting.com

<https://global.gotomeeting.com/join/834892997>

Attached with this notice is the agenda for said meeting of the Elko City Council. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at <http://www.elkocity.com>, the State of Nevada's Public Notice Website at <https://notice.nv.gov>, and in the following locations:

ELKO CITY HALL

1751 College Avenue, Elko, NV 89801

Date/Time Posted: 8:30 a.m., P.D.T. Thursday, October 22, 2020

Posted by: Kim Wilkinson, Administrative Assistant

The public may contact Kim Wilkinson by phone at (775) 777-7110 or email at kwilkinson@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is available on the City website at <http://www.elkocity.com>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/> You can also dial in using your phone at [+1 \(669\)224-3412](tel:+16692243412) the Access Code for this meeting is **834 892 997**. Public Comment and questions can be received by calling (775) 777- 0590 or by emailing: cityclerk@elkocitynv.gov

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Dated this 22nd day of October, 2020

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko, City Manager's Office, 1751 College Avenue, Elko, Nevada, 89801, or by calling (775) 777-7110.

Scott Wilkinson, Assistant City Manager
Elko, Nevada

CITY OF ELKO
CITY COUNCIL AGENDA
REGULAR MEETING
4:00 P.M., P.D.T., TUESDAY, OCTOBER 27, 2020
GoToMeeting.com
<https://global.gotomeeting.com/join/834892997>

CALL TO ORDER

The Agenda for this meeting of the Elko City Council has been posted for this date and time in accordance with State of Nevada Emergency Directive 006. The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone by registering at the link above.

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. Comments may be made through GoToMeeting.com, or by calling (775)777-0590, you may also email comments to: cityclerk@elkocitynv.gov **ACTION WILL NOT BE TAKEN**

APPROVAL OF MINUTES: October 13, 2020 Regular Session

I. PRESENTATIONS

- A. Reading of a proclamation in recognition of "Extra Mile Day 2020" and matters related thereto. **INFORMATION ITEM ONLY – NON ACTION ITEM**
- B. Presentation by Elko County District Attorney, Tyler J. Ingram, regarding the Great Basin Children's Advocacy Center, and matters related thereto. **INFORMATION ITEM ONLY-NON ACTION ITEM**
- C. Presentation by Police Chief Ty Trouten on External Vest Carriers, and matters related thereto. **INFORMATION ITEM ONLY – NON ACTION ITEM**
- D. Presentation of Volunteer and Career Firefighter of the Year Awards, and matters related thereto. **INFORMATION ONLY – NON ACTION ITEM**

II. APPROPRIATIONS

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

- B. Review and possible approval of Print n' Copy Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- C. Review and possible approval of Great Basin Engineering Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- D. Review, consideration and possible final acceptance of Airport Improvement Project No. 3-32-0005-050 (AIP 50) Pavement Maintenance Project, and matters related thereto. **FOR POSSIBLE ACTION**

The purpose of this project was to preserve and rehabilitate the pavement on Runways 6/24 and 12/30, Taxiways A and B, blast pads, and all aprons, by crack sealing, major crack repair, seal coating, and re-striping. This rehabilitation was necessary to preserve the service life of the asphalt pavements. There were two (2) no cost change orders in the amount of \$96,543.52. Jviation and Staff believes the project has been substantially completed with a few minor administration items and requests to begin the closeout process with the FAA

III. UNFINISHED BUSINESS

- A. Review, consideration, and possible direction to Staff regarding CARES Act funding, including the possible initiation of the closeout process, and matters related thereto. **FOR POSSIBLE ACTION**

Based on the recommendation of the City Manager, this item was tabled at the September 22, 2020 meeting. CC

IV. NEW BUSINESS

- A. Review, consideration, and possible approval for the City of Elko to enter into a Memorandum of Understanding (MOU) with the Utah Department of Technology Services, Automated Geographic Reference Center (AGRC) for the purpose of sharing a real-time stream of raw GPS data from the City of Elko GPS reference station, and matters related thereto. **FOR POSSIBLE ACTION**

The AGRC maintains a network of GPS reference stations throughout the State of Utah, and has recently acquired another network of reference stations in Washoe County, Nevada. The AGRC would like to fill in the gap between the two networks with additional GPS reference stations along the I-80 corridor. In exchange for the City providing the steam of GPS data, the AGRC will provide the City with one Network subscription at no cost. BT

- B. Review, consideration, and approval of a Selection Committee for the Golf Course Professional/Management Services Request for Proposals, and matters related thereto. **FOR POSSIBLE ACTION**

Bids were opened for the Golf Course Professional/Management Services on October 16, 2020, and four bids were received. The RFP indicated the Selection

Committee would include the City Manager, the Finance Director, one member of the City Council, one member of the Golf Course Financial Advisory Committee, and the Golf Course Superintendent. JW

- C. Review, consideration, and possible approval of a mutual release of claims between the City and Michelli Measurement Group, Inc. regarding termination of a contract for the installation of truck scales at the Elko Landfill, and matters related thereto. **FOR POSSIBLE ACTION**

On August 11, 2020, the City awarded a contract to Michelli Measurement Group, Inc. for the purchase and installation of two heavy duty steel deck truck scales at the Elko Landfill. Subsequently, disagreements developed between the City and Michelli Measurement over the scope of the contract. The City and Michelli Measurement have since preliminarily agreed that it would be better for both parties to terminate the contract and release each other from any claims they might have, subject to Council approval. The City would then recommence the bidding process and seek a new contractor. DS

- D. Review, consideration, and possible acceptance of a Grant of Easement for utility purposes from Grace Baptist Church, along the northerly property line of APN 001-610-112, and matters related thereto. **FOR POSSIBLE ACTION**

As part of Vacation 4-20 to vacate an existing utility easement that was granted to the City of Elko, the owner is granting the new utility easement in a location that doesn't bisect the parcel and hinder future development. CL

- E. Review, consideration, and possible approval of a Grant, Bargain and Sale Deed and Contract of Purchase and Sale between the City of Elko and Anthem Broadband of Nevada, LLC, for the purchase and sale of a parcel of land consisting of 2,800 sq. ft. referred to as APN 001-01R-004 in the City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

City Council adopted Resolution No. 20-20 accepting the fair market value of the referenced parcel at their August 25, 2020 meeting and then adopted Resolution No. 21-20 permitting the sale of the property to Anthem Broadband of Nevada LLC for economic development purposes without offering the property to the public. The Contract of Purchase and Sale and Grant, Bargain and Sale Deed are required to complete this transaction. CL

V. RESOLUTIONS AND ORDINANCES

- A. Review, consideration and possible adoption of Resolution No. 25-20, a resolution of the Elko City Council Declaring Intention to Lease Land at Public Auction, Approval of the Lease Document and Setting Date for Auction regarding the possible lease of property located on West Idaho Street identified as APN 006-09G-027, consisting of approximately 8.69 acres, and matters related thereto. **FOR POSSIBLE ACTION**

On July 28, 2020, the City Council held a public hearing accepting CBRE, Inc.'s annual fair market rent estimate for the property identified as APN 006-09G-027, consisting of approximately 8.69 acres of City-owned property located generally north of West Idaho Street, in the amount of \$19,000.00. The City Council also adopted Resolution 15-20 and set a date for public auction of the property. The City Council then proceeded with the statutory process of awarding the lease for the parcel at public auction as required by NRS 268.062. However, the lessee who was awarded the lease has since rescinded. Resolution No. 25-20, which is the next step in the process of leasing the property to a different lessee requires a finding that it is in the best interest of the City to lease the property, together with a declaration of the City Council's intention to lease the property at public auction pursuant to City Code Section 8-1-3 and NRS 268.062. The City Council may rely on the existing CRBE, Inc. rent estimate since it has not yet expired. JF

VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible action to rename Dakota Street to Dakota Drive, and matters related thereto. **FOR POSSIBLE ACTION**

It has come to the attention of the Engineering Department, that there has been some confusion of the suffix for the roadway known as Dakota. The roadway was first mapped and dedicated in 1999 without a name. The City records and the street sign say Dakota Drive. Recorded maps since 2011 have said Dakota Street. The recent map of Copper Trails Unit I extended the roadway, and named that portion Dakota Street, following the other maps. This action will clarify the name, and change any portion that may be known as Dakota Street, to be officially known as Dakota Drive. There are no addresses along this roadway that will be affected by this change. BT

VII. REPORTS

- A. Mayor and City Council
- B. City Manager
- C. Assistant City Manager
- D. Utilities Director
- E. Public Works
- F. Airport Manager
- G. City Attorney
- H. Fire Chief
- I. Police Chief
- J. City Clerk
- K. City Planner
- L. Development Manager
- M. Financial Services Director
- N. Parks and Recreation Director
- O. Civil Engineer
- P. Building Official

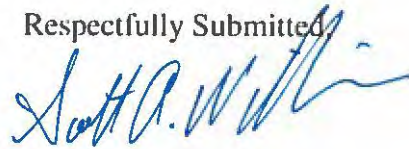
COMMENTS BY THE GENERAL PUBLIC

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NOTE: The Mayor, Mayor Pro Tempore, or other Presiding Officer of the City Council reserves the right to change the order of the agenda, and if the agenda has not been completed, to recess the meeting and continue on another specified date and time. Additionally, the City Council reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully Submitted



Scott Wilkinson
Assistant City Manager

City of Elko)
County of Elko)
State of Nevada)

SS October 13, 2020

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, October 13, 2020. Due to the restrictions found in the State of Nevada Emergency Directive 006, the meeting was held in the Silver Room of the Elko Convention and Visitors Authority, 700 Moren Way, Elko.

This meeting was called to order by Mayor Reece Keener.

CALL TO ORDER

ROLL CALL

Mayor Present: Reece Keener

Council Present: Councilwoman Mandy Simons
 Councilman Robert Schmidlein
 Councilman Chip Stone

City Staff Present: Scott Wilkinson, Assistant City Manager
 Kelly Wooldridge, City Clerk
 Candi Quilici, Accounting Manager
 Jan Baum, Financial Services Director
 Dale Johnson, Utilities Director
 James Wiley, Parks and Recreation Director
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Jim Foster, Airport Manager
 Matt Griego, Fire Chief
 Dave Stanton, City Attorney
 Lt. Jason Pepper
 DJ Smith, Computer Systems
 Diann Byington, Recording Secretary

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

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There were no public comments.

The minutes were approved by general consent.

I. PRESENTATIONS

- A. Presentation of a “Years of Service” Plaque to former Planning Commissioner, Evi Buell, and matters related thereto. **INFORMATION ONLY–NON ACTION ITEM**

Ms. Buell was not present.

- B. Fire Department Badge Pinning

- 1.) Tyler Huff, Fire Fighter

Chief Griego introduced firefighter Tyler Huff and his mother. His mother did the pinning ceremony. Councilman Robert Schmidlein administered the oath.

II. CONSENT AGENDA

- A. Review, consideration, and possible reappointment of Dennis Strickland as Chairperson for the Storm Water Advisory Committee, and matters related thereto. **FOR POSSIBLE ACTION**

Per the Storm Water Advisory Committee Bylaws, the chairperson serves a two-year term. Dennis Strickland has served as Chairperson since September 11, 2018 and is now due for reappointment. Article III, Section 1 of the committee bylaws states that the City Council shall appoint the Chairperson. MR

- B. Review, consideration, and possible acceptance of a “Letter of Resignation” from Arts and Culture Advisory Board Member, Bailey Billington-Benson, and direct Staff to advertise the vacant seat, and matters related thereto. **FOR POSSIBLE ACTION**

Bailey Billington-Benson has submitted a “Letter of Resignation” from the Arts and Culture Advisory Board. A copy of the letter has been placed your packet. CC

- C. Review, consideration, and possible appointment of Kelly Wooldridge, City Clerk as the City of Elko Title VI Coordinator, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko is required to have a Title VI program to be in compliance with State and Federal grants. In early May the City was notified by NDOT that they will be completing a Title VI program compliance review. NDOT has also hired consultants to assist the City in completing the Title VI program plan. The program requires a City-wide Title VI Coordinator. KW

**** A motion was made by Councilwoman Simons, seconded by Councilman Stone, to approve the consent agenda.**

III. PERSONNEL

A. Employee Introductions:

- 1.) Spencer Sutherland, Landfill Equipment Operator, Public Works, Landfill
Unable to attend..
- 2.) Caleb McHale, Parks Maintenance Technician I, Parks and Recreation
Present and introduced.
- 3.) Aaron Brensel, Equipment Operator I, Public Works, Street Department
Present and introduced.
- 4.) Carlos Gonzalez, Equipment Operator I, Public Works, Street Department
Present and introduced.
- 5.) Nicholas Kyriss, Equipment Operator I, Public Works, Street Department
Present and introduced.
- 6.) Kirsten Kowing, Animal Shelter Worker II, Animal Shelter
Unable to attend.

IV. APPROPRIATIONS

A. Review and possible approval of Warrants, and matters related thereto. FOR POSSIBLE ACTION

Mayor Keener asked about the purchase of a valve tool. Dale Johnson, Utilities Director stated this is an 18-inch valve machine, and it is the only one in the world. The first 18-inch valve was installed three weeks ago. It will also do 4-14 inch valves.

**** A motion was made by Councilwoman Mandy Simons and seconded by Councilman Chip stone to approve the general warrants.**

The motion passed unanimously. (4-0)

B. Review and possible approval of Print n' Copy Warrants, and matters related thereto. FOR POSSIBLE ACTION

**** A motion was made by Councilwoman Mandy Simons and seconded by Councilman Chip Stone to approve the print and copy warrants.**

The motion passed (3-0 Mayor Keener Abstained)

C. Review and possible approval of Ruby Mountain Lock & Safe Warrants, and matters related thereto. FOR POSSIBLE ACTION

**** A motion was made by Councilwoman Mandy Simons and seconded by Councilman Chip stone to approve the Ruby Mountain Lock & Safe Warrants.**

The motion passed unanimously. (4-0)

- D. Review and possible approval of Great Basin Engineering Contractors Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**** A motion was made by Councilwoman Mandy Simons and seconded by Councilman Chip Stone to approve the Great Basin Engineering Contractors Warrants.**

The motion passed (3-0 Councilman Schmidtlein abstained)

- E. Review, consideration, and possible final acceptance of the Public Works Department Preventive Maintenance Project 2020 to apply Micro Slurry Seal to select City streets, and matters related thereto. **FOR POSSIBLE ACTION**

At the May 26, 2020 meeting, the City Council awarded the bid for the Preventive Maintenance Project 2020 to Sierra Nevada Construction in the amount of \$514,007.00. The contract came in under budget due to field quantity adjustments. Sierra Nevada Construction has satisfactorily completed the work. DS

Dennis Strickland, Public Works Director stated there was less work than awarded. They were not able to complete College Avenue in front of the high school. Mr. Martinez with AM Engineering is present and they did an excellent job. All of the regional roads have been treated. Mayor Keener stated he doesn't recall this project ever coming in under the budgeted amount.

**** A motion was made by Councilman Robert Schmidtlein and seconded by Councilman Chip Stone to approve the final acceptance of the Preventative Maintenance Project 2020 by Sierra Nevada Construction for \$500,675.85**

The motion passed unanimously. (4-0)

- F. Review, consideration, and possible award of the bid for the Swimming Pool Re-Plastering Project, and matters related thereto. **FOR POSSIBLE ACTION**

Bids for the Swimming Pool Re-Plastering Project were opened on Wednesday October 7, 2020. A Bid tabulation sheet has been included in the packet for Council review. JW

James Wiley, Parks and Recreation Director stated this is phase two of the pool projects for this year. The bidding process was a little difficult for this project. We did not receive any bids the first time. The second time we advertised to the public we would receive bids for an additional seven days and we received one bid but it was considered non-responsive. We repeated this process one more time and received one bid from Adams Pool Specialties, Inc. who has done plastering for the pool previously. This bid did come in about \$50,000 over what was budgeted. The additional \$50,000 will come from ad valorem funds. This must be done in order to reopen the pool. Mayor Keener asked how long will it take them to mobilize once they are awarded the bid. Mr. Wiley stated the contractor would like to be here by the middle of November and finish by the middle of December. Mr. Wiley stated City staff will do some maintenance to the plaster

(the plaster will need to be cured). The plan is to reopen the pool after the first of the year. Councilman Stone asked about a warranty. Dennis Strickland stated most contractor warranties are typically a year.

**** A motion was made by Councilman Chip Stone and seconded by Councilman Robert Schmidlein to award the swimming pool plastering bid to Adams Pool Specialties, Inc. for \$175,600.**

The motion passed unanimously. (4-0)

V. UNFINISHED BUSINESS

- A. Review, consideration, and possible approval of an Interlocal Agreement for Communication Facility Exchange between the City of Elko and CC Communications for a communication facility exchange, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko approved a non-exclusive franchise agreement with the CC Communications on February 11, 2020. The non-exclusive franchise agreement does not provide for the use of City-owned fiber. On June 23, 2020, the City of Elko approved the development of an agreement for future consideration by the Council. The Council action required a condition that CC Communication construct the entire communication infrastructure proposed in the agreement prior to CC Communications utilizing City owned fiber. The proposed agreement reflects that condition. SAW

Scott Wilkinson, Assistant City Manager stated he provided colored copies of the exhibits A & B. Exhibit A is the city owned fiber they would utilize from the intersection of Mountain City Highway and Silver Street up to Pinion Road to the Landfill. The City needs to identify another 1.4 miles of fiber run to be installed and utilized by the City. CC Communications is proposing the language be clarified for section 2.6 of the agreement with the condition the Council had that they finish the infrastructure prior to using the City fiber. Mr. Wilkinson stated the proposed language is reasonable. Mark Feest of CC Communications stated CC Communications would build 4.6 miles of fiber and turn over 12 fibers to the City in exchange for existing 2.3 miles of fiber the City has. The City needs to identify a remaining 1.4 miles. CC Communications is asking one buffer tube be made available. Mayor Keener stated that there would be advantages of fiber going to the new WRF or a need for fiber at the Sports Complex. Mr. Wilkinson stated we definitely should look at the WRF. He stated in the agreement there was some concern about service to Spring Creek in section 2.4 CC Communications will provide services around the routes in the City of Elko prior to providing service to residents or businesses in Spring Creek. Section 2.7 requires the City to provide the information on the 1.4 miles within three months of execution of the agreement. Mayor Keener would like it to go back to staff to determine the 1.4 miles. Mr. Wilkinson stated they will give the City three months to do this and consult with IT and different departments and bring it back to City Council. Mayor Keener wants to make sure Councilman Hance has some input before this decision is made.

Mayor Keener called for public comment. There were no comments.

**** A motion was made by Councilwoman Mandy Simons and seconded by Councilman Robert Schmidlein to approve the interlocal agreement between CC Communications and**

the City of Elko for a communication facility exchange, the revision in section 2.6 the agreement and conditioned on Dave Stanton's approval.

The motion passed unanimously. (4-0)

Councilman Hance who was watching remotely stated he was good with the motion as well.

VI. NEW BUSINESS

- A. Review, consideration, and possible approval of the First Amendment to the Non-Exclusive Franchise Agreement between the City of Elko and Citizens Telecommunication Company of Nevada d/b/a Frontier Communications of Nevada, amending Section 1 of the agreement, granting a Revocable License to pull communications cable in underground conduit owned by the City of Elko located within City Rights-of-Way, and amending Section 5 of the agreement, allowing for a reduction in franchise fees by resolution of the City Council, and matters related thereto. **FOR POSSIBLE ACTION**

Council has recently approved Non-exclusive Franchise Agreements including a provision granting a Revocable Permit for Occupancy of City owned conduit. Additionally, Council passed Resolution No. 4-20 on February 11, 2020, waiving franchise fees for telecommunications carriers beginning July 1, 2020 for a period of five (5) years. Commencing on June 29, 2025, and continuing thereafter, the telecommunication carrier shall pay the Franchise Fee as stipulated in the agreement. The proposed amendment addresses the issues referenced above. SAW

Scott Wilkinson, Assistant City Manager stated that in an effort to have all of the franchise agreements consistent with each other this amendment was proposed. We want the same opportunity for all of the providers and the Council's ability to waive franchise fees. Level III is the last one we will need to do this with. Frontier is not proposing to use City Fiber.

Mayor Keener called for public comment. There were no comments.

**** A motion was made by Councilman Chip Stone and seconded by Councilwoman Simons to approve the first amendment to the non-Non-Exclusive Franchise Agreement between the City of Elko and Citizens Telecommunication Company of Nevada d/b/a Frontier Communications of Nevada amending Section 1 of the agreement, granting a Revocable License to pull communications cable in underground conduit owned by the City of Elko located within City Rights-of-Way, and amending Section 5 of the agreement, allowing for a reduction in franchise fees by resolution of the City Council.**

The motion passed unanimously. (4-0)

- B. Review, consideration, and possible approval of a corrected lease between the City of Elko and ESM2, LLC, for the lease of approximately 8.69 acres of City owned property located generally north of West Idaho and west of the Airport, and matters related thereto. **FOR POSSIBLE ACTION**

Council adopted Resolution No. 15-20, accepting the appraised lease value at its meeting on July 28, 2020, and conducted a public auction for the referenced property on August 25, 2020. At the July 28, 2020, meeting there was considerable discussion concerning the lack of access to the property and public comment requesting a draft lease agreement to be provided. There was comment by City Officials that the lease must address the access issue. To ensure that all potential interested parties would be bidding on equal terms, a draft lease agreement was presented in the Council agenda packet for the public auction process. That draft lease agreement is what the successful bidder bid upon. The draft lease agreement contained some typographical errors and did not contain two of the referenced Exhibits. The typographical errors have been corrected and the Exhibits have been included in the lease agreement. The successful bidder has requested other significant and substantive revisions to the agreement that Staff, based on legal advice, believes would violate NRS 268.062, because substantive revisions would constitute post-bid negotiation prohibited by the law of competitive bidding. For that reason, the presented agreement does not include the revisions requested by the successful bidder. SAW

Scott Wilkinson, Assistant City Manager stated he recommends the City Council take no action on this item. ESM2, LLC requested the item be removed. He intends to bring back a resolution to go through this process again, as NGM has an interest in the lot. Mayor Keener asked if Eric Lattin wanted to comment on the lease and he stated no. Mayor Keener stated no action will be taken on this item.

- C. Review, consideration, and possible termination of the Memorandum of Understanding (MOU) between the City of Elko, and Friends in Service Helping (F.I.S.H.), a Nevada Non-Profit Corporation for the implementation of Elko Policy Procedure, and Action Plan for the Extreme Cold Weather Shelter, and matters related thereto. **FOR POSSIBLE ACTION**

Due to the COVID-19 pandemic, the F.I.S.H. Agency is not equipped to safely operate nor staff the shelter. F.I.S.H. Chairman Robert Leonhardt has submitted a letter and a copy has been placed in the packet for your review. CC

Scott Wilkinson, Assistant City Manager stated F.I.S.H. is not in a position to deal with the requirements of COVID-19 to operate the shelter this year and he recommends we terminate the MOU. City staff will try to identify some other ways to deal with the cold weather and homeless this year. Mayor Keener asked about using hotel rooms and reimbursement under CARES funding. Mr. Wilkinson stated it probably would fall under CARES, however we need to consult with our legal team so we do not create a liability for the City. This decision will be a little more involved prior to bringing anything forward. Councilman Schmittlein asked if the City is required to provide a facility. Dave Stanton, City Attorney stated no. We are required to provide homeless people with a place to go so we created the Humanitarian Campground. If you do not have a place for homeless people to go, it is considered cruel and unusual punishment. However, the City is not required to provide a heated or air conditioned facility. As soon as the City undertakes a duty on behalf of a specific individual, we have assumed potential liability. There would also be liability to the hotel owner. Mr. Stanton wants to vet this with Pool Pact to ensure we have

coverage for this. Staff will work through this and come back to Council with suggestions. Councilwoman Simons asked if F.I.S.H. will resume doing this in the future. Mr. Wilkinson stated he is unsure about this and he commends F.I.S.H. for the efforts they have put into this over the years. Staffing the shelter has been difficult for them. Councilman Stone asked about the deadline for the CARES act. Jan Baum, Financial Director stated it is December 31, 2020

Mayor Keener called for public comment. No comments were made.

**** A motion was made by Councilman Robert Schmidtlein and seconded by Councilwoman Mandy Simons to terminate the MOU between the City of Elko and F.I.S.H and direct staff to develop a cold weather plan.**

The motion passed unanimously. (4-0)

- D. Review, consideration, and possible approval of a Performance/Maintenance Agreement for subdivision improvements associated with the Aspen Heights subdivision, and matters related thereto. **FOR POSSIBLE ACTION**

Elko City Code 3-3-21 requires the subdivider to have executed and filed an agreement between the subdivider and the City for the required subdivision improvements, including stipulations on the timeframe for when those improvements are to be completed, and to post a performance guarantee in accordance with Elko City Code 3-3-22.

Final Map 3-20 was approved by the City Council on July 14, 2020. At that time, a Performance and Maintenance Agreement was entered into by the original property owner/developer. Since then, the property has been sold to a new developer (Braemar Construction). Due to this change in ownership, a new Performance and Maintenance Agreement is needed. MR

Michelle Rambo, Community Development Director stated this is simply a change of name for the responsible party since the property was sold to a new Developer. Mayor Keener asked if this was originally Cambridge. Ms. Rambo stated no Cambridge is the one across the street from Aspen Heights.

Mayor Keener called for public comment. There were no comments made.

**** A motion was made by Councilman Robert Schmidtlein and seconded by Councilwoman Mandy Simons to approve the Performance/Maintenance Agreement for subdivision improvements associated with the Aspen Heights subdivision and require the developer to enter into the agreement within 30 days.**

The motion passed unanimously. (4-0)

- E. Review, consideration, and possible action to conditionally approve Parcel Map No. 8-20, filed by Gallagher Family Trust, for the merger of two parcels into one, approximately 4.896 acres, located generally on the north side of 30th Street

between Idaho Street and Norco Lane with offer of dedication for Norco Lane Right-of-Way, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered this item at its October 6, 2020 meeting, and took action to forward a recommendation of conditional approval Parcel Map 8-20. The Parcel Map contains an offer of dedication for Right-of-Way, and it is for this reason that the map was referred to the Planning Commission, and subsequently to Council. CL

Cathy Laughlin, City Planner stated Mr. Gallagher is present tonight. They are proposing to do an expansion of the facility so we need to move the two parcels into one and get the remainder of Norco Lane dedicated to the City. Mayor Keener stated the driver of this is the building is crossing the property line and Ms. Laughlin stated yes. Mayor Keener asked if this is approved how long until they can start construction. Ms. Laughlin stated we will get the map recorded as soon as we get all of the signatures. They have been issued a site permit to start. A building permit can be issued right away.

Mayor Keener called for public comment. No comments were made.

**** A motion was made by Councilman Chip Stone and seconded by Councilman Robert Schmidlein to conditionally approve parcel map 8-20 , filed by Gallagher Family Trust, for the merger of two parcels into one, approximately 4.896 acres, located generally on the north side of 30th Street between Idaho Street and Norco Lane with offer of dedication for Norco Lane Right-of-Way, subject to the conditions as recommended by the Planning Commission.**

The motion passed unanimously. (4-0)

F. Review, consideration, and possible action to fill a vacancy on the Elko City Planning Commission, and matters related thereto. **FOR POSSIBLE ACTION**

On September 8, 2020, Council accepted a letter of resignation from Planning Commission member Evi Buell. Staff conducted the standard recruitment process and has received two (2) Letters of Interest to serve on the Planning Commission, copies have been included in the Council packet. The new member will be appointed to fill the remainder of the four-year term, which will expire at the end of July 2023. CL

Cathy Laughlin, City Planner stated the only requirement is you have to be a resident of the City of Elko and both applicants are residents. We have Mercedes Mendive and Mr. Tony Odeh in the audience and I think either one of them would be great.

Mayor Keener called Ms. Mendive to say a few words. Ms. Mendive stated she was born and raised in Elko. She spent seven years in Florida and came back due to her love for Elko, She is impressed with the growth and development that has happened in Elko in the last few years.

Mr. Tony Odeh thinks this would be a great opportunity for the start of something he is planning in the future. It is great to give back to the community. He would like to help the City grow. He is in real-estate so he is familiar with zoning.

Mayor Keener asked for questions. Councilman Stone asked Mr. Odeh what he is working towards. Mr. Odeh stated his concern is the educational system and that youth need to be taught financial management. He would like to have classes for Seniors and he thinks this will help him get to this step in the future.

Mayor Keener asked Ms. Laughlin who are the current Planning Commissioners. Ms. Laughlin answered. Mayor Keener stated the current composition is five men and one woman. Councilman Stone stated he has known both of them for many years and would support both of them. He feels Ms. Mendive's background makes her comfortable in this setting. Councilman Schmidtlein feels both of them would be outstanding and having two voices from the female side makes sense. Councilwoman Simons agreed.

**** Councilman Stone made a motion and Councilman Schmidtlein seconded the motion to appoint Mercedes Mendive to the City of Elko Planning Commission.**

The motion passed unanimously. (4-0)

Mayor Keener thanked Mr. Odeh and stated these positions come open frequently and to please apply again.

VII. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible action to accept a petition for the vacation of a 25' wide public utility easement bisecting APN 001-610-112, consisting of an area approximately 9,944 sq. ft., filed by Grace Baptist Church and processed as Vacation No. 4-20, and matters related thereto. **FOR POSSIBLE ACTION**

The applicant is in the process of selling the parcel to a developer who would prefer to have the public easement run along the property line. The applicant will be granting a new public utility easement to the City of Elko in lieu of this easement.
CL

Cathy Laughlin, City Planner stated this application is for Grace Baptist Church and the easement provided for a sewer line to feed the parcels to the Northwest of this parcel. The property is under contract of sale. The potential buyer does not want this easement. He wants it relocated along property lines. The property is undeveloped. The proposed vacation is in conformance with the Master Plan Land Use component. The proposed vacation is in conformance with the Master Plan Transportation Component. The area is located outside the Redevelopment Area. There are several findings in the staff report and staff recommends City Council approve this application and refer it to the Planning Commission for consideration.

Mayor Keener called for public comment. No comments were made.

**** A motion was made by Councilwoman Mandy Simons and seconded by Councilman Chip Stone to accept the petition for a vacation and direct staff to commence the vacation process by referring the matter to the planning commission.**

The motion passed unanimously. (4-0)

- B. Review, consideration, and possible action to accept a petition for the vacation of a portion of Silver Street Right-of-Way, consisting of an area approximately 1,720 sq. ft., filed by Ygoa Ltd. and processed as Vacation No. 3-20, and matters related thereto. **FOR POSSIBLE ACTION**

The applicant would like to vacate this portion of Silver Street to create an outdoor dining area. CL

Cathy Laughlin, City Planner stated she will go through a couple of key points in the staff report. NRS 278.479 to 278.480, require that the governing body must be satisfied the public will not be materially injured by a vacation. Staff does believe this area is being used for parking, it is right of way parking and taking away the public use of this property is considered materially injuring the public. Second, under land use the Master Plan Land Use shows the area as Mixed Use Downtown. The Property is general Industrial is not a corresponding zoning district for Mixed Use Downtown. It does meet the Master Plan objectives numbers 2 & 6, but staff feels that due to the existing zoning this vacation is not in conformance with the Master Plan Land Use. Under transportation the property is accessed from Silver Street, 3rd Street and River Street. We have already vacated a portion of River Street to the applicant. Silver Street is a major arterial. One plus is the existing egress onto Silver Street is within the area proposed to be vacated and it is being proposed to be moved further to the West. The proposed vacation is in conformance with the Master Plan Transportation Component. Under the redevelopment plan there are three findings. Under Public Uses the Redevelopment Plan states: The intent of this Redevelopment Plan is to maintain the amount of property currently being used for public purposes. This property is being used for a public purpose and makes it a conflict with the redevelopment plan. The Redevelopment Plan states: On street parking is not reserved or limited to the exclusive use of the abutting property owner, but is made available to the public on a first-come, first-serve basis. Parking needs can be met with the conversion of local street blocks to angled parking. A parking deficiency is created due to properties not required to provide off street parking. Public right-of-way is forced to absorb a significant share of the cumulative parking demand. The RDA Vision Plan also talks about parking and it is not in conformance with this. Code 3-2-17 states principal permitted uses which are situated on property located within four hundred feet (400') of the central business district public parking corridor, are exempted from providing required off street parking. This property is within the 400' but the other properties on that block are not. Staff does feel this vacation will create a detriment to the adjoining business due to the loss of parking. In Code 8-7 the City Council is required to determine that the public will not be materially injured by the proposed vacation, and that it is in the best interest of the city, prior to ordering the street be vacated. Some other areas of concern include there is a water line serving properties to the West. There were 7 findings in the staff report and staff recommends denial. We agree it is a great idea but were not able to make it fit within the code.

Scott Ygoa owner of the Star Hotel stated this was proposed to the City about ten years ago and they were not able to get it done. He stated it was evident during Covid that if you didn't have outdoor dining you were going out of business. He stated we know this is going to happen again with Covid. I'm trying to make the business better. The Star will be 110 years old in December. I rent the vacant

lot to the West just for parking. It gives me 12 spots. With this proposal we will lose 4 spots. Mayor Keener asked if Mr. Ygoa has spoken to his neighbors. Mr. Ygoa stated no.

Eric Lattin, Engineer addressed some technical aspects. Parking is the reason for denial. We are proposing to slide over the entrance that is a five-point intersection on a major arterial. You should not put five point intersections on a major arterial. We are not losing good parking spaces. There are accidents at that intersection every year. In terms of the water line, we will simply grant an easement to the City.

Councilman Schmidlein stated this is a unique area. The entire secondary parking lot should happen going all of the way down and put a curb, gutter and sidewalk all the way down. This would eliminate any safety issues and grant this for all of the business owners. Dennis Strickland, Public Works stated the issue is the other property owners have to be in agreement. He would not recommend parallel parking down Silver Street. Councilwoman Mandy Simons stated everything we do sets a precedent. This is an amazing idea but if we do it for one we need to do it for everyone. What if everyone doesn't want it? Parking is valuable downtown. Mayor Keener likes the concept of outdoor dining. He stated this intersection is a hot mess and it would be in the interest of public safety to remediate it. There are safety related advantages to doing this.

Mr. Ygoa stated the water line is old and breaks at least two or three times a year and it needs to be replaced. Dale Johnson, Utilities Director stated this water line starts in the peninsula and it feeds other business, not the Star. This water line is on the list to be replaced and contractors have already looked at it. Ideally it would be better to have the service come off of Silver Street.

Mr. Lattin added in closing, you have a business owner willing to give something back to the community and beautify the downtown and this is unusual. He understands the reasons for denying it but does not think it applies because there is a safety issue at this intersection. We would like the opportunity to continue moving the project forward. Mayor Keener asked about putting it on the east side of the property. Mr. Lattin stated this would not work. Mr. Strickland stated the intersection was not created like it should have been but he doesn't believe we have had a large number of crashes at this corner. Councilman Schmidlein would like staff to figure out a way to make this work. Councilwoman Simons would like them to talk to the neighbors. Mr. Strickland stated he has concerns about how the proximity of diners to drivers on a very busy road. Scott Wilkinson wanted some clarification from legal counsel. Is this excess right of way and if we vacate it does it injure the public is the question. As we go through the process and it, goes to the Planning Commission the public will be notified. Council could direct staff to work with the neighboring property owners. Councilwoman Simons asked to table it because right now she would vote no. Mayor Keener asked if Mr. Lattin and Mr. Ygoa if this were tabled would they agree to meet with staff and do outreach with the neighbors. They stated yes.

**** A motion was made by Councilwoman Simons and seconded by Councilman Stone to table this item and direct staff to work with the applicant and include the property owners the in the effected properties.**

Mayor Keener called for public comment. Mr. Ygoa asked what would happen if all of the owners don't agree with it, how will it change things? Mayor Keener stated the Board will hear all sides and take it into consideration.

The motion passed unanimously. (4-0)

- C. Review, consideration, and possible approval of a request by Jeff and Jenny Peterson of 2727 Morning Breeze Drive to pay the costs on a water leak at his residence, and matters related thereto. **FOR POSSIBLE ACTION**

On July 17, 2020 and again on July 22, 2020 the City of Elko was contacted regarding a water leak at 2727 Morning Breeze Drive. It was discovered there were two leaks on the City line. The Petersons are requesting payment of a \$1000 invoice from Fielder Sewer and Drain. The claim was denied by Alternative service Concepts, the City's third-part administrator for insurance claims. The agenda packet contains specific information regarding the leak. KW

Kelly Wooldridge, City Clerk stated this is really a housekeeping item. Normally the City would have paid this directly, however the Petersons paid the invoice so the City will need to reimburse the Petersons.

**** A motion was made by Councilman Robert Schmidlein and seconded by Councilwoman Mandy Simons to authorize city staff to reimburse the Peterson's for the \$1000 they paid to Fielder Sewer and Drain.**

The motion passed unanimously. (4-0)

- D. Review, consideration, and possible action concerning a request for the City Council to direct the Building Department to issue an order of non-compliance to the owner of the property and partially demolished building located at 397 5th Street, and matters related thereto. **FOR POSSIBLE ACTION**

The City received a petition from the owner of the property and structure located at 369 5th Street and abutting the partially demolished structure located 397 5th Street. The request is based on the petitioner intending to complete roof repairs on the structure located at 369 5th Street. The petitioner states that they have attempted to utilize the wall located on 397 5th Street for completion a roof repair on the structure located at 369 5th Street. The petitioner did not provide documentation that the owner of 397 5th Street has granted permission for the use of the wall. The petitioner states that a bricklayer was consulted, and a determination was made the wall is structurally unsound and demolition of the wall is required. A structural analysis completed by a properly licensed professional would be required for a final determination.

The Building Department issued a demolition permit 2018-00000452 on May 21, 2018. That permit is still open pending a final inspection. A final inspection cannot be performed until the owner of the property provides the City a structural analysis showing the portion of the structure left standing is structurally sound. SAW

Scott Wilkinson, Assistant City Manager stated that as a result of receiving this petition he sent a letter to the contractor that worked on the building reminding him there is an open permit and they need to provide a structural analysis or remove the wall. He has also spoken to both property owners. He does not believe the Council needs to take any action on this. There is a copy of an email from the property owner David Knight and he is working with the other property owners to

resolve the issues. He is looking for the property owners to resolve the issue. He recommended no action at this time.

Mayor Keener asked about the tarps on the building. Mr. Wilkinson stated those are not tarps. They appear to be a membrane roof and we would not permit this.

The Council took no action on this item.

VIII. 5:30 P.M. PUBLIC HEARINGS

- A. Review, consideration, and possible action to conditionally approve Tentative Map No. 6-20, filed by Legion Construction and Development, LLC, for the development of a subdivision entitled Jarbidge Estates, involving the proposed division of approximately 2.16 acres of property into 18 lots for residential development and 1 common lot within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located on the west side of N 5th Street at the intersection of Rolling Hills Drive (APN 001-610-093). The Planning Commission considered this item on September 1, 2020, and took action to forward a recommendation to conditionally approve Tentative Map 6-20. MR

Michelle Rambo, Community Development Director stated this is 2.16 acres that will have 18 townhouse lots, one common lot and a HOA. The zoning change was completed. There were some concerns at the Planning Commission about traffic on 5th Street. The road was designed for 12-15000 trips per day. In 2019 it had about 5000 trips per day and this project will add only 100 trips per day. There is access of the driveways to 5th Street. There is a vacation request for the sewer line they are proposing to use pending. There is a proposed condition that final sewer easement location will be determined prior to final map submission. They comply with the Master Plan, City Code, and regulations. Staff recommends conditional approval.

Mayor Keener called for public comment. There were no comments.

**** A motion was made by Councilman Schmidlein and seconded by Councilman Stone to conditionally approve Tentative Map No. 6-20 for the Jarbidge Estates subdivision, subject to the findings and conditions as recommended by the Planning Commission and the proposed additional condition of approval as presented by Staff. The final sewer easement to be determined and recorded prior to submittal of the final map on all of the construction drawings.**

The motion passed unanimously. (4-0)

IX. REPORTS

- A. Mayor and City Council – *Mayor Keener read a letter complimenting the water department. The letter is in the record. Councilman Stone stated the ECVA is looking for people to be recipients of the Festival of Trees donations.*
- B. City Manager
- C. Assistant City Manager – *Scott Wilkinson wished the City Manager a speedy recovery.*
- D. Utilities Director – *Dale Johnson stated the golf course project is nearing completion. They have started on pond two. Mayor Keener was concerned about the track hoe that went across the fairway and Mr. Johnson stated the contractor will fix any damage. They are hoping to fill the ponds tomorrow. Mayor Keener asked about effluent line failures on Sequoia. A couple yards were flooded and these lines have been repaired. Councilman Stone stated they repaired it very quickly. Mr. Johnson also stated there is conduit going into the Sports Complex. Councilman Stone asked about the COVID Sewer report. Mr. Johnson stated on October 7 the number was 172,707 virus concentration. It is ticking up again. The analysis is based on the flow rate. It estimates there is 5 new cases per day.*
- E. Public Works – *Dennis Strickland stated Cedar Street will be on for final acceptance next meeting. It is a little over budget. The contractor and engineer did a good job. Striping is wrapped up for the year and patching is almost done.*
- F. Airport Manager
- G. City Attorney
- H. Fire Chief – *Chief Griego reported a new resignation of a firefighter going to Storey County. They will try and fill this as soon as possible. Fire is down 25% right now with 2 on maternity leave, one injured and now the resignation. Mayor Keener asked if any of the volunteer firefighters might be interested. Chief Griego stated yes, and that there may be other local people interested.*
- I. Police Chief – *No Report.*
- J. City Clerk – *Kelly Wooldridge reported the City Clerk's office will be accepting mail in ballots only October 19-29. Mayor Keener asked if we will utilize the outside drop box. Ms. Wooldridge stated no we will have to open. They did this for people that don't want to walk into the convention center and stand in line. Councilman Stone asked if you need to have the mail in vote to vote in person. Ms. Wooldridge stated you don't have to but they would prefer you surrender it.*
- K. City Planner – *No Report*
- L. Development Manager – *No Report*
- M. Financial Services Director – **Cares Act Report** *Jan Baum stated we have spent about \$500,000 of the first half, leaving about \$ 1.3 million. She did reach out to the County and they are not willing to agree to adhere to the directives of the Governor. Councilwoman Simons asked if they did not sign the same document the City did with the Governor's office. Ms. Baum stated, yes the County signed the exact same document the City signed.*
- N. Parks and Recreation Director – *James Wiley stated the pool-reroofing project is near completion. Painting and replacing the air unit are the last steps, as well as getting the heating source back in. There is some work at Sno Bowl with electrical issues on the lift. We may need to replace a motor. We anticipate we will be able to ski with Covid restrictions in place. We are working on turf renovation and soil amendments at the Sports Complex. Mayor Keener asked about the Golf Course RFP. Mr. Wiley stated that as of today, we have received one but there are several people on the list.*

- O. Civil Engineer - *Not Present*
- P. Building Official – *Not Present*

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

There were no public comments.

There being no further business, Mayor Reece Keener adjourned the meeting.

Mayor Reece Keener

Kelly Wooldridge, City Clerk

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible final acceptance of Airport Improvement Project No. 3-32-0005-050 (AIP 50) Pavement Maintenance Project, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **APPROPRIATION**
4. Time Required: **5 Minutes**
5. Background Information: **The purpose of this project was to preserve and rehabilitate the pavement on Runways 6/24 and 12/30, Taxiways A and B, blast pads, and all aprons, by crack sealing, major crack repair, seal coating, and re-striping. This rehabilitation was necessary to preserve the service life of the asphalt pavements. There were two (2) no cost change orders in the amount of \$96,543.52. Jviation and staff believes the project has been substantially completed with a few minor administration items and requests to begin the closeout process with the FAA JF**
6. Budget Information:

Appropriation Required:	\$1,332,564.00	Federal Share
Budget amount available:	\$ 88,837.60	Local Match
	\$ 31,460.00	Non FAA eligible
Fund name:	Airport Enterprise Fund	
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Closeout cost worksheets**
9. Recommended Motion: **Move to approve final acceptance and authorize Staff to begin the closeout process with the FAA.**
10. Prepared By: **Jim Foster, Airport Manager**
11. Committee/Other Agency Review: **N/A**
12. Council Action:
13. Agenda Distribution: **Kirk Nielsen, P. E.
Program Manager, Jviation, Inc.
kirk.nielsen@jviation.com**

Elko AIP-50

Rehabilitate Runway 6/24, Taxiway A, Taxiway B, Runway 12/30 and Apron

Funding		Amount
FAA Grant AIP-3-32-0005-050-2019		\$1,332,564.00
Elko (6.25%)		\$88,837.60
Elko (Non FAA eligible areas) Sch II		\$31,460.00
Project Total		<u>\$1,452,861.60</u>

Costs	Justification	Amount
Jviation		\$199,824.64
Amendment #1 (Additional Inspection)	\$4,500.70 paid by Contractor (Liquidated Damages)	\$18,233.12
Maxwell (Original Bid-- Federal Sch I)		\$1,211,576.85
Maxwell (Original Bid-- Local Sch II)		\$31,460.00
Maxwell Change Order #1	Additional Soft spot remediation/quantity reconciliation	-\$11,922.98
Maxwell Change Order #2	quantity reconciliation	-\$91,780.19
Maxwell Change Order #2 (Sch II)	quantity reconciliation	-\$5,003.00
Elko - Admin Costs		\$3,929.64
Total Costs		<u>\$1,356,318.08</u>
Difference (Recovery)		<u>\$96,543.52</u>

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration and possible direction to Staff regarding CARES Act funding, including the possible initiation of the closeout process, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **UNFINISHED BUSINESS**
4. Time Required: **20 Minutes**
5. Background Information: **Based on the recommendation of the City Manager, this item was tabled at the September 22, 2020 meeting. CC**
6. Budget Information:

Appropriation Required: **NA**
Budget amount available: **NA**
Fund name: **NA**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information:
9. Recommended Motion: **Pleasure of the Council**
10. Prepared By: **Scott A. Wilkinson, City of Elko Assistant City Manager**
11. Committee/Other Agency Review:
12. Council Action:
13. Agenda Distribution:

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval for the City of Elko to enter into a Memorandum of Understanding (MOU) with the Utah Department of Technology Services, Automated Geographic Reference Center (AGRC) for the purpose of sharing a real-time stream of raw GPS data from the City of Elko GPS reference station, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **5 Minutes**
5. Background Information: **The AGRC maintains a network of GPS reference stations throughout the State of Utah, and has recently acquired another network of reference stations in Washoe County, Nevada. The AGRC would like to fill in the gap between the two networks with additional GPS reference stations along the I-80 corridor. In exchange for the City providing the stream of GPS data, the AGRC will provide the City with one Network subscription at no cost. BT**
6. Budget Information:

Appropriation Required: \$0
Budget amount available: N/A
Fund name: N/A
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Copy of the Memorandum of Understanding between the City of Elko and the Utah Department of Technology Services, Automated Geographic Reference Center.**
9. Recommended Motion: **Approval for the City of Elko to enter into the Memorandum of Understanding with the Utah Department of Technology Services, Automated Geographic Reference Center.**
10. Prepared By: **Bob Thibault, Civil Engineer**
11. Committee/Other Agency Review: **N/A**
12. Council Action:
13. Council Agenda Distribution: **Sean Fernandez, Utah Dept. of Technology Services, AGRC**
sfernandez@utah.gov



Agreement Number: MOU-0269

MEMORANDUM OF UNDERSTANDING
between
**THE DEPARTMENT OF TECHNOLOGY SERVICES,
AUTOMATED GEOGRAPHIC REFERENCE CENTER**
and
The City of Elko, Nevada

SUMMARY

Effective Date: the date of the last signature on this MOU
Termination Date: 11/1/2030
ELCID/NSCID: ITAGRGPS

PURPOSE

This Memorandum of Understanding ("MOU") is entered into between the Department of Technology Services ("the Department"), Automated Geographic Reference Center ("AGRC"), and the City of Elko, Nevada (the "Customer" or "the City"), a duly formed and existing city pursuant to the laws of the State of Nevada, regarding The Utah Reference Network GPS ("the Network"). The City and AGRC may be collectively referred to as the "parties," and singularly as a "party."

This MOU document defines and describes the responsibilities of each party, the services to be provided, and other details of the parties' understanding.

CONTACT INFORMATION

Customer Contact: Bob Thibault
Phone: (775) 777-7214
E-mail: bthibault@elkocitynv.gov
Address: 1751 College Ave, Elko, NV 89801

AGRC Representative: Sean Fernandez, AGRC Manager, Utah Automated Geographic Reference Center
Phone: (801) 209-9359
E-mail: sfernandez@utah.gov

BACKGROUND

The State of Utah, through the Department, operates AGRC. AGRC administers the Network to support highly accurate GPS measurements and also offers subscription-based access to the Network to the public. This MOU outlines the understanding that AGRC will provide a Network subscription to the Customer, and the Customer will host a Network station.



COMMENCEMENT

This MOU is effective as of the date of the last signature on this MOU, and the target implementation date is 11/01/2020.

CUSTOMER RESPONSIBILITIES

Pursuant to this MOU, the parties understand that the City will:

- Provide AGRC a real-time stream of raw GPS data from the City of Elko GPS Reference Station at no cost.
- Provide and help maintain internet connectivity.
- Not be responsible if the stations go down, get stolen, or other circumstances outside the City's control.
- Maintain the right to continue broadcasting GPS data and corrections to the public, free of charge, over UHF radio and the internet from the Elko City GPS receiver.
- **Maintenance access.** The City of Elko will perform its own maintenance on the GPS Reference Station.
- If the City is unable to provide the real-time stream of raw GPS data, the City will give the AGRC 30 days' notice.

AGRC RESPONSIBILITIES

Pursuant to this MOU, the parties understand that AGRC will:

- Provide the City with one Network subscriptions at no cost.
- Not hold the City of Elko responsible for any downtime or station outages.

PROVISIONS

- **Authority.** The parties affirm that they have the authority to enter into this MOU.
- **Compliance.** Each party will comply with all federal requirements, along with its own state and local requirements.
- **No liability.** Neither party makes any express or implied warranty related to this MOU. In no event will either party be liable to the other for any damages, to include but not limited to lost profits, lost savings, or incidental, indirect, special or consequential damages arising out of the use or inability to use real-time stream of raw GPS data, or for any other reason arising out of or in any manner pertaining to this MOU. The parties understand that this MOU is an expression of intent and not an enforceable contract, nor does it create any enforceable rights or obligations between the parties.
- **No Legal Relationship.** The parties intend by this MOU that there is no legal relationship between them, and the relationship of the parties shall not be that of independent contractor, principal and agent, master and servant, or employer and employee. Each party shall be solely responsible for all employment-related benefits and obligations imposed by statute, regulation, contract, or



otherwise for its employees, servants, agents, and representatives and those of its subcontractors, if any.

- **Notices.** All notices concerning this MOU, other than the day-to-day communications between the parties, shall be in writing and shall be sent to the relevant address set forth below. The parties may designate other addressees or addresses by notice to the other party. A notice shall be deemed effective (a) when given by hand delivery; (b) when sent by email; (c) three days after deposit into the U.S. mail, postage prepaid; or (d) one business day after deposit with commercial overnight delivery service, charges prepaid.

City of Elko
Attn: Bob Thibault
1751 College Ave.
Elko, NV 89801
bthibault@elkocitynv.gov
Ph: (775) 777-7214

State of Utah DTS-AGRC
Attn: Sean Fernandez
1 State Office Bldg, Room 5130
Salt Lake City, UT 84114
sfernandez@utah.gov
Ph: (801) 209-9359

- **Assignment.** Neither party shall, in whole or in part, assign its rights or delegate its obligations under this MOU without the prior written consent of the other party, and any attempt to do so without consent shall be void. This MOU shall be binding upon and inure to the benefit of the parties' permitted successors and assigns; provided, in no event shall succession or assignment render this MOU an enforcement instrument.
- **Entire MOU.** This MOU, together with its exhibits (if any), contains the entire MOU between the parties concerning the subject matter, and it replaces and supersedes any and all prior or contemporaneous, oral or written, agreements, understandings, communications, and representations between the parties. Any terms or conditions contained in any confirmation, statement, or invoice that differ or vary the terms of this MOU are null and void and shall have no effect between the parties. This MOU may not be amended except in writing signed by the parties.
- **Authority.** Each person signing this MOU warrants that the person has full legal capacity, power, and authority to execute this MOU for and on behalf of the respective party.
- **Interpretation.** Notwithstanding any other provision contained herein or the construction of any language, this MOU is not a contract, nor does it create any enforceable legal rights in favor of or against either party hereto, nor are there any third party beneficiaries hereto, intended or otherwise. In no event may this MOU be used in support of any claim or action, whether administrative, civil, criminal, legal, equitable or otherwise. This MOU serves no purpose other than to outline a mechanism by which the parties may cooperate in an effort to exchange and facilitate the use of GPS data and access to digital networks and information systems.

COSTS

AGRC will not charge a fee for providing the Customer with a subscription to the Network, and, in exchange, the Customer will host the network site.



TERMINATION OR AMENDMENT

This MOU shall begin on the date of the last signature on this MOU and will remain in effect for a period of ten (10) years ending on 11/01/2030. The parties may renew this MOU for an additional ten (10)-year term by written amendment. Notice(s) of termination and proposed amendments should be in writing and provided to the Contacts above. Either party may terminate this MOU for any reason, or for no reason, with at least 60 days' prior written notice to the other party.

SIGNATURES OF APPROVAL

By signing below, the parties agree to this Memorandum of Understanding.

Elko City Representative

Signature:		Date:	
Name (Printed):		Title (Printed):	

AGRC Representative

Signature:		Date:	
Name (Printed):		Title (Printed):	

Department of Technology Services Representative

Signature:		Date:	
Name (Printed):		Title (Printed):	

ATTACHMENTS

- A.
- B.

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and approval of a Selection Committee for the Golf Course Professional/Management Services Request for Proposals, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **10 Minutes**
5. Background Information: **Bids were opened for the Golf Course Professional/Management Services on October 16, 2020, and four bids were received. The RFP indicated the Selection Committee would include the City Manager, the Finance Director, one member of the City Council, one member of the Golf Course Financial Advisory Committee, and the Golf Course Superintendent. JW**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **None**
9. Recommended Motion: **Pleasure of the Council**
10. Prepared By: **James Wiley, Parks and Recreation Director**
11. Committee/Other Agency Review: **None**
12. Council Action:
13. Council Agenda Distribution:

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of a mutual release of claims between the City and Michelli Measurement Group, Inc. regarding termination of a contract for the installation of truck scales at the Elko Landfill, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **15 Minutes**
5. Background Information: **On August 11, 2020, the City awarded a contract to Michelli Measurement Group, Inc. for the purchase and installation of two heavy duty steel deck truck scales at the Elko Landfill. Subsequently, disagreements developed between the City and Michelli Measurement over the scope of the contract. The City and Michelli Measurement have since preliminarily agreed that it would be better for both parties to terminate the contract and release each other from any claims they might have, subject to Council approval. The City would then recommence the bidding process and seek a new contractor. DS**
6. Budget Information:
 Appropriation Required: **NA**
 Budget amount available: **NA**
 Fund name: **NA**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **October 1, 2020 letter signed by Dennis Strickland and Robert J. Feigler, Michelli Measurement Group, Inc.**
9. Recommended Motion: **Move to approve the mutual release of claims with Michelli Measurement Group, Inc. as set forth in the October 1, 2020 letter signed by Dennis Strickland and Robert J. Feigler.**
10. Prepared By: **Dennis Strickland, Public Works Director**
11. Committee/Other Agency Review: **Dave Stanton, City Attorney**
12. Council Action:
13. Agenda Distribution: sfertig@elkocitynv.gov



City of Elko Public Works/Streets
1751 College Avenue
Elko, NV 89801
(775) 777-7241
FAX (775) 777-7249

October 1, 2020

Michelli Measurement Group, Inc.
Attn: _____
2334 Stagecoach Road, Suite E
Stockton, CA 95215

RE: Heavy Duty Steel Truck Scales

Dear Mr. Feigler:

Per Gregory Dicker's email to me dated September 29, 2020, Michelli Measurement Group, Inc. has decided to "opt out" of its contract with the City of Elko for the furnishing and installation of two (2) heavy duty steel deck truck scales at the City of Elko Solid Waste Facility. By doing so, Michelli Measurement Group, Inc. has unilaterally terminated an enforceable contract with the City of Elko. While the City of Elko may have remedies for breach of contract at this point, we would be willing to terminate the contract at no cost to either party in exchange for a mutual release of all claims between the City of Elko and Michelli Measurement Group, Inc., subject to approval by the Elko City Council. In other words, if Michelli Measurement Group, Inc. agrees to a mutual release of claims and if the release is approved by the Elko City Council, neither Michelli Measurement Group, Inc. nor the City of Elko will have claims against each other in relation to the contract.

If the foregoing is acceptable, please obtain an authorized signature below and return the signed letter to me. I will then place the item on an agenda for an upcoming Elko City Council meeting. You will be notified once the City Council has made its decision.

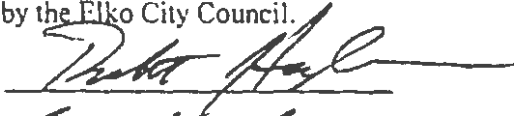
Sincerely,

Dennis W. Strickland
Public Works Director

Michelli Measurement Group, Inc. does not agree with the statements contained in the above letter. Rather, Michelli Measurement Group, Inc. believes that new material requirements were included in the City bid specifications post purchase order award, or were added to the resulting purchase order, which has rendered the contract unenforceable and therefore, there has been no "meeting of the minds".

Notwithstanding this disagreement with the City, I, Robert J. Feigler, on behalf of Michelli Measurement Group, Inc., hereby agree to release the City of Elko from any and all claims arising from the contract with the City of Elko for the furnishing and installation of two (2) heavy duty steel deck truck scales at the City of Elko Solid Waste Facility, subject to approval of a mutual release of claims by the Elko City Council.

By:



Title:



Date:



Michelli Measurement Group, Inc.

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible acceptance of an easement for utility purposes from Grace Baptist Church, along the northerly property line of APN 001-610-112, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **5 Minutes**
5. Background Information: **As part of Vacation 4-20 to vacate an existing utility easement that was granted to the City of Elko, the owner is granting the new utility easement in a location that doesn't bisect the parcel and hinder future development. CL**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Granting of Easement Document with Exhibits**
9. Recommended Motion: **Accept the Easement for utility purposes**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution: **High Desert Engineering
Attention: Robert Morley
remorley@frontiernet.net
640 Idaho Street
Elko, NV 89801**

**Grace Baptist Church
Attention: John Ferricks
Tgmd1@citlink.net**

EXHIBIT A
30' PUBLIC UTILITY EASEMENT
TO BE GRANTED TO THE CITY OF ELKO, NEVADA
October 20, 2020

An Easement for utility purposes located in Section 9, T.34 N., R.55 E., M.D.B. & M., City of Elko, Nevada, being 30.00 feet in width, lying Southerly of and parallel with the Northerly Boundary of Adjusted Parcel 1B as shown on the Boundary Line Adjustment, Record of Survey for the Grace Baptist Church on file in the Office of the Elko County Recorder, Elko, Nevada, as File No. 775538, more particularly described as follows:

Beginning at the most Easterly Corner of said Adjusted Parcel 1B being Corner No.1, the True Point of Beginning;

Thence S 41° 32' 17" W, 30.00 feet along the Northwesterly Right of Way of Dakota Street to Corner No. 2;

Thence N 48° 02' 03" W, 187.13 feet to Corner No. 3;

Thence N 84° 54' 21" W, 225.88 feet to Corner No. 4, a point being on the Northwesterly Line of said Adjusted Parcel 1B;

Thence N 42° 52' 32" E, 37.96 feet along the said Northwesterly Line of Adjusted Parcel 1B to Corner No. 5;

Thence S 84° 54' 21" E, 212.63 feet along the Northerly Line of said Parcel 1B to Corner No. 6;

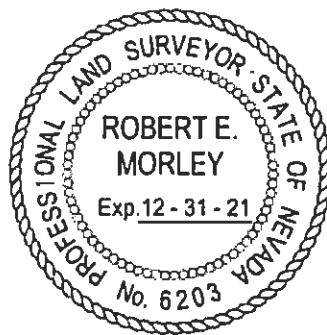
Thence S 48° 02' 03" E, 196.91 feet along the said Northerly Line of Parcel No. 1B to Corner No. 1, the point of beginning, containing 12,338 square feet more or less.

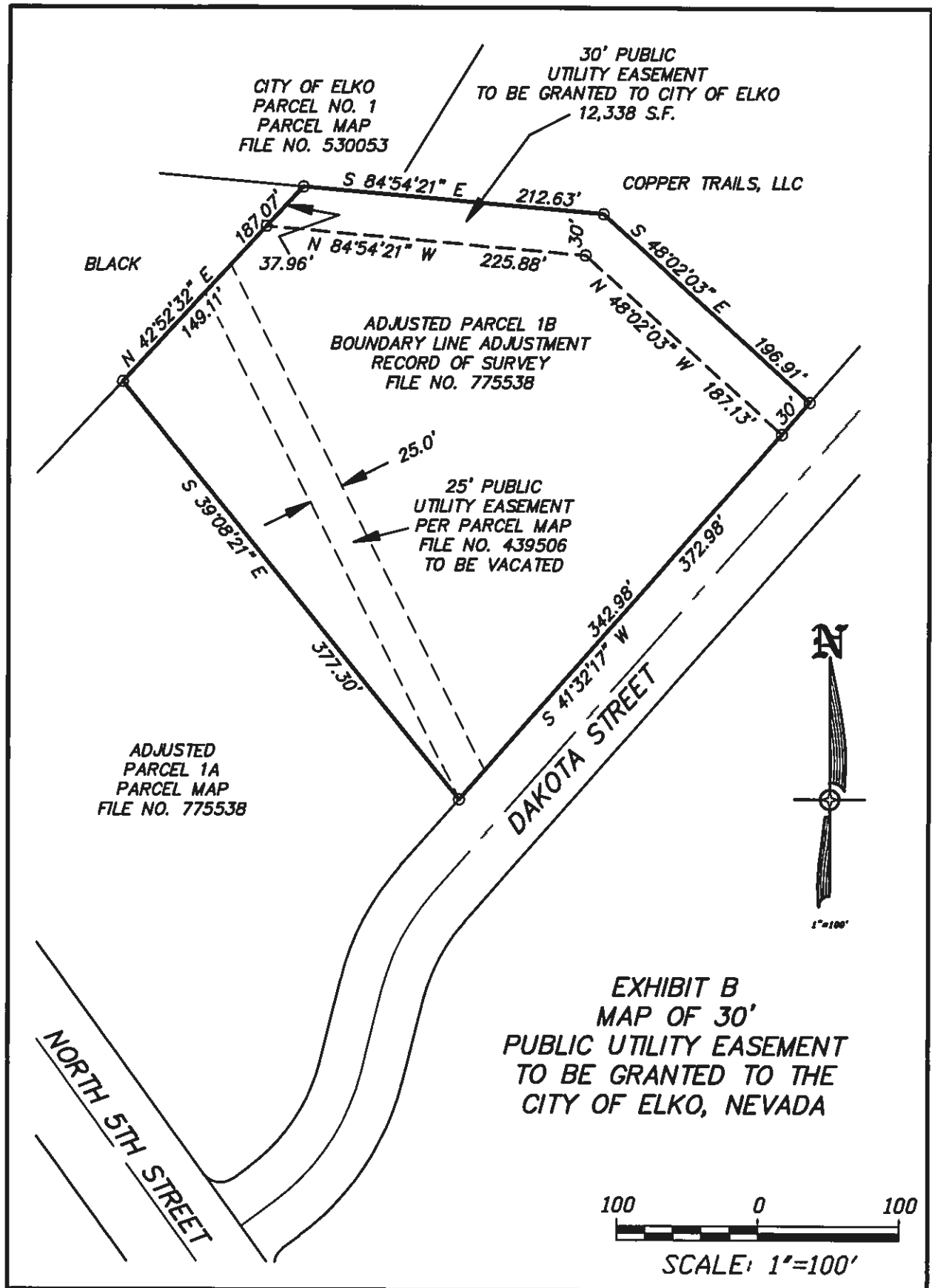
The Basis of Bearing for the above described easement is the Boundary Line Adjustment, Record of Survey for the Grace Baptist Church on file in the Office of the Elko County Recorder, Elko, Nevada, as File No. 775538.

Continued on Page 2

30' Public Utility Easement
To be Granted to the City of Elko, Nevada
Continued from Page 1

Reference is hereby made to Exhibit B, Map of 30' Public Utility Easement To Be Granted to the City of Elko, Nevada, attached hereto and made a part hereof.





APN: 001-610-112

After Recordation Return To:

Elko City Planner
1751 College Avenue
Elko, Nevada 89801

GRANT OF EASEMENT
(Utilities)

THIS GRANT OF EASEMENT is entered into this ____ day of _____, 2020 by and between **GRACE BAPTIST CHURCH OF ELKO, NEVADA**, a Nevada Nonprofit Corporation ("Grantor"), and the **CITY OF ELKO**, a municipal corporation and political subdivision of the State of Nevada ("Grantee").

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain real property situate in the County of Elko, State of Nevada, more particularly described in the following exhibits:

**EXHIBIT A (LEGAL DESCRIPTION) - 30' PUBLIC UTILITY EASEMENT
TO BE GRANTED TO THE CITY OF ELKO, NEVADA**

and shown on the following map:

**EXHIBIT B (MAP) - MAP OF 30' PUBLIC UTILITY EASEMENT TO BE
GRANTED TO THE CITY OF ELKO, NEVADA**

Exhibits A and B, being attached hereto and by this reference made a part hereof, the foregoing property collectively referred to as the "Easement Property;" and

WHEREAS, Grantor desires to grant a permanent public utility easement to Grantee and its successors and assigns over the Easement Property for the purposes of and on the terms and conditions set forth herein.

NOW THEREFORE, Grantor, for good and valuable consideration, receipt of which is hereby acknowledged, does hereby convey an easement as follows:

GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD.
Attorneys at Law
530 Idaho Street, P.O. Box 1358
Elko, Nevada 89801 - (775) 738-8091

1. **Grant of Public Utility and Drainage Easement.** Grantor hereby grants to grantee and its successors, assigns, licensees, contractors, invitees and agents, a permanent non-exclusive easement and right of way, over, across, upon, under and through that portion of the Grantor's Property described as the **Easement Property** on the description attached hereto at **Exhibit A** and depicted on the map attached hereto at **Exhibit B** and made a part hereof, for ingress and egress for the purpose of construction, grading, excavating, operation and maintenance of public utilities and for the purpose of providing drainage.

2. **Access; Use.** Except as provided in Section 1, Grantee shall not traverse, trespass on or disturb other portions of the Grantor's Property or other real property owned by Grantor without the prior written consent of Grantor. Grantee shall comply with all applicable dust control and emissions requirements, regulation and laws while entering over, across, upon, under, and through that portion of the Grantor's Property for ingress and egress and for the purpose of constructing, altering, maintaining, inspecting, repairing, reconstructing, and operating its public utilities and to provide for drainage.

THIS GRANT OF EASEMENT and the terms contained herein shall run with the land and become and be a burden on the Grantor's Property and shall be binding upon and shall inure to the benefit of Grantor and Grantee, and the successors, agents and assigns of Grantor and Grantee, and all the right herein granted may be assigned.

TO HAVE AND TO HOLD all the singular the said premises, granted together with the appurtenances, unto said Grantee their successors, agents, contractors, licensees and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have caused these presents duly to be executed the day and year first above written.

GRANTOR:

**GRACE BAPTIST CHURCH OF ELKO,
NEVADA, a Nevada Nonprofit Corporation**

By: _____
JOHN FERICKS, PRESIDENT

///
///
///
///

GRANTEE:

**CITY OF ELKO, a municipal corporation
and political subdivision of the State of Nevada**

By: _____
REECE KEENER
Mayor, City of Elko

STATE OF NEVADA)
 : ss.
COUNTY OF ELKO)

This instrument was acknowledged before me on this _____ day of _____,
2020, by John Fericks, as President of Grace Baptist Church of Elko, Nevada, on behalf of said
entity, as therein named.

NOTARY PUBLIC

STATE OF NEVADA)
 : ss.
COUNTY OF ELKO)

This instrument was acknowledged before me on this _____ day of _____,
_____, 2020, by Reece Keener, as City of Elko Mayor, on behalf of said
entity, as therein named.

NOTARY PUBLIC

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of a Grant, Bargain and Sale Deed and Contract of Purchase and Sale between the City of Elko and Anthem Broadband of Nevada, LLC, for the purchase and sale of a parcel of land consisting of 2,800 sq. ft. referred to as APN 001-01R-004 in the City of Elko, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **15 Minutes**
5. Background Information: **City Council adopted Resolution No. 20-20 accepting the fair market value of the referenced parcel at their August 25, 2020 meeting and then adopted Resolution No. 21-20 permitting the sale of the property to Anthem Broadband of Nevada LLC for economic development purposes without offering the property to the public. The Contract of Purchase and Sale and Grant, Bargain and Sale Deed are required to complete this transaction. CL**
6. Budget Information:
 Appropriation Required: **NA**
 Budget amount available: **NA**
 Fund name: **NA**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Grant, Bargain and Sale Deed, and Contract of Purchase and Sale**
9. Recommended Motion: **Move to approve the Grant Bargain and Sale Deed and Contract of Purchase Sale between the City of Elko and Anthem Broadband of Nevada, LLC.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review: **Legal**
12. Council Action:
13. Agenda Distribution: **Jasen Herr**
 jasenh@safelinkinternet.com

001-01R-001

Recording Requested By
and Return to:

Anthem Broadband of Nevada
c/o 212 Tech, LLC, Managing Member
906 South Oneida Street, Unit 8
Rupert, Idaho 83350

The undersigned affirms that
this document does not contain
a social security number.

Grantors' Mailing Address:
1751 College Avenue
Elko, Nevada 89801

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE, made and entered into this ____ day of _____, 2020, by and between the **CITY OF ELKO**, a municipal corporation and body politic within the County of Elko, State of Nevada hereinafter called "Grantor" and **ANTHEM BROADBAND OF NEVADA, LLC**, a Nevada limited-liability company, hereinafter called "Grantee."

W I T N E S S E T H:

FOR VALUABLE CONSIDERATION RECEIVED, Grantor does hereby grant, bargain, sell and convey unto the said Grantee, and to its successors and assigns, forever, all that certain lot, piece, or parcel of land situate, lying and being in the City of Elko, County of Elko, State of Nevada, consisting of 2,800 square feet, more or less, and described at **Exhibit 1** hereto (entitled "Legal Description") and shown on the map at **Exhibit 2** hereto (entitled "Display Map");

SUBJECT to any and all exceptions, reservations, restrictions, restrictive covenants, liens, encumbrances, assessments, easements, rights and rights-of-way existing or of record.

TOGETHER WITH all and singular tenements, hereditaments, easements,

and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, or of any part thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said Grantee, and unto its successors and assigns, forever.

PROVIDED, notwithstanding any other provision contained herein, in the event Buyer fails to complete construction of and thereafter obtain a final certificate of occupancy on or before August 25, 2025 for a new building to be located on the Property and used in support of the provision of high-speed Internet to the residents of the City of Elko in connection with Buyer's business, the Property and all improvements thereon shall thereupon automatically revert to the Seller and Seller shall be held harmless from and against any damages, expenses or costs incurred or suffered by Buyer in relation to the Property.

IN WITNESS WHEREOF, the said Grantor has executed this Deed the day and year first herein above written.

GRANTOR:

CITY OF ELKO

By: _____
REECE KEENER, Mayor

STATE OF NEVADA)
) ss.
COUNTY OF ELKO)

This instrument was acknowledged before me on the _____ day of _____, 2020, by REECE KEENER.

NOTARY PUBLIC

CONTRACT OF PURCHASE AND SALE

THIS CONTRACT OF PURCHASE AND SALE ("Agreement") is made and entered into this ____ day of _____, 2020, by and between **ANTHEM BROADBAND OF NEVADA, LLC**, a Nevada limited-liability company, hereinafter called "Buyer," and the **CITY OF ELKO**, a municipal corporation and body politic within the County of Elko, State of Nevada hereinafter called "Seller."

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Property. Subject to the terms and conditions set forth in this Agreement, Seller does hereby agree to sell to Buyer and Buyer does hereby agree to buy from Seller, all of Seller's right, title and interest in and to that certain real property commonly known as Elko Assessor's Parcel Number 001-01R-001, more fully described as follows:

A parcel of land in the City of Elko, Nevada, consisting of 2,800 square feet, more or less, and described at Exhibit A hereto (entitled "Legal Description") and shown on the map at Exhibit B hereto (entitled "Display Map");

SUBJECT to any and all exceptions, reservations, restrictions, restrictive covenants, liens, encumbrances, assessments, easements, rights and rights-of-way existing or of record.

TOGETHER WITH all and singular tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, or of any part thereof.

2. Purchase Price. The Buyer shall pay to the Seller in full for the purchase price of the foregoing described Property the sum of TWENTY-TWO THOUSAND, FIVE HUNDRED DOLLARS AND NO CENTS (\$22,500.00), payable in cash or other immediately available funds at close of sale.

3. Conveyance of Title and Conditions Precedent.

A. Conveyance of Title. The Seller shall convey and the Buyer shall accept good and marketable fee title to the real property insurable by Stewart Title Company, without exceptions, reservations, liens or encumbrances, save and except:

- (i) Those set out in the current form of title policy issued by said title company; and
- (ii) Taxes which are a lien but not yet due and payable.

B. Conditions Precedent. Notwithstanding anything herein to the contrary, it is hereby agreed that, it shall be a condition precedent to Buyer's obligations hereunder that Seller shall not have materially breached any of Seller's obligations hereunder as of Closing.

4. Documents of Sale. The Seller shall execute a good and sufficient grant, bargain and sale deed conveying to Buyer good, marketable and insurable record title to the Property, in substantially the same form as Exhibit C attached hereto and incorporated herein by reference ("Deed"), and deposit the same into escrow with instructions to record the same in accordance with the terms and conditions of this Agreement.

5. Title Insurance Policy. Buyer shall, at its own expense, obtain a policy of title insurance, in form and substance and in the sum satisfactory to Buyer.

6. Taxes. All general real estate taxes, personal property taxes and assessments, including without limitation, state, county, school district and city ad valorem taxes and assessments and any improvement or other bonds encumbering the Property shall be prorated as of closing.

7. Risk of Loss. Risk of loss of the Property shall be that of the Seller until date of closing and shall be Buyer's risk thereafter.

8. Closing Date. The closing date of this transaction shall be on or before the 26th day of October 2020. Possession shall be delivered to Buyer on the closing date.

9. Closing. The closing of this sale will take place through Stewart Title Company, 810 Idaho Street, Elko, Nevada, which shall act as escrow for purposes of this transaction. Following execution of this Agreement, said escrow shall submit to the parties such documents and instruments as may be necessary to close this sale in accordance herewith, including the Deed. The parties agree to execute and return such documents, payments and other items requested by said escrow in form satisfactory for closing this sale in accordance with this Agreement. Upon receipt of all payments and documents necessary hereunder and satisfaction of the Conditions Precedent, said escrow shall close the sale on the closing date set forth in Section 8 above and cause such recordings and title policy to be issued as appropriate hereunder and disburse copies of all documents, recorded or otherwise, to both parties, and shall deliver the original title policy to Buyer.

10. Costs of Sale and Attorney Fees. At closing, Buyer shall pay the title insurance premium, recording fees, transfer tax, legal publication fees, the appraisal fee in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), and all attorney fees for the preparation of the documents and other services of related to this sale.

11. Inspection of Property. The Buyer acknowledges that the Property has been inspected, that the same is being sold in its present condition and state of repair and, except as

otherwise specifically set forth herein, without representations, statements or warranties, express or implied, as to the condition thereof.

12. Seller's Covenants. Seller covenants with Buyer, as follows:

A. No Transfers. Until the closing, no part of the Property, or any interest therein, will be sold, encumbered or otherwise transferred without Buyer's consent.

B. Maintenance. Until the closing, Seller shall maintain the Property in the same manner that it is being maintained on the date of this Agreement.

C. Contracts. Until the closing, Seller shall not enter into any contracts, licenses or agreements that in anyway relate to or otherwise affect the Property without Buyer's prior written consent.

13. Public Improvements. Any public improvements required for right-of-way access approval shall be the sole responsibility of Buyer.

14. Default. If the Closing fails to occur because of either Party's default, the non-defaulting Party shall have the right to all remedies available at law or in equity, including without limitation, seeking specific performance of this Agreement.

15. Automatic Reversion. Notwithstanding any other provision contained herein, in the event Buyer fails to complete construction of and thereafter obtain a final certificate of occupancy on or before August 25, 2025 for a new building to be located on the Property and used in support of the provision of high-speed Internet to the residents of the City of Elko in connection with Buyer's business, the Property and all improvements thereon shall thereupon automatically revert to the Seller and Seller shall be held harmless from and against any damages, expenses or costs incurred or suffered by Buyer in relation to the Property.

16. Additional Provisions.

A. Time. Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

B. Execution of Additional Documents. In addition to documents and other matters specifically referenced in this Agreement, Seller and Buyer agree to execute and/or deliver, or cause to be executed and/or delivered such other documents and/or materials as may be reasonably necessary to effect the transaction contemplated by this Agreement.

C. Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of Nevada applicable to agreements

negotiated, executed and performed in Nevada by Nevada residents, whether one or more of the parties shall now be or hereafter become a resident of another state.

D. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings in relation thereto. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

E. Counterparts. This Agreement may be executed in one or more counterparts, and each counterpart shall constitute an original instrument, but all such counterparts shall only constitute one and the same instrument.

F. Captions. The captions of this Agreement do not in any way limit or amplify the terms and provisions of this Agreement.

G. Merger. The obligations of Seller and Buyer pursuant to this Agreement shall survive the close of escrow contemplated hereunder and shall not be deemed to merge with the Deed of conveyance.

H. Attorney Fees. In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorneys' fees.

I. Non-Assignability. This Agreement may not be assigned or transferred without the express written consent of the non-assigning or non-transferring party.

J. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

K. JURY TRIAL WAIVER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES KNOWINGLY AND FREELY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND REPRESENT THAT THE RIGHT TO A JURY TRIAL IS AN IMPORTANT RIGHT, THAT EACH HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO,

THAT THIS PROVISION IS A MATERIAL AND NEGOTIATED TERM OF THIS AGREEMENT, THAT EACH PARTY WOULD NOT ENTER INTO THIS AGREEMENT BUT FOR THE JURY TRIAL WAIVER, AND THAT EACH PROVIDES THIS WAIVER HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOOSING.

SELLER'S INITIALS: ____

BUYER'S INITIALS: ____

SELLER:

BUYER:

CITY OF ELKO

**ANTHEM BROADBAND OF
NEVADA, LLC**

By: _____
REECE KEENER, Mayor

By: _____

ATTEST:

Its: _____

KELLY WOOLDRIDGE, City Clerk

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible adoption of Resolution No. 25-20, a resolution of the Elko City Council Declaring Intention to Lease Land at Public Auction, Approval of the Lease Document and Setting Date for Auction regarding the possible lease of property located on West Idaho Street identified as APN 006-09G-027, consisting of approximately 8.69 acres, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **RESOLUTION**
4. Time Required: **10 Minutes**
5. Background Information: **On July 28, 2020, the City Council held a public hearing accepting CBRE, Inc.'s annual fair market rent estimate for the property identified as APN 006-09G-027, consisting of approximately 8.69 acres of City-owned property located generally north of West Idaho Street, in the amount of \$19,000.00. The City Council also adopted Resolution 15-20 and set a date for public auction of the property. The City Council then proceeded with the statutory process of awarding the lease for the parcel at public auction as required by NRS 268.062. However, the lessee who was awarded the lease has since rescinded. Resolution No. 25-20, which is the next step in the process of leasing the property to a different lessee requires a finding that it is in the best interest of the City to lease the property, together with a declaration of the City Council's intention to lease the property at public auction pursuant to City Code Section 8-1-3 and NRS 268.062. The City Council may rely on the existing CRBE, Inc. rent estimate since it has not yet expired. JF**
6. Budget Information:
 Appropriation Required: **NA**
 Budget amount available: **NA**
 Fund name: **NA**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Resolution No. 25-20, Affidavit of Posting, Notice of Adoption and Lease Agreement**
9. Recommended Motion: **Motion to adopt Resolution No. 25-20**
10. Prepared By: **Jim Foster, Airport Manager**
11. Committee/Other Agency Review: **City Attorney**
12. Council Action:
13. Agenda Distribution:

CITY OF ELKO
Resolution No. 25-20

**RESOLUTION DECLARING
INTENTION TO LEASE LAND AT PUBLIC AUCTION, APPROVAL OF THE LEASE
DOCUMENT AND SETTING DATE FOR AUCTION**

WHEREAS, the City Council has determined to proceed with the process of leasing approximately 8.69 acres of City-owned land located north of the West Idaho Street, Elko County, Nevada (hereinafter the "Property") through the public auction process, as set forth in Elko City Code Title 8, Chapter 1;

WHEREAS, the property is legally described as:

A.P.N. 006-09G-027

All those certain lots, pieces, or parcels of land situate in the County of Elko, State of Nevada, more particularly described as follows:

A Tract of land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T. 34N., R.55E., MDB&M., more particularly described as follows:

Beginning at Corner No. 1 from which the $\frac{1}{4}$ corner of Sections 19 and 20, T.34N., R.55E., bears S.0°15'20" E., 57.08 feet;

Thence S. 58°21'W., 667.12 feet to Corner No. 2;

Thence S.27°18'E., 1425.25 feet to Corner No. 3;

Thence N.53°46'E., 39.55 feet to Corner No. 4;

Thence N.27°18'W., 243.19 feet to Corner No. 5, also a point in the section line between Sections 19 and 20;

Thence N.0°15'20"W., 1377.08 feet along said sections line to Corner No. 1, the place of beginning.

EXCEPTING THEREFROM that portion deeded to the STATE OF NEVADA described as follows:

Beginning at a point 150.00 feet right of and measured radially from the East bound centerline of Nevada Interstate Route 80 (S.R.-1), Project I-080-4 (11) 277, at Highway Engineer's Station "DE" 642 + 13.81 P.O.C., and being further described as bearing S.50°23'30W., a distance of 653.50 feet from the East $\frac{1}{4}$ corner of Section 19, T.34N., R.55E., MDB&M.

Thence N.27°12'29"W., along the Western boundary of the LOUIS CLARKSON property as recorded in Book 63 of Deeds, Page 99, Elko County, Nevada, on April 4, 1953, a distance of 138.71 feet to the Northwest corner of said LOUIS CLARKSON property;

Thence N. 58°17'10"E., along the Northern boundary of said LOUIS CLARKSON property, a distance of 666.48 feet to the Northeast corner of LOUIS CLARKSON;

Thence S. 46°44'54W, along the right or Southern highway right of way line of Nevada Interstate Route 80 (S.R. -1), a distance of 691.34 feet to the point of beginning.

TOGETHER WITH all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents issues and profits thereof, or of any part thereof;

WHEREAS, the City has obtained one (1) appraisal of the annual market rent estimate of the property as follows:

An appraisal by CBRE, Inc. with an annual market rent estimate of \$19,000.00 as of June 29, 2020;

WHEREAS, the City Council held a public hearing on July 28, 2020 regarding the annual market rent estimate of the property and affirmed that the annual market rent estimate established by CBRE, Inc. of \$19,000.00 is the fair market value of the annual rental for the property;

WHEREAS, the City cannot lease the property for less than the market rent estimate as determined by an appraiser;

WHEREAS, the minimum amount of the annual rental for the property must be \$19,000.00, payable in in monthly installments as they become due or otherwise as provided in the lease.

NOW, THEREFORE, upon motion duly made by Councilman -- and seconded by Councilwoman --,

IT IS RESOLVED AND ORDERED THAT:

1. It is in the best interest of the City that the City-owned real property consisting of a 8.69-acre parcel of City owned land located north of West Idaho Street, Elko County, Nevada and more particularly described above, shall be offered for lease at a public auction during the

regularly held City Council Meeting on the 24th day of November, 2020 at 5:30 o'clock p.m. at the Elko Convention Center, 700 Moren Way, Elko, Nevada, or at such other place as the City Council shall hold its regular meeting.

2. The terms and conditions of the lease, which is included in the packet presented to the City Council in support of this Resolution and which is available for review in the Office of the Elko City Clerk, shall include the following:

A. The lease term shall be ten (10) years, subject to renewal for an additional five (5) years under the same terms and conditions;

B. The annual rental for the property shall be an amount equal to or greater than \$19,000.00, which shall be payable in equal monthly payments throughout the lease term, except for portions of months, which shall be prorated;

C. Annual increases shall be an amount equal to two percent (2%) over the annual rental amount effective in the month preceding such anniversary date; and

D. Restricted access – Lessee shall be responsible for access to and from the property and lessor shall have no responsibility therefore. Lessee acknowledges as of the Effective Date, the Nevada Department of Transportation (NDOT) does not permit access from State Route 535 (West Idaho Street) to the Leased Premises.

E. Occupancy of Leased Premises – Lessee will be entitled to occupy the Leased Premises thirty (30) days after execution of the lease by both parties.

3. In addition, within ten (10) business days of the Elko City Council's decision to award the lease, the successful bidder, upon acceptance by the City Council, shall pay the legal publication fees, the appraisal fee in the amount of ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500.00), and all attorney fees for the preparation of the documents and other services related to this lease.

4. All bids must be in writing, sealed, addressed to the Elko City Council, and filed with the City Clerk at the City Office no later than 5:30 p.m. on the date of said public meeting, must comply with the terms and conditions of this Resolution, and must comply with Title 8, Chapter 1 of the Elko City Code, as amended or supplemented. Bids must propose an annual rental in the amount of \$19,000.00 or more. Bids that propose an amount less than an annual rental amount (e.g., monthly rental or total rent over the lease term) shall be rejected as nonconforming.

5. At the time and place fixed in this Resolution for the meeting of the City Council, all sealed bids which have been received will, in public session, be opened, examined and declared by the City Council. Of the bids submitted which conform to all terms and conditions specified in this Resolution and which are made by responsible bidders, the bid which is the highest annual rental amount equal to or greater than \$19,000.00 will be finally accepted, unless a higher oral bid is accepted at the public auction or the City Council rejects all bids in

accordance with NRS 268.062(3)(a).

6. Before accepting any written bid, the City Council shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to lease the property upon the terms and conditions specified in this Resolution, for a price exceeding by at least five percent (5%) the highest written bid, then the highest oral bid received at the public auction which is made by a responsible person shall be finally accepted.

7. The final acceptance by the City Council may be made either at the same session or at any adjourned session of the same meeting held within the twenty-one (21) days next following.

8. If the City Council does not make a final acceptance of the highest bid, the City Council may, either at the same session or at any adjourned session of the same meeting held within the twenty-one (21) days next following, if it deems the action to be for the best public interest, reject any and all bids, either written or oral, and withdraw the property from lease.

9. The City is leasing all its interest in and to the parcel of land described above subject to all terms and conditions stated herein, and subject to all conditions, exceptions and reservations of record. The City makes no guarantee of title or of the accuracy of the description of said lands.

10. Without limiting any obligation of the lessee, execution of the lease by the City is expressly conditioned upon prior satisfaction of the following conditions of the lessee within ten (10) business days of the date of approval of the lease by the City Council: (a) execution and delivery of the approved lease containing the lessee's signature to the City, (b) performance and compliance with all the terms or conditions of the lease which are to be performed concurrently therewith, and (c) payment all costs and expenses to the City by cash or cashier's check. Failure of the lessee to satisfy any of the foregoing requirements shall result in automatic cancellation of the lease.

11. The City Council may only finally accept a bid which is made by a responsible bidder.

12. The City Council reserves the right to waive technical or minor variations, omissions or irregularities in any bid, so long as the waiver does not give the bidder a competitive advantage over other bidders.

13. **IT IS FURTHER RESOLVED THAT** upon adoption of this Resolution by the City Council and performance of and compliance with all the terms or conditions of the lease which are to be performed concurrently therewith, the draft lease now on file with the Elko City Clerk, subject to adding the name of the successful bidder and appropriate dates, and correcting any minor, nonsubstantive errors and irregularities, shall be signed by the Mayor and attested by the City Clerk and shall be in full force and effect after its adoption.

PASSES AND ADOPTED this 27th day of October 2020.

END OF RESOLUTION AND ORDER.

DATED this 27th day of October 2020.

CITY OF ELKO

ATTEST:

By: _____
REECE KEENER, Mayor

KELLY WOOLDRIDGE, City Clerk

VOTE:

AYES:

NAYES: **None**

ABSENT: **None**

ABSTAIN: **None**

EXHIBIT A
LEGAL DESCRIPTION

A parcel of land located in the southeast quarter of the northeast quarter of Section 16, and in the southwest quarter of the northwest quarter of Section 15, Township 34 North, Range 55 East, MDB&M, described as follows;

Commencing at the intersection of Sewell Drive and Sage Street, as shown on the official map of Elko Heights Subdivision No. 2 Extension, file no. 17144;

Thence, South 89°54'15" East, a distance of 119.44 feet;

Thence, North 0°05'45" West, a distance of 107.98 feet, to corner no. 1, the true Point of Beginning;

Thence, North 48°11' West, a distance of 61.45 feet, to corner no. 2;

Thence, North 41°49' East, a distance of 50.00 feet, to corner no. 3;

Thence, South 48°11' East, a distance of 61.45 feet, to corner no. 4;

Thence, South 41°49' West, a distance of 50.00 feet, to corner no. 1, the Point of Beginning.

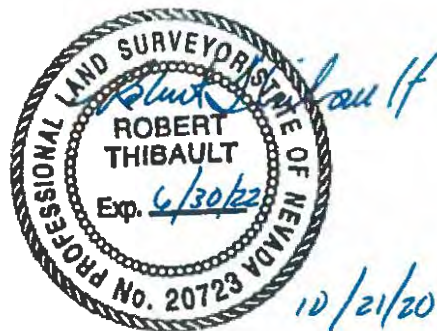
This area of land contains a total of ±3,073 square feet.

The Basis of Bearings for this description is the official map of Elko Heights Subdivision No. 2 Extension, recorded in the office of the Elko County Recorder as file no. 17144.

Description prepared by:

Robert Thibault, PE, PLS

Civil Engineer for the City of Elko

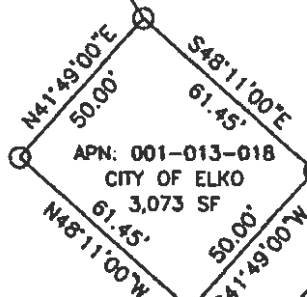




SEWELL DRIVE

WALNUT STREET

APN: 001-013-002
WILSON



APN: 001-013-001
SMALES

ALLEY

APN: 001-013-016
ANDREAS

APN: 001-013-017
RUNKLE

N00°05'45"W
107.98'

SAGE STREET

S89°54'15"E
119.44'

SAGE STREET



CITY OF ELKO
1751 COLLEGE AVE
ELKO, NEVADA 89801
775-777-7210

EXHIBIT B
APN: 001-013-018
DISPLAY MAP

DESIGNED BY BT

CHECKED BY BT

DATE 10/21/2020

SHEET

1 of 1

NOTICE OF ADOPTION OF CITY OF ELKO
RESOLUTION NO. 25-20 AND TIME AND PLACE OF CITY COUNCIL
MEETING FOR LAND LEASE BY PUBLIC AUCTION

Notice is hereby given that the Elko City Council intends to offer a ten-year (renewable) lease, by a public auction in the manner provided in the Elko City Code, Title 8, Chapter 1, as amended or supplemented, at the Elko Convention Center, 700 Moren Way, or at such other place as the City Council shall hold its regular meeting, on Tuesday, the 24th day of November, 2020, at 5:30 p.m., for the property located in the City of Elko, State of Nevada, more particularly described as follows:

A.P.N. 006-09G-027

All those certain lots, pieces, or parcels of land situate in the County of Elko, State of Nevada, more particularly described as follows:

A Tract of land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T. 34N., R.55E., MDB&M., more particularly described as follows:

Beginning at Corner No. 1 from which the $\frac{1}{4}$ corner of Sections 19 and 20, T.34N., R.55E., bears S.0°15'20" E., 57.08 feet;

Thence S. 58°21'W., 667.12 feet to Corner No. 2;

Thence S.27°18'E., 1425.25 feet to Corner No. 3;

Thence N.53°46'E., 39.55 feet to Corner No. 4;

Thence N.27°18'W., 243.19 feet to Corner No. 5, also a point in the section line between Sections 19 and 20;

Thence N.0°15'20"W., 1377.08 feet along said sections line to Corner No. 1, the place of beginning.

EXCEPTING THEREFROM that portion deeded to the STATE OF NEVADA described as follows:

Beginning at a point 150.00 feet right of and measured radially from the East bound centerline of Nevada Interstate Route 80 (S.R.-1), Project I-080-4 (11) 277, at Highway Engineer's Station "DE" 642 + 13.81 P.O.C., and being further described as bearing S.50°23'30W., a distance of 653.50 feet from the East $\frac{1}{4}$ corner of Section 19, T.34N., R.55E., MDB&M.

Thence N.27°12'29"W., along the Western boundary of the LOUIS CLARKSON property as recorded in Book 63 of Deeds, Page 99, Elko County, Nevada, on April 4, 1953, a distance of 138.71 feet to the Northwest corner of said LOUIS CLARKSON property;

Thence N. 58°17'10"E., along the Northern boundary of said LOUIS CLARKSON property, a distance of 666.48 feet to the Northeast corner of LOUIS CLARKSON;

Thence S. 46°44'54"W, along the right or Southern highway right of way line of Nevada Interstate Route 80 (S.R. -1), a distance of 691.34 feet to the point of beginning.

TOGETHER WITH all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents issues and profits thereof, or of any part thereof.

The City has adopted Resolution No. 25-20 declaring its intention to lease the property at Public Auction. A copy of the resolution has been posted in the following three public places in Elko County:

1. Elko City Hall
2. Elko County Court House
3. Elko Police Station

All bids must be in writing, sealed, addressed to the Elko City Council, and filed with the City Clerk at the City Office no later than 5:30 p.m. on the date of said public meeting, must comply with the terms and conditions of this Notice, and must comply with Title 8, Chapter 1 of the Elko City Code, as amended or supplemented. The City has caused a market rent estimate for the property to be determined by one (1) appraiser and has held a public hearing on the matter of the annual market rent for the real property. The appraised market rent estimate for the real property being offered, which is the minimum annual rental for the rental property, is \$19,000.00.

At the time and place fixed in the resolution for the meeting of the City Council, all sealed bids which have been received will, in public session, be opened, examined and declared by the City Council. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to lease and which are made by responsible bidders, the bid which is the highest will be finally accepted, unless a higher oral bid is accepted or the City Council rejects all bids.

Before accepting any written bid, the City Council shall call for oral bids. If, upon the call for oral bidding, any responsible bidder offers to lease the property upon the terms and conditions specified in the resolution, for a price exceeding by at least five percent (5%) the highest written bid, then the highest oral bid received at the public auction which is made by a responsible person shall be finally accepted.

The City Council may, either at the same session or at any adjourned session of the same meeting held within the next 21 days: (1) Make a final acceptance of the highest

bid; or (2) Reject any and all bids, either written or oral, and withdraw the real property from leasing if the City Council deems such action to be for the best public interest.

The successful bidder, upon acceptance by the City Council, shall pay the publication fees, the appraisal fee in the amount of ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500.00), and all attorney fees incurred by the City for the preparation of the documents and other services related to this lease.

The City is leasing all its interest in and to the parcel of land described herein subject to all terms and conditions stated herein and as shown in the draft lease, available for review in the City of Elko, Clerk's Office, and subject to all conditions, exceptions and reservations of record, but the City makes no guarantee of title or of the accuracy of the description of said lands.

Without limiting any obligation of the lessee, execution of the lease by the City will be expressly conditioned upon prior satisfaction of the following conditions of the lessee within ten (10) business days of the date of acceptance of the highest bid by the City Council: (a) execution and delivery of the approved lease now available for review in the Office of the Elko City Clerk, containing the lessee's signature to the City, (b) performance and compliance with all the terms or conditions of the lease which are to be performed concurrently therewith, and (c) payment all costs and expenses to the City by cash or cashier's check. Failure of the lessee to satisfy any of the foregoing requirements will result in automatic cancellation of the lease.

The City Council may only finally accept a bid which is made by a responsible bidder.

The City Council reserves the right to waive technical or minor variations, omissions or irregularities in any bid, so long as the waiver does not give the bidder a competitive advantage over other bidders.

DATED this 28th day of October 2020.

KELLY WOOLDRIDGE, City Clerk

Publish: Elko Daily Free Press – November 6th, 13th, and 20th. 2020

LEASE AGREEMENT
(Parking, Equipment and Materials Storage Yard)

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 20__ (the "Effective Date") by and between the CITY OF ELKO, a special charter municipal corporation and political subdivision of the State of Nevada, hereinafter referred to as "Lessor," and _____, hereinafter referred to as "Lessee."

W I T N E S S E T H :

That for and in consideration of the rents, covenants and agreements herein contained, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the herein-described property located on West Idaho Street in the Elko County, Nevada, upon the terms and conditions described hereinafter.

SECTION 1
PROPERTY

1.01 **Description.** Lessor does hereby lease to Lessee, and the Lessee does hereby lease from Lessor, that certain parcel of land situate, lying and being on West Idaho Street, Elko County, State of Nevada (APN 006-09G-027), consisting of 8.69 acres, more or less, and which parcel (hereinafter "Leased Premises") is more particularly described on **Exhibit A** attached hereto and shown on the map as **Exhibit B**, which are made a part hereof by this reference.

SECTION 2
TERM OF LEASE

2.01 **Term.** This Lease Agreement shall begin _____, 2020 (which date shall be thirty (30) days after the public auction at which the Lessee was the successful bidder on this Lease) and shall continue for a period of ten (10) years thereafter, ending at midnight on _____, 202__ (hereinafter the "Initial Term"), unless sooner terminated as in this Lease Agreement provided.

2.02 **Option to Extend.** At the expiration of the Initial Term, if this Lease shall then be in full force and effect and the Lessee shall have fully and timely performed all of the terms and conditions, the Lessee shall have the option to extend this Lease for five (5) additional years subject to the same terms and conditions. The option to extend must be exercised in writing by the Lessee not later than sixty (60) days prior to the expiration of the Initial Term, and if the Lessor does not receive written notice of the exercise of this

option on or before such date, this option shall terminate on that date, time being of the essence. The Initial Term and any extension thereto are collectively referred to herein as the "Term."

SECTION 3

RENT

3.01 Annual Rent. Lessee agrees to pay to Lessor as rent for the Leased Premises for the sum of \$ 19,000.00 per year.

3.02 Initial and Monthly Payment of Rent. Thirty (30) days after the public auction at which the Lessee was the successful bidder on this Lease, Lessee agrees to pay to Lessor as rent for the premises an initial prorated sum of \$ _____ for the corresponding fraction of the first month of the Lease and, on the first day of each month thereafter, equal payments of \$1,583.33 per month with the final payment adjusted for all amounts due as set forth in Section 3.01 thereafter, subject to annual increases as set forth in Section 3.03, below, payable on the first day of each and every month during the Term.

3.03 Annual Rent Increases. During the Term, the rental amount shall be increased annually on each anniversary of the Effective Date by two percent (2%) over the rental amount in effect in the month immediately preceding such anniversary date.

SECTION 4

OCCUPANCY OF LEASED PREMISES

Lessee shall not occupy the Leased Premises for a period of thirty (30) days after the public auction at which the Lessee was the successful bidder on this Lease.

SECTION 5

USE OF LEASED PREMISES

4.01 Uses Prohibited. It is agreed between Lessor and Lessee that the Lessee shall use the Leased Premises only for parking, including parking associated with park and ride activities and the storage of equipment and materials typically used in the construction trade and no other use shall be made of the Leased Premises without the prior approval of the Lessor.

SECTION 6

LESSEE'S RESPONSIBILITIES

5.01 Maintenance of Leased Premises. The Lessee shall maintain the Leased Premises in accordance with the highest standards applicable to parking, including parking associated with park and ride activities and the storage of equipment and materials. The Lessee shall maintain the Leased Premises in a clean, neat and sanitary condition.

5.02 Loss/Theft/Damage. The Lessee shall be responsible for the loss or theft of and damage to all of its property on the Leased Premises. The City of Elko shall have no liability for the theft or loss of or damage to the Lessee's property, and as a material consideration for this Lease, the City of Elko, and its officers, supervisors, agents and employees are hereby released and discharged from all claims, demands and liability therefor.

5.03 Access. Lessee shall be responsible for access to and from the Leased Premises, , and Lessor shall have no responsibility therefor. Lessee acknowledges that as of the Effective Date, the Nevada Department of Transportation (NDOT) does not permit access from State Route 535 (West Idaho Street) to the Leased Premises. Lessee is solely responsible for obtaining permission from NDOT to access the Leased Premises and for complying with all conditions of such access if permission is granted by NDOT. Lessor does not represent that NDOT will permit access to the Leased Premises from State Route 535 (West Idaho Street) and the failure of Lessee to obtain such access will not relieve Lessee of its obligations under this Lease. Lessor agrees to cooperate with Lessee, in Lessee's efforts to obtain access to State Route 535 (West Idaho Street). Such cooperation is restricted to minimal administrative duties such as, but not limited to accepting an access permit from NDOT as the property owner. Such cooperation excludes any activities including but not limited to, legal fees, cost of improvements required by NDOT for granting access and the cost of maintaining any access improvements required by NDOT.

SECTION 7

REMOVAL OF PROPERTY UPON TERMINATION OF LEASE

6.01 Lessee to Remove Personal Property. In the event of the termination of this Lease, Lessee shall have a reasonable time (but in any event no less than thirty (30) days) to remove from the Leased Premises all personal property owned by Lessee.

SECTION 8
INDEMNIFICATION AND HOLD HARMLESS

7.01 Indemnification of City. The Lessee does hereby covenant and agree to defend, indemnify and save harmless the City of Elko, its officers, supervisors, employees and agents from all fines, suits, claims, demands, expenses, fees, liabilities, defenses and actions of any kind and nature by reason of any and all of the Lessee's operations hereunder and any and all negligence, acts and omissions of the Lessee's and their agents, employees, officers and directors and do hereby agree to assume all the risk and liability of the operation of their business hereunder.

SECTION 9
CONDUCT BY LESSEE

8.01 Compliance with Applicable Laws. Lessee shall conduct and handle the Leased Premises in a lawful and orderly manner and shall comply with all city, county, state and federal laws, rules, regulations, ordinances and codes, as well as administrative rules and regulations governing the use of property and conduct of operations at Elko Regional Airport. A copy of the Elko Regional Airport Rules and Regulations is attached hereto as **Exhibit C**.

SECTION 10
WASTE

9.01 No Waste Permitted. Lessee will not commit or permit to be committed any waste upon the Leased Premises.

SECTION 11
(INTENTIONALLY OMITTED)

SECTION 12
DEFAULT AND TERMINATION

11.01 Termination of Lease Upon Default. In the event that the rent herein provided for, in any part or portion thereof shall be in arrears or shall be unpaid on the date when the same is provided to be paid, and for ten (10) days thereafter, it shall be and may be lawful for the City of Elko, its agents or legal representatives to go to and upon the Leased Premises, and to again repossess itself thereof, and to hold and enjoy the Leased Premises without let or hindrance by Lessee, anything herein to the contrary notwithstanding. Such repossession of the Leased Premises by the City of Elko shall constitute a termination of this Lease.

11.02 Breach. In the event of default of any of the payments herein provided for, or any breach of any one or all of the clauses, covenants and agreements contained in this Lease, City of Elko shall have the right and option of declaring all monies at once due and payable and repossess itself of the Leased Premises without suit, either at law or in equity.

SECTION 13

QUIET POSSESSION

12.01 Lessee's Right to Occupy. The Lessee, upon making the payments herein provided for and in the manner provided, and complying with each, every and all of the terms, clauses and covenants of this Lease, shall have the sole right and option of occupying the Leased Premises under the terms of this Lease during the full term herein provided, without any let or hindrance by said Lessor.

SECTION 14

IMPROVEMENTS

13.01 Improvements Prohibited. Lessee shall not place any structures on or make improvements to the Leased Premises without the prior written consent of Lessor.

SECTION 15

AIRPORT MASTER PLAN

14.01 Termination of Lease. The Lessee understands that the Lessor has a master plan at the airport, that the master plan is subject to amendment, and that changes to the matters set forth in this lease may become necessary as a result. Lessee, accordingly, covenants and agrees, notwithstanding any provisions of this Lease to the contrary, that the Lessor may terminate this Lease at any time during the term of this Lease, or any renewable extension thereof, by written notice mailed or delivered to Lessee as provided in Section 19.04 hereof, and upon any such termination, the Lessee shall within thirty (30) days from the date of such notice of termination, vacate the Leased Premises, surrender this Lease in the premises, and remove from the Leased Premises all of Lessee's property.

SECTION 16

ASSIGNMENT

15.01 No Assignment. This Lease shall not be assigned, nor shall any or all of the Leased Premises be relet or sublet by the Lessee without the written consent of the

Lessor first had and obtained.

SECTION 17
LIENS / ENCUMBRANCES

16.01 Status of Lease. The Lessee shall not allow any encumbrances, liens or processes of law to attach against the Leased Premises, or Lessor's interest therein. Any attempted legal process levied against the Leased Premises, or Lessor's interest therein, if attempted in good faith, shall result in a complete termination of this Lease and a termination of Lessee's right in and to this Lease and the Leased Premises, subject to the right of Lessee to cause a discharge of any lien within sixty (60) days after filing or levy thereof, and in the event of such discharge, this Lease shall continue in full force and effect.

SECTION 18
(INTENTIONALLY OMITTED)

SECTION 19
INSPECTION

18.01 Lessor's Right to Inspect. Lessor reserves the right to enter upon the Leased Premises at any reasonable time for the purpose of making any inspection it may deem appropriate for the proper enforcement of any of the covenants or conditions of this Lease.

SECTION 20
ADDITIONAL TERMS

19.01 FAA Requirements. Lessee shall comply with all terms and conditions required by the FAA Safety/Compliance Inspector as set forth on **Exhibit D** attached hereto.

19.02 Abandonment. In the event the Lessee abandons the Leased Premises, the Lease shall immediately terminate without further notice and any personal property remaining on the Leased Premises shall become the property of Lessor. For purposes of this Section 19.02, "abandonment" shall occur when either Lessee notifies Lessor that it has abandoned the Leased Premises or Lessee does not use the Leased Premises for parking associated with park and ride activities and the storage of equipment and materials for a period of ninety (90) days.

19.03 Waiver. No waiver by the Lessor or default, violation of or non-

performance of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Lessee shall be construed to be or act as a waiver of any subsequent default, violations or non-performance. The acceptance of rental or the performance of all or any part of this Lease Agreement by Lessor for or during any period or periods of default, violation or non-performance of any of these terms, covenants and conditions herein contained to be performed, kept and observed by Lessee, shall not be deemed a waiver of any right on the part of the Lessor to cancel this Lease Agreement for failure of Lessee to so perform, keep or observe any of the items, covenants or conditions hereof.

19.04 Notices. All notices sent to the parties under this Lease shall be addressed as follows:

CITY OF ELKO: Elko Regional Airport Manager
City of Elko
1751 College Avenue
Elko, NV 89801

LESSEE:

19.05 Attorney Fees. In any dispute between the parties hereto resulting in legal action, the prevailing party shall be entitled to reasonable attorney fees and court costs.

19.06 Binding Effect. This Lease shall be binding upon and inure to the benefit of the Lessor, its successors and assigns, and upon the Lessee, their heirs, successors and assigns, subject to the restrictions against subletting and assignments.

19.07 Time. Time is of the essence of this Lease. In the event that any date specified in this Lease falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

19.08 Governing Law. The validity, construction and enforceability of this Lease shall be governed in all respects by the law of Nevada applicable to agreements negotiated, executed and performed in Nevada by Nevada residents, whether one or more of the parties shall now be or hereafter become a resident of another state. Any disputes arising hereunder shall be resolved in the Fourth Judicial District Court in and for the County of Elko, State of Nevada.

19.09 Captions. The captions of this Lease do not in any way limit or amplify the

terms and provisions of this Lease.

19.10 Severability. Each provision of this Lease is severable from any and all other provisions of this Lease. Should any provision(s) of this Lease be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

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

LESSOR:

CITY OF ELKO

By: _____
REECE KEENER, Mayor

ATTEST:

Kelly Wooldridge, City Clerk

LESSEE:

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

A.P.N. 006-09G-027

All those certain lots, pieces, or parcels of land situate in the County of Elko, State of Nevada, more particularly described as follows:

A Tract of land in the SE ¼ NE ¼ and E ½ SE ¼ of Section 19, and the SW ¼ SW ¼ of Section 20, T. 34N., R.55E., MDB&M., more particularly described as follows:

Beginning at Corner No. 1 from which the ¼ corner of Sections 19 and 20, T.34N., R.55E., bears S.0°15'20" E., 57.08 feet;

Thence S. 58°21'W., 667.12 feet to Corner No. 2;

Thence S.27°18'E., 1425.25 feet to Corner No. 3;

Thence N.53°46'E., 39.55 feet to Corner No. 4;

Thence N.27°18'W., 243.19 feet to Corner No. 5, also a point in the section line between Sections 19 and 20;

Thence N.0°15'20"W., 1377.08 feet along said sections line to Corner No. 1, the place of beginning.

EXCEPTING THEREFROM that portion deeded to the STATE OF NEVADA described as follows:

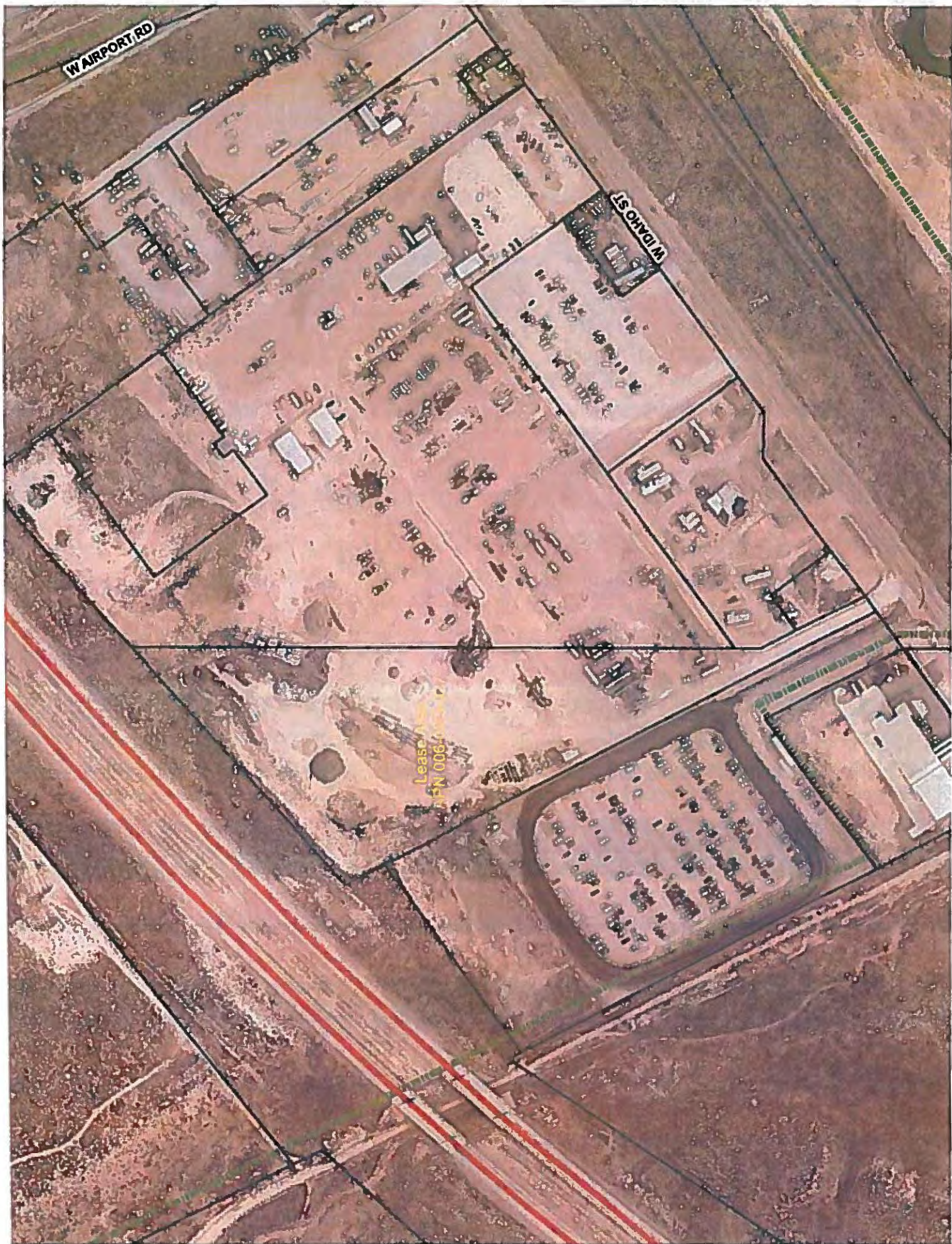
Beginning at a point 150.00 feet right of and measured radially from the East bound centerline of Nevada Interstate Route 80 (S.R.-1), Project 1-080-4 (11) 277, at Highway Engineer's Station "DE" 642 + 13.81 P.O.C., and being further described as bearing S.50°23'30W., a distance of 653.50 feet from the East ¼ corner of Section 19, T.34N., R.55E., MDB&M.

Thence N.27°12'29"W., along the Western boundary of the LOUIS CLARKSON property as recorded in Book 63 of Deeds, Page 99, Elko County, Nevada, on April 4, 1953, a distance of 138.71 feet to the Northwest corner of said LOUIS CLARKSON property;

Thence N. 58°17'10"E., along the Northern boundary of said LOUIS CLARKSON property, a distance of 666.48 feet to the Northeast corner of LOUIS CLARKSON;

Thence S. $46^{\circ}44'54''$ W, along the right or Southern highway right of way line of Nevada Interstate Route 80 (S.R. -1), a distance of 691.34 feet to the point of beginning.

EXHIBIT II



W AIRPORT RD

W DRAST ST

Lease Area
APN 006-000-000

EXHIBIT C

RULES AND REGULATIONS

CHAPTER I GENERAL PROVISIONS

SECTION 1. Definitions

As used in these Rules and Regulations, unless the text otherwise requires:

1. Airport means the Elko Regional Airport and all of the area, building facilities, and improvements within the exterior boundaries of such airport as it now exists or as it may hereafter be extended or enlarged.

2. Airport Director means the person hired by the City, whose job duties are outlined in Section 2.

3. Council means the Elko City Council of the City of Elko, Nevada.

4. City means the City of Elko, Elko County, Nevada.

5. F.A.A. means the Federal Aviation Administration.

6. Person means any individual, firm, partnership, corporation, company, association, joint-stock association or body politic, and includes any trustee, receiver assignee or other similar representative thereof.

7. Advisory Board means the Elko Regional Airport Advisory Board established by the Elko City Council.

SECTION 2. Airport Director

The Airport Director shall be hired by the City. He shall report to the City Manager. The Airport Director's duties include, but are not limited to:

1. Develop and implement policies and procedures related to airport operations, safety and maintenance, drafts and revises airport policy and procedure manuals regarding emergency procedures, minimum safety standards and operating procedures in accordance with FAA operation rules.

2. Coordinates the development and negotiation of airport leases, contracts and agreements, including those with private companies, commercial air carriers and government agencies for the rental of airport facilities including hangars, building space, airport service and concessions.

3. Initiates the FAA grant priorities and monitors the major construction resulting from those grant projects. Plans, organizes, coordinates, supervises and evaluates programs, plans, services, staffing, equipment and infrastructure of the airport, including airport development and improvement projects.

4. Supervises and monitors use of the airport facilities by tenants, concessionaires and patrons, including ground operations, passenger and baggage screening, emergency operations, maintenance and related activities. Supervises grounds and facilities maintenance, coordination of improvements or changes to facilities or equipment. Inspects airport grounds, facilities and equipment, and notes maintenance needs, safety hazards and other problems, initiates corrective action and follows-up as necessary.

5. Interprets flight safety and other flight and airport use regulations for the public, enforces airport regulations and assures compliance with a variety of local, State, and Federal laws and regulations related to airport operations.

6. Assesses a variety of emergency situations requiring airport closure or altered operations, such as snow-plowing, ice removal or other extreme weather conditions, bomb threats, fire, crashes or other emergencies, coordinates fire, crash and rescue procedures.

SECTION 3. Rules and Regulations

All aeronautical activities at the airport, all operation and flying of aircraft at the airport, and all business and other activities on the airport shall be conducted in conformity with these rules and regulations, and all amendments, supplements, attachments, changes, and additions hereto which may hereafter be adopted by the City Council, and further in conformity with all pertinent rules, regulations, orders and rulings of the F.A.A., which are made a part of these rules by this reference. Provided, however, that nothing herein contained shall affect or impair any existing agreement. In the event of any conflict between these rules and regulations and any law, rule, regulation or order of the F.A.A. or other governmental agency exercising the same or similar jurisdiction, the latter shall prevail.

SECTION 4. Special Events

Special events, such as air shows, air races, fly-ins, sky diving and all events requiring the general use of the airport, other than normal or routine airport traffic, shall be held only upon the prior approval of the Airport Director, and on such dates, in such areas and upon such terms and conditions as shall be specified by the Airport Director.

SECTION 5. Public Use

The airport shall be open for public use at all hours of the day, subject to regulation or restriction due to conditions of the landing area, the presentation of special events and like causes, as may be determined by the Airport Director and revocation of the right to use for violation of these rules and regulations as herein provided.

SECTION 6. Common Use Area

All runways for landing and take-off, all, all runway markers, guidance, signal, and beacon light used to guide operating aircraft, and wind information, for signaling, for radio-direction finding, or for any other structure, equipment or mechanism having a similar purpose for guiding or controlling flight in the air or landing and take-off of aircraft, and together with such aprons, ramps, turn-offs, taxiways, tie down areas and other areas of the airport as the airport director shall specify or designate as common use areas available for use, in common, by all persons flying or operating aircraft on the airport and shall be kept clear and available for aircraft traffic. No person or entity shall use any common use area for the parking or storing of inoperative aircraft, the repair, servicing, or fueling of aircraft or for any other purpose other than the flying and operation of aircraft without the prior consent and authorization of the Airport Director. Common use areas shall be subject to change by the Airport Director.

SECTION 7. Vehicular Traffic

The traffic laws of the City shall apply to the streets, roads, and parking areas on the airport, unless restricted by the Airport Director. Vehicular access to aircraft in the General Aviation area is permitted for the purpose of loading and unloading only. Except for firefighting equipment, ambulances, emergency vehicles, and aircraft maintenance vehicles, no person shall take or drive any vehicle on the airport, other than on established streets, roads and automobile parking facilities, unless permission has been first obtained from the Airport Director.

SECTION 8. Advertising

No signs or other advertising shall be placed on constructed upon the airport without the prior approval of the Airport Director. Any building, structure or improvement must also

obtain prior approval of the Airport Director.

SECTION 9. Acceptance of Rules By Use

The use of the airport or any of its facilities in any manner shall constitute an assumption by the user of these rules and regulations and shall create an obligation on the part of the user to abide by and obey these rules and regulations.

SECTION 10. Operators to Keep Rules Available

All persons licensed to do business on or conduct operations of any kind on the airport shall keep a current copy of these rules and regulations in its office or place of business and make it available to all persons.

CHAPTER II

AIRPORT OPERATIONS AND AIRPORT TRAFFIC

SECTION 1. General

1. Every person operating an aircraft shall comply with and operate such aircraft in conformity with these Rules and Regulations, and all pertinent rules, regulations, or orders of the FAA.

2. The taxing, traffic, and landing rules will be managed by the Elko Regional Airport Control Tower, if operating.

3. In the event any aircraft is wrecked or damaged to the extent that it cannot be moved under its own power, the Airport Director shall be immediately notified by the pilot. Subject to governmental investigations and inspection of the wreckage, the owner or pilot of the wrecked or damaged aircraft, must obtain the necessary permission for the removal of the aircraft and shall promptly remove such aircraft and debris from all landing areas, taxiways, ramps, tie-downs areas, and all other traffic areas. The owner or pilot must place or store the aircraft in an area designated by the Airport Director. In the event the owner of the aircraft fails for any reason to comply with this regulation, the Airport Director may cause the removal and storage, or disposal of such wrecked or damaged aircraft at the expense of the aircraft owner.

SECTION 2. Ground Rules

1. No person shall park, store, tie-down, or leave any aircraft on any area of the airport other than that designated by the Airport Director, or his duly authorized agent.

2. No aircraft shall be parked or stored at the Elko Regional Airport unless it is

properly tied down and secured in place. It shall be the sole responsibility of the aircraft owner or pilot to tie down or secure said aircraft at all times required by these rules and regulations or as requested by the Airport Director. Owners of all aircraft shall be held solely responsible for any damage or loss resulting from the failure of such owner or pilot of such aircraft to comply with this rule.

3. No person shall take or use any aircraft anchoring or tie-down facilities when said facilities are already in use by another person.

4. All repairs to aircraft or engines shall be made in the spaces or areas designated for this purpose by the Airport Director and not on any part of the landing area, taxiways, ramps, fueling, or service areas of a fixed base operator, unless mutually agreed upon by the fixed base operator and the Airport Director. Prior approval for minor repairs to aircraft located on parking areas may be obtained from the Airport Director.

5. No aircraft engine shall be started on an aircraft unless a competent operator is in control of the aircraft and the parking brakes have been set or the wheels have been set with blocks that are equipped with ropes or other suitable means for removing said blocks.

6. No aircraft engine shall be started, run, or run-up, unless the aircraft is in such a position that the propeller or jet blast clears all hangars, shops, or other buildings, persons, other aircraft, vehicles, and the flight and taxi path of other aircraft.

SECTION 3. Fire Regulations

1. No aircraft shall be fueled or drained while the engine is running, or while in a hangar or other enclosed area. Fueling shall be done in such a manner and with such equipment that adequate connections for bonding for static electricity shall be continuously maintained during fueling operations.

2. All persons using, in any way, the airport area or the facilities of the airport shall exercise the utmost care to guard against fire and injury to persons or property.

3. No person shall smoke or ignite any matches, flares, lighters, or other objects of which produce an open flame anywhere within a hangar, shop, building or flammable structure in which any aircraft is or may be stored, or in which any gas, oil or flammable substance is stored or within 50 feet of any aircraft or any fueling facilities.

CHAPTER III

AIRPORT OPERATORS, LEASES, AND CONCESSIONS

SECTION 1. Business Activities.

Subject to applicable orders, certificates or permits of the Federal Aviation Administration, or its successors, no person shall use the airport, or any portion thereof, or any of its improvements or facilities for revenue producing commercial, business, or aeronautical activities, who has not first complied with these rules and regulations and obtained the consent and all appropriate permits and licenses for such activities from the City Council and entered into such written leases and other agreements prescribed by the City Council, or agreed upon by the City Council and such person or business entity.

SECTION 2. Application.

Applications for leases of ground on the airport, or for permission to carry on any commercial, business or aeronautical activity on the airport, with the necessary permits and licenses, shall be made to the Airport Director. This includes, but is not limited to Request for Proposals. The Airport Director shall present the application to the City Council by at least its next regular meeting. The City Council may, if it deems it advisable, have a public hearing upon the application. The applicant shall submit all information and material necessary, or requested by the RFP or the City Council, to establish to the satisfaction of the City Council that the applicant can qualify and will comply with these rules and regulations. The application shall be signed and submitted by every party owning an interest in the business, those who will be managing the business, every partner of a partnership, and each Director, and officer of a corporation.

SECTION 3. Action on Application.

The City Council may deny any application if, in its opinion, it finds any one or more of the following:

1. The applicant, for any reason, does not meet the qualifications, standards and requirements established by these rules and regulations; or
2. The applicants proposed operations or construction will create a safety hazard on the airport; or
3. The granting of the application will require the City to spend City funds, or to supply labor or materials in connection with the proposed operations to an extent which or at a time the City Council is unwilling to enter into such arrangement; or the operation will result in a financial loss to the City; or

4. There is no appropriate, adequate or available space or building on the airport to accommodate the entire activity of the applicant at the time of the application; or

5. The proposed operation or airport development or construction does not comply with the master plan of the airport; or

6. The development or use of the area requested by the applicant will result in depriving existing fixed base operators of portions of the area in which they are operating; or will result in a congestion of aircraft or buildings; or will result in unduly interfering with the operations of any present fixed base operator on the airport through problems in connection with aircraft traffic or service, or preventing free access to the fixed base operators area; or

7. Any party applying or interested in the business has supplied the City Council with any false information or has misrepresented any material fact in his application or in supporting documents; or has failed to make full disclosure on his application; or in supporting documents; or

8. Any party applying, or interested in the business has a record of violating these rules and regulations, or the rules and regulations of any other airport, or the Federal Aviation Regulations, or any other rules and regulations applicable to the Elko Regional Airport.

9. Any party applying, or interested in the business has defaulted in the performance of any lease or other agreement with the City of Elko, or

10. Any party applying, or interested in the business has a credit report which contain derogatory information and does not appear to be a person of satisfactory business responsibility and reputation; or

11. The applicant does not appear to have, or have access to the finances necessary to conduct the proposed operation for a minimum of six months; or

12. Any party applying, or interested in the business has been convicted of any crime or violation of any City ordinance of such a nature that it indicates to the City Council that the applicant would not be a desirable operator on the Elko Regional Airport;

13. The protection of the health, welfare, or safety of the inhabitants of the City of Elko requires such denial.

14. Nothing contained herein shall be construed to prohibit the City Council from

granting or denying, for any reason it deems sufficient, an application to do business on the airport for the purpose of selling, furnishing or establishing non-aviation products and supplies or any service or business of a non-aeronautical nature, or the application by a person for an area on the airport for the personal non-profit use of such person.

SECTION 4. Supporting Documents

If requested by the City Council, the applicant shall submit the supporting documents itemized in an Appendix (if applicable) to the City Council, together with such other documents and information as may be requested by the City Council.

SECTION 5. Airport License and Leases Non-Transferable

No right, privilege, permit or license to do business on the Elko Regional Airport, or any lease of any area of the airport shall be assigned, sold, or otherwise transferred or conveyed in whole or part without the prior express consent of the City Council.

SECTION 6. Tie-down Rates

Daily and Monthly tie down rates shall be administered by the Airport Director.

SECTION 7. Refuse

No person shall throw, dump, or deposit any waste, refuse or garbage on the Elko Regional Airport. All waste, refuse, or garbage shall be placed and kept in closed garbage cans or containers and all operating areas shall be kept in a safe, neat, clean, and orderly manner at all times, and in such a manner as to minimize any hazards.

SECTION 8. Approval of Construction

No buildings, structures, tie-downs, ramps, paving, taxi areas, or any other improvement or addition on the airport shall be placed or constructed on the airport or altered or removed without the prior approval of the City Council *and/or Airport Director*. In the event of any construction, the City Council may, in its discretion, require the appropriate bond to guarantee the completion of the construction in accordance with City Council approval.

SECTION 9. Operation Area.

No person authorized to operate on or conduct business activities on the airport shall conduct any of its business or activities on any area except those specified by the City

Council, or the Airport Director, and the leased areas.

SECTION 10. Fixed Base Operator

No person shall use the Elko Regional Airport as a fixed base operator until such person has applied for and received from the City Council a fixed base operator's license and has met the qualifications, standards and requirements of these rules and regulations. These standards, requirements, rules and regulations pertaining to FBOs, and a list of the services of a fixed base operator is contained in the Elko Regional Airport's Minimum Standard Requirements for Airport Aeronautical Services.

SECTION 11. Waiver of Chapter III

The City Council may in its discretion, waive all or any of Chapter III, or the requirements listed in the Appendix (if applicable), for the benefit of any Government or Government Agency or Department or person performing non-profit public services to the aircraft industry, or performing air search and rescue operations, or performing fire prevention or firefighting operations.

SECTION 12. Business Name

No person shall conduct business operations on the airport under a business name the same as or deceptively similar to the business name of any other fixed base operator.

SECTION 13. Damage Repair by The City

Nothing contained in these rules and regulations shall be construed as requiring the City to maintain, repair, restore or replace any structure, improvement or facility which is substantially damaged or destroyed due an act of God or other condition or circumstance beyond the control of the City.

CHAPTER IV PENALTIES

SECTION 1. General

In addition to any penalties otherwise provided by City Ordinance, law, the F.A.A., or other governmental agency, any person violating or failing or refusing to comply with these rules and regulations or those issued by the Airport Director may be promptly removed or ejected from the airport by or under the authority of the Airport Director. Upon the order of the City Council or Airport Director, such person may be deprived of further use of the airport

and its facilities pending appeal or presentation of the matter to the City Council.

SECTION 2. Appeals

Such matters shall be presented to the City Council as expeditiously as practicable. By request of the City Council, the accused violator will be asked to show cause for reinstatement of airport use.

SECTION 3. Enforcement

In addition to any civil or criminal penalties, upon order of the City Council, such person may be deprived of further use of the airport and its facilities for such time as may be deemed necessary and appropriate by the City Council to insure the safeguarding of the airport, its operations, the public use thereof and the City's interest therein.

CHAPTER V

GOVERNMENT AGREEMENTS

SECTION 1. War or National Emergency

During time of war or national emergency the City shall have the right to lease the airport, or the landing areas, or any part thereof to the United States Government for military use, and any license or authority granted under these rules and any lease and agreement executed pursuant hereto shall be subject to such government lease and the provision of the government lease.

EXHIBIT D

Additional Terms Required
by FAA Safety/Compliance Inspector

1. The Lessee, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in the attached Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The Lessee, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. Lessee shall furnish its accommodations and/or services on a fair, equal and no unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or

other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the Lessor shall have the right to terminate this Lease and the estate hereby created without liability therefor or at the election of the Lessor or the United States. Either or both said governments shall have the right to judicially enforce such provisions.

6. Lessee agrees that it shall insert the above five provisions in any Lease agreement, contract, etc. by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.

7. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The Lessee assures that it will require that its covered sub organizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR 152, Subpart E, to the same effort.

8. The Lessor reserves the right to further develop or improve the landing area of the Elko Regional Airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance.

9. The Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Elko Regional Airport and all publicly-owned facilities of the Elko Regional Airport, together with the right to direct and control all activities of the Lessee in this regard.

10. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the development, operation or maintenance of the Elko Regional Airport.

11. There is hereby reserved to the Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used

for navigation or flight through the said airspace or landing at, taking off from or operation on the Elko Regional Airport.

12. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

13. The Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of 5,075 feet. In the event the aforesaid covenants are breached, the Lessor reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

14. The Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This Lease and all provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of or the exclusive or non-exclusive use of the Elko Regional Airport by the United States during the time of war or national emergency.

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to rename Dakota Street to Dakota Drive, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **October 27, 2020**
3. Agenda Category: **PETITIONS, APPEALS AND COMMUNICATIONS**
4. Time Required: **5 Minutes**
5. Background Information: **It has come to the attention of the Engineering Department, that there has been some confusion of the suffix for the roadway known as Dakota. The roadway was first mapped and dedicated in 1999 without a name. The City records and the street sign say Dakota Drive. Recorded maps since 2011 have said Dakota Street. The recent map of Copper Trails Unit 1 extended the roadway, and named that portion Dakota Street, following the other maps. This action will clarify the name, and change any portion that may be known as Dakota Street, to be officially known as Dakota Drive. There are no addresses along this roadway that will be affected by this change. BT**
6. Budget Information:
 Appropriation Required: **None**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **None**
9. Recommended Motion: **Accept the petition to change the name of Dakota Street to Dakota Drive, and direct Staff to set the matter for a public hearing.**
10. Prepared By: **Bob Thibault, Civil Engineer**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution: