



EL DORADO CITY COMMISSION - REGULAR MEETING AGENDA
CITY HALL – 220 E. FIRST AVENUE
March 20, 2023 - 5:30 PM

- 1. Call to Order**
- 2. Roll Call**
- 3. Invocation** - Father John Lanzrath, St John Catholic Church
- 4. Pledge of Allegiance**

Proclamations and Recognition

- 5. None.**

Personal Appearances. Personal appearances are opportunities for organizations or citizens to make special presentations before the City Commission. Such appearances are scheduled in advance of the meeting by calling City Clerk Tabitha Sharp at (316) 321-9100 by 5:00 pm the Tuesday preceding the meeting. Presentations are limited to ten minutes. Any presentation is for information purposes only; no action will be taken.

- 6. None.**

Public Comments. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon the Mayor. Comments on personnel matters and matters pending in court are not permitted. Speakers are limited to three minutes. Any presentation is for information purposes only; no action will be taken.

Consent Agenda (*Consent agenda items will be acted on by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.*)

- 7. City Commission Meeting Minutes from March 6, 2023.**
- 8. One-Cent Sales Tax Committee Appointment**
- 9. Appointment of Loren Anthony to the Parks and Recreation Advisory Board for a term to expire on December 31, 2024.**

Old Business

- 10. None.**

New Business

11. Housing Committee Appointments
12. Waiver and Release of Use Restrictions for Numana, Inc.
13. Rezone SE 20th Street & SE Teter Road
14. Kinder 2nd Addition, Final Plat
15. Special Use Permit 522 W 5th Avenue
16. Special Use Permit 2819 W 4th Avenue
17. Butler Rural Electric (dba Velocity) Franchise Agreement
18. Delta Communications, LLC (dba Clearwave Fiber) Franchise Agreement

Discussion Items

19. None.

Reports

20. City Commission and Advisory Board Updates
21. City Manager

Executive Session

22. Executive Session for Attorney-Client Privileged Exception under K.S.A. 75-4319(b)(2)

Adjournment

23. Consideration of a motion to adjourn

PUBLIC COMMENT POLICY:

Citizens are encouraged to address the City Commission during regularly scheduled meetings. This policy is intended to provide guidelines to ensure that all El Dorado citizens have a chance to address the Commission.

1. Each citizen will state their name and address before making comments.
2. There are no residency requirements.
3. Each citizen will have 3 minutes to present his or her comments.
4. An extension of time, if necessary, may be approved but must be by a majority of the City Commission.
5. Comments or questions will be directed only to the City Commission.
6. Citizens will follow the decorum policy.
7. Debate or argument between parties in the audience will not be allowed.
8. Certain legal issues may not be discussed. (Examples include but are not limited to personnel issues, lawsuits, etc.)
9. Violation of this public comment policy will result in the citizen being directed to cease or resume sitting.

Approved by the Commission this 2nd day of May, 2005.

EL DORADO CITY COMMISSION MEETING

March 6, 2023

The El Dorado City Commission met in a regular session on March 6, 2023 at 5:30 p.m. in the Commission Room with the following present: Mayor Bill Young, Commissioner Kelly Tetrick, Commissioner Gregg Lewis, Commissioner Leon Leachman, Commissioner Kendra Wilkinson, City Manager David Dillner, City Engineer Scott Rickard and Administration Director Tabitha Sharp. Absent: City Attorney Ashlyn Lindskog

VISITORS

Mike Holton	220 E 1 st Ave	El Dorado, KS
Phil Benedict	El Dorado Chamber of Commerce	El Dorado, KS
Emily Connell	El Dorado Main Street	El Dorado, KS
Craig Yaryan	El Dorado Main Street	El Dorado, KS
Corey Landreth	Real Life Church	El Dorado, KS
Chris Huffman	Martens Appraisal	Wichita, KS

CALL TO ORDER

Mayor Bill Young called the March 6, 2023 meeting to order.

INVOCATION

Pastor Wade Graber opened the meeting with an invocation.

PLEDGE OF ALLEGIANCE

El Dorado High School's Encore group led the Pledge of Allegiance.

PERSONAL APPEARANCES

El Dorado High School's Encore group sang a song from the performance they will be giving in Disney Land next week.

Emily Connell, El Dorado Main Street, presented their master plan.

PUBLIC COMMENT

Mayor Bill Young opened the floor for public comments.

There were no comments.

CONSENT AGENDA

Approval of the City Commission Minutes from February 20, 2023 and Special City Commission Minutes from March 1, 2023.

Approval of Appropriation Ordinance No. 02-23 in the amount of \$1,455,530.89.

Commissioner Leon Leachman moved to approve the consent agenda as presented.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 5 – 0.

PUBLIC HEARING

There were no public hearings scheduled.

OLD BUSINESS

There was no old business.

NEW BUSINESS

CIVIC CENTER APPRAISAL

City Manager David Dillner stated that Chris Huffman with Martens Appraisal is present to provide the City Commission with information on the appraisal of the Civic Center.

Chris Huffman, Martens Appraisal, stated that it is difficult to find comparable buildings to a Civic Center. He stated that he used similarly functioning buildings to provide an appraisal to the City. He stated that his appraisal came in at about \$62 per square foot, however if the City wanted to lease it to a similar not-for-profit or community organization, he stated that it could be sold for approximately \$47 per square foot. He stated that the most probable market value is about \$95 per square foot.

Commissioner Leon Leachman asked if the land value was \$305,000.

Mr. Huffman stated that he felt that was difficult to find a comparison for because there have not been comparable land sales within the City of El Dorado.

Commissioner Gregg Lewis asked if the rental area was included.

Mr. Huffman stated that it is included in the building area.

Commissioner Leachman asked about the portion that refers to the property as vacant.

Mr. Huffman stated that he is required by the standards board to provide that.

EL DORADO CITY COMMISSION MEETING

March 6, 2023

Mayor Bill Young confirmed that the comparables on page 6-3 is the problem he is referring to.

Mr. Huffman stated that he is correct, it is difficult to find comparable buildings. He stated that he looked for buildings of similar construction and size.

Commissioner Lewis stated that it sounded like it was being used correctly.

Mr. Huffman stated that he was asked to provide an appraisal as if the City were going to sell the Civic Center, he did not determine the best use.

Commissioner Kelly Tetrick stated that it was difficult to determine what is best between the three different options.

Mr. Huffman stated that if he were to provide a number to a bank, it would be the \$1,950,000 amount. He stated that some of the amenities are very specific to a certain buyer, and may not be important to others.

Mayor Young stated that he appreciates the work done by the appraiser on this project. He stated that there is a lot for the Commission to consider.

Commissioner Gregg Lewis moved to accept the appraisal of the Civic Center completed by Martens Appraisal.

Commissioner Leon Leachman seconded the motion.

Motion carried 5 – 0.

REFER DOWNTOWN MASTER PLAN TO PLANNING COMMISSION

City Manager David Dillner stated that as reviewed earlier, El Dorado Main Street has prepared the Downtown Master Plan. He stated that staff recommend that the plan be referred to the Planning Commission so that they can compare it to the Comprehensive Plan.

Commissioner Gregg Lewis moved to refer the Downtown Master Plan as prepared by El Dorado Main Street, to the Planning Commission.

Commissioner Kelly Tetrick seconded the motion.

Motion carried 5 – 0.

REFER TEMPORARY AND OFF-SITE SIGNAGE REGULATIONS FROM ARTICLE 8 OF THE ZONING REGULATIONS TO THE PLANNING COMMISSION

EL DORADO CITY COMMISSION MEETING

March 6, 2023

City Manager David Dillner stated that the Commission has received some comments regarding signage in recent meetings. He stated that staff recommend referring this issue to the Planning Commission for review.

Commissioner Gregg Lewis moved to refer temporary and off-site signage regulations, as defined by Article 8 of the Zoning Regulations, to the Planning Commission.

Commissioner Kelly Tetrick seconded the motion.

Motion carried 5 – 0.

ONE-CENT SALES TAX COMMITTEE APPOINTMENTS

City Manager David Dillner stated that every five years, the Commission appoints a sales tax task force in order to prepare a ballot question for the upcoming election. He stated that the committee would provide a recommendation by July on the ballot question. He stated that the Commission would then take action on the item and then it would be sent to the County to be included on the November ballot. City Manager David Dillner provided the names of the individuals who had been discussed or had submitted an application.

Commissioner Leon Leachman moved to appoint Bill Rinkenbaugh, Matt Jacobs, Jordan Buxton, John Steinbacher, David Sundgren, Craig Hamilton, Brett Remsberg, Lori Gioso, Ross Stumpf and Edward Wilson to serve on the One-Cent Sales Tax Committee to prepare a recommendation for a ballot question concerning a one-cent sales tax for consideration by voters during the November general election.

Commissioner Kendra Wilkinson seconded the motion.

Commissioner Leon Leachman stated that he felt they should all be included because he hated to turn down anyone who had volunteered.

Commissioner Gregg Lewis stated that he thought it was a good group.

Commissioner Kelly Tetrick stated that he was concerned that it was an even number.

Commissioner Kendra Wilkinson asked if they would be able to discuss another member.

Mayor Bill Young stated that he is open to discussing anything that comes up.

Motion carried 5 – 0.

DISCUSSION ITEMS

Mayor Bill Young asked about the process for the Civic Center moving forward.

EL DORADO CITY COMMISSION MEETING

March 6, 2023

City Manager David Dillner stated that staff would come to the next work session to discuss the appraisal and any questions the Commission might have.

Commissioner Kelly Tetrick stated that he would like to discuss how the building is going to be used in the future and if it's discussed in the Comprehensive Plan.

City Manager Dillner stated that due to the lack of a quorum on the 15th, they would bring it to the meeting on March 29th.

Commissioner Lewis asked if there would be an opportunity for the public to comment.

City Manager Dillner stated that staff will bring options to the Commission and however they decide to proceed will indicate if public comment is necessary, e.g. if they don't sell it, public comment may not be required.

REPORTS

CITY COMMISSION AND ADVISORY BOARD UPDATES

Commissioner Kendra Wilkinson stated that El Dorado Main Street met and reviewed their proposed budget as well as some upcoming events, including the Garden Tour and a possible adult trick-or-treat. She showed a sign that they will include on all Main Street projects downtown.

Commissioner Leon Leachman stated that he will be absent for next week's Experience El Dorado meeting, but they will be voting on the mural proposals.

Commissioner Gregg Lewis stated that the El Dorado Inc. Director will be making quarterly reports.

Commissioner Kelly Tetrick stated that the library will be providing more activities during Spring Break.

CITY MANAGER REPORT

City Manager David Dillner stated that staff are closely monitoring Senate Bill 248, if it is passed as currently packaged, it will cost the City a minimum of \$350,000. He stated that it was adopted in an emergency vote and will go to the House next.

Mayor Bill Young confirmed that the bill would reduce the amount collected with our one-cent sales tax and that our Senator voted in favor of it.

City Manager Dillner stated that he was correct.

City Manager Dillner stated that sales tax collections are starting strong this year.

Commissioner Kendra Wilkinson asked how long the legislative session will last.

City Manager Dillner stated that it typically ends around the end of April.

Commissioner Wilkinson asked if the House had scheduled a vote yet.

City Manager Dillner stated that they had not.

Mayor Young asked if there was any direction from the League on this item.

City Manager Dillner stated that they are requesting that communities contact their local representative and explain the impact of the loss of those funds.

City Manager Dillner stated that K254 met last week. He stated that the company that chose Bel Aire as their new location was present to garner support for grant funding. He stated that Integra would be located at Webb and 254. He stated that if they receive the funding, it will create about 2,000 jobs. He stated that if they receive the funding, they have to bring five suppliers with them, those suppliers can be located in other communities in the area. He stated that someone will be present from the Economic Area Partnership at a future Commission meeting to talk more about the project.

ADJOURNMENT

Commissioner Kendra Wilkinson moved to adjourn the meeting at 6:43 p.m.

Commissioner Leon Leachman seconded the motion.

Motion carried 5 – 0.

City Clerk Tabitha D. Sharp

Mayor Bill Young

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: One-Cent Sales Tax Committee Appointment
DATE: March 20, 2023

Background:

Every five years, the City requires consideration of a ballot question to continue its one-cent sales tax. Voters last approved the one-cent sales tax in 2018. The City Commission tasks the One-Cent Sales Tax Committee with recommending a ballot question for El Dorado voters to consider during the upcoming general election in November.

The City's one-cent sales tax is currently allocated as follows: \$1.65 million to property tax reduction; \$600,000 to street maintenance; and \$100,000 to economic development. The City Commission allocates any funds in excess of \$2.35 million at the recommendation of the Excess Sales Tax Committee.

The City Commission needs to appoint the One-Cent Sales Tax Committee to allow a recommendation to be drafted prior to July 2023 in order to place a question on the November general election ballot.

The City Commission appointed the following individuals to serve on the committee at the May 6, 2023 meeting: Bill Rinkenbaugh, Matt Jacobs, Jordan Buxton, John Steinbacher, David Sundgren, Craig Hamilton, Brett Remsberg, Lori Gioso, Ross Stumpf, and Edward Wilson. Following these appointments, the Planning Commission requested Scott Leason to serve on the committee as its representative.

Attachments:

Policy Issue:

Not Applicable

Fiscal Impact:

Not Applicable

Trade-offs:

Not Applicable

Staff Recommendation:

Not Applicable

Commission Action:

Commissioner _____ moved to appoint Scott Leason to serve on the One-Cent Sales Tax Committee to prepare a recommendation for a ballot question concerning a one-cent sales tax for consideration by voters during the November general election.

Commissioner _____ seconded the motion.

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Housing Committee Appointments
DATE: March 20, 2023

Background:

El Dorado Inc. is tasked with facilitating progress on goals and objectives defined in its work plan. Housing is one of the priority areas articulated in the work plan. El Dorado Inc. has provided a list of individuals interested in serving on the Housing Committee. The committee will work on the goals and objectives necessary to increase the availability of housing in El Dorado, while also serving as the steering committee for the housing assessment to be facilitated by Wichita State University.

The City Commission authorized \$12,450 from the Economic Development Sales Tax Fund for the housing assessment at its regular meeting on February 6, 2023. Wichita State desires to have a steering committee in place prior to commencing its work under the agreement. The following board members from El Dorado Inc. are recommended to serve on this committee: Kim Krull, Kyle Blasdel, Ryan Liess, Ryan Murry, Gregg Lewis, Bryan Coons, Shannon Beal, Ryan Browning, and John Banks. Inc. Executive Director Sarah Hoefgen will serve on the committee as an ex officio member.

Attachments:

Policy Issue:

Not Applicable

Fiscal Impact:

Not Applicable

Trade-offs:

Not Applicable

Staff Recommendation:

Not Applicable

Commission Action:

Commissioner _____ moved to appoint Kim Krull, Kyle Blasdel, Ryan Liess, Ryan Murry, Gregg Lewis, Bryan Coons, Shannon Beal, Ryan Browning, and John Banks to serve on the Housing Committee to serve as the steering committee for the Housing Assessment to be facilitated by Wichita State University.

Commissioner _____ seconded the motion.

WAIVER AND RELEASE OF USE RESTRICTIONS

THIS WAIVER AND RELEASE OF USE RESTRICTION (“Waiver”) is entered into as of _____, 2023, by and between Numana, Inc., a Kansas non-profit corporation (“Numana”), and the City of El Dorado, Kansas, a Kansas municipal corporation (the “City”)

WHEREAS, Numana is the owner of the real property legally described on Exhibit A attached hereto and made a part hereof (the “Property”); and

WHEREAS, Numana acquired the Property from the City on or about September 3, 2010 (the “Prior Transaction”); and

WHEREAS, as part of the Prior Transaction, Numana and the City agreed to place certain restrictions on the Property (the “Restrictions”), including but not limited to the following:

- A. The Property will be used exclusively for the operations of Numana;
- B. If the Property is not used by Numana, the City shall have the right to repurchase the Property.
- C. If Numana seeks to sell the Property, the City shall have the right of first refusal.

WHEREAS, Numana desires to convey the Property free from the Restrictions and the City has agreed to release the Property from the Restrictions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Numana and the City agree as follows:

1. The Property is hereby released from the Restrictions so that the Restrictions shall no longer apply to the Property.
2. Signatures may be signed in counterpart, on separate pages, and then assembled as the complete agreement of the parties.

IN WITNESS WHEREOF, the parties have set their hands as of the date shown above.

Numana, Inc., a Kansas non-profit corporation

By _____
Name _____
Title _____

STATE OF KANSAS)
) ss
COUNTY OF BUTLER)

On this ____ day of _____, 2023, before me appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is a _____ of Numana, Inc., a Kansas non-profit corporation, and that said instrument was signed on behalf of said limited liability company, and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid on the day and year first above written.

Notary Public

Print Name

My commission expires:

City of El Dorado, Kansas, a Kansas municipal corporation

By _____
Name _____
Title _____

STATE OF KANSAS)
) ss
COUNTY OF BUTLER)

On this ____ day of _____, 2023, before me appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is a _____ of the City of El Dorado, Kansas, a Kansas municipal corporation, and that said instrument was signed on behalf of said limited liability company, and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid on the day and year first above written.

Notary Public

Print Name

My commission expires:

EXHIBIT A

Beginning at a point 34.94 feet West of the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 5, Township 26 South, Range 5 East of the 6th P.M., Butler County, Kansas, thence North $89^{\circ}58'30''$ West a distance of 570.14 feet; thence North $0^{\circ}08'42''$ West a distance of 299.06 feet; thence North $89^{\circ}49'51''$ East a distance of 569.94 feet; thence South $0^{\circ}11'02''$ East 300.87 feet to the point of beginning.

Commonly known as 405 SW Boyer Rd., El Dorado, KS 67042.

TO: City Commission
FROM: Scott Rickard
SUBJ: Rezone SE 20th Street & SE Teter Road
DATE: March 20, 2023

Background:

The Planning Commission held a public hearing on February 23, 2023, to review an application to rezone approximately 68.4 acres at the southwest quadrant of SE 20th Street and SE Teter Road from A-R Agricultural Residential District to R-S Residential Suburban District. R-S is a residential zoning that primarily allows single-family residential on large lots.

The property's current zoning, A-R, requires a minimum lot size of 40 acres. The applicant proposes two new 20.2-acre lots along SE 20th Street and four seven-acre lots along SE Teter Road.

This property is located outside city limits but within the El Dorado Extraterritorial Jurisdiction (ETJ).

The Butler County Commission reviewed the request at their February 21st, 2023, meeting and voted to "not support" the rezoning. The primary concern cited was the impact to township roads.

Unfortunately, County Staff did not share the meeting date so the applicant was not able to attend the meeting, present his request, and share the news that Prospect Township supports the rezoning. The applicant, after hearing about this meeting, requested a postponement of the Planning Commission hearing until he could get formal support in writing from the Township. The Planning Commission voted to recommend approval of the application (6-1).

Attachments:

1. Moore Memo
2. Moore Township Approval
3. Teter and 20th
4. 47820 MOORE Two Tract Rezone
5. 47820 MOORE Four Tract Rezone
6. Moore Ord

Policy Issue:

Zoning districts restrict properties to a specific set of land uses. Most rezoning applications, such as this one, request a zoning district that is less restrictive and allows an increase in land use intensity. The minimum lot size in R-S zoning is three acres when a public water supply is available. The minimum lot size is 6.6 acres when public water or wastewater system is not present.

Fiscal Impact:

Approval of the zoning map amendment will create little to no fiscal impact on the City of El Dorado at this time.

Trade-offs:

Staff Recommendation:

Staff recommends approval of the proposed rezoning request.

Commission Action:

Commissioner _____ moved to approve an ordinance for Case No. 23-01-REZ,

requesting a rezoning of 68.4 acres at the southwest corner of SE 20th Street and SE Teter Road to R-S Residential Suburban District.

Commissioner _____ seconded the motion.

PLANNING COMMISSION MEMORANDUM

TO: Planning Commission
FROM: Jay Shivers, AICP, City Planner
CC: Scott Rickard, Engineering Director
RE: Zone Change Application – SE 20th Street and SE Teter Road

Britt Moore has submitted a rezoning application to rezone approximately 68.4 acres at the southwest quadrant of SE 20th Street and SE Teter Road from A-R Agricultural Residential District to R-S Residential Suburban District. R-S is a residential zoning that primarily allows single-family residential on large lots.

The property's current zoning, A-R, requires a minimum lot size of 40 acres. The applicant proposes two new 20.2-acre lots along SE 20th Street and four seven-acre lots along SE Teter Road. The proposed lots will require R-S zoning. The minimum lot size in R-S zoning is three acres when a public water supply is available. The minimum lot size is 6.6 acres when public water or wastewater system is not present.

This property is located outside city limits but within the El Dorado Extraterritorial Jurisdiction (ETJ). The Butler County Commission will also review the request and make a recommendation.

The regulations state the Planning Commission shall make findings of fact to determine whether the application is found to be compatible with the following:

Character of the neighborhood.

The existing land uses in the area consist of very low density single-family residential and agricultural open space. Zoning in the area is primarily A-R to the north, east, south, and west. The two 20.2-acre lots proposed along SE 20th Street will face the El Dorado Correctional Facility across the road to the north.

Consistency with the Comprehensive Plan and ordinances of the City of El Dorado.

The Future Land Use Map (FLUM) designates the subject property as Agricultural. The Zoning Ordinance states “the primary land use is agricultural in nature, such as farming and livestock production. May include ancillary uses like residential or storage. May include large lot single-family land uses generally no more dense than one unit per five acres.”

Adequacy of public utilities and other needed public services.

Staff have worked with the property owner through the fall of 2022 to ensure adequate utility capacity is available. Rural Water is available in the area; the lots may also use water wells. The applicant plans to use lagoons for wastewater treatment. Evergy has confirmed electric access and available capacity. The lots access unimproved roads. Improved roads, such as SE 30th and SE Bluestem, are located one mile south and one mile east, respectively. Highway 77 is approximately two miles west.

Suitability of the uses to which the property has been restricted under its existing zoning.

R-S is one of the more restrictive zoning districts in the zoning ordinance. The property is generally restricted to its current use, agricultural open space, and very low density single-family residential.

Length of time property has remained vacant as zoned.

The property has been used for agricultural purposes.

Compatibility of the proposed district classification with nearby properties.

R-S is a zoning classification best suited to areas on the urban fringe where low density residential and agricultural uses are intermingled. The proposed zoning is consistent with the land uses currently in the area.

The extent to which the zoning amendment may detrimentally affect nearby properties.

The addition of a single new single-family residential lot is not expected to detrimentally affect neighboring properties. The proposed lot size exceeds minimum lot size requirements and is consistent with the rural residential in the area.

Whether the proposed amendment provides a disproportionately great loss to the individual land owners nearby relative to the public gain.

Staff does not anticipate a disproportionately great loss nor significant impact to nearby land owners for reasons mentioned above.

The proposed zoning conforms to the Comprehensive Plan and would allow six large, rural residential lots. Lots of this size and zoning are common in the rural areas surrounding urban areas. If the rezoning is approved, the applicant will submit a plat for review by the Planning Commission to officially create the lots. For these reasons, staff recommends the Planning Commission recommend approval of the request.

Adoption of this amendment requires a majority vote of the Planning Commission members present and voting.

Suggested Motion:

I move to recommend approval of Case No. 23-01-REZ, an application by Britt Moore to rezone 68.4 acres at the southwest corner of SE 20th Street and SE Teter Road from A-R Agricultural Residential District to R-S Residential Suburban District, for reasons stated in the staff recommendation and heard at this public hearing.

TO BUTLER CO. COMMISSIONER:

PROSPECT TOWNSHIP -

HAS HAD DISCUSSION ABOUT A HOMESTEAD
LOT SPLIT; GENERAL LOCATION 4460 SE 20th
IN OUR TOWNSHIP.

WE HAVE NO PROBLEM WITH THIS
APPROVAL.

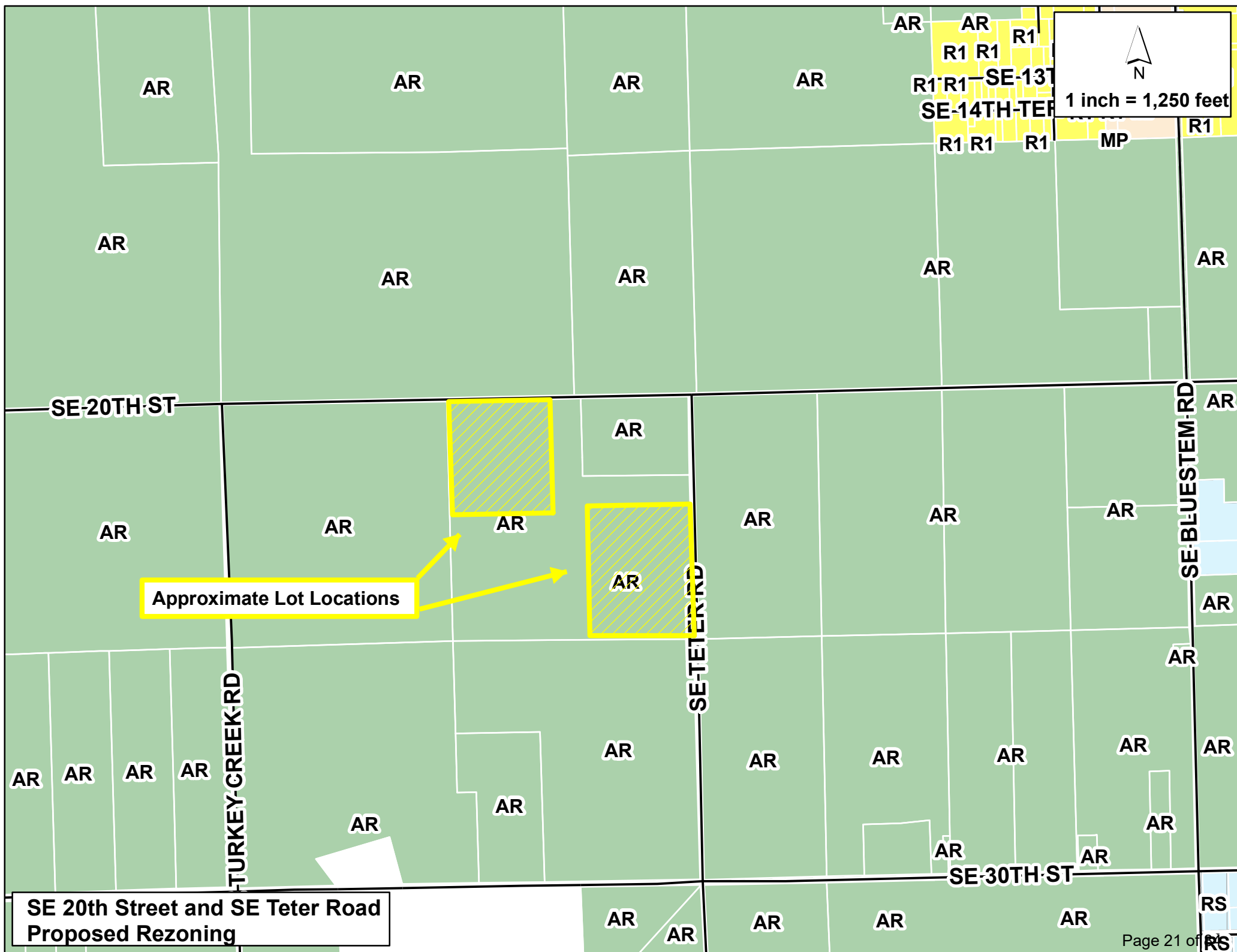
PROSPECT TOWNSHIP BOARD -

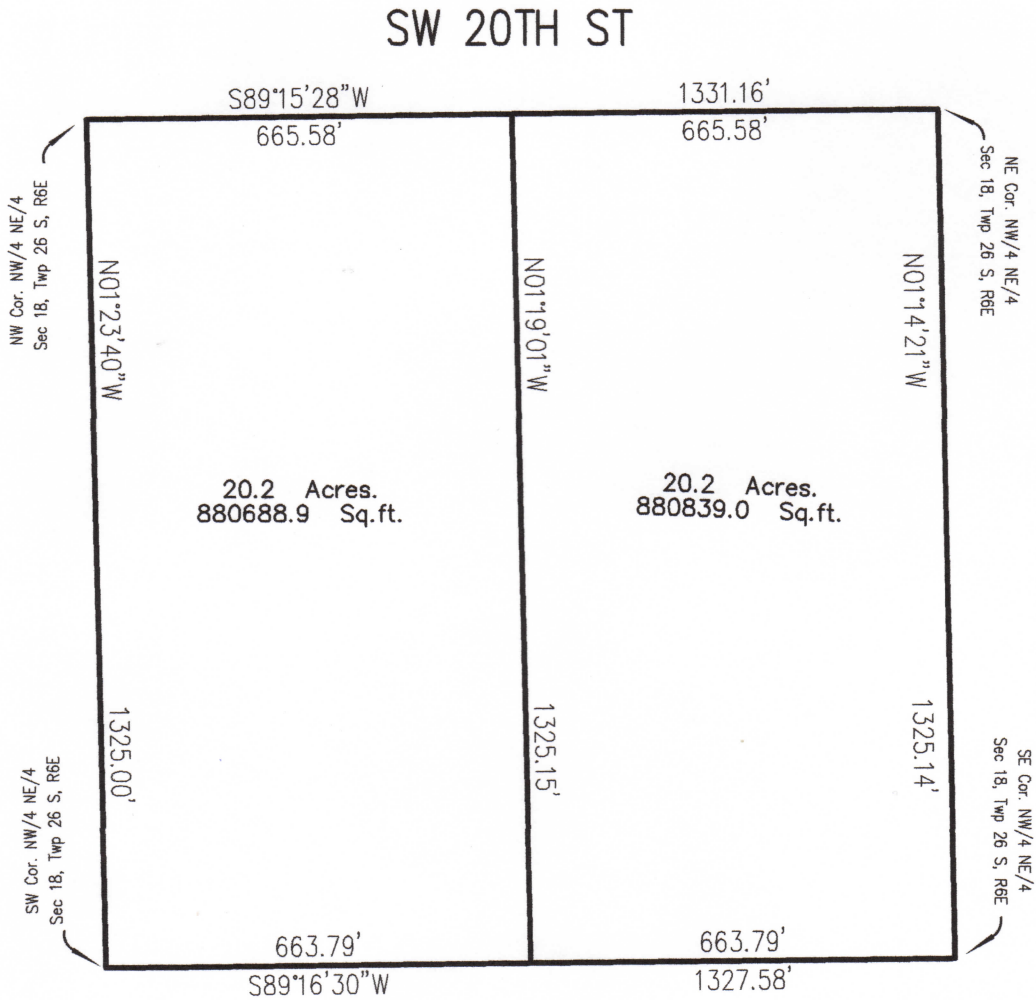
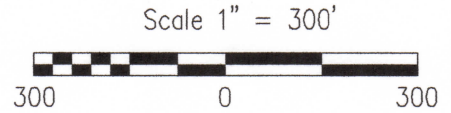
TRUSTEE:

TREASURER

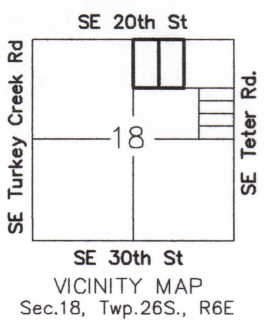
CLERK

Wayne [Signature]
Halt. Hall
Rebecca [Signature]





Rezone Request
 The Northwest Quarter of the Northeast Quarter of Section 18, Township 26 South,
 Range 6 East of the 6th P.M. Butler County, Kansas.



OWNER:
 Britt A. Moore
 1827 SE 20th St.
 El Dorado Ks. 67042-9117
 Phone 316-807-4606

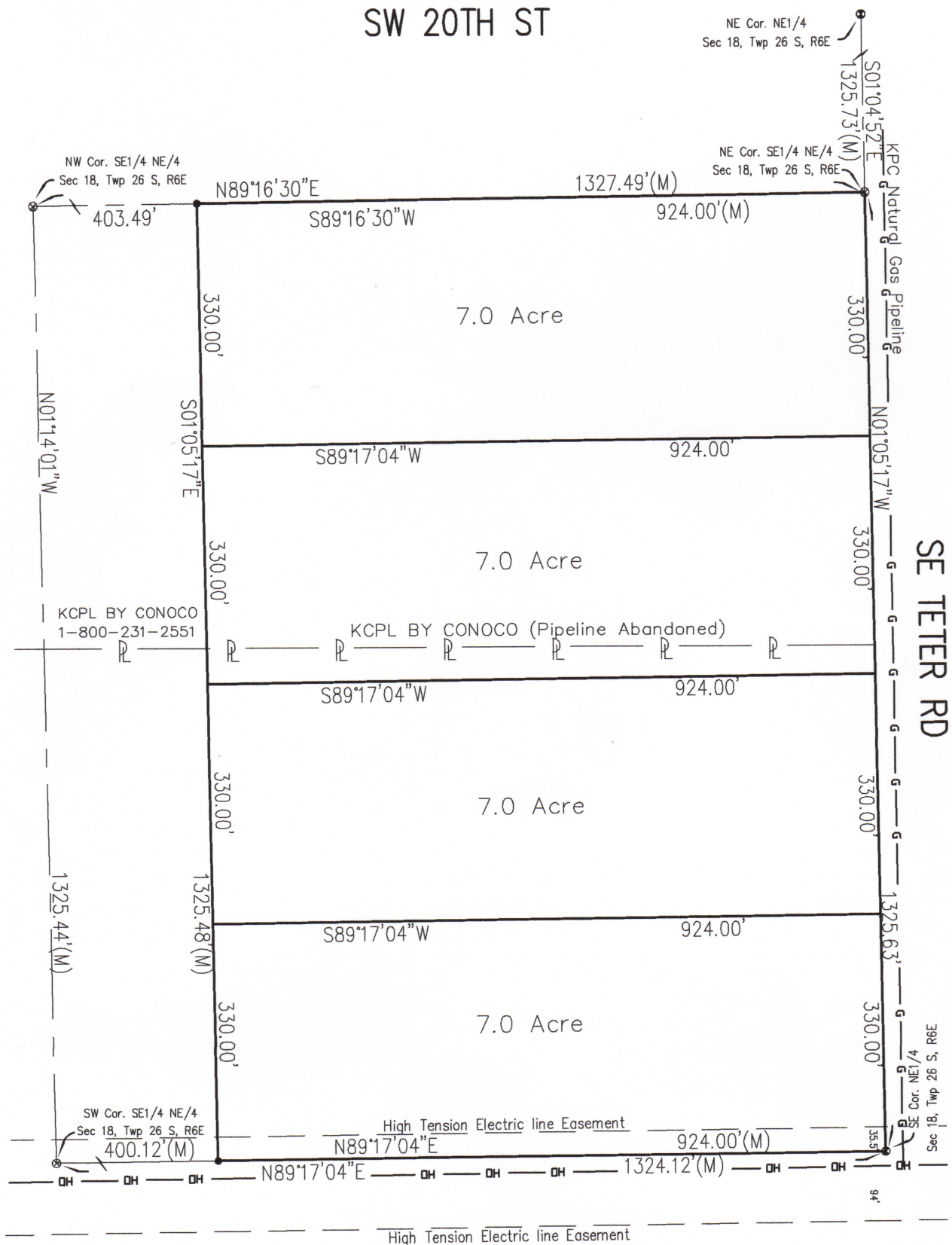
FEMA FIRM PANEL
 20015C0395E
 Zone X
 eff. 6/02/2009

- Legend
- Set 5/8"x24" Rebar & CLS 251 Cap
 - ⊗ Found 5/8" Rebar & CLS 28 Cap
 - ⊗ Found 1" Bar (Excepted by Brookher)
 - (M) Measured

REZONE REQUEST
 FOUR, SEVEN ACRE TRACTS

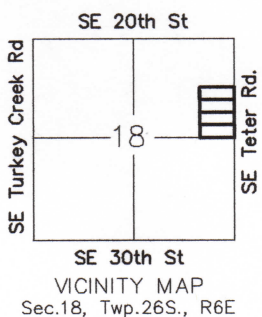


Scale 1" = 200'



Rezone Request

The East 924 feet of the South 1325.63 feet of the Northeast Quarter of Section 18, Township 26 South, Range 6 East of the 6th P.M. Butler County, Kansas.



OWNER:

Britt A. Moore
 1827 SE 20th St.
 El Dorado Ks. 67042-9117
 Phone 316-807-4606

FEMA FIRM PANEL
 20015C0395E
 Zone X
 eff. 6/02/2009

Legend

- Set 5/8"x24" Rebar & CLS 251 Cap
- ⊗ Found 5/8" Rebar & CLS 28 Cap
- ⊗ Found 1" Bar (Excepted by Brookher)
- (M) Measured

ORDINANCE NO. _____

**AN ORDINANCE ZONING CERTAIN LAND IN THE CITY OF EL DORADO,
KANSAS, EXTRATERRITORIAL JURISDICTION R-S RESIDENTIAL
SUBURBAN DISTRICT AND AMENDING THE ZONING MAP OF THE CITY**

WHEREAS, an application has been filed with the El Dorado Planning Commission requesting rezoning of certain land from A-R Agricultural Residential District to R-S Residential Suburban District;

WHEREAS, on the 21st day of February, 2023, the Butler County Commission reviewed the rezoning application and voted to deny approval, and;

WHEREAS, on the 23rd day of February, 2023, at a Planning Commission meeting duly convened, the Planning Commission held a public hearing and voted to recommend and does hereby recommend that the Governing Body approve the rezoning;

WHEREAS, it is determined by the Governing Body of the City of El Dorado, Kansas, that certain property located within the City’s Extraterritorial Jurisdiction should be zoned;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE
CITY OF EL DORADO, KANSAS:**

Section 1: The following property should be and is zoned R-S Residential Suburban District:

Two-20.2 Acre Tracts: The Northwest Quarter of the Northeast Quarter of Section 18, Township 26 South, Range 6 East of the 6th P.M. Butler County, Kansas

Four-7.0 Acre Tracts: The East 924 feet of the South 1325.63 feet of the Northeast Quarter of Section 18, Township 26 South, Range 6 East of the 6th P.M. Butler County, Kansas.

Section 2: The Governing Body hereby directs that the City Zoning map be amended to conform herewith.

Section 3: This Ordinance shall take effect and be in full force from and after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, and

APPROVED by its Mayor, this 20th day of March, 2023.

Bill Young, Mayor

ATTEST:

Tabitha Sharp, City Clerk

APPROVED AS TO FORM:

Ashlyn Lindskog, City Attorney

TO: City Commission
FROM: Scott Rickard
SUBJ: Kinder 2nd Addition, Final Plat
DATE: March 20, 2023

Background:

The Planning Commission reviewed the Kinder 2nd Addition Plat at their February 23, 2023 regular meeting. The Planning Commission voted to unanimously approve the Final Plat.

Attachments:

1. Kinder Plat Memo
2. Kinder Second Add. Final Plat
3. 2-23-23 Minutes

Policy Issue:

Plats are required by the Subdivision Regulations to subdivide property and create new lots of record, easements, and right-of-way. The Planning Commission reviews plats to ensure conformance with the Zoning Ordinance and Subdivision Regulations and approve the plat. The role of the City Commission is to accept easements and right-of-way dedications.

Fiscal Impact:

The subdivision itself will not have a fiscal impact on the City of El Dorado.

Trade-offs:

Staff Recommendation:

Accept the Final Plat for Kinder Second Addition.

Commission Action:

Commissioner _____ moved to accept the Final Plat for Kinder Second Addition.

Commissioner _____ seconded the motion.

PLANNING COMMISSION MEMO

TO: Planning Commission
FROM: Jay Shivers, AICP, City Planner
Scott Rickard, Engineering Director
RE: Kinder Second Addition Final Plat

Roger Cutsinger of Savoy Company has submitted the Kinder Second Addition Final Plat, creating three lots just north of Kinder First Addition. In addition to the three platted lots, a right-of-way will be dedicated along the western boundary of these lots to provide access. The lots are currently zoned R-1 Low Density Residential District.

The applicant will present the plat and answer any questions at the meeting. The final plat meets the requirements found in the Zoning Ordinance and Subdivision Regulations. Staff recommend approval of the plat.

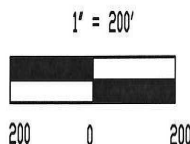
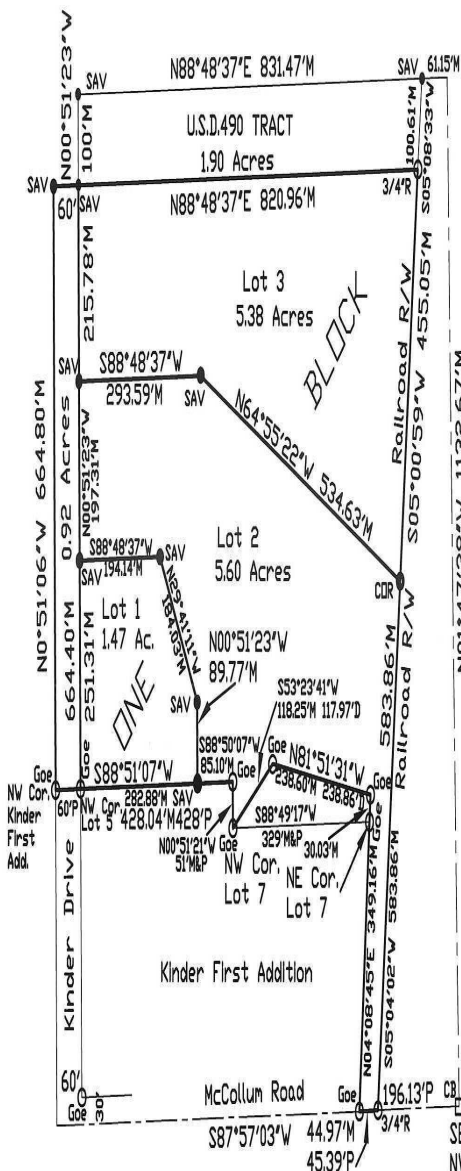
Recommended Motion:

I move to approve the final plat of the Kinder Second Addition as presented.

FINAL PLAT

KINDER SECOND ADDITION

Part of Northwest Quarter (NW4) Section 25-25-5E
El Dorado, Kansas



LEGEND
M = Measured
D = Deeded
P = Platted

- Goe 5/8" Bar w/ Goedecke Eng. Cap (Fd)
- 251 5/8" Bar w/ Goedecke Survey Cap (Fd)
- CB Concrete Block Found BuCo.
- 3/4" 3/4" Bar (Fd BuCo.)
- SAV 1/2"x24" Bar w/ Savoy Cap (Set)
- CDR Corps of Engineers

PLANNING COMMISSION CERTIFICATE

State of Kansas) ss
County of Butler)
This plat of KINDER SECOND ADDITION, has been submitted to and approved by the El Dorado Planning Commission on this _____ day of _____, 2022.

David Stewart, Chairman

ATTEST: Jay Shivers, Secretary

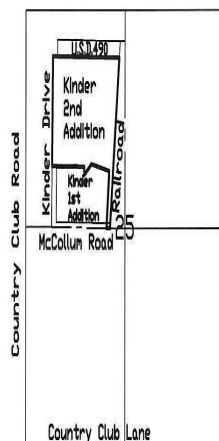
CITY COMMISSIONER'S CERTIFICATE

State of Kansas) ss
County of Butler)
These easements and right-of-way accepted by the City Commission of El Dorado, Kansas, this _____ day of _____, 2022.

Bill Young, Mayor

ATTEST: Tabitha Sharp, City Clerk

SE Cor.
NW4
Sec. 25



VICINITY MAP

CERTIFICATE OF SURVEY

I, the undersigned, licensed professional Surveyor of the State of Kansas, do hereby certify that the following described tract of land was surveyed on September 18, 2020 and the accompanying Final Plat prepared and shown to the best of my knowledge and belief:
Commencing at a point on the South line of the Northwest Quarter (NW4) of Section 25, Township 25 South, Range 5 East of the Sixth Principal Meridian in Butler County, Kansas, said point being 196.13 feet West of the Southeast corner of said Northwest Quarter (NW4) and on the Western Railroad Right-of-way and the Point of Beginning; thence continuing West along said South line, a distance of 45.39 feet to the Southeast corner of the Kinder First Addition to the City of El Dorado, Kansas; thence N4°18'45"E, a distance of 349.16 feet; thence N81°51'31"W, a distance of 238.66 feet; thence S53°23'41"W, a distance of 117.97 feet; thence N0°51'21"W, a distance of 51 feet; thence S88°51'07"W, a distance of 428 feet to the Northwest corner of said Kinder First Addition; thence N0°51'06"W, along the West line of Kinder Drive extended, a distance of 664.80 feet; thence N88°48'37"E, a distance of 880.96 feet to a point on the Western Railroad Right-of-way; thence S05°00'59"W, along said Railroad Right-of-way, a distance of 455.05 feet; thence S05°04'02"W, a distance of 583.86 feet to the Point of Beginning. Said tract contains 13.37 Acres.

Date Signed _____ Roger L. Cutsinger P.S. 8805

LAND SURVEYORS REVIEW

Reviewed in accordance with K.S.A. 58-2005 on this _____ day of _____, 2022.

Michael A. Vork PS 1160
Butler County Surveyor, Butler Co, Kansas

OWNER'S CERTIFICATE

State of Kansas) ss
County of Butler)

This is to certify that the undersigned owner(s) of the land described in the Surveyor's Certificate have caused the same to be surveyed and subdivided on the accompanying plat into lots, blocks, streets and other public ways under the name of KINDER SECOND ADDITION to the City of El Dorado, Butler County, Kansas; that all highways, streets, alleys, easements and public grounds as denoted on the plat are hereby dedicated to and for the use of the public for the purposes of constructing, operating, maintaining and repairing public improvements. The land contained herein is held and shall be conveyed subject to any restrictions, reservations, and covenants on file or hereafter filed in the Office of the Register of Deeds of Butler County, Kansas.

Date Signed _____
Kody Kinder Owner Kurt Bookout Owner
Ton J. Kinder Owner Karen R. Kinder Owner Kacy Bookout Owner

NOTARY CERTIFICATE

State of Kansas) ss
County of Butler)
The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Kody Kinder _____, Notary Public

My appointment expires: _____

NOTARY CERTIFICATE

State of Kansas) ss
County of Butler)
The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Ton J. Kinder & Karen R. Kinder _____, Notary Public

My appointment expires: _____

NOTARY CERTIFICATE

State of Kansas) ss
County of Butler)
The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Kurt Bookout & Kacy Bookout _____, Notary Public

My appointment expires: _____

CITY ATTORNEY'S CERTIFICATE

State of Kansas) ss
County of Butler)

This plat is approved as an addition to the City of El Dorado, Kansas pursuant to the provisions of K.S.A. 12-401.

Date Signed _____
Ashlyn Lindskog, City Attorney

TRANSFER RECORD CERTIFICATE

Entered on transfer record this _____ day of _____, 2022.
Tatum Stafford, County Clerk

REGISTER OF DEEDS CERTIFICATE

State of Kansas) ss
County of Butler)
This is to certify that this instrument was filed for record in the Register of Deeds Office at _____, M., on this _____ day of _____, 20____, and is duly recorded. Book _____ Page _____
Jacque Roberts, Register of Deeds

PROJECT NO. 2201192
Savoy Company, P.A.
Land Surveyors
1381 N. Main St. Suite 110 El Dorado, KS 67042
620.5. Hybrid, Wichita, KS 67213-1771
www.savoy.com

EL DORADO

KANSAS

PLANNING COMMISSION MINUTES - DRAFT February 23, 2023 5:30p.m.

1. CALL TO ORDER & ROLL CALL

Chairman Stewart called the meeting to order at 5:30pm.

Members Present

Steve Fellers
Lawrence Fischetti
Scott Hackler
Scott Leason
Brad Long
David Stewart
Gerald Watson

Others Present

Scott Rickard
Britt Moore
Roger Cutsinger

Dan Rose

2. APPROVAL OF MINUTES

Commissioner Fellers moved to approve the minutes of the October 27, 2022, Planning Commission meeting, seconded by Commissioner Leason. The motion passed (7-0).

3. NEW BUSINESS

ITEM NO. 1 – CASE NO. 23-01-REZ: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST TO REZONE TWO 20.2 ACRE TRACTS AND FOUR SEVEN-ACRE TRACTS AT THE SOUTHWEST CORNER OF SE 20TH STREET AND SE TETER ROAD FROM A-R AGRICULTURAL RESIDENTIAL DISTRICT TO R-S RESIDENTIAL SUBURBAN DISTRICT.

A. Presentation of Request

Scott Rickard provided an overview of the request and staff memo. The applicant, Britt Moore, is requesting the R-S zoning in order to create two 20.2-acre tracts along SE 20th Street and four 7-acre tracts along SE Teter Road. The property is located outside city limits, but within the El Dorado Extraterritorial Jurisdiction (ETJ). The minimum lot size in R-S zoning is 3 acres when a public water supply is available. The minimum lot size is 6.6 acres when public water or wastewater system is not present. The current zoning, A-R, has a 40 acre minimum lot size. Mr. Rickard explained the proposed zoning allows single-family residential, which is consistent with land uses and zoning in the area.

Mr. Rickard added that the Butler County Commission reviewed the request on February 21st, but unfortunately the applicant was unaware of their meeting & was not present. The County Commission voted to not support the rezoning citing the impact to township roads. Mr. Moore went to the Prospect Township and received approval of the project. Since the County recommended denial the PC must have super majority or 6 votes.

Britt Moore, applicant, presented the letter from the township showing they approved the lot splits since it will generate more revenue and they maintain the streets already and they don't see any issues with it.

B. Public Hearing

Chairman Stewart opened the public hearing. Heather Reed 2158 SE Teter and speaking for the Kiefers that live on Teter Road also no one ecstatic having residential lots on this property. Moved to live in country not have houses stacked on top of them and have an increase in traffic also worried about their taxes increasing and dangers to livestock.

Commissioner Leason asked Mr Rickard about water availability and what happens if it is not available. Mr Rickard stated that is the risk of the property owner, nobody is guaranteed water supply. Chairman Stewart reminded everyone that they are not conducting a full scale site plan review or development review just focused on land use and if it is appropriate and acceptable.

C. Discussion by Planning Commission

Commissioner Fellers stated if there are any concerns with water supply then that is up to the Rural Water District to handle.

Commissioner Long understands the concerns of the neighbors, but stated their job is to promote land use and he thinks this is good use of the land and will increase the property value and taxes.

D. Motion

Commissioner Long moved to recommend approval of Case No. 23-01-REZ, an application by Britt Moore, to rezone 68.4 acres at the Southwest corner of SE 20th Street and SE Teter Road from A-R Agricultural Residential District to R-S Residential Suburban District for the reasons stated in the staff recommendation and heard at this public hearing, seconded by Commissioner Fellers.

Roll Call Vote:

Steve Fellers	Y
Lawrence Fischetti	Y
Scott Hackler	Y
Scott Leason	N
Brad Long	Y
David Stewart	Y
Gerald Watson	Y

The motion passed (6-1). Mr. Rickard said the application would go to the March 20th City Commission meeting.

ITEM NO. 2 – CASE NO. 23-01-PLAT: CONSIDERATION OF THE FINAL PLAT OF KINDER 2ND ADDITION.

A. Presentation of Request

Roger Cutsinger of Savoy Company submitted the Kinder Second Addition Final Plat, creating three lots just north of Kinder First Addition. The lots have previously been zoned R-1 Low Density Residential District. A 60 foot right-of-way will be dedicated along the western boundary of these lots to provide access to the owners and any future development to the north. This property is not located inside the City limits, however the land to the north and the south is inside City limits.

B. Discussion by Planning Commission

Commissioner Fellers believes this is a great project and opens up the potential for the future.

C. Motion

Commissioner Fischetti moved to recommend approve the final plat of Kinder Second Addition as presented, seconded by Commissioner Leason.

Members Present

Steve Fellers	Y
Lawrence Fischetti	Y
Scott Hackler	Y
Scott Leason	Y
Brad Long	Y
David Stewart	Y
Gerald Watson	Y

The motion passed (7-0). Mr. Rickard said the plat will go to the City Commission on March 20th.

ITEM NO. 3 – CASE NO. 23-01-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST FOR A SPECIAL USE PERMIT OFR AN ACCESSORY STRUCUTRE AT 522 W 5TH AVENUE.

A. Presentation of Request

Scott Rickard provided an overview of the request and staff memo. AGLN Development is requesting a Special Use Permit to allow a 2,400SF (40' X 60') accessory structure at 522 W 5th Avenue to use for storage, equipment and furniture. Paved access to the building will be required.

AGLN Development, represented by Clint Arndt, has previously been approved for a rezoning and Special Use Permit of the property for a nursing/convalescent home.

B. Public Hearing

Chairman Stewart opened the public hearing.

Clint Arndt, owner of Sunflower Homes and the General Contractor for the site stated that he has already padded up the location, but no foundation has been built. There will be multiple uses for the storage building including yard maintenance equipment, furniture storage, chemicals, etc. The site is planned for two assisted living facilities and possible duplexes or independent living housing.

Commissioner Hackler asked if 40 x 60 would be large enough and would they need an additional building in the future. Mr. Arndt stated he has other facilities and believes this will be a sufficient size.

Commissioner Long asked if the facility would be built immediately. Mr Arndt stated it would.

Commissioner Long asked if there would be a fence built around the storage building, Mr. Arndt stated he has not planned to build a fence at this time.

C. Discussion by Planning Commission

Commissioner Fellers is excited for these homes stating all other facilities are full and have waiting lists.

Commissioner Long stated this building makes sense and he supports the project.

Commissioner Hackler believes the building fits in due to across the street there is also storage buildings.

D. Motion

Commissioner Hackler moved to recommend approval of Case No. 23-01-SUP, a request by AGLN Development, for a Special Use Permit to allow a 2,400SF accessory structure on the property located at

522 W 5th Avenue, for the reasons set forth in the staff recommendation and heard at this public hearing, seconded by Commissioner Leason.

Members Present

Steve Fellers	Y
Lawrence Fischetti	Y
Scott Hackler	Y
Scott Leason	Y
Brad Long	Y
David Stewart	Y
Gerald Watson	Y

The motion to recommend approval passed (7-0). Mr. Rickard said the application will go to the City Commission on March 20th.

ITEM NO. 4 – CASE NO. 23-02-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST FOR A SPECIAL USE PERMIT FOR BARBER AND BEAUTY SERVICES AT 2819 W 4TH AVENUE.

A. Presentation of Request

Mr. Rickard provided an overview of the request and staff memo. Dannah Rose is requesting a Special Use Permit (SUP) to allow pet grooming on the property at 2819 W 4th Avenue. There is no “pet grooming” in the Zoning Ordinance. In these cases, staff must determine if there is another use that is a close fit. Staff determined pet grooming is closest to “Beauty/Barber Services” as listed under Home Occupations. The property is zoned R-1 Low Density Residential.

Sarah Rose 2819 W 4th Avenue stated they currently groom dogs in their garage and are in need of a larger structure. Currently they see 3-4 dogs a day 5 days a week from 10:00 to 5:00 by appointment and they have not had any issues with traffic. The dogs have to be current on all their vaccinations. They are requesting the SUP so they can use the accessory structure for more convenience and so the dogs are not in their home.

Commissioner Fellers asked if a license was required.

Mrs. Rose stated there is not, but her husband has an animal science degree and she has been a vet tech in the past. They have been grooming dogs for about 1 year, just family and friends.

Commissioner Fellers then asked if their insurance company requires this business.

Mrs. Rose stated that their home owners policy does cover the work they are performing and any accidents that may happen. They consult with Veterernarian Justin Parsons on products, issues or any questions they may have about the dogs. The structure is 10’ X 30’ and they do have a permit to build.

Mr. Rickard stated the building does not have any relevance to the SUP request. The issue is the business in a single family home.

Commissioner Long asked if the owner of the dog stays while services are being rendered.

Mrs. Rose indicated the pet owner typically pulls in their driveway and drops off the animal.

Commissioner Long inquired if there are any breeds that they do not groom due to safety concerns if the animal would get loose in the neighborhood.

Mrs. Rose said they will not accept any viscous breeds like pit bulls or chows.

Commissioner Hackler asked if their business model was for one animal at a time and the building is an expansion over the garage they are currently using. Would the future allow for them to have dogs waiting for their appointments or will it always be one dog at a time. He is concerned about noise and dog runs affecting the neighborhood.

Mrs. Rose stated her goal is by appointment only one dog at a time and using the accessory structurer instead of their garage will just give them a more room and dedicated space.

Commissioner Long asked if signs could be placed on the residence.

Mr. Rickard stated they could not.

Commissioner Watson asked if the SUP would allow them to board dogs.

Mr. Rickard stated it would not.

Commissioner Fellers asked if the SUP needs a caveat to only allow one dog at a time to insure the neighborhood the use is followed.

Mr. Rickard stated the board can place any conditions on the SUP they see fit.

B. Public Hearing

Chairman Stewart opened the public hearing. There being no one to speak, the public hearing was closed.

C. Discussion by Planning Commission

Commissioner Hackler stated that he doesn't see any need to have special conditions to the SUP since they have been performing this work for a year with no issues.

Commissioner Fellers agrees with Commissioner Hackler, however if the SUP stays with the property, the next owner could do business differently.

Mr. Rickard stated the SUP is for the current owners that reside in the house, it would not be allowed for anyone else.

D. Motion

Commissioner Leason moved to recommend approval of Case NO. 23-02-SUP, a request by Dannah Rose, for a Special Use Permit to allow pet grooming on the property located at 2819 W 4th Avenue, seconded by Commissioner Hackler.

Members Present

Steve Fellers	Y
Lawrence Fischetti	Y
Scott Hackler	Y
Scott Leason	Y
Brad Long	Y
David Stewart	Y
Gerald Watson	Y

The motion to recommend approval passed (7-0). Mr. Rickard said the application will go to the City Commission on March 20th.

4. OLD BUSINESS

5. STAFF ITEMS

Mr. Rickard stated that a representative from the Planning Commission is needed for the Excess Sales Tax Committee/Sales Tax Task Force.

Commissioner Fellers asked if this committee is in relation to the sales tax survey that was made public.

Mr. Rickard stated that it is.

Commissioner Leason stated he was a representative a few years ago and found it interesting.

Commissioner Fellers was the current representative.

Commissioner Long felt like he has a conflict of interest to be able to serve.

Commissioner Watson has also served on the committee and is not interested at this time.

Commissioner Hackler could serve, but has other obligations at this time.

Chairman Stewart does not want to serve.

Commissioner Fischetti is already serving on another committee.

Commissioner Stewart nominated Commissioner Leason to the Excess Sales Tax Committee/Sales Tax Task Force, Commissioner Leason seconded the motion.

Motion passed 7-0

Mr. Rickard stated advertisement for the next City Planner will be soon.

Chairman Stewart reminded that officers are usually appointed on the Planning Commission board in the Spring.

6. ADJOURNMENT

The meeting was adjourned at 6:43pm.

TO: City Commission
FROM: Scott Rickard
SUBJ: Special Use Permit 522 W 5th Avenue
DATE: March 20, 2023

Background:

The Planning Commission held a public hearing on February 23, 2023 to review a Special Use Permit application to allow a 2,400 (40' by 60') square foot accessory structure at 522 W. 5th Avenue. The Planning Commission voted to recommend approval of the application (7-0).

Attachments:

1. 522 W 5th Memo
2. 522 W 5th Map
3. 522 W 5th Site Plan
4. 522 W 5th Ord

Policy Issue:

Special Use Permits (SUP) allow specific uses to take place on a property. The zoning ordinance allows accessory structures up to the gross floor area of the primary structure or 1,200 square feet, whichever is smaller. The ordinance also has an allowance to match larger home sizes up 1,500 square feet if the proposed structure is over 60 from the front property line and the visible portions of the building match the building materials of the house.

Fiscal Impact:

Approval of the SUP will not have a fiscal impact on the City of El Dorado.

Trade-offs:

Staff Recommendation:

Approve the SUP application

Commission Action:

Commissioner _____ moved to approve an ordinance for Case No. 23-01-SUP, requesting a Special Use Permit for an accessory structure at 522 W 5th Avenue.

Commissioner _____ seconded the motion.

PLANNING COMMISSION MEMORANDUM

TO: Planning Commission
CC: Scott Rickard, Director of Engineering
FROM: Jay Shivers, AICP, City Planner
RE: SUP – Accessory Structure at 522 W. 5th Avenue

AGLN Development is requesting a Special Use Permit to allow a 2,400 (40' by 60') square foot accessory structure at 522 W. 5th Avenue. The Zoning Ordinance currently allows accessory structures up to the gross floor area of the primary structure or 1,200 square feet, whichever is smaller. The ordinance also has an allowance to match larger home sizes up 1,500 square feet if the proposed structure is over 60 from the front property line and the visible portions of the building match the building materials of the house.

AGLN Development, represented by Clint Arndt, purchased the property in 2021. In the same year, the City Commission and Planning Commission approved a rezoning of the property to R-3 Multiple Family Dwelling District and a Special Use Permit for a nursing/convalescent home. In 2022, the City issued a building permit to begin construction on the home.

The standards that must be met and staff recommendations are as follows:

- A. *The location and size of the proposed use in relation to the site and to adjacent sites and uses of the property, and the nature and intensity of operations proposed thereon.*

Adjacent uses are generally single-family residential, with more commercial uses along W. 6th Avenue. The applicant is currently building 7,600 square-foot assisted living facility on the property and plans to build a second. The owner is also considering options for senior housing behind the assisted living facilities to fill out the interior of the 4.3-acre property. The applicant proposes positioning the building near 6th Avenue, an arterial-class road with commercial uses.

- B. *Accessibility of the property to police, fire, refuse collection and other municipal services; adequacy of ingress and egress to and within the site; traffic flow and control; and the adequacy of off-street parking and loading areas.*

The site is accessible to all municipal services and meets all City requirements

- C. *Utilities and services, including water, sewer, drainage, gas, and electricity, with particular reference to location, availability, capacity and compatibility.*

The site is served by all utilities.

- D. *The location, nature, and height of structures, walls, fences, and other improvements; their relation to adjacent property and uses; and the need for buffering or screening.*

The proposed accessory structure is 40 feet in width and 60 feet in depth. The proposed sidewall height is 14 feet.

E. *The adequacy of required yard and open space requirements and sign provisions.*
Staff has spoken with the applicant about the proposed structure; if approved, it will meet the required setbacks for the zoning district.

F. *The general compatibility with adjacent properties, other properties in the district, and the general safety, health, comfort and general welfare of the community.*

The building is more compatible in the proposed location near 6th Avenue, adjacent to other commercial uses across the street and dwarfed by a municipal water tower just to the east.

The applicant plans to use the building to store building materials during construction of his other buildings, maintenance equipment for the large property, surplus bed and furniture, and seasonal outdoor furniture for the assisted-living facility and future additions.

Staff have worked with the Planning Commission in the past to improve accessory structure regulations, mainly because of the interest in large accessory buildings on small single-family residential lots. The same requirements apply to this proposal, though the circumstances are substantially different than what is usually brought before the Planning Commission. Given that the property is on track to become a higher-density residential development and maintained by the property owner, staff support the request for an accessory structure to help support these residential uses.

Approval of this Special Use Permit requires a majority vote of the Planning Commission members present and voting. The Planning Commission may recommend approval, recommend approval with conditions, or recommend denial of the application.

Recommend Approval:

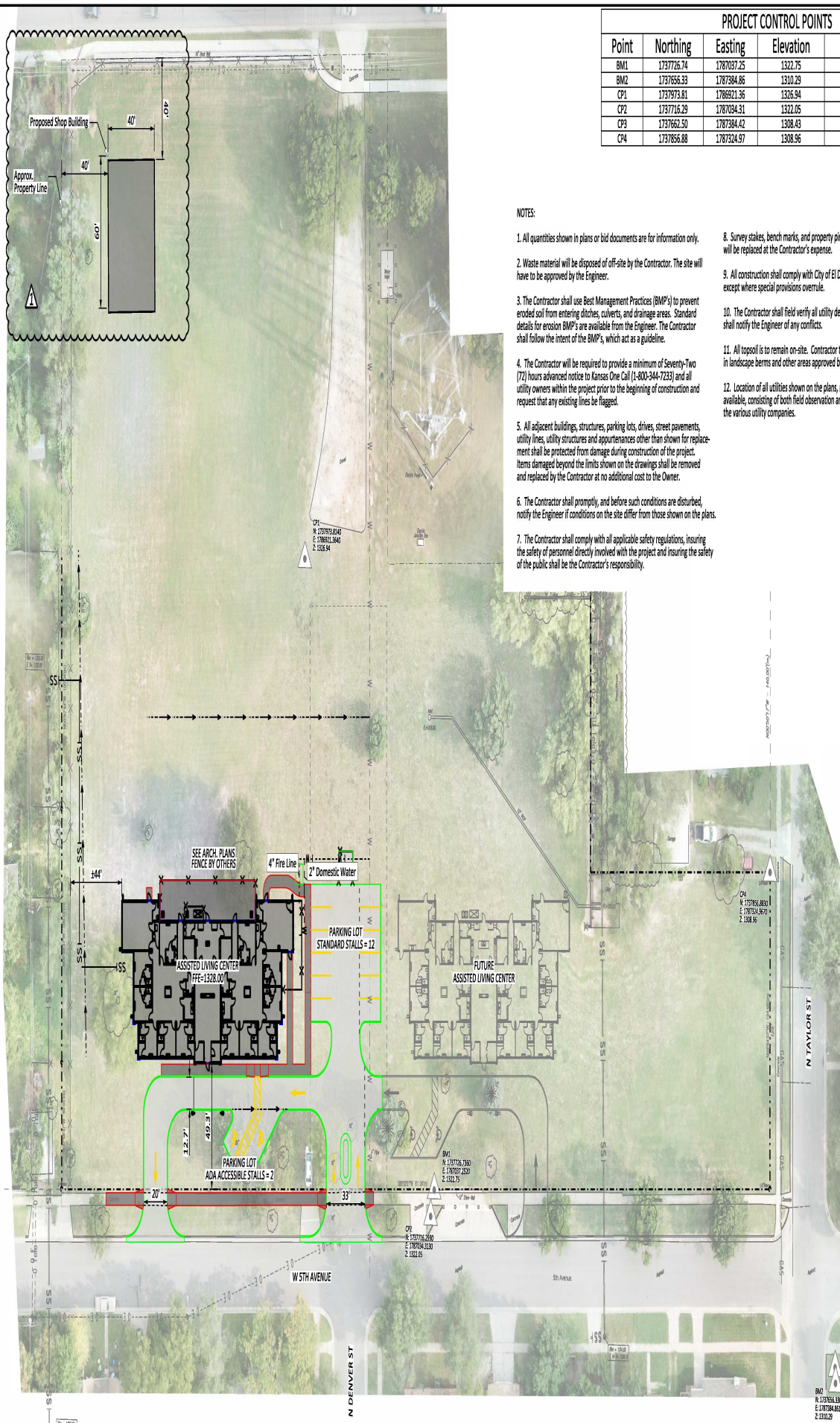
I move to recommend approval of Case No. 23-01-SUP, a request by AGLN Development, for a Special Use Permit to allow a 2,400 square foot accessory structure on the property located at 522 W. 5th Avenue, for the reasons set forth in the staff recommendation and heard at this public hearing.



Subject Property

522 W. 5th Avenue - Zoning Map

1 inch = 200 feet



PROJECT CONTROL POINTS				
Point	Northing	Easting	Elevation	Description
BM1	173726.74	1787037.25	1322.75	CHISELED BOX ON STEM WALL
BM2	1737656.33	1787384.86	1310.29	N BOLT OF FLANGE ON FIRE HYDRANT
CP1	1737973.81	1786921.36	1326.94	1/2" REBAR-"SURVEY CONTROL" CAP
CP2	1737716.29	1787034.31	1322.05	1/2" REBAR-"SURVEY CONTROL" CAP
CP3	1737662.30	1787384.42	1308.43	1/2" REBAR-"SURVEY CONTROL" CAP
CP4	1737856.88	1787324.97	1308.96	5/8" REBAR

- NOTES:
1. All quantities shown in plans or bid documents are for information only.
 2. Waste material will be disposed of off-site by the Contractor. The site will have to be approved by the Engineer.
 3. The Contractor shall use Best Management Practices (BMP's) to prevent eroded soil from entering ditches, culverts, and drainage areas. Standard details for erosion BMP's are available from the Engineer. The Contractor shall follow the intent of the BMP's, which act as a guideline.
 4. The Contractor will be required to provide a minimum of Seventy-Two (72) hours advanced notice to Kansas One Call (1-800-344-7233) and all utility owners within the project prior to the beginning of construction and request that any existing lines be flagged.
 5. All adjacent buildings, structures, parking lots, drives, street pavements, utility lines, utility structures and appurtenances other than shown for replacement shall be protected from damage during construction of the project. Items damaged beyond the limits shown on the drawings shall be removed and replaced by the Contractor at no additional cost to the Owner.
 6. The Contractor shall promptly, and before such conditions are disturbed, notify the Engineer if conditions on the site differ from those shown on the plans.
 7. The Contractor shall comply with all applicable safety regulations, insuring the safety of personnel directly involved with the project and insuring the safety of the public shall be the Contractor's responsibility.
 8. Survey stakes, bench marks, and property pins destroyed by the Contractor will be replaced at the Contractor's expense.
 9. All construction shall comply with City of El Dorado Standard Specifications except where special provisions overrule.
 10. The Contractor shall field verify all utility depths prior to construction and shall notify the Engineer of any conflicts.
 11. All topsoil is to remain on-site. Contractor to compact the topsoil in landscape berms and other areas approved by the Engineer.
 12. Location of all utilities shown on the plans, reflect the best information available, consisting of both field observation and information from records of the various utility companies.



15' 0' 30'



WILLIAM W. MC HENRY
ENGINEER
STATE OF KANSAS
NO. 17945

Issue	Date	By	Description
0	12-07-2022	RWM	ISSUE FOR CONSTRUCTION
1	01-09-2023	RWM	SHOP BUILDING ADDITION
-	-	-	-
-	-	-	-

Drawn By: JTP
Checked By: KHL
Date: 1/9/2023
Issue No. 0



AGSM
Engineering Consultants
301 N. Commercial Blvd., Suite 200, El Dorado, Kansas 67042-4057
www.agsm-engineers.com

Client:

AGLN Development LLC
El Dorado, KS 67042-4057

ASSISTED LIVING CENTER
SITE PLAN
EL DORADO, KANSAS

Sheet No.
C103

Project No.
2612

ORDINANCE NO. _____

WHEREAS, an application has been filed with the El Dorado Planning Commission requesting a Special Use Permit to allow an accessory structure measuring 2,400 square feet on the property located at 522 W 5th Avenue and;

WHEREAS, on the 23rd day of February, 2023, at a Planning Commission meeting duly convened, the Planning Commission held a public hearing and voted to recommend and does hereby recommend that the Governing Body grant the Special Use Permit.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 1. The Special Use Permit is hereby granted to AGLN Development to allow an accessory structure measuring 2,400 square feet in an R-3 Multiple Family Dwelling District at 522 W 5th Avenue.

Section 2. This ordinance shall be in full force and effect after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, on this 20th day of March, 2023.

Bill Young, Mayor

ATTEST:

Tabitha Sharp, City Clerk

TO: City Commission
FROM: Scott Rickard
SUBJ: Special Use Permit 2819 W 4th Avenue
DATE: March 20, 2023

Background:

The Planning Commission held a public hearing on February 23, 2023 to review a Special Use Permit application to allow barber/beauty services for pet grooming at 2819 W 4th Avenue. The Planning Commission voted to recommend approval of the application (7-0).

Attachments:

1. 2819 W 4th memo
2. 2819 W 4th map
3. 2819 W 4th Ord

Policy Issue:

Special Use Permits (SUP) allow specific uses to take place on a property. The property is zoned R-1 Low Density Residential. The zoning regulations do not allow a barber/beauty services as a primary use in this zoning. However, it is allowed with a SUP as long as the primary use is still residential and it is operated by the residents of the home.

Fiscal Impact:

Approval of the SUP will not have a fiscal impact on the City of El Dorado.

Trade-offs:

Staff Recommendation:

Approve the SUP application.

Commission Action:

Commissioner _____ moved to approve an ordinance for Case No. 23-02-SUP, requesting a Special Use Permit for barber and beauty services for pet grooming at 2819 W 4th Avenue.

Commissioner _____ seconded the motion.

PLANNING COMMISSION MEMORANDUM

TO: Planning Commission
CC: Scott Rickard, Engineering Director
FROM: Jay Shivers, AICP, City Planner
RE: SUP – Barber/Beauty Services at 2819 W. 4th Avenue

Dannah Rose is requesting a Special Use Permit (SUP) to allow pet grooming on her property at 2819 W. 4th Avenue. There is no “pet grooming” in the Zoning Ordinance. In these cases, staff must determine if there is another use that is a close fit. Staff determined pet grooming is closest to “Beauty/Barber Services” as listed under Home Occupations. Obviously, the primary difference is small animals are receiving the services, not humans. The property is zoned R-1 Low Density Residential. The zoning regulations do not allow a barber/beauty services as a primary use in this zoning. However, it is allowed with a SUP as long as the primary use is still residential and it is operated by the residents of the home.

Zoning Ordinance standards for review:

- A. *The location and size of the proposed use in relation to the site and to adjacent sites and uses of the property, and the nature and intensity of operations proposed thereon.* The property consists of a single residential structure. The proposed use will take place in an accessory structure on the property.
- B. *Accessibility of the property to police, fire, refuse collection and other municipal services; adequacy of ingress and egress to and within the site; traffic flow and control; and the adequacy of off-street parking and loading areas.* The site is accessible to all municipal services and has adequate parking for the proposed one client at a time.
- C. *Utilities and services, including water, sewer, drainage, gas, and electricity, with particular reference to location, availability, capacity and compatibility.* Additional utility demands will be minimal if any.
- D. *The location, nature, and height of structures, walls, fences, and other improvements; their relation to adjacent property and uses; and the need for buffering or screening.* The accessory structure was permitted separately. The SUP will allow the dog grooming use to occur on the property.
- E. *The adequacy of required yard and open space requirements and sign provisions.*
- F. *The general compatibility with adjacent properties, other properties in the district, and the general safety, health, comfort and general welfare of the community.* Compatibility will depend on any impacts created by the grooming, such as sounds, smells, and/or increased traffic, which will likely depend on the level of business occurring on the property.

The pet grooming business is currently operating on the property. Staff became aware after the start of business and contacted the owners about the appropriate permits and processes. The applicant says they are currently operating, and plan to operate, Monday through Friday from 10am-5pm. They are averaging three-to-four dogs a day by appointment, currently. It is up to the Planning Commission to determine if this is an acceptable additional use for the property and if any impacts, such as increased traffic, is acceptable. The Planning Commission may apply conditions with a Special Use Permit in order to address potential impacts.

Approval of this Special Use Permit requires a majority vote of the Planning Commission members present and voting.

Motions

To approve as presented:

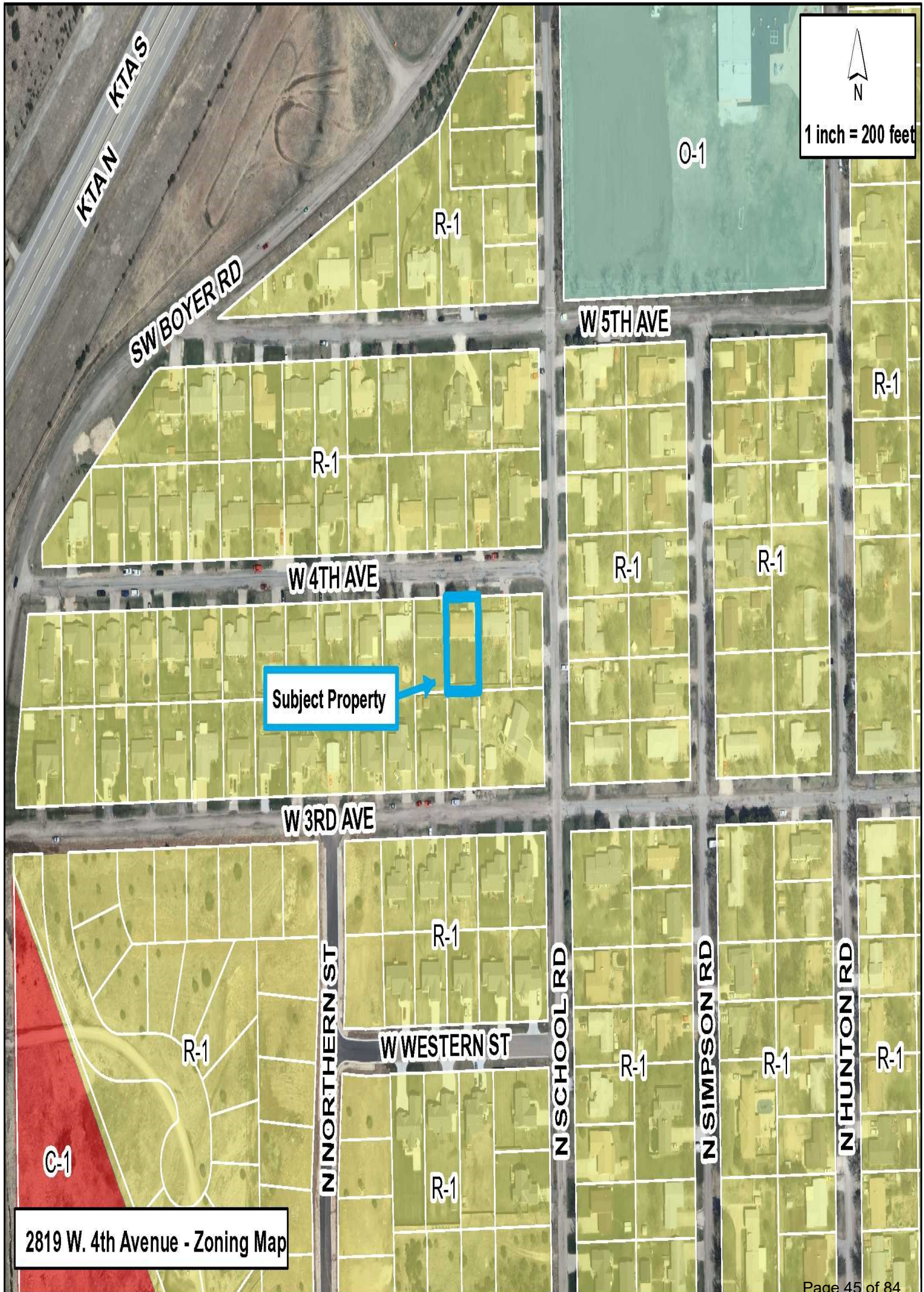
I move to recommend approval of Case No. 23-02-SUP, a request by Dannah Rose, for a Special Use Permit to allow pet grooming on the property located 2819 W 4th Avenue.

To approve with conditions:

I move to recommend approval of Case No. 23-02-SUP, a request by Dannah Rose, for a Special Use Permit to allow pet grooming on the property located 2819 W 4th Avenue, with the following conditions: _____.

To recommend denial:

I move to recommend denial of Case No. 23-02-SUP, a request by Dannah Rose, for a Special Use Permit to allow pet grooming on the property located 2819 W 4th Avenue.



KTA N
KTA S

SW BOYER RD

R-1

0-1

W 5TH AVE

R-1

R-1

W 4TH AVE

R-1

R-1

Subject Property

W 3RD AVE

R-1

W WESTERN ST

R-1

N NORTHERN ST

N SCHOOL RD

N SIMPSON RD

N HUNTON RD

R-1

R-1

R-1

R-1

C-1

2819 W. 4th Avenue - Zoning Map

N
1 inch = 200 feet

ORDINANCE NO. _____

WHEREAS, an application has been filed with the El Dorado Planning Commission requesting a Special Use Permit to allow in-home barber and beauty services for pet grooming on the property located at 2819 W 4th and;

WHEREAS, on the 23rd day of February, 2023, at a Planning Commission meeting duly convened, the Planning Commission held a public hearing and voted to recommend and does hereby recommend that the Governing Body grant the Special Use Permit.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 1. The Special Use Permit is hereby granted to Dannah Rose to allow in-home barber and beauty services for pet grooming in an R-1 Low Density Residential District at 2819 W 4th Avenue.

Section 2. This ordinance shall be in full force and effect after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, on this 20th day of March, 2023.

Bill Young, Mayor

ATTEST:

Tabitha Sharp, City Clerk

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Butler Rural Electric (dba Velocity) Franchise Agreement
DATE: March 20, 2023

Background:

Butler Rural Electric Cooperative Association, Inc., dba Velocity, desires to construct a fiber optic network within the City's public right-of-way. The City requires utilities locating infrastructure within the public right-of-way to obtain a franchise agreement prior to commencing construction. The agreement outlines the terms and conditions for use of the public right-of-way.

Attachments:

1. El Dorado-Velocity Franchise Agreement

Policy Issue:

Should the City Commission grant a franchise to Butler Rural Electric Cooperative, dba Velocity, for use of the public right-of-way for telecommunications and internet services?

Fiscal Impact:

The franchise agreement provides that Velocity will pay franchise fees to the City for applicable infrastructure investments as follows: an annual payment of \$150 per distributed antennae system or small wireless facility and a one-time \$1,000 permit and license fee for each distributed antennae system or small wireless facility located within the public right-of-way. In addition, Velocity will pay 5% of gross receipts attributed to customers directly connected to any fiber network located within the corporate limits of the City. At this time, the City does not anticipate a significant amount of revenue arising from the franchise agreement.

Trade-offs:

Velocity will not have permission to use the City's right-of-way should the City Commission not approve the franchise agreement. Velocity, as a communications provider, would likely not invest in constructing infrastructure to serve El Dorado in such a scenario. Competition for such services would then be limited to existing providers and their willingness to invest in upgrades and extensions to serve the community.

Staff Recommendation:

The City Manager recommends approval of the proposed franchise agreement with Butler Rural Electric Cooperative, dba Velocity, as it has the potential to create internet service options for residents and businesses. In addition, the franchise agreement is drafted in the same form as other existing franchise agreements. The City does not have any reason to deny a franchise to Velocity.

Commission Action:

Commissioner _____ moved to approve an ordinance granting Butler Rural Electric Cooperative Association, Inc. dba Velocity, a contract franchise to construct, operate, and maintain a telecommunications system in the City of El Dorado, Kansas.

Commissioner _____ seconded the motion.

ORDINANCE NO. – _____

AN ORDINANCE GRANTING TO BUTLER RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC. DBA VELOCITY, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF EL DORADO, KANSAS.

This Contract Franchise (hereinafter, the “Ordinance”) is entered into as of _____, 2023 (the “Effective Date”) by and between the City of El Dorado, a municipal corporation (the “City”), and Butler Rural Electric Cooperative Association, Inc., a Kansas corporation (“BRECA”).

RECITALS

- I. BRECA is a Telecommunications carrier as defined in K.S.A. 66-1,187(m) with authority under K.S.A. 17-1902 to occupy the public right-of-way subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City.
- II. BRECA seeks to enter the City of El Dorado’s Right of Way, and other real property of the City, to install, maintain and operate fiber network Facilities (the “Network”), so that BRECA and/or its underlying customers (the “Customers”) may provide data, telecommunications, broadband Internet, and related services to the residents and visitors of the City (the “Services”).

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number.

- a. "BRECA" - means BRECA Telcom, LLC, a competitive telecommunications local exchange service provider providing local exchange, Internet services, and other telecommunications services within the City. References to BRECA shall also include as appropriate any and all successors and assigns.
- b. "*Contract Franchise*" means this Ordinance granting the right, privilege, and franchise to BRECA to provide services within the City.
- c. "*Distributed Antenna Systems*" (“DAS Facility”) means certain components of the Network consisting of distributed antenna systems which may be located on existing or new streetlights, stand-alone poles, third party utility poles, and other

structures located on or within the right-of-way as permitted under this Ordinance, and which will be connected to BRECA's Facilities.

- d. *"Facilities"* means any portion of a system located in, along, over, upon, under, or through the right-of-way and may include, without limitation, antenna nodes, poles, streetlight poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, DAS Facility, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process.
- e. *"Gross receipts"* shall be defined as set forth in K.S.A. 12-2001(c)(6). Uncollectible and late charges, taxes, surcharges, and other pass-through charges shall not be included within gross receipts.
- f. *"Laws"* or *"Law"* as used in this Ordinance means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Ordinance or having jurisdiction that is applicable to any aspect of this Ordinance that are in force on the Effective Date and as they may be enacted, issued, or amended during the term of this Ordinance.
- g. *"Network"* means the franchisee's fiber network and DAS Facilities or small wireless facilities, including the antenna nodes, poles, equipment cabinets, underground and aboveground fiber optic cable, wires, lines, fiber handholes and enclosures, fiber repeaters and related equipment and appurtenance, and similar facilities and appurtenances, designed, constructed or occupied for the purpose of producing, receiving, amplifying or distributing telecommunications service to or from locations within the City.
- h. *"Right-of-way"* or *"ROW"* means the surface and space on, above and below every municipal street, alley, road, highway, lane, or City right-of-way dedicated or commonly used now or hereafter for utility purposes, including but not limited to overhead lighting facilities, and including utility easements wherein the City now or hereafter acquires the right and authority to locate or permit the location of utilities consistent with communications facilities. This term shall not include any county, state, or federal right-of-way or any property owned or controlled by any person or agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or agency. Right-of-way shall not include property owned or held by City and not typically considered right-of-way such as City parks and City buildings.
- i. *"Small Wireless Facilities"* or *"Wireless Facilities"* means a wireless facility that meets both of the following qualifications:

- i. All antennas are located inside an enclosure of not more than (6) six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than (6) six cubic feet, and
 - ii. All other wireless equipment associated with the facility is cumulatively not more than (28) twenty-eight cubic feet on volume, or (50) fifty cubic feet in volume if the equipment was ground mounted before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:
 - 1. An electric meter.
 - 2. Concealment elements.
 - 3. A telecommunications demarcation box.
 - 4. Grounding equipment.
 - 5. A power transfer switch.
 - 6. A cutoff switch.
 - 7. Vertical cable runs for the connection of power and other services.
- j. *“Telecommunications Service(s)”* means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF ORDINANCE.

- a. This Ordinance hereby grants to BRECA, the nonexclusive contract, right, privilege, and franchise to locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain, facilities along, across, upon and under the ROW for the purpose of BRECA providing competitive infrastructure to third-party carriers to provide telecommunications services, internet services, or other intrastate or interstate traffic, subject to the terms and conditions of this Ordinance.
- b. Nothing in this Ordinance is intended to preclude the City from seeking or authorize the City to seek, a franchise from an affiliate or third-party providing telecommunications services.
- c. This Ordinance does not grant BRECA the authority or right to provide end user “Cable Service.” For the purposes of this Ordinance, “Cable Service” is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

- d. This Ordinance shall not convey title, equitable or legal, in the ROW, and gives only the right to occupy the ROW, for the purposes and for the period stated herein and subject to the terms stated in this Ordinance. This Ordinance does not:
 - i. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third party, without the consent of such party;
 - ii. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City whether inside or outside of the ROW, specifically including, but not limited to, poles, streetlights, buildings, towers, park property, City Hall property, or other facilities;
 - iii. Excuse BRECA from obtaining appropriate access or attachment agreements or permits before locating its Facilities on Facilities or property owned or controlled by the City or a third-party;
 - iv. Grant to any licensee or lessee of BRECA or other third party a right of access or authority to the City's ROW without said licensee, lessee, or third party obtaining all necessary permits and authorizations from the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City dealing with management of the ROW and, if determined necessary by the City, a contract franchise for said licensee, lessee, or third party.
 - v. Provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Ordinance, and BRECA shall not knowingly allow the use of its Facilities or Network by any third party in violation of any federal, state, or local law.
- e. This Ordinance is subject to and conditioned upon the terms and conditions of all applicable federal, state, and local laws, existing now or in the future, and the parties shall comply with any such laws in the exercise of their rights and performance of their obligations under this Ordinance.
- f. As noted in subsection (c), BRECA shall not provide any additional services for which a separate franchise ordinance is required by the City without first obtaining a separate franchise ordinance or amending this Ordinance. In particular, this Ordinance does not grant BRECA the right to provide cable services as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City. BRECA also agrees that this Ordinance does not permit it to operate an open video system without the payment of fees contemplated by 47 U.S.C. § 573(c)(2)(B) and without complying with all Federal Communications Commission ("FCC") regulations promulgated pursuant to 47 U.S.C. § 573. BRECA

shall not knowingly allow the use of its Facilities by any third party in violation of this subsection or of any federal, state, or local laws.

- g. The authority of BRECA to use and occupy the ROW shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the ROW provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. BRECA shall comply with all laws, rules, and lawful City regulations, in effect now or as may be adopted in the future, governing the use of ROW, specifically including City of El Dorado Ordinance No. 2293 as amended or replaced, the City's zoning, land use, and subdivision regulations and amendments thereto.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Ordinance, BRECA shall have the right to construct, maintain and operate its Facilities along, across, upon and under the public ROW. BRECA shall construct and maintain the Facilities in a skillful and workmanlike manner that does not obstruct or hinder the usual travel or public safety on such ROW, and that does not obstruct or interfere with the legal use of the ROW by other utilities.
- b. BRECA shall participate in the Kansas One Call utility location program. BRECA shall be solely responsible for communicating with Kansas One-Call, or for taking other necessary measures to determine the location of public improvements or other facilities located in the ROW.
- c. BRECA may attach its Facilities to an existing City-owned utility pole pursuant to the current National Electric Safety Code. BRECA shall coordinate the placement of its Facilities in the ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City engineer.
- d. It is understood that BRECA may build new Facilities in the City which would comply with all applicable Laws. If the City has no formal third-party utility installation policy or permit process, BRECA will not be obligated to make application for new facility installations unless and until such time a formal process is implemented by the City in a reasonable and non-discriminatory form and enforced among all third-party utility installations.
- e. BRECA shall install Facilities in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.
- f. Except in cases of emergency, a minimum of fourteen (14) days prior to construction, reconstruction, location, or relocation of any Facilities in a ROW, BRECA shall submit to the City Engineer, or his or her designee, for approval,

plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not reasonably withhold, delay, or condition approval of said plans and specification. The City's review of the plans and specifications shall be confined to matters impacting the interests of the City in managing the ROWs of the City.

- g. No notice is necessary to the City for Facility maintenance unless such maintenance will require street closure, and in such event, BRECA will use reasonable efforts to coordinate such closure with the City.
- h. Zoning regulations shall not apply to installations within the public ROW.
- i. BRECA shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by BRECA's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. BRECA shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. BRECA's obligations under this section 3.h shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by BRECA to the City.
- j. BRECA shall pay for the electricity and other utilities services it consumes in its operations at the rates charged by the servicing utility companies.
- k. BRECA shall, at BRECA's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain its facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws including Ordinance No. 2293 of the City, or any then current ordinance or regulation of the City dealing with management of the ROW. In the event any facility requires replacement because such part cannot be repaired, BRECA shall, at BRECA's sole cost and expense, replace the irreparable facility. BRECA shall not cause rubbish, garbage, or debris on or around the facilities and shall not permit any rubbish, garbage, or debris to accumulate on or around any enclosed areas around the facilities. If the City gives BRECA written notice of a failure by BRECA to maintain the facilities, BRECA shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.
- l. In granting this contract franchise ordinance, the City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of the ROW. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon BRECA.

- m. BRECA shall take all reasonable measures necessary to maintain accurate and complete records in electronic format, of all Facilities constructed, reconstructed, or relocated in the ROW. BRECA shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its Facilities located within the ROW when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of BRECA without expense to the City, its employees, agents, or authorized contractors.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Ordinance, BRECA agrees to pay the City one hundred and fifty dollars (\$150.00) per year per attachment for the attachment of wireless equipment to support any DAS Facility or Small Wireless Facility within the City on City owned infrastructure or newly placed BRECA poles within the City (such amount being the “DAS Franchise Fee”). BRECA shall pay the DAS Franchise Fee on the 15th day of the second month following the month in which the gross revenue is received.
- b. BRECA agrees to remit to the City five percent (5%) of Gross Receipts as defined in K.S.A. 12-2001(c)(6) for all fiber connections made in the Network (the “Fiber Franchise Fee,” and collectively with the DAS Franchise Fee, the “Franchise Fee”). BRECA shall pay its Fiber Franchise Fee on the 15th day of the second month following the month in which the gross revenue is received.
- c. A one-time permit and license fee of \$1,000.00 for each DAS Facility or Small Wireless Facility installed within the public ROW of the City shall be paid by BRECA. This fee shall be in addition to other City permit and review fees that exist as of the date the DAS Facility or Small Wireless Facility is installed that relate to the installation of the DAS Facility or Small Wireless Facility. BRECA shall pay the one-time application fee upon submission of a complete application for the installation of a DAS Facility or Small Wireless Facility per this article and after the date of BRECA’s submission of a complete application, the City shall not retroactively apply any new permit or licensing fees to the DAS Facility or Small Wireless Facility.
- d. BRECA shall reimburse the City for the publication costs related to the adoption or amendment of this Ordinance.
- e. If any Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest shall accrue from the due date until received, at an annual rate of ten percent (10%), or if lower, the highest percentage allowed by law.

- f. BRECA shall keep accurate books of account at its principal office in Buhler, Kansas, or such other location of its choosing, for the purpose of determining the amounts due to the City pursuant to this subsection. The City shall have access to, and the right to examine, at all reasonable times, all books, receipts, files, records, and documents of BRECA necessary to verify the correctness of compensation paid to the City, and to correct the same, if found to be erroneous. The City may only exercise its right to examine the books, receipts, files, records, and documents one time per year at a mutually agreeable time. If the statement of fees paid by BRECA is incorrect, BRECA shall promptly make payment upon such corrected statement. The City agrees to hold in confidence any non-public information it learns from BRECA to the fullest extent permitted by law.
- g. BRECA shall collect and remit compensation as described in Section 4 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 5. TERM.

- a. This Ordinance shall be effective for a term of five (5) years from the effective date of this Ordinance. Thereafter, this Ordinance shall automatically renew for three (3) additional five-year terms, unless a party notifies the other party of its intent to terminate the franchise prior to 180 days before the termination of the current term. The additional terms are a continuation of this franchise and not a new franchise or amendment.
- b. Upon written request of either the City or BRECA, this Ordinance shall be renegotiated at any time in accordance with the requirements of K.S.A. 12-2001 and K.S.A. 17-1902, as amended, upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or BRECA, including but not limited to the scope of the Ordinance granted to the BRECA or the compensation to be received by the City.
- c. Amendments under this section, if any, shall be made by contract franchise ordinance as prescribed by statute. The Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation provided by this section.

SECTION 6. ACCESS TO THE FACILITIES.

Subject to the requirements of El Dorado Ordinance No. 2293, or any then current ordinance or regulation of the City dealing with management of the ROW, franchised utility companies will be given reasonable access to each of the facilities in the ROW for the purposes of routine installation, repair, maintenance, or removal of facilities.

SECTION 7. NON-INTERFERENCE.

- a. BRECA shall operate its network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the network or that are in operation prior to any modifications BRECA may make to the network.
- b. BRECA's network and facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any components thereof have been placed in service. Nor shall V's network and facilities cause interference with the City's use of the BRECA poles for the City's intended City purpose.
- c. If such interference with the facilities described in subsections (a) or (b) occurs, BRECA shall, upon receipt of written notice from the City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by BRECA to the reasonable satisfaction of the City within the cure period set forth in the City's notice, which notice shall not be less than thirty (30) days, absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this Ordinance and City may terminate the Ordinance. Interference caused by actions of BRECA's customer(s) remains the responsibility of BRECA.

SECTION 8. INDEMNITY AND HOLD HARMLESS.

- a. It shall be the responsibility of BRECA to take adequate measures to protect and defend its facilities in the public ROW from harm or damage. If BRECA fails to accurately or timely locate facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near BRECA's facilities.
- b. BRECA shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of BRECA, any agent, officer, director, representative, employee, affiliate or subcontractor of BRECA, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the public ROW.

- c. BRECA or City shall promptly advise the other in writing of any known claim or demand against BRECA or the City related to or arising out of BRECA's activities in the public ROW.

SECTION 9. INSURANCE REQUIREMENT.

- a. During the term of this franchise, BRECA shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers with an A.M. Best rating of no less than A-:VII. BRECA shall provide not less than the following insurance:
 - i. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - ii. Commercial general liability with limits of insurance not less than \$2,000,00 each occurrence, \$2,000,000 annual aggregate, \$2,000,000 completed Operations/Product Aggregate covering claims for bodily injury, property damage, personal and advertising injury, completed operation/product liability and contractual liability arising from the activities and operations of the franchisee and independent contractors operating on their behalf. The City shall be included as an additional insured. The insurance for the additional insured shall be as broad as the insurance for the named insured and apply on a primary/noncontributor basis and include protection for completed operations/products claim. Coverage for the additional insured shall include defense expense. If in order to accomplish the required limits of insurance, the franchisee must purchase an excess liability/umbrella policy, such policy shall be written on a follow form basis and be as broad as the underlying insurance. The City shall be included as additional insured to the policy.
 - iii. Business Auto Liability Insurance with limits of insurance not less than \$1,000,00 Combined Single Limit for bodily injury and property damage covering ownership or use of all owned, hired, and non-owned autos used in connection with the Franchisee operations and activities. The City shall be included as additional insured to the auto liability policy.
- b. As an alternative to the requirements of subsection (a), BRECA may demonstrate to the satisfaction of the City that it is self-insured and as such BRECA has the ability to provide coverage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage occasioned by BRECA, or alleged to so have been caused or occurred.

- c. BRECA shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City 30 days prior written notice. BRECA shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. BRECA shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal of this franchise, deliver to the City a performance bond in the amount of \$100,000.00, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the ROW as set forth in this article; to ensure BRECA's repair and restoration of its damage to its facilities or the ROW; and to ensure BRECA's removal of its facilities, as set forth herein. The required performance and maintenance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City attorney in form and substance.

SECTION 10. TAXES.

BRECA agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the network and this Ordinance. Pursuant to Section 79-5(a)(26) of the Kansas Revenue and Taxation Code, as amended, the City hereby advises, and BRECA recognizes and understands, that BRECA 's use of the ROW and/or BRECA facilities may create a possessory interest subject to real property taxation and that BRECA may be subject to, and responsible for, the payment of real property taxes levied on such interest. BRECA will cooperate with the county appraiser in providing any information necessary for the appraiser to make a property tax determination. BRECA reserves the right to challenge any such assessment, and the City agrees to reasonably cooperate with BRECA in connection with any such challenge.

SECTION 11. REVOCATION AND TERMINATION.

In case of failure on the part of BRECA to comply with any of the material provisions of this Ordinance, or if BRECA should do or cause to be done any act or thing prohibited by or in violation of the terms of this Ordinance, the City shall abide by the requirements of K.S.A. 12-2001 which requires reasonable notice and an opportunity for a public hearing before the City governing body before a contract franchise ordinance may be revoked.

SECTION 12. RESERVATION OF RIGHTS.

- a. In granting its consent hereunder, BRECA does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- b. In entering into this Ordinance, neither the City's nor BRECA's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Ordinance, neither the City nor BRECA waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or BRECA may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

SECTION 13. FAILURE TO ENFORCE.

The failure of either the City or the BRECA to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the BRECA unless said waiver or relinquishment is in writing and signed by both the City and the BRECA.

SECTION 14. DEFAULT ABANDONMENT.

- a. A "default" shall be deemed to have occurred if a party fails to cure a breach, within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.
- b. Upon a party's failure to timely cure a breach after notice, and upon expiration of the above cure periods, then the other party may terminate this Ordinance and pursue all remedies provided for in this Ordinance and/or any remedies it may have under applicable law or principles of equity relating to such breach.
- c. In addition to the remedies set forth herein, the City shall have the right to terminate this Ordinance if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW; or (ii) if BRECA's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights under subsection (iii) shall be subject to BRECA's rights to just compensation, if any, from the federal, state, or local government requiring such removal for any taking of a protected property right.

- d. In the event BRECA ceases to operate and abandons the network, any facility, or parts thereof, for a period of ninety (90) days or more, BRECA shall, at its sole cost and expense and within ninety (90) days from the date of abandonment, vacate and remove the network or the abandoned part thereof. If such removal disturbs the facility or adjacent property (including ROW or City real property), BRECA shall also, at its sole cost and expense, restore or repair the ROW, each facility, and any adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment or other aesthetic improvements made by BRECA to the facility or adjacent property. Alternatively, the City may allow BRECA, in the City's sole and absolute discretion, to abandon the network, or any part thereof, in place and convey it to the City.
- e. Upon expiration or termination of this Ordinance for any reason, BRECA shall have the right to remove any and all of its Facilities within sixty (60) days after such termination or expiration, or, subject to the approval of the City Engineer said approval not to be unreasonably withheld, to transfer any and all of its Facilities to another entity authorized to place facilities in the ROW. BRECA has the duty, immediately upon any such removal, to restore the ROW from which the facilities are removed to as good a condition as the same were before removal was performed. If BRECA fails to remove or transfer its Facilities within sixty (60) days, the City may, at its option, remove any or all of the Facilities at BRECA's expense, or take ownership of any or all of Facilities for the City's use and/or disposal.

SECTION 15. TRANSFER AND ASSIGNMENT.

This franchise shall be assignable in accordance with the laws of the State of Kansas. BRECA shall provide the City written notice of any transfer or assignment within thirty (30) days, including notice of the name and address of the assignee and contact information. BRECA's obligations under this Ordinance with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of any transfer or assignment.

SECTION 16. POINT OF CONTACT AND NOTICES.

BRECA shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of BRECA in the event of an emergency.

All other notices between the parties shall be in writing and shall be made by personal delivery or by depositing such notice in the U.S. Mail, Certified Mail, return receipt requested. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. "Business day" for purposes of this section shall mean Monday through Friday, City and/or BRECA observed holidays excepted.

The City: City of El Dorado Attn: City Clerk 220 E. First Avenue El Dorado, Kansas 67042	BRECA: BRECA Telecom Attn: Contract Notifications PO Box 407 Buhler, KS 67522 Daniel@BRECA.com
---	--

Replacement addresses may be later designated in writing.

SECTION 17. ACCEPTANCE.

Prior to the effective date of this franchise, BRECA shall file with the City clerk its acceptance in writing of the provisions, terms and conditions of this Ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to administer oaths. When so accepted, the ordinance and acceptance shall constitute a contract between the City and BRECA subject to the provisions of the laws of the state of Kansas.

SECTION 18. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 et seq and amendments thereto. BRECA agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of BRECA, or of the City at the written request of BRECA, in seeking to safeguard the confidentiality of information provided by BRECA to the City under this Ordinance.

SECTION 19. NON-DISCRIMINATION.

- a. BRECA will not, on the grounds of race, religion, color, sex, disability, national origin, or ancestry, discriminate or permit discrimination against any person in the use of the ROW or in activities under this franchise.
- b. The City agrees that under K.S.A. 12-2001 and K.S.A 17-1902, and other state and federal laws, this Ordinance must be competitively neutral and may not be unreasonable or discriminatory to any telecommunications provider operating in the City.

SECTION 20. MOST-FAVORED MUNICIPALITY.

Should BRECA after the Parties' execution and delivery of this Ordinance enter into a franchise agreement with another municipality of the same size or smaller than the City in this State, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Ordinance, the City shall have the right to require that

BRECA modify this Ordinance to incorporate the same or substantially similar superior benefits.

SECTION 21. MOST FAVORED PROVIDER.

All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Ordinance. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Ordinance, which agreement provides for benefits or terms more favorable than those contained in this Ordinance, then this Ordinance shall be deemed to be modified effective as of the date of such more favorable agreement to provide BRECA with those more favorable benefits and terms. The City shall notify BRECA promptly of the existence of such more favorable benefits and terms and BRECA shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by BRECA, the City shall amend this Ordinance to contain the more favorable terms and conditions.

SECTION 22. SEVERABILITY.

If any clause, sentence, or section of this Ordinance, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or BRECA may elect to declare the entire Ordinance invalidated if the portion declared invalid is, in the judgment of the City or BRECA, an essential part of the Ordinance.

SECTION 23. ENTIRE ORDINANCE; MODIFICATION.

- a. This Ordinance constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Ordinance. The parties agree that this Ordinance is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.
- b. Any modification or amendment to this Ordinance shall be of no force and effect unless it is in writing, signed by the parties, and adopted pursuant to the requirements of state law.

SECTION 24. SURVIVAL OF TERMS.

All of the terms and conditions in this Ordinance related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Ordinance.

SECTION 25. GOVERNING LAW AND VENUE.

- a. As a condition of this Ordinance, BRECA is required to obtain and is responsible for any necessary permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC, or the Kansas Corporation Commission ("KCC"), subject to BRECA's right to challenge in good faith such requirements as established by the FCC, KCC, or other City regulations. BRECA shall also comply with all applicable laws, statutes and/or City regulations, subject to BRECA's right to challenge in good faith such laws, statutes, and/or City regulations.
- b. The obligations and undertakings of both parties hereto shall be performed at El Dorado, Butler County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for Butler County, Kansas.

SECTION 26. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war, and other disasters beyond BRECA's or the City's control.

SECTION 27. SUMMARY PUBLICATION.

Pursuant to K.S.A. 12-2007(b), summary of the ordinance shall be published one time in the following format:

Ordinance No. _____ Summary
On _____, the City of _____, passed Ordinance No. _____. The ordinance grants a franchise to BRECA to construct, operate and maintain a telecommunications system in the City of El Dorado, Kansas. A complete copy of the ordinance is available at www. _____ or in the office of the city clerk located at _____, _____, Kansas, free of charge. This summary is certified by the city attorney.

[Signatures Begin on Following Page]

PASSED BY THE GOVERNING BODY, this ____ day of _____, 2023 for the City of El Dorado, Kansas.

THE CITY OF EL DORADO, KANSAS

BILL YOUNG, MAYOR

ATTEST:

TABITHA SHARP, CITY CLERK

APPROVED AS TO FORM:

ASHLYN B. LINDSKOG, City Attorney

**BUTLER RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.**

BY: _____

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Delta Communications, LLC (dba Clearwave Fiber) Franchise Agreement
DATE: March 20, 2023

Background:

Delta Communications, LLC, dba Clearwave Fiber, desires to construct a fiber optic network within the City's public right-of-way. The City requires utilities locating infrastructure within the public right-of-way to obtain a franchise agreement prior to commencing construction. The agreement outlines the terms and conditions for use of the public right-of-way.

Attachments:

1. El Dorado-Clearwave Franchise Agreement

Policy Issue:

Should the City Commission grant a franchise to Delta Communications, LLC, dba Clearwave Fiber, for use of the public right-of-way for telecommunications and internet services?

Fiscal Impact:

The franchise agreement provides that Clearwave Fiber will pay franchise fees to the City for applicable infrastructure investments as follows: an annual payment of \$150 per distributed antennae system or small wireless facility and a one-time \$1,000 permit and license fee for each distributed antennae system or small wireless facility located within the public right-of-way. In addition, Clearwave Fiber will pay 5% of gross receipts attributed to customers directly connected to any fiber network located within the corporate limits of the City. At this time, the City does not anticipate a significant amount of revenue arising from the franchise agreement.

Trade-offs:

Clearwave Fiber will not have permission to use the City's right-of-way should the City Commission not approve the franchise agreement. Clearwave Fiber, as a communications provider, would likely not invest in constructing infrastructure to serve El Dorado in such a scenario. Competition for such services would then be limited to existing providers and their willingness to invest in upgrades and extensions to serve the community

Staff Recommendation:

The City Manager recommends approval of the proposed franchise agreement with Clearwave Fiber, as it has the potential to create internet service options for residents and businesses. In addition, the franchise agreement is drafted in the same form as other existing franchise agreements. The City does not have any reason to deny a franchise to Clearwave Fiber.

Commission Action:

Commissioner _____ moved to approve an ordinance granting Delta Communications, LLC, dba Clearwave Fiber, a contract franchise to construct, operate, and maintain a telecommunications system in the City of El Dorado, Kansas.

Commissioner _____ seconded the motion.

ORDINANCE NO. – _____

**AN ORDINANCE GRANTING TO DELTA COMMUNICATIONS, LLC,
DBA CLEARWAVE FIBER, A CONTRACT FRANCHISE TO
CONSTRUCT, OPERATE, AND MAINTAIN A
TELECOMMUNICATIONS SYSTEM IN THE CITY OF EL DORADO,
KANSAS.**

This Contract Franchise (hereinafter, the “Ordinance”) is entered into as of _____, 2021 (the “Effective Date”) by and between the City of El Dorado, a municipal corporation (the “City”), and Delta Communications, LLC, a Kansas limited liability company (“Clearwave Fiber”).

RECITALS

- I. Clearwave Fiber is a Telecommunications carrier as defined in K.S.A. 66-1,187(m) with authority under K.S.A. 17-1902 to occupy the public right-of-way subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City.
- II. Clearwave Fiber seeks to enter the City of El Dorado’s Right of Way, and other real property of the City, to install, maintain and operate fiber network Facilities (the “Network”), so that Clearwave Fiber and/or its underlying customers (the “Customers”) may provide data, telecommunications, broadband Internet, and related services to the residents and visitors of the City (the “Services”).

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number.

- a. *"Contract Franchise"* means this Ordinance granting the right, privilege, and franchise to Clearwave Fiber to provide services within the City.
- b. *"Distributed Antenna Systems"* (“DAS Facility”) means certain components of the Network consisting of distributed antenna systems which may be located on existing or new streetlights, stand-alone poles, third party utility poles, and other structures located on or within the right-of-way as permitted under this Ordinance, and which will be connected to Clearwave Fiber’s Facilities.
- c. *"Facilities"* means any portion of a system located in, along, over, upon, under, or through the right-of-way and may include, without limitation, antenna nodes, poles, streetlight poles, equipment cabinets, underground and above ground fiber optic

cable, fiber handholes and enclosures, fiber repeaters and related equipment, DAS Facility, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process.

- d. *"Gross receipts"* shall be defined as set forth in K.S.A. 12-2001(c)(6). Uncollectible and late charges, taxes, surcharges, and other pass-through charges shall not be included within gross receipts.
- e. *"Laws"* or *"Law"* as used in this Ordinance means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Ordinance or having jurisdiction that is applicable to any aspect of this Ordinance that are in force on the Effective Date and as they may be enacted, issued, or amended during the term of this Ordinance.
- f. *"Network"* means the franchisee's fiber network and DAS Facilities or small wireless facilities, including the antenna nodes, poles, equipment cabinets, underground and aboveground fiber optic cable, wires, lines, fiber handholes and enclosures, fiber repeaters and related equipment and appurtenance, and similar facilities and appurtenances, designed, constructed or occupied for the purpose of producing, receiving, amplifying or distributing telecommunications service to or from locations within the City.
- g. *"Right-of-way"* or *"ROW"* means the surface and space on, above and below every municipal street, alley, road, highway, lane, or City right-of-way dedicated or commonly used now or hereafter for utility purposes, including but not limited to overhead lighting facilities, and including utility easements wherein the City now or hereafter acquires the right and authority to locate or permit the location of utilities consistent with communications facilities. This term shall not include any county, state, or federal right-of-way or any property owned or controlled by any person or agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or agency. Right-of-way shall not include property owned or held by City and not typically considered right-of-way such as City parks and City buildings.
- h. *"Small Wireless Facilities"* or *"Wireless Facilities"* means a wireless facility that meets both of the following qualifications:
 - i. All antennas are located inside an enclosure of not more than (6) six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than (6) six cubic feet, and
 - ii. All other wireless equipment associated with the facility is cumulatively not more than (28) twenty-eight cubic feet on volume, or (50) fifty cubic feet in

volume if the equipment was ground mounted before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

1. An electric meter.
 2. Concealment elements.
 3. A telecommunications demarcation box.
 4. Grounding equipment.
 5. A power transfer switch.
 6. A cutoff switch.
 7. Vertical cable runs for the connection of power and other services.
- i. “*Telecommunications Service(s)*” means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF ORDINANCE.

- a. This Ordinance hereby grants to Clearwave Fiber, the nonexclusive contract, right, privilege, and franchise to locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain, facilities along, across, upon and under the ROW for the purpose of Clearwave Fiber providing competitive infrastructure to third-party carriers to provide telecommunications services, internet services, or other intrastate or interstate traffic, subject to the terms and conditions of this Ordinance.
- b. Nothing in this Ordinance is intended to preclude the City from seeking or authorize the City to seek, a franchise from an affiliate or third-party providing telecommunications services.
- c. This Ordinance does not grant Clearwave Fiber the authority or right to provide end user “Cable Service.” For the purposes of this Ordinance, “Cable Service” is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- d. This Ordinance shall not convey title, equitable or legal, in the ROW, and gives only the right to occupy the ROW, for the purposes and for the period stated herein and subject to the terms stated in this Ordinance. This Ordinance does not:
- i. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third party, without the consent of such party;

- ii. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City whether inside or outside of the ROW, specifically including, but not limited to, poles, streetlights, buildings, towers, park property, City Hall property, or other facilities;
 - iii. Excuse Clearwave Fiber from obtaining appropriate access or attachment agreements or permits before locating its Facilities on Facilities or property owned or controlled by the City or a third-party;
 - iv. Grant to any licensee or lessee of Clearwave Fiber or other third party a right of access or authority to the City's ROW without said licensee, lessee, or third party obtaining all necessary permits and authorizations from the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City dealing with management of the ROW and, if determined necessary by the City, a contract franchise for said licensee, lessee, or third party.
 - v. Provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Ordinance, and Clearwave Fiber shall not knowingly allow the use of its Facilities or Network by any third party in violation of any federal, state, or local law.
- e. This Ordinance is subject to and conditioned upon the terms and conditions of all applicable federal, state, and local laws, existing now or in the future, and the parties shall comply with any such laws in the exercise of their rights and performance of their obligations under this Ordinance.
- f. As noted in subsection (c), Clearwave Fiber shall not provide any additional services for which a separate franchise ordinance is required by the City without first obtaining a separate franchise ordinance or amending this Ordinance. In particular, this Ordinance does not grant Clearwave Fiber the right to provide cable services as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City. Clearwave Fiber also agrees that this Ordinance does not permit it to operate an open video system without the payment of fees contemplated by 47 U.S.C. § 573(c)(2)(B) and without complying with all Federal Communications Commission ("FCC") regulations promulgated pursuant to 47 U.S.C. § 573. Clearwave Fiber shall not knowingly allow the use of its Facilities by any third party in violation of this subsection or of any federal, state, or local laws.
- g. The authority of Clearwave Fiber to use and occupy the ROW shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the City. The City may exercise its home rule powers in its

administration and regulation related to the management of the ROW provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Clearwave Fiber shall comply with all laws, rules, and lawful City regulations, in effect now or as may be adopted in the future, governing the use of ROW, specifically including City of El Dorado Ordinance No. 2293 as amended or replaced, the City's zoning, land use, and subdivision regulations and amendments thereto.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Ordinance, Clearwave Fiber shall have the right to construct, maintain and operate its Facilities along, across, upon and under the public ROW. Clearwave Fiber shall construct and maintain the Facilities in a skillful and workmanlike manner that does not obstruct or hinder the usual travel or public safety on such ROW, and that does not obstruct or interfere with the legal use of the ROW by other utilities.
- b. Clearwave Fiber shall participate in the Kansas One Call utility location program. Clearwave Fiber shall be solely responsible for communicating with Kansas One-Call, or for taking other necessary measures to determine the location of public improvements or other facilities located in the ROW.
- c. Clearwave Fiber may attach its Facilities to an existing City-owned utility pole pursuant to the current National Electric Safety Code. Clearwave Fiber shall coordinate the placement of its Facilities in the ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City engineer.
- d. It is understood that Clearwave Fiber may build new Facilities in the City which would comply with all applicable Laws. If the City has no formal third-party utility installation policy or permit process, Clearwave Fiber will not be obligated to make application for new facility installations unless and until such time a formal process is implemented by the City in a reasonable and non-discriminatory form and enforced among all third-party utility installations.
- e. Clearwave Fiber shall install Facilities in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.
- f. Except in cases of emergency, a minimum of fourteen (14) days prior to construction, reconstruction, location, or relocation of any Facilities in a ROW, Clearwave Fiber shall submit to the City Engineer, or his or her designee, for approval, plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not reasonably withhold, delay, or condition approval of said plans and specification. The City's review of

the plans and specifications shall be confined to matters impacting the interests of the City in managing the ROWs of the City.

- g. No notice is necessary to the City for Facility maintenance unless such maintenance will require street closure, and in such event, Clearwave Fiber will use reasonable efforts to coordinate such closure with the City.
- h. Zoning regulations shall not apply to installations within the public ROW.
- i. Clearwave Fiber shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Clearwave Fiber's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. Clearwave Fiber shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. Clearwave Fiber's obligations under this section 3.h shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by Clearwave Fiber to the City.
- j. Clearwave Fiber shall pay for the electricity and other utilities services it consumes in its operations at the rates charged by the servicing utility companies.
- k. Clearwave Fiber shall, at Clearwave Fiber's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain its facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws including Ordinance No. 2293 of the City, or any then current ordinance or regulation of the City dealing with management of the ROW. In the event any facility requires replacement because such part cannot be repaired, Clearwave Fiber shall, at Clearwave Fiber's sole cost and expense, replace the irreparable facility. Clearwave Fiber shall not cause rubbish, garbage, or debris on or around the facilities and shall not permit any rubbish, garbage, or debris to accumulate on or around any enclosed areas around the facilities. If the City gives Clearwave Fiber written notice of a failure by Clearwave Fiber to maintain the facilities, Clearwave Fiber shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.
- l. In granting this contract franchise ordinance, the City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of the ROW. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Clearwave Fiber.
- m. Clearwave Fiber shall take all reasonable measures necessary to maintain accurate and complete records in electronic format, of all Facilities constructed,

reconstructed, or relocated in the ROW. Clearwave Fiber shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its Facilities located within the ROW when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of Clearwave Fiber without expense to the City, its employees, agents, or authorized contractors.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Ordinance, Clearwave Fiber agrees to pay the City one hundred and fifty dollars (\$150.00) per year per attachment for the attachment of wireless equipment to support any DAS Facility or Small Wireless Facility within the City on City owned infrastructure or newly placed Clearwave Fiber poles within the City (such amount being the “DAS Franchise Fee”). Clearwave Fiber shall pay the DAS Franchise Fee on the 15th day of the second month following the month in which the gross revenue is received.
- b. Clearwave Fiber agrees to remit to the City five percent (5%) of Gross Receipts as defined in K.S.A. 12-2001(c)(6) for all fiber connections made in the Network (the “Fiber Franchise Fee,” and collectively with the DAS Franchise Fee, the “Franchise Fee”). Clearwave Fiber shall pay its Fiber Franchise Fee on the 15th day of the second month following the month in which the gross revenue is received.
- c. A one-time permit and license fee of \$1,000.00 for each DAS Facility or Small Wireless Facility installed within the public ROW of the City shall be paid by Clearwave Fiber. This fee shall be in addition to other City permit and review fees that exist as of the date the DAS Facility or Small Wireless Facility is installed that relate to the installation of the DAS Facility or Small Wireless Facility. Clearwave Fiber shall pay the one-time application fee upon submission of a complete application for the installation of a DAS Facility or Small Wireless Facility per this article and after the date of Clearwave Fiber’s submission of a complete application, the City shall not retroactively apply any new permit or licensing fees to the DAS Facility or Small Wireless Facility.
- d. Clearwave Fiber shall reimburse the City for the publication costs related to the adoption or amendment of this Ordinance.
- e. If any Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest shall accrue from the due date until received, at an annual rate of ten percent (10%), or if lower, the highest percentage allowed by law.
- f. Clearwave Fiber shall keep accurate books of account at its principal office in Buhler, Kansas, or such other location of its choosing, for the purpose of determining the amounts due to the City pursuant to this subsection. The City shall

have access to, and the right to examine, at all reasonable times, all books, receipts, files, records, and documents of Clearwave Fiber necessary to verify the correctness of compensation paid to the City, and to correct the same, if found to be erroneous. The City may only exercise its right to examine the books, receipts, files, records, and documents one time per year at a mutually agreeable time. If the statement of fees paid by Clearwave Fiber is incorrect, Clearwave Fiber shall promptly make payment upon such corrected statement. The City agrees to hold in confidence any non-public information it learns from Clearwave Fiber to the fullest extent permitted by law.

- g. Clearwave Fiber shall collect and remit compensation as described in Section 4 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 5. TERM.

- a. This Ordinance shall be effective for a term of five (5) years from the effective date of this Ordinance. Thereafter, this Ordinance shall automatically renew for three (3) additional five-year terms, unless a party notifies the other party of its intent to terminate the franchise prior to 180 days before the termination of the current term. The additional terms are a continuation of this franchise and not a new franchise or amendment.
- b. Upon written request of either the City or Clearwave Fiber, this Ordinance shall be renegotiated at any time in accordance with the requirements of K.S.A. 12-2001 and K.S.A. 17-1902, as amended, upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Clearwave Fiber, including but not limited to the scope of the Ordinance granted to the Clearwave Fiber or the compensation to be received by the City.
- c. Amendments under this section, if any, shall be made by contract franchise ordinance as prescribed by statute. The Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation provided by this section.

SECTION 6. ACCESS TO THE FACILITIES.

Subject to the requirements of El Dorado Ordinance No. 2293, or any then current ordinance or regulation of the City dealing with management of the ROW, franchised utility companies will be given reasonable access to each of the facilities in the ROW for the purposes of routine installation, repair, maintenance, or removal of facilities.

SECTION 7. NON-INTERFERENCE.

- a. Clearwave Fiber shall operate its network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the network or that are in operation prior to any modifications Clearwave Fiber may make to the network.
- b. Clearwave Fiber's network and facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any components thereof have been placed in service. Nor shall V's network and facilities cause interference with the City's use of the Clearwave Fiber poles for the City's intended City purpose.
- c. If such interference with the facilities described in subsections (a) or (b) occurs, Clearwave Fiber shall, upon receipt of written notice from the City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by Clearwave Fiber to the reasonable satisfaction of the City within the cure period set forth in the City's notice, which notice shall not be less than thirty (30) days, absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this Ordinance and City may terminate the Ordinance. Interference caused by actions of Clearwave Fiber's customer(s) remains the responsibility of Clearwave Fiber.

SECTION 8. INDEMNITY AND HOLD HARMLESS.

- a. It shall be the responsibility of Clearwave Fiber to take adequate measures to protect and defend its facilities in the public ROW from harm or damage. If Clearwave Fiber fails to accurately or timely locate facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Clearwave Fiber's facilities.
- b. Clearwave Fiber shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Clearwave Fiber, any agent, officer, director, representative, employee, affiliate or subcontractor of Clearwave Fiber, or its respective officers, agents, employees,

directors or representatives, while installing, repairing or maintaining Facilities in the public ROW.

- c. Clearwave Fiber or City shall promptly advise the other in writing of any known claim or demand against Clearwave Fiber or the City related to or arising out of Clearwave Fiber's activities in the public ROW.

SECTION 9. INSURANCE REQUIREMENT.

- a. During the term of this franchise, Clearwave Fiber shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers with an A.M. Best rating of no less than A-:VII. Clearwave Fiber shall provide not less than the following insurance:
 - i. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - ii. Commercial general liability with limits of insurance not less than \$2,000,00 each occurrence, \$2,000,000 annual aggregate, \$2,000,000 completed Operations/Product Aggregate covering claims for bodily injury, property damage, personal and advertising injury, completed operation/product liability and contractual liability arising from the activities and operations of the franchisee and independent contractors operating on their behalf. The City shall be included as an additional insured. The insurance for the additional insured shall be as broad as the insurance for the named insured and apply on a primary/noncontributor basis and include protection for completed operations/products claim. Coverage for the additional insured shall include defense expense. If in order to accomplish the required limits of insurance, the franchisee must purchase an excess liability/umbrella policy, such policy shall be written on a follow form basis and be as broad as the underlying insurance. The City shall be included as additional insured to the policy.
 - iii. Business Auto Liability Insurance with limits of insurance not less than \$1,000,00 Combined Single Limit for bodily injury and property damage covering ownership or use of all owned, hired, and non-owned autos used in connection with the Franchisee operations and activities. The City shall be included as additional insured to the auto liability policy.
- b. As an alternative to the requirements of subsection (a), Clearwave Fiber may demonstrate to the satisfaction of the City that it is self-insured and as such Clearwave Fiber has the ability to provide coverage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from

personal injury, bodily injury, death, or property damage occasioned by Clearwave Fiber, or alleged to so have been caused or occurred.

- c. Clearwave Fiber shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City 30 days prior written notice. Clearwave Fiber shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. Clearwave Fiber shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal of this franchise, deliver to the City a performance bond in the amount of \$100,000.00, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the ROW as set forth in this article; to ensure Clearwave Fiber's repair and restoration of its damage to its facilities or the ROW; and to ensure Clearwave Fiber's removal of its facilities, as set forth herein. The required performance and maintenance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City attorney in form and substance.

SECTION 10. TAXES.

Clearwave Fiber agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the network and this Ordinance. Pursuant to Section 79-5(a)(26) of the Kansas Revenue and Taxation Code, as amended, the City hereby advises, and Clearwave Fiber recognizes and understands, that Clearwave Fiber's use of the ROW and/or Clearwave Fiber facilities may create a possessory interest subject to real property taxation and that Clearwave Fiber may be subject to, and responsible for, the payment of real property taxes levied on such interest. Clearwave Fiber will cooperate with the county appraiser in providing any information necessary for the appraiser to make a property tax determination. Clearwave Fiber reserves the right to challenge any such assessment, and the City agrees to reasonably cooperate with Clearwave Fiber in connection with any such challenge.

SECTION 11. REVOCATION AND TERMINATION.

In case of failure on the part of Clearwave Fiber to comply with any of the material provisions of this Ordinance, or if Clearwave Fiber should do or cause to be done any act or thing prohibited by or in violation of the terms of this Ordinance, the City shall abide by the requirements of K.S.A. 12-2001 which requires reasonable notice and an opportunity for a public hearing before the City governing body before a contract franchise ordinance may be revoked.

SECTION 12. RESERVATION OF RIGHTS.

- a. In granting its consent hereunder, Clearwave Fiber does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- b. In entering into this Ordinance, neither the City's nor Clearwave Fiber's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Ordinance, neither the City nor Clearwave Fiber waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Clearwave Fiber may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

SECTION 13. FAILURE TO ENFORCE.

The failure of either the City or the Clearwave Fiber to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Clearwave Fiber unless said waiver or relinquishment is in writing and signed by both the City and the Clearwave Fiber.

SECTION 14. DEFAULT ABANDONMENT.

- a. A "default" shall be deemed to have occurred if a party fails to cure a breach, within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.
- b. Upon a party's failure to timely cure a breach after notice, and upon expiration of the above cure periods, then the other party may terminate this Ordinance and pursue all remedies provided for in this Ordinance and/or any remedies it may have under applicable law or principles of equity relating to such breach.
- c. In addition to the remedies set forth herein, the City shall have the right to terminate this Ordinance if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW; or (ii) if Clearwave Fiber's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights under subsection (iii) shall be subject to Clearwave Fiber's rights to just

compensation, if any, from the federal, state, or local government requiring such removal for any taking of a protected property right.

- d. In the event Clearwave Fiber ceases to operate and abandons the network, any facility, or parts thereof, for a period of ninety (90) days or more, Clearwave Fiber shall, at its sole cost and expense and within ninety (90) days from the date of abandonment, vacate and remove the network or the abandoned part thereof. If such removal disturbs the facility or adjacent property (including ROW or City real property), Clearwave Fiber shall also, at its sole cost and expense, restore or repair the ROW, each facility, and any adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment or other aesthetic improvements made by Clearwave Fiber to the facility or adjacent property. Alternatively, the City may allow Clearwave Fiber, in the City's sole and absolute discretion, to abandon the network, or any part thereof, in place and convey it to the City.
- e. Upon expiration or termination of this Ordinance for any reason, Clearwave Fiber shall have the right to remove any and all of its Facilities within sixty (60) days after such termination or expiration, or, subject to the approval of the City Engineer said approval not to be unreasonably withheld, to transfer any and all of its Facilities to another entity authorized to place facilities in the ROW. Clearwave Fiber has the duty, immediately upon any such removal, to restore the ROW from which the facilities are removed to as good a condition as the same were before removal was performed. If Clearwave Fiber fails to remove or transfer its Facilities within sixty (60) days, the City may, at its option, remove any or all of the Facilities at Clearwave Fiber's expense, or take ownership of any or all of Facilities for the City's use and/or disposal.

SECTION 15. TRANSFER AND ASSIGNMENT.

This franchise shall be assignable in accordance with the laws of the State of Kansas. Clearwave Fiber shall provide the City written notice of any transfer or assignment within thirty (30) days, including notice of the name and address of the assignee and contact information. Clearwave Fiber's obligations under this Ordinance with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of any transfer or assignment.

SECTION 16. POINT OF CONTACT AND NOTICES.

Clearwave Fiber shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Clearwave Fiber in the event of an emergency.

All other notices between the parties shall be in writing and shall be made by personal delivery or by depositing such notice in the U.S. Mail, Certified Mail, return receipt requested. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall

be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Clearwave Fiber observed holidays excepted.

The City: City of El Dorado Attn: City Clerk 220 E. First Avenue El Dorado, Kansas 67042	Clearwave Fiber: Delta Communications, LLC dba Clearwave Fiber PO Box 808 Harrisburg, IL 62946 With copy to: Clearwave Fiber Attn: Legal Department 1375 Chatham Parkway Savannah, GA 31405
---	---

Replacement addresses may be later designated in writing.

SECTION 17. ACCEPTANCE.

Prior to the effective date of this franchise, Clearwave Fiber shall file with the City clerk its acceptance in writing of the provisions, terms and conditions of this Ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to administer oaths. When so accepted, the ordinance and acceptance shall constitute a contract between the City and Clearwave Fiber subject to the provisions of the laws of the state of Kansas.

SECTION 18. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 et seq and amendments thereto. Clearwave Fiber agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Clearwave Fiber, or of the City at the written request of Clearwave Fiber, in seeking to safeguard the confidentiality of information provided by Clearwave Fiber to the City under this Ordinance.

SECTION 19. NON-DISCRIMINATION.

- a. Clearwave Fiber will not, on the grounds of race, religion, color, sex, disability, national origin, or ancestry, discriminate or permit discrimination against any person in the use of the ROW or in activities under this franchise.
- b. The City agrees that under K.S.A. 12-2001 and K.S.A 17-1902, and other state and federal laws, this Ordinance must be competitively neutral and may not be unreasonable or discriminatory to any telecommunications provider operating in the City.

SECTION 20. MOST-FAVORED MUNICIPALITY.

Should Clearwave Fiber after the Parties' execution and delivery of this Ordinance enter into a franchise agreement with another municipality of the same size or smaller than the City in this State, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Ordinance, the City shall have the right to require that Clearwave Fiber modify this Ordinance to incorporate the same or substantially similar superior benefits.

SECTION 21. MOST FAVORED PROVIDER.

All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Ordinance. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Ordinance, which agreement provides for benefits or terms more favorable than those contained in this Ordinance, then this Ordinance shall be deemed to be modified effective as of the date of such more favorable agreement to provide Clearwave Fiber with those more favorable benefits and terms. The City shall notify Clearwave Fiber promptly of the existence of such more favorable benefits and terms and Clearwave Fiber shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by Clearwave Fiber, the City shall amend this Ordinance to contain the more favorable terms and conditions.

SECTION 22. SEVERABILITY.

If any clause, sentence, or section of this Ordinance, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Clearwave Fiber may elect to declare the entire Ordinance invalidated if the portion declared invalid is, in the judgment of the City or Clearwave Fiber, an essential part of the Ordinance.

SECTION 23. ENTIRE ORDINANCE; MODIFICATION.

- a. This Ordinance constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Ordinance. The parties agree that this Ordinance is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

- b. Any modification or amendment to this Ordinance shall be of no force and effect unless it is in writing, signed by the parties, and adopted pursuant to the requirements of state law.

SECTION 24. SURVIVAL OF TERMS.

All of the terms and conditions in this Ordinance related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Ordinance.

SECTION 25. GOVERNING LAW AND VENUE.

- a. As a condition of this Ordinance, Clearwave Fiber is required to obtain and is responsible for any necessary permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC, or the Kansas Corporation Commission ("KCC"), subject to Clearwave Fiber's right to challenge in good faith such requirements as established by the FCC, KCC, or other City regulations. Clearwave Fiber shall also comply with all applicable laws, statutes and/or City regulations, subject to Clearwave Fiber's right to challenge in good faith such laws, statutes, and/or City regulations.
- b. The obligations and undertakings of both parties hereto shall be performed at El Dorado, Butler County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for Butler County, Kansas.

SECTION 26. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war, and other disasters beyond Clearwave Fiber's or the City's control.

SECTION 27. SUMMARY PUBLICATION.

Pursuant to K.S.A. 12-2007(b), summary of the ordinance shall be published one time in the following format:

Ordinance No. _____ Summary

On _____, the City of _____, passed Ordinance No. _____. The ordinance grants a franchise to CLEARWAVE FIBER TELCOM, LLC to construct, operate and maintain a telecommunications system in the City of _____, Kansas. A complete copy of the ordinance is available at www. _____ or in the office of the city clerk located at _____, _____, Kansas, free of charge. This summary is certified by the city attorney.

[Signatures Begin on Following Page]

PASSED BY THE GOVERNING BODY, this ____ day of _____, 2023 for the City of El Dorado, Kansas.

THE CITY OF EL DORADO, KANSAS

BILL YOUNG, MAYOR

ATTEST:

TABITHA SHARP, CITY CLERK

APPROVED AS TO FORM:

ASHLYN B. LINDSKOG, City Attorney

CLEARWAVE FIBER, TELCOM LLC

BY: _____

TO: City Commission
FROM: Tabitha Sharp
SUBJ: Executive Session for Attorney-Client Privileged Exception under K.S.A. 75-4319(b)(2)
DATE: March 20, 2023

Background:

The City Attorney requested an executive session to discuss an attorney-client privileged matter.

Attachments:

Policy Issue:

Not Applicable

Fiscal Impact:

Not Applicable

Trade-offs:

Not Applicable

Staff Recommendation:

Not Applicable

Commission Action:

Commissioner _____ moved to recess into executive session pursuant to the attorney-client privileged exception under K.S.A. 75-4319(b)(2) for the purpose of discussing a legal matter and to reconvene the meeting at _____ p.m. in the City Commission Room.

Commissioner _____ seconded the motion.