



STAFF REPORT

DATE: January 9, 2025
TO: The Honorable Mayor and City Council
FROM: Blake Thomas, Community Development Director
SUBJECT: High-Speed Internet Task Force Update

RECOMMENDATION:

No recommendation is provided for this item. Staff requests that the city council discuss and provide guidance on how to proceed with the presented items.

ISSUE BEFORE COUNCIL:

Two items are being discussed for this agenda item:

- 1) Should the city council place an agreement with All West Communications for consideration on a future city council agenda?
- 2) Are there other terms, conditions, or concerns that need to be addressed in this agreement?
- 3) Should the city council initiate a text amendment to City Code §7-15-3? If so, does the proposed language represent the best interests of the community?

BACKGROUND/SUMMARY:

Item 1: All West Communications has been working in Herriman under an approved franchise agreement. All West has constructed its fiber network in the southeast portions of Herriman (near RSL), some areas in Rosecrest, and portions of the Copper Creek subdivision.

Item 2: All utility providers to have a franchise agreement to install their facilities in the City's public rights-of-way (ROW). The franchise agreement requires utility providers to pay the city a percentage of their gross receipts. This revenue to the city is part of the cost to use the public's ROW and is used to cover the costs incurred by the city to repair the road/curb/sidewalk due to impacts from the utility installation. The city also uses the revenue to account for increased costs/time to do repair work on the city's utilities because of the proximity of the utility providers' facilities to the city's utilities).

DISCUSSION:

Item 1: All West has an interest in using portions of city-owned conduit for their fiber optic cable. The City has requested that in exchange for using the city conduit, All West provide fiber and/or services to the City. A draft agreement has been prepared and is included with this staff report.

While there is a desire to reach an agreement that meets the needs of both parties, there are still unknowns that must be resolved.

Item 2: Google Fiber has submitted a request to the city to amend the City Code regarding how franchise fees are calculated and charged. A copy of the proposed text amendment is included with this staff report.

ALTERNATIVES:

The council may direct staff to do any of the following:

- 1) Schedule the items for decision at a future city council meeting.
 - a. Council may direct staff to present items at a future council meeting as they are written, or;
 - b. Council may direct staff to coordinate changes suggested by the council with the utility providers prior to placing them on a future agenda for decision.
- 2) Direct staff to continue working with the utility providers on the proposed items and return to a future city council work meeting for further discussion.
- 3) Direct staff to stop working on one or both items with the utility providers.

FISCAL IMPACT:

A fiscal impact for the proposed items has not been completed.

ATTACHMENTS:

1. Draft Agreement with All West
2. Proposed Text Amendment to City Code §7-15-3

**FIBER AND CONDUIT LEASE AGREEMENT BETWEEN HERRIMAN CITY
AND ALL WEST/UTAH, INC**

This Master Agreement “Master Agreement” is entered into this ____ day of _____ 2024 by and between All West/Utah, Inc. (“All West”), a Utah corporation whose principal office is located at 50 West 100 North, Kamas, Utah 84036, and Herriman City (the “City”), a municipal corporation, whose principal office is located 5355 West Herriman Main Street, Herriman, UT 84096. All West and the City are hereafter sometimes collectively referred to as “parties” and either may be individually referred to as a “party”, all as governed by the context in which such words are used.

RECITALS

A. The City and All West own and operate separate fiber optic systems and/or conduit infrastructure in Herriman City, Utah. All West has access to the City’s right-of-way pursuant to that certain Telecommunications Franchise Agreement between All West and the City, dated March 21, 2023 and this agreement

B. The City and All West mutually agree that it may be in the parties’ interest to grant All West access to the public utility easement (“City PUE”) to enable the City to provide utility related services to City offices and other City infrastructure and to share each other’s fiber optic system and conduit infrastructure in certain circumstances.

C. The parties desire to enter this Master Agreement to define a comprehensive process where the parties can work together to identify services or available capacity in the fiber optic system and conduit infrastructure of the other party, and utilize that available capacity or services when in the mutual interest of the parties.

AGREEMENT

NOW THEREFORE, in accordance with the foregoing Recitals, which are incorporated into this Master Agreement by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived from this Agreement, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Access to the City PUE. The City hereby grants All West access to the City PUE for the purpose of installing, constructing, repairing, replacing, operating, and maintaining a fiber optic telecommunications network, including but not limited to fiber optic cables, conduits, innerducts, handholes, junction boxes, hubs, vaults, electronics, and other equipment necessary for the provision of broadband internet access and telecommunications services,
2. Fiber Optic System Capacity, or Services. All West and the City may, from time to time, identify fiber optic systems (hereafter generally referred to as “Infrastructure”) owned by the other, or telecommunications or broadband services provided by the other party (“Services”) which may potentially provide desirable communication connections to the

requesting party. For purposes of this Master Agreement, Infrastructure includes dedicated fiber optic cables, or individual strands of fiber optic cables. Infrastructure may also include conduits, innerducts, handholes, junction boxes, hubs, other improvements constructed as part of each party's fiber optic system, and any communication transport service that may be useful to either party.

3. Identification of Available Infrastructure or Services. Where a party desires access to available Infrastructure or Services, such party may request such Infrastructure or Services from the other party. If the other Party determines, in its sole discretion that such Infrastructure or Services are available, such Party may permit the requesting party to utilize the available capacity in the Infrastructure, or some portion thereof, or the Services to meet the requesting party's communication needs, pursuant to the terms of this Master Agreement (hereinafter referred to as "Available Infrastructure").

3.1 Identification of Initial Available Infrastructure. Prior to the execution of this Master Agreement, the parties identified certain City-owned Available Infrastructure which All West desires to use and certain All West-owned Available Infrastructure with available capacity which the City desires to use. The identified Infrastructure is shown on the balance sheet of shared Infrastructure (the "Balance Sheet") attached as Exhibit "A."

3.2 Identification of Additional Available Infrastructure. During the term of this Master Agreement, the parties may identify additional Available Infrastructure. The parties agree to execute updates to the Balance Sheet as necessary to identify additional Available Infrastructure for which use rights are granted under this Master Agreement. Each update to the Balance Sheet shall: (a) describe with reasonable specificity the Available Infrastructure that is subject to this Master Agreement and the corresponding use rights granted with respect to such Available Infrastructure; and (b) identify the effective date of the use rights granted. Updates to the Balance Sheet shall be executed by the designated representatives of each party. Upon the execution of an updated Balance Sheet as set forth in the preceding sentence, each party shall append and attach the updated Balance Sheet to this Master Agreement and such updated Balance Sheet shall be automatically incorporated into this Master Agreement by reference. Upon execution, such updated Balance Sheet shall replace and supersede all prior Balance Sheets previously executed by and between the parties. As used in this Agreement, the term Available Infrastructure refers to the fiber optic systems identified in the Balance Sheet and any replacement facilities that are constructed by each party from time to time.

4. Limitation on Each Party's Commitment under Master Agreement. Nothing in this Agreement shall require, or be deemed to require either party to make any Infrastructure or Services available to the other, except for Available Infrastructure specifically identified on the Balance Sheet, attached as Exhibit A.

5. Consideration. The purpose of this Master Agreement is to establish a cooperative and equitable process where capacity in parallel corridors may be utilized to avoid duplicative

Infrastructure. The parties desire to create a process that will expedite the shared use of Infrastructure, when desirable. In this spirit, the parties agree as follows:

- 5.1 It is intended that both parties will benefit from this Master Agreement and that the respective benefits to each party will be approximately equal over time. The parties agree that the calculated value for access to the Available Infrastructure shall be mutually agreed upon by both parties.
 - 5.2 The parties shall strive to ensure that the benefits provided under this Master Agreement, as identified in the Balance Sheet, remain approximately equal over time.
6. Nature of Rights Granted. The rights granted in accordance with this Master Agreement shall be for the use of the Available Infrastructure capacity for a period of years. This Master Agreement does not contemplate the sale or transfer of any real or personal property associated with the Available Infrastructure. The rights granted herein may not include any necessary third party rights of way, easements, or permits, including but not limited to Utah Department of Transportation (“UDOT”), Salt Lake County, or other municipal jurisdiction, permits, rights of way, or easements, in which case each party shall be responsible for obtaining such rights as needed. Each party has the right to use the Available Infrastructure capacity for any purpose, consistent with the party’s respective mission(s), provided that such use does not violate the law or does not threaten the technical or operational integrity of the Infrastructure as a whole or the other party’s Infrastructure capacity. The parties agree that they shall not have the right to sell, lease, or otherwise transfer any rights, title or interest in or to any of the Available Infrastructure received from the other party pursuant to this Agreement to any third party without prior written approval from the owner of the Available Infrastructure. The City specifically acknowledges and agrees that it will restrict its use of the All West Available Infrastructure to City communications only, and will not engage in any commercial competition with All West using the All West Available Infrastructure in any way without prior written approval from All West.
7. Construction and Maintenance Performed Under Master Agreement. The Available Infrastructure use rights granted pursuant to this Master Agreement will likely require the parties to coordinate construction and maintenance issues that are unique to each portion of the Available Infrastructure identified in the Balance Sheet. The parties agree to cooperate with respect to such issues in good faith, in a manner consistent with the intent of this Master Agreement and according to the following general principles:
 - 7.1 Unless otherwise agreed, each party shall be responsible for any construction, reconstruction, installation, splicing or other capital project costs that are necessary to connect to the fiber optic system of the other party. This includes, by mutual agreement, costs associated with remediating damaged conduit, junction boxes or fiber optic cables approved for lease. Costs incurred to make such repairs will be included in the Balance Sheet to maintain a fair and equitable trade.

- 7.2 With respect to each portion of Available Infrastructure for which use rights are granted under this Master Agreement, prior to any construction, the granting party shall have reviewed and approved, in writing, design, construction and work plans for all construction, reconstruction, installation, connection, splicing or other work to be performed by the other party.
- 7.3 All West and the City each agree to not perform any construction, reconstruction, fiber installation, connection, splicing, or other work with respect to the fiber optic system of the other party (including the optical fiber strands for which the other party has granted use rights under this Master Agreement) without providing notice to, and receiving prior written approval from, the other party. The granting party has the right to have a representative present, at its sole cost and expense, during any and all construction, reconstruction, fiber installation, connection, splicing, or other work performed on the fiber optic system of the granting party. Access that requires a permit will follow standard permit procedures, including the payment of standard permit fees.
- 7.4 Both parties acknowledge and agree that they are members of Blue Stakes of Utah Utility Notification Center, Inc. (“Utah Blue Stakes”). Both Parties agree that they will fulfill all requirements as a utility “operator” as may be required pursuant to Utah law, as applicable, or pursuant to Blue Stakes rules and regulations. In addition to complying with Utah law with regard to underground facilities, neither party shall excavate, dig, trench, or otherwise expose any of the other parties’ network outside of an existing manhole or handhole without fourteen (14) days prior written notice to the other party; provided, however that All West may perform emergency repairs of the fiber upon prior notice (including without limitation, voicemail or email) to the City. After All West has installed fiber optic cables in underground facilities, All West will be responsible for “locating” such underground facilities under Utah Code §54-8a-1 et seq.
- 7.5 Each party shall be responsible for the routine costs of operating and maintaining its own Infrastructure, including any conduit, cables, fiber, boxes or other facilities used by the other party pursuant to this Master Agreement. The maintenance of such facilities shall be accounted for in the value of the trade and represented on the Balance Sheet.
- 7.6 Neither party shall have any responsibility or obligation to maintain the other party’s communications system, nor shall either party be liable to the other party with respect thereto in any manner whatsoever. Each party will operate and maintain its Infrastructure in a manner that avoids unreasonable disruptions to the service of the other party. Except as otherwise provided in Section 12 of this Master Agreement, in the event of a disruption to service to any Available Infrastructure for which use rights have been granted to the other party, each party agrees to cooperate with the other party and to use commercially reasonable efforts to reinstate the other party’s communication connection as quickly as practicable.

- 7.7 In the event of any emergency which severs, damages, or renders unusable the Available Infrastructure for which rights have been granted to either party, either party may make the emergency repairs necessary to repair the Available Infrastructure. If in such emergency either party repairs the Infrastructure of the other party, the other party shall account for the reasonable cost of the repair by revision to this Agreements Balance Sheet or by other agreement.
7. All West's Representations and Covenants. All West hereby covenants, represents and warrants that:
- 7.1. All licenses, certifications, approvals, authorizations or other actions by governmental authorities, or filings with any such authorities, have been or will be obtained or accomplished in connection with the execution, delivery and performance by All West of this Agreement.
- 7.2. All West has the requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by All West and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action and no other proceedings on the part of All West is necessary to authorize this Agreement or to consummate the transactions so contemplated hereby.
8. The City's Representations and Covenants. The City hereby covenants, represents and warrants that:
- 8.1. All licenses, certifications, approvals, authorizations or other actions by governmental authorities, or filings with any such authorities, have been or will be obtained or accomplished in connection with the execution, delivery and performance by the City of this Agreement.
- 8.2. The City has the requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the City and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action by the governing body of the City and no other proceedings on the part of the City is necessary to authorize this Agreement or to consummate the transactions so contemplated hereby.
10. Right to Enter. Subject to paragraph 6.3 each party reserves the right to enter the buildings or other structures of the other party (at reasonable times and with notice to the other party) as necessary to inspect and operate any communications systems and equipment that are used pursuant to the use rights granted under this Master Agreement.
11. Duration and Termination of Rights Granted. Unless a shorter duration is specifically provided for herein (or in the Balance Sheet incorporated into this Master Agreement) or

unless otherwise terminated as provided herein, the use rights granted with respect to any Available Infrastructure shall be effective on the date first set forth in the Balance Sheet and shall thereafter continue for an initial period of fifteen (15) years. At the conclusion of the initial fifteen (15) year period, the use rights shall be extended for up to five (5) successive, consecutive five-year renewal terms upon mutual agreement by the parties. Should this Master Agreement be terminated neither party shall be permitted to remove any Infrastructure added by such party without the written consent of the other party.

12. First Right of Refusal. City shall have the first right of refusal for any part of the Infrastructure of which All West desires to transfer ownership.
13. Irrevocable Right to Use. Where the City utilizes Infrastructure operated by All West, City shall be granted continued use of the Infrastructure regardless of any change in ownership of the Infrastructure.
14. Termination of Use Rights for Default. Notwithstanding Section 10 of this Master Agreement, either party may terminate, for default, the use rights it has granted to the other party with respect to any specific portion of the Available Infrastructure. A party may terminate specified use rights for default in the event that the other party continues in material breach of any provisions of this Master Agreement for a period of thirty (30) days following the delivery of written notice from the non-defaulting party, which notice identifies the breach with specificity and demands the cure thereof (provided, however, that with respect to any breach that is not reasonably capable of cure within thirty (30) days, the breaching party shall not be deemed in default if it commences commercially reasonable efforts to cure the breach within thirty (30) days and thereafter diligently and continually pursues such efforts to completion).
15. Termination of Use Rights for Force Majeure Events. Notwithstanding Section 10 of this Master Agreement, either party may terminate the use rights it has granted to the other party: with respect to Infrastructure that is destroyed or rendered unusable by a Force Majeure Event, and provided that the terminating party does not undertake efforts to reconstruct or repair such Infrastructure within one hundred eighty (180) days following the Force Majeure Event. As used in this Section, the term “Force Majeure Event” means any event, whether foreseeable or unforeseeable, that prevents, nullifies or interferes with the enjoyment of the use rights granted pursuant to this Master Agreement provided that such event is beyond the reasonable control of the granting party and not attributable to fault or malfeasance on the part of the granting party. Force Majeure Events include, without limitation, the following: floods, earthquakes, fires, landslides, tornadoes, explosions, civil disturbances, acts of God or the public enemy, terrorist acts, military actions, actions of a court or public authority or labor disturbances/work stoppages.
16. Value of Balance Sheet upon Termination. In the event either party exercises its rights to terminate this Master Agreement, or if All West is dissolved, the value represented on the Balance Sheet at the time of termination will become null and void and the owing party shall have no obligations to pay any amounts owed in the Balance Sheet as of the termination date of this Master Agreement. All leases of both parties reflected in the Balance Sheet of the Master Agreement will return to the original owners at the end of the

current lease term. Any infrastructure that is abandoned will become the property of the granting party to use or dispose of in any way that they see fit.

17. Limitation on Warranties. Each party agrees that, subsequent to the grant of use rights pursuant to this Master Agreement, such party will not grant any additional rights to third parties, or take other affirmative actions, which materially impair the exercise of the use rights granted to the other party. Except as specifically provided in the preceding sentence, all use rights contemplated under this Master Agreement are granted with respect to the Available Infrastructure on “AS-IS” “WHERE-IS” basis, subject to all existing conditions, restrictions and encumbrances, and without any express or implied warranties whatsoever.
18. Term of Master Agreement. This Master Agreement shall be effective upon the date that it is fully executed by the parties and shall thereafter continue for thirty (30) years with two five (5) year automatic renewals, unless earlier terminated as provided herein. Either party may terminate this Master Agreement with cause at any time by providing not less than thirty days written notice to the other party. The termination of this Master Agreement shall not affect any rights granted hereunder prior to termination (which shall continue as set forth in Sections 10, 11, and 12 of this Master Agreement).
19. Mediation. In the event of any action, controversy or claim between the Parties arising out of or relating to this Master Agreement, or the breach thereof, the Parties may first engage in mediation to attempt to resolve the controversy, claim, or breach or they may select a mutually acceptable mediator to do so. Parties shall bear their respective costs incurred in mediation.
20. Costs of Enforcement. If either party files an action to enforce any covenant or condition of this Master Agreement, the prevailing party shall be entitled to reasonable attorney’s fees, and all costs associated with enforcement of this Master Agreement.
21. Title and Encumbrances. Each of the party’s respective communications systems attached to the demised Infrastructure and Available Infrastructure shall remain the property of such party, and such party shall be solely responsible for the collection of and payment of all property, income, excise and use taxes and any special assessments of any kind that may be levied against such party’s communications system. No party hereto shall make or create any agreement, obligation, or encumbrance nor perform or commit any act which creates any obligation, encumbrance, lien or attachment which would, in any way, hypothecate any other parties’ rights, title or interest in or ownership of the other parties’ property without the prior express written consent of the party of interest whose rights, title or interest might be hypothecated thereby.
22. Indemnification. Subject to the other provisions of this Section, each party agrees to indemnify and save harmless the other for damages, claims, suits and actions arising out of its own actions or omissions or the acts or omissions of its officers, agents, or employees in connection with this Master Agreement. It is expressly agreed between the parties (i) that the obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, Utah Code 63G-7-101 and is further limited only to claims that arise from

the negligent acts or omissions of the indemnifying party and (ii) that this provision is not a waiver of the Governmental Immunity Act by either party.

23. Consequential Damages. In no event shall All West or the City be liable to the other party for special, consequential, exemplary or punitive damages as a result of the performance or non-performance of their obligations under this Agreement.
24. Notices. Any notice, demand, request, consent, submission, approval, designation or other communication which either party is required or desires to give under this Master Agreement must be made in writing and mailed to the designated recipient and at the address set forth below. Such notices shall be hand delivered, mailed (by first class mail, postage prepaid) or sent by recognized courier or delivery service. Notices shall be effective upon receipt.

If to All West, at:
All West/Utah, Inc.
Attn: _____
50 West 100 North
Kamas, Utah 84036

with a copy to:
Kira M. Slawson
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111

If to the City, at:
Herriman City
Attn: City Manager _____
5355 West Herriman Main St.
Herriman, UT 84096

Either party may change its designated representative or the address for the receipt of notices by delivering written notice of such change to the other party according to the provisions of this Section.

25. Governing Law. This Master Agreement will be governed by the laws of the State of Utah, both as to interpretation and performance and without regard to conflict of law. It will be enforced only in a court of competent jurisdiction located in Utah.
26. Severability. If any provision of this Master Agreement will be held or deemed to be or will, in fact, be illegal, inoperative or unenforceable, the same will not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever, provided the essential terms of the Agreement remain the same.
27. Entire Agreement; Amendment. This Master Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents of either party that are not contained in this Master Agreement will be binding or valid. This Master Agreement may not be amended, enlarged, modified or altered except through a written instrument which is signed by both parties.

28. Assignment. Neither party may assign or delegate the rights or obligations of this Master Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. Such assignment, if made by either party, shall in no way affect or diminish any right, title or interest of any other party who has an interest in the facilities subject hereto. Any assignment contract made by any party hereto shall contain a clause or clauses which obligate the new third party of interest to ALL the contractual obligations of the assigning party pursuant to this Agreement, including specifically at least, but not limited to, the obligations related to access to the facilities, payment of periodic maintenance costs, assignment and indemnification contained herein.
29. Binding Effect. This Master Agreement shall bind the parties, their successors and assigns.
30. Captions. The captions to the various sections of this Master Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Master Agreement or any parts of this Master Agreement.
31. Time. Time is of the essence of each term, provision, and covenant of this Master Agreement.
32. Multiple Counterparts. This Master Agreement may be executed in any number of counterparts and by either of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Master Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Master Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as the delivery of an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have each executed this Master Agreement as of the date first set forth above.

ALL WEST/UTAH, INC.

HERRIMAN CITY

By: _____
Matthew Weller
President

By: _____

Its: _____

APPROVED AS TO FORM AND
LEGALITY

Herriman City Attorney

EXHIBIT "A"
Balance Sheet

**DESCRIPTION OF USE RIGHTS GRANTED UNDER _____ 2024 MASTER
AGREEMENT REGARDING SHARED FIBER FACILITIES**

Transaction #1 (coincident with execution of the original agreement):

ALL WEST SHALL PROVIDE TO THE CITY:

- 1) To be determined

THE CITY SHALL PROVIDE TO ALL WEST:

- 1) To be determined

The Master Agreement Balance Sheet is based on _____ according to Section 4 of this Master Agreement. Any differences between quantities are tracked by the Balance Sheet for each party detailed below, and are based on current contract pricing. Any outstanding amounts owed according to the Balance Sheet will be updated during future transactions for the purposes of future trades, land access right-of-way fees or other mutually agreed upon items. Banked values can be converted back to full foot-for-foot or other trade values for subsequent transactions, but are shown in dollar value for outstanding banked balances. The parties shall not provide cash or other direct compensation for amounts shown in the Balance Sheet.

Segment#	Segment Description	Trade Summary	Basis of Estimate	Qty	Conduit and Fiber Value/ft	Circuit Value	Line total
All West Agreement Value							

Segment#	Segment Description	Trade Summary	Basis of Estimate	Qty	Conduit and Fiber Value/ft	Circuit Value	Line total
THE CITY Agreement Value							

All West or CITY Banked Value \$ _____

7-15-3: Rate Of Fee

Providers shall separately identify each service received by a customer in its statement of transaction. Unless expressly excluded or prohibited by federal, state, or local laws, the fee levy rate shall be **in a nondiscriminatory and competitively neutral amount, as reasonably negotiated between the City and the provider, based upon 5% of the provider's gross receipts for services as such term is defined in the applicable franchise agreement, license agreement, or such other agreement governing provider's use of the Public Rights of Way** ~~or the highest fee allowed by federal, state, or local laws.~~ If a provider does not have a gross receipts for services, the fee levy rate shall be determined by the City Council.