



Date: October 25, 2019
To: Weber County Board of County Commissioners
From: Sean Wilkinson, Director *sw*
Community Development Department
Agenda Date: November 5, 2019
Subject: **Request for Approval of a Tower Lease Agreement with Liberty Broadband**
Exhibits: A - Aerial View of Lease Property
B – September 19, 2017 County Commission Minutes (Revenue Sharing Agreement)
C – Tower Lease Agreement

Summary:

Liberty Broadband has approached Weber County about leasing tower space on County owned property in Eden. The property is located on a hill east of Snowflake Subdivision with access from Powder Mountain Road (see Exhibit A). It currently houses communication equipment for the Sheriff's Office and television translator equipment for the Ogden Valley Recreation/Transmission Special Service District. Liberty Broadband will co-locate on the existing tower and install three AirPrism Antennas (1' x 4.5') and one AF-24HD Radio (1' x 2'). The co-location project was approved administratively by the Planning Director on October 22, 2019.

The agreement allows Liberty Broadband to lease space on the tower only. Liberty Broadband will pay \$4,800 annually to Weber County in monthly installments of \$400. The agreement runs for five years with automatic five-year extensions until the agreement is amended or terminated.

Recommendation:

Approve the Tower Lease Agreement with Liberty Broadband

Fiscal Impact:

Weber County will receive \$4,800 annually (\$400 per month) as a lease payment from Liberty Broadband. In 2017 Weber County entered into a revenue sharing agreement with Eden Heights, LLC for the property in question. Eden Heights transferred the property where the tower is located to Weber County and the County agreed to share 35% of any revenue earned from the property for a period of 25 years with Eden Heights.

Exhibit A



Exhibit B

MINUTES OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY

Tuesday, September 19, 2017 - 10:00 a.m.
Commission Chambers, 2380 Washington Blvd., Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-203, the County Clerk records in the minutes the names of all persons who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.

WEBER COUNTY COMMISSIONERS: James Ebert, Kerry W. Gibson and Jim Harvey.

OTHER STAFF PRESENT: Ricky D. Hatch, County Clerk/Auditor, Bryan Baron, Deputy County Attorney; and Fátima Ferneliuss, of the Clerk/Auditor's Office, who took minutes.

A. WELCOME – Chair Ebert

B. INVOCATION – Chair Ebert

C. PLEDGE OF ALLEGIANCE – Bryan Baron

D. THOUGHT OF THE DAY – Commissioner Gibson

E. CONSENT ITEMS:

1. Warrants #1197-1203 and #420816-421066 in the amount of \$1,694,128.91.
2. Purchase orders in the amount of \$46,969.45.
3. Minutes for the meeting held on September 12, 2017.
4. Delete Parcel Numbers from Tax Roll: 04-029-0046; 09-075-0210; 11-015-0010; 19-011-0104; 15-027-0042
Commissioner Gibson moved to approve the consent items; Commissioner Harvey seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

F. ACTION ITEMS:

1. CONTRACT WITH PARK CITY POLKA PLAYERS FOR ENTERTAINMENT AT THE 2018 HOF GERMANFEST.

Cari Montgomery, with GSEC, presented this contract for \$1,500.
Commissioner Harvey moved to approve the contract with the Park City Polka Players for entertainment at the 2018 Hof Germanfest; Commissioner Gibson seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

2. CONTRACT WITH THE GRUBER FAMILY BAND FOR ENTERTAINMENT AT 2018 HOF GERMANFEST.

Cari Montgomery, with GSEC, presented this contract for \$3,500.
Commissioner Harvey moved to approve the contract with the Gruber Family Band for entertainment at the 2018 Hof Germanfest; Commissioner Gibson seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

3. CONTRACT WITH EDEN HEIGHTS, LLC, FOR REVENUE SHARING.

Bryan Baron, Deputy County Attorney, presented this revenue sharing agreement and an easement agreement. This item has been in the works for years. In 1968 the county signed an agreement with Alvin/June Cobabe for a piece of property in Eden where the county installed a television/transmission tower. Through an oversight back then, the property was not transferred to the name of Weber County. This was discovered in 2008 and the county has been negotiating with Eden Heights since then. An agreement has now been reached whereby Eden Heights will transfer the television tower property to the county in exchange for this revenue sharing agreement. The term is 25 years at which time the property will belong to the county free and clear. The county does not have to pay them anything unless the county earns revenue from the property, at which time the county would share 35% of that revenue. Eden Heights is granting an easement which allows the county access to the subject property.

Commissioner Gibson moved to approve the contract with Eden Heights, LLC, for revenue sharing; Commissioner Harvey seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

4. FINAL SUBDIVISION APPROVAL OF THE MOUNTAINSIDE PRUD PHASE 1 INCLUDING APPROVAL OF THE IMPROVEMENT GUARANTEE AGREEMENT WITH A LETTER OF CREDIT.

Ronda Kippen, of the County Planning Division, stated that Mountainside is one of the six communities in The Bridges PRUD approved last year for 364 units as a multi-phase development with a variety of housing options with 143 acres of open space. Mountainside PRUD Phase 1 will consist of 24 lots and about 1.649 acres of common area, including a 4-foot soft trail. This subdivision has been through an extensive review process, including zoning and lot yard setbacks. The PRUD was approved for 15-ft. front yards, 7½ ft. side yards and 20 ft. rear yards, and the homes with two front yards due to being on a

Exhibit C

WIRELESS COMMUNICATIONS TOWER LEASE

This Lease Agreement (this "Lease") is dated as of November 5, 2019, by and between Weber County ("Landlord"), and Liberty Broadband LLC ("Tenant"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant sufficient area on the main tower to mount 3x AirPrism Antennas (1'x4.5') and 1x AF-24HD Radio (1'x2'), (the "Premises") located at 4964 N. Powder Mountain Rd, Eden, UT 84310 (see Exhibit A).

TERM. The lease term will begin on November 5, 2019 and will terminate on November 4, 2024.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly installments of \$400.00, payable in advance on the seventh day of each month. Lease payments shall be made to the Landlord at 444 24th Street, Ogden, Utah 84401. The payment address may be changed from time to time by the Landlord.

POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

USE OF PREMISES. Tenant may use the Premises only for providing wireless Internet Service to residents of the Ogden Valley. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

PROPERTY INSURANCE. Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Premises and property located on the Premises. Landlord shall be named as an additional insured in such policies. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Premises. Tenant is responsible for maintaining casualty insurance on its own property.

LIABILITY INSURANCE. Tenant shall maintain liability insurance on the Premises in a total aggregate sum of at least \$1,000,000.00 for damage or destruction of property in any one occurrence. Tenant shall maintain commercial auto liability insurance on all owned, non-owned, and hired automobiles with a minimum combined limit of not less than \$1,000,000.00 per occurrence; and workers compensation insurance as required by law. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by

companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies.

RENEWAL TERMS. This Lease shall automatically renew for an additional period of 5 years per renewal term, unless either party gives written notice of termination no later than 180 days prior to the end of the term or renewal term. The lease terms during any such renewal term shall be the same as those contained in this Lease.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times.

UTILITIES AND SERVICES. Landlord shall be responsible for all utilities and services incurred in connection with the Premises.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed by fire or other casualty to an extent that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, Landlord shall repair the Premises and a just proportion of the lease payments shall abate during the period of the repair according to the extent to which the Premises have been rendered untenable. However, if the damage is not repairable within sixty days, or if Landlord is prevented from repairing the damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party and any unearned rent paid in advance by Tenant shall be apportioned and refunded to it. Tenant shall give Landlord immediate notice of any damage to the Premises.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 7 days (or any other obligation within 14 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent." The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord lease payment(s) during the Holdover Period at a rate equal to the normal payment rate set forth in the Renewal Terms paragraph.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Weber County Community Development Department
444 24th Street
Ogden, Utah 84401

TENANT:

Liberty Broadband LLC
PO Box 856
Eden, Utah 84310

Such addresses may be changed from time to time by any party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Utah.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned have affixed their respective signatures hereto.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Scott K. Jenkins, Chair

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

LIBERTY BROADBAND LLC

By _____
Michael Zindel, CEO

ATTEST:

Exhibit A

(Legal Description of Parcel Number 22-006-0036 Where the Tower is Located)

PART OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, US SURVEY BETTER DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT FALLS NORTH 0026'18" EAST 691.66 FEET ALONG THE SECTION LINE AND NORTH 89D47'26" WEST 142.38 FEET FROM THE BRASS MOUNUMENT LOCATING AT THE SOUTHEAST CORNER OF SAID SECTION 15, BASIS OF BEARING BEING THAT OF NAD 83 UTAH NORTH STATE PLANE GRID BETWEEN THE SAID SOUTHEAST CORNER AND THE EAST QUARTER CORNER OF SECTION 15 AND RUNNING THENCE SOUTH 87D30'30" WEST 56.03 FEET THENCE NORTH 88D08'24" WEST 91.67 FEET, THENCE NORTH 00D12'34" EAST 147.60 FEET, THENCE SOUTH 89D47'26" EAST 147.60 FEET THENCE SOUTH 00D12'34" WEST 147.60 FEET TO THE POINT OF BEGINNING. CONTAINS 0.50 ACRES.