

PRE-MEETING AGENDA

Casper City Council
City Hall, Council Meeting Room
Tuesday, December 17, 2019, 5:30 p.m.





	Presentation	Allotted	Beginning Time
	Distribution of December 20, 2019 Executive Session Minutes *Council – please initial by your name on the minutes to indicate your approval*		
1.	InTTec, Inc. – Franchise Agreement	5 min	5:30
2.	Budget Calendar	5 min	5:35
3.	LAD Jade & Arrowhead Follow-up	5 min	5:40
4.	Increasing Disability Leave Cap	5 min	5:45
5.	Employee One-Time Payment	5 min	5:50
6.	Agenda Review	5 min	5:55
	Approximate Ending Time		6:00

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November 22, 2019

MEMO TO: J. Carter Napier, City Manager 
FROM: John Henley, City Attorney 
Wallace Trembath, Deputy City Attorney W. T.
SUBJECT: InTTec, Inc., Telecommunications Franchise

Meeting Type & Date

Council Pre-Meeting, December 17, 2019

Action type

Consideration of a telecommunications franchise for InTTec, Inc.

Recommendation

That Council bring forward an ordinance that would grant a franchise to InTTec, Inc., (“InTTec”) Inc., a wholly-owned subsidiary of Visionary Communications, Inc., at the next available Council meeting.

Summary

The Wyoming Public Services Commission granted InTTEC a certificate of public convenience and necessity to provide local exchange telecommunications service in the State of Wyoming. The City and InTTEC, Inc. are in discussions for a new telecommunications franchise ordinance. The final draft of the franchise ordinance, which is attached to this memorandum, is the product of mutual, good-faith negotiation. Here are some highlights of the franchise ordinance.

1. Franchise Grant: The purpose of the franchise ordinance is to allow InTTec to erect, construct, operate and maintain its telecommunications system in City rights-of-way in exchange for a franchise fee and other benefits provided to the City.
2. Franchise Fee: CenturyLink has agreed to a five percent franchise fee.
3. Franchise Term: The term of the franchise is for ten years. A long term franchise is important to the City. Over the course of years, federal law has become increasing unfavorable to cities, limiting the fees, terms and conditions that may be negotiated in a franchise. The City wants the best contractual terms it can get, for as long as it can get them.
4. Insurance, Indemnification: InTTec is required to carry insurance and indemnify the City against its negligence arising out of operation of its telecommunications system.
5. Code Compliance: InTTec is required to comply with all applicable law and regulations.

Financial Considerations

See section 2 above.

Oversight/Project Responsibility

After passage of the ordinance, InTTec will work with the Public Services and Community Development departments for placement of its system in City rights-of-way.

Attachments

Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO INTEC, INC. (A WHOLLY OWNED SUBSIDIARY OF VISIONARY COMMUNICATIONS, INC.) TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM (“THE SYSTEM”) IN THE CITY OF CASPER, WYOMING (“THE CITY”).

WHEREAS, under Wyoming Statute § 15-1-103(a)(xxxiii), a city may grant franchises for such terms as the governing body deems proper to any utility company, provided no franchise may be entered into with any person in which that person is given an exclusive right for any purpose whatsoever; and,

WHEREAS, InTTec, Inc., a wholly-owned subsidiary of Visionary Communications, Inc., is a utility company that desires a franchise from the City; and,

WHEREAS, the City has determined that it is in the public interest to grant a franchise to InTTec, Inc. under the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING:

SECTION 1. Grant of Franchise.

A. Subject to the terms and conditions set forth in this Franchise, the City hereby grants to InTTec, Inc. a nonexclusive authorization to construct, maintain, operate, upgrade, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, wires, conduits, conductors, pipes and related appurtenances (“Facilities”) for its System in, under, along, over and across the present and future streets, alleys and avenues of the City (“Public Ways”), for the purpose of providing telecommunication services (as defined in 47 U.S.C. § 153) and related services to the City’s inhabitants. This Franchise shall constitute both a right and an obligation to provide the System required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

B. Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the effective date of this Franchise.

C. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of Public Ways, should InTTec, Inc. provide services other than a telecommunication system (for example, a cable system for purposes of providing a cable service).

D. This Franchise is intended to convey limited rights and interests in Public Ways as set forth in Wyoming Statute § 15-1-103(a)(xxxiii) and its subsections. It is not a warranty of title or interest in any Public Way; it does not provide InTTec, Inc. with any interest in any particular location within the Public Way; and it does not confer rights other than as expressly provided in the grant hereof.

SECTION 2. Acceptance by InTTec, Inc. This ordinance shall be published once in a newspaper of general circulation within the City, pursuant to Wyoming Statute § 15-1-116, and shall become effective on the day following its publication. Within sixty (60) days after the passage of this Ordinance by the City, InTTec, Inc. shall file a signed copy thereof with the City Clerk, otherwise the Ordinance and the rights, privileges and authority granted herein shall be null and void.

SECTION 3. Term. The Term of this Franchise is ten (10) years commencing on the date of Acceptance by InTTec, Inc. as set forth in Section 2, above, and then from year-to-year until a party gives the other party at least ninety (90) days' notice in writing and in advance of expiration of the initial term or any subsequent term stating an intent to terminate the agreement at the end of such existing term.

SECTION 4. Franchise Fee.

A. Payments and Reports.

1. **Quarterly Payments.** From and after the date of InTTec, Inc.'s Acceptance of this Ordinance and until its expiration, InTTec, Inc. will pay the City five percent (5%) of InTTec, Inc.'s local exchange access service Gross Revenue (as defined in Appendix A hereto). InTTec, Inc.'s Franchise fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after those dates.

2. **No Accord and Satisfaction.** No acceptance of any payment shall be construed as an accord and satisfaction by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for additional sums payable or for the performance of any other obligation of InTTec, Inc..

B. Franchise Termination. If this Franchise terminates for any reason, and InTTec, Inc. ceases operations in the City or is not in the negotiation with the City of a replacement Franchise, InTTec, Inc. shall file with the City within ninety (90) calendar days of the date of termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by InTTec, Inc. since the end of the previous fiscal year.

C. Late Payments. If any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, InTTec, Inc. shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date that payment was originally due until the date the City receives the payment.

D. Underpayments. If a net franchise underpayment is discovered as a result of an audit, InTTec, Inc. shall pay interest at the rate of eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date InTTec, Inc. remits the underpayment to the City.

SECTION 5. Records Inspection. No more frequently than once every two years, the City shall have the right to audit records to ensure compliance with this Franchise. The City shall give reasonable written notice of its intent to audit. It is InTTec, Inc.'s responsibility to collect and to make available to the City for copying, at InTTec, Inc.'s local office, all records upon which a franchise fee is required to be paid. If a City review of payments shows that InTTec, Inc. has underpaid the franchise fee by: (i) three percent (3%) or less for the year, the City shall bear the cost of the audit; (ii) more than three percent (3%) but less than or equal to five percent (5%) for the year, the City and InTTec, Inc. shall each bear an equal amount of the cost of the audit; or (iii) more than five percent (5%) for the year, InTTec, Inc. shall bear the cost of the audit.

SECTION 6. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's use, however, shall not unreasonably interfere with InTTec, Inc.'s Facilities or the rights granted to InTTec, Inc. herein.

SECTION 7. City Regulatory Authority. In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties, and exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Wyoming, the laws of the State of Wyoming or City ordinance.

SECTION 8. Indemnification.

A. General Indemnification. InTTec, Inc. shall indemnify, defend and hold harmless, the City, its officers, elected and appointed officials, employees, agents and volunteers, from any action or claim for injury, death, damage, loss, liability, cost or expense, including court appeal costs and reasonable attorney's fees or reasonable expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, or any other act done under this Franchise, by or for InTTec, Inc., its agents, or its employees, or by reason of any neglect or omission of InTTec, Inc.. InTTec, Inc. shall consult and cooperate with the City while conducting its defense of the City.

B. Indemnification for Relocation. InTTec, Inc. shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, InTTec, Inc.'s failure to remove, adjust or relocate any of its facilities in the Public Ways in a timely manner in accordance with Section 12 of this Franchise.

C. Hazardous Substances Indemnification. InTTec, Inc. shall indemnify the City against any claims, costs and expenses of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) caused by the System.

SECTION 9. Insurance Requirements.

A. Prior to the commencement of any work, InTTec, Inc. shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, death or damages to property which may arise from or in connection with the performance of the work hereunder by InTTec, Inc., its subcontractors, agents, representatives, or employees.

B. Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): On an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence.

2. Automobile Liability: Covering, Code 1 (any auto), or if InTTec, Inc. has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than Five Hundred Thousand Dollars (\$500,000) per accident for bodily injury and property damage.

3. Workers’ Compensation: as required by the State of Wyoming with Statutory Limits. The Workers’ Compensation policy shall be endorsed to contain Employers Liability/Stop Gap Coverage.

4. Professional Liability (Errors and Omissions) Insurance appropriate to the InTTec, Inc.’s profession, with limit no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence.

C. Higher Limits. If InTTec, Inc. maintains higher limits than required under this Agreement, then the City shall be entitled to coverage for the higher limits maintained by InTTec, Inc.. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. *Additional Insured Status*

The City, its officers, elected and appointed officials, employees, agents and volunteers are to be included as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of InTTec, Inc. including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to InTTec, Inc.’s insurance.

2. *Primary Coverage*

For any claims related to this contract, InTTec, Inc.'s insurance coverage shall be primary insurance as respects the City, its officers, elected and appointed officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected and appointed officials, employees, agents or volunteers shall be in excess of InTTec, Inc.'s insurance and shall not contribute with it.

3. *Waiver of Subrogation*

InTTec, Inc. hereby grants to the City a waiver of any right to subrogation which Commercial General and Auto Liability of InTTec, Inc. may acquire against the City by virtue of the payment of any loss under such insurance, for losses caused by and to the extent of InTTec, Inc.'s negligence. InTTec, Inc. agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

4. *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise agreed to in writing by the City.

5. *Claims Made Policies.* If any of the required policies provide coverage on a claims made basis:

a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.* However, InTTec, Inc.'s liabilities under this Contract shall not be deemed limited in any way by the insurance coverage required.

c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, InTTec, Inc. must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of contract work and at all times thereafter until the applicable statute of limitations runs.

6. *Verification of Coverage*

InTTec, Inc. shall furnish the City with a Memorandum of Insurance coverage required by this clause. However, failure to obtain the required documents prior to the work beginning shall not waive InTTec, Inc.'s obligation to provide them.

7. *Subcontractors*

InTTec, Inc. shall require and verify that all subcontractors maintain insurance appropriate for the work being performed and InTTec, Inc. shall ensure that the City is an additional insured on insurance required from subcontractors.

8. *Special Risks or Circumstances*

The City reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SECTION 10. Annexation.

A. Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All System Facilities owned, maintained, or operated by InTTec, Inc. located within any Public Ways of the annexed territory shall thereafter be subject to all of the terms hereof.

B. Notice of Annexation. When any territory is approved for annexation to the City, the City's Community Development Director or his/her designee shall within ten (10) business days provide by certified mail to InTTec, Inc.: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to the contact in Section 19, or such other updated address as InTTec, Inc. shall provide to the City in writing by certified mail, return receipt requested. Notwithstanding the foregoing, failure of the City to provide the notice described herein shall not constitute a material breach of this Franchise.

SECTION 11. Plan, Design, Construction and Installation of InTTec, Inc.'s Facilities.

A. All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law, codes and regulations.

B. InTTec, Inc. shall, prior to commencing construction work in Public Ways or other public places, apply for a permit from the City. InTTec, Inc. will abide by all applicable ordinances, rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. InTTec, Inc. shall obtain excavation permits for streets and alleys, regardless of surfacing types, and traffic control permits for all streets, and shall not unnecessarily obstruct the use of Public Ways. All mains, services, and pipes laid or installed under this Franchise shall be so located and placed as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed, and all such mains, services and pipes shall be installed subject to approval of the City Manager or his/her designee. Notwithstanding the foregoing, InTTec, Inc. shall not be obligated to obtain a permit to perform emergency repairs.

C. To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City, as they may be amended from time to time.

D. InTTec, Inc., in doing any work in connection with its Facilities, shall avoid, so far as practicable, interfering with the use of any Public Way or public place, and where the paving or surface of any street, alley or public place is disturbed, InTTec, Inc., at its own expense and in a

manner satisfactory to the City Manager or his/her designee, shall replace such paving or surface in accordance with the City of Casper's Standard Specifications for Street Construction in the Casper Municipal Code, and any other applicable rules, ordinances and regulations, as they may be amended from time to time.

E. Paved streets shall be bored or drilled when crossed under the ground by InTTec, Inc.'s Facilities so that the City's paved Public Ways will not be unnecessarily damaged. The City Manager or his/her designee, in his/her sole discretion, may allow other construction methods when it is found that drilling or boring is unreasonable and will not provide a sufficient public benefit for the cost.

F. If, during the course of work on its Facilities, InTTec, Inc. causes damage to or alters the Public Way or other public property, InTTec, Inc. shall replace and restore such Public Way or public property at InTTec, Inc.'s expense to a condition equal to or better than the condition that existed immediately prior to such damage or alteration.

G. InTTec, Inc. shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. All excavation shall be performed in a manner that creates the least inconvenience to the public, and in accordance with permits and manuals issued by the City. In doing any work in connection with said mains, pipes and services, InTTec, Inc. shall avoid, so far as practicable, interfering with the use of any street, alley or public place.

H. **Strand Maps**. Upon reasonable request, InTTec, Inc. agrees to provide strand maps or similar records kept in its usual course of business to an unaffiliated person engaged by City if such person signs a reasonable nondisclosure agreement.

I. Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect InTTec, Inc.'s Facilities, the City shall give written notice to InTTec, Inc., and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of InTTec, Inc.'s Facilities.

J. InTTec, Inc. shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

K. This Agreement does not establish priority for use of Public Ways over holders of other permits or franchises; it grants no vested interest in occupying any particular position in the Public Ways. The City shall control distribution of space in the Public Ways, but may not exercise that authority unreasonably. No location of any of the Facilities shall give rise to a vested interest in public property.

SECTION 12. Relocation of Facilities and Discontinuing Use/Abandonment.

A. Relocation for the City.

1. InTTec, Inc. shall protect, support, adjust, raise, lower, temporarily disconnect, relocate, or remove any InTTec, Inc. Facilities, property or equipment located in a Public Way

when required by the City consistent with its police powers or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Public Way vacation, Public Way construction, change or establishment of Public Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes, but excluding projects undertaken for beautification or aesthetics). Such work shall be performed at InTTec, Inc.'s expense. Except during an emergency, the City shall provide reasonable notice to InTTec, Inc. of its need to relocate that is commensurate with the complexity of the project, but in all events never less than sixty (60) days, and allow InTTec, Inc. an opportunity to perform such action. Following notice by the City, InTTec, Inc. shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Public Way, or on any other property of the City. If the City requires InTTec, Inc. to relocate its facilities located within the Public Way, the City shall provide InTTec, Inc. with an alternative location within the Public Way.

2. Excluding circumstances or events outside of its reasonable control, if InTTec, Inc. fails to complete this work within the time prescribed to the City's satisfaction, the City may cause such work to be done at InTTec, Inc.'s cost; and provided further that the City shall not be liable for any damage to any portion of the System except to the extent caused by the negligence of the City or its contractor. Within thirty (30) days of receipt of an itemized list of those costs, InTTec, Inc. shall pay the City.

B. Relocation for a Third Party. InTTec, Inc. shall, at the request of any person or entity holding a lawful permit issued by the City, protect, support, adjust, raise, lower, temporarily disconnect, relocate or remove any InTTec, Inc. Facilities, property or equipment located in the Public Ways, provided that the cost of such action is borne by the person requesting it and InTTec, Inc. is given advance written notice of not less than 60 days. In such situation, InTTec, Inc. may also require advance payment by the benefited person or entity.

C. Temporary Changes for Other Permittees. At the request of any person or entity holding a valid permit upon reasonable advance notice, InTTec, Inc. shall temporarily raise, lower or remove its Facilities, property or equipment as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and InTTec, Inc. may require a reasonable deposit of the estimated payment in advance.

D. Alternatives to Relocation. InTTec, Inc. may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise InTTec, Inc. in writing if one or more of the alternatives are suitable. If requested by the City, InTTec, Inc. shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by InTTec, Inc. full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, InTTec, Inc. shall relocate the components of the System as otherwise provided herein.

E. Discontinuing Use/Abandonment of System Facilities. Whenever InTTec, Inc. intends to discontinue using any facility in the Public Ways, InTTec, Inc. shall submit for the City's

approval a complete description of the facility and the date on which InTTec, Inc. intends to discontinue using the facility. InTTec, Inc. may remove the facility or request that the City permit it to remain in place and to convey same to City through a letter of abandonment or bill of sale. The City may require InTTec, Inc. to perform a combination of abandonment, modification or removal of the facility upon a reasonable schedule set by the City. Until such time as InTTec, Inc. abandons, removes or modifies the facilities, as directed by the City, InTTec, Inc. shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Way, in the same manner and degree as if the facility were in active use, and InTTec, Inc. shall retain all liability for such facility during such time. If InTTec, Inc. abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, access purposes.

SECTION 13. Vegetation Management. InTTec, Inc. shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on InTTec, Inc.; instead, this grant gives permission to InTTec, Inc. should InTTec, Inc. elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

SECTION 14. Omitted.

SECTION 15. Franchise Noncompliance; Claims Under Agreement.

A. In the event that the City believes that InTTec, Inc. has not complied with the terms of the Franchise, the City's Public Services Director or his/her designee shall informally discuss the matter with InTTec, Inc. If these discussions do not lead to resolution of the problem, the City shall notify InTTec, Inc. in writing of the exact nature of the alleged noncompliance.

B. InTTec, Inc. shall have thirty (30) days from receipt of the written notice described in subsection 15. A. to either respond to the City, contesting the assertion of noncompliance and requesting a public hearing of same, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed. A public hearing shall be held within sixty (60) days of the request.

C. The City and InTTec, Inc. agree that, except to the extent inconsistent with applicable law, any and all claims asserted and arising under this Agreement, including from the determination of a public hearing held pursuant to subsection 15.B. above, shall be heard and determined either in a state or federal court located in the City.

SECTION 16. No Waiver of Rights. Neither the City nor InTTec, Inc. shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 17. Transfer of Franchise. InTTec, Inc.'s right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with InTTec, Inc., or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of InTTec, Inc. in the Franchise or Facilities in order to secure indebtedness.

SECTION 18. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and InTTec, Inc. and formally adopted by the City Council as an ordinance amendment.

SECTION 19. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) business days after such notice is deposited in the United States Mail, postage prepaid, certified, return-receipt requested, and addressed to the Parties as set forth below:

The City of Casper, Wyoming
Attn: City Attorney's Office
200 N. David Street
Casper, WY 82601

InTTec, Inc.:
Attn: Contracts Management
1001 S Douglas Hwy, #201
Gillette, WY 82716

SECTION 20. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 21. Governmental Claims Act. The City does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, W.S. § 1-39-101, et seq., and the City specifically reserves the right to assert any and all rights, immunities, and defenses it may have pursuant to the Wyoming Governmental Claims Act.

PASSED on 1st reading the ____ day of _____, 2020.

PASSED on 2nd reading the ____ day of _____, 2020.

PASSED, APPROVED AND ADOPTED on the 3rd and final reading the ____ day of _____, 2020.

APPROVED AS TO FORM

ATTEST

CITY OF CASPER, WYOMING
A Municipal Corporation

Fleur D. Tremel
City Clerk

Charles Powell
Mayor

ACCEPTED BY INTTEC, INC.:

BY: _____

NAME: Brian R Worthen

TITLE: President

DATE: _____

DRAFT

APPENDIX A

LISTING OF SERVICE CATEGORIES INCLUDED IN "GROSS REVENUE" FOR
CALCULATION OF FRANCHISE FEES

Business Local Access—including Flat Rate, Multiparty, and Extended Area Service

Business Measured Usage Local Access Service

Flat Usage Local Access Trunks

Low Income Telephone Assistance Program Local Access

Measured Rate Local Access Trunk Usage

Message Rate Local Access Trunk Usage

Public Access Line (PAL) Service

Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service

Residential Measured Usage

THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF REVENUE NOT REPRESENTING THE RETAIL SALE OF LOCAL ACCESS SERVICES AND THEREFORE EXCLUDED FROM THE DEFINITION OF "GROSS REVENUES" AND, THEREFORE, ARE NOT INCLUDED IN THE CALCULATION OF ANY FEE DUE TO THE CITY:

Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks

Bad debt write-offs and customer credits

Revenue from directory advertising

Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including, but not limited to, support for the hearing impaired

Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments

Revenues from internet access

Revenues from digital or other electronic content, such as computer software, music and video downloads

Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service

DRAFT

December 4, 2019

MEMO TO: J. Carter Napier, City Manager *JCN*
FROM: Tom Pitlick, Financial Services Director *TP*
SUBJECT: Fiscal Year 2021 Budget Calendar

Meeting Type & Date:
Council Pre-Meeting
December 17, 2019

Action Type:
Information Only

Recommendation:
That Council acknowledge the proposed calendar in regard to the preparation of the fiscal year 2020-2021 annual budget.

Summary:
Wyoming Statute 16-4-109 stipulates that a public hearing for consideration and adoption of the annual City budget must be held no later than the third Tuesday in June. Prior to presenting the budget document for adoption, numerous steps must take place to ensure the document has been prepared with proper input from staff and Council. The attached "FY 2021 Budget Calendar" has been developed to set timelines for completion of the various required processes. Items highlighted in red represent topics which will require scheduling of Council time while those in black are for staff reference.

Financial Considerations:
None

Oversight/Project Responsibility:
Tom Pitlick, Financial Services Director

Attachments:
FY 2021 Budget Calendar



FY 2021 BUDGET CALENDAR

Budgetary Preparation

Dec. 9th & Dec. 10th	Capital Budget Class, Instructions to departments, other classes TBD
Dec. 9th	Capital Improvement Plan (CIP) process begins, includes capital projects and capital equipment for next five years.
Dec. 10th	Council Work Session Topic - Utility Rate Model Review
Jan. 2nd to Jan. 31st	City Manager/Dept. Head discussions on requested staffing level changes
Jan 14th	Comp Study Kick Off
Jan 24th	CIP requests due to Finance
Jan. 28th	Council Work Session Topic - Council Goals Status Update
Jan. 29th to Feb. 21st	Department budgets entered into system
Feb. 3 to Feb 14th	Capital Review (Finance, City Manager, Dept Heads, and Managers)
Feb (TBD)	Fire Dept. Union Negotiations Begin
March 10th	Council Work Session - Capital Budget Review Council Work Session - Community Promotion Funding
March 24th	Council Work Session Topic - Community Promotion Funding
Mar. 23rd to Apr. 10th	Budget review (City Manager, Dept. Heads, Div. Supervisors & Finance)
April 14	Comp and Class Study Review
May 12th	Tentative budget to Council (to be published in Minutes)
May 18th & 20th	Council Budget Review Work Sessions (Monday & Wed.)
June 4th	Summary of Proposed Budget Submitted To Council (published in minutes) Set Public Hearing Date of June 16, 2020 For City Budget
June 16th	Public Hearing on FY 20 Budget Adoption/Action on Resolution/Publication

December 11, 2019

MEMO TO: Casper City Council
J. Carter Napier, City Manager

FROM: John Henley, City Attorney 
Andrew Beamer, Public Services Director 

SUBJECT: LAD Overview/Intersection of Arrowhead Road and Jade Avenue

Meeting Type & Date:
Council Pre-Meeting
December 17, 2019

Action Type
Information/Direction Requested

Recommendation
That Council authorize and direct that staff create a Local Assessment District (LAD) to improve a street, make road improvements at the intersection of Arrowhead Road and Jade Avenue.

Summary
A property owner at the intersection of Arrowhead Road and Jade Avenue has requested that the City create a Local Assessment District (LAD) to, in essence, make a street improvement by making road improvements that were to have been made decades ago. The area was originally platted in the 1970's, with the requirement that the developer construct all street improvements. For the most part, these improvements were constructed, with the exception of the intersection of Arrowhead Road and Jade Avenue, which remains gravel.

As the developer of the subdivision is no longer viable, the burden to make the improvements now lies with the adjacent property owners. The City of Casper Engineering Division has estimated the cost for a contractor to make these improvements to be close to \$250,000. This cost includes an engineering consultant to design and provide construction administration services, as well as the cost for a contractor to construct the improvements. The property owner is requesting that the City provide in-house engineering and construction services, and that the property owners only be liable for actual out-of-pocket expenses. The property owner is also requesting that the LAD be established so that the assessments are spread out over ten (10) equal annual installments at the interest rate of three (3) percent. If Council agrees to this proposal, the Engineering Division has estimated the out-of-pocket expenses to be approximately \$80,000.

Wyoming Statutes (W.S.) govern the process for a city to follow to create a local improvement.¹ A city has the authority to provide for the making and maintenance of local improvements and to

¹ See W.S. §§ 15-6-101 through 15-6-609.

levy and collect special assessments on the property specially benefited to pay all or part of the cost of the improvement.²

Casper Municipal Code (Code) section 16.16.010(B) refers to the local improvement process as “Local Assessment Districts (LADs).”

General Powers and Duties Overview:

The Casper City Council (Council) may order any improvement, and determine its character, kind and extent. If the improvement is paving, it shall designate the kinds of pavement to be used. It shall provide for the maintenance of an improvement for a specified period not to exceed five (5) years and include the cost of that maintenance in the assessment for making the improvements. It shall levy and collect an assessment upon all lots, parts of lots and parcels of land specially benefited by the improvement to defray all or any part of the cost and expense and determine what lots, parts of lots and parcels of land are specially benefited by the improvements and the amount each is benefited.³

Process:

Resolution of Intention to Create an LAD – W.S. §§ 15-6-201 through 15-6-202. Any improvement may be initiated directly by Council by resolution declaring its intention to make improvements.

Notice by Publication and Mailing – W.S. § 15-6-202(d) and (e). Fifteen (15) days prior to the public hearing, the resolution must be published at least once in the newspaper.

In addition to the publication, a copy of the resolution of intention shall be mailed, postage prepaid, at least fifteen (15) days prior to the hearing, to **each** legal owner of record of the property within the proposed district.

Objections and Authority to Act – W.S. §§ 15-6-203 & 204.

- Owners have fifteen (15) days from the publication to file with the city clerk their written objections to the proposed improvement.
- If protests are filed by the legal owners of record of more than one-half (1/2) of the area of the property subject to assessment, the proposed improvements within that district will usually be abandoned. However, W.S. §15-6-205 provides for an exception, if the improvement proposed is to a street and not more than two (2) blocks remain unimproved in the street between improvements already made or proposed to be made; in such event, “the governing body on its own motion may cause the intervening or unimproved part to be improved. The improvement of that part shall not be stayed, defeated or prevented by any remonstrance or other objection, unless the governing body considers the remonstrance or objection proper to stay or prevent the improvement.”

² See W.S. 15-6-102(a).

³ See W.S. § 15-6-103.

Public Hearing & Ordinance Ordering Improvement – W.S. § 15-6-206. Upon the hearing of the resolution of intention, if Council decides to proceed with the improvement, it shall pass an ordinance. After Council passes the ordinance, the city engineer shall prepare and file with the city clerk, plans and specifications which shall show in detail the work to be done, the quantities of material to be handled and the estimated cost of the improvements. Council shall approve the plans and specifications by motion or resolution.

The improvements may be made under contract, or as a part of a contract, publicly let by the city in the manner provided in this section and W.S. § 15-6-302 (*Bidding Requirements*), or the city may make the improvements with its own equipment, labor and materials, without contract, or any combination of methods may be followed.

Financial Considerations

Because the City would be providing the labor and heavy equipment and the potential cost to the City is estimated to approximately \$95,000 (between \$90,000 to \$100,000) in wages and depreciation, the owners would contribute approximately \$20,000 each, thus the cost of the project, without profit, is estimated at approximately \$175,000 (\$80,000 plus \$95,000).

Attachments

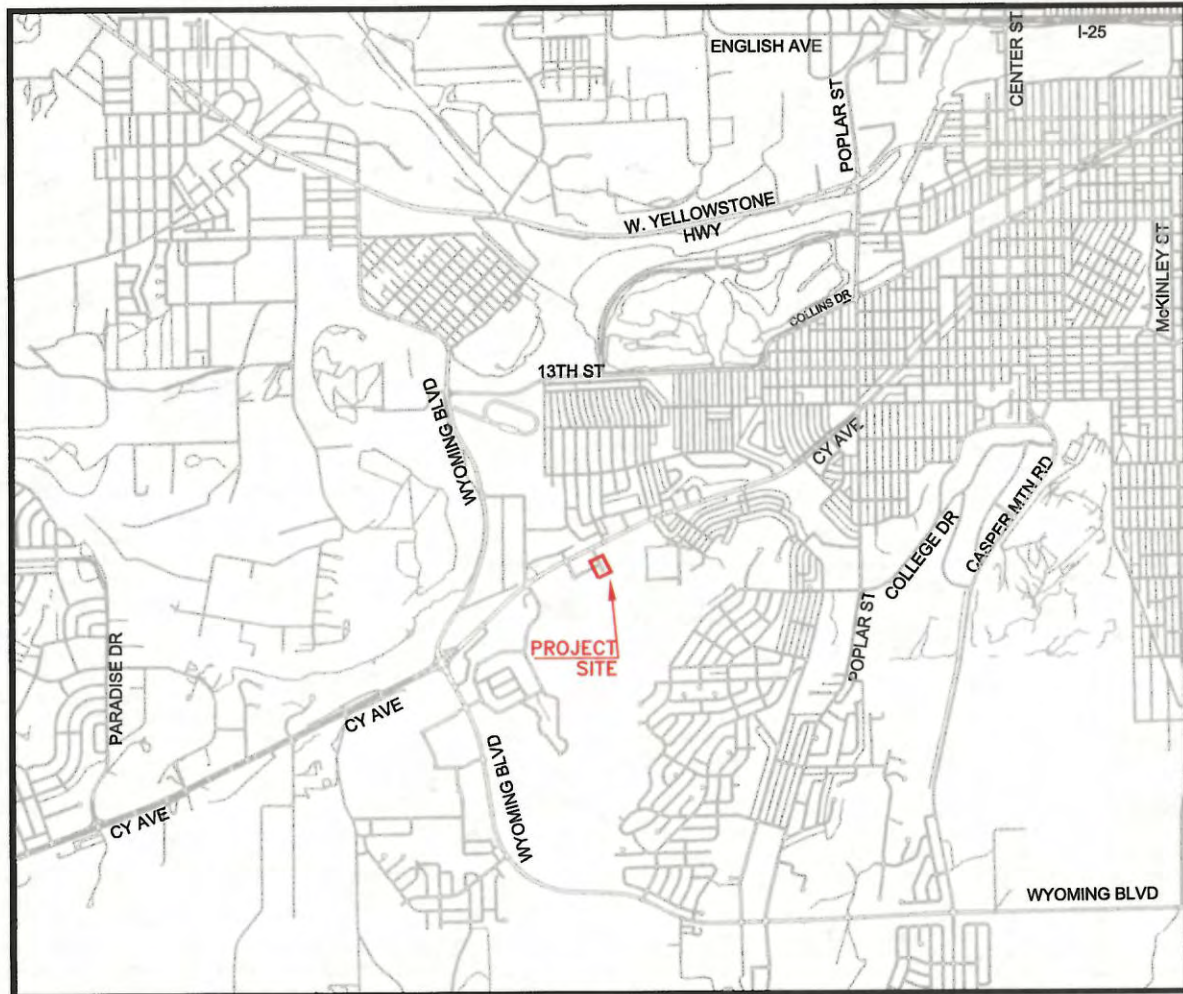
Arrowhead Road LAD – Preliminary Site Plan

Oversight/Project Responsibility

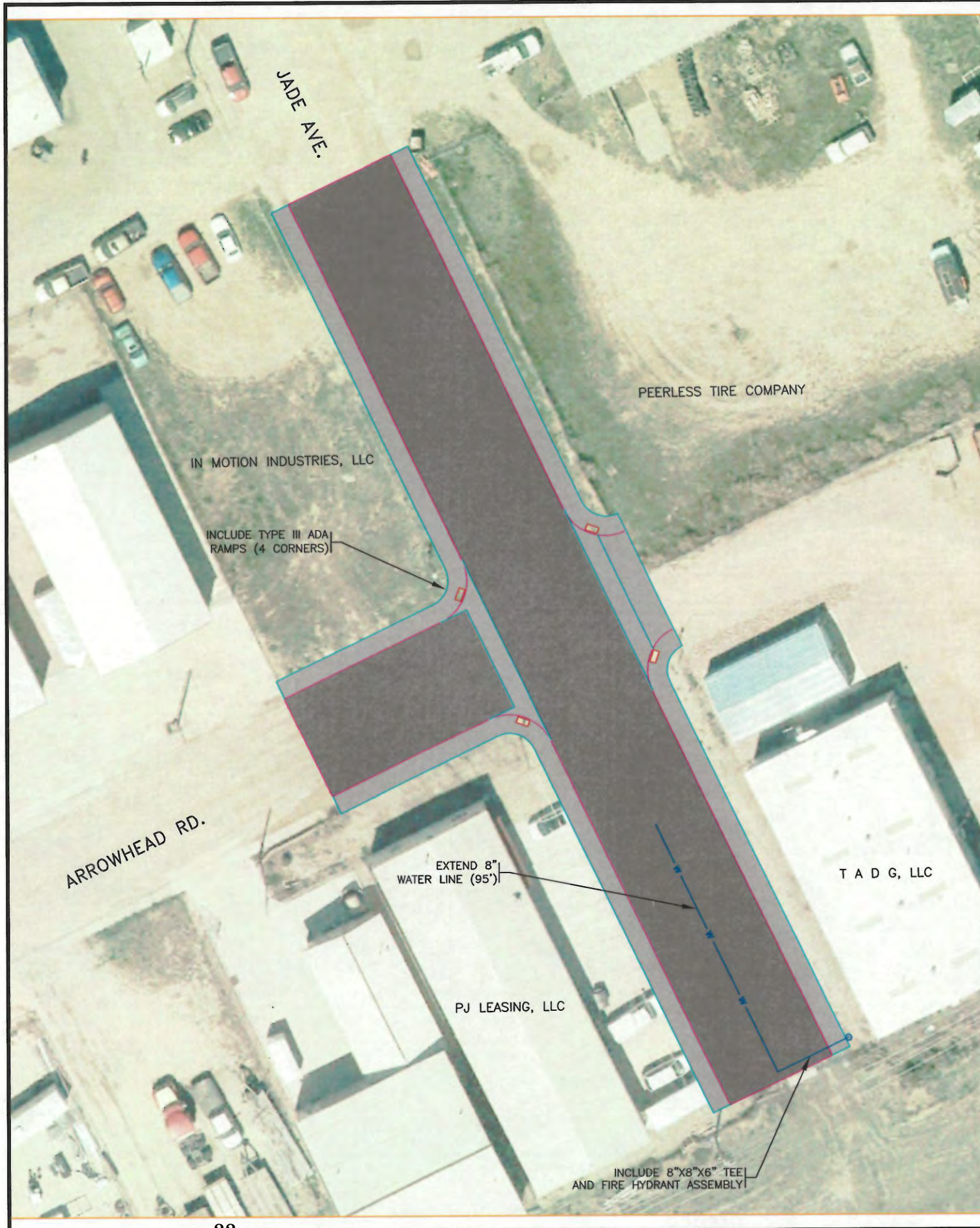
John Henley, City Attorney

Andrew Beamer, Public Services Director

Craig Collins, City Planner



VICINITY MAP - WEST CASPER
SCALE: 1" = 4000'



Sheet Title
**PRELIMINARY SITE PLAN
ARROWHEAD RD. LAD
ARROWHEAD & JADE**

THIS DRAWING IS
SET UP FOR
PRINTING &
SCALING ON
11"x17" PAPER
SIZE ONLY.

No.	Revision/Issue	Date
AB	As-Built Drawings	9/10/18

**CITY OF CASPER
ENGINEERING**
200 N. DAVID
CASPER, WY
82601

**2019
ARROWHEAD
ROAD
LAD**

CASPER, WY
PROJECT NO.
19-XXX

Date	10/31/19	Sheet	SP
Drawn	SRB		
Scale	1" = 40'		

December 11, 2019

MEMO TO: J. Carter Napier, City Manager *JCN*
FROM: Tracey Belser, Support Services Director *TB*
SUBJECT: Increasing Disability Leave Cap

Recommendation:

That consideration be given to increase the cap on disability leave from 200 hours to 500 hours. This recommendation does not include those covered by the Local 904 Collective Bargaining Agreement since there is no cap on disability leave under that Agreement.



Summary:

The City of Casper disability leave benefit is for full time employees and accrues at the rate of one (1) working day for each month of service per the City of Casper Rules and Regulations. Disability leave is currently capped at 200 hours, which means accrual stops once the benefit time bank for an employee reaches 200 hours. The City's disability leave benefit is defined only to be used for the following circumstances:

- Illness or injury.
- Medical and dental appointments and appointments under the Employee Family Assistance Program.
- Illness or injury in the employee's immediate family necessitating the employee's attendance, not to exceed forty (40) hours annually, unless the illness qualifies under the Family Medical Leave Act (FMLA).
- In addition to Bereavement Leave of Absence for a death in the employee's immediate family, not to exceed forty (40) hours annually.

Under Family Medical Leave, eligible employees can take up to twelve weeks of leave, either paid or unpaid, annually which equates to 480 hours. The City's Rules and Regulations states that any combination of paid and unpaid leave shall not exceed a maximum absence of twelve (12) weeks. Allowing a cap of disability leave to accrue to 500 hours would provide employees who have utilized twelve weeks of absence, the peace of mind that when they return to work that they could have some disability time remaining both in the form of hours being accrued while absent as well as what would remain in the bank. This change would also preserve the employee's vacation balances in that they would not need to use those hours to offset what their disability balance would otherwise not provide for.

December 12, 2019

MEMO TO: J. Carter Napier, City Manager 
FROM: Fleur Tremel, Assistant to the City Manager 
SUBJECT: Employee One-Time Payment

Meeting Type & Date:
Council Pre-Meeting
December 17, 2019

Action type:
Direction Requested.

Recommendation:
That Council provide direction to Staff whether full-time employees should be given a one-time payment.

Summary:
The City recently decided to join the State of Wyoming's Health Plan. Because of the State's requirements the premiums were taken from City employees starting December 12, 2019. However, coverage will not begin until January of 2020. So for the month of December, employees will have to pay both the City premium as well as the state premium.

Because of this "double" premium, and in light of the sales tax revenues that have been received over budget, Staff would like to propose a one-time payment for each full-time employee for \$250.00, net (after taxes). This would help offset the cost as well as serve to thank our employees for their hard work throughout the year.

Financial Considerations
The total cost to give full-time employees \$250.00 would be \$186,000. This would be \$153,000 cost to the general fund and \$33,000 to other funds.

Oversight/Project Responsibility
Tom Pitlick
Tracey Belser

Attachments
None