

**CITY OF LOGAN, UTAH
RESOLUTION NO. 21-38**

**A RESOLUTION APPROVING A LEASE AGREEMENT WITH USU TO LOCATE A
LOGAN CITY SUBSTATION ON USU PROPERTY**

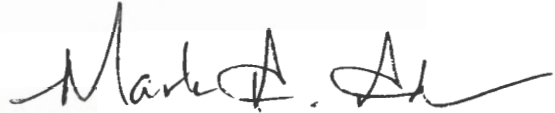
WHEREAS, Logan City Light & Power has the need for a power distribution substation in the North East quadrant of the municipal power service territory; and

WHEREAS, Logan City Light & Power has come to a lease agreement with property owned by Utah State University located at the description in the lease agreement attached here as Addendum 1,

NOW THEREFORE, BE IT RESOLVED BY THE LOGAN MUNICIPAL COUNCIL, that Logan City Light & Power is authorized to enter into a long-term property lease under the terms of the agreement attached in Addendum 1.


THIS RESOLUTION duly adopted this 20th day of July, 2021, by the following vote:

Ayes: A. Anderson, M. Anderson, Jensen, Simmonds
Nays: None
Absent: Topen



Mark A. Anderson, Chair

ATTEST:


Teresa Harris, City Recorder

GROUND LEASE

Logan Light & Power Substation
1300 North 1200 East, Logan UT

THIS GROUND LEASE AGREEMENT ("Agreement") is made and entered into as of August 1, 2021 ("Effective Date"), by and between City of Logan ("City"), a municipal corporation of the State of Utah having an address at 290 N 100 W, Logan UT 84321 and Utah State University ("USU"), an institute of higher education in the State of Utah, having an address of 1445 Old Main Hill, Logan UT 84322. USU and City may be referred to hereafter individually as "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, City desires to obtain a ground lease from USU to land in proximity to developments along 1200 East; and to construct a substation ("Substation") thereon for underground transmission and distribution of electricity to address increasing demand in the surrounding areas;

WHEREAS, USU desires to lease certain premises to City for the construction of the Substation as set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements herein contained, said Parties covenant, promise, and agree with each other as follows:

1. **THE LEASED PREMISES.** USU hereby leases to City, and City hereby leases from USU, subject to the terms and conditions stated and referred to herein (including exhibits hereto, hereinafter referred to as "Exhibits"), all of that certain tract of land located in Cache County, Utah, depicted in Exhibit "A," attached hereto, together with and subject to easements appertaining thereto, all as described or more particularly referred to in Exhibit "A-1," attached hereto. The foregoing, collectively, are hereinafter referred to as the "Leased Premises." City shall have access to the Leased Premises upon the Effective Date for purposes of layout, testing, improvement, and construction of the Substation. Nothing in this Agreement shall be deemed to include as any part of the Leased Premises a fee title interest in the land itself.

2. **TERM.**

2.1 Lease Term. This Agreement shall commence on August 1, 2021, and, unless sooner terminated as provided herein, shall continue for a period of forty (40) years thereafter ("Lease Term").

2.2 Renewal. The Parties reserve the option to mutually renew this Agreement for an additional period of ten (10) years ("Renewal Term") upon the terms, covenants, and conditions set forth in this Agreement; provided that the Annual Base Rent shall be reassessed and adjusted, as needed, in good faith by the Parties in keeping with then-current market rates. The Parties agree to discuss renewal at least six (6) months before the expiration of the Lease Term. Any renewal must be made in writing and executed by both Parties.

2.3 Termination. During the Lease Term, this Agreement shall continue in effect unless and until terminated by the mutual written consent of USU and City or by the expiration of the Lease Term, whichever comes first. USU may unilaterally terminate this Agreement in accordance with the specific terms set forth in this Agreement.

3. **RENT.** City agrees to pay to USU an “Annual Base Rent,” which is due on August 1st of every year during the Lease Term, in advance. The initial Annual Base Rent is seven thousand six hundred and fifty dollars (\$7,650.00). On August 1, 2022, and every year thereafter on August 1, the Annual Base Rent for the upcoming annual period shall be adjusted and increased by 2.125%. All rental payments shall be made by check payable to USU and mailed or hand-delivered to USU at the address set forth in the opening paragraph of this Agreement. Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer and, in such event, USU agrees to provide to Lessee bank routing information for such purpose upon request of Lessee.

4. **TAXES.** The Parties do not anticipate that taxes will be assessed upon the Leased Premises. However, City covenants and agrees to bear, pay, and discharge promptly, as the same become due and before delinquency, any taxes, assessments (whether special or general), fees, or other charges levied, assessed, or imposed on or with respect to the Leased Premises or any buildings or improvements owned by City thereon (inclusive of all real and personal property), including, without limitation, any rollback or similar taxes associated with the discontinuance of any “greenbelt” classification with respect to the Leased Premises, together with any interest or penalties on any of the foregoing under all present or future laws, ordinances, orders, rules, or regulations of the federal, state, county, city governments, or other government or special district authorities (collectively hereinafter sometimes referred to as “Taxes”). During the Lease Term, USU will not be liable or responsible for any Taxes or assessment against the Leased Premises or any improvement thereon, whether it be real, equipment, personal, or mixed.

5. CONSTRUCTION OF SUBSTATION AND OTHER IMPROVEMENTS, ALTERATIONS, AND ADDITIONS.

5.1 **Construction of Substation.** City shall construct the Substation pursuant to the Exhibits set forth herein, which are incorporated by reference in their entirety. . City shall coordinate and review all development plans and specific designs for construction of all buildings and any other improvements on the Leased Premises with USU’s Office of Facilities Planning Design and Construction (“USU PDC”). Prior to beginning each stage of construction of any building or other improvement, City shall obtain written approval from USU PDC. Except as may be specifically provided otherwise herein, the planning, erection, construction, or development of any improvements upon the Leased Premises shall be at the sole cost and expense of the City. City recognizes that USU’s approval of any plans or specific designs relating to the Substation shall be informed by the applicable policies of USU and the Utah System of Higher Education.

5.2 **Future Construction.** Upon prior written approval of USU PDC, including approval of the plans and specifications therefor (which approval shall not be unreasonably withheld), and provided City is in compliance with the terms of this Agreement, City may, during the term of this Agreement, make alterations and additions to existing buildings and improvements or construct additional buildings or improvements on the Leased Premises.

5.3 **Compliance with Codes, Laws, etc.** Any construction, alteration, addition, or other improvement of any kind or nature in or upon the Leased Premises by or at the instance of the City shall be accomplished in a good and workmanlike manner and shall fully comply with all applicable rules, regulations, ordinances, laws, orders, and other requirements of all governmental authorities having jurisdiction over the same. City shall obtain any and all necessary permits for the accomplishment of any construction, alteration, addition, or other improvement in or upon the Leased Premises at City’s sole cost and expense. City shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands that may, in any manner, arise from or be imposed as a result of City’s failure or breach of its requirements of compliance set forth in this paragraph. Notwithstanding, City shall have the right, at any time and at its sole cost and expense, to contest in good faith, by appropriate legal or administrative

proceedings, the validity or application of any law, ordinance, order, rule, regulation, requirement, or other government imposition and, if permitted by law, City shall not be required to comply therewith until final determination of such proceedings. In the event of any such contest, City shall give prior written notice thereof to USU of City's intention to contest the validity or application of any such law, ordinance, order, rule, regulation, requirement, or other governmental imposition; and, in the event of any such contest, USU shall reasonably cooperate with City in making necessary appearances and other such matters; provided, however, that USU shall not be required to incur, pay, or be liable for any costs or expenses in connection with, relating to, or arising from any such contest or proceeding. Any such construction, alteration, addition, or other improvement made by or at the insistence of City shall be at City's sole cost and expense and shall impose no obligation upon USU.

5.4 City's Obligation for Utilities. City shall, at its sole cost and expense, extend or cause to be extended all utilities from the boundaries of the Leased Premises onto and over the Leased Premises for City's use and shall be responsible for, and shall pay, all utility connection and service fees relating to such utilities.

5.5 Ownership of Building and Other Improvements, and Right of Reversion. So long as this Agreement remains in force, any building, structure, or other improvement located on and/or constructed by City on the Leased Premises shall be owned by City or its assignee (City or its assignee to stand seized of the title for the purposes herein set forth) subject to the future interest of USU. All right, title, and interest in and to all buildings, structures, and improvements constructed by City upon the Leased Premises shall transfer to, and become the sole property of, USU immediately upon the termination of this Agreement, for any reason, whether by lapse of time or otherwise. Within sixty (60) days of termination, City or its assignee shall execute and deliver to USU such instruments of conveyance or other documents as may be necessary or desirable to effect, evidence, or confirm said ownership by USU.

5.6. Removal of Buildings and Other Improvements Upon Termination. Notwithstanding any of the foregoing, within one hundred and eighty (180) days of the expiration or earlier termination of this Agreement, City shall remove, at its sole cost and expense, any or all buildings, structures, or other improvements that USU may require and, in doing so, shall repair any damage caused as a result of the installation or removal of the same returning the Leased Premises to the status quo ante at the start of the Agreement. Should City refuse or neglect to remove all or a part of said buildings, structures, or other improvements that USU has asked it to remove in accordance with the foregoing, USU shall have the right, upon ten (10) days' prior notice, to carry out all the necessary work on its own to remove the same. In such case, City shall reimburse USU immediately, upon request, for all expenses thus incurred by USU plus administrative fees equal to fifteen (15) percent of the cost of such work.

6. REPAIR, OPERATION AND MAINTENANCE.

6.1 Repair, Operation, and Maintenance. The repair, operation, and maintenance of the Leased Premises and the Substation (including landscaping of the grounds associated therewith) after construction is completed shall be the exclusive responsibility of the City.

6.2 Compliance with Governmental Regulations. City shall comply with all federal, state, county, municipal, and other governmental statutes, ordinances, laws, orders, regulations, or requirements affecting the Leased Premises, the improvements thereon, or any activity or condition on or in the Leased Premises.

6.3 Waste and Environmental Laws and Regulations. City agrees that it shall not commit or permit waste upon the Leased Premises, including improvements thereon or thereto, other than to the extent

necessary for the removal of any buildings or improvements upon the Leased Premises for the purpose of constructing and erecting other buildings and improvements thereon. Additionally, City shall at all times take reasonable care to prevent unnecessary damage or injury to the Leased Premises or any improvement thereon. City shall strictly adhere to the applicable regulations for use and disposal of chemicals, metals, and any other materials. Within ninety (90) days of the expiration or termination of this Agreement, City shall, to USU's satisfaction, remove all hazardous and nonhazardous waste materials placed, located, or released upon the Leased Premises during the Lease Term. City shall keep the Leased Premises orderly and shall not use it for storage.

7. UTILITY EASEMENTS, IMPROVEMENTS AND CROSS EASEMENT.

7.1 Utility Access/Easement. USU expressly reserves the right for itself and/or any public utility to enter upon the Leased Premises for the purposes of installing, using, maintaining, renewing, and replacing such underground water, oil, gas, steam, sewer, and other pipelines and telephone, electric, power, and other lines and conduits as USU and/or any public utility may deem desirable in connection with the development or use of any other property owned, leased, or controlled by USU; provided that such entry and work shall not interfere unreasonably with City's use and development of the land and any building, structure, or improvements thereon. In the event that this right is exercised, the public utility shall restore the land and its improvements, including landscaping, to its original condition.

7.2 Grant of Easement by Lessee. City hereby grants a non-exclusive easement to USU and all occupants and tenants of any of USU's adjacent properties and their guests to access and use roadways, sidewalks, and parking areas; provided that such access and use does not conflict with a scheduled event or activity of the City. City agrees to execute documentation reasonably necessary to effectuate the same.

7.3 Grant of Easement by USU. USU hereby grants a non-exclusive easement to City and its tenants and guests to access and use, for vehicular entry and pedestrian purposes only, the portion of the parcel of property as further defined and illustrated in **Exhibit A-1**. It is the intent of the Parties that this grant of easement be further memorialized in a separate, recorded document.

8. MECHANIC'S AND OTHER LIENS.

8.1 Mechanic's Lien Claims. City covenants and agrees to keep all of the Leased Premises and every part thereof, including all buildings and other improvements thereon, free and clear of and from any and all mechanic's, materialmen's, and other liens for any work or labor done, services performed, or any materials, appliances, and tools contributed, used, or furnished to be used in or about the Leased Premises for or in connection with any operations of City, any alterations, improvement, construction, repairs, or additions which City may permit, make, cause to be made, or permit, or any work or construction by, for, or permitted by City on or about the Leased Premises, and shall, at all times, promptly and fully pay and discharge any and all claims upon which any such lien may or could be based. City shall save and hold USU and all of the Leased Premises, including all buildings and improvements thereon, free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto.

8.2 Interest of USU. No mechanic's or materialmen's liens, mortgages, or deeds of trust (other than mortgages on City's interest in the leasehold estate and the buildings and other improvements thereon (or other liens of any character whatsoever created or suffered by City) shall in any way, or to any extent, affect the interest or rights of USU in any buildings or other improvements on the Leased Premises, or attach to or affect its title to, or rights in, the Leased Premises except as may be specifically provided under the terms and conditions of this Agreement.

8.3 Contesting Claims. City shall not be required to pay or discharge any mechanic's or other lien so long as City shall, in good faith, proceed to contest the same by appropriate proceedings; provided, however, that City shall give notice in writing to USU of its intention to contest the validity of any such lien and shall give USU security in the form of a surety bond (or in a form otherwise reasonably acceptable to USU) in an amount equal to 110% of the amount of such contested lien claim, with interest thereon. USU shall reasonably cooperate with City, where necessary, with respect to the contest of any such lien or charge; provided, however, that USU shall not be obligated to incur or pay any cost, expense, or liability, whatsoever, in connection with any of the foregoing. City shall give written notice to USU of City's intention to contest the validity or application of any lien, charge, or order. City shall, and hereby does, indemnify and hold harmless USU from and against any and all costs, liabilities, suits, penalties, claims, demands, costs, and expenses (including reasonable attorney's fees) resulting from any lien, charge, or order against the Leased Premises, any improvement or construction thereon, or any other matter referred to in this paragraph 8.3, including, without limitation, City's contest of the validity or application of any such lien, charge, or order.

9. INDEMNIFICATION. From and after the Lease Term commencement, City shall defend all actions against USU, and shall pay, protect, indemnify and save harmless USU and the Leased Premises from and against any and all liabilities, suits, claims, demands or judgments of any nature to which USU is subject because of its respective estate in the Leased Premises or arising or alleged to arise from or in connection with (a) injury to or death of any person, or damage to or loss of property on or about the Leased Premises, or resulting from City's use, occupancy, lease, sublease of the Leased Premises, or City's buildings, structures, or improvements on the Leased Premises, or the condition thereof; (b) violation of any legal requirement whether with respect to environmental protection or hazardous waste matters or otherwise caused by City, its agents, employees or contractors; (c) violation of the requirements of this Agreement by City; and (d) any act or omission of City or its agents, contractors, licensees, sub-lessee or invitees. The obligations of City under this Section shall not be limited or affected by any other provision of this Agreement.

The parties agree that USU and the City are governmental entities under the Utah Governmental Act, Utah Code Sections 63G-7-101 et seq. ("UGIA"). Nothing in this Agreement, including without limitation any indemnity obligations, shall be construed as a waiver of any rights, immunities, or defenses otherwise applicable under the UGIA, including the provisions of Section 63G-7-604 regarding limitations of judgments. In addition, it is further agreed that the indemnity obligations imposed by this Agreement are limited to the UGIA damage cap amounts found at Utah Code Section 63G-7-604.

10. INSURANCE.

10.1 Fire and Extended Coverage. City shall, at its sole expense, obtain and keep in force during the Lease Term, fire and extended coverage insurance on all buildings and improvements that are hereafter placed or built upon the Leased Premises. USU shall be named as a co-insured with City. The amount of such insurance shall not be less than ninety percent (90%) of the replacement value of said buildings and improvements. The term "Replacement Value" shall be determined at the time the fire and extended coverage insurance is initially taken out, and City shall promptly notify USU in writing of such determination and deliver a copy of said insurance policy, provided that USU or City may at any time, but not more than once every five (5) years, by written notice to the other, require the full insurable value of said buildings and improvements to be redetermined, whereupon such redetermination shall be made promptly and each Party promptly notified in writing of the results thereof.

10.2 Other Insurance. During the Lease Term, the City shall procure and maintain in full force and effect commercial general liability insurance with a single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence insuring against any and all liability of City. Such insurance shall

be written by a company which is rated A- or better by A.M. Best Company (or an equivalent rating by a nationally recognized rating agency) and which is authorized to do business in the state of Utah and shall name as insured parties USU and City as their interests may appear.

10.3 Determination of Limits. In the event that either Party shall at any time deem the limits of any of such insurance then carried to be either excessive or insufficient, the Parties shall endeavor to agree upon the proper and reasonable limits for such insurance then to be carried. If the parties shall be unable to agree thereon, the proper and reasonable limits for such insurance then to be carried shall be determined by an impartial third person selected by the parties and the decision of such impartial third person as to such limits then to be carried shall be binding upon the parties. Such insurance shall be carried with the limits as thus agreed upon or determined until such limits shall again be changed pursuant to the provisions of this paragraph. The expenses of such determination shall be borne equally by USU and City.

10.4 Parties Covered. USU shall be named as an insured as its interest may appear. The fire and extended coverage insurance shall contain a standard mortgage clause naming the leasehold mortgagee. Any loss adjustment shall require the written consent of the USU, City, and leasehold mortgagee. City shall endeavor to have all policies required in this paragraph to provide that the insurer of such policies shall endeavor to give not less than thirty (30) days prior written notice to USU and leasehold mortgagee of any cancellation or alteration of such policies. Upon the issuance of a policy each such policy or a duplicate or certificate thereof shall be delivered to USU for retention by it.

10.5 Blanket Insurance Coverage. Any insurance required to be carried by City hereunder may be provided by blanket insurance covering the Leased Premises and other property owned, Leased or controlled by City, provided such blanket insurance complies with all other insurance requirements hereunder.

11. SUBLEASE, ASSIGNMENT, SUCCESSORS AND ASSIGNS. Neither Party may assign or transfer any rights or duties set forth in this Agreement without the express written authorization of the other Party. City shall not sublease the Leased Premises without the express written authorization of USU. Neither this Agreement or the leasehold estate of City, nor any interest of City hereunder in the Leased Premises or any buildings or improvements thereon, shall be subject to involuntary assignment, transfer, or sale nor to any assignment, transfer or sale by operation of law in any manner whatsoever. Any such attempted assignment, transfer, or sale shall be void and of no effect. Without limiting the generality of the foregoing provisions, City covenants and agrees that in the event any proceedings under the Bankruptcy Act, or any amendment thereto, be commenced by or against City, and, if against City, said proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement, or plan of reorganization, or in the event City be adjudged insolvent or make an assignment for the benefit of its creditors, or if a writ of attachment or execution be levied on the leasehold estate hereby created and be not released or satisfied within forty-five (45) days thereafter, or if a receiver be appointed in any proceeding or action to which City is a party with authority to take possession or control of the Leased Premises or the business conducted thereon by City and such receiver be not discharged within a period of forty-five (45) days after his appointment, any such event or any involuntary assignment prohibited by the provisions of this paragraph 11 shall be deemed to constitute a breach of this Agreement by City. Upon such a breach USU may, at its discretion and with written notice, but not otherwise, terminate this Agreement and all rights of City provided by this Agreement in and to the Leased Premises, including any and all rights of any and all persons claiming under City, and retake possession thereof.

12. **WAIVER.** City covenants and agrees that if USU fails or neglects, for any reason, to take advantage of any of the terms hereof providing for the termination of this Agreement or for the termination or forfeiture of the estate hereby demised, or if USU, having the right to declare this Agreement terminated or the estate hereby demised terminated or forfeited, shall fail so to do, any such failure or neglect of USU shall not be or be deemed or be construed to be a waiver of any cause for the termination of this Agreement or for the termination or forfeiture of the estate hereby demised subsequently arising, or as a waiver of any of the covenants, terms, or conditions of this Agreement, or of the performance thereof. None of the covenants, terms, or conditions of this Agreement can be waived except by the written consent of USU and City.

13. **INSPECTION OF PREMISES.** USU shall be entitled, at all reasonable times, to go on and into the Leased Premises for the purposes of inspecting the said premises and inspecting the performance by City of the terms and conditions of this Agreement.

14. **USU'S DEFENSE OF ACTIONS.** If City is required to defend any action or proceeding pursuant to any such occurrence to which the USU is made a part, USU shall be entitled to appear, defend, or otherwise take part in the matter involved at its election by counsel of its own choosing, provided such action by USU does not limit or make void any liability of any insurer of USU or City hereunder in respect to the claim or matter in question.

15. **TERMINATION OF LEASE AS TO EXCESS PROPERTY.** In the event, and any time during the Lease Term, City and the leasehold mortgagee shall jointly determine that the portion of the Leased Premises upon which City has not constructed improvements of a substantial nature are not required for use and occupancy by City, City and the leasehold mortgagee shall so notify USU in writing described by meets and bounds the excess property, and USU shall thereupon have the right, but not the obligation, to terminate this Agreement as to said property so described. Rent for the land not so returned shall be reduced in the proportion that the land returned bears to the total area originally leased hereunder.

16. **DESTRUCTION; CONDEMNATION.**

16.1 **Destruction.** In the event that, at any time prior to the expiration of the Lease Term, there shall be a partial or total destruction of the buildings and improvements on the Leased Premises from any cause, the Leased Premises shall be restored to a safe condition forthwith and the City shall either:

(a) Diligently restore and rehabilitate said buildings and improvements, City to be entitled to pay the cost of such restoration and rehabilitation out of the proceeds received from the insurance; or

(b) Within ninety (90) days after such destruction, notify USU of its election to terminate this Agreement and surrender the Leased Premises to USU, in which event City shall: (i) diligently restore the land as nearly as possible to the condition existing prior to the construction of said buildings and improvements; (ii) make, execute, and acknowledge and delivery to USU any documents necessary conveying to USU all right, title, and interest herein granted to City in and to the Leased Premises; and (iii) thereupon redeliver the land to the USU in a neat and clean condition. City shall be entitled to pay the cost of such restoration of the land out of any proceeds received from insurance; the balance of such proceeds shall be paid to USU as follows: two and one-half (2.5) percent shall be paid to USU for each of the years or fractional year which shall have expired after the date of the execution of this Agreement. The remainder of such proceeds shall be paid to City. Notwithstanding any such termination, City shall fully perform any obligation under this

Agreement (except the obligation of restoring and rehabilitating said buildings and improvements and any rental installments) relating to an event occurring or circumstances existing prior to the date of termination of this Agreement, including the payment of assessments or any charges which City is obligated to pay under the terms of this Agreement which may be a lien upon the Leased Premises at the date of termination.

16.2 Condemnation. As used in this paragraph, the following terms shall have the indicated definitions: (i) "Condemnation Proceeding" shall mean any action or proceeding in which the interest in the Leased Premises or in the improvements is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or right of condemnation, or by purchase or otherwise in lieu thereof; (ii) "Reversion" shall mean USU's interest in the Leased Premises and in the improvements thereon, i.e., free ownership of the Leased Premises subject to City's ownership of the improvements thereon and subject to City's leasehold estate in the Leased Premises and USU's expectancy concerning title to the improvements. In the event a question under this paragraph arises during the Lease Term, the remaining term of City's leasehold estate shall, for purposes of this paragraph, be taken to be the balance of said Lease Term; and (iii) "Leasehold Estate" shall mean all interests in the Leased Premises and in the improvements thereon, less the Reversion. If the whole of the Leased Premises and the improvements thereon be taken through Condemnation Proceedings, this Agreement shall automatically terminate as of the date of taking, and the entire award resulting therefrom shall be divided between USU and City as follows: USU shall receive that portion of the award equal to the fair market value of the Reversion; City shall receive any remaining sum. If only a portion of the Leased Premises or the improvements thereon be taken through Condemnation Proceedings, then (i) USU shall receive that portion of the award attributable to the fair market value of the portion of the Reversion affected by the taking; and (ii) the Parties shall enter into good faith discussions regarding this Agreement and any adjustments necessitated by the Condemnation Proceedings.

17. DEFAULT PROVISIONS.

17.1 Events of Default. The following events are hereby defined as "Events of Default":

(a) The failure of City to pay any installment of rent or any other payments or deposits of money as herein provided or required when due, and the continuance of such failure for a period of thirty (30) days after notice thereof in writing;

(b) The failure of City to perform any of the other covenants, conditions, and agreements of this Agreement on the part of City to be performed, and the continuance of such failure for a period of sixty (60) days after notice in writing thereof from USU to City (which notice shall specify the respects in which USU contends that City has failed to perform any of such covenants, conditions, and agreements) unless, with respect to any default which cannot be cured within sixty (60) days, City, or any person holding by, through, or under City, in good faith, promptly after receipt of such written notice, shall have commenced, and thereafter continue diligently, to prosecute all action necessary to cure such default;

(c) (i) the filing of an application by City for a consent to the appointment of a receiver, trustee, or liquidator of itself or of all of its assets;

(ii) the filing by City of a voluntary petition in bankruptcy, or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due;

(iii) the making by City of a general assignment for the benefit of creditors;

(iv) the filing by City of an answer admitting or consenting to the material allegations of, or defaulting in answering, a petition filed against it in any bankruptcy proceeding; and

(v) the entry of an order, judgment, or decree by any court of competent jurisdiction adjudicating City bankrupt or appointing a receiver, trustee, or liquidator of it or all its assets, and such order, judgment, or decree continuing unstated and in effect for any period of sixty (60) consecutive days.

17.2 Remedies in Event of Default. USU may treat any one or more of the Events of Default (defined herein) as a breach of this Agreement and thereupon, at its option by serving written notice by certified mail on City at the last known address City of which USU shall have received notice in writing, USU shall have, subject to the provisions of this Agreement, in addition to all other remedies provided by law, one or more of the following remedies:

(a) USU may terminate this Agreement and the Lease Term created hereby, in which event USU may forthwith repossess the land and building and be entitled to recover forthwith as damages a sum of money equal to the value of the rent and other sums provided to be paid by City for the balance of the Lease Term less the rental value of the land and building received for said period in the event said land and improvements are re-rented and any other sum of money and damages due or to become due to USU from City.

(b) USU may terminate City's right of possession and may repossess the land and building by forcible entry and detainer suit or otherwise without demand or notice of any kind to City (except as herein above expressly provided) and without terminating this Agreement, in which event USU may, but shall be under no obligation so to do, relet all or any part of such property for such rent and upon such terms as shall be satisfactory to USU (including the right to relet the land and building for the term greater or lesser than the remaining under the stated Lease Term and the right to relet the land and building as a part of a larger area and the right to change the character or premises). For the purpose of such reletting, USU may make any repairs, changes, alterations, or additions in or to the land and building that may be necessary or convenient; and if USU shall fail or refuse to relet the premises, or if the land and building are relet and a sufficient sum shall not be realized from such reletting after paying all of the costs and expenses of such repairs, changes, alterations, additions and the expenses of such reletting and the collection of the rent accruing therefrom to satisfy the rent above provided to be paid, then City shall pay to USU as damages a sum equal to the amount of the rent reserved in this Agreement for such period or periods, or, if the premises have been let, City shall satisfy and pay any such deficiency upon demand.

(c) USU may take possession of the Leased Premises, including all improvements, and pay and fully discharge any mortgages or outstanding loans or obligations, at which time USU would be the sole owner of the real property and all improvements thereon.

(d) Upon the termination of this Agreement and the Lease Term created hereby or upon the termination of City's right of possession, whether by lapse of time or at the option of USU, as aforesaid, City will at once surrender possession of the land and building to USU and remove all effects therefrom; and if such possession be not immediately surrendered, USU may forthwith re-enter the land and building and repossess itself thereof as of its former estate and remove all persons

and their effects using such force as may be necessary without being deemed guilty of any manner or trespass or forcible entry or detainer.

17.3. Notwithstanding any provisions set forth herein, City shall receive written notice of default and may exercise a reasonable period of time to cure any default of City under this Agreement so as to avoid the harsh remedy of termination and reversion of title of improvements to USU.

18. COVENANTS OF TITLE AND AUTHORITY; OTHER WARRANTIES.

18.1 USU Warranties. USU represents and warrants as follows:

(a) Authority. USU has full right and lawful authority to enter into and perform the obligations of USU under this Agreement for the full Lease Term hereof.

(b) Title. USU has a sufficient fee interest in the Leased Premises, free of liens, encumbrances, or security interests to enable it to enter into this Agreement with City. The execution of this Agreement and the performance required hereunder have been duly authorized by the necessary action of appropriate governing bodies of USU; and USU will defend the same, at USU's expense, against all claims of any right, title, or interest adverse to, or in conflict with, said title. USU does not warrant the condition of the Leased Premises or the suitability of the Leased Premises (including, without limitation, soils, water table, drainage, and other such matters) for the construction of City's Substation or any other improvements thereon; and City accepts the Leased Premises "as is," subject only to the express obligations of this Agreement. USU agrees to make available to City, without charge, all tests and test results in USU's possession relating to soils, water table, drainage, and other such matters with respect to the Leased Premises; provided, however, that such tests shall be made available without any warranty or representation or liability, whatsoever, to the USU, and City shall be solely responsible for its use or reliance, if any, of or upon said tests.

18.2 City Warranties. City represents and warrants as follows:

(a) Entity. City is a government entity duly organized and validly existing under the laws of the State of Utah.

(b) Authority. City has a full right and lawful authority to enter into and perform the obligations of City under this Agreement for the full Lease Term hereof; and the execution of this Agreement and the performance required hereunder have been duly authorized by all partners, and the partner executing this Agreement has been authorized to do so.

19. DELIVERY OF POSSESSION OF PREMISES. USU agrees to deliver possession of the Leased Premises to City upon delivery of a fully executed copy of this Agreement by USU to City, and, if the Leased Premises are at such date occupied by any person, whether under claim of right emanating from USU or otherwise, USU shall, at its sole cost and expense, remove any such person from the Leased Premises.

20. CITY'S FIXTURES. City, at any time when City is not in default hereunder and upon termination of this Agreement if so requested in writing by USU, shall remove from the Leased Premises any fixtures or equipment installed thereon by City whether or not such fixtures are fastened to the Building or other improvements located upon the Leased Premises and regardless of the manner in which they are fastened; provided, however, that under no circumstances shall any fixture be removed without USU's written

consent if: (a) such fixtures or equipment are used in the operation of any building or improvement upon the Leased Premises; or (b) the removal thereof would result in impairing the structural strength of any building or improvement upon the Leased Premises. City shall fully repair any damage occasioned by the removal of any such fixtures and shall leave the buildings and improvements in good, clean, and neat condition.

21. MEMORANDUM OF LEASE. This Agreement shall not be recorded, but USU and City agree to execute a Memorandum of Lease containing the name of the Parties, the legal description of the land, and the Lease Term.

22. NOTICE. Any notice given under this Agreement must be in writing and must be sent by registered or certified mail to the last address of the Party to whom notice is to be given as designated by such part in writing. Notice shall be deemed to have been given upon the date of mailing. USU designates its address as:

For Financial or Contract Matters:
Utah State University
1445 Old Main Hill
Logan, Utah 84322
Attn: Vice President of Business and Finance

For Construction Matters:
Facilities Planning, Design, and Construction
6605 Old Main Hill
Logan, UT 84322-6605

City hereby designates its address as:

City of Logan
Logan City Light & Power Director
530 North 800 West
Logan, Utah 84321

With a copy to:
Logan City Legal Department
290 N. 100 W.
Logan, Utah 84321

23. MISCELLANEOUS

23.1 Choice of Law and Venue. The Agreement will be governed by the laws of the State of Utah without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.

23.2 Benefit. Except as otherwise provided in this Agreement, no term or provision of this Agreement or the Exhibits hereto are intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity not a party hereto. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

23.3 Remedies. All remedies hereinbefore and hereafter conferred upon USU shall be deemed cumulative and no one exclusive of the other or any other remedy conferred by law.

23.4 Time of the Essence. Time is to be of the essence of this Agreement and of each and every covenant, term, condition, and provision hereof.

23.5 Government Records and Management Act. City and USU acknowledge that each Party is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code Ann., Section 63G-2-101 et seq., as amended ("GRAMA"); that certain records within the Parties' possession or control, including, without limitation, the Agreement, may be subject to public disclosure; and that the Parties' confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information provided to a Party that the other Party believes should be protected from disclosure must be accompanied by a written claim of confidentiality with a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, the Parties may disclose any information or record to the extent required by GRAMA or otherwise required by law and to the Parties' employees, attorneys, accountants, consultants, and other representatives on a need-to-know basis; provided, that such representatives shall be subject to confidentiality obligations no less restrictive than those set forth in the Agreement.

23.6 Governmental Immunity. It is understood and agreed that no terms and conditions in this Agreement shall be construed to create or establish any general financial obligation for a deficiency judgment against the State of Utah and/or USU. City and USU further acknowledge that each Party is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by either Party of any protections, rights, or defenses applicable to either Party under the Act, including, without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of USU to incur by contract any liability for the operations, acts, or omissions of City or any third party, and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of either Party contained in the Agreement are subject to the Act and are further limited only to claims that arise directly and solely from the negligent acts or omissions of that party. Any limitation or exclusion of liability or remedies in the Agreement for any damages other than special, indirect, or consequential damages, shall be void and unenforceable.

23.7 Attorneys' Fees. If either City or USU institutes any action or proceeding against the other to enforce any provision of this Agreement, the non-prevailing Party shall reimburse the prevailing Party for all reasonable costs and expenses incurred by the prevailing Party in the performance of this Agreement, including court costs, expenses, and reasonable attorneys' fees.

23.8 Assignment. Neither Party may assign, transfer, or otherwise dispose of its rights, interests, or duties hereunder, in whole or in part, to any third party without prior written approval from the other Party.

23.9 Relationship of Parties. In assuming and performing the obligations of this Agreement, the Parties are each acting as independent Parties and neither shall be considered or represent itself as a joint venture, partner, agent or employee of the other.

23.10 Headings and Terms. No headings in this Agreement affect its interpretation. Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular number shall include the plural.

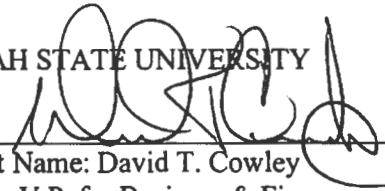
23.11 Amendment and Supplement. Any amendment and/or supplement of this Agreement shall come into force only after a written agreement is signed by both Parties. The amendment and supplement

duly executed by both Parties shall be part of this Agreement and shall have the same legal effect as this Agreement.

23.12 Merger. This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject matter thereof.

23.13 Severability. The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions herein.

IN WITNESS WHEREOF, City and USU each caused this Agreement to be executed and delivered by its duly authorized representative to be effective as of the Effective Date.

UTAH STATE UNIVERSITY
By: 
Print Name: David T. Cowley
Title: V.P. for Business & Finance
Date: 7/16/21

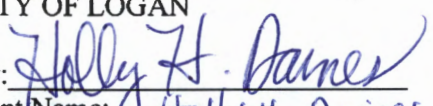
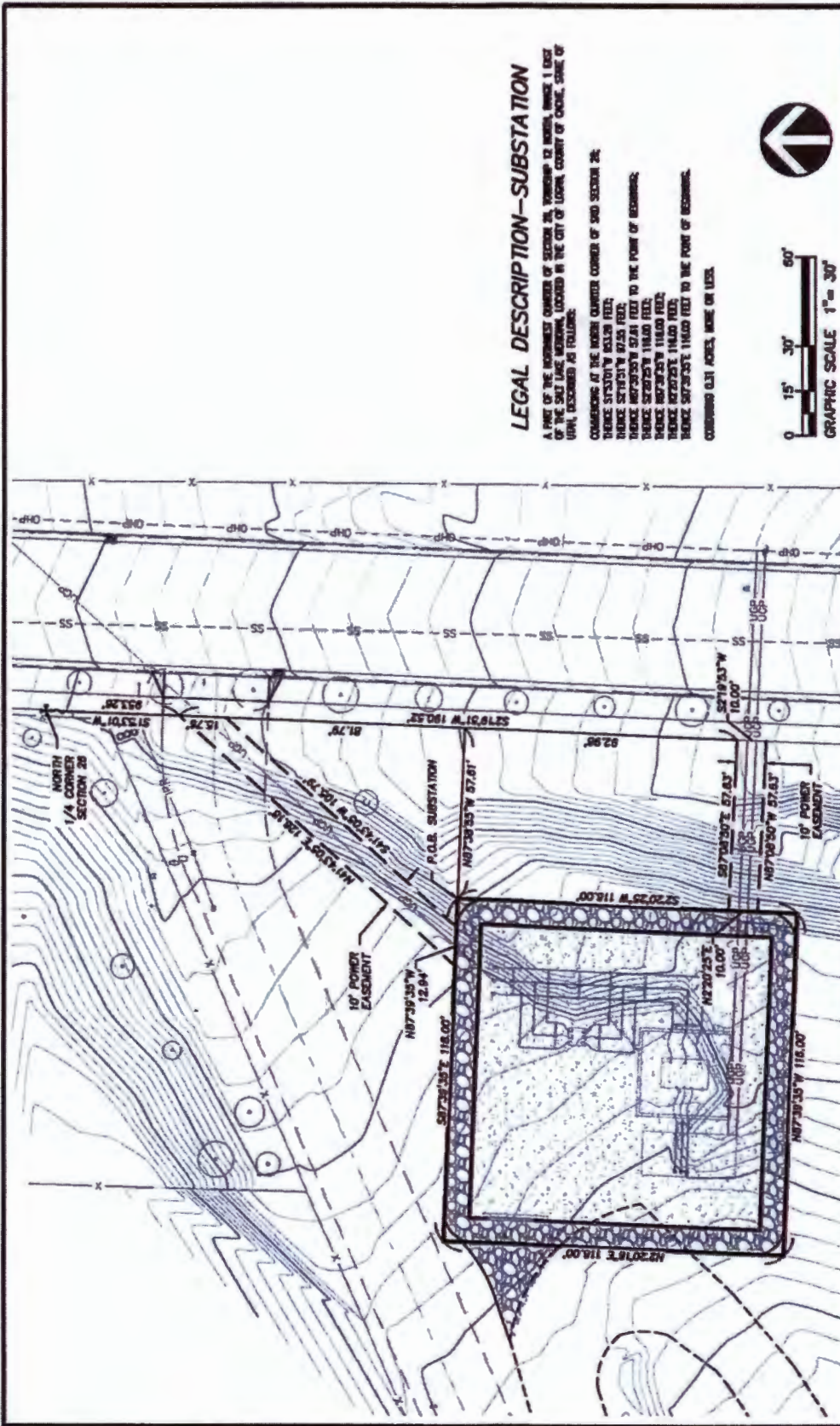
CITY OF LOGAN
By: 
Print Name: Holly H. Daines
Title: Mayor
Date: 7/21/21

EXHIBIT "A"
LEASE PREMISES

EXHIBIT A



LEGAL DESCRIPTION - SUBSTATION

A PART OF THE NORTHEAST CORNER OF SECTION 26, TOWNSHIP 12 NORTH, RANGE 1 EAST OF THE SIXTH RANGE MERIDIAN, LOCATED IN THE CITY OF LOGAN, COUNTY OF CACHE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

CORNER OF THE NORTH CORNER CORNER OF 300 SECTION 26,

THENCE S72°03'11\"/>

THENCE S72°03'11\"/>

THENCE S72°03'11\"/>

THENCE S72°03'11\"/>

THENCE S72°03'11\"/>

THENCE S72°03'11\"/>

THENCE S72°03'11\"/>

CONTAINING 0.31 ACRES, MORE OR LESS.



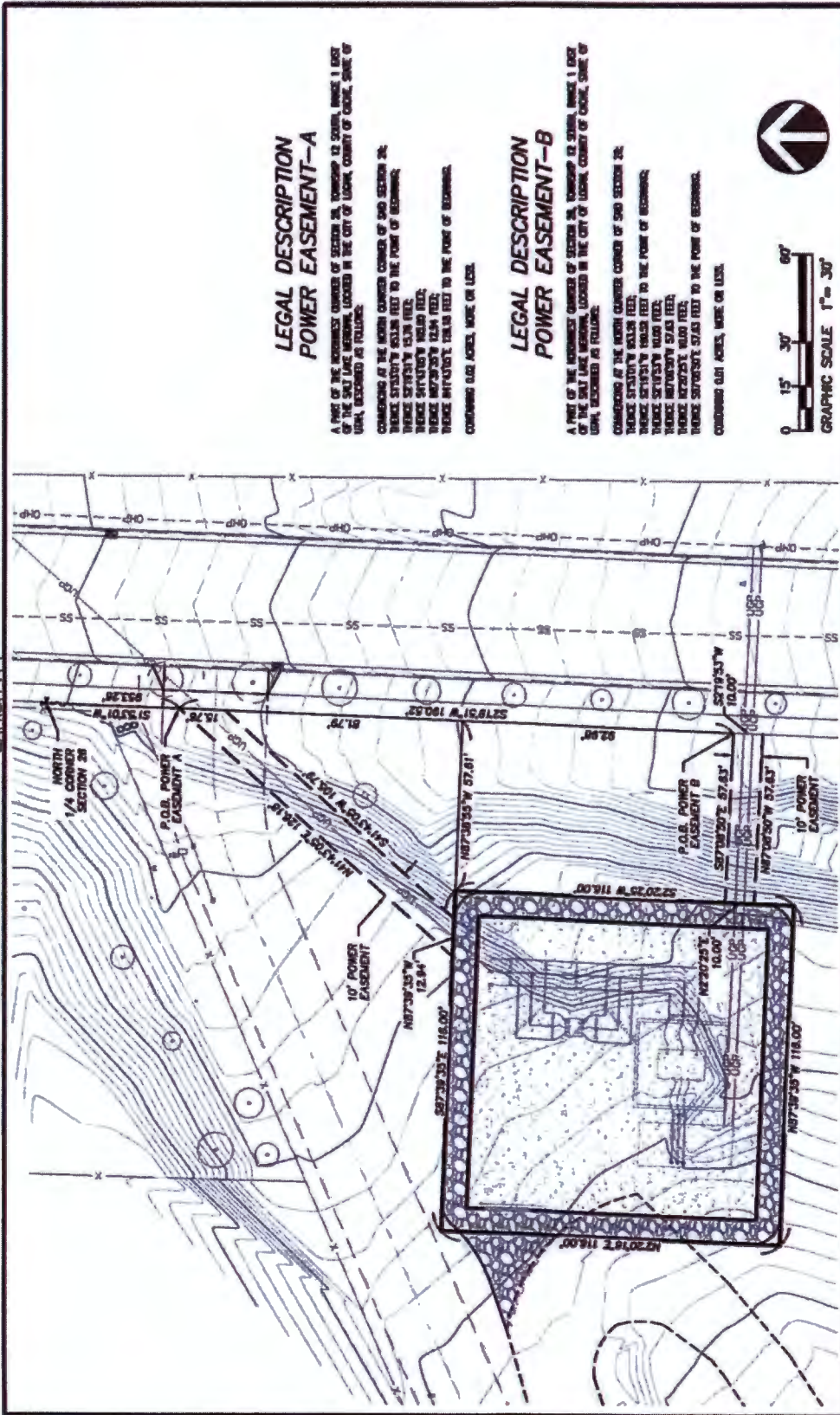
DATE		APPROVED BY:	 14 West Coal Creek Blvd., Suite 104 Logan, UT 84301 435.733.8897	LEGAL DESCRIPTION EXHIBIT A	SHEET # 1/1
DATE	DRAWING BY:	CHECKED BY:			
JULY 15, 2021	J. JENSEN	L. ANDERSON			

PRINTED July 13, 2021 BY Jenny Johnson FILE 212021 PROJECTS/20-2101 LOGAN CITY SUBSTATION - US/ACR/DMK/20-2101 SUBSTATION ONE SHEET (PART 2).DWG

EXHIBIT "A-1"

EASEMENT

EXHIBIT A-1



**LEGAL DESCRIPTION
POWER EASEMENT-A**

A PART OF THE SOUTHWEST CORNER OF SECTION 28, TOWNSHIP 12 SOUTH, RANGE 1 EAST OF THE SIXTH RANGE, LOCATED IN THE CITY OF LOGAN, COUNTY OF CACHE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH CORNER CORNER OF SAID SECTION 28;

THENCE S175°17'W 63.38 FEET;

THENCE S71°53'17" W 12.94 FEET;

THENCE N72°25'17" W 12.94 FEET;

THENCE N71°50'27" W 57.63 FEET TO THE POINT OF BEGINNING.

CONTAINING ONE ACRES, MORE OR LESS.

**LEGAL DESCRIPTION
POWER EASEMENT-B**

A PART OF THE SOUTHWEST CORNER OF SECTION 28, TOWNSHIP 12 SOUTH, RANGE 1 EAST OF THE SIXTH RANGE, LOCATED IN THE CITY OF LOGAN, COUNTY OF CACHE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH CORNER CORNER OF SAID SECTION 28;

THENCE S175°17' W 63.38 FEET;

THENCE S71°53'17" W 12.94 FEET;

THENCE N72°25'17" W 12.94 FEET;

THENCE N71°50'27" W 57.63 FEET TO THE POINT OF BEGINNING.

CONTAINING ONE ACRES, MORE OR LESS.

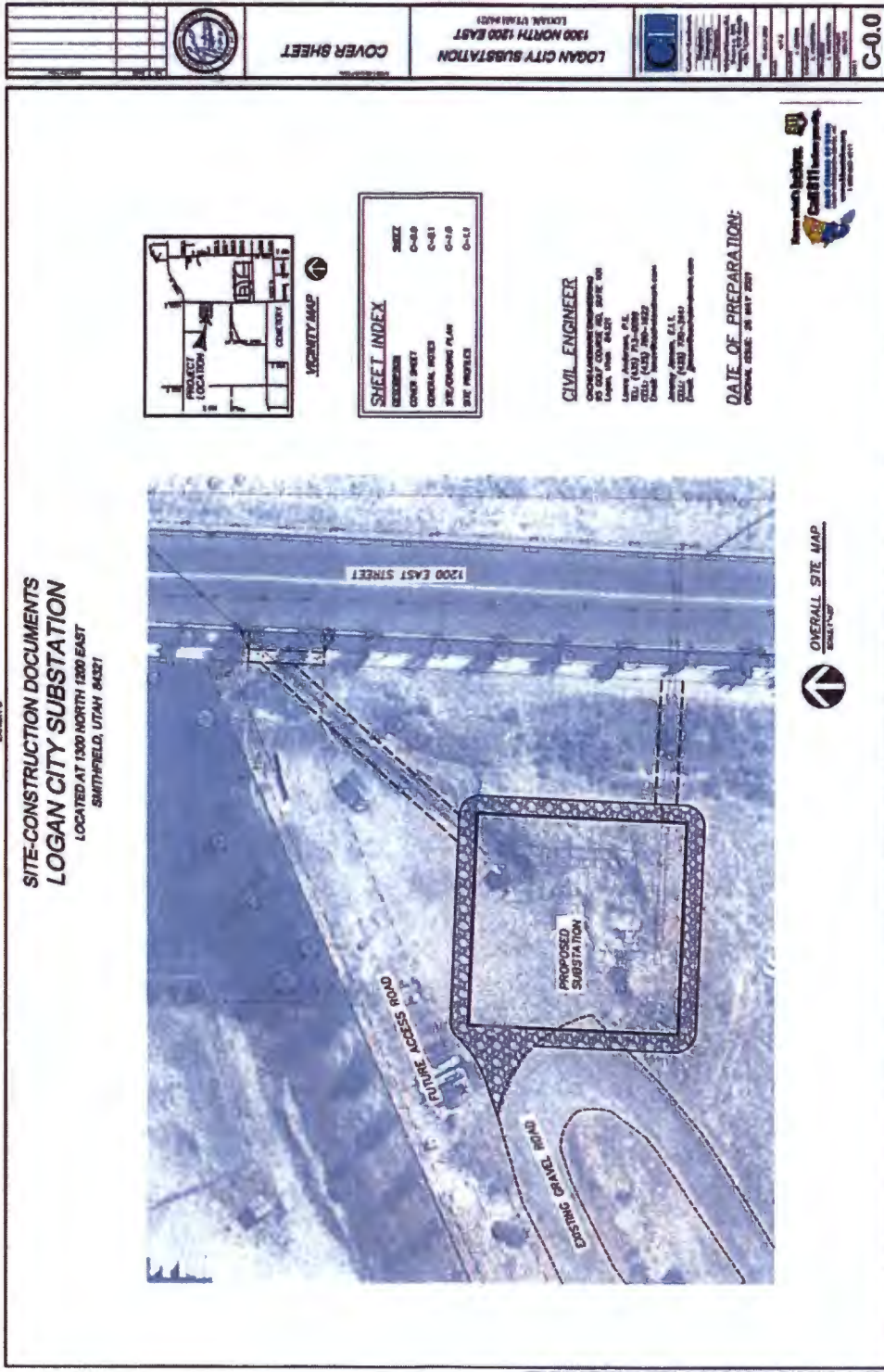


DATE: JULY 13, 2021 DRAFTED BY: J. JOHNSON	APPROVED BY: L. ANDERSON CHECKED BY: L. ANDERSON		LEGAL DESCRIPTION EXHIBIT A-1	SHEET NO. 1/1
				PROJECT NO. 21011

PRINTED July 13, 2021 BY: J. JOHNSON FILE: 210111 PROJECT: 21011 LOGAN CITY SUBSTATION - USA/CA/UT/CA/12S-12E-12R1 SECTION ONE (PARTIAL).DWG

EXHIBIT "B"

IMPROVEMENTS



C-1.1

