

DARK FIBER LEASE AGREEMENT

This DARK FIBER LEASE AGREEMENT (this "Agreement") is made and entered into as of this ____ day of June, 2021 (the "Effective Date"), by and among the City of Cheney, a municipal corporation of the State of Washington (referred to as either "City" or "Lessor") and Avista Edge, Inc., a Washington corporation (the "Lessee"). Lessor and Lessee are each sometimes referred to herein as "Party" and collectively as "Parties."

RECITALS

WHEREAS, Lessor is the owner of single mode dark fiber optical strands contained in a fiber optic sheath that provide fiber optic continuity between connected points, two of which are further identified on Exhibit "A" attached hereto and incorporated by reference herein, and related equipment and structures which support the fiber (collectively, the "Dark Fiber");

WHEREAS, Lessee desires to lease the use of Lessor's Dark Fiber pursuant to this Agreement to enable broadband internet, further identified on Exhibit "B" attached hereto and incorporated by reference herein ("Lessee's Services"), to residential customers within the jurisdictional boundaries of the City, including any areas annexed by the City where Dark Fiber may extend (the "Service Area");

WHEREAS, concurrent with the execution and delivery of this Agreement, the Lessor has duly considered, approved and passed a franchise ordinance (Ordinance No. __) (the "Telecommunication Ordinance") setting forth the general conditions for Lessee's Services.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Section 1. Lease.

1.1 Grant of Lease. Subject to the terms and conditions contained herein, Lessor hereby grants to Lessee, and Lessee hereby accepts, a lease authorizing the use of two strands of the Dark Fiber in connection with Lessee's Services.

1.2 Restrictions on Use. Except with Lessor's prior written consent on such terms and conditions as Lessor shall, in its sole discretion, require or approve, Lessee shall not sublease, subcontract, delegate, or assign the rights set forth in this Agreement with respect to the Dark Fiber. For the avoidance of doubt, (a) Lessee shall be entitled to assign its rights and delegate its obligations under this agreement to an affiliate without such written consent of the Lessor and (b) no equity sale, merger, change of control or sale of assets of or by Lessee shall be deemed to be an "assignment." Lessee shall provide the City with written notice within 5 business days of such affiliate assignment, equity sale, merger, change of control or sale of assets.

Section 2. Ownership, Security and Maintenance.

2.1 Ownership. The Dark Fiber will remain the property of Lessor and will never be deemed a fixture to any real property owned by Lessee or any third party. Lessor and Lessee will each retain title to all of their respective equipment, electronics and facilities used in relationship to this Agreement. Lessee shall have the nonexclusive right to use space in the communications room at City Hall as set forth in the Exhibit A hereto for the purposes of housing equipment necessary to provide Lessee's Services and to connect to other communications companies for access to their networks and the Internet. No use of the Dark Fiber or payment of any Lease Fees under this Agreement shall create or vest in Lessee any easements or any other ownership or property rights of any nature, other than the nonexclusive lease of the space at City Hall. Neither this Agreement nor the lease granted hereunder shall constitute an assignment of any of Lessor's rights to use unleased Dark Fiber strands or the public or private property in which unleased Dark Fiber strands are located.

2.2 Access to the Communications Room in City Hall. Lessor will provide Lessee, its affiliates, and their respective employees, subcontractors, representatives, and agents, with 24x7x365 unescorted access to the communications room within City Hall as described in Section 2.1 of this Agreement for the purposes of installing, maintaining, and accessing any necessary equipment to provide Lessee's Services. Prior to exercising its right to access the communications room in City Hall, Lessee shall first provide notice to the City official identified in Section 7.3 of this Agreement by telephone if during normal business hours or by e-mail if outside normal business hours. Lessee will ensure that the employees and third parties under its control, as well as those under its Affiliates' control, abide by the rules and procedures established by Lessor and communicated to Lessee for its use of, access to, or security measures of City Hall. Lessor reserves the right, in its own discretion, to modify such rules and procedures from time to time upon written notice to Lessee, but no such modification shall unduly interfere with Lessee's access and use of the space in the communications room, where Lessee shall occupy space for one 19" rack and one 23" rack, or such access and use related to Lessee's installation and use of GPS cabling between the communication room to the roof of City Hall where an antenna will be installed. Lessee will also have the option to expand the number of 19" racks to two racks by providing 30 days' advance written notice to the Lessor and Lessor will make available the necessary space and power for an additional rack.

2.3 Security. The City will provide industry standard security services and systems as necessary to prevent access to the communication room at City Hall or any space occupied by Lessee's equipment by any persons who are unauthorized to enter City Hall or access Lessee's equipment, all at the City's expense. Lessee has examined the security services and systems, if any, currently utilized by the City and has determined that they are currently sufficient to meet

Lessor's obligations pursuant to this Section. Lessee may install, manage, and maintain, at its expense, additional security systems subject to approval by the City.

2.4 Equipment Power Consumption. Lessee may use the electrical service at City Hall for Lessee's equipment as specified in Section 2.2. Lessee will pay in arrears on a monthly basis the cost of the power consumed by its equipment to the City according to the timeline and process set forth in Section 4 of this Agreement. All power must be metered and information on power consumption will be included in the invoice to Lessee. Lessor will not be responsible for interference, interruption or failure, beyond the reasonable control of Lessor, of electrical or other utility services to be furnished or supplied by Lessor. Lessee has the right to temporarily install any stand-by generation or uninterruptible power supply system, at its own expense and for its exclusive use, to maintain continuous power to its equipment.

2.4 Acceptance of Dark Fiber. Lessee may test the Dark Fiber prior to acceptance to ensure it performs in such a manner that will enable Lessee to deliver the Lessee's Services. Such testing may be conducted by a qualified third party designated by Lessee. Lessor will permit Lessee to extend existing fiber to reach Lessee's radio site(s) between the radio site(s) and City Hall, and subsequent testing conducted by a third party on Lessee's behalf of the Dark Fiber running between the radio site(s) and City Hall. Lessee will notify Lessor of its acceptance or any performance deficiencies found in the Dark Fiber. In the event that testing reveals any deficiencies in the Dark Fiber, Lessor will permit Lessee to make necessary repairs to correct such deficiencies within 10 days of receipt by the Lessor of the notice pursuant to this Section 2, reducing the potential burden on the Lessor and City.

2.5 Maintenance of Dark Fiber and Equipment at City Hall. Lessor, its agents or subcontractors will perform industry standard maintenance, locates and repairs for the Dark Fiber and the related equipment at City Hall to ensure proper performance and functioning of the Dark Fiber and related equipment. Consistent with this Section 2.5, Lessor shall:

- (a) Be responsible for costs associated with industry standard maintenance, locates and repairs of the Dark Fiber and equipment located at City Hall;
- (b) Monitor all space occupied by the equipment identified in Section 2.2 to ensure security, power, environmental conditions and maintenance are provided in accordance with this Agreement and to industry standards, and will take all commercially reasonable efforts to discover, identify or report to Lessee all faults discovered or as identified by Lessee.
- (c) Provide Lessee not less than 7 calendar days prior written notice of any scheduled maintenance or repairs that may result in an interruption of Dark Fiber continuity or a material degradation in performance of the Dark Fiber (an "Outage") and coordinate with Lessee a time for such maintenance or repairs; and

- (d) In the event that an emergency unscheduled repair is required and such action may result in an Outage, immediately notify Lessee.

Lessee may also request that the City undertake repairs of the Dark Fiber and any equipment specified in Section 2.2. The City shall, within a reasonable timeframe, evaluate Lessee's request and make such repairs at the City's expense, as the City deems reasonably necessary pursuant to this Section 2.5. If the City and Lessor cannot agree on the necessity of such repairs, the Parties shall resolve such dispute in accordance with Section 7.2 of this Agreement.

Section 3. Relocation. The Parties agree that this Agreement shall not be construed as limiting or interfering with the Lessor's right to manage, control, construct, locate, maintain and/or use its Dark Fiber; other City facilities; the public right-of-way within the Service Area; and/or any public or private property in which the Dark Fiber is located. With respect to relocation, Lessee shall be responsible for making the proposed relocation and for covering costs and expenses of relocating the Dark Fiber for the purpose of this Section 3 after Lessee provides 10 days' advance written notification to Lessor, which shall cooperate with Lessee to minimize disruption.

Section 4. Lease Fee.

4.1 **Monthly Fee.** After the Effective Date of this Agreement and upon Lessee turning up the entire circuit using the Dark Fiber, Lessee shall pay to Lessor a monthly recurring Fiber Usage lease fee (the "Lease Fee") in the amount of \$149 for use of two strands of Dark Fiber used in providing the Lessee's Services.

4.2 **Lease Fee Adjustment.** On an annual basis during the Term after Lessee begins offering its Services, Lessor will review the Lease Fee currently charged and may adjust the Lease Fee, either up or down, to reflect an amount no more than necessary for the City to recoup its actual, documented direct costs in connection with the use of the Dark Fiber and no less than necessary to prevent the City from suffering a loss arising from its actual, documented direct costs incurred in connection with the use of the Dark Fiber. Lessor will solicit input from Lessee to negotiate, in good faith, a fair and appropriate Lease Fee. Lessor shall provide Lessee 30 days' written notice prior to adjusting the Lease Fee.

4.3 **Remittance of Lease Fee and Interest Charges.** Lessee shall remit the monthly Lease Fee, in immediately available good funds, to the Lessor at the address provided in Section 7.3 on or before the 15th of each month. Interest shall accrue at the rate of 1.5% for any Lease Fee 30 days past due.

4.4 **Service Credits.** Lessee shall be entitled to a Service Credit if the City's failure to meet its obligations under this Agreement result in an interruption of Lessee's Services. Such interruptions shall be calculated on a monthly basis according to the below table as commencing upon the earlier of (i) Lessee's notification to Lessor and (ii) when indicated by information actually or reasonably known to Lessor.

Cumulative Unavailability (in hrs:mins:secs)	Service Level Credit
00:00:01 – 00:43:49	No Credit
00:43:50 – 04:00:00	5% of the MRC
04:00:01 – 06:00:00	10% of the MRC
06:00:01 – 10:00:00	25% of the MRC
10:00:01 or greater	50% of the MRC

Each interruption terminates upon repair or restoration of the Lessee’s Services in accordance with the terms of this Agreement. Lessor shall be solely responsible for the costs to repair or correct any interruption to Lessee’s Service unless such interruption is a direct and sole consequence of Lessee’s acts or omissions.

Section 5. Term; Termination.

5.1 Term. The term of this Agreement shall become effective on the Effective Date and shall continue in effect for a period of 3 years (the "Initial Term") or until terminated in accordance with the provisions of Section 5.3 or, if applicable, Section 7.7. This Agreement may be extended in one year increments for a total of 10 additional years, or as otherwise agreed by the Parties (the "Extension Term").

5.2 Renewal Terms. At least 90 days prior to expiration of the Initial Term, a Party may deliver written notice of intent to renew this Agreement. The notice shall propose the period and terms of renewal. The Party receiving the notice shall within 10 days of delivery respond by stating its intent to renew this Agreement. Thereafter, the Parties shall negotiate the Extension Term in good faith. No response by the party receiving the notice shall be deemed a refusal to extend this Agreement.

5.3 Termination. This Agreement shall terminate immediately upon the termination of the Telecommunication Ordinance without the further action of either Party. In addition, this Agreement may be terminated as follows:

(a) Either Party may terminate this Agreement if the other Party breaches any provision of this Agreement and fails to cure such breach within 30 days after the date on which the defaulting Party receives written notice of default from the non-defaulting Party; or

(b) The City may terminate this agreement subject to the process specified in Section 7.7;

5.4 Effects of Termination. Upon termination of this Agreement, all rights in the Dark Fiber granted to Lessee shall automatically revert to Lessor, and Lessee shall have no further rights in, and shall immediately cease all use of, the Dark Fiber. At such time, Lessee will have a

reasonable time period to remove its equipment and facilities and the City will cooperate in any necessary transition.

Section 6. Indemnification and Insurance Requirements.

6.1 Indemnification by Lessee. Lessee shall indemnify, defend and hold harmless Lessor, City Council and any of the City's officers, officials, boards, commissions, agents and employees acting in an official capacity from any action, claim, damage, loss, liability, cost or expense, including court costs and attorneys' fees and expenses (collectively, "Claims"), to the extent that such Claims arise out of or relate to:

(a) The gross negligence or willful misconduct of Lessee, its agents, or employees resulting in any bodily injury or death to any person, or loss, disappearance or damage to tangible or intangible property;

(b) Any failure of Lessee, its agents or employees to comply with applicable laws, rules or regulations.

(c) Any Lessee Indemnifying Party's infringement, misuse, or misappropriation of any third-party intellectual property rights;

The City shall give the Lessee written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. If a Claim arises, the City or any other indemnified party shall provide the Lessee with reasonable information and assistance to help the Lessee to answer and defend Claims at Lessee's expense. The City or any other indemnified party may employ separate counsel and participate in the defense of any Claim at its own expense.

6.2 Indemnification by Lessor. Lessor shall indemnify, defend and hold harmless Lessee, its affiliates, and any directors, officers, agents and employees acting in an official capacity from any action, claim, damage, loss, liability, cost or expense, including court costs and attorneys' fees and expenses (collectively, "Claims"), to the extent that such Claims arise out of or relate to:

(a) The gross negligence or willful misconduct of Lessor, City Council and any of the City's officers, officials, boards, commissions, agents and employees acting in an official capacity (each a "Lessor Indemnifying Party") resulting in any bodily injury or death to any person, or loss, disappearance or damage to tangible or intangible property;

(b) Any Lessor Indemnifying Party's infringement, misuse, or misappropriation of any third-party intellectual property rights;

(c) Breach of any obligations by any Lessor Indemnifying Party under the Agreement; or

The Lessee shall give the City written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. If a Claim arises, the

Lessee shall provide the City with reasonable information and assistance to help the City to answer and defend Claims at the City's expense. The Lessee may employ separate counsel and participate in the defense of any Claim at its own expense.

6.2 Insurance. Throughout the term of this Agreement, the Lessee shall, at its own cost and expense, maintain comprehensive general liability and automobile liability insurance and provide the City certificates of said insurance designating the City as an additional insured and demonstrating that the Lessee has obtained the insurance required herein. Such policy or policies shall permit \$1,000,000.00 of general liability coverage per occurrence, and \$1,000,000.00 of automobile liability coverage per occurrence. Coverage is limited to \$3,000,000.00 in the annual aggregate. Such policy or policies shall be non-cancelable except upon 30 days prior written notice to the City. The Lessee shall provide workers' compensation coverage in accordance with applicable state, federal and local law. The Lessee shall indemnify and hold harmless the City from any workers' compensation claims to which the Lessee may become subject during the term of this Agreement.

Section 7. Miscellaneous Provisions.

7.1 Severability. If any section, sentence, clause or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Agreement. In the event that any of the provisions of the Agreement are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of the Agreement and may amend, repeal, add, replace or modify any other provision of the Agreement, or may terminate the Agreement.

7.2 Dispute Resolution.

(a) Notice of Dispute. If either Party has a dispute under this Agreement, it shall provide written notice to the other Party. The notice shall provide a brief description of the dispute.

(b) Meet and Confer. Following delivery of notice to the other Party, the Parties shall, within 7 business days from the date the notice is delivered, meet and confer to discuss and attempt, in good faith, to resolve the dispute.

(c) Judicial Remedies. If the Parties fail to achieve resolution of the dispute in the above manner, either Party may then pursue any available judicial remedies. The prevailing Party in any such action shall be entitled to its attorneys' fees and costs.

7.3 Notice. Any notice or information required or permitted to be given by or to the Parties under this Agreement shall be deemed delivered on the day it is sent to the following addresses unless otherwise specified, in writing:

The City:

Lessee:

Steve Marx
Director of Light Department
112 Anderson Road
Cheney, Washington 99004

Avista Edge Inc.
Attn: Sean Chambers
12 N Sheridan St., Suite 340
Spokane, WA 99202
notices@avistaedge.com

With copy to:
Witherspoon • Kelley
Attn: Stanley M. Schwartz
422 W. Riverside Ave., Suite 1100
Spokane, Washington 99201

With copy to:
Davis Wright Tremaine LLP
Attn: Daniel Waggoner
920 Fifth Avenue, Suite 3300
Seattle, WA 98104

7.4 Choice of Law/Venue. This Agreement shall be governed by and construed under Washington State laws. Any litigation between Lessor and Lessee arising under or regarding this Agreement shall occur, if in the state courts, in the Spokane County Superior Court, and if in the federal courts, in the United States District Court for the Eastern District of Washington.

7.5 Non-Waiver. Lessee shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the Lessor to enforce prompt compliance, nor does the Lessor waive or limit any of its rights under this Agreement by reason of such failure or neglect.

7.6 Entire Agreement and Effect. This Agreement constitutes the entire understanding and agreement between the Parties as to the subject matter herein and no other agreements or understandings, written or otherwise, related to this subject-matter shall be binding upon the Parties upon execution and acceptance hereof.

This Agreement supersedes, affirms and governs previous rights or claims of Lessee to occupy the City's rights-of-way. If any term of this Agreement shall directly conflict with the code, ordinances, resolutions, rules, permits, licenses, leases, policies or standards of the City, the terms of this Agreement shall control and govern.

7.7 Forfeiture of Lease. The City reserves the right to terminate and cancel this Agreement and all rights and privileges of the Lessee hereunder in the event that the Lessee: (i) violates any provision of this Agreement or any rule, order, or determination of the City Council made pursuant to this Agreement; or (ii) becomes insolvent, unable to pay its debts, or is adjudged to be bankrupt. Any termination and cancellation of the Lease by the City shall be by ordinance duly adopted only after 60 days' notice to the Lessee. Lessee shall be provided an opportunity to present information at an open public meeting before the City Council prior to any action by the City Council, including termination.

7.8 Anti-Kickback. No officer or employee of the City, having the power or duty to perform and official act or action related to this Agreement shall have or acquire any interest in

this Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from any person with an interest in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, as of the Effective Date first written above.

CITY OF CHENEY:

Mayor, Chris Grover

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

AVISTA EDGE, INC.

Signature:

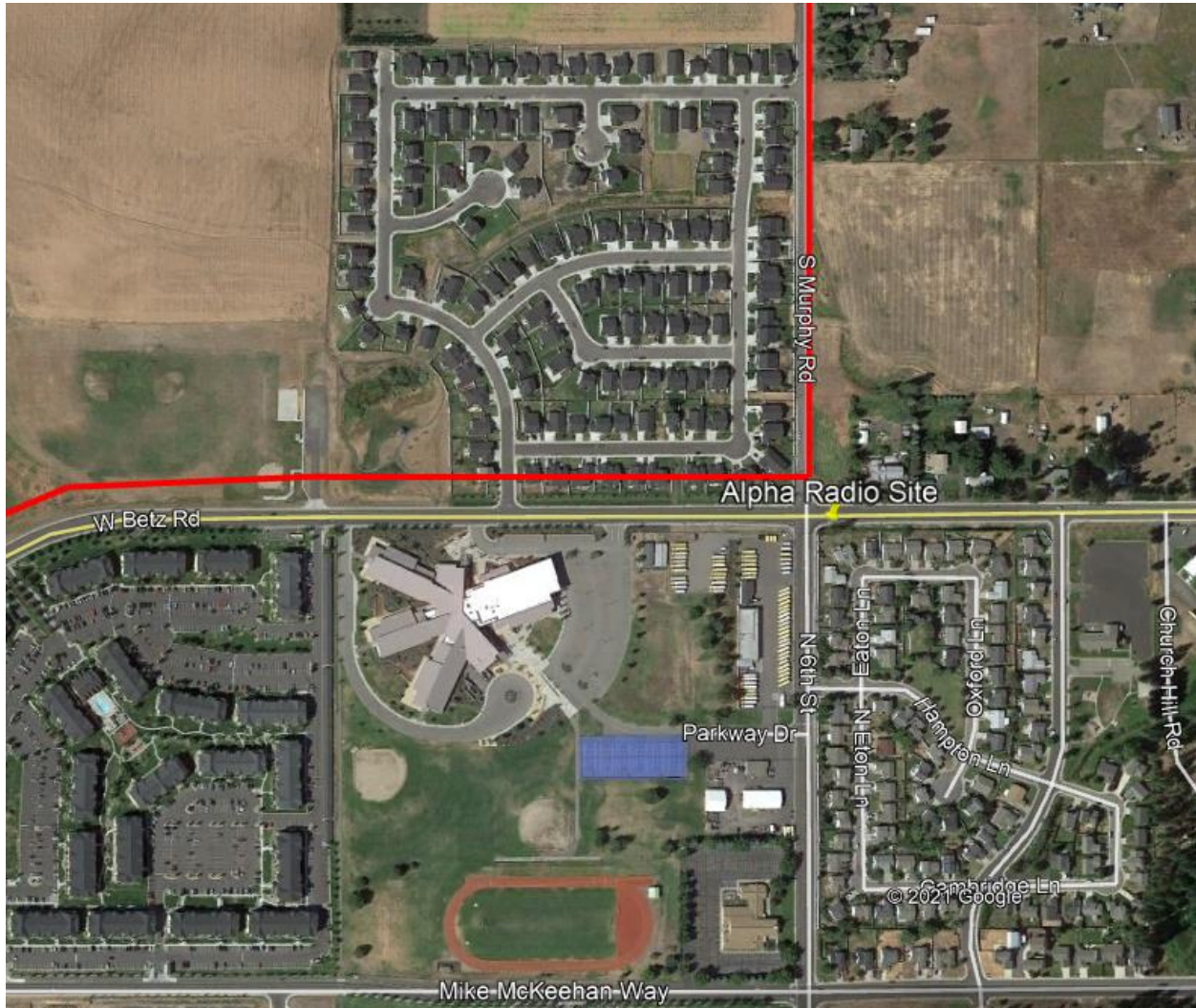
Print Name:

Title:

EXHIBIT "A"

Connected Points and Location within City Hall

Radio site location and City of Cheney fiber path:



Proposed fiber extension from existing splice box to radio site #1:

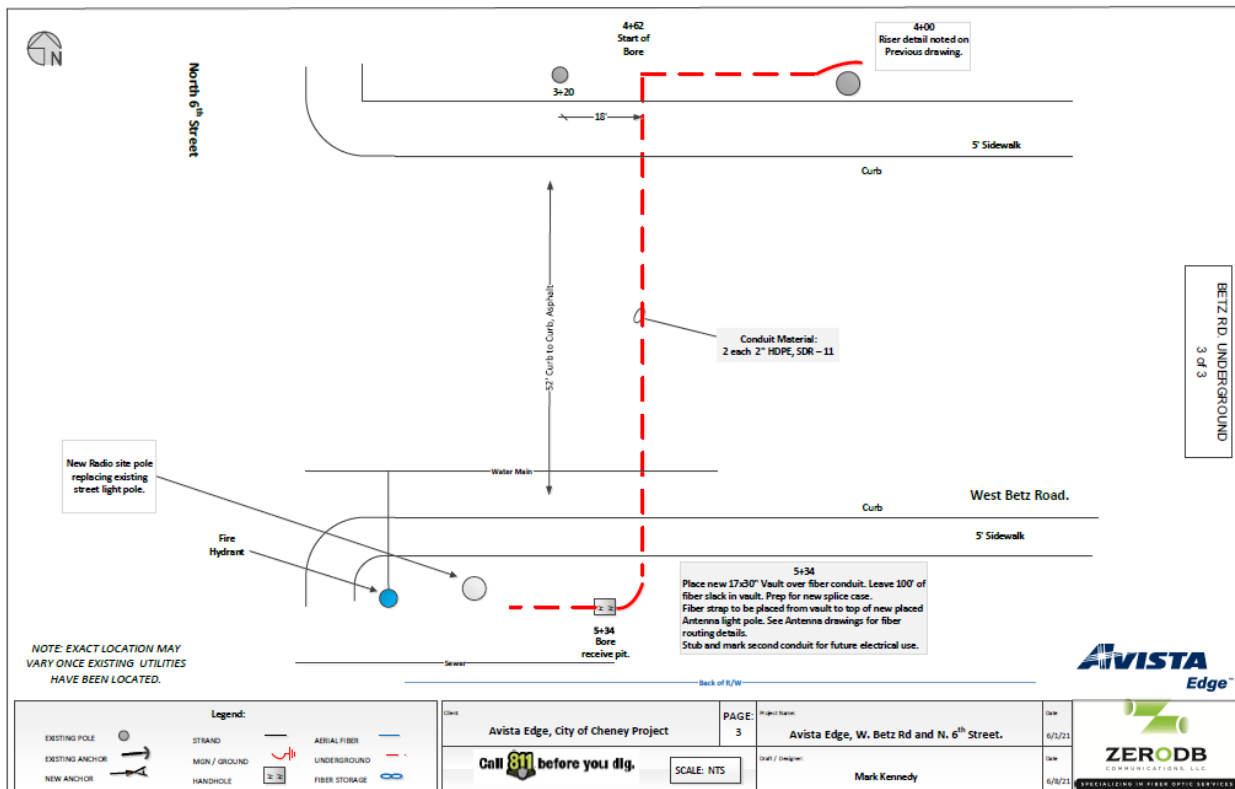
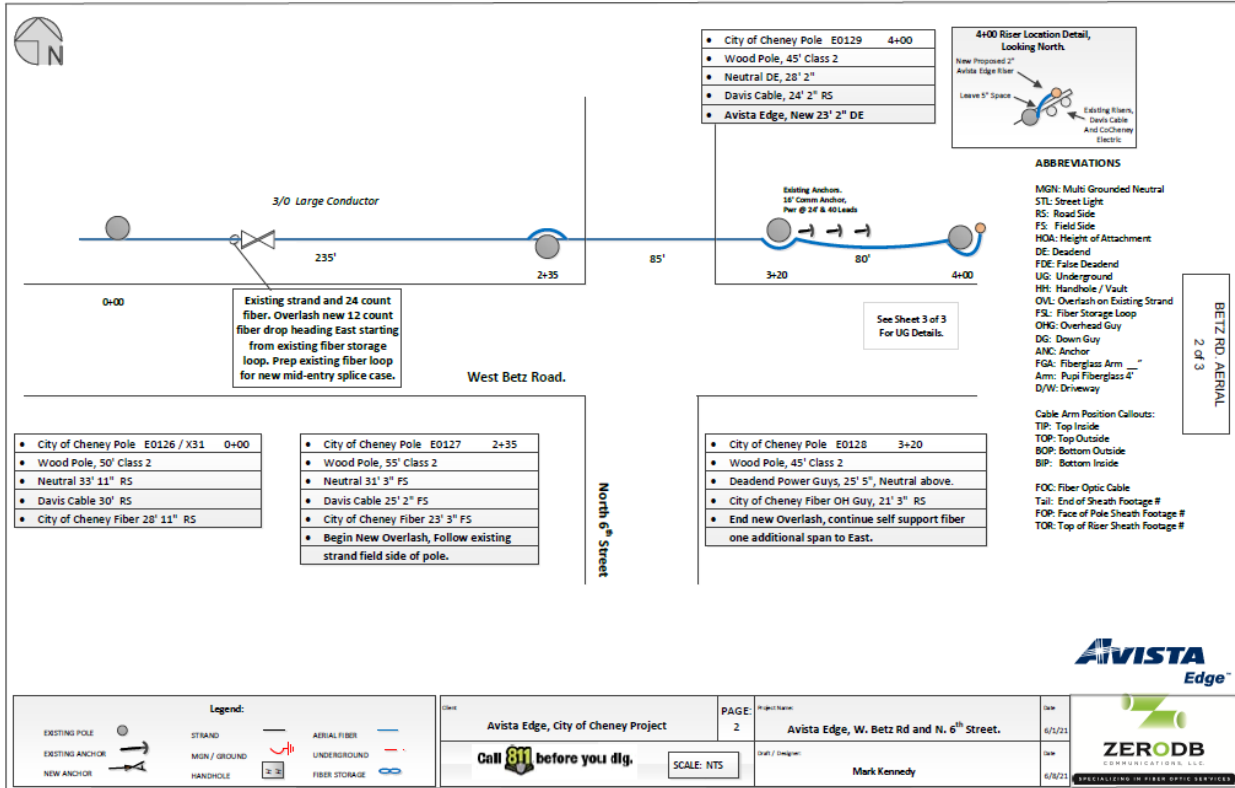


Exhibit "B"

City Hall communications room and proposed Avista Edge equipment racks and electric service panel locations:

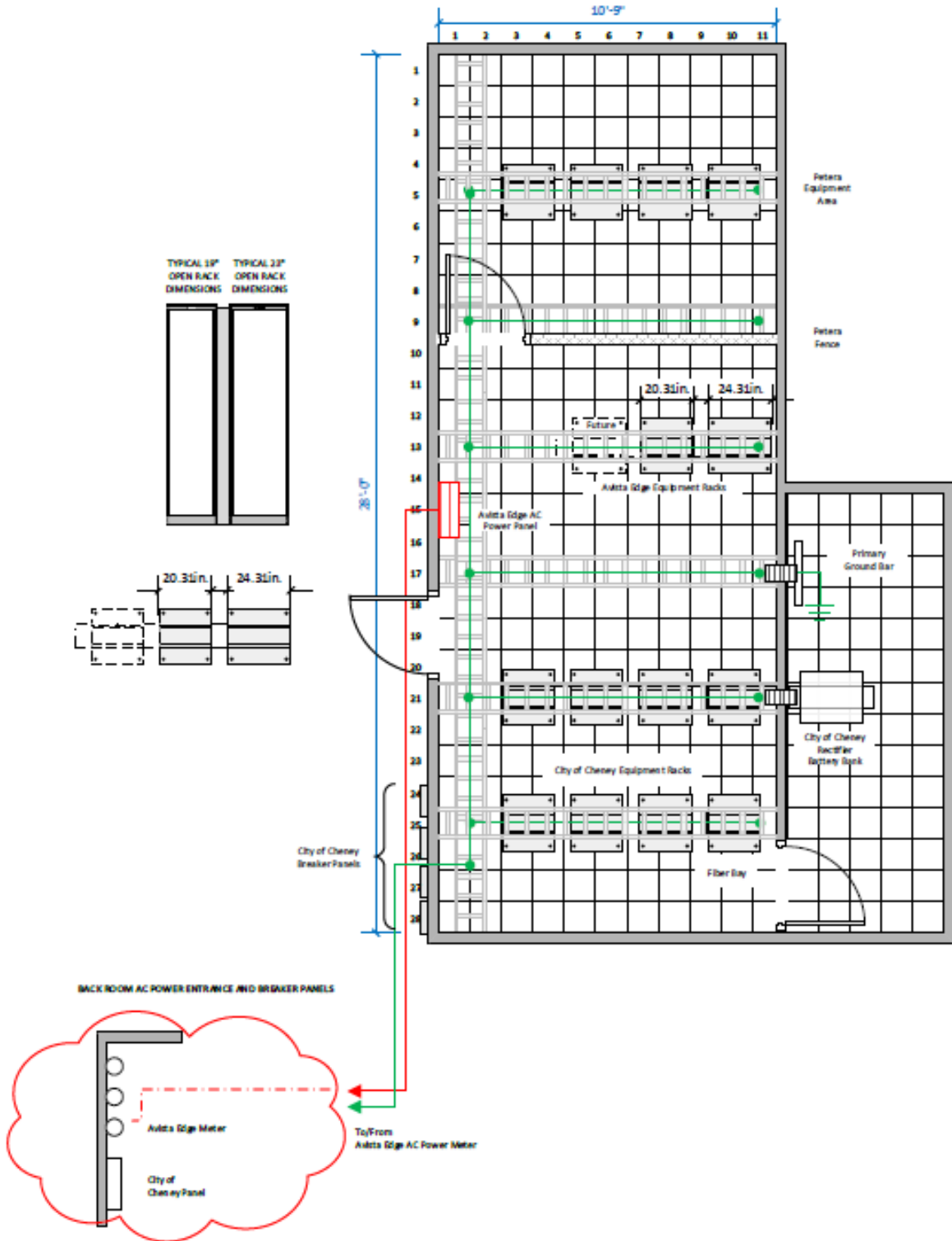


Exhibit "B"

