PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Agenda

5:30 PM, Tuesday, April 09, 2019
Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Decorum

The Council requests that citizens help maintain the decorum of the meeting by turning off electronic devices, being respectful to the Council and others, and refraining from applauding during the proceedings of the meeting.

Opening Ceremony

Roll Call
Prayer
Pledge of Allegiance
Approval of Minutes

- February 19, 2019 Council Meeting Minutes

Public Comment

Fifteen minutes have been set aside for any person to express ideas, concerns, comments, or issues that are not on the agenda:

Please state your name and city of residence into the microphone.
Please limit your comments to two minutes.
State Law prohibits the Council from acting on items that do not appear on the agenda.

Redevelopment Agency of Provo

1. A resolution authorizing the Chief Executive Officer of the Provo City Redevelopment Agency to modify certain contracts with NeighborWorks Provo. (18-076)

Action Agenda

2. An ordinance granting New Cingular Wireless PCS, LLC a non-exclusive franchise to operate a telecommunications network in Provo City, Utah. (19-009)

3. A resolution approving the execution of a Master Tax-Exempt Lease Purchase Agreement for the purchase of Fire apparatus. (19-043)

4. A resolution authorizing the Mayor to create an interlocal agreement with Utah County for vote-by-mail election for municipal primary and general elections to be held on Tuesday, August 13, 2019 and Tuesday, November 5, 2019. (19-044)

Adjournment

If you have a comment regarding items on the agenda, please contact Councilors at council@provo.org or using their contact information listed at: http://provo.org/government/city-council/meet-the-council

Materials and Agenda: agendas.provo.org
Council meetings are broadcast live and available later on demand at youtube.com/user/ProvoCityCouncil
To send comments to the Council or weigh in on current issues, visit OpenCityHall.provo.org.

The next scheduled Council Meeting will be held on 4/23/2019 5:30:00 PM at 4/23/2019 5:30:00 PM in the Council Chambers, 351 West Center Street, Provo, unless otherwise noticed. The Work Meeting start time is to be determined (typically between 12:00 and 4:00 PM) and will be noticed at least 24 hours prior to the meeting.

Notice of Compliance with the Americans with Disabilities Act (ADA)

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Provo Council Office at 351 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email evanderwerken@provo.org at least three working days prior to the meeting. The meeting room in Provo City Center is fully accessible via the south parking garage access to the elevator. Council meetings are broadcast live and available for on demand viewing at youtube.com/user/ProvoCityCouncil.

Notice of Telephonic Communications

One or more Council members may participate by telephone or Internet communication in this meeting. Telephone or Internet communications will be amplified as needed so all Council members and others attending the meeting will be able to hear the person(s) participating electronically as well as those participating in person. The meeting will be conducted using the same procedures applicable to regular Municipal Council meetings.

Notice of Compliance with Public Noticing Regulations

This meeting was noticed in compliance with Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at agendas.provo.org. Council meeting agendas are available through the Utah Public Meeting Notice website at utah.gov/pmn, which also offers email subscriptions to notices.

Network for public internet access: *Provo Guest,* password: *provoguest*

Please Note – These minutes have been prepared with a time-stamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

PROVO MUNICIPAL COUNCIL

Regular Meeting Minutes
5:30 PM, Tuesday, February 19, 2019
Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Council Member David Harding
Council Member David Knecht
Council Member David Sewell
Council Member Gary Winterton
Council Member George Handley
Council Member George Stewart
Council Member Vernon K. Van Buren
Mayor Michelle Kaufusi
Council Executive Director Cliff Strachan
Wayne Parker, CAO
Council Attorney Brian Jones

Conducting: Council Chair David Harding

Prayer

Quinn Wilder

Pledge

Mark Wilder

Presentations, Proclamations, and Awards

1. Provo City Employees' Association Employee of the Year Presentation (0:08:29)

Shilo Harris, Employees Association President, presented. She said when ballots were returned for Employee of the Year, it was clear that Ryan Stewart stood out. Mr. Stewart was the October 2018 Employee of the Month and was respected and admired by his peers. Following a short presentation Mr. Harris was presented with a certificate and recognized as the 2018 Employee of the Year.

2. A presentation about future construction on Bulldog Boulevard and 500 West. (19-026) (0:12:06)

Leah Jaramillo was the Vice President and Senior Project Manager of Sommers-Jaramillo and Associates. Ms. Jaramillo provided updates on two UDOT projects: 500 West Upgrade and Bulldog Boulevard Improvements Project.

500 West Project:

- Replace asphalt with concrete
- Add on-street bicycle lanes
- New sewer, storm drain, curb and gutter
- Widened sidewalks

- Raised, planted medians
- Improved pedestrian crosswalks
- Upgraded traffic signalization
- Drainage work to begin immediately
- Work to begin March 4 with an 18-month completion time

She said this project was similar to the 300 South project that took place a few years ago. The intent was to improve the road, not increase capacity.

Bulldog Boulevard Improvements Project:

- Convert one travel lane in each direction into protected bicycle lanes
- Install a raised center median between all signalized intersections
- Add a new signalized intersection at 400 West
- Add landscaping in the buffers and medians, where space allows
- Highlight areas where vehicles and bike paths cross
- Install physically separated or striped dedicated bike lanes 500 West to University Avenue
- Add shared shoulders between University Avenue and Canyon Road.
- Signal work to begin first
- Work to begin March 4 with a six-month completion time

Mr. Knecht clarified that both projects would begin on the same day, March 4. The 500 West project would extend to 500 South, stopping just before the train tracks. He asked was the vision was for the portion of road that continued further south. Ms. Jaramillo explained the lane configuration would not change but there would be drain improvements.

Mr. Winterton suggested it may be a good time to consider changing the name of Bulldog Boulevard since Provo High had relocated and the Bulldog was their mascot. Brian Torgersen, Engineer, said this had been discussed and was possible but would not be easy. There were many things to consider, including the impact to the businesses located along this road.

Approval of Minutes

3. January 22, 2019 Council Meeting Minutes

The January 22, 2019 minutes were approved by unanimous consent.

Public Comment (0:22:50)

Mr. Jones, Council Attorney, explained the process for public comment. Chair Harding opened public comment. There were no comments from the public. Mr. Harding closed public comment.

Action Agenda

4. Resolution 2019-08 appropriating $26,172 in the Police Department General Fund for expenses related to the death of an officer in the line of duty, applying to the fiscal year ending June 30, 2019. (19-019) (0:24:11)

Motion: An implied motion to adopt Resolution 2019-08 as currently constituted, had

been made by council rule.

Dustin Grabau, Budget Officer, presented. This appropriation would cover Police Department expenses related to the death of Master Officer Joseph Shinners.

Mr. Winterton noted there had been many donations, including Utah Valley University waiving the fee for use of the UCCU Event Center where the funeral was held. Mr. Winterton asked if this appropriation covered funeral related expenses. Mr. Grabau explained these were actual expenses incurred by the department related to vigils, overtime, etc. A detailed list of itemized receipts was available upon request.

Chair Harding opened public hearing, there was no response. He invited council discussion, seeing none, he called for a vote on the implied motion.

Vote: The motion to approve Resolution 2019-08 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

Chair Harding noted this had been an especially difficult time for the Police Department. He hoped they felt the love and support of the Council and community.

5. Resolution 2019-09 appropriating $72,597,691 in the General Capital Improvement Plan Fund and $240,000 in Debt Service Fund for construction and debt payments related to the new City facilities applying to the fiscal year ending June 30, 2019. (19-021) (0:27:12)

Motion: An implied motion to adopt Resolution 2019-09 as currently constituted, had been made by council rule.

Dustin Grabau, Budget Officer, presented. This reflects an appropriation of the bonds that were issued for Police, Fire & City Facilities. This number was slightly higher than the amount of debt issued as a result of the bond sale because the interest expected to be gained throughout the life of the project was also included. The amount of $240,000 came from the bond proceeds and would be used to pay for expenses related to issuing the debt, such as paying the firm that helped with the process.

Mr. Knecht noted this represented the amount of money available, but not necessarily the amount of money that would be used, it was possible the City would spend less.

Chair Harding opened public hearing, there was no response. There was no council discussion. Mr. Harding called for a vote on the implied motion.

Vote: The motion to approve Resolution 2019-09 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

6. Resolution 2019-10 appropriating $196,475 in the Airport Fund, Operating Division for the Airport Bond payment. (19-020) (0:30:23)

Motion: An implied motion to adopt Resolution 2019-10 as currently constituted, had been made by council rule.

Dustin Grabau, Budget Officer, explained Airport bonds had recently been issued for the purpose of infrastructure construction. This amount, $196,475, represented two semiannual payments, including a portion of interest paid during the initial phases of the bonds. The early stages of the bond repayment schedule included capitalizing interests and other aspects. Beginning with fiscal year 2020, this would be included in future budgets.

Chair Harding opened the public hearing and invited the public to comment, there was no response. There was no council discussion. Mr. Harding called for a vote on the implied motion.

Vote: The motion to approve Resolution 2019-10 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

7. Joint Resolution 2019-11 of the Provo City Mayor and Municipal Council in Support of the Provo City Airport and requested state funding to add a commercial passenger facility (terminal). (19-028) (0:32:11)

Motion: An implied motion to adopt Resolution 2019-11 as currently constituted, had been made by council rule.

Isaac Paxman, Deputy Mayor, presented the joint resolution to the Council. Recently the FAA had authorized Provo City to proceed with an apron for a terminal. The City was considering adding four gates now, with the possibility of up to ten in the future. The estimated project cost was $41,710,085. There were state and federal grants available, but Provo City would need to procure the remaining funds of approximately $19 million.

The proposed funding sources were as follows:

Federal FAA Grants with $947,957 local grant match	$10,113,097.00
State Legislature Appropriation	$9,000,000.00
Provo Public Works CIP Projects	$9,564,372.50
Inter-Departmental Loan from Energy ¼ Cent Sales Tax	$4,000,000.00
Previously acquired terminal area property	$4,734,917.00
Funding Gap – Possibly Utah County MAG	$4,297,699.05
Agency Funding Totals	**$41,710,085.55**

In addition to the FAA grants, Mr. Paxman had been working with the legislature to secure funding. As part of this process, it was important for Provo to be able to show what they would be contributing. The administration considered shifting CIP Project funding ($9,564,372.50) to the airport. An inter-departmental loan could be used to borrow $4,000,000 from the Energy department, a ¼ cent sales tax increase was going into effect in July. The City already owned 66 acres within the airport boundary, which had a value of $4,734,917. The administration would be asking Utah County for the remaining $4,297,699.05.

The purpose of this resolution was to signal that Provo was serious about making this work. Mr. Paxman thought it was important to act upon this opportunity and discover ways to procure the remaining funds.

Mr. Sewell thanked Mr. Paxman for pursing this opportunity. He was fully supportive.

Mr. Winterton suggested looking to other entities or foundations that might be willing to help. Mr. Paxman said they would look into this.

Mr. Winterton explained the City was eligible for grants based upon the value of the property at the airport, this had been a valuable resource in the past. Mr. Torgersen explained the City had 66 acres of land in the airport boundary. The City was not actively looking to take property but would make offers to willing sellers to secure more land so that the added value could be considered in the future.

Mr. Stewart congratulated previous administrations for their contributions to the airport, specifically Mayor Billings and Mayor Curtis. They laid the groundwork that made this possible.

Chair Harding opened public comment, there was no response.

Mr. Van Buren was supportive but thought they needed to go on record by saying it will have some costs. He asked what CIP projects might be delayed because of this. Mr. Decker responded there would be an impact from a utility standpoint. He estimated $4 million would be needed in infrastructure improvements for the terminal, this would could from water, waste water, and storm water funds. It was not an insignificant investment.

Chair Harding called for a vote on the implied motion.

Vote: The motion to approve Resolution 2019-11 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

8. Resolution 2019-12 to place seven parcels of property located generally at the mouth of Provo Canyon, east of Nevada Ave. and Slate Canyon Dr., 350 S Slate Canyon Dr., and 1320 S State St. on the surplus property list. (19-015) (0:43:10)

Motion: An implied motion to adopt Resolution 2019-12 as currently constituted, had been made by council rule.

Tara Riddle, Property Coordinator, presented. She explained that staff had determined the following properties were no longer needed by the City and could be added to the surplus property list. She described the following properties:

Size	County Tax ID	General Description
39 Acres	20-015-0004	Mouth of Provo Canyon
17.71 Acres	22-048-0068 22-048-0007 22-048-0005	Three parcels, east of former County Jail property (Buckley Draw)
4.347 Acres	22-038-0063	Old Slate Canyon Gun Range on 300 South
1 Acre	22-051-0024 22-051-0071	Remnant substation property near 1320 N. State Street

Mr. Knecht asked if proceeds from the sale of Buckley Draw would go to Bicentennial Park. Ms. Riddle confirmed they would.

Chair Harding opened public comment.

Doug Gail, Provo Resident, was the Chairman of the Provo Housing Authority. He said they were working to provide affordable housing in Provo and the surrounding area. He asked council to consider the land for several of the projects they were working on, such as land trust. Or as developers purchase properties, ten percent could be set aside for affordable housing.

There were no other comments from the public. Chair Harding closed public comment.

Mr. Handley appreciated Mr. Gail's comments. He clarified that the sale of each property would go through the regular approval process. Mr. Handley did not want to see the property get developed without considering how the development would meet the City's overall needs.

Mr. Knecht recognized the properties would go through the regular process, but they did not need to wait for a private developer to make an offer. Provo Housing could also make a proposal to Council.

Mr. Winterton said the property near the Indian Hills trailhead needed quite a bit of work before it could be developed, he asked Ms. Riddle whether the other properties were ready to be developed. Ms. Riddle agreed the Indian Hills property would be the most difficult to develop, but the other properties had infrastructure close by and would not be as challenging.

Mr. Knecht asked if any fault line studies had been conducted. Ms. Riddle explained the City had conducted environmental studies, but they would not have included fault line studies. A developer would need to arrange and pay for that type of study.

Chair Harding called for a vote on the implied motion.

Vote: The motion to approve Resolution 2019-12 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

9. Resolution 2019-13 adopting the Provo City Storm Drain Master Plan for decision making and policy formation regarding Storm Drain matters within the City. (18-102) (0:53:00)

Motion: An implied motion to adopt Resolution 2019-13 as currently constituted, had been made by council rule.

Brian Torgersen, Division Director of Public Services, presented. He said it had been 33 years since the last Storm Drain Master Plan was adopted. The plan had been presented earlier in the day, Mr. Torgersen provided a brief overview of some of the changes:

- The storm intensity design was changed to a 10-year event from a 25-year event. This was to be consistent with plans in surrounding cities.
- The plan included proposed improvements to save money by reducing pipe sized by using a regional detention basis.
- The 500 West construction project included a significant trunk line improvement, this would replace the buried irrigation canal that previously ran through Pioneer Park.

Chair Harding opened public comment, there was no response. He called for a vote on the implied motion.

Vote: The motion to approve Resolution 2019-13 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

10. Ordinance 2019-04 amending Provo City Code regarding on-street parking and enforcement of publicly owned lots and garages. (19-023) (0:59:35)

Motion: An implied motion to adopt Ordinance 2019-04 as currently constituted, had been made by council rule.

Austin Taylor, Parking and Sustainability Coordinator, presented. Mr. Taylor explained that under the current code there was no enforcement of off-street parking, even on City property. This amendment would allow off-street parking enforcement on City owned property, such as the Recreation Center. This amendment would also provide clarification regarding abandoned vehicles by specifying how far a car must move before returning to the original spot within a 72-hour period.

Mr. Winterton spoke about abandoned vehicles on private property. He understood that parking enforcement had no jurisdiction on private property, but he was concerned that privacy laws made it difficult for property owners to get the vehicle owner's information to contact them before just having a vehicle towed. Mr. Knecht had experience with this, he said abandoned vehicles were often left in the parking lots of churches. He agreed that it was difficult to track down the owner, he wondered if Provo Police would help by notifying the vehicle owner. Mr. Winterton thought that was already taking place, he appreciated their efforts but wanted to make it easier for private property owners to deal with abandoned vehicles. He would follow up with Mr. Taylor later to discuss this. Mr. Jones clarified that private property owners had the authority under State law to initiate parking enforcement on their property. State law said you could enforce parking on private property, City code said you could enforce parking on-street, but nothing regulated off-street parking on City owned property.

Chair Harding opened public comment but there was no response. There was no other Council discussion. He called for a vote on the implied motion.

Vote: The motion to approve Ordinance 2019-04 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

11. An ordinance amending the Zone Map Classification of approximately 0.96 acres of real property, generally located at 1356 South 500 West, from Residential Agricultural (RA) to Residential (R1.8). Lakewood Neighborhood. (17-0017R) (1:05:36)

Austin Ardmore, Planner, presented. A map was displayed to show an existing home on about 1 acre of land near 1356 South 500 West. The applicant hoped to subdivide and develop the rear part of their property, they had requested R1.8 zoning. Staff determined the lots met R1.8 standards and recommended approval. Mr. Ardmore thought this was a good idea that would allow the City to provide more housing in the area and complete this portion of 570 West. The Planning Commission also recommended approval. The neighborhood had a concern about the building height, but the owner was willing to limit the building to two stories and was willing to put a note on the plat stating this. Further, the R1.8 zone would restrict building height to 35 feet, measured at the middle of the roof. Mr.

Winterton asked if 35 feet was measured before or after fill was brought in for grading. Mr. Ardmore said it was measured from the average to finished grade, after any fill was brought in.

Mr. Harding asked if the neighbors were satisfied by the applicant's offer to record a note on the plat to restrict the height. He invited the applicant, Angela Eckstein, to speak. Ms. Eckstein explained the property no longer served its purpose as agricultural, irrigation had been disconnected and the land was no longer used for hay crops. She thought the land would be best used to bring in a few more homes. The property extended into the road which made the road very narrow and difficult to navigate. Ms. Eckstein explained the Osprey Development included very tall homes which worried her neighbors because they did not want more tall homes. At the planning commission meeting the neighbors agreed a two-story home would be appropriate and basements were not feasible in the neighborhood due to the sewer depth of four feet.

Mr. Knecht noted from the pictures presented that the road was incomplete, there were not curb, gutter, or sidewalks on one side of the road. He asked if it would all be complete after development. Ms. Eckstein explained there would still be an incomplete section, it was her neighbor's property and they were not interested in paying to have it finished.

Chair Harding invited the Lakewood Neighborhood Chair, Becky Bogdin, to speak. Ms. Bogdin said the neighbor to the south where the incomplete section existed was 80 years old and lacked the funding to pay for curb, gutter, and sidewalk behind her home. Ms. Bogdin still had concerns about the plat note because it did not specify that a basement would not be put in. She worried the applicant would sell the property and a new developer would build a two-story home with a basement. She said a basement was not considered a story. She would feel more comfortable if it clearly stated no basement or if 35 feet was measured from the existing street. Ms. Bogdin also wanted written assurances the planter strip would be consistent with the rest of the neighborhood. Lastly, she said the existing sidewalks were only three feet wide and the new requirement for sidewalks was six feet, she wanted an exception made so the new sidewalk matched the rest of the neighborhood.

Chair Harding opened public comment, there were no other comments.

Mr. Ardmore explained that the details being discussed would be addressed with the site plan, this request was only for a zone change.

Considering the concerns brought forth by Ms. Bogdin, Mr. Stewart thought it was best to allow this item to be heard again in two weeks and allow time for those issues to be resolved.

Mr. Harding recognized there would be another process for site plan approval but that would be handled administratively so this was Council's only opportunity to weigh in. Allowing the item to be continued would provide an opportunity for these issues to get resolved while Council still had control.

Mr. Sewell knew there were many R1.8 zones in the City but not many had this type restriction on basements. He wondered if this was compensation for a flaw in the code. Mr. Ardmore said there were a few areas on the west side of the city that had this type of restriction due to the contour level. He thought this request was a reaction to the Osprey Development.

Mr. Van Buren clarified that the 35-foot requirement was part of the zone, so if this passed the home would be limited to 35 feet. Mr. Knecht said this was the standard for the zone unless there was a development agreement.

Chair Harding explained this was the first hearing for this item and any Councilor could request to continue this to the next meeting. Mr. Stewart stated his preference for this item to be continued to the next meeting.

Mr. Harding asked if the applicant and neighborhood chair could come to an agreement now that 35 feet was to be measured from the street level. Ms. Eckstein said it was more important to her to have this developed than to have a basement or homes of a certain height, she was willing to agree to this. Mr. Harding asked if they were opposed to working on the details and waiting two weeks. Regardless, Mr. Stewart said he wanted to wait two weeks.

Mr. Jones requested to be notified if a development agreement was proffered so that he could have an alternate version of the ordinance prepared for the next meeting.

Ms. Bogdin was not concerned about working with Ms. Eckstein but worried what might happen in the future. She hoped the code would be amended to prevent another development like Osprey from being built in the R1.8 zone. Mr. Harding said he would be interested in revisiting how height is defined and closing any loopholes.

Mr. Knecht noted this situation was unique because the new homes would be built in an existing neighborhood. If this were a new development in an undeveloped area there would be no imposition on existing homes and there would be no issue on how the height was measured. He hoped Community Development would consider what zone language might be used if the code were amended to properly regulate everything else built on the west side.

As allowed by Council rule, this item would be presented again at the next meeting.

12. ***CONTINUED* An ordinance amending Provo City Code Section 14.38.085 to clarify limitations on signage within the North University Riverbottoms Design Corridor. City-wide application. (PLOTA20190026)**

13. **CONTINUED An ordinance amending the General Plan from Public Facilities (PF) to Residential (R) for approximately 0.78 acres located at approximately 862 E Quail Valley Drive. Edgemont Neighborhood. (PLGPA20190009)**

14. **CONTINUED An ordinance amending the zone map classification of approx. 0.78 acres of real property, generally located at 862 East Quail Valley Dr, from Public Facilities (PF) to Low Density Residential (LDR). Edgemont Neighborhood. (PLRZ20180430)**

15. ***CONTINUED* An ordinance amending Provo City Code Section 14.34.285 regarding the design standards for buildings in the Campus Mixed Use Zone. City-wide application. (PLOTA20190025)**

16. Ordinance 2019-05 amending Provo City Code Section 14.14E.030(2) to remove the maximum density restriction in the Campus Mixed Use Zone. City-wide impact. (1:33:58) **(PLOTA20180432)**

Motion: An implied motion to adopt Ordinance 2019-05 as currently constituted, had been made by council rule.

Josh Yost, Planner, explained the Campus Mixed Use Zone was most commonly found around universities and colleges. There was a request to apply this to the land where the Noorda School of Osteopathic Medicine would be built near 1860 South in the East Bay Neighborhood. The zone had a number of regulations that govern the geometric size and form of the building. This request removes the density restriction but would regulate above and beyond other regulations in this zone, according to Mr. Yost. He said density was not a good regulatory mechanism. The Planning Commission voted 6:1 to recommend approval.

Mr. Knecht asked what the current parking requirement was. Mr. Yost said a baching occupancy in the South Campus Planning Area was 0.8 per residence, plus 0.2 per unit for visitor parking. A three-bedroom unit with three occupants would be 2.6 stalls per unit. Mr. Knecht was concerned about visitor parking turning into resident parking. Josh agreed and said there needed to be additional discussion, but that was outside of the scope of this application.

Mr. Harding said from a community planning perspective this was a good proposal, but he wondered if Engineering had considered the impact of the potential density. Mr. Yost said the engineering staff originally had concerns that removing the cap on density could make it difficult to plan for infrastructure, but after discussing how the geometric regulations were working in the ITOD zone, they felt more comfortable. Mr. Yost added that there was discussion about removing this zone from the Joaquin Neighborhood so that every project would need to apply for a rezone individually, this would provide an additional level of scrutiny and consideration for infrastructure impact. From a planning perspective, having more students next to campus and near mass transit would decrease traffic. He thought this was a wise land use decision.

Chair Harding invited the applicant, Todd Sinks, to comment. Mr. Knecht felt the Council was in favor of removing the density restriction but asked if Mr. Sinks had a density estimate. Mr. Sinks estimated there would be 787 units on 9.3 acres or about 84 units per acre.

Chair Harding opened public comment, there was no response. Council had no further discussion and Mr. Harding called for a vote on the implied motion.

Vote: The motion to approve Ordinance 2019-05 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

17. An ordinance amending the General Plan Map from Commercial (C) to Public Facilities (PF) for approximately 23 acres and from Commercial (C) to Mixed Use (MU) for approximately 12 acres, located at 178 E 1860 S. East Bay Neighborhood. (PLGPA20180407) (1:47:10)

Joshua Yost, Planner, presented the item. The intent was to align the General Plan with plans to develop a medical school and student housing on the northwest corner of the golf course. This request had been made by Economic Development. In addition to zone map changes, Mr. Yost suggested removing three policy statements from the General Plan that were conflicting with the current General Plan Map:

- Central Area Policy No. 19 stated that freeway oriented commercial zoning should be initiated for property adjacent to I-15, but that was not possible in this area.
- Policy No. 6 stated the intent to dedicate 60 acres in this area for commercial use, but this was no longer the plan.
- Policy No. 9 called for a study of potential future locations for the East Bay Golf Course, but this had been resolved with the transfer of property for the medical school.

The Planning Commission also recommended removing these items from the General Plan.

Mr. Harding thought the resolution only contemplated changes to the map, not the policy statements. He asked for clarification. Mr. Yost said both items were included in the staff report, but he was not sure what was in the resolution. Mr. Jones reviewed the resolution and concluded only the map changes were included in this resolution. Mr. Yost said they would include the removal of these policy statements in future General Plan amendments concerning the golf course.

Mr. Van Buren did not want to see the removal of these policies be forgotten, he asked what the timeframe would be. Mr. Yost said he could open an application the next day to resolve the policy statements.

The City had two I-15 interchanges, East Bay and Center Street. Mr. Harding thought it still made sense to have freeway oriented commercial zoning at the Center Street interchange. Rather than completely removing Policy 19, he hoped the text could just be amended to exclude the East Bay interchange for this policy.

Mr. Jones had reviewed the staff report which included removing these policy statements, he offered to amend the ordinance to include the removal of these statements. Mr. Van Buren did not want to delay voting but did want this included in the resolution. Mr. Yost and Mr. Jones would work on this and present an amended ordinance at the next meeting, they would also be sure to include Mr. Harding's suggestion. Mr. Van Buren preferred this option and stated his preference to vote on an amended resolution at the next meeting.

Chair Harding opened public comment, there was no response. There was no further Council discussion.

18. Ordinance 2019-06 to amend the General Plan regarding the Downtown Master Plan to clarify right-of-way improvements for 100 West. City-wide impact. (PLGPA20190008) (1:56:28)

Motion: An implied motion to adopt Ordinance 2019-06 as currently constituted, had been made by council rule.

Javin Weaver, Planner, presented. The Downtown Master Plan described 100 West from 600 South to 500 North as a Pedestrian Corridor. Multiple departments including Economic Development and Redevelopment had identified a cross section of 100 West from 100 South to 600 South as a potential pedestrian corridor.

One new development in the area would be a pedestrian overpass connecting the Provo Station at 100 West 600 South. Mr. Weaver said there had also been discussion of UDOT installing a pedestrian bicycle traffic light at 300 West and 100 South.

The proposed street section would include two bike lanes and 45 degree back-in parking which was thought to be safer for pedestrians and bicyclists. This was a new concept for the City.

Chair Harding opened public comment, there was no response. He called for a vote on the implied motion.

Vote: The motion to approve Ordinance 2019-06 was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

19. ***CONTINUED* An ordinance amending the Downtown Streetscape Standards to clarify right-of-way improvements for 100 West. City-wide impact. (PLOTA20190007)**

20. The Municipal Council or the Governing Board of the Redevelopment Agency will consider a motion to close the meeting for the purposes of holding a strategy session to discuss pending or reasonably imminent litigation, and/or to discuss the purchase, sale, exchange, or lease of real property, and/or the character, professional competence, or physical or mental health of an individual in conformance with § 52-4-204 and 52-4-205 et. seq., Utah Code.

Mr. Jones said the administration had requested a closed meeting for the purpose of strategizing about the sale of property. The property being discussed had been publicly noticed and met the requirements for a strategy session.

Motion: Councilor Stewart moved to close the meeting. The motion was seconded by Councilor Van Buren.

Vote: The motion to close the meeting was approved 7:0 with Councilors Handley, Harding, Knecht, Sewell, Stewart, Van Buren and Winterton in favor.

Adjournment

The regular meeting was adjourned by unanimous consent at approximately 7:34 p.m.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: BMUMFORD
Department: Council
Requested Meeting Date: 03-19-2019

SUBJECT: A policy discussion related to the Neighborhood Housing Services of Provo proposal with regards to home purchases with CDBG/HOME Dollars (18-076)

RECOMMENDATION: There are a number of policy issues that need to be discussed relative to the recent proposal that Neighborhood Housing Services of Provo (NHS) made to the Council at the November 13, 2018 Work Meeting. A motion may be required. RDA is seeking guidance from the Council about whether to forgive the write-off amounts on all of the loans, the write-off amounts on some of the loans, and/or whether to establish a covenant between NeighborWorks and Provo City that would ensure the houses in question stay affordable.

BACKGROUND: The RDA is seeking guidance from the Council about whether to forgive the write-off amounts on all of the loans from NHS and whether the Council should, or would like to, establish criteria for writing off loans. The RDA provided Council with the letter from NHS and Council staff summed up the amounts and proposal that NHS has established (below). The write off amounts of the loans vary and NHS has different proposals for each project they're looking for forgiveness.

Several years ago, Neighborhood Housing Services (now known as NeighborWorks) purchased and rehabbed several houses using funds borrowed from the Redevelopment Agency that originally came from the Federal Government. Based on the type and amount of funding used, the homes were required to remain affordable for specific durations of time.

Recently, there has been interest in forgiving some of the loans. The RDA is concerned that should some of these houses no longer remain affordable, the Federal Government (HUD) could demand the funds back from Provo that were originally used to rehab them. There is also some concern regarding what the state of these houses would be after the decision might be made to forgive the loans:

- Should Provo City take ownership?
- Should Neighborworks continue to manage the properties?
- Should the properties be placed in a trust to be managed as a Community Land Trust by Neighborworks?
- Should the upcoming release of the RFP RFQ be tied to these properties?

Any number of the above listed combinations or other considerations should be considered.

More information about specific homes and their situations is included below:

FRANKLIN COMMONS The outstanding loan amount on this property is $270,000, payable to the City when the constructed properties were sold. This loan was intended to assist eight homeowners. Because the amount of subsidy per unit was greater than $15,000 but lower than $40,000, the corresponding amount of time during which the housing must stay affordable (the affordability period) is 10 years.

An affordability period begins when the City reports to HUD that a given activity is completed (i.e., the housing unit has been constructed, and the beneficiary has taken possession of the property). In Franklin Commons' case, the activity was reported as complete on September 30, 2006; therefore, the affordability period requirement of 10 years has been met, and the City does not run the risk of funds being recaptured by HUD. As a result, with approval from the Municipal Council, this loan amount of $270,000 could be forgiven to NHS, without further responsibility to HUD.

PLACE ON 9TH The outstanding loan amount for Place on 9th is $261,395. Five units were assisted in this project with a subsidy of $52,279 per unit. Because more than $40,000 was used for each unit, the affordability period is 15 years. These activities were reported completed to HUD on April 21, 2011. The affordability period for this project won't be met until April 21, 2026. Should the properties fail to meet the affordability period (occupancy requirement), the City could be liable to repay funds back to HUD (approximately $3,485 per unit for every year short of the affordability period.) If all five properties were to fall out of compliance now, the City could be required to pay back to HUD approximately $139,400. NHS is proposing to the City to pay back $74, 975.37 to satisfy the loan, writing off $186,419.90. The Municipal Council may approve to accept the reduced payoff on this project, understanding the City's responsibility to HUD should the properties fall out of compliance for the affordability period anytime within the next eight years.

JOAQUIN RETREAT The outstanding loan amount on this property is $215,800 for one unit. The affordability period for this property is 15 years. Because the activity was reported as completed to HUD on March 21, 2013, there are still ten years left in the affordability period. This means that the City could be required to repay HUD approximately $1,438.66 per year, should the property fall out of compliance (occupancy requirement) during that time (a total of $14,386.60). NHS is proposing to the City to pay back $44,940.73 to satisfy the loan, writing off $168,993.63. The Municipal Council may approve to accept the reduced payoff on this project, understanding the City's responsibility to HUD should the properties fall out of compliance for the affordability period anytime within the next ten years.

FISCAL IMPACT: Potentially this could mean a loss to the CDBG program income for future years

PRESENTER'S NAME: David Walter and Councilor Dave Knecht

REQUESTED DURATION OF PRESENTATION: 30 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Vision 2030, Goal 1.5 - Encourage owner occupancy or long-term residency by creating healthy and balanced neighborhoods for schools, businesses, religious congregations, and community organizations

CITYVIEW OR ISSUE FILE NUMBER: 18-076

RESOLUTION 2019-.

A RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER OF THE PROVO CITY REDEVELOPMENT AGENCY TO MODIFY CERTAIN CONTRACTS WITH NEIGHBORWORKS PROVO. (18-076)

WHEREAS, the Redevelopment Agency (RDA) has made loans to NeighborWorks Provo, also known as NeighborWorks Mountain Country Home Solutions and Neighborhood Housing Services of Provo, Inc. (NeighborWorks), for the acquisition and rehabilitation of deteriorated houses in and around Provo City; and

WHEREAS, the primary purpose of these loans was to correct deficiencies in such properties and either resell them to, or develop new housing for, owner-occupants to encourage neighborhood revitalization; and

WHEREAS, the Governing Board has identified three loans with outstanding balances the terms of which they have a desire to revisit regarding the following three projects—Franklin Commons, Place on 9th, and Joaquin Retreat; and

WHEREAS, these loans have been reviewed and determined to enhance neighborhood vitality and meet the following locally targeted objectives:

- provide "decent housing,"
- enhance the neighborhood living environment, and
- enhance economic development opportunity; and

WHEREAS, on November 13, 2018, March 5, 2019, and April 9, 2019, the Governing Board of the RDA met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Board's consideration; and

WHEREAS, after considering the facts, the Governing Board of the RDA finds (i) as a result of real estate collapse and decrease in home value, the NeighborWorks contract loss was the result of force majeure, and (ii) the homes were sold at the request of the RDA at a loss to NeighborWorks; (iii) the loans should be reworked to set forth the terms as established below; and (iv) the proposed action reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Governing Board of the Redevelopment Agency of Provo City Corporation as follows:

PART I:

The Chief Executive Officer of the RDA is hereby authorized to negotiate and execute an agreement to formalize new terms for the Franklin Commons project in form substantially similar to the proposal attached hereto as Exhibit A, including the forgiveness of $270,000. An executed copy of said agreement shall be attached hereto as Exhibit B after execution.

PART II:

The Chief Executive Officer of the RDA is hereby authorized to negotiate and execute an agreement to formalize new terms for the Place on 9th project in form substantially similar to the proposal attached hereto as Exhibit A, including requiring the repayment of $74,975.37, providing a grant totaling $186,419.90, and committing to work with NeighborWorks in the event requirements of the affordability period, which runs through April 21, 2026, are not met. An executed copy of said agreement shall be attached hereto as Exhibit C after execution.

PART III:

The Chief Executive Officer of the RDA is hereby authorized to negotiate and execute an agreement to formalize new terms for the Joaquin Retreat project in form substantially similar to the proposal attached hereto as Exhibit A, including requiring the repayment of at least $44,940.73 (with more to be potentially paid if NeighborWorks generates additional income from the construction of a pocket neighborhood described in the proposal), and providing for a grant of $168,993.63, and committing to work with NeighborWorks in the event requirements of the affordability period, which runs through March 21, 2028, are not met. An executed copy of said agreement shall be attached hereto as Exhibit D after execution.

PART IV:

This resolution shall take effect immediately.

END OF RESOLUTION.

Provo City Municipal Council

Staff Memorandum

Neighborhood Housing Services Loan Forgiveness Policy Report

Bryce Mumford, Lead Analyst

~~As part of~~ During the housing boom between the years of 2005 and 2008, Neighborhood Housing Services (NHS), now NeighborWorks,was active in buying, rehabilitating, and selling homes in Provo. When the economy fell out, NHS was left holding large loans on properties that did not have the equity to cover the amount on the loans. NHS scrambled to find a way to absorb the impact that came as a result of the downturn. They began renting the properties in order to begin covering costs for properties that could not sell.

In 2011, NHS came to the City to amend the contracts, since they were out of compliance by renting the properties. As the housing market became more stable, they took the opportunity to sell the properties at a price close to what was still owed,. However, they were unable to entirely recoup their losses, and this resulted in some of these large, outstanding obligations they still owe. Additionally, associated with each property was something referred to as an affordability period, a Housing and Urban Development (HUD) requirement that any property where HUD funds were used there is an expectation of affordability and reporting associated with each property. If it fails to meet these requirements, then HUD requires repayment based on the loan and the amount of time remaining in the "affordability period." Because these properties were secured by NHS, the obligation falls on their organization to track the properties, submit reports, and ensure maintenance of affordability. The costs associated to the affordability timeframe are found below (Franklin Commons, Place on 9th, Joaquin Retreat).

In 2011, Neighborhood Housing Services changed their name to NeighborWorks of Provo, and they continue to serve the lower-income population in and around Provo City. They came to a November 13, 2018 Work Meeting to discuss forgiveness of the outstanding debt obligations they currently have with Provo City. For each of the Neighborworks debt forgiveness asks, there is an associated breakdown of costs explained below and in the letter they provided (Exhibit A).

NeighborWorks provides a tremendous value to the City in that they perform a service that few groups in Provo City cancan do. When the City has a home that has been run down or been impacted by drug issues, private developers are often hesitant to purchase the home, since there are many unknowns. NeighborWorks has the ability to come in, rehabilitate the premises, and

return the home to a habitable standard. In some cases, this can lead to a complete neighborhood revitalization. The benefit and impact that NHS has on the City should not be overlooked.

The process that takes place when NeighborWorks purchases a home is as follows:

- NeighborWorks finds homes that fall within the affordability limits.
- NeighborWorks estimates rehabilitation costs associated with the home.
- NeighborWorks breaks down the budget to account for the purchase price, rehabilitation, and any other improvements or costs that would be associated.

The following information, including financial amounts from information provided by NeighborWorks and further verified by David Walter, Redevelopment Agency (RDA) Director, shows the dollar amounts and simplified financial data associated with each project.

FRANKLIN COMMONS

The outstanding loan amount totals $270,000, intended to assist eight homeowners and payable to the City when the constructed properties were sold.. Because the amount of HUD subsidy per unit was greater than $15,000 but lower than $40,000 the corresponding affordability period is 10 years. The period begins when the City reports to HUD that the activity is completed (housing unit is constructed and the beneficiary has taken possession of the property). In this case, the activity was reported as completed on September 30, 2006. Therefore, the affordability period has been met and the City does not run the risk of funds being recaptured by HUD. This loan amount could be forgiven to NeighborWorks, with approval from the Municipal Council, without further responsibility to HUD.

PLACE ON 9TH

The outstanding loan amount totals $261,395. Five units were assisted in this project with a subsidy of $52,279 per unit. Because more than $40,000 was used in each unit, the affordability period is 15 years. These activities were reported as completed to HUD on April 21, 2011. The affordability period for this project will not be met until April 21, 2026. Should the properties fail to meet the affordability period occupancy requirement—meaning the unit is occupied by those who meet income requirements--the City could be liable to repay funds back to HUD (approximately $3,485 per unit for every year short of the Affordability Period). If all five properties fall out of compliance now, the City may be required to pay back to HUD approximately $139,400. NeighborWorksis proposing to the City to pay back $74, 975.37 to satisfy the loan, writing off $186,419.90. The Municipal Council may approve to accept the reduced payoff on this project, understanding the City’s responsibility to HUD should the

properties fall out of compliance with the affordability period anytime within the next eight years.

JOAQUIN RETREAT

The outstanding loan amount totals $215,800 to subsidize one unit, and therefore the affordability period is 15 years. The activity was reported as completed to HUD on March 21, 2013, leaving 10 years remaining on the affordability period, or approximately $1,438.66 per year that would need to be repaid to HUD should the property fall out of compliance ~~(~~occupancy requirement~~)~~ during that time. NeighborWorks is proposing to the City that they will pay back $44,940.73 to satisfy the loan, but Provo City would be required to write off $168,993.63. The Municipal Council may approve the reduced payoff on this project, understanding the City's responsibility to HUD should the properties fall out of compliance for the affordability period anytime within the next 10 years.

When staff spoke with NeighborWorks about their revenues, they indicated that for every home they purchase, they feel it is important to put skin in the game. This means that they also put money into properties, bringing their own funds to the overall purchase or rehab. Sharlene Wilde, NeighborWorks Executive Director, indicated that NeighborWorks feels it is important for the City to know this since when the City loses, so do they. As part of the loan, there is an amount for the purchase of the home, a grant amount, and an overall payback amount.

These homes were purchased, they were rehabilitated, many of these homes were rented, and ultimately the homes were sold. The money that was owed was only discovered once they had an auditor come in and review their books to develop a cash flow statement. As part of this audit, these properties were discovered to be on the books. There were still outstanding obligations. There are no homes that remain. NHS has other properties and they have committed that if a profit is realized from those properties, then they will make a payment to the City to help offset whatever is forgiven. For the last couple of home sales, they have attempted to repay the City. There are policy issues that should be considered relative to this issue.

Questions to consider:

- If we forgive this loan, are we willing to do this for other entities with a similar loan?
    - Are there any other entities with these types of loans?
- Should the Council forgive only those loans for which the affordability period has concluded and later consider forgiving other loans only when the applicable affordability period has concluded?
- Does the Council set a precedent if they forgive this loan that is contrary to initial terms?

- When Neighborhood Housing Services signed the loan, they agreed to repay the funds that could then be used as program income. What type of projects are we missing out on if we forgive this loan?
- What amount of credit should be given to Neighborhood Housing Services for the type of work they do and projects they take on? Is this service worth the $400,000-$600,000 they are requesting? What value does the City put on the work this group does?

NeighborWorks®
MOUNTAIN COUNTRY
HOME SOLUTIONS

Honorable Provo City Council:

Grant Request

At the request of our auditing firm during the 2015 audit process, NeighborWorks Mountain Country Home Solutions, formerly known as NeighborWorks Provo during the time frames spoken to in this document was given a detailed list of the outstanding loans that the Provo City Redevelopment Agency records indicated were outstanding. Just to clarify who we are, our legal name is still Neighborhood Housing Services of Provo, Inc. In 2008, we changed our name to NeighborWorks Provo of which many of the documents reference. The remainder of this document will refer to our organization as NeighborWorks Provo of consistency.

On that list, were three project contracts that the City believed to be outstanding and we believed were closed out. The first contract is for Franklin Commons for $270,000 dated June 11, 2003. The second consisted of two contracts for the Place on 9th project, one for $103,286 and the second for $158,109 dated November 8, 2005 and November 21, 2005, respectively. The last contract was for 656 E 350 N for $215,800 dated January 27, 2009. Again, we believed these contracts had been closed and the money had been granted to us because there were not sufficient funds from the projects to pay the contracts off after the banks were paid.

During the past several months, in addition to reviewing our own records, we have interviewed people from the various time frames in which the projects were being built including past City Council members, past Mayor Lewis Billings, past RDA Director Paul Glauser, developer, David Gardner, past executive director of NeighborWorks Provo, Hazel Dunsmore, past NeighborWorks Provo board members and various residents to get the details surrounding these projects. We presented this information to the RDA staff and Mr. Wayne Parker and from that has resulted in additional meetings with Mr. David Walter, RDA Director that have been enlightening and educational with a sense of willingness to resolve this issue in the best way possible for all parties involved. Below are additional details of each project.

Franklin Commons Project

This project was started in 2002. The project consisted of 9 single family homes and 8 twin homes all of which were sold by 2006. According to several neighbors and past city elected officials, it was anticipated from the beginning that the funds provided by the city would not be repaid, thus the statement in the contract that says "[the] Loan shall be repaid when property is sold and on a cash flow basis". Demographic information had been submitted to the RDA years ago and the project was closed out in IBIS on September 30, 2006 but a final sources and uses statement had never been provided by

NeighborWorks Provo to the RDA for final contract close out. That report was submitted on August 30, 2018, and thus we request that the council consider NeighborWorks Provo's obligation under this contract be met.

Summary of Franklin Commons Project

Project	Franklin Commons
Amount Owed	$270,000
Number of housing units created	17 total units – 9 single-family homes and 8 twin homes
Neighborworks Proposal	Total forgiveness

Place on 9th Project

We purchased two parcels in the Dixon neighborhood, 255 & 275 N 900 W in November, 2005 with the intent to construct 5 new homes and rehab the existing home on the northern lot. During the entitlement process we learned that the neighbors thought the project was too dense and asked if we could eliminate one home to create larger lots with more green space. We accommodated their wishes. Construction began in April, 2007 with the sale of 3 units being sold immediately upon completion. Then October 19th, 2008 happened, the economy crashed, the housing bubble burst and we had a difficult time selling the remaining two units. The 4th home finally sold in October, 2009 a year later and the last home sold in March, 2011 two year beyond that. We sold the last two homes at a significant loss because home values had dropped over 30%. Because of the volatility in the housing market during the time we were trying to sell the last two homes, the former RDA director recommended to NeighborWorks Provo that contract revisions should wait until all of the homes were sold and the project was closed out which made complete sense at the time. Soon after the last home sold, we submitted our final sources and uses report to the RDA and our auditor closed out the project on our books. We did not realize the contracts were not closed out until we received the loan detail report in 2015 nor were we aware that there was an affordability period for these homes.

NeighborWorks Provo would respectfully request that the contracts be amended to reflect that NeighborWorks Provo will pay $74,975.37 to the city and the remaining balance will be a grant of $46,605 for units 1, 2, 4 and 5 ($186,420). The contract should also indicate that in an effort to meet the HUD affordability period requirements for this project, should any one of these units be sold to a family that does not meet HUD income limits of 80% and below area median income during the 15 year affordability period, NeighborWorks Provo will pay the city $3,107 per unit for the remaining years of the affordability period from the time the unit was sold and title was transfer to the first buyer.

Summary of Place on 9th Project

Project	Place on 9th Project
Amount Owed	Total of $261,395
Number of housing units created	6 total units – 5 new homes and 1 rehab home
Neighborworks Proposal	Revision of contract with Neighborworks to pay Provo RDA - $74,975.37; with the City providing a grant to Neighborworks for specific units totaling $186,420; Neighborworks will pay Provo RDA $3,107 per unit per year for the remain years in the affordability period if one of these homes is sold to someone who falls outside HUD affordability guidelines

656 E 350 N – Joaquin Retreat

This property was purchased in August, 2006 after we had purchased four other parcels adjacent and across the street from this property with the intent of tearing them all down and building another development similar to Franklin Commons. During the planning process, in September, 2007 we were able to purchase a 6th parcel giving us an acre on both sides of 350 North. We spent several months planning a project and held several meetings with the neighbors trying to design an affordable housing project that would benefit our targeted population and enhance the neighborhood. We presented two different projects to the RDA Executive Committee in early 2008 that reflected what the neighbors wanted but the density was not high enough to make either project pencil and the city felt the deficit was too large to justify moving forward.

Once again timing was not on our side. October, 2008 came along and we were stuck holding six properties that were in terrible shape and there was not enough money available from the City to move forward with a project. We held the properties until 2012 when HUD determined that any homes not sold must be rented. HUD also indicated that since we had torn down the little shack that was on 656 E 350 N, a home must be built immediately and either rented or sold. We built the home and sold it in August, 2012. It was sold to a moderate income family but they have since sold the home and we have no way of knowing what income bracket the current owner falls within.

We submitted the final sources and uses report to the RDA in November, 2013. That report indicated that of the $213,874, cash proceeds were $44,941 causing the HOME investment to be $168,933 which covered property acquisition, demolition, construction and six years of carrying costs. Again, we did not realize the contracts were not closed out until we received the loan detail report in 2015 nor were we aware that there was an affordability period for these homes.

MNCHS would like to build a pocket neighborhood on the north side of 350 North as a public-private-non-profit partnership possibly in conjunction with a community land trust and include the homes on the south side of the street in the project.

NeighborWorks Provo would respectfully request that the contract for this home be amended to reflect that we will pay $44,941 to the city and the remaining balance will be a grant. However, in the event that there are excess funds from the sale of homes on any of the remaining five lots that that money will be paid to Provo City RDA as a reduction of the grant.

Summary of Joaquin Retreat Project

Project	656 E 350 N – Joaquin Retreat
Amount Owed	$215,800
Number of housing units created	No units yet – pre-construction phase
Neighborworks Proposal	Build a pocket neighborhood on north side of 350 North in conjunction with a community land trust, include homes on south side of street in project; contract amended to have Neighborworks pay Provo RDA $44,941, with the City providing a grant for $168,933; RDA will pay Provo RDA more if they generate more income on the property

NeighborWorks Provo has started selling the homes we have rented as a result of the economic downturn and as per our agreement with the City. We have sold two homes to date paying the City back for the full amount of the contract including the portion that was intended to be an investment. That amount was $51,380. We have two more homes that are up for sale and the investment amount we intend to pay on those homes is $59,800. This illustrates that we are asking for grants on some contracts but are paying more than anticipated on others.

NeighborWorks Provo has worked in Provo for 23 years and wants to continue to help with the City's goal to promote affordable homeownership. We would like to thank the City Council for their time and consideration of this matter.

Sincerely,

NeighborWorks Mountain Country Home Solutions Board of Directors and Executive Director

Summary of Neighborworks Proposal

Project	**Franklin Commons**	**Place on 9th Project**	**Joaquin Retreat**
Amount Owed	$270,000	$261,395	$215,800
Housing Units Created	17 total units	6 total units	Pre-construction phase
Amount of Forgiveness	The full amount - $270,000	Forgiveness grant for units totaling $186,420	Forgiveness grant of $168,933
Neighborworks Offering	Nothing additional, claim the contract offered them an out	Pay Provo City $74,975.37, plus $3,107 per unit per year, up to maximum of 15 years, for future homebuyer who falls outside HUD affordability guidelines	Build a pocket neighborhood and pay Provo City $44,941, more if they generate additional income

TEL 801 852 6140
351 W CENTER ST
PO BOX 1849
PROVO, UT 84603

Provo City *(Legal)*

Staff Memorandum

New Cingular Wireless PCS Franchise Agreement Ordinance

April 9, 2019

Department Head

Robert West
(801) 852-6144

Presenter

Marcus Draper
(801) 852-6158

Required Time for Presentation

15 minutes

Is This Time Sensitive

No

Case File # (if applicable)

XX-XXX

Purpose of Proposal

- To establish the terms of New Cingular Wireless PCS' franchise with Provo City.

Action Requested

- Approval of Franchise Agreement.

Relevant City Policies

- Provo City Code Chapters 5.03, 5.07, and 6.24.

Budget Impact

- New Cingular Wireless shall pay the Municipal Telecommunications License Tax of 3.5% of the gross revenues it derives from sales of its services to customers within Provo City limits.

Description of this item (at least 2 paragraphs)

This is to help Council Members to have a clear understanding of what your item is.

- Provo City and New Cingular Wireless PCS have come to terms on a Franchise Agreement. Pursuant to Provo City Code, "[n]o franchise contract shall take effect until it has been approved by the Municipal Council." 5.03.020 (5). The parties are seeking the Council's approval for the Agreement that they have reached.

	● In addition to some minor changes, there are 2 notable changes in the Franchise Agreement from the template. The provisions relating to the City's ability to conduct an audit are removed on the grounds that the Utah State Tax Commission already collects the Municipal Telecommunications License Tax on behalf of Provo and conducts periodic audits. Thus, additional audits by Provo were considered duplicative. The second notable change relates to the franchise fee. Under the template, the fee is collected in an amount equal to the Municipal Telecommunications License Tax. The Franchise Fee paid is then offset against the tax that would otherwise be due. In this agreement the issue is simplified and New Cingular Wireless would simply pay the tax. The amount of revenues that Provo receives would not be affected by this change.

ORDINANCE 2019-.

AN ORDINANCE GRANTING NEW CINGULAR WIRELESS PCS, LLC A NONEXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK IN PROVO CITY, UTAH. (19-009)

WHEREAS, New Cingular Wireless PCS, LLC (New Cingular) desires to obtain a nonexclusive franchise to have the right and privilege to operate a telecommunications network in Provo, Utah; and

WHEREAS, Provo City and New Cingular have negotiated a nonexclusive franchise agreement ("Franchise Agreement") setting forth New Cingular's rights and duties with respect to its operation of a telecommunications network in Provo, Utah, as set forth in the attached Exhibit A; and

WHEREAS, on April 9, 2019, the Provo Municipal Council the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds: (i) the attached Franchise Agreement should be approved, thereby granting New Cingular a franchise to operate a telecommunications network in Provo, Utah, on the terms set forth in the Franchise Agreement; and (ii) such action furthers the health, safety, and welfare, and the best interests of the citizens of Provo.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The attached Franchise Agreement between Provo City and New Cingular Wireless, PCS, LLC is hereby approved and New Cingular is hereby granted a franchise to operate a telecommunications network in Provo, Utah, pursuant to the Franchise Agreement. The Mayor is hereby authorized to execute the Franchise Agreement, as set forth in draft form in the attached Exhibit A; provided, however, that the Mayor is also hereby authorized to amend the Franchise Agreement as may be needed to meet the requirements of applicable law. A copy of the executed agreement shall be attached hereto as Exhibit B after execution.

The franchise granted herein shall be effective upon the date on which all parties have signed the Franchise Agreement. If the Franchise Agreement has not been fully executed within

sixty (60) days after the passage of this ordinance by the City, this ordinance and the rights granted herein shall be null and void.

PART II:

A. If a provision of this Ordinance conflicts with a provision of a previously adopted ordinance concerning the same franchising act as described herein, this Ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that this Ordinance remain uncodified.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

PROVO CITY AND NEW CINGULAR WIRELESS PCS, LLC
TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into on _____, 2019 by and between the City of Provo, Utah, (hereinafter "City") and New Cingular Wireless PCS, LLC, a Delaware limited liability company (hereinafter "Company").

WITNESSETH:

WHEREAS, Provo City Code Chapter 6.24 “Telecommunications Rights-of-Way” provides for the use of the City’s Rights-of-Way for the installation, construction, and maintenance of systems in the City’s Rights-of-Way,

WHEREAS, the Company desires to provide certain telecommunication services within the City and in connection therewith to establish a telecommunications network in, under, along, over, and across present and future Rights-of-Way of the City, consisting of telecommunication lines, cables, and all necessary appurtenances; and

WHEREAS, the City, in exercise of its ownership rights over and in the public streets, alleys, easements, and Rights-of-Way, believes that it is in the best interest of the public to provide to the Company and its successors a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have negotiated an arrangement whereby the Company may provide its services within the City, pursuant to the terms and conditions outlined in this Agreement and in Provo City Code Chapter 6.24, and subject to the further reasonable regulation under its police and other regulatory power;

NOW, THEREFORE, in consideration of the mutual convents and agreements of the parties contained herein, and other good and valuable consideration, City and Company agree as follows:

ARTICLE I

FRANCHISE AGREEMENT AND ORDINANCE

1.1 **Agreement**. Upon approval by the City Municipal Council, this Franchise Agreement shall be deemed to constitute a contract by and between City and Company.

1.2 **Ordinance.** Previously, the City adopted Chapter 6.24 “Telecommunications Rights-of-Way” (the "Ordinance"), and such Ordinance is incorporated herein by reference and made an integral part hereof.

1.3 Grant of Franchise. The City hereby grants to Company and its successors and assigns the non-exclusive right, privilege, and franchise (the "Franchise") to construct, maintain, and operate a telecommunications network (hereinafter "Network") in, under, along, over, and across the present and future streets, alleys, ways, easements and Rights-of-Way of the City. The Franchise does not grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business although nothing contained herein shall preclude the Company from providing such service if an appropriate Franchise is obtained and all other legal requirements have been satisfied. If state or federal law permits Company to operate an open video system without obtaining a separate franchise from City to provide video services, Company nevertheless acknowledges that Chapter 6.22 of the Provo City Code regulates and governs the provisions of multichannel video services, and in providing video services to Customers within City, Company shall be subject to the customer service and consumer protection provisions of that Chapter.

1.4 Financial Capability. Company warrants that it has the financial capability to construct, maintain, and operate a telecommunications network and to otherwise comply with the provisions of this Agreement.

1.5 Relationship; Joint Facilities Agreement. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with the other. The Franchise does not grant Company the right to use City poles, conduit, or other facilities. The use of such facilities shall be governed by a separate Pole Attachment and Conduit Occupancy Agreement.

1.6 Definitions. The words, terms, and phrases which are used herein and in the Ordinance shall have their ordinary plain meaning unless the word, term, or phrase is expressly defined herein. Words, terms, and phrases which are not specifically defined herein, but are defined in 47 U.S.C.§153, or its successor, shall have the technical meaning provided by that section as of the date of this agreement. The following words, terms, and phrases when used herein shall have the following meanings:

"City Council" means the Provo City Municipal Council.

"Customer" means a person or user of the Company's telecommunications or wireless communications Network who lawfully receives telecommunications or wireless communications services or other services therefrom with the Company's authorized permission, including, but not limited to, other companies utilizing Company’s Network to provide services to customers of those companies.

"Network" means a Network of telecommunications or wireless communications lines and cables (including without limitation fiber-optic and copper lines and cables), together with necessary and desirable appurtenances (including underground and above-ground conduits and structures, antennas, poles, towers, wire, and cable) for its own use for the purpose of providing telecommunications or wireless communications services to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof.

"Public Improvement" means any existing or contemplated public facility, building, or capital improvement project, including without limitation streets, alleys, sidewalks, sewer, water drainage, Right-of-Way improvements, poles, lines, wires, conduits, and Public Projects.

"Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

"Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, shoulders, curbs, landscaping areas between sidewalks and curbs or shoulders, and other public rights-of-ways and similar public properties and areas to the extent that the City has the authority to grant permission to use any of the foregoing. It does not include structures, including poles and conduit, located in the right-of-way and, any other property owned by the City.

ARTICLE II

TERM AND RENEWAL

2.1 **Term and Renewal.** The Franchise granted to Company shall be for a period of ten (10) years commencing on the date this Agreement is executed, unless this Franchise is sooner terminated as herein provided. At the end of the initial ten (10) year term the Franchise may be renewed by Company upon the same terms and conditions as contained in this Agreement, so long as Company is in compliance with the provisions of this Agreement, for an additional five (5) year term, by providing to the City's representative, not less than ninety (90) calendar days before the expiration of the initial franchise term, written notice of Company's intent to renew.

2.2 **Rights of Company Upon Expiration or Revocation.** Within 120 days after the expiration of the Franchise, whether by lapse of time or by agreement between Company and the City, or forfeiture or lawful revocation of this Franchise, and no renewal is agreed upon, the Company shall remove any and all of its facilities, but in such event, it

shall be the duty of the Company, immediately upon such removal, to restore the Rights of Way, and grounds from which such facilities are removed, to as good condition as the same were before the removal was effected, reasonable wear and tear excepted.

2.3 Rights of City Upon Expiration or Revocation. Upon expiration of the term of this Franchise, forfeiture, or lawful revocation of this Franchise, and if no renewal or extension thereof is agreed upon, Company may, at the discretion of the City Council, be required, in part or entirely, to remove all its wires, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Franchise. Alternatively, the removal, or sale of such facilities and equipment may be directed, limited, or conditioned by the City by agreement or through means of other lawful municipal power or right. The City may continue to invoke any or all provisions of this Franchise against Company or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Company will work together to take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Company.

ARTICLE III

CONSIDERATION AND PAYMENT

3.1 Franchise Fee. To the extent that Company is providing services subject to the Municipal Telecommunications License Tax Act (Title 10, Chapter 1, Part 4 of Utah Code), it shall not be required to pay additional rate, fee or compensation for the right to use or occupy the City Rights-of-Way as Company acknowledges that it currently pays the required municipal telecommunications license tax ("Municipal Telecommunications Tax") as a result of its other operations within the City. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, the Company shall pay a franchise fee payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with similar facilities in accordance with applicable federal law, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate a change in fees due hereunder; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

ARTICLE IV

USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY

4.1 Franchise Rights to Use the Public Right-of-Way. The Company shall have the right to use the public Rights-of-Way within the City to construct and maintain its Network subject to the conditions set forth in this Agreement, including the provisions of Chapters 6.24 and 15.11 of the Provo City Code, which are hereby incorporated by reference; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any Right-of-Way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, Company shall have the right to utilize any easements across private property granted to the City for utility purposes, provided the City's written permission is obtained in each case, and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and Rights-of-Way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or Right-of-Way beyond the extent that the City may have acquired, and such easements and Rights-of-Way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and Right-of-Way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or Right-of-Way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or Right-of-Way.

4.2 Company Duty to Relocate; Subordination to City Use. Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, Rights-of-Way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not less than one hundred twenty (120) calendar days, to remove, relocate, temporarily bypass, or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 5.3 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement. In the event the City has required the Company to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of relocation. Notwithstanding anything to the contrary herein, the Company's use of the

Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.

4.3 Duty to Obtain Approval to Move Company Property; Emergency. Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the Mayor, City Council, City Engineer, Fire Chief, Police Chief, Energy Director, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of telecommunications services provided by the use of or through the Company's property (including telecommunications services provided by the Company to the Company's Customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's Customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of Company shall be paid to the Company within thirty (30) business days.

4.4 Dedication of Facilities. In consideration of this Agreement, the Company shall, during the term of this Agreement, provide City with the exclusive use of four (4) strands of single mode fiber (dark fiber) in its fiber optic cables which are located within the City, excluding drop cables to individual buildings or customer premises.

ARTICLE V

PLAN, DESIGN, CONSTRUCTION, INSTALLATION OF COMPANY FACILITIES

5.1 Coordination of Construction and Joint Use. On or before February 28 and November 30 of each calendar year, or such other date the Company and City may agree upon from year to year, the Company's and the City's representatives will meet (the "Bi-Annual Coordination Meeting") for the purpose of exchanging available information and documents regarding future construction of Company's facilities within the City, with a view toward coordinating their respective activities. Documents and information to be

exchanged shall include, without limitation, engineering drawings or other detailed maps of the proposed locations of construction or installation of telecommunication facilities. The Company, and the City Energy Director shall thereafter in good faith exchange other information and documents regarding the proposed construction for the purpose of coordinating the joint and respective activities within the City. Any significant construction or installation of new facilities by the Company or other franchised telecommunication companies not presented at the Bi-Annual Coordination Meeting shall only be commenced upon approval of the City Energy Director. Upon request, information regarding future capital improvements involving land acquisition or construction or installation of telecommunication facilities shall be treated with confidentiality as governed, and to the extent authorized, by City ordinance and the Government Records Access and Management Act.

5.2 Conditions of Public Utility Easement, Right-of-Way and Street Occupancy.

a. Except as provided below, the Company shall not erect, authorize, or permit others to erect any poles within the streets of the City for the operation of Company's Network, but shall use the existing poles and facilities of the City under such terms as the Company negotiates with City in separate master attachment agreements. City shall cooperate with Company in its negotiating with other telecommunication providers.

b. The Company may request, in writing, that it be authorized to erect poles or place conduit or other facilities within the streets of the City for the operation of its Network. Such consent shall be entirely discretionary with the City and shall be given upon such terms and conditions as the City Council, in its sole discretion, may prescribe, which shall include a requirement that the Company perform, at its sole expense, all tree trimming required as a result of the Company's presence to maintain the line or facilities clear of obstructions. With respect to any poles or wire-holding structures that the Company is authorized to construct and install within the City, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or facility by the Company, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Company's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility district pay to the Company any and all actual and necessary costs incurred by the Company in permitting such use, and shall indemnify the Company and City from and against any claims or causes of action brought about due to such use.

c. No cables, equipment, or wires for construction, maintenance, and operation of the Network shall be installed or the installation thereof commence on any existing pole within the City until the proposed location, specifications, and

manner of installation of such cables, equipment, and wires are set forth upon an engineering drawing, plot, or map showing the existing poles, streets, alleys, or highways where such installations are proposed. The drawing, plot, or map shall be submitted to the City Engineer and the City Energy Director and reviewed for approval or disapproval within thirty (30) days after submittal. Such approval shall not be unreasonably withheld, delayed, or conditioned. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the Network, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits.

d. If, in the conduct of its business, the Company is required to locate facilities in the streets of the City, other than facilities that may be attached to utility poles, the nature of such facilities shall be disclosed to the City for prior review and approval as to the need thereof and as to the location within the street. The installation shall be made under such conditions as the City Engineer shall prescribe.

e. The Company, at its own expense, may, and is solely responsible to, trim trees overhanging the public Rights-of-Way of the City to prevent the branches of such trees from coming in contact with the Company's wires and cable. Prior to the Company attempting to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City, the Company shall obtain approval from, and be under the supervision of, the City official to whom such duties have been or may be delegated in accordance with the applicable provisions of the municipal code of the City. Company shall immediately remove the trimmings and restore the area to its previous condition.

f. The Company, on the request of any person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company may require such payment in advance. The City agrees to provide prior written notice of the necessity to move the wires as far in advance as possible; provided in no event shall the City give less than forty-eight (48) hours advance notice. In the event of a disagreement between the Company and the holder of a permit, such disagreement shall be resolved by the City.

5.3 Duty to Underground. The Company shall be required to comply with the rules and regulations of the Public Service Commission in regard to the installation of underground lines. In addition, the Company shall comply with rules and regulations adopted by the City for the placement of newly constructed Network lines underground; provided, however, Company shall only be required to place newly constructed Network lines

underground to the extent that underground placement is also required of all other existing and newly constructed lines of other telecommunication companies at that location with the City. If all other electric utilities or telephone utilities are located or relocated underground in any place within the City after the Company has installed its facilities, the Company shall thereafter remove and relocate its facilities underground in such places. Where utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity and with the written approval from the City.

5.4 Company Duty to Comply with Rules and Regulations. Facilities located on, upon, over, and under property in which the City has an ownership interest shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with such rules and regulations as the City may issue in writing to Company. The Company shall acquire permits in accordance with such rules and regulations and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community, and from time to time, must be done under circumstances that may make prior acquisition of a permit infeasible.

5.5 Compliance with Pollution Laws. Company shall ensure that its facilities within the City meet the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company shall provide the City with a status report of such measures.

5.6 Compliance with Applicable Laws. All telecommunications lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed, used, maintained, relocated, or dismantled under color of this Agreement shall be so installed, used, operated, tested, maintained, relocated, or dismantled in accordance with applicable present and future federal, state, and City law and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be additional to or stricter than such minimum standards.

5.7 Location to Minimize Interference. All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, Rights-of-Way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, Rights-of-Way, or public property.

5.8 Repair of Damage. If during the course of work on its facilities, the Company causes damage to or alters any street, alley, Rights-of-Way, sidewalk, utility, Public Improvement, or other public property, the Company (at its own cost and expense and in

a manner approved by the City) shall promptly and completely restore such street, alley, Rights-of-Way, sidewalk, utility, Public Improvement or other public property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld. The Company shall abide by all reasonable regulations and requirements of the City for such work.

5.9 Guarantee of Repairs. For a period of one year following the completion of the repair work performed pursuant to Section 5.8, the Company shall maintain, repair, and keep in good condition those portions of the Rights-of-Way, or public property restored, repaired, or replaced to the satisfaction of the City.

5.10 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations, or standards imposed by law including, but not limited to, signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

5.11 Supervision by the City.

a. The Company shall construct, operate, and maintain the Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.

b. The Company's Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company and provided that a representative from Company is present during any such inspection.

5.12 Company's Duty to Remove Its Network.

a. The Company shall remove, in accordance with the terms herein, at its own cost and expense, from any public property within the City, all or any part of the Network when one or more of the following conditions occur:

(1) The Company ceases to operate the Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such cessation, except when the cessation of service is a direct result of a natural or man-made disaster;

(2) The Company fails to construct said Network as herein provided and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such failure;

(3) The Franchise is terminated or revoked pursuant to notice as provided herein; or

(4) The Franchise expires pursuant to this Agreement.

b. The Company's removal of any or all of the Network that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.

c. The Company shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 5.12(a) above and shall have one hundred twenty (120) calendar days from the date upon which said notice is received to remove or abandon such facilities.

5.13 Abandonment of Facilities by Company. The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, after receiving the written consent of the City, the abandoned Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

5.14 Notice of Closure of Streets. Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 5.10, above.

ARTICLE VI

POLICE POWER

6.1 Reservation of Police Power. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

6.2 Other Regulatory Approval. The Company and the City shall at all times during the life of this Franchise, comply with all federal, state, and City laws and regulations and with such reasonable and lawful regulation as the City now or hereafter shall provide, including all lawful and reasonable rules, regulations, policies, resolutions and ordinances now or hereafter promulgated by the City relating to permits and fees, sidewalk and pavement cuts, attachment to poles, utility location, construction coordination, beautification, and other requirements on the use of the Right-of-Way. The terms of this Franchise shall apply to all the Company's facilities used, in whole or part, in the provision of telecommunications services in newly annexed areas upon the effective date of such annexation. Company shall provide no service regulated by the Federal Communications Commission (FCC) or Utah Public Service Commission (PSC) until it has received all necessary approvals and permits from said commissions. Nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this Agreement which is not in accordance with applicable federal, state and local laws.

ARTICLE VII

CITY REPRESENTATIVES

7.1 Mayor's Duties and Responsibilities. The Mayor is hereby designated as the "City Representative" with full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The Mayor may delegate to others, including but not limited to, the City Attorney, City Engineer, City Finance Director, and City Energy Director, the various duties and responsibilities of City Representative. The failure or omission of the Mayor or the Mayor's designee(s) as City Representative to act shall not constitute any waiver or estoppel.

7.2 Company Duty to Cooperate. In order to facilitate such duties of the City Representative, the Company agrees to allow the City Representative reasonable access to any part of the Company's Network within the City's public Rights-of-Way.

7.3 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement 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 of such terms and conditions.

ARTICLE VIII

TRANSFER OF FRANCHISE

8.1 Written Approval Required. Subject to Section 8.6 below, Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld or delayed. Any attempted assignment or transfer without such prior written consent shall constitute a Default of the Franchise. In the event of such a Default, City shall proceed according to the procedure set forth in this Agreement, and any applicable state or federal law.

8.2 Procedure for Obtaining Approval for Transfer. At least ninety (90) calendar days before a proposed assignment or transfer of Company's Franchise is scheduled to become effective, Company shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider any or all of the following:

(a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
(b) qualifications of proposed assignee or transferee;
(c) legal integrity of proposed assignee or transferee;
(d) financial ability and stability of the proposed assignee or transferee;
(e) the corporate connection, if any, between the Company, and proposed assignee or transferee; and
(f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of a telecommunications network.

8.3 Certification of Assignee. Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise Agreement and all applicable laws, rules, and regulations.

8.4 Effect of Approval. In the event of any assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise Agreement arising prior to the date that the assignment occurs, unless specifically relieved by federal, or state law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.

8.5 Transfer Upon Revocation by City. Company and City agree that in the case of a lawful revocation of the Franchise, at Company's request, which shall be made in its sole discretion, Company shall be given a reasonable opportunity to effectuate a transfer of its

Network to a qualified third party. City further agrees that during such a period of time, it shall authorize the company to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If at the end of that time, Company is unsuccessful in procuring a qualified transferee or assignee of its Network which is reasonably acceptable to the City, Company and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Company's continued operation of its Network during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either the City or the Company. Notwithstanding anything to the contrary set forth herein, neither City nor Company shall be required to violate federal or state law.

8.6 **Permitted Assignment**. Notwithstanding anything to the contrary contained herein, approval from the City is not required for an assignment to (i) any person or entity controlling, controlled by, or under common ownership with Company or Company's parent company, (ii) to any person or entity that acquires Company's business, or (iii) any entity that acquires a majority of Company's assets in the market defined by the Federal Communications Commission in which the facilities are located.

ARTICLE IX

ACCEPTANCE BY THE COMPANY OF FRANCHISE

Company Duty to Approve Franchise Agreement. If the Company has not duly executed this Agreement prior to the City Council's adoption of the corresponding ordinance, then within sixty (60) calendar days after the effective date of the City Council's adoption of the ordinance, the Company shall execute this Agreement and file an unqualified acceptance of the ordinance in writing with the City Recorder of the City in a form approved by the City Attorney; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

ARTICLE X

EXTENSION OF CITY LIMITS

Annexations. Upon the annexation of any territory to the City, all rights hereby granted and the Franchise shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

ARTICLE XI

EARLY TERMINATION OR REVOCATION OF FRANCHISE

11.1 Grounds for Termination by City. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

a. The Company fails to pay the Municipal Telecommunications License Tax or franchise fee as required in Article III of this Agreement within thirty (30) days after receipt of notice of such non-payment from City.

b. The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and, thereupon, after written notice giving the Company notice of such determination, the Company, within forty-five (45) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such ninety-day period and failure to correct such conditions, the City may declare the Franchise forfeited, and, thereupon, the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and, provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the ninety-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Company;

c. The Company becomes insolvent, unable, or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within sixty (60) calendar days; or

d. In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

11.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

11.3 Grounds for Termination by Company. The Company may terminate this Franchise for any of the following:

a. If City shall fail to comply with a material provision of this Franchise, and City does not cure such failure within forty-five (45) calendar days after receipt of written notice, or longer if the nature of the cure requires longer than 45 days and City commences the cure within such 45 days period, but not to exceed 90 days. After expiration of the ninety (90) calendar days from the notice, Company may seek all remedies available to it at law and in equity, including but not limited to damages, injunctive relief, specific performance, or may terminate this Franchise upon written notice.

b. Upon ninety (90) days' written notice, if the Company is unable to obtain or maintain any permit or governmental approval necessary for the construction, installation or operation of the Facilities or Company's business, or the Franchise and the rights granted hereunder are no longer satisfy a specific need of Company's business.

ARTICLE XII

INSURANCE AND INDEMNIFICATION

12.1 No City Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct.

12.2 Company Indemnification of City. The Company shall indemnify, and at the City's option defend, and hold the City, and the officers, agents and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind to the extent on account of, or arising from the Company's negligence or willful misconduct, and shall pay the costs of defense plus reasonable attorneys' fees, except to the extent arising from or caused by the City's negligence or willful misconduct. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of telecommunications lines and appurtenances, whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement.

12.3 Notice of Indemnification. The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. City shall give written notice to Company promptly after City learns of the existence of Claim for which City seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of City, except and only to the extent the Company is prejudiced by such failure. The Company shall have the right to employ counsel reasonably acceptable to the City to defend against any such Claim. If such counsel will represent both the Company and City, there may be no conflict with such counsel's representation of both. Company must acknowledge in writing its obligation to indemnify the City for the entire amount of any loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the City other than for money damages. If Company fails to acknowledge in writing its obligation to defend against or settle such Claim within thirty (30) days after receiving notice thereof from the City (or such shorter time specified in the notice as the circumstances of the matter may dictate), the City shall be free to dispose of the matter, at the expense of Company (but only if indemnification is adjudged to be proper), in any way in which the City deems to be in its best interest. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

12.4 Insurance. Company shall file a certificate of insurance with the City, and at all times thereafter maintain in full force and effect at its sole expense, commercial general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, its officers, agents and employees. Policies limits required for Commercial General Liability insurance are $2,000,000 per occurrence for bodily injury and property damage, and $2,000,000 general aggregate. The insurer or insurers shall be authorized to write the required insurance in the State of Utah with an AM Best rating of at least A-VII. The coverage shall be maintained by the Company in full force and effect during the entire term of the Franchise. Company shall provide City with thirty (30) days' notice of any cancellation of the insurance required hereunder if coverage is not replaced. Company may self-insure the required coverage.

12.5 City's Right to Intervene. In any suit in which the City is named as a party and seeks indemnification from the Company, and in which the City in its own reasonable discretion believes that a conflict of interest with Company exists, the City shall have the right to provide its own defense in connection with the same. In such event, in addition to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit

or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

12.6 No Creation of a Private Cause of Action. The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under these indemnity provisions and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Company shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the City in defense thereof. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Company from its duty of defense against liability or paying any judgment entered against such party.

12.7 Performance Bonds and Other Surety. To ensure completion of the Company's performance of its obligations hereunder, Company shall furnish to the City a performance bond, that is substantially similar in form to the surety guarantee bond that is attached hereto as Exhibit 1, from an insurer or guarantor that is acceptable to the City.

ARTICLE XIII

REMEDIES

13.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

13.2 Remedies at Law. In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

13.3 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

13.4 Force Majeure. The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power

outages, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

ARTICLE XIV

NOTICES

City and Company Designees and Addresses. Unless otherwise specified herein, all notices between the City and the Company pursuant to or concerning this Agreement or the Franchise shall be delivered to (or to such other offices as the City or Company may designate by written notice to the other Party):

City:

Provo City Corporation
351 West Center Street
Provo, UT 84601
Attention: Finance Department

With copies to (which shall not constitute notice):

Provo City Attorney's Office
PO Box 1849
Provo, UT 84603
Attention: City Attorney

AND

Provo City Energy Department
PO Box 658
Provo, UT 84603
Attention: Energy Department Director

Company:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. City of Provo (UT)
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to (which copy will not constitute notice):

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. City of Provo (UT)
208 S. Akard Street
Dallas, TX 75202-4206

ARTICLE XV

CHANGING CONDITIONS

Meet to Confer. The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

ARTICLE XVI

AMENDMENT AND GENERAL PROVISIONS

16.1 Duty to Negotiate. At any time during the term of this Agreement, the City, through the City Council, or the Company may propose amendments to this Agreement by giving sixty (60) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s).

16.2 Written Approval to Amend Agreement Required. No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company, and an ordinance or resolution approving such amendments is approved by the City Council.

16.3 Entire Agreement. This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only by the written agreement of the parties, including the formal approval of the City Council.

16.4 Governing Law. This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

16.5 Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

ARTICLE XVII

SEVERABILITY

17.1 Conditions. If any section, sentence, paragraph, term, or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent 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 or thereof, all of which shall remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article III hereof. The parties do not waive their right to assert that the obligations contained herein, including those obligations contained in Article III arise as a matter of contract and are not otherwise conditioned.

17.2 Conflicts. In the event of a conflict between any provision of this Agreement and the Ordinance, the provisions of the Ordinance in effect at the time the Agreement is entered into shall control.

17.3 Fee Article Non-Severable. Article III hereof is essential to the adoption of this Agreement, and should it be challenged by the Company or determined to be illegal, invalid, unconstitutional, or superseded, in whole or in part, the entire Agreement and the Franchise shall be voided and terminated, subject to the following provisions of this Article. In the event of a judicial, regulatory, or administrative determination that Article III is illegal, invalid, unconstitutional, or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Company. In the event of any legislative action that renders Article III unconstitutional, illegal, invalid, or superseded, such termination shall be effective as of the effective date of such legislative action.

17.4 Waiver of Non-Severability. Notwithstanding the foregoing, if the City stipulates in writing to judicial, administrative, or regulatory action that seeks a determination that Article III is invalid, illegal, superseded, or unconstitutional, then a determination that Article III is invalid, illegal, unconstitutional, or superseded shall have no effect on the validity or effectiveness of any other section, sentence, paragraph, term, or provision of this Agreement, which shall remain in full force and effect.

17.5 Lease Terms Upon Termination. In the event this Agreement is terminated pursuant to Section 17.3 hereof, the City grants to the Company a lease according to the same terms and conditions as set forth in this Agreement.

IN WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the date first set forth above, to become effective on that date.

Provo City Corporation

By: _____
Michelle Kaufusi, Mayor

ATTEST:

_____
Amanda Ercanbrack, City Recorder

New Cingular Wireless PCS LLC,
a Delaware limited liability company

By: AT&T Mobility, Its Manager

By: _____
Its:_____

ATTEST:

_____
Secretary

APPROVED AS TO FINANCES:

_____
Chief Financial Officer

APPROVED AS TO FORM:

_____
General Counsel

STATE OF UTAH)
)ss.
COUNTY OF UTAH)

On the _____ day of _____, 2019, personally appeared before me _____, and who being by me duly sworn did each respectively say that he/she is the _____ of AT&T Mobility Corporation, Manager of New Cingular Wireless PCS, LLC and that the foregoing instrument was signed in behalf of said Company.

_____
Notary Public

RESOLUTION 2019-.

A RESOLUTION APPROVING THE EXECUTION OF A MASTER TAX-EXEMPT LEASE PURCHASE AGREEMENT FOR THE PURCHASE OF FIRE APPARATUS. (19-043)

WHEREAS, the Provo City Corporation ("Lessee") desires to obtain certain equipment (the "Equipment") described in the Equipment Schedule to the Master Tax-Exempt Lease Purchase Agreement ("Agreement") with Lessor, the form of which has been available for review by the Municipal Council of Lessee prior to the action taken herein and is attached hereto as Exhibit A; and

WHEREAS, the Equipment is essential for the Lessee to perform its governmental functions; and

WHEREAS, Lessee has taken the necessary steps, including those relating to any applicable purchasing policy and legal procurement requirements, to arrange for the acquisition of the Equipment; and

WHEREAS, Lessee proposes to enter into the Agreement with Lessor substantially in the form presented in this meeting; and

WHEREAS, on April 9, 2019 the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, all persons for and against the proposed Agreement were given an opportunity to be heard; and

WHEREAS, after considering the Mayor's recommendation, and facts and comments presented to the Municipal Council, the Council finds the proposed Agreement reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah as follows:

PART I:

It is hereby found and determined that the terms of the Agreement in the form presented in this meeting and incorporated in this resolution are in the best interests of Lessee for the acquisition of the Equipment.

PART II:

The Agreement and the acquisition and financing of the Equipment under the terms and conditions as described in the Agreement are hereby approved. The Mayor of Lessee and any other officer of Lessee who shall have power to execute contracts on behalf of Lessee are, and each of them hereby is, authorized to execute, acknowledge and deliver the Agreement with any changes,

insertions and omissions therein as may be approved by the officers who execute the Agreement, such approval to be conclusively evidenced by such execution and delivery of the Agreement. The Mayor of the Lessee and any other officer of Lessee who shall have power to do so are, and each of them hereby is, authorized to affix the official seal of Lessee to the Agreement and attest the same. An executed copy of the Agreement shall be attached hereto as Exhibit B following execution.

PART III:

The proper officers of Lessee are, and each of them hereby is, authorized to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and the Agreement.

PART IV:

Pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"), Lessee hereby specifically does not designate the Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code.

PART V:

This resolution shall take effect immediately.

END OF RESOLUTION.

UTAH FIXED EQUIPMENT LEASE

Long Name of Entity:	Provo City
Address:	351 W. Center Street
City, State Zip:	Provo, UT 84601
Attention:	Dan Follett
Public Finance Office:	Division Director of Finance
County:	Utah
Amount:	2,490,000.00
Rate:	2.63
Maturity Date:	April 1, 2027
First Pmt Date:	April 1, 2020
Payment Dates:	April 1
Auto Extend:	7
Governing Body:	City Council
Resolution Date:	March ___, 2019
Dated Date:	April, 2019
Day:	23rd
State:	Utah

$2,490,000.00
Provo City
Non-BQ Lease Purchase Agreement

---

1. Lease/Purchases Agreement of the Provo City
2. Exhibit A. Calculation of Interest Component
3. Exhibit B. Description of Leased Property
4. Exhibit C. Resolution of Governing Body
5. Exhibit D. Opinion of Lessee's Counsel
6. Exhibit E. Security Documents
7. Exhibit F. Delivery and Acceptance Certificate
8. Exhibit G Escrow Agreement
9. Form 8038-G
10. Wire Transfer Request

NON-BQ LEASE/PURCHASE AGREEMENT

Dated as of April 23, 2019

by and between

ZMFU II, INC.,
as Lessor

and

PROVO CITY,
as Lessee

TABLE OF CONTENTS

LEASE/PURCHASE AGREEMENT

THIS LEASE/PURCHASE AGREEMENT, dated as of April 23, 2019, by and between ZMFU II, Inc., a Corporation organized and existing under the laws of the State of Utah, as lessor (the "Bank"), and Provo City (the "Lessee"), a public agency of the State of Utah (the "State"), duly organized and existing under the Constitution and laws of the State, as lessee;

W I T N E S S E T H :

WHEREAS, the Lessee desires to finance the acquisition of the equipment and/or other personal property described as the "Leased Property" in Exhibit B (the "Leased Property") by entering into this Lease/Purchase Agreement with the Bank (the "Lease"); and

WHEREAS, the Bank agrees to lease the Leased Property to the Lessee upon the terms and conditions set forth in this Lease, with rental to be paid by the Lessee equal to the Lease Payments hereunder; and

WHEREAS, it is the intent of the parties that the original term of this Lease, and any subsequent renewal terms, shall not exceed 12 months, and that the payment obligation of the Lessee shall not constitute a general obligation under State law; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1 Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the definitions below. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Lease, refer to this Lease as a whole.

"Acquisition Amount" means $2,490,000.00 and is the amount represented by Lessee to be sufficient to acquire the Leased Property and pay any ancillary costs associated therewith.

"Advance" shall have the meaning set forth in Section 2.1(l)(i)(D) hereof.

"Bank" shall have the meaning set forth in the Preamble hereof.

"Business Day" means any day except a Saturday, Sunday, or other day on which banks in Salt Lake City, Utah or the State are authorized to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" means the date this Lease is executed by the Bank and the Lessee and shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

"Escrow Account" means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

"Escrow Agent" means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

"Escrow Agreement" means the Escrow Agreement dated April 23, 2019 executed by Lessee, Bank and the Escrow Agent, pursuant to which the Escrow Account is established and administered. A copy of the Escrow Agreement shall be found in Exhibit G.

"Event of Nonappropriation" shall have the meaning set forth in Section 3.2 hereof.

"Governing Body" means the governing body of the Lessee.

"Lease Payments" means the rental payments described in Exhibit A hereto.

"Lease Payment Date" shall have the meaning set forth in Section 3.4(a) hereof.

"Leased Property" shall have the meaning set forth in the Whereas clauses hereof.

"Lessee" shall have the meaning set forth in the Preamble hereof.

"Net Proceeds" means insurance or eminent domain proceeds received with respect to the Leased Property less expenses incurred in connection with the collection of such proceeds.

"Obligation Instrument" shall have the meaning set forth in Section 2.1(c) hereof.

"Original Term" shall have the meaning set forth in Section 3.2 hereof.

"Permitted Encumbrances" means, as of any particular time: (i) liens for taxes and assessments, if any, not then delinquent, or which the Lessee may, pursuant to provisions of Section 5.3 hereof, permit to remain unpaid; (ii) this Lease; (iii) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law to the extent permitted under Section 5.4(b) hereof; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the execution date of this Lease and which the Lessee hereby certifies will not materially impair the use of the Leased Property by the Lessee; and (v) other rights, reservations, covenants, conditions or restrictions established following the date of execution of this Lease and to which the Bank and the Lessee consent in writing.

"Rebate Exemption" shall have the meaning set forth in Section 2.1(l)(ii)(A) hereof.

"Regulations" shall have the meaning set forth in Section 2.1(l)(i) hereof.

"Renewal Term" shall have the meaning set forth in Section 3.2 hereof.

"Scheduled Term" shall have the meaning set forth in Section 3.2 hereof.

"State" shall have the meaning set forth in the Preamble hereof.

"Term" or "Term of this Lease" means the Original Term and all Renewal Terms provided for in this Lease under Section 3.2 until this Lease is terminated as provided in Section 3.3 hereof.

SECTION 1.2 Exhibits. Exhibits A, B, C, D, E, F, and G attached to this Lease are by this reference made a part of this Lease.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1 Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Bank as follows:

(a) Due Organization and Existence. The Lessee is a public agency of the State duly organized and existing under the Constitution and laws of the State.

(b) Authorization; Enforceability. The Constitution and laws of the State authorize the Lessee to enter into this Lease and to enter into the transactions contemplated by, and to carry out its obligations under, this Lease. The Lessee has duly authorized, executed and delivered this Lease in accordance with the Constitution and laws of the State. This Lease constitutes the legal, valid and binding special obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; Other Liens or Encumbrances. Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby (i) conflicts with or results in a breach of the terms, conditions, provisions, or restrictions of any existing law, or court or administrative decree, order, or regulation, or agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, **including without limitation any agreement or instrument pertaining to any bond, note, lease, certificate of participation, debt instrument, or any other obligation of the Lessee** (any such bond, note, lease, certificate of participation, debt instrument, and other obligation being referred to herein as an "Obligation Instrument"), (ii) constitutes a default under any of the foregoing, or (iii) results in the creation or imposition of any pledge, lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property except for Permitted Encumbrances.

By way of example, and not to be construed as a limitation on the representations set forth in the immediately preceding paragraph:

(A) no portion of the Leased Property is pledged to secure any Obligation Instrument; and

(B) the interests of the Lessor in the Leased Property hereunder do not violate the terms, conditions or provisions of any restriction or revenue pledge in any agreement or instrument pertaining to any Obligation Instrument.

If any Obligation Instrument existing on the date of execution of this Lease creates any pledge, lien, charge or encumbrance on any revenues, property or assets associated with the Leased Property that is higher in priority to the Bank's interests therein under this Lease, the Bank hereby subordinates its interests therein, but only to the extent required pursuant to such existing Obligation Instrument.

(d) Compliance with Open Meeting Requirements. The Governing Body has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which the Lessee's execution of this Lease was authorized.

(e) Compliance with Bidding Requirements. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Leased Property pursuant to this Lease, or the Governing Body and the Lessee have complied with all such procurement and public bidding laws as may be applicable hereto.

(f) No Adverse Litigation. There are no legal or governmental proceedings or litigation pending, or to the best knowledge of the Lessee threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling, or finding might adversely affect the transaction contemplated in or the validity of this Lease.

(g) Opinion of Lessee's Counsel. The letter attached to this Lease as Exhibit D is a true opinion of Lessee's counsel.

(h) Governmental Use of Leased Property. During the Term of this Lease, the Leased Property will be used solely by the Lessee, and only for the purpose of performing one or more governmental or proprietary functions of the Lessee consistent with the permissible scope of the Lessee's authority, and the Leased Property will not be subject to any direct or indirect private business use.

(i) Other Representations and Covenants. The representations, covenants, warranties, and obligations set forth in this Article are in addition to and are not intended to limit any other representations, covenants, warranties, and obligations set forth in this Lease.

(j) No Nonappropriations. The Lessee has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any municipal lease of the same general nature as this Lease, or under any of its bonds, notes, or other obligations of indebtedness for which its revenues or general credit are pledged.

(k) No Legal Violation. The Leased Property is not, and at all times during the Term of this Lease will not be in violation of any federal, state or local law, statute, ordinance or regulation.

(l) General Tax and Arbitrage Representations and Covenants.

(i) The certifications and representations made by the Lessee in this Lease are intended, among other purposes, to be a certificate permitted in Section 1.148-2(b) of the Treasury Regulations promulgated pursuant to Section 148 of the Code (the "Regulations"), to establish the reasonable expectations of the Lessee at the time of the execution of this Lease made on the basis of the facts, estimates and circumstances in existence on the date hereof. The Lessee further certifies and covenants as follows:

(A) The Lessee has not been notified of any disqualification or proposed disqualification of it by the Commissioner of the Internal Revenue Service as an issuer which may certify bond issues.

(B) To the best knowledge and belief of the Lessee, there are no facts, estimates or circumstances that would materially change the conclusions, certifications or representations set forth in this Lease, and the expectations herein set forth are reasonable.

(C) The Scheduled Term of this Lease does not exceed the useful life of the Leased Property, and the weighted average term of this Lease does not exceed the weighted average useful life of the Leased Property.

(D) Each advance of funds by the Bank to finance Leased Property under this Lease (each an "Advance") will occur only when and to the extent that the Lessee has reasonably determined and identified the nature, need, and cost of each item of Leased Property pertaining to such Advance.

(E) No use will be made of the proceeds of this Lease or any such Advance, or any funds or accounts of the Lessee which may be deemed to be proceeds of this Lease or any such Advance, which use, if it had been reasonably expected on the date of the execution of this Lease or of any such Advance, would have caused this Lease or any such Advance to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code.

(F) The Lessee will at all times comply with the rebate requirements of Section 148(f) of the Code as they pertain to this Lease, to the extent applicable.

(G) In order to preserve the status of this Lease and the Advances as other than "private activity bonds" as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease and any such Advances are outstanding and unpaid:

(I) none of the proceeds from this Lease or the Advances or any facilities or assets financed therewith shall be used for any "private business use" as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code;

(II) the Lessee will not allow any such "private business use" to be made of the proceeds of this Lease or the Advances or any facilities or assets financed therewith; and

(III) none of the Advances or Lease Payments due hereunder shall be secured in whole or in part, directly or indirectly, by any interest in any property used in any such "private business use" or by payments in respect of such property, and shall not be derived from payments in respect of such property.

(H) The Lessee will not take any action, or omit to take any action, which action or omission would cause the interest component of the Lease Payments to be ineligible for the exclusion from gross income as provided in Section 103 of the Code.

(I) The Lessee is a "governmental unit" within the meaning of Section 141(b)(6) of the Code.

(J) The obligations of the Lessee under this Lease are not federally guaranteed within the meaning of Section 149(b) of the Code.

(K) This Lease and the Advances to be made pursuant hereto will not reimburse the Lessee for any expenditures incurred prior to the date of this Lease and do not constitute a "refunding issue" as defined in Section 1.150-1(d) of the Regulations, and no part of the proceeds of this Lease or any such Advances will be used to pay or discharge any obligations of the Lessee the interest on which is or purports to be excludable from gross income under the Code or any predecessor provision of law.

(L) In compliance with Section 149(e) of the Code relating to information reporting, the Lessee will file or cause to be filed with the Internal Revenue Service Center, Ogden, UT 84201, within fifteen (15) days from the execution of this Lease, IRS Form 8038-G or 8038-GC, as appropriate, reflecting the total aggregate amount of Advances that can be made pursuant to this Lease.

(M) None of the proceeds of this Lease or the Advances to be made hereunder will be used directly or indirectly to replace funds of the Lessee used directly or indirectly to acquire obligations at a yield materially higher than the yield on this Lease or otherwise invested in any manner. No portion of the Advances will be made for the purpose of investing such portion at a materially higher yield than the yield on this Lease.

(N) Inasmuch as Advances will be made under this Lease only when and to the extent the Lessee reasonably determines, identifies and experiences the need therefor, and will remain outstanding and unpaid only until such time as the Lessee has moneys available to repay the same, the Lessee reasonably expects that (I) the Advances will not be made sooner than necessary; (II) no proceeds from the Advances will be invested at a yield higher than the yield on this Lease; and (III) the Advances and this Lease will not remain outstanding and unpaid longer than necessary.

(O) The Lessee will either (i) spend all of the moneys advanced pursuant to this Lease immediately upon receipt thereof, without investment, on the portion of the Leased Property that is to be financed thereby; or (ii) invest such moneys at the highest yield allowable and practicable under the circumstances until they are to be spent on the portion of the Leased Property that is to be financed thereby, and track, keep records of, and pay to the United States of America, all rebatable arbitrage pertaining thereto, at the times, in the amounts, in the manner, and to the extent required under Section 148(f) of the Code and the Treasury Regulations promulgated in connection therewith. At least five percent (5%) of the total amount of moneys that are expected to be advanced pursuant to this Lease are reasonably expected to have been expended on the Leased Property within six (6) months from the date of this Lease. All moneys to be advanced pursuant to this Lease are reasonably expected to have been expended on the Leased Property no later than the earlier of: (I) the date twelve (12) months from the date such moneys are advanced; and (II) the date three (3) years from the date of this Lease.

(P) This Lease and the Advances to be made hereunder are not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the regulations promulgated in connection therewith (I) enabling the Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (II) overburdening the tax-exempt bond market, as those terms are used in Section 1.148-10(a)(2) of the Regulations.

(Q) To the best of the knowledge, information and belief of the Lessee, the above expectations are reasonable. On the basis of the foregoing, it is not expected that the proceeds of this Lease and the Advances to be made hereunder will be used in a manner that would cause this Lease or such Advances to be "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, and to the best of the knowledge, information and belief of the Lessee, there are no other facts, estimates or circumstances that would materially change the foregoing conclusions.

(ii) Arbitrage Rebate Under Section 148(f) of the Code. With respect to the arbitrage rebate requirements of Section 148(f) of the Code, either (check applicable box):

☐ (A) Lessee Qualifies for Small Issuer Exemption from Arbitrage Rebate. The Lessee hereby certifies and represents that it qualifies for the exception contained in Section 148(f)(4)(D) of the Code from the requirement to rebate arbitrage earnings from investment of proceeds of the Advances made under this Lease (the "Rebate Exemption") as follows:

(1) The Lessee has general taxing powers.

(2) Neither this Lease, any Advances to be made hereunder, nor any portion thereof are private activity bonds as defined in Section 141 of the Code ("Private Activity Bonds").

(3) Ninety-five percent (95%) or more of the net proceeds of the Advances to be made hereunder are to be used for local government activities of the Lessee (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Lessee).

(4) Neither the Lessee nor any aggregated issuer has issued or is reasonably expected to issue any tax-exempt obligations other than Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) during the current calendar year, including the Advances to be made hereunder, which in the aggregate would exceed $5,000,000 in face amount, or $15,000,000 in face amount for such portions, if any, of any tax-exempt obligations of the Lessee and any aggregated issuer as are attributable to construction of public school facilities within the meaning of Section 148(f)(4)(D)(vii) of the Code.

For purposes of this Section, "aggregated issuer" means any entity which (a) issues obligations on behalf of the Lessee, (b) derives its issuing authority from the Lessee, or (c) is subject to substantial control by the Lessee.

The Lessee hereby certifies and represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV) of the Code.

Accordingly, the Lessee will qualify for the Rebate Exemption granted to governmental units issuing less than $5,000,000 under Section 148(f)(4)(D) of the Code ($15,000,000 for the financing of public school facilities construction as described above), and the Lessee shall be treated as meeting the requirements of Paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States with respect to this Lease and the Advances to be made hereunder.

- or -

☐ (B) Lessee Will Keep Records of and Will Rebate Arbitrage. The Lessee does not qualify for the small issuer Rebate Exemption described above, and the Lessee hereby certifies and covenants that it will account for, keep the appropriate records of, and pay to the United States, the rebate amount, if any,

earned from the investment of gross proceeds of this Lease and the Advances to be made hereunder, at the times, in the amounts, and in the manner prescribed in Section 148(f) of the Code and the applicable Regulations promulgated with respect thereto.

SECTION 2.2 Representations, Covenants and Warranties of the Bank. The Bank is a Corporation organized and in good standing under and by virtue of the laws of the State of Utah, and has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same, and has duly authorized the execution and delivery of this Lease. This Lease, constitutes the legal, valid and binding obligation of the Bank, enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

ARTICLE III

AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

SECTION 3.1 Lease. The Bank hereby leases the Leased Property to the Lessee, and the Lessee hereby leases the Leased Property from the Bank, upon the terms and conditions set forth herein.

Concurrently with its execution of this Lease, the Lessee shall deliver to the Bank fully completed documents substantially in the forms attached hereto as Exhibits B, C, D E, F, and G hereto.

SECTION 3.2 Term. The Term of this Lease shall commence on the date of execution of this Lease, which is also the date on which the Acquisition Amount is deposited with the Escrow Agent, including delivery to the Bank by the Lessee of fully completed documents in the forms set forth in Exhibits B, C, D, E, and F attached hereto, and continue until the end of the fiscal year of Lessee in effect at the Commencement Date (the "Original Term"). Thereafter, this Lease will be extended for 7 successive additional periods of one year coextensive with Lessee's fiscal year, except for the last such period which may be less than a full fiscal year, (each, a "Renewal Term") subject to an Event of Nonappropriation as described herein below in this Section 3.2 and in Section 3.3(a), with the final Renewal Term ending on April 1, 2027, unless this Lease is terminated as hereinafter provided. The Original Term together with all scheduled Renewal Terms shall be referred to herein as the "Scheduled Term" irrespective of whether this Lease is terminated for any reason prior to the scheduled commencement or termination of any Renewal Term as provided herein.

If Lessee does not appropriate funds for the payment of Lease Payments due for any Renewal Term in the adopted budget of the Lessee for the applicable fiscal year (an "Event of Nonappropriation"), this Lease will terminate upon the expiration of the Original or Renewal Term then in effect and Lessee shall notify Bank of such termination at least ten (10) days prior to the expiration of the Original or Renewal Term then in effect.

SECTION 3.3 Termination. This Lease will terminate upon the earliest of any of the following events:

(a) upon the expiration of the Original Term or any Renewal Term of this Lease following an Event of Nonappropriation;

(b) the exercise by Lessee of any option to purchase granted in this Lease by which Lessee purchases all of the Leased Property;

(c) a default by Lessee and Bank's election to terminate this Lease under Article VII herein; or

(d) the expiration of the Scheduled Term of this Lease, the Lessee having made payment of all Lease Payments accrued to such date.

SECTION 3.4 Lease Payments.

(a) Time and Amount. During the Term of this Lease and so long as this Lease has not terminated pursuant to Section 3.3, the Lessee agrees to pay to the Bank, its successors and assigns, as annual rental for the use and possession of the Leased Property, the Lease Payments (denominated into components of principal and interest) in the amounts specified in Exhibit A, to be due and payable in arrears on each payment date identified in Exhibit A (or if such day is not a Business Day, the next succeeding Business Day) specified in Exhibit A (the "Lease Payment Date").

(b) Rate on Overdue Payments. In the event the Lessee should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount was originally payable at the rate equal to the original interest rate payable with respect to such Lease Payments.

(c) Additional Payments. Any additional payments required to be made by the Lessee hereunder, including but not limited to Sections 4.1, 5.3, and 7.4 of this Lease, shall constitute additional rental for the Leased Property.

SECTION 3.5 Possession of Leased Property Upon Termination. Upon termination of this Lease pursuant to Sections 3.3(a) or 3.3(c), the Lessee shall transfer the Leased Property to the Bank in such manner as may be specified by the Bank, and the Bank shall have the right to take possession of the Leased Property by virtue of the Bank's ownership interest as lessor of the Leased Property, and the Lessee at the Bank's direction shall ship the Leased Property to the destination designated by the Bank by loading the Leased Property at the Lessee's cost and expense, on board such carrier as the Bank shall specify.

SECTION 3.6 No Withholding. Notwithstanding any dispute between the Bank and the Lessee, including a dispute as to the failure of any portion of the Leased Property in use by or possession of the Lessee to perform the task for which it is leased, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

SECTION 3.7 Lease Payments to Constitute a Current Obligation of the Lessee. Notwithstanding any other provision of this Lease, the Lessee and the Bank acknowledge and agree that the obligation of the Lessee to pay Lease Payments hereunder constitutes a current special obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. The Lessee has not hereby pledged the general tax revenues or credit of the Lessee to the payment of the Lease Payments, or the interest thereon, nor shall this Lease obligate the Lessee to apply money of the Lessee to the payment of Lease Payments beyond the then current Original Term or Renewal Term, as the case may be, or any interest thereon.

SECTION 3.8 Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" and the Lessee hereby agrees that the Lease Payments shall be an absolute net return to the Bank, free and clear of any expenses, charges or set-offs whatsoever, except as expressly provided herein.

SECTION 3.9 Offset. Lease Payments or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such Lease Payments or other sums for any reason whatsoever, including, but not limited to: (i) any accident or unforeseen circumstances; (ii) any damage or destruction of the Leased Property or any

part thereof; (iii) any restriction or interference with Lessee's use of the Leased Property; (iv) any defects, breakdowns, malfunctions, or unsuitability of the Leased Property or any part thereof; or (v) any dispute between the Lessee and the Bank, any vendor or manufacturer of any part of the Leased Property, or any other person.

ARTICLE IV

INSURANCE

SECTION 4.1 Insurance. Lessee, at Bank's option, will either self-insure, or at Lessee's cost, will cause casualty insurance and property damage insurance to be carried and maintained on the Leased Property, with all such coverages to be in such amounts sufficient to cover the value of the Leased Property at the commencement of this Lease (as determined by the purchase price paid for the Leased Property), and public liability insurance with respect to the Leased Property in the amounts required by law, but in no event with a policy limit less than $1,000,000 per occurrence. All insurance shall be written in such forms, to cover such risks, and with such insurers, as are customary for public entities such as the Lessee. A combination of self-insurance and policies of insurance may be utilized. If policies of insurance are obtained, Lessee will cause Bank to be a loss payee as its interest under this Lease may appear on such property damage insurance policies, and an additional insured on a primary and noncontributory basis on such public liability insurance in an amount equal to or exceeding the minimum limit stated herein. Subject to Section 4.2, insurance proceeds from insurance policies or budgeted amounts from self-insurance as relating to casualty and property damage losses will, to the extent permitted by law, be payable to Bank in an amount equal to the then outstanding principal and accrued interest components of the Lease Payments at the time of such damage or destruction as provided by Section 8.1. Lessee will deliver to Bank the policies or evidences of insurance or self-insurance satisfactory to Bank, together with receipts for the applicable premiums before the Leased Property is delivered to Lessee and at least thirty (30) days before the expiration of any such policies. By endorsement upon the policy or by independent instrument furnished to Bank, such insurer will agree that it will give Bank at least thirty (30) days' written notice prior to cancellation or alteration of the policy. Lessee will carry workers compensation insurance covering all employees working on, in, or about the Leased Property, and will require any other person or entity working on, in, or about the Leased Property to carry such coverage, and will furnish to Bank certificates evidencing such coverages throughout the Term of this Lease.

SECTION 4.2 Damage to or Destruction of the Leased Property. If all or any part of the Leased Property is lost, stolen, destroyed, or damaged, Lessee will give Bank prompt notice of such event and will, to the extent permitted by law, repair or replace the same at Lessee's cost. If such lost, stolen, destroyed or damaged Leased Property is equipment, it shall be repaired or replaced within thirty (30) days after such event. If such lost, stolen, destroyed or damaged Leased Property is other than equipment, it shall be repaired or replaced within one hundred eighty (180) days after such event. Any replaced Leased Property will be substituted in this Lease by appropriate endorsement. All insurance proceeds received by Bank under the policies required under Section 4.1 with respect to the Leased Property lost, stolen, destroyed, or damaged, will be paid to Lessee if the Leased Property is repaired or replaced by Lessee as required by this Section. If Lessee fails or refuses to make the required repairs or replacement, such proceeds will be paid to Bank to the extent of the then remaining portion of the Lease Payments to become due during the Scheduled Term of this Lease less that portion of such Lease Payments attributable to interest which will not then have accrued as provided in Section 8.1. No loss, theft, destruction, or damage to the Leased Property will impose any obligation on Bank under this Lease, and this Lease will continue in full force and effect regardless of such loss, theft, destruction, or damage. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss, theft, destruction, or damage to the Leased Property and for injuries or deaths of persons and damage to property however arising, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such damage to property be to Lessee's property or to the property of others.

ARTICLE V

COVENANTS

SECTION 5.1 Use of the Leased Property. The Lessee represents and warrants that it has an immediate and essential need for the Leased Property to carry out and give effect to the public purposes of the Lessee, which need is not temporary or expected to diminish in the foreseeable future, and that it expects to make immediate use of all of the Leased Property.

The Lessee hereby covenants that it will install, use, operate, maintain, and service the Leased Property in accordance with all vendors' instructions and in such a manner as to preserve all warranties and guarantees with respect to the Leased Property.

The Lessor hereby assigns to the Lessee, without recourse, for the Term of this Lease, all manufacturer warranties and guaranties, express or implied, pertinent to the Leased Property, and the Lessor directs the Lessee to obtain the customary services furnished in connection with such warranties and guaranties at the Lessee's expense; provided, however, that the Lessee hereby agrees that it will reassign to the Lessor all such warranties and guaranties in the event of termination of this Lease pursuant to Sections 3.3(a) or 3.3(c).

SECTION 5.2 Interest in the Leased Property and this Lease. Upon expiration of the Term as provided in Section 3.3(b) or 3.3(d) hereof, all right, title and interest of the Bank in and to all of the Leased Property shall be transferred to and vest in the Lessee, without the necessity of any additional document of transfer.

SECTION 5.3 Maintenance, Utilities, Taxes and Assessments.

(a) Maintenance; Repair and Replacement. Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all repair and maintenance of the Leased Property shall be the responsibility of the Lessee, and the Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property excepting ordinary wear and tear, and the Lessee hereby covenants and agrees that it will comply with all vendors' and manufacturers' maintenance and warranty requirements pertaining to the Leased Property. In exchange for the Lease Payments herein provided, the Bank agrees to provide only the Leased Property, as hereinbefore more specifically set forth.

(b) Tax and Assessments; Utility Charges. The Lessee shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges, of any type or nature charged to the Lessee or levied, assessed or charged against any portion of the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

(c) Contests. The Lessee may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Bank with the opinion of an independent counsel acceptable to the Bank to the effect that, by nonpayment of any such items, the interest of the Bank in such portion of the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. Otherwise, the Lessee shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Bank.

SECTION 5.4 Modification of the Leased Property.

(a) Additions, Modifications and Improvements. The Lessee shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Property if such improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would impair the exclusion from gross income for federal income tax purposes of the interest components of the Lease Payments; and the Leased Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements.

(b) No Liens. Except for Permitted Encumbrances, the Lessee will not permit (i) any liens or encumbrances to be established or remain against the Leased Property or (ii) any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Lessee pursuant to this Section; provided that if any such mechanic's lien is established and the Lessee shall first notify or cause to be notified the Bank of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Bank. The Bank will cooperate fully in any such contest.

SECTION 5.5 Permits. The Lessee will provide all permits and licenses necessary for the ownership, possession, operation, and use of the Leased Property, and will comply with all laws, rules, regulations, and ordinances applicable to such ownership, possession, operation, and use. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Leased Property, such changes or additions will be made by the Lessee at its own expense.

SECTION 5.6 Bank's Right to Perform for Lessee. If the Lessee fails to make any payment or to satisfy any representation, covenant, warranty, or obligation contained herein or imposed hereby, the Bank may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation, and the amount of such payment and the expense of any such action incurred by the Bank, as the case may be, will be deemed to be additional rent payable by the Lessee on the Bank's demand.

SECTION 5.7 Bank's Disclaimer of Warranties. The Bank has played no part in the selection of the Leased Property, the Lessee having selected the Leased Property independently from the Bank. The Bank, at the Lessee's request, has acquired or arranged for the acquisition of the Leased Property and shall lease the same to the Lessee as herein provided, the Bank's only role being the facilitation of the financing of the Leased Property for the Lessee. THE BANK MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE LEASED PROPERTY, OR ANY PORTION THEREOF. THE LESSEE ACKNOWLEDGES THAT THE BANK IS NOT A MANUFACTURER OR VENDOR OF ALL OR ANY PORTION OF THE LEASED PROPERTY, AND THAT THE LESSEE IS LEASING THE LEASED PROPERTY AS IS. In no event shall the Bank be liable for incidental, direct, indirect, special or consequential damages, in connection with or arising out of this Lease, for the existence, furnishing, functioning or Lessee's use and possession of the Leased Property.

SECTION 5.8 Indemnification. To the extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless the Bank, its directors, officers, shareholders, employees, agents, and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, construction, or use of the Leased Property. Notwithstanding the foregoing, the Bank shall not be indemnified for any liability resulting from the gross negligence or willful misconduct of the Bank.

SECTION 5.9 Inclusion for Consideration as Budget Item. During the Term of this Lease, the Lessee covenants and agrees that it shall give due consideration, in accordance with applicable law, as an item for expenditure during its annual budget considerations, of an amount necessary to pay Lease Payments for the Leased Property during the next succeeding Renewal Term. Nothing herein shall be construed to direct or require that Lessee take or direct that any legislative act be done, or that the Governing Body of Lessee improperly or unlawfully delegate any of its legislative authority.

SECTION 5.10 Annual Financial Information. During the Term of this Lease, the Lessee covenants and agrees to provide the Bank as soon as practicable when they are available: (i) a copy of the Lessee's final annual budget for each fiscal year; (ii) a copy of the Lessee's most recent financial statements; and (iii) any other financial reports the Bank may request from time to time.

ARTICLE VI

ASSIGNMENT AND SUBLEASING

SECTION 6.1 Assignment by the Bank. The parties hereto agree that all rights of Bank hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part, including without limitation transfer to a trustee pursuant to a trust arrangement under which the trustee issues certificates of participation evidencing undivided interests in this Lease and/or the rights to receive Lease Payments hereunder, provided that notice of any such assignment, transfer or other disposition is given to Lessee.

SECTION 6.2 Assignment and Subleasing by the Lessee. The Lessee may not assign this Lease or sublease all or any portion of the Leased Property unless both of the following shall have occurred: (i) the Bank shall have consented to such assignment or sublease; and (ii) the Bank shall have received assurance acceptable to the Bank that such assignment or sublease: (A) is authorized under applicable state law, (B) will not adversely affect the validity of this Lease, and (C) will not adversely affect the exclusion from gross income for federal income tax purposes of the interest components of the Lease Payments.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.1 Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the Lessee to pay any Lease Payment required to be paid hereunder by the corresponding Lease Payment Date.

(b) Covenant Default. Failure by the Lessee to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Bank; provided, however, if the failure stated in the notice cannot be corrected within the applicable

period, the Bank shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the Lessee of a case in bankruptcy, or the subjection of any right or interest of the Lessee under this Lease to any execution, garnishment or attachment, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

The foregoing provisions of this Section 7.1 are subject to the provisions of Section 3.2 hereof with respect to nonappropriation.

SECTION 7.2 Remedies on Default. Whenever any event of default referred to in Section 7.1 hereof shall have happened and be continuing, the Bank shall have the right, at its sole option without any further demand or notice to take one or any combination of the following remedial steps:

(a) take possession of the Leased Property by virtue of the Bank's ownership interest as lessor of the Leased Property;

(b) hold the Lessee liable for the difference between (i) the rents and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, as appropriate, and (ii) the rent paid by a lessee of the Leased Property pursuant to such lease; and

(c) take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease, the Security Documents (defined in Section 9.3), the Escrow Agreement or as a secured party in any or all of the Leased Property or the Escrow Account hereunder.

(d) terminate the Escrow Agreement and apply the proceeds in the Escrow Account to the Lease Payments due hereunder.

SECTION 7.3 No Remedy Exclusive. No remedy conferred herein upon or reserved to the Bank is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 7.4 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

SECTION 7.5 Waiver of Certain Damages. With respect to all of the remedies provided for in this Article VII, the Lessee hereby waives any damages occasioned by the Bank's repossession of the Leased Property upon an event of default.

ARTICLE VIII

PREPAYMENT OF LEASE PAYMENTS IN PART

SECTION 8.1 Extraordinary Prepayment From Net Proceeds. To the extent, if any, required pursuant to Section 4.1 the Lessee shall be obligated to purchase the Leased Property by prepaying the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds or other moneys pursuant to Article IV hereof. The Lessee and the Bank hereby agree that in the case of such prepayment of the Lease Payments in part, such Net Proceeds or other moneys shall be credited toward the Lessee's obligations hereunder pro rata among Lease Payments so that following prepayment, the remaining annual Lease Payments will be proportional to the initial annual Lease Payments.

SECTION 8.2 Option to Purchase Leased Property. Subject to the terms and conditions of this Section, the Bank hereby grants an option to the Lessee to purchase all or a portion of the Leased Property by paying on any date a price equal to the portion of the outstanding principal component of the Lease Payments that is allocable to such portion of the Leased Property that is being so purchased, without premium, plus the accrued interest component of such portion of the Lease Payments to such payment date. To exercise this option, the Lessee must deliver to the Bank written notice specifying the date on which the Leased Property is to be purchased (the "Closing Date"), which notice must be delivered to the Bank at least thirty (30) days prior to the Closing Date specified therein. The Lessee may purchase the Leased Property pursuant to the option granted in this Section only if the Lessee has made all Lease Payments when due (or has remedied any defaults in the payment of Lease Payments, in accordance with the provisions of this Lease) and all other warranties, representations, covenants, and obligations of the Lessee under this Lease have been satisfied (or all breaches thereof have been waived by the Bank in writing).

Upon the expiration of the Scheduled Term of this Lease and provided that all conditions of the immediately preceding paragraph have been satisfied (except those pertaining to notice), the Lessee shall be deemed to have purchased the Leased Property (without the need for payment of additional moneys) and shall be vested with all rights and title to the Leased Property.

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 Notices. Unless otherwise specifically provided herein, all notices shall be in writing addressed to the respective party as set forth below (or to such other address as the party to whom such notice is intended shall have previously designated by written notice to the serving party), and may be personally served, telecopied, or sent by overnight courier service or United States mail:

If to Bank:	If to the Lessee:
ZMFU II, INC. One South Main Street, 17th Floor Salt Lake City, Utah 84133 Attention: Kirsi Hansen	Provo City 351 W. Center Street Provo, UT 84601 Attention: Dan Follett

Such notices shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted by 4:00 p.m. (Salt Lake City time) on a Business Day or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, two Business Days after delivery to such courier properly addressed; or (d) if by United States mail, four Business Days after depositing in the United States mail, postage prepaid and properly addressed.

SECTION 9.2 System of Registration. The Lessee shall be the Registrar for this Lease and the rights to payments hereunder. The Bank shall be the initial Registered Owner of rights to receive payments

hereunder. If the Bank transfers its rights to receive payments hereunder, the Registrar shall note on this Lease the name and address of the transferee.

SECTION 9.3 Instruments of Further Assurance. To the extent, if any, that the Bank's interest in the Leased Property as Lessor under this Lease is deemed to be a security interest in the Leased Property, then the Lessee shall be deemed to have granted, and in such event the Lessee does hereby grant, a security interest in the Leased Property and any moneys and investments held from time to time in the Escrow Account to the Bank, which security interest includes proceeds, and this Lease shall constitute a security agreement under applicable law. Concurrently with the execution of this Lease, the Lessee has executed, delivered, and filed and/or recorded all financing statements, UCC forms, mortgages, deeds of trust, notices, filings, and/or other instruments, in form required for filing and/or recording thereof, as are required under applicable law to fully perfect such security interest of the Bank in the Leased Property (collectively, "Security Documents"). Attached hereto as Exhibit E are copies of all such Security Documents. The Lessee will do, execute, acknowledge, deliver and record, or cause to be done, executed, acknowledged, delivered and recorded, such additional acts, notices, filings and instruments as the Bank may require in its sole discretion to evidence, reflect and perfect the title, ownership, leasehold interest, security interest and/or other interest of the Bank in and to any part or all of the Leased Property, promptly upon the request of the Bank.

SECTION 9.4 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Bank and the Lessee and their respective successors and assigns.

SECTION 9.5 Amendments. This Lease may be amended or modified only upon the written agreement of both the Bank and the Lessee.

SECTION 9.6 Section Headings. Section headings are for reference only, and shall not be used to interpret this Lease.

SECTION 9.7 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, to the extent permitted by law, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 9.8 Entire Agreement. This Lease and the attached Exhibits constitute the entire agreement between the Bank and the Lessee and supersedes any prior agreement between the Bank and the Lessee with respect to the Leased Property, except as is set forth in an Addendum, if any, which is made a part of this Lease and which is signed by both the Bank and the Lessee.

SECTION 9.9 Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9.10 Arbitration. To the extent permitted by law, any dispute, controversy or claim arising out of or based upon the terms of this Lease or the transactions contemplated hereby shall be settled exclusively and finally by binding arbitration. Upon written demand for arbitration by any party hereto, the parties to the dispute shall confer and attempt in good faith to agree upon one arbitrator. If the parties have not agreed upon an arbitrator within thirty (30) days after receipt of such written demand, each party to the dispute shall appoint one arbitrator and those two arbitrators shall agree upon a third arbitrator. Any arbitrator or arbitrators appointed as provided in this section shall be selected from panels maintained by, and the binding arbitration shall be conducted in accordance with the commercial arbitration rules of, the American Arbitration Association (or any successor organization), and such arbitration shall be binding upon the parties. The arbitrator or arbitrators shall have no power to add or detract from the agreements of the parties and may not make any ruling or award that does not conform to the terms and conditions of this Lease. The arbitrator or arbitrators shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages. Judgment upon an arbitration award may be entered

in any court having jurisdiction. The prevailing party in the arbitration proceedings shall be awarded reasonable attorney fees and expert witness costs and expenses.

SECTION 9.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Bank has caused this Lease to be executed in its name by its duly authorized officer, and the Lessee has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

ZMFU II, INC., as Lessor

By_____
Authorized Officer

PROVO CITY, as Lessee

By:_____

_____
Title

EXHIBIT A

FIXED RATE

LEASE PAYMENT DEBT SERVICE SCHEDULE*

1. Interest. Interest components payable on the principal amount outstanding have been computed at the rate of two and sixty-three hundredths percent (2.63 %) per annum calculated based on actual number of days elapsed during a 360-day year.

2. Payment Dates and Amounts.

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
04/23/2019	-	-	-	-	-
04/01/2020	287,169.40	2.630%	61,485.02	348,654.42	348,654.42
04/01/2021	290,719.98	2.630%	57,934.44	348,654.42	348,654.42
04/01/2022	298,365.91	2.630%	50,288.51	348,654.42	348,654.42
04/01/2023	306,212.93	2.630%	42,441.49	348,654.42	348,654.42
04/01/2024	314,266.33	2.630%	34,388.09	348,654.42	348,654.42
04/01/2025	322,531.54	2.630%	26,122.88	348,654.42	348,654.42
04/01/2026	331,014.12	2.630%	17,640.30	348,654.42	348,654.42
04/01/2027	339,719.79	2.630%	8,934.63	348,654.42	348,654.42
Total	$2,490,000.00	-	$299,235.36	$2,789,235.36	-

EXHIBIT B

DESCRIPTION OF THE LEASED PROPERTY

One Rosenbauer Ladder Truck
Vin # _____

And

One Rosenbauer Heavy Rescue
Vin #_____

EXHIBIT C

RESOLUTION OF GOVERNING BODY

A resolution approving the form of the Lease/Purchase Agreement with ZMFU II, INC., Salt Lake City, Utah and authorizing the execution and delivery thereof.

Whereas, The City Council (the "Governing Body") of Provo City (the "Lessee") has determined that the leasing of the property described in the Lease/Purchase Agreement (the "Lease/Purchase Agreement") presented at this meeting is for a valid public purpose and is essential to the operations of the Lessee; and

Whereas, the Governing Body has reviewed the form of the Lease/Purchase Agreement and has found the terms and conditions thereof acceptable to the Lessee; and

Whereas, either there are no legal bidding requirements under applicable law to arrange for the leasing of such property under the Lease/Purchase Agreement, or the Governing Body has taken the steps necessary to comply with the same with respect to the Lease/Purchase Agreement.

Be it resolved by the Governing Body of Provo City as follows:

SECTION 1. The terms of said Lease/Purchase Agreement are in the best interests of the Lessee for the leasing of the property described therein.

SECTION 2. The appropriate officers and officials of the Lessee are hereby authorized and directed to execute and deliver the Lease/Purchase Agreement in substantially the form presented to this meeting and any related documents and certificates necessary to the consummation of the transactions contemplated by the Lease/Purchase Agreement for and on behalf of the Lessee. The officers and officials of the Lessee may make such changes to the Lease/Purchase Agreement and related documents and certificates as such officers and officials deem necessary or desirable, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The officers and officials of the Governing Body and the Lessee are hereby authorized and directed to fulfill all obligations under the terms of the Lease/Purchase Agreement.

Adopted and approved this _____ day of _____, 2019.

By _____

Print Name_____

Title _____

Attest:

By _____

Print Name _____

Title_____

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, _____ hereby certify that I am the duly qualified and acting _____ of Provo City (the "Lessee").
(Title)

I further certify that the above and foregoing instrument constitutes a true and correct copy of the minutes of a regular meeting of the governing body including a Resolution adopted at said meeting held on March ___, 2019, as said minutes and Resolution are officially of record in my possession, and that a copy of said Resolution was deposited in my office on _____, 2019.

In witness whereof, I have hereunto set my hand on behalf of the Lessee this _____ day of _____, 2019.

By _____

Print Name_____

Title _____

EXHIBIT D
Opinion of Lessee's Counsel

To: ZMFU II, INC.
One South Main Street, 17th Floor
Salt Lake City, Utah 84133

As counsel for Provo City ("Lessee"), I have examined duly executed originals of the Lease/Purchase Agreement (the "Lease") dated this 23rd day of April, 2019, between the Lessee and ZMFU II, INC., Salt Lake City, Utah ("Bank"), and the proceedings taken by Lessee to authorize and execute the Lease (the "Proceedings"). Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a body corporate and politic, legally existing under the laws of the State of Utah (the "State").

2. The Lease and the Proceedings have been duly adopted, authorized, executed, and delivered by Lessee, and do not require the seal of Lessee to be effective, valid, legal, or binding.

3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which the Proceedings were adopted and the Lessee's execution of the Lease was authorized.

4. The Lease is a legal, valid, and binding obligation of Lessee, enforceable against Lessee in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditor's rights generally.

5. Either there are no usury laws of the State applicable to the Lease, or the Lease is in accordance with and does not violate all such usury laws as may be applicable.

6. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Leased Property (as defined in the Lease) from the Bank under the Lease, or the acquisition and leasing of the Leased Property from the Bank under the Lease comply with all such procurement and public bidding laws as may be applicable.

7. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.

8. The adoption, execution and/or delivery of the Lease and the Proceedings, and the compliance by the Lessee with their provisions, will not conflict with or constitute a breach of or default under any court decree or order or any agreement, indenture, lease or other instrument or any existing law or administrative regulation, decree or order to which the Lessee is subject or by which the Lessee is or may be bound.

9. Although we are not opining as to the ownership of the Leased Property or the priority of liens thereon, it is also our opinion that the Security Documents attached as Exhibit E to the Lease are sufficient in substance, form, and description, and indicated place, address, and method of filing and/or recording, to completely and fully perfect the security interest in every portion of the Leased Property granted under the Lease, and no other filings and/or recordings are necessary to fully perfect said security interest in the Leased Property.

_____
Attorney for Lessee

EXHIBIT E

SECURITY DOCUMENTS

[Attach Certificates of Title showing ZMFU II, INC. as the lien holder]

EXHIBIT F

DELIVERY AND ACCEPTANCE CERTIFICATE

To: ZMFU II, INC.
One South Main Street, 17th Floor
Salt Lake City, Utah 84133

Reference is made to the Lease/Purchase Agreement between the undersigned ("Lessee"), and ZMFU II, INC. (the "Bank"), dated April 23, 2019, (the "Lease") and to that part of the Leased Property described therein which comprises personal property (collectively, the "Equipment"). In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.

2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.

3. We acknowledge that the Bank is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.

4. The serial number for each item of Equipment which is set forth on Exhibit "B" to the Lease is correct.

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

Lessee:

PROVO CITY

By: _____
(Authorized Signature)

Date: _____

EXHIBIT G

ESCROW AGREEMENT

[Attach Escrow Agreement]

FORM OF ESCROW AGREEMENT

This Escrow Agreement (this "Agreement"), dated April 23, 2019, by and among ZMFU II, Inc., a Corporation organized under the laws of the State of Utah, (hereinafter referred to as "Lessor"), Provo City, a body politic and corporate of the State of Utah (hereinafter referred to as "Lessee"), and ZIONS BANCORPORATION, N.A., dba Zions Bank, a national banking association (hereinafter referred to as "Escrow Agent").

Reference is made to that certain Lease/Purchase Agreement, dated April 23, 2019, between Lessor and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain Leased Property described therein (the "Leased Property"). It is a requirement of the Lease that the Acquisition Amount be deposited with the Escrow Agent hereunder for the purpose of providing a mechanism for the application of such amounts to the payment of Leased Property costs.

The parties agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created a special trust fund to be known as the "Provo City Escrow Account" (the "Escrow Account") to be held in trust by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof. On the date hereof, from proceeds of the Lease, Lessor has caused the amount of $2,490,000.00 to be transferred to Escrow Agent for deposit into the Escrow Account.

(b) The Escrow Agent shall invest and reinvest moneys on deposit in the Escrow Account in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account and is not a trustee or a fiduciary to Lessee. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of the investment of public funds by Lessee in accordance with applicable Utah law and any applicable policy that the governing body of the Lessee has adopted with respect to the investment of public funds.

(c) Lessee covenants that all investments of amounts deposited in the Escrow Account or other fund containing gross proceeds of the Lease will be acquired, disposed of and valued at the fair market value thereof. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Internal Revenue Code of 1986, as amended (the *"Code"*) will be valued at their present value. Terms used in this subsection (c) shall have the meanings given them in the applicable provisions of the Code.

(d) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (e) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Leased Property. Any moneys remaining in the Escrow Account on or after the date on which Lessee executes the Delivery and Acceptance Certificate shall be applied as provided in Section 4 hereof.

(e) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account (including delivery to Lessor by Lessee of an executed Delivery and Acceptance Certificate contained in the Lease), or (ii) written notice given by Lessor of the occurrence of a default or non-appropriation of the Lease.

(f) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(g) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(h) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully

protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(i) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(j) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for extraordinary administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(k) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "Effective Date"), which shall be a date not less than 90 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(l) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no fiduciary or implied duties, responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Leased Property, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Leased Property are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Leased Property, and the operation and maintenance thereof.

(b) Authorized Escrow Account Disbursements. Disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the Leased Property Costs and any delivery costs.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and

the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by Dan Follett, the Division Director of Finance (including his successors or anyone whom he or his successors may appoint to sign) of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

   (i)(A) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Escrow Account for costs relating to the Leased Property identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (B) the Leased Property relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee, and (C) Lessee has conducted such inspection and/or testing of the Leased Property relating to such obligation as it deems necessary and appropriate in order to determine the Leased Property's capability and functionality in order to accept such Leased Property; (ii) the Lessee has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Leased Property is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred and is continuing and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof; and

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement); bills of sale (if title to such Leased Property has passed to Lessee); a description, and serial and/or VIN number for each item and any additional documentation reasonably requested by Lessor;

3. Deposit to Escrow Account. Upon execution of the Lease and the satisfaction of any conditions specified in the Lease or otherwise, Lessor will cause the Acquisition Amount of $2,490,000.00 to be deposited into the Escrow Account. Lessee agrees to pay any costs with respect to the Leased Property in excess of amounts available therefor in the Escrow Account and to pay delivery costs in excess of amounts available therefor in the Escrow Account; provided, however, that any amount required for either such purpose shall be payable solely from moneys that have been appropriated by Lessee for such purpose.

4. Excessive Escrow Account. Any funds remaining in the Escrow Account on or after the date on which Lessee executes the Delivery and Acceptance Certificate, or upon a

termination of the Escrow Account as otherwise provided herein, shall be delivered by the Escrow Agent to Lessor, and Lessor shall apply such funds to amounts owed under the Lease.

5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account and all proceeds thereof, and all investments made with any amounts in the Escrow Account. If the Escrow Account or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Escrow Account. In order to perfect Lessor's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account, (iii) all of Lessee's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the Uniform Commercial Code of the State of Utah ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (b) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lessor if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Escrow Agent may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent

of Lessor, allow Lessee to withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to Escrow Agent, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Fee Schedule; Initial Fee. To be Provided by Escrow Agent

9. Miscellaneous.

(a) Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by

all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:	ZMFU II, INC. 1 South Main Street 17th Floor Salt Lake City, UT 84133 Attn: Jon Dunfield, Vice President
If to Lessee:	Provo City Attn: Dan Follett Division Director of Finance 351 W. Center Street Provo, UT 84601
If to Acquisition Fund Custodian:	ZIONS BANCORPORATION, N.A. dba Zions Bank Corporate Trust Department 1 South Main Street Salt Lake City, UT 84037 Attn: _____, Vice President

In Witness Whereof, the parties have executed this Escrow Agreement as of the date first above written.

ZMFU II, INC.
as Lessor

By:_____
_____, Vice President

PROVO CITY
as Lessee

By:_____
Dan Follett, Division Director of Finance

ZIONS BANCORPORATION, N.A. dba Zions Bank
as Escrow Agent

By:_____
_____, Vice President

SCHEDULE 1

TO THE ESCROW AGREEMENT

FORM OF DISBURSEMENT REQUEST

Re: Lease/Purchase Agreement, dated April 23, 2019, (the *"Lease"*), between ZMFU II, INC., as Lessor, and Provo City, as Lessee (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated April 23, 2019, (the *"Escrow Agreement"*) by and among ZMFU II, INC., a Utah corporation (*"Lessor"*), Provo City (*"Lessee"*) and ZIONS BANCORPORATION, N.A. dba Zions Bank, (the *"Escrow Agent"*), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Agreement for the following purposes:

PAYEE'S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE (INCLUDE SERIAL AND/OR VIN NUMBER)

The undersigned hereby certifies as follows:

(i) The date on which "acceptance" occurred with respect to the portion of the Leased Property for which disbursement is hereby requested is _____, and such portion of Leased Property is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Escrow Account for costs relating to the Leased Property identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Leased Property relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Leased Property relating to such obligation as it deems necessary and appropriate in order to determine the Leased Property's capability and functionality in order to accept such Leased Property. Attached hereto is the original invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Leased Property is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(ix) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: _____

By: _____
Authorized Representative

Disbursement of funds from the Escrow Account in accordance with the foregoing Disbursement Request hereby is authorized

ZMFU II, INC., as Lessor under the Lease

By:_____
Name: _____
Title: _____

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: DGRABAU
Department: Finance
Requested Meeting Date: 04-09-2019

SUBJECT: A resolution approving the execution of a Master Tax-Exempt Lease Purchase Agreement for the purchase of Fire apparatus. (19-043)

RECOMMENDATION: The council is requested to approve the lease financing for two new fire apparatus and related equipment for $2,490,000

BACKGROUND: On a regular basis, Provo City uses lease-purchase financing for the acquisition of new fire vehicles. This resolution is a continuation of this policy that will allow us to continue to maintain the Fire Department's fleet.

FISCAL IMPACT: 2,490,000

PRESENTER'S NAME: Dan Follett

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-043

2019 Municipal Elections

Exhibit B

Active Voters for billing purposes, will be calculated 7 days before each Election Day

PROVO

Election	Active Voters as of 3/1/19	Not to exceed $1.80 per voter per election
Primary	40857	$ 73,542.60
General	40857	$ 73,542.60

Estimated Cost as of 3/1/2019	$ 147,085.20

Exhibit A
2019 Municipal Elections
Scope of Work for Election Services

Revised 4/4/2019

The County shall provide to the City an Official Register as required by Utah Code Ann. § 20A-5-401, (as amended).

Services the City will provide include, but are not limited to:

- All administrative functions related to candidate filing.
- All administrative functions related to financial disclosure required by state code and/or city code.
- Publish Public Notices required by law. The City may work with the County to publish notices jointly with other jurisdictions.
- Keeping candidates and the public up to date and current on all legal requirements governing candidates and campaigns.
- Thoroughly examine and proof all election programing done for the 2019 City Municipal Election. Final approval of ballots and programming will rest with the City.
- Host on the official City web site a link to or copy of the official reported results as hosted on the County Elections web page. City will not change the format or otherwise alter the official reported results, only displaying them in the form and format as provided by the County.
- Canvassing the final elections results.

The City will provide the County Clerk with information, decisions, and resolutions and will take appropriate actions required for the conduct of the election in a timely manner.

The City agrees to consolidate all elections administration functions and decisions in the office of the County Clerk to ensure the successful conduct of multiple, simultaneous municipal elections. In a consolidated election, decisions made by the County regarding resources, procedures and policies are based upon providing the same scope and level of service to all the participating jurisdictions and the City recognizes that such decisions, made for the benefit of the whole, may not be subject to review by the City.

Services the County will perform for the City include, but are not limited to:

- Ballot Layout and Design
- Ballot Printing
- Ballot Mailings
- Return Postage
- Ballot Processing
- Printing Optical Scan Ballots
- Program and Test Voting Equipment
- Program Electronic Voter Register
- Poll Worker Recruitment and Training
- Compensate Vote Center Poll Worker
- Delivery of Supplies and Equipment
- Tabulate and Report Election Results on County Website
- Provisional Ballot Verification
- Update Voter History Database
- Conduct Audits (as required)
- Conduct Recounts (as needed)
- Election Day Administrative Support
- Operation of county wide vote centers
- Provide final, canvass report of Official Election Results, such results will constitute the final Official Results of the Election. The city is responsible to canvass their municipal election on the date required by state law.

The County will work with ES&S to provide a report to meet the needs of Provo City. Provo knows we are changing vendors and that we are subject to whatever is available to us. We are committed to try and provide them data as quickly as possible in whatever format we have the ability to provide.

The County will provide a good faith estimate for budgeting purposes. Election costs are based upon the offices scheduled for election, the number of voters, and the number of jurisdictions participating. The City will be invoiced for its share of the actual costs of the elections which will not exceed the estimated rate in Exhibit B.

In the event of a state or county special election being held in conjunction with a municipal election, the scope of services and associated costs, and the method of calculating those costs, will remain unchanged.

The City acknowledges that this Interlocal Agreement relates to a municipal ballot and election and as required by state statute, the City Clerk/Recorder is the Election Officer.

Agreement No. 2019 - ___

INTERLOCAL COOPERATION AGREEMENT BETWEEN UTAH COUNTY AND PROVO CITY FOR THE ADMINISTRATION OF THE 2019 MUNICIPAL ELECTIONS

THIS IS AN INTERLOCAL COOPERATION AGREEMENT (Agreement), made and entered into by and between Utah County, a political subdivision of the State of Utah, and Provo City, a Utah municipality and political subdivision of the State of Utah, hereinafter referred to as CITY.

WITNESSETH:

WHEREAS, pursuant to the provisions of the Interlocal Cooperation Act ("Act"), Title 11, Chapter 13, Utah Code, public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into written agreements with one another for joint or cooperative action; and

WHEREAS, pursuant to the Act, the parties desire to work together through joint and cooperative action that will benefit the residents of both Utah County and CITY; and

WHEREAS, the parties to this Agreement are public agencies as defined in the Act; and

WHEREAS, Utah County and CITY desire to successfully conduct the 2019 CITY Municipal Primary (August 13, 2019) and General (November 5, 2019) Elections (collectively "2019 CITY Municipal Elections"); and

WHEREAS, it is to the mutual benefit of both Utah County and CITY to enter into an agreement providing for the parties' joint efforts to administer the 2019 CITY Municipal Elections.

NOW, THEREFORE, the parties do mutually agree, pursuant to the terms and provisions of the Act, as follows:

Section 1. EFFECTIVE DATE; DURATION

This Agreement shall become effective and shall enter into force, within the meaning of the Act, upon the submission of this Agreement to, and the approval and execution thereof by Resolution of the governing bodies of each of the parties to this Agreement. The term of this Agreement shall be from the effective date hereof until the completion of the parties' responsibilities associated with the 2019 CITY Municipal Elections or until terminated but is no longer than 1 year from the date of this Agreement. This Agreement shall not become effective until it has been reviewed and approved as to form and compatibility with the laws of the State of Utah by the Utah County Attorney and the attorney for CITY. Prior to becoming effective, this Agreement shall be filed with the person who keeps the records of each of the parties hereto.

Section 2. ADMINISTRATION OF AGREEMENT

The parties to this Agreement do not contemplate nor intend to establish a separate legal entity under the terms of this Agreement. The parties hereto agree that, pursuant to Section 11-13-207, Utah Code, Utah County, by and through the Utah County Clerk/Auditor Elections Office, shall act as the administrator responsible for the administration of this Agreement. The parties further agree that this Agreement does not anticipate nor provide for any organizational changes in the parties. The administrator agrees to keep all books and records in such form and manner as Utah County shall specify and further agrees that said books and records shall be open for examination by the parties hereto at all reasonable times. The parties agree that they will not acquire, hold nor dispose of real or personal property pursuant to this Agreement during this joint undertaking.

Section 3. PURPOSES

This Agreement has been established and entered into between the parties for the purpose

of administering the 2019 CITY Municipal Elections. This Agreement contemplates basic, traditional primary and general elections for the 2019 CITY Municipal Elections. All other election-related services, including but not limited to services for special elections or elections for subsequent years, will need to be agreed to in a separate writing signed by both parties.

Section 4. RESPONSIBILITIES

The parties agree to fulfill the responsibilities and duties as contained in Exhibit A which is attached hereto and by this reference is incorporated herein for the 2019 CITY Municipal Elections.

CITY agrees to pay to Utah County the actual cost of County's administration of the 2019 CITY Municipal Elections which cost shall not exceed the estimated costs as contained in Exhibit B which is attached hereto and by this reference is incorporated herein. CITY agrees to pay to County the cost as contemplated herein within 30 days of receiving an invoice from County.

Section 5. METHOD OF TERMINATION

This Agreement will automatically terminate at the end of its term herein, pursuant to the provisions of paragraph one (1) of this Agreement. Prior to the automatic termination at the end of the term of this Agreement, any party to this Agreement may terminate the Agreement sixty days after providing written notice of termination to the other parties. Should the Agreement be terminated prior to the end of the stated term, CITY will be responsible for any costs incurred, including costs not then incurred but which are contemplated herein and irreversible at the time of termination such as return mailing costs, through the time of termination. The Parties to this Agreement agree to bring current, prior to termination, any financial obligation contained herein.

Section 6. INDEMNIFICATION

The parties to this Agreement are political subdivisions of the State of Utah. The parties

agree to indemnify and hold harmless the other for damages, claims, suits, and actions arising out of a negligent error or omission of its own officials or employees in connection with this Agreement. It is expressly agreed between the parties that the obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, Section 63G-7-604.

Section 7. FILING OF INTERLOCAL COOPERATION AGREEMENT

Executed copies of this Agreement shall be placed on file in the office of the County Clerk/Auditor of Utah County and with the official keeper of records of CITY, and shall remain on file for public inspection during the term of this Agreement.

Section 8. ADOPTION REQUIREMENTS

This Agreement shall be (a) approved by Resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, (c) submitted to and approved by an Authorized Attorney of each of the parties, as required by Section 11-13-202.5, Utah Code, and (d) filed in the official records of each party.

Section 9. AMENDMENTS

This Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be (a) approved by Resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, (c) submitted to and approved by an Authorized Attorney of each of the parties, as required by Section 11-13-205.5, Utah Code, and (d) filed in the official records of each party.

Section 10. SEVERABILITY

If any term or provision of the Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable,

shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law which would render any of the terms of this Agreement unenforceable.

Section 11. NO PRESUMPTION

Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against a party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that each of the parties have participated in the preparation hereof.

Section 12. HEADINGS

Headings herein are for convenience of reference only and shall not be considered in any interpretation of the Agreement.

Section 13. BINDING AGREEMENT

This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

Section 14. NOTICES

All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at the addresses of the City Mayor or County Commission, or at such other addresses as may be designated by notice given hereunder.

Section 15. ASSIGNMENT

The parties to this Agreement shall not assign this Agreement, or any part hereof, without

the prior written consent of all other parties to this Agreement. No assignment shall relieve the original parties from any liability hereunder.

Section 16. GOVERNING LAW

All questions with respect to the construction of this Agreement, and the rights and liability of the parties hereto, shall be governed by the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement, after resolutions duly and lawfully passed, on the dates listed below:

UTAH COUNTY

Authorized by Resolution No. 2019 -___, authorized and passed on the _____ day of _____ 2019.

BOARD OF COUNTY COMMISSIONERS
UTAH COUNTY, UTAH

By:_____
WILLIAM C. LEE, Chairman

ATTEST: AMELIA A. POWERS
Utah County Clerk/Auditor

By:_____
Deputy

APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:
DAVID O. LEAVITT, Utah County Attorney

By:_____
Deputy County Attorney

CITY

Authorized by Resolution No. _____, authorized and passed on the _____ day of _____ 2019.

_____
Mayor, CITY

ATTEST:

_____
NAME
CITY Recorder

APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH
CITY Attorney

By: _____

RESOLUTION 2019-

A RESOLUTION AUTHORIZING THE MAYOR TO APPROVE AN INTERLOCAL AGREEMENT WITH UTAH COUNTY TO CONDUCT A VOTE-BY-MAIL ELECTION FOR THE MUNICIPAL PRIMARY AND GENERAL ELECTIONS TO BE HELD IN PROVO CITY ON TUESDAY, AUGUST 13, 2019 AND TUESDAY, NOVEMBER 5, 2019.

WHEREAS, municipal primary and general elections within Provo City will be held on Tuesday, August 13, 2019 and Tuesday, November 5, 2019; and

WHEREAS, it is proposed that the Mayor be authorized to approve an interlocal agreement arranging for Utah County to conduct a vote-by-mail election; and

WHEREAS, on April 9, 2019, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds (i) the agreement attached hereto as Exhibit A should be approved; (ii) the Mayor, or her designee, should be authorized to execute the agreement; and (iii) such agreement reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah, as follows:

PART 1:

The Interlocal Agreement between Provo City and Utah County, attached in draft form hereto as Exhibit A, is hereby approved and the Mayor, or her designee, is authorized to execute the agreement. An executed copy of the agreement shall be attached hereto as Exhibit B following execution by both parties.

PART II:

This resolution shall take effect immediately.

END OF RESOLUTION

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: AERCANBRACK
Department: Recorder
Requested Meeting Date: 04-09-2019

SUBJECT: A resolution authorizing the Mayor to create an interlocal agreement with Utah County for vote-by-mail election for municipal primary and general elections to be held on Tuesday, August 13, 2019 and Tuesday, November 5, 2019. (19-044)

RECOMMENDATION: Authorize execution of agreement. Utah County has requested this agreement be signed and returned to them no later than April 20, 2019.

BACKGROUND: Provo City and Utah County will be working together to administer a vote-by-mail election for the 2019 City Municipal Election. The interlocal agreement specifies the responsibilities for each entity. In summary, Utah County will be responsible for printing and mailing ballots, providing manpower and equipment to process and count ballots, providing election returns, and postal permits for both outbound and return mail. Provo City will be responsible for administering candidate filings, candidate campaign finance reports, submitting all required notices, and proof of all election programming done for the 2019 City Municipal Election. As of March 1, 2019, there are 40,857 active voters in Provo City. The total cost of the election will not exceed $1.80 per active voter, per election. The total estimated cost would not exceed $147,085.20.

FISCAL IMPACT: $147,085.20

PRESENTER'S NAME: Amanda Ercanbrack

REQUESTED DURATION OF PRESENTATION: 5-10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: