

**EASEMENT LEASE AGREEMENT  
PROVO CITY CORPORATION  
FOR THE CONSTRUCTION AND MAINTENANCE OF HIGHWAY  
APPURTENANCES  
ACROSS THE 5<sup>TH</sup> WEST PROVO FISHING ACCESS**

**UDWR Easement Lease No. UTAH-1308EA-0430**

THIS NON-EXCLUSIVE EASEMENT LEASE AGREEMENT (“**Agreement**”) is made by and between the **Utah Division of Wildlife Resources** whose address is 1594 West North Temple, Suite 2110, Salt Lake City, Utah 84114-6301 (hereafter “**DWR**”) and Provo City Corporation, whose address is 351 West Center, Provo, Utah 84603 (hereafter “**Lessee**”). DWR and Lessee are collectively referred to as “the **Parties**”.

**EXHIBITS**

- A Project Description
- B Property Description
- C Project Map
- D Project Map



ENT 11769:2014 PG 1 of 24  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2014 Feb 21 10:50 am FEE 0.00 BY SS  
RECORDED FOR PROVO CITY CORPORATION

**SECTION 1 GRANT AND LOCATION OF EASEMENT**

- 1.1 Burdened Property.** DWR owns certain real property known to DWR as the 5<sup>th</sup> West Provo Fishing Access (“**Access**”). DWR represents that its purposes and uses of owning said Access is to provide important habitat for wildlife, and to provide wildlife-based recreation for the general public. DWR grants and conveys to Lessee a nonexclusive easement lease (“**Easement**”) for construction and maintenance of a highway appurtenance (“**Appurtenance**”). The legal descriptions of the road and pipeline centerlines, and of the wellsites, whichever the case may be, of the portions of the WMA to which Lessee is hereby granted an Easement are set forth in Exhibit B, said property hereafter referred to as “**Burdened Property**” and approximately depicted in Exhibit C and Exhibit D.
- 1.2 Right of Third Parties.** This Easement is subject to all valid interests of third parties. DWR claims title in fee simple, but does not warrant to Lessee the validity of title to the Burdened Property. Lessee shall have no claim for damages or refund against DWR for any claimed failure or deficiency of DWR’s title to said lands, or for interference by any third party.
- 1.3 Surveys, Maps, and Plans.** In executing this Easement, DWR is relying upon the surveys, plats, diagrams, and/or legal descriptions provided by Lessee. Lessee is not

relying upon, and DWR is not making, any representations about any surveys, plats, diagrams, and/or legal descriptions provided by DWR.

- 1.4 Headings.** The Headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Easement nor the meaning of any of its provisions.

## SECTION 2 PURPOSE AND SCOPE OF EASEMENT

- 2.1 Purpose.** This Easement is granted for the purpose of ingress and egress for the construction, installation, operation, maintenance, repair, and replacement as necessary for the project outlined in Exhibit A, subject to and in accordance with the restrictions and conditions set forth herein, and for no other purpose. Lessee agrees that it shall not remove from DWR's property ordinary sand and gravel or wood products of any kind without the appropriate permit or other written authorization from DWR. Any unauthorized use of the Burdened Property shall be considered a material breach of this Easement.
- 2.2 Number and Kind of Infrastructure.** Under this Agreement, Lessee shall have the right to construct, install, operate, maintain, repair and replace as necessary the structures outlined Exhibit A and described and depicted in Exhibit B, Exhibit C and Exhibit D.
- 2.3 Exclusivity.** It is expressly understood and agreed that the right herein granted is non-exclusive. DWR hereby reserves the right to issue other non-exclusive easements, leases, or permits on or across the Burdened Property where such uses are appropriate and compatible, or dispose of the property by sale or exchange.
- 2.4 Permittees.** Lessee may permit its respective employees, agents, contractors, and licensees, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted herein. Acts or omissions of the Permittees operating under this Easement shall be deemed an act of Lessee. Restrictions or requirements placed on Lessee herein shall apply equally to the Permittees.
- 2.5 Emergency Activities.** DWR shall have the right to enter the Burdened Property at any time for emergency activities to prevent environmental damage. In the event that such emergency activities are necessary, DWR shall notify the contact identified in Section 18 of this Easement.
- 2.6 Right of Access.** At no time shall Lessee be allowed to conduct any activities permitted under this Agreement in a manner that would limit DWR's ability to physically access the Burdened Property.

### SECTION 3 TERM AND RENEWAL

- 3.1 Term Defined.** The term of this Easement is thirty (30) years ("Term"), commencing on the date of the last signature affixed to this Agreement, unless earlier terminated, subject to the terms and conditions set forth in this Agreement, and any valid and exiting rights.
- 3.2 Renewal of the Easement.** This Easement shall automatically renew at no additional cost to Lessee if at any time within six (6) months but not later than thirty (30) days prior to the Termination Date of the Initial Term of this Easement Lessee contacts DWR to arrange for a DWR representative to inspect the Burdened Property to ensure that the Lessee's activities do not conflict with the interests DWR. DWR reserves the right to alter this Easement at that time in order effectuate the interests of DWR. In the event that Lessee fails to schedule such an inspection, this Easement shall terminate.

### SECTION 4 RENT/ PAYMENT

All payments are final. There shall be no pro-rata reimbursement of any payments hereunder should the Easement outlined under this Agreement terminate before its Term has lapsed.

- 4.1 Rental Payment.** Lessee shall pay a single use payment for the initial Term in the amount of **One Thousand, One Hundred and Fifty Eight Dollars and Fifty Two (\$1,158.52)** (\$600.00 in Right-of-Way fees, plus \$558.52 in Administrative Cost Recovery). Payment is due when Lessee returns this Agreement to DWR appropriately signed and notarized. Surface Owner shall be entitled to additional compensation for any additional Use or User outside the scope of this Easement. Use or User shall not be construed to include affiliates or joint venturers of Lessee so long as the Use or User remains within the scope of this Easement. For purposes of this Agreement,
- (a) "affiliate" means any entity under common control with Lessee, or under control of Lessee. Control for purposes of this Agreement means 80% or more of the voting interests of the entity being held by the controlling entity.
- (b) "joint venturer" means a party to an operating agreement, including pooled parties pursuant to state regulations, with respect to a project located on the Burdened Property.
- 4.2 Administrative Costs.** In approving a request to apportion, assign, or transfer an interest in this Easement, DWR shall be entitled to charge for administrative costs for approving the transfer and require additional compensation for any additional use or user. These rights will be in addition to and not a limitation upon DWR's discretionary authority under this subsection.

- 4.3 Non-Waiver.** DWR's acceptance of a payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

## **SECTION 5 NOTIFICATION OF ACTIVITIES**

- 5.1** All notifications shall reference the Easement number and the location of Lessee's activity. Notification of activities covered under this Section shall be in writing, which may include email, and be deemed sufficient if made solely to Surface Owner's Central Region Habitat Manager. The respective time periods required between notification and commencement of activities covered under this Section may be waived in writing, which may include email, by Surface Owner's Central Supervisor or Habitat Manager.
- 5.2** Lessee shall notify Surface Owner:
- (a) at least Twenty-Four (24) hours prior to any contemplated major repair of Lessee's facilities, if such repair requires the use of heavy equipment such as backhoes or other mechanized earth-moving equipment, heavy boom trucks, or cranes.
  - (b) within five (5) business days after the start of emergency activities contemplated in Subsection 2.5.
- 5.3** Lessee shall notify Surface Owner at least three (3) days prior to excavation of any previously reclaimed site, except in cases where such excavation takes place as a result of emergency activities contemplated in Subsection 2.5, in which case notification shall take place within five (5) days after the start of emergency activities.
- 5.4** Should future conditions be such that Surface Owner determines there is little wildlife-monitoring value facilitated by Lessee's prior notification, the Parties may amend this Agreement and terminate the prior notification requirements of this Section, to the extent the Parties may mutually agree in writing at the time.

## **SECTION 6 CONSTRUCTION, MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS AND TRADE FIXTURES**

- 6.1 Lessee's Activities.** Lessee shall conduct its construction, maintenance and repair operations in accordance with this agreement and the Surface Use Plan attached as Exhibit A; however, should any provisions of the Surface Use Plan conflict with any provision set forth in the body of this Agreement, the provision in the body of this Agreement shall govern. Lessee shall promptly repair, at its sole cost, all damages to the Burdened Property, and to any improvements thereon, which are caused by Lessee's activities. Lessee shall take all necessary precautions to protect DWR-owned resources. At no time while this easement is in effect shall Lessee restrict public access to the

Burdened Property and Lessee shall bear all cost and responsibility of ensuring continued public access to the Burdened Property. Any damage to natural resources deemed by DWR to be excessive or unnecessary shall be paid by Lessee at a price determined by DWR, said price or cost shall be determined by bids or estimates of the cost of repair. All work performed by Lessee shall be completed in a careful and workman-like manner to DWR's satisfaction, free of any claims or liens. Upon completion of any work performed by Lessee, Lessee shall remove all debris and restore the Burdened Property, as nearly as practicable, to the condition it was in prior to commencement of the work. Lessee shall notify DWR in writing within five (5) days after completion of work, to allow DWR to inspect the work.

**6.2 Waste.** Lessee shall neither commit nor allow waste to be committed to or on the Burdened Property. Lessee shall not cause or permit any filling activity on the Burdened Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), any other pollutants, or other waste matter in or on the Burdened Property, except as provided under this Agreement or approved in writing by DWR. Ordinary waste committed by third parties incident to the public's recreational activities on the Burdened Property shall be removed by Lessee, at Lessee's cost. Waste in the form of illegal dumping shall be removed by Lessee, and the cost of removal shall be borne solely by Lessee. If Lessee fails to comply with this Subsection, DWR may take any steps reasonably necessary to remedy such failure, subject to the notice and right to cure provisions of Section 11. Upon demand by DWR, Lessee shall pay all costs of such remedial action, including, but not limited to the costs of removing and disposing of any material deposited improperly on the Burdened Property. This section shall not in any way limit Lessee's liability under Section 9, below.

**6.3 Pre-construction.** Forty-Eight (48) hours prior to commencement of the activities associated with installation of the facilities within the Easement granted herein, Lessee shall notify DWR's Appropriate Regional Habitat Manager to advise of the activities that will occur and an estimated time frame for said activities as depicted on the relevant Exhibit describing said construction on the Burdened Property. Thirty (30) days prior to any subsequent construction or reconstruction by Lessee on the Burdened Property, Lessee shall submit a written plan of construction to DWR's Appropriate Regional Habitat Manager outlining the construction or activity for DWR's approval. During the course of construction, operations, or maintenance, Lessee shall minimize soil erosion and damage to soil. Equipment will not be operated when conditions are such that excessive soil damage will occur on sites not intended for excavation. Lessee will not remove any timber or other valuable materials, including, but not limited to, those materials identified or sold as valuable materials from the Burdened Property until Lessee has received the appropriate permits or other written approval from DWR to remove such valuable materials and has made provisions to compensate DWR for the value of the valuable materials.

**6.4 Road Relocation.** DWR shall have a right to require the relocation of any and all

roadways that may be necessary to satisfy the interests of DWR for the use or purposes of the dominant estate or the adjoining lands, so long as the new location does not unreasonably interfere with Lessee's rights herein, which relocation shall be at Lessee's sole expense unless DWR agrees in writing to share in the cost. The relocated or modified Easement shall provide Lessee with access such as is necessary to fulfill the purposes of this Easement.

- 6.5 Resource Damage.** Lessee shall prevent as reasonably as possible unauthorized use of the Easement, including but not limited to activities associated with public access and use when such access and use is prohibited by DWR. Lessee shall take all reasonable precautions to protect DWR-owned crops and trees. Lessee shall report to DWR any visible resource damage, illegal dumping, or any other change in condition on the Burdened Property that is observed or recognized by Lessee.

## SECTION 7 INTERFERENCE

Lessee shall exercise its rights under this Easement so as to not unreasonably interfere with DWR's use of the Burdened Property or with the public's ability to use DWR's lands for purposes of lawful recreation, except during periods of construction of Lessee's facilities. Any improvements and trade fixtures constructed by Lessee on the Burdened Property shall be placed and constructed so as to allow reasonably unobstructed movement over and across the Burdened Property.

## SECTION 8 COMPLIANCE WITH LAWS

Lessee shall comply with all applicable laws, including all DWR's rules and regulations, and state, county and municipal laws, ordinances, or regulations in effect. Lessee shall obtain and be in possession of all permits and licenses required for the authorized use of the Easement and shall provide proof of such permits/licenses upon request by DWR.

## SECTION 9 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

- 9.1 Definition.** "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, State, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq.
- 9.2 Use of Hazardous Substances.** Lessee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed

of in, on, under, or above the Burdened Property, except in accordance with Federal, State, and Local laws.

**9.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.**

(a) DWR makes no representation about the condition of the Burdened Property. Hazardous Substances may exist in, on, under, or above the Burdened Property. With regard to any Hazardous Substances that may exist in, on, under, or above the Burdened Property, DWR disclaims any and all responsibility to conduct investigations, to review any DWR records, documents or files, or to supply any information to Lessee.

(b) Lessee shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Burdened Property, and any Hazardous Substances that come to be located in, on, under or above the Burdened Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 9.3 includes, but is not limited to, the following requirements:

(1) Lessee shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Burdened Property;

(2) Lessee shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Burdened Property;

(3) Lessee shall not undertake any activities that result in the mechanical or chemical disturbance of Burdened Property on-site habitat mitigation, except as reasonably necessary for Lessee's use and occupancy of the Burdened Property in which case notification shall be made pursuant to Section 5 herein;

(4) Lessee shall allow access to the Burdened Property by employees and authorized agents of the Environmental Protection Agency, the State of Utah or other similar environmental agencies.

(c) It shall be Lessee's obligation to gather sufficient information concerning the Burdened Property and the existence, scope and location of any Hazardous Substances on the Burdened Property, or adjoining the property, that allows Lessee to effectively meet its obligations under this Easement.

**9.4 Notification and Reporting.** Lessee shall immediately notify DWR if Lessee becomes aware of any of the following:

- (a) A release or threatened release of Hazardous Substances in, on, under or above the Burdened Property, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Burdened Property;
- (b) Any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under, or above the Burdened Property, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Burdened Property;
- (c) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Burdened Property, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Burdened Property, in the event Lessee observes or is notified of such violations;
- (d) Any lien or action with respect to any of the foregoing; or,
- (e) Any notification from the U.S. Environmental Protection Agency (EPA) or the State of Utah that remediation or removal of Hazardous Substances is or may be required at the Burdened Property.

Lessee shall, at DWR's request, provide DWR with copies of all reports, studies, or audits which pertain to environmental problems and concerns pertaining to the Burdened Property, and which are or were prepared by or for Lessee and submitted to any federal, State, or local authorities as required by any federal, State, or local permit, license, or law. These permits may include, but are not limited to, any Utah or National Pollution Discharge Elimination System Permit, any Army Corps of Engineers permit, any Hydraulics Project Approval or any Water Quality Certification.

**9.5 Indemnification.** Lessee shall fully indemnify, defend, and hold DWR, its director, managers, employees and agents harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorney's fees and disbursements), that arise out of or are in any way related to:

- (a) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Lessee, its sublessees, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Burdened Property, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Burdened Property, during the Term of this Easement or during any time when Lessee occupies or occupied the Property.



(b) The release of any Hazardous Substance in, on, under, or above the Burdened Property, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Burdened Property, which release or threatened release occurs or occurred during the Term of this Easement or during any time when Lessee occupies or occupied the Burdened Property or any such other property and as a result of:

- (1) Any act or omission of Lessee, its sublessees, contractors, agents, employees, guests, invitees, or affiliates; or,
- (2) Any foreseeable act or omission of a third party unless Lessee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions: or

(c) A breach of the obligations of Subsection 9.3, above, by Lessee, its sublessees, contractors, agents, employees, guests, invitees, or affiliates.

**9.6 Cleanup.** If a release of Hazardous Substances occurs in, on, under, or above the Burdened Property or other DWR-owned property arising out of any action, inaction, or event described or referred to in Subsection 9.5, above, Lessee shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, resource restoration, mitigation, removal, containment and remedial actions and shall be performed in accordance with all applicable Federal, State, and Local laws, rules, ordinances, and permits. Lessee's obligation to undertake a cleanup of the Burdened Property under this Subsection 9.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards, or where it is determined that there will be continuing damages to natural resources in the absence of a cleanup action. Lessee shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims arising out of any action, inaction, or event described or referred to in Subsection 9.5, above. Lessee may take reasonable and appropriate actions without advance approval in emergency situations.

**9.7 Sampling by DWR, Reimbursement, and Split Samples.**

(a) DWR may conduct sampling, tests, audits, surveys or investigations ("Tests") of the Burdened Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Burdened Property, any adjoining property, any other property subject to use by Lessee in conjunction with its use of the Burdened Property. If such Tests indicate the existence, release or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 9.5, above, Lessee shall promptly reimburse DWR for all costs associated with such Tests.

(b) DWR's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon DWR providing Lessee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case DWR shall only be required to give such notice as is reasonably practical.

(c) Lessee shall be entitled to split samples of any Test samples obtained by DWR, but only if Lessee provides DWR with written notice requesting such samples within ten (10) calendar days of the date Lessee is deemed to have received notice of DWR's intent to conduct any non-emergency Tests. The additional cost of any split samples shall be borne solely by Lessee. Any additional costs DWR incurred by virtue of Lessee's split sampling shall be reimbursed to DWR within thirty (30) calendar days after a bill for such costs is sent to Lessee.

## 9.8 Contamination Investigation.

(a) If DWR has reason to believe that a release or threatened release of Hazardous Substances has occurred on the Burdened Property during Lessee's occupancy, DWR may require Lessee to conduct a Closeout Environmental Assessment ("Closeout Assessment") by providing Lessee with written notice of this requirement no later than ninety (90) calendar days prior to the Easement termination date, or within ninety (90) days of any valid notice to terminate the easement earlier than originally agreed. The purpose of the Closeout Assessment shall be to determine the existence, scope, or effects of any Hazardous Substances on the Burdened Property and any associated natural resources. If the initial results of the Closeout Assessment disclose the existence of Hazardous Substances that may have migrated to other property, DWR may require additional Closeout Assessment work to determine the existence, scope, and effect of any Hazardous Substances on adjoining property, any other property subject to use by Lessee in conjunction with its use of the Burdened Property, or on any associated natural resources. The Closeout Assessment may include Sediment Sampling as well as any additional testing requirements DWR may require based on changes in scientific, statutory, or regulatory standards for information concerning the activities of Lessee, its contractors, agents, employees, guests, invitees, or affiliates.

(b) Prior to undertaking the Closeout Assessment, Lessee shall submit a proposed plan in writing for DWR's approval. The plan shall be provided to DWR within thirty (30) days of DWR's notice requiring the Closeout Assessment. If DWR fails to respond in writing, either approving or disapproving of the proposed plan, within thirty (30) days of its receipt, the proposed plan shall be deemed approved. Lessee shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.

## 9.9 Reservation of Rights. The Parties have agreed to allocate certain environmental liabilities by the terms of Section 9. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 9.5, that subsection shall

exclusively govern the allocation of those liabilities. With respect to any environmental liabilities not covered by Subsection 9.5, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under or above the Burdened Property, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Burdened Property that either Party may have against the other under federal, State or local laws, including but not limited to, CERLCA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Easement and the Parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release Lessee from or affect Lessee's liability for claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

- 9.10 Impacts to Wildlife.** Lessee, its employees, contractors, successors and assigns shall make every effort to protect any protected wildlife species to the best of their knowledge and ability. Lessee shall report any harm, threats to harm or harass any protected wildlife species. Lessee shall report any observed threats or harm to any protected wildlife resulting from Lessee's operations unless such threats or harm shall be by duly licensed hunters during the legal hunting season for said wildlife.

## SECTION 10 PRESERVATION OF SURVEY CORNERS

Lessee shall exercise the utmost care to ensure that all legal land subdivision survey corners and witness objects are preserved, where applicable. If any survey corners or witness objects are destroyed or disturbed by Lessee, Lessee shall reestablish them by a registered professional engineer or licensed land surveyor in accordance with US General Land Office standards, at Lessee's own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in the process of construction of improvements and trade fixtures must be adequately referenced and/or replaced in accordance with all applicable laws and regulations in force at the time. The references must be approved by DWR prior to removal of the survey corners and/or witness objects.

## SECTION 11 TERMINATION OF EASEMENT

- 11.1 Termination for Cause.** This Easement shall terminate if Lessee receives notice from DWR that Lessee is in material breach of this Easement and Lessee fails to cure that breach within ninety (90) days of DWR's notice, or such longer period as may be required under the circumstances as approved by DWR. If the breaching party fails to correct such breach within such period, DWR may terminate this Easement without further notice; provided, however, such termination shall not release the breaching party from liability for damage prior to such termination. In addition to terminating this Easement, DWR

shall have any other remedy available to it. DWR's failure to exercise its right to terminate at any time shall not waive DWR's right to terminate for any future breach.

**11.2 Termination for Non-Use.**

(a) Any portion of the Easement that is deemed by DWR to be unused or abandoned shall automatically terminate without further action by DWR. Lessee shall upon request of DWR execute a release of interest in the portion deemed abandoned under the provisions of this Section. Under the non-use clause, Lessee shall be responsible to reclaim and restore the Burdened Property to a condition and contour as existed prior to Lessee's use, subject to the terms of this Agreement. DWR shall have the right to use funds from Lessee's surety bond to complete reclamation or restoration if Lessee fails to do so. Any portion of this Easement that is so described by the following conditions shall be deemed to be unused and abandoned within 365 days of the date of execution of this Agreement, Lessee fails to construct and install the infrastructure which necessitated Lessee's acquisition of the Easement; or

**11.3 Voluntary Termination.** This Easement may also terminate as to all or part of the Burdened Property if Lessee has satisfied its outstanding obligations as to the part to be relinquished, provides DWR with sixty (60) days written notice of its intent to terminate, and executes a release of interest to the portion terminated in recordable form. Lessee shall not be entitled to a refund for any relinquishment.

**11.4 Lessee's Obligations.** Lessee obligations not fully performed upon termination shall continue until fully performed.

## SECTION 12. RECLAMATION

**12.1 Timing.** Following the construction of improvements and trade fixtures, or termination of the Easement, all disturbed land, other than access road driving surfaces for those portions of the Easement not terminated, will be restored to original contour as soon as practicable.

**12.2 Soil.** Where applicable, during construction of any and all wellsites, access roads, and pipelines, any and all topsoil moved or removed will be stockpiled and preserved for present and future project area restoration. Soil from the right of way shall not enter any live stream or open water.

**12.3 Revegetation.** Where applicable, Lessee will re-establish a successful vegetation cover by reseeding with a seed mixture of shrubs, forbs, and grasses, as specified by DWR. Lessee will not be released from this obligation until DWR has inspected the site for two (2) years following construction and reclamation, and has made a determination that the re-vegetation is successful, or such time thereafter until re-vegetation has become successful.

- 12.4 Unauthorized Travel.** Lessee will undertake all measures, including the placement of locked gates, post and rail fence, trenches, barrier rock or other obstacles, to prevent unauthorized motorized travel, including that of third parties, on or across the Burdened Property, as directed by DWR. If the initial measures are not effective in controlling unauthorized motorized travel, Lessee will install additional measures approved by DWR to address the problem.

### **SECTION 13 OWNERSHIP AND REMOVAL OF IMPROVEMENTS, TRADE FIXTURES, AND EQUIPMENT**

- 13.1 Improvements.** No Lessee-Owned improvements other than appurtenances for the rights herein granted, shall be placed on the Burdened Property without DWR's prior written consent. Improvements made on the Burdened Property without DWR's prior written consent are not authorized ("Unauthorized Improvements"). DWR may, at its option, require Lessee to sever, remove, and dispose of them or allow them to remain upon amendment of this Agreement, at which time all provisions of this Agreement shall apply to the Unauthorized Improvements unless otherwise explicitly stated in the amendment. If Lessee fails to remove an Unauthorized Improvement within sixty (60) days of notification by DWR, DWR may remove the Unauthorized Improvements and charge Lessee for the cost of removal and disposal.
- 13.2 Ownership of Improvements and trade fixtures.** Except as provided herein, Lessee shall retain ownership of all improvements and trade fixtures it may place on the Burdened Property (collectively Lessee-Owned Improvements). Lessee-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 13.4 below.
- 13.3 Construction.** Issuance of this Easement and notification of DWR's Regional Habitat Manager of construction activities shall constitute authorization to undertake the initial construction work specified in this Agreement without the need for further notice. Subsequent alterations, significant repairs, or new construction shall require advance notice to DWR as contemplated in Section 5.

### **SECTION 14 INDEMNITY**

Lessee shall indemnify, defend, and hold harmless DWR, its directors, managers, employees and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Burdened Property by Lessee, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act or omissions of

DWR. Lessee's liability to DWR for hazardous substances, and its obligation to indemnify, defend, and hold DWR harmless for hazardous substances, shall be governed exclusively by Section 9.

### **SECTION 15 TAXES AND ASSESSMENTS**

Lessee shall promptly pay all taxes, assessments and other governmental charges of any kind whatsoever levied as a result of this Easement or relating to Lessee's improvements and trade fixtures constructed pursuant to this Easement.

### **SECTION 16 ADVANCE BY DWR**

If DWR advances or pays any costs or expenses for or on behalf of Lessee, including, but not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of improvements and trade fixtures, or other amounts not paid when due, Lessee shall reimburse DWR the amount paid and shall pay interest on such amount at the rate of one percent (1%) per month from the date DWR notifies Lessee of the advance or payment.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

### **SECTION 18 NOTICE**

Any notices required or permitted under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

**DWR**  
Habitat Section

Utah Division of Wildlife Resources  
1594 West North Temple, Suite 2110  
Salt Lake City, Utah 84114-6301

AND

Habitat Section  
Utah Division of Wildlife Resources  
1115 North Main 100 Street  
Springville, Utah 84663

**Lessee**

Provo City Corporation  
351 West Center  
Provo, Utah 84603

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

**SECTION 18 RESERVATIONS**

DWR, its successors and assigns, reserves all ownership of the Burdened Property and profits thereon, and the right of use for any and all purposes that do not unreasonably interfere with the rights granted herein, including the right to keep the Burdened Property open for public use for recreation; the right to remove profits from the Burdened Property; the right at all times to cross and recross the Burdened Property at any place on grade or otherwise; and the right to use the Easement for access to and from the lands owned by DWR on both sides of the Easement. DWR may grant to third parties any and all rights reserved. Once Lessee clears or removes vegetation on the Burdened Property, vegetation that is subsequently grown in such cleared areas shall belong to DWR.

**SECTION 19 CULTURAL RESOURCES**

It is hereby understood and agreed that all treasure-trove, all articles of antiquity, and critical paleontological resources in or upon the Burdened Property or adjacent lands belonging to DWR are and shall remain the property of DWR. Lessee agrees that all costs associated with archeological and paleontological investigations on the Burdened Property that may be required by DWR will be borne by Lessee. Lessee further agrees to cease all activity on the subject lands and immediately notify DWR if any discovery of

human remains or a "site" or "specimen," as defined in Section 9-8-302 or 63-73-1 Utah Code Annotated (1953), as amended, is made on the Burdened Property, and continue to cease all construction or maintenance therein until such time as the human remains, "site" or "specimen" in question has been treated to the satisfaction of DWR.

## SECTION 20 ASSIGNMENT

- 20.1 Consent of DWR.** Lessee shall not hypothecate, mortgage, assign, transfer or otherwise alienate this Easement, or any interest therein, without the prior written consent of DWR, which shall not be unreasonably withheld. In no case shall such consent operate to relieve Lessee of the responsibilities or liabilities assumed by Lessee hereunder, or be given unless such party is acceptable to DWR and assumes in writing all of the obligations of Lessee under the terms of this Easement as to the balance of the Term thereof, or acquires the rights in trust as security and subject to conditions such as DWR deems necessary. In the event that a sublease, assignment, or any other legally recognized conveyance is approved by DWR, such conveyance must be executed using legally sufficient instrument, properly executed and acknowledged, that clearly sets forth the easement lease contract number found on first page of this document, the lands involved, and the name and address of the transferee, and shall include any agreement which transfers control of the Easement to a third party. A copy of the documents subleasing, assigning, or otherwise conveying the interest provided to Lessee by this Easement shall be given to DWR prior to DWR's approval or denial of the conveyance.
- 20.2 Assignee.** Any assignment shall be in keeping with the purposes of this Easement and may only be made to a party qualified to do business in the State of Utah, and which has authority to operate the said facilities, and which is not in default under the laws of the State of Utah relative to qualification to do business within the State, and is not in default on any previous obligation to DWR.
- 20.3 Costs of Assignment.** A sublease, conveyance, or assignment may not be approved without reimbursement of DWR's administrative costs associated with said sublease, conveyance, or assignment; and payment of the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted.
- 20.4 Effective Date of Assignment.** A sublease, conveyance, or assignment shall take effect on the date of DWR's approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.



**20.5 Non-Waiver.** The consent of DWR to any one assignment shall not constitute a waiver of DWR's right to consent to subsequent assignments, nor shall consent of DWR to any one assignment relieve any party previously liable as Lessee from any obligations under this Easement. The acceptance by DWR of the payment of rent following an assignment shall not constitute consent to any assignment and DWR's consent shall be evidenced only in writing.

### **SECTION 21 SUCCESSORS AND ASSIGNS**

This Easement shall be binding upon and inure to the benefit of the parties, their successors and assigns and shall be a covenant running with the land.

### **SECTION 22 TIME IS OF THE ESSENCE**

TIME IS OF THE ESSENCE as to each and every provision of this Easement.

### **SECTION 23 RECORDATION**

Lessee shall record this Agreement or a memorandum documenting the existence of this Agreement in the counties in which the Burdened Property is located, at Lessee's sole expense. The memorandum shall, at a minimum, contain the Burdened Property description, the names of the parties to the Easement, DWR's easement number, and the duration of the Easement. Lessee shall provide DWR a copy of the public recording, whether this Agreement or a memorandum serving notice of the existence of this Agreement. Lessee shall have thirty (90) days from the date of delivery of the final executed Agreement to comply with the requirements of this Section.

### **SECTION 24 APPLICABLE LAW AND VENUE**

This Easement shall be interpreted and construed in accordance with and shall be subject to the laws of the State of Utah. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Lessee consents to suit in the courts of the State of Utah in any dispute arising under the terms of this Agreement or as a result of operations carried on under this Agreement. Service of process in any such action is hereby agreed to be sufficient if sent by registered mail to Lessee at the last known address of Lessee appearing in the records of DWR. Lessee agrees for itself and its successors and assigns that any suit brought by Lessee, its successors or assigns concerning this Easement may be maintained only in the Utah State District Court of Salt Lake County. In the event of any litigation arising under this Agreement, the prevailing

party shall be entitled to recover its cost and reasonable attorneys' fees incurred in connection with the litigation, including any appeals.

#### **SECTION 25 MODIFICATION**

Any modification of this Easement must be in writing and signed by the parties. Authorized signatures of DWR may be provided by only the Director of DWR or the Director's designee.

#### **SECTION 26 SURVIVAL**

Any obligations which are not fully performed upon termination of this Easement shall not cease, but shall continue as obligations until fully performed.

#### **SECTION 27 WAIVER**

No Waiver of Conditions by DWR of any default of Lessee or failure of DWR to timely enforce any provision of this Easement shall constitute a waiver of or constitute a bar to subsequent enforcement of the same or other provisions of this Easement. No provision in this Easement shall be construed to prevent DWR from exercising any legal or equitable remedy it may have.

#### **SECTION 28 INVALIDITY**

If any provision of this Easement proves to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Easement.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective on the date of the last signature below.

**DWR**

**STATE OF UTAH  
DEPARTMENT OF NATURAL  
RESOURCES, DIVISION OF WILDLIFE  
RESOURCES**

**ACTING DIRECTOR**

By: Michael F. C.  
Gregory Sheehan  
Director of Wildlife Resources

Date: 2/20/14

**Funding Approvals:  
Division of Wildlife Resources Fiscal  
Management**

By: L. Braithwaite  
Linda Braithwaite  
Budget Officer

Date: 2/20/14

**LESSEE**

**PROVO CITY CORPORATION**

By: John R. Curtis  
John R. Curtis  
Mayor

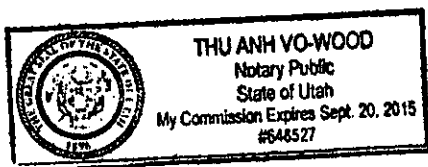
Date: 1/10/14

Attest: Jenene Deiss  
City Recorder



STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

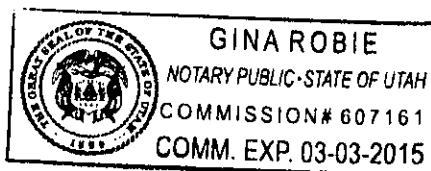
On this 20<sup>th</sup> day of February, <sup>2014</sup>~~2013~~ Gregory Sheehan personally appeared before me who being first duly sworn and said that he is the Director of the Division of Wildlife Resources for the State of Utah, that the foregoing instrument was executed pursuant to authority granted him by The Wildlife Resource Code of Utah (23-21-1), and he acknowledged to me that he executed the same.



[Signature]  
Notary Public for the State of Utah  
Residing at Salt Lake  
My commission expires 9-20-2015

STATE OF UTAH )  
 ) SS.  
COUNTY OF UTAH )

On this 16 day of January, 2013, John R. Curtis personally appeared before me to me known to be the Mayor for Provo City and executed the within and foregoing instrument, and acknowledged that the execution of the document herein was his free and voluntary act and deed, for the uses and purposes therein mentioned, and gave an oath that he is authorized to execute the within instrument for said corporation.



[Signature]  
Notary Public for the State of Utah  
Residing at Provo, Utah  
My commission expires 3-3-15

**Exhibit A**  
**Project Description**

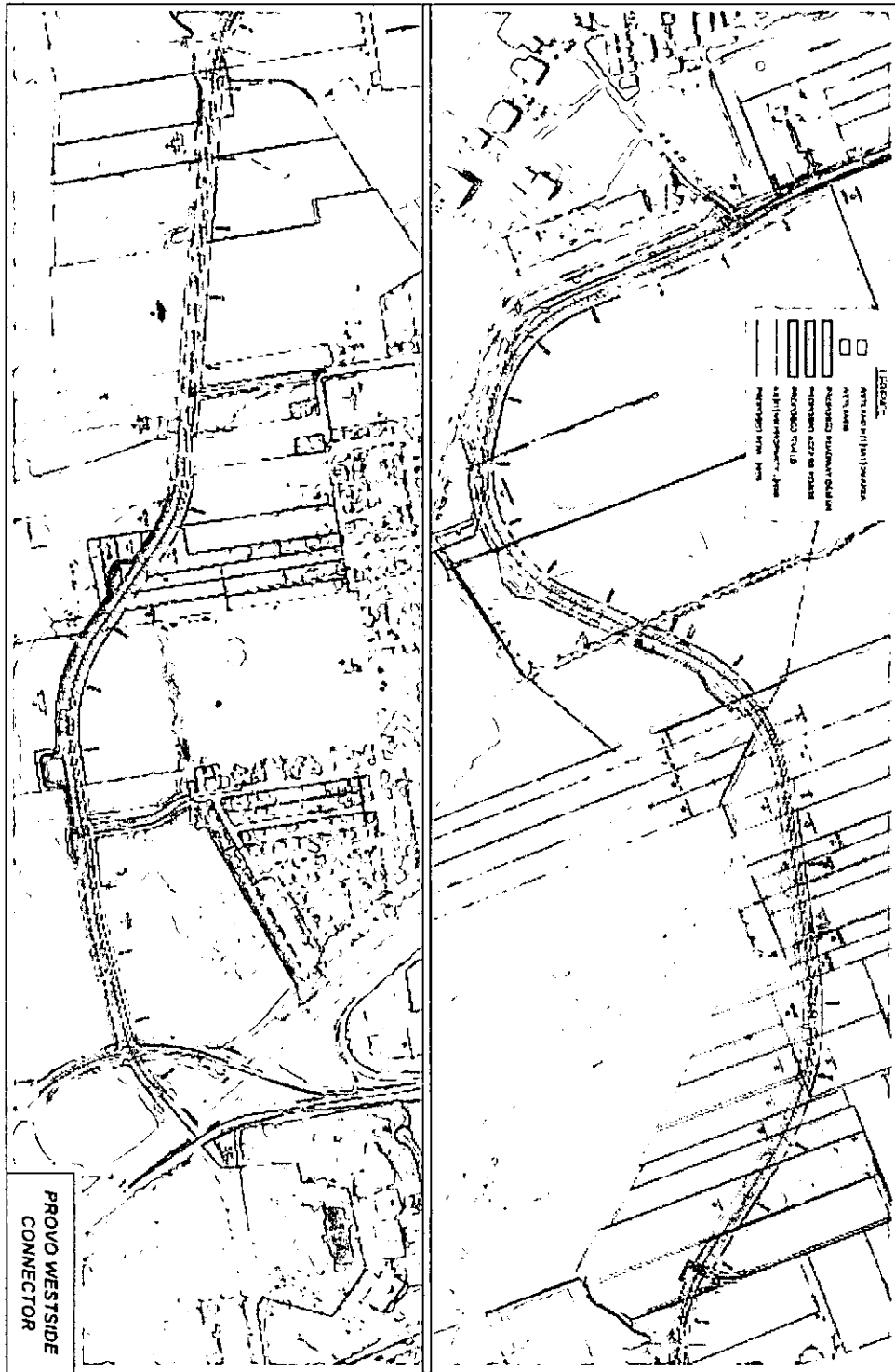
The proposed work on Parcel 13:C includes the reconstruction and widening of the existing 500 West roadway, installation of concrete curb and gutter, regrading for a fill slope behind the curb and gutter, installation of chain link fence, and the relocation of the existing earthen berm (currently located at the southern end of the 500 West roadway).

**Exhibit B**  
**Property Description**








Beginning at the northeast corner of said entire tract, which point is 151.03 feet S.89°30'12"E and 49.32 feet N.70°00'00"E. from the southwest corner of Lot 19, Circle C Subdivision, Plat "B", recorded in the office of the Utah County Recorder's office; and running thence S.00°20'18"W. 58.20 feet along the easterly boundary line of said entire tract to the southerly boundary line of said entire tract; thence S.88°26'36"W. 60.73 feet along said southerly boundary line to the westerly highway right of way line of said 500 West Street, at a point 85.00 feet radially distant westerly from the right of way control line of said 500 West Street, opposite approximate Engineers Station 17+60.92; thence Northerly 28.78 feet along the arc of a 435.00-foot radius non-tangent curve to the right, concentric with said right of way control line (chord bears N.11°54'13"W. 28.78 feet); thence S.89°30'12"E. 48.72 feet; thence N.00°29'48"E. 25.56 feet; thence N.70°00'00"E. 19.20 feet to the point of beginning.

The above described part of an entire tract contains 2,251 square feet in area or 0.052 acre.

# Project C Project Map



# Project D Project Map

| LEGEND:                                                                           |                         |
|-----------------------------------------------------------------------------------|-------------------------|
|  | WETLAND MITIGATION AREA |
|  | WETLANDS                |
|  | PROPOSED ROADWAY DESIGN |
|  | PROPOSED ACCESS ROADS   |
|  | PROPOSED TRAILS         |
|  | EXISTING PROPERTY LINES |
|  | PROPOSED ROW LINES      |

