

CITY COUNCIL MEETING

ADDENDUM

6:00 pm

Tuesday, February 1, 2005

I. PRELIMINARY ACTIVITIES

- A. Pledge of Allegiance
- B. Minutes

II. STAFF REPORTS

- A. Dale Robinson - Parks and Recreation
 - 1. Utilization of Restaurant Tax Funds to Light J.C. Field*
- B. Junior Baker - Legal
 - 1. [Chamber of Commerce Service Agreement](#)
 - 2. [Utah Education Network Contract Ratification](#)
 - 3. [John Smiley and Bruce Hall Contract](#)

III. OTHER BUSINESS

IV. EXECUTIVE SESSION IF NEEDED - TO BE ANNOUNCED IN MOTION

() indicates support information, if any, will follow at the Council meeting.*

The public is invited to participate in all Spanish Fork City Council Meetings. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.

CONTRACT

THIS CONTRACT is effective the 1st day of February 2005 between Spanish Fork City, a Municipal Corporation of the State of Utah, hereinafter called City, and the Spanish Fork Area Chamber of Commerce, hereinafter called Chamber.

1. City does hereby lease and demise unto Chamber, the main level of the building located at 57 E. 300 N. in Spanish Fork, for a term of five years from the 1st day of February, 2005, for the sum of ONE DOLLAR per year, and in further consideration of the covenants and agreements set forth herein. Unless terminated as set forth hereinafter, at the end of the initial term, this lease shall automatically be extended for an additional five year term.

2. The property described herein is leased to Chamber for the use and benefit of Chamber for the purpose of creating an office which can more efficiently promote the economic growth of City and the vitality of businesses within City and the immediate vicinity.

3. Chamber shall have full powers of management and control of the premises herein leased, subject to the terms and conditions herein set forth. It is expressly agreed that the benefits and duties of this agreement may not be assigned by Chamber without the prior written approval of City.

4. In consideration of the agreement herein contained, City further agrees as follows:

(a) To contribute \$_____.00 annually to Chamber to be used at Chamber's discretion for economic development within City;

(b) To keep the exterior and roof of said building in good repair and condition, keeping the same wind and water tight, including the repair of drains and repair of gas, water and sewer lines located outside the building, but not including the replacement of broken glass and outside windows.

(c) To furnish and pay all utilities (except telephone) in connection with the operation of said building.

(d) The maintenance to be performed by the City hereunder shall be performed in the manner and at the times the City, in its sole discretion, shall designate.

5. In consideration of the covenants and agreements herein set forth, Chamber agrees as follows:

(a) To provide membership in Chamber to City;

(b) To keep in good repair and condition the interior of the premises leased to them, including the repair of all windows and glass, both interior and exterior;

(c) To perform all janitorial service connected with the operation of the office;

(d) To keep the contents of the office insured against loss by theft, fire, or other cause, or fully assume the risk of such loss and hold harmless City from such loss and indemnify City for any loss incurred, including attorney's fees incurred in defending such claims;

(e) To provide "welcome bags" to new residents of City;

(f) To provide the light parade on the Friday evening following Thanksgiving, complete with a Santa Claus, who shall be available that evening to visit with children;

(g) To sponsor an Easter Egg hunt in the City, providing treats and prizes;

(h) To provide maps of the city;

(i) To act as a liaison between the business community and the City;

(j) To arrange ribbon cuttings for new businesses, maintain the "Red Card"

program, assist with Fiesta Days sidewalk celebration and parade;

(k) To assist with other city functions and events, as agreed upon;

(l) To answer general questions about the City, its businesses, history, and future.

6. City reserves the use of the second floor and the basement for its own storage needs.

7. In the event the building becomes unusable during the term hereof from earthquake, lightning, fire, bomb damage, flood, or depreciated condition, or from any cause whatsoever, City shall have no obligation to provide a replacement building.

8. City may terminate its rights and duties as herein set forth, thus terminating all force and effect of this contract, prior to the expiration of the term as set forth herein, in the following manner and upon the following conditions:

(a) The City may terminate the lease, on thirty days notice, if the building requires renovation in order to be used and the City elects not to incur the costs of renovation. Chamber may elect to incur the costs of renovation and keep the lease in effect.

(b) The City shall serve written notice of intention to terminate upon Chamber or its successors in interest, six (6) months prior to the effective date of the proposed termination.

9. Any notices to be given hereunder shall be sufficient if mailed by United States first class mail, postage prepaid as follows:

Spanish Fork City
Attn: City Manager
40 S. Main
Spanish Fork, UT 84660

Spanish Fork Area Chamber of Commerce
57 E. 300 N.
Spanish Fork, UT 84660

The names of any new contact persons shall be noticed as set forth herein.

10. City and Chamber agree that should they default in any of the covenants and agreements contained herein to pay all costs and expenses that may arise from enforcing this agreement either by suit or otherwise, including a reasonable attorney's fee. Each further agrees that a breach of this agreement releases the other from any responsibility under the terms of this agreement.

11. This writing constitutes the entire agreement between the parties. Any statement or understanding not explicitly set forth herein shall be null and void. All prior contracts and amendments thereto are rescinded and merged into this document.

IN WITNESS WHEREOF, the parties hereto have signed their names this _____ day of January, 2005 at Spanish Fork, Utah.

SPANISH FORK AREA CHAMBER of COMMERCE By:

SPANISH FORK CITY by:

Dale R. Barney, Mayor

Attest:

Kent R. Clark, Recorder

UTAH EDUCATION NETWORK FIBER BROADBAND SERVICES

COMES NOW Spanish Fork City (“City”) and the University of Utah, on behalf of its operating unit, Utah Education Network (“UEN”) and hereby contract, agree, and covenant as follows:

1. SCOPE

The City is providing fiber-optic based services throughout the City and agrees that the City shall furnish services as described herein. The City shall provide network services up to the Network Interface Device (“NID”) at the service locations listed herein. The NID is that location where the City’s protected networking facilities end and the UEN inside wiring or network begins. This contract, together with all addenda signed by the City and UEN and attached hereto (each an “Addendum” and collectively, the “Addenda”), are hereinafter collectively referred to as the “Agreement”.

2. SERVICE CHANGES

As infrastructure and services are available, additional service and site locations may be added at the request of UEN by mutual agreement with the City memorialized in an Addenda to this Agreement signed by both the City and UEN.

3. CHARGES AND BILLING

UEN agrees to pay the fees for service as outlined in the Addenda to this Agreement. Payment by UEN to the City for service shall be made promptly following delivery of such service in accordance with the provisions of this Agreement and UEN's receipt of an invoice for service. The City may request the implementation of billing and payment options in accordance with the City's agreement with other municipalities and entities provided that UEN is notified in writing of such terms prior to commencement of service under this Agreement and provided that UEN agrees to such terms in an Addendum to this Agreement signed by both the City and UEN. UEN will be responsible to apply for any appropriate credits under the Universal Service Fund E-rate program or other similar federal reimbursement programs. UEN does not guaranty that such credits will be granted and makes no representations or warranties regarding the Universal Service Fund E-rate program or other similar federal reimbursement programs, the application process, or possible reimbursements from such programs. The City agrees to work in good faith with UEN in processing E-rate reimbursements for amounts UEN incurs and qualifies for under the Universal Service Fund E-rate program. The City further agrees to pay to UEN an amount equivalent to the amounts the City receives from the Schools and Library Division ("SLD"), such payments to UEN by the City to be made within thirty (30) days of the City's receipt of such payments from SLD.

4. LOCATION OF INFRASTRUCTURE

Fiber optics shall run from the Spanish Fork Community Network head-end co-location facilities to the service locations detailed in this Agreement.

5. FACILITY LOCATION

The City will provide the Ethernet termination equipment on the City premises at the City's Main Distribution Facility ("MDF") for purposes of this Agreement.

The City is responsible to maintain and support its termination equipment for provision of service under this Agreement. Per mutual agreement with the City, UEN has equipment located at the City's MDF that is owned and operated by UEN. The City agrees that it will provide UEN staff access to the MDF during regular business hours and emergency access as required to maintain the services specified in this Agreement.

6. TERM AND TERMINATION

This Agreement shall be effective on the date executed by each of the parties and shall expire on the 30th day of June, 2006 (which period is the "Term"). Either party may terminate this Agreement at any time by giving 60 days written notice to the other party. In the event a 60 day written notice is not given, and provided this Agreement has not been previously terminated pursuant to the provisions of this Agreement, the Term of this Agreement shall automatically extend for an additional one (1) year and thereafter on a yearly basis, subject to the 60 day

termination notice as provided herein. Subsequent years shall run from July 1st through June 30th of the following year. In the event of termination by either party, UEN's liability for services charges under this Agreement shall be limited to those service charges that have been incurred through the date of such termination.

8. NON-APPROPRIATION BY STATE LEGISLATURE

The City agrees in the event that UEN is not appropriated funds by the state legislature for the services contained in the this Agreement, or is appropriated insufficient funds to pay the charges for services under this Agreement, whether due to regulatory changes or program cancellation, or otherwise, UEN may terminate this Agreement by giving the City not less that thirty (30) days prior written notice, and upon termination, to the extent of any remaining funds appropriated for service, UEN shall remit all amounts due under this Agreement through the date of termination. In of the event of any termination of this Agreement pursuant to this Section or the previous Section, the City agrees that no termination charges or termination liability charges shall apply.

9. FIXED-PRICE

The pricing in this agreement for future years shall be negotiated with the parties, provided that no single annual increase may exceed 5% of the prior year's price.

10. INTEGRATION

This document is the entire agreement between the parties. All prior negotiations, understandings, or agreements are merged herein and superceded hereby.

11. AMENDMENTS

Amendments to this Agreement shall be made only in writing signed by each of the parties hereto.

12. BREACH

In the event of a breach of this Agreement, the breaching party shall be liable for court costs and attorneys fees incurred by the non-breaching party.

13. UNCONTROLLABLE CONDITIONS

Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under the Agreement by reason of severe weather and storms, earthquakes or other natural occurrences, strikes or other labor unrest, power failures, nuclear or other civil or military emergencies, acts of legislative, judicial, executive or administrative authorities, or any other circumstances which are not within its reasonable control.

14. INTERRUPTIONS TO SERVICE

If the City causes a service interruption, an out-of-service credit will be calculated using the following terms: If the service interruption lasts for more than twenty-four (24) consecutive hours after the City receives notice of it, the City will give UEN credit calculated by: (a) dividing the monthly rate for the affected service by thirty (30) days; then (b) multiplying that daily rate by the number of days, or major fraction, that service was interrupted. Routine maintenance or rearrangement of facilities or equipment is not considered an out-of-service condition, provided that service is restored at the end of the period specified in the notification by the City of such conditions. The City shall provide UEN within 48-hours in advance of any scheduled maintenance or rearrangement of facilities or equipment. Any continuous service outage over 48 hours in duration or cumulative outages of 72 hours in a 30-day period constitute a breach of contract by the City.

15. GRAMA

The City is hereby informed that UEN is a governmental entity and thus subject to the Governmental Records Access and Management Act of the Utah Code, Section 63-2-101 et seq., 1953, as amended (“GRAMA”). Pursuant to GRAMA, certain records within UEN’s possession or control may be subject to public disclosure. UEN hereby informs the City that any person or entity that provides UEN with records that such person or entity believes should be protected from

disclosure for business reasons, must provide UEN, pursuant to Section 308 of GRAMA, with the record, a written claim of business confidentiality, and concise statement of reasons supporting such claim.

16. EXECUTION

The parties hereby execute and authorize this Agreement as of the latest date shown below. Notices concerning this Agreement may be sent to Spanish Fork City's address of record or to UEN's address for notices specified herein.

DATED this 26 of January 2005.



SPANISH FORK CITY by

Dale R Barney
DALE R. BARNEY, Mayor

ATTEST

Connie Swain
~~KENT R. CLARK, Recorder Deputy~~
Connie Swain

Lisa Kuhn
Lisa Kuhn, Business Manager

UTAH EDUCATION NETWORK

Mike Petersen 1-14-05
Mike Petersen, Executive Director Date

UNIVERSITY OF UTAH

Stephen H. Hess 1-14-05
Stephen H. Hess, Associate Vice President Date
Information Technology

Notice Address

Spanish Fork City
Information Systems
40 South Main
Spanish Fork, UT 84660
Attn: John Bowcut, Director

Utah Education Network
101 Wasatch Drive
Salt Lake City, UT 84112
Attn: Pete Kruckenberg

Addendum 1

CONTRACT FOR SPANISH FORK CITY RATE PLAN FOR MUNICIPAL NETWORK CONNECTION SERVICE

Service Description	Location	Monthly Rate
1. 100 MB Dedicated Wide-Area-Networking (WAN) Ethernet Network Connection	Spanish Fork City Head-end to: Nebo School District 350 South Main Spanish Fork, Utah 84660	200.00
2. 100 MB Dedicated Wide-Area-Networking (WAN) Ethernet Network Connection	Spanish Fork High School 99 N. 300 W. Spanish Fork, Utah 84660	200.00
3. 100 MB Dedicated Wide-Area-Networking (WAN) Ethernet Network Connection	Spanish Fork Junior High 600 S. 820 E. Spanish Fork, Utah 84660	200.00
4. 100 MB Dedicated Wide-Area-Networking (WAN) Ethernet Network Connection	Spanish Fork Middle School 50 N. 900 E. Spanish Fork, Utah 84660	200.00

By affixing their signatures below, the parties agree that the City shall provide, and UEN shall accept the services specified above at the rate and length of the term specified below. Actual term of service shall be determined by the date of first billing by the City.

Initials:

Spanish Fork City DLB Date Jan 16 05 UEN [Signature] Date 1-14-05

Start Billing Date: _____ Term of Agreement: 2yrs

CONTRACT

This agreement is made this _____ day of February, 2005, by and between Spanish Fork City (City), and John Smiley and Bruce Hall (Smiley).

WHEREAS, Smiley is developing real property located along the south bank of the Spanish Fork River, within the city limits of Spanish Fork City; and

WHEREAS, Smiley has installed utility improvements through the Spanish Fork Sports Park in order to proceed with his development; and

WHEREAS, the utility master plan anticipated those utilities coming from another location; and

WHEREAS, the City maintains a snack shack and related facilities at the Sports Park; and

WHEREAS, the snack shack and related facilities need utility connections; and

WHEREAS, the intention of the City was to provide utility connections pursuant to the terms of the utility master plan; and

WHEREAS, it is more convenient to City to access the utilities installed by Smiley; and

WHEREAS, the cost to City to provide utilities pursuant to the utility master plan would be \$36,550.00; and

WHEREAS, City is willing to pay the cost of \$36,550.00 to Smiley to connect to the utilities installed by Smiley; and

WHEREAS, Smiley is willing to accept \$36,550.00 as full payment from City to allow City to connect to the utility lines he installed;

NOW THEREFORE, the parties hereto hereby contract, covenant, and agree as follows:

1. That City will pay to Smiley the sum of \$36,550.00 as full payment for the right to connect to the utility lines installed through the Sports Park by Smiley.

2. That City will bear all costs of connecting its facilities to the utility lines as installed by Smiley.

3. That Smiley accepts the sum of \$36,550.00 as full payment from City for City's right to connect to the utilities installed through the Sports Park.

4. That City will not charge Smiley for an easement to install utilities through the Sports Park.

5. That this agreement relates only to the snack shack and related facilities. If future facilities are constructed, which require a separate connection to the utility lines installed by Smiley, the parties will negotiate an appropriate price to be paid to Smiley for the right to connect those future facilities, provided that no payment shall be due to Smiley if any such connection takes place more than ten (10) years from the date hereof.

6. That payment of the sums mentioned in paragraphs one and three hereof shall be made within five days of the execution of this contract and shall be paid without interest.

7. This agreement represents the entire agreement between the parties concerning the subject matter of this contract. All prior negotiations, understandings, or agreements are merged herein and superceded hereby. Any amendment to this agreement must be in writing and executed

by all the parties hereto.

DATED this _____ day of February, 2005.

SPANISH FORK CITY by:

DALE R. BARNEY, Mayor

Attest:

KENT R. CLARK, City Recorder

JOHN SMILEY

BRUCE HALL