

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

I. CALL TO ORDER – On Monday, October 17, 2011 at 7:01 p.m. a Council Meeting was held in the City Hall Auditorium.

II. ROLL CALL OF MEMBERS – Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Marie Doucette, Philip Blood, Arthur Tardif, Eric Cote and Marston Lovell. City Administrator Richard Michaud was also present. Councilor Leslie Smith Jr. was excused this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL:

25<sup>th</sup> YEAR EMPLOYEE ANNIVERSARY – DEPUTY POLICE CHIEF JEFF HOLLAND

Chief of Police Bradley Paul recognized Deputy Police Chief Jeff Holland’s 25<sup>th</sup> Year Anniversary with the following words: Law enforcement has long been an honorable calling. Many young men and women enter this field filled with high ideals and a strong desire to serve their community.

Deputy Chief Jeffrey Holland is approaching a career milestone that less than 1/3<sup>rd</sup> of all who choose police work as a profession will be around to celebrate. 25 years of service with a single organization is not only a testament to his steadfastness, but his willingness to lead and excel.

Jeff joined the Saco Police Department 1986, was promoted to corporal in 1989, and his dependability and reliability earned him a promotion to sergeant in 1999. He has since advanced to Deputy Chief and currently oversees the Support Services for the department, including direct responsibility for the Criminal Investigative Division and Records.

He has served the City well in his 2-1/2 decades and it is an honor to serve alongside him.

V. APPROVAL OF MINUTES: OCTOBER 3, 2011

The minutes of October 3, 2011 were approved as written.

VI. AGENDA

A. MUNICIPAL YARD WAST COMPOSTING CONTRACT WITH SOUTH AUBURN ORGANIC FARM

AGREEMENT FOR THE REMOVAL OF MUNICIPAL YARD WASTE

This Agreement made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF SACO, a municipal corporation located in the County of York and State of Maine, with a mailing address of , 300 Main Street, Saco, Maine 04072 (hereinafter “CITY”) and South Auburn Organic Farm, Inc., with a mailing address of 310 Sopers Mill Road, Auburn, Maine 04210 (hereinafter ‘CONTRACTOR.’)

WITNESSETH

In consideration of the mutual covenants and conditions contained herein, the CITY and CONTRACTOR agree as follows:

1. SCOPE OF SERVICES. CONTRACTOR will furnish any materials, supplies, equipment, trucking, and labor required to provide the following services:

A) CONTRACTOR will remove the CITY’S annual accumulations of up to 2000 cubic yards of municipal yard waste, defined as clean brush, grass clippings, and leaves, from the CITY transfer station for a flat cost

of \$2000 per year for each year in the 5 year term beginning in 2011, with the total contract equal to \$10,000.

- B) CONTRACTOR reserves the right to require the CITY'S front end loader to assist in loading trucks for removal, at no compensation or rebate to the CITY. If such equipment is desired, CONTRACTOR will provide at least a 2 day notice of such needs to the CITY. CONTRACTOR may also opt to bring in and utilize any other equipment for the purposes of loading and removing yard waste at its own expense, at its discretion. If CONTRACTOR brings any equipment to CITY transfer station, CONTRACTOR shall be solely responsible and liable for its care, maintenance, and operational requirements such as fuel. The CITY shall be released from any and all claims for theft or damage from any equipment left by CONTRACTOR.
  - C) If annual accumulations exceed 2000 cubic yards, the yard waste in excess may also be removed at the CITY'S option, and will be billed at \$1 per cubic yard for each excess yard up to an additional 500 cubic yards. For annual accumulations in excess of 2500 cubic yards, the excess yard waste may be removed at the CITY'S discretion, but will be billed at current market hauling rate. Additionally, CONTRACTOR agrees to accept yard waste in excess of 2500 cubic yards at no charge to the CITY if hauled to CONTRACTOR'S Lyman facility by CITY'S own municipal trucks.
  - D) There shall be no pro-ration of any invoice for annual accumulations of less than 2000 cubic yards.
  - E) CITY may keep up to 500 cubic yards of yard waste annually, for its own use.
  - F) For all annual accumulations, the removal schedule for each contract year shall generally occur between May and November. However, this schedule may vary, may not necessarily occur on a consistent monthly basis, and will be determined at the discretion of the CONTRACTOR.
  - G) The CITY agrees to accept, free of charge, rubbish screened during processing of the CITY'S yard waste. Additionally the CITY will take appropriate measures to ensure yard waste is kept free from rocks larger than 3 inches in any direction, man-made materials such as glass, wrappers, twine, wire, plastic, nails, etc. that are not compostable or which could cause damage to equipment, and chemical contaminants. CONTRACTOR reserves the right to reject contaminated material at CONTRACTOR'S sole discretion.
  - H) If market conditions do not provide sufficient feedstock supply for CONTRACTOR to continue commercial composting, CONTRACTOR may choose to terminate this agreement. In this event, CONTRACTOR shall give the CITY written notice of its intention to terminate this agreement by December 31<sup>st</sup> of the year prior to the year in which it intends to terminate. If transfer station operations and waste streams accepted at its facility change considerably during the term of this agreement, CITY may choose to terminate this agreement. In this event, CITY shall give the CONTRACTOR written notice of its intention to terminate this agreement by December 31<sup>st</sup> of the year prior to the year in which it intends to terminate. In either event, the details of the agreement could be renegotiated or simply terminated.
  - I) CONTRACTOR markets this product doing business as "Vital Soils." The CITY may be recognized in the Vital Soils pamphlet, as well as on CONTRACTOR'S website, as a feedstock source and/or member municipality of CONTRACTOR'S composting facility. Such advertising shall be done only upon written approval of the CITY, and in no event will any photos or likenesses of the CITY and/or CITY personnel be used without advance written approval.
2. COMPENSATION FOR WORK. The CITY shall compensate CONTRACTOR as follows: Invoices shall be submitted by CONTRACTOR annually on or about November 1st of each year and shall be paid within 30 days of presentation.
3. INDEPENDENT CONTRACTOR. CONTRACTOR and any employees, officers and agents shall have independent contractor status and shall not hold themselves out as employees or officers of the CITY.

4. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW. Any work done under this Agreement shall be in full compliance with the requirements of all applicable federal, state and local laws.
5. INSURANCE. Except as otherwise provided by this Agreement, CONTRACTOR shall obtain and maintain throughout the term of this Agreement at no expense to the CITY the following insurance coverages, and the Comprehensive General policy shall name the CITY as an additional insured:
  - A) **Comprehensive General Liability Insurance** in the amount of not less than Four Hundred Thousand Dollars (\$400,000) to protect CONTRACTOR and the CITY from claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by anyone directly or indirectly employed by them.
  - B) **Automobile Liability Insurance** in the amount of not less than Four Hundred Thousand Dollars (\$400,000) to protect CONTRACTOR or anyone directly or indirectly employed by them, and the CITY from claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by anyone directly or indirectly employed by them.
  - C) **Workers' Compensation Insurance, if required, in amounts required by Maine law and Employer's Liability Insurance,** as necessary, as required by Maine law. All such insurance policies shall name the CITY and its officers, agents and employees as additional insureds, except that for purposes of workers' compensation insurance if such insurance is required, CONTRACTOR instead may provide a written waiver of subrogation rights against the CITY. CONTRACTOR, prior to commencement of work under this Agreement, shall deliver to the CITY certificates satisfactory to the CITY evidencing such insurance coverages, which certificates shall state that CONTRACTOR must provide written notice to the CITY at least thirty (30) days prior to cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to the CITY prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. CONTRACTOR shall not commence work under this Agreement until they have obtained all insurance coverages required under this subparagraph and such insurance policies have been approved by the CITY. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the parties or CONTRACTORS' commencement of services thereunder.
  - D) **Additional Insurance Conditions:** CONTRACTOR shall deliver to the CITY certificates satisfactory to the CITY evidencing such insurance coverage's, which certificates shall state that contractor must provide written notice to the CITY at least thirty (30) days prior to cancellation, non-renewal, material modification, or expiration of any such insurance policy. CONTRACTOR shall not commence work under this agreement until it has obtained all insurances required under this subparagraph and such insurance policies have been approved by the CITY. All insurance policies shall have an active date which is earlier than the date of this Agreement between the parties, or contractors commencement of services hereunder.
6. INDEMNIFICATION. CONTRACTOR agrees to defend, indemnify, and hold harmless the CITY, its officers, agents, and employees against any and all liabilities, causes of action, judgments, claims or demands, including attorney's fees and costs, for personal injury (including death) or property damage arising out of or caused by the performance of work under this Agreement by CONTRACTOR, its agents or employees.
7. TERM OF AGREEMENT. The term of this agreement shall be from the date of execution of this Agreement through 31 Dec, 2015. In no event shall this agreement automatically renew after the year ending 31 Dec, 2015.
8. PERMITS AND LICENSES. Any permits and licenses necessary for the prosecution of the work shall be secured and paid by CONTRACTOR.
9. ASSIGNMENT. Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall either party assign any prior moneys due or to become due to it hereunder, without the previous written consent of the other.

10. **NOTICES.** Any notices served under this Agreement upon either party shall be sent via United States first class mail, postage prepaid, as follows:

CITY:

Richard Michaud, City Administrator

Address:

300 Main Street

Saco, Maine 04072

CONTRACTOR:

John and Karen Bolduc

South Auburn Organic Farm, Inc.

310 Sopers Mill Road

Auburn, Maine 04210

11. **TITLE.** Title to and ownership of all yard waste shall pass to CONTRACTOR at the moment CONTRACTOR places said materials in or upon any truck or container owned or used by contractor.

12. **EXTENT OF AGREEMENT.** This Agreement represents the entire and integrated Agreement between the CITY and CONTRACTOR for the work established hereunder and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CITY and CONTRACTOR.

**CITY OF SACO**

\_\_\_\_\_ By:

Richard Michaud, Its City Administrator

**SOUTH AUBURN ORGANIC FARM, INC.**

\_\_\_\_\_ By:

Karen Bolduc, Its President

\_\_\_\_\_ End of the Contract \_\_\_\_\_

Councilor Blood moved, Councilor Lovell seconded “Be it Ordered that the City Council authorize the City Administrator to execute the document titled, ‘Agreement for the Removal of Municipal Yard Waste by and between the City of Saco and South Auburn Organic Farm Inc’”. Further move to approve the order. The motion passed with six (6) yeas.

**B. ZONING ORDINANCE AMENDMENT INFILL DEVELOPMENT – (PUBLIC HEARING)**

***“Zoning Ordinance Amendment to Implement a Changes with Regard to Infill Development as Proposed in the 2011 Comprehensive Plan, dated July 20, 2011”***

*Proposed additions are underlined; proposed deletions are ~~struck through~~.*

1. Amend TABLE 412-1: MINIMUM LOT AND YARD REQUIREMENTS by adding a new standard D.1 Maximum Front Setback to read as shown on the revised table and accompanying footnotes on the following pages.

2. Amend TABLE 412-1: MINIMUM LOT AND YARD REQUIREMENTS by revising the Minimum Lot Area per Dwelling Unit requirement in the R3 District to allow a higher density for small dwelling units to read as shown on the revised table and accompanying footnotes on the following pages.

3. Amend TABLE 412-1: MINIMUM LOT AND YARD REQUIREMENTS by revising the Minimum Side Yard and Rear Yard requirement in the R3 District to increase the setbacks for multifamily housing and principal

structures that are part of a multi-unit residential project to read as shown on the revised table and accompanying footnotes on the following pages.

**TABLE 412-1: MINIMUM LOT AND YARD REQUIREMENTS**

	R-1a	R-1b	R-1c	R-1d	R-2	R3/B7	R-4	B-1	B-2a	B-2b	B-2c& B-2d	B-3	B-4	B-5	B-6	BP	I-1 I-2,I-2b, I-3	C-1	RP <sup>3</sup>
<b>A. MINIMUM LOT AREA (Sq. Ft.)<sup>13</sup></b>																			
(1) sewerd	20,000	10,000	7,500	15,000	7,500	6,07,500 <sup>20</sup>	7,500	7,500	20,000 <sup>9</sup>	20,000 <sup>9</sup>	7,500	7,500	*	7,500	20,000	40,000	40,000	40,000	40,000
(2) unsewerd	40,000	20,000	40,000	40,000	20,000	20,000	20,000	20,000	20,000	20,000	N/A	*	20,000	40,000	40,000	40,000	80,000	80,000	80,000
<b>B. MINIMUM LOT AREA PER DWELLING UNIT (Sq. Ft.)<sup>7, 13</sup></b>																			
<b>B1. MINIMUM NET RESIDENTIAL ACREAGE PER DWELLING UNIT IN SUBDIVISIONS (SQ. Ft.)<sup>7, 13</sup> (Amended 3/07/05)</b>																			
<b>45)</b>																			
Single Family																			
sewerd	20,000	10,000	7,500	15,000	7,500	7,500	7,500	7,500	10,000	7,500	7,500	7,500	N/A	7,500	20,000	40,000	N/A	N/A	N/A
unsewerd	40,000	20,000	20,000	40,000	20,000	20,000	20,000	20,000	40,000	20,000	20,000	N/A	N/A	20,000	40,000	40,000	N/A	80,000	N/A
unsewerd & on-lot water	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	N/A	N/A	40,000	40,000	40,000	N/A	80,000	N/A
<b>(2) Two Family</b>																			
sewerd	20,000	10,000	7,500	15,000	5,000	4,000 <sup>20</sup>	5,000	5,000	7,500	5,000	4,000	3,750	N/A	7,500	20,000	N/A	N/A	N/A	N/A
unsewerd	40,000	20,000	20,000	30,000	17,500	17,500	17,500	17,500	30,000	20,000	17,500	N/A	N/A	17,500	40,000	N/A	N/A	80,000	N/A
<b>(3) Multi-family</b>																			
sewerd	N/A	N/A	N/A	N/A	5,000	4,000 <sup>20</sup>	5,000	5,000	7,500	5,000	4,000	1,500	*	N/A	5,000	N/A	N/A	N/A	N/A
unsewerd	N/A	N/A	N/A	N/A	17,500	17,500	17,500	17,500	30,000	20,000	17,500	N/A	NA	N/A	N/A	N/A	N/A	N/A	N/A
<b>C. MINIMUM STREET FRONTAGE<sup>4</sup> (Feet)</b>																			
(1) sewerd	100	100	75	100 <sup>13</sup>	75	75	75	50	100 <sup>10</sup>	200 <sup>10</sup>	100	50	*	50	200	150 <sup>12</sup>	150 <sup>12</sup>	200	200
(2) unsewerd	150	100	75	150	100	100	100	100	100	200	200	N/A	N/A	50	200	150 <sup>12</sup>	150 <sup>12</sup>	200	200
<b>D. MINIMUM DEPTH FRONT YARD (Feet)</b>																			
	40	25	25	25	25 <sup>19</sup>	15 <sup>19</sup>	25 <sup>19</sup>	25	40	75/40 <sup>11</sup>	40	0	*	15	75/40 <sup>11</sup>	75/40 <sup>11</sup>	50	30	50
<b>D.1. MAXIMUM FRONT SETBACK</b>																			
	N/A	N/A	N/A	N/A	See Note 19	See Note 19	See Note 19	N/A	N/A	N/A	N/A	N/A	N/A *	N/A	N/A	N/A	N/A	N/A	N/A
<b>E. MINIMUM WIDTH SIDEYARD AND REARYARD (Feet)<sup>14</sup></b>																			
	20	15	15	15	15 <sup>21</sup>	10 <sup>21</sup>	15 <sup>21</sup>	15/0 <sup>1</sup>	20	20	20	10/0 <sup>2</sup>	*	10	20	25	25	25	25
<b>F. MINIMUM WIDTH SIDEYARD AND REARYARD OF THE FOLLOWING NON-RESIDENTIAL USES ABUTTING LOTS IN RESIDENTIAL OR CONSERVATION DISTRICTS (Feet)<sup>8</sup></b>																			
<b>45)</b>																			
Churches, day care centers, funeral homes, offices, quasi-public uses, religious																			
conference centers, tourist homes	25	25	25	25	25	25/N/A	25	25	25	25	25	25	25	25	25	25	25	25	25
<b>(2) Commercial greenhouses and nurseries, hospitals and clinics for humans, hotels and motels, non-profit recreational uses, nursing homes, private clubs, private and public schools</b>																			
	50	50	50	50	50	50/N/A	50	50	50	50	50	50	50	50	50	50	50	50	50
<b>G. MINIMUM SETBACK FROM NORMAL HIGH WATER MARK OF FRESHWATER BODIES; MAXIMUM SPRING HIGH TIDE LEVEL OF TIDAL WATERS; UPLAND EDGE OF WETLANDS (Feet)<sup>5</sup> (Amended 11/7/05)</b>																			
	75	75	75	75	75	75	75	75	75	75	75	25	25	75	75	75	75	75	75
<b>H. MAXIMUM LOT COVERAGE (%)</b>																			
	20	30	30	25	30	40	30	50	50	50	50	90	*	40	50	40	40	20	N/A
<b>I. MAXIMUM HEIGHT (Feet)</b>																			
	35	35	35	35	35	35	35	35	35	35	35	60	*	35	60	60	60	35	35
	R-1a	R-1b	R-1c	R-1d	R-2	R-3	R-4	B-1	B-2a	B-2b	B-2c B-2d	B-3	B-4	B-5	B-6	BP	I-1,I-2 I-2b,1-3	C-1	RP <sup>3</sup>

## Footnotes to Table 412-1.

1. Zero if with party wall; otherwise 15 feet minimum (Amended 1/3/95)
2. Zero if with party wall; otherwise 10 feet minimum (Amended 1/3/95)
3. Applies to lots involving development of buildings or structures
4. Where a lot fronts on a cul-de-sac, these minimums shall be measured at the front yard setback line
5. Along the Saco River, the aggregate of river frontage plus setback shall equal 500 feet, with a minimum setback of 100 feet. Setback provisions do not apply to structures which require direct access to the water as an operational necessity, such as piers and docks.
6. (Reserved) (Amended 1/3/95)
7. For religious conference centers density shall be governed on the basis that three bedrooms equal one dwelling unit, or for common sleeping areas, four beds equals one dwelling
8. In the Historic Preservation District only, the setbacks for new buildings (and additions) described in F (2) and F (3) shall be the same as in Row E above. Existing buildings are not required to conform to setbacks. For new parking areas, existing parking areas to be enlarged by five or more spaces, and new access drives as described in F(1), the setbacks shall be 10 feet. Existing parking areas and access drives do not require setbacks. For both new and existing parking areas, the Planning Board may impose conditions of approval including plantings, fences, earth berms, and other screens and buffers, to assure that adequate protection of nearby uses is provided. Nothing in this section shall be interpreted to prohibit shared parking on adjoining lots when permitted. (Amended 7/1/91)
9. Except for single-family houses in sewerer areas, the minimum lot size for which is 10,000 sq. ft. in the B-2a and 7,500 sq ft. in the B-2b. (Amended 3/2/92)
10. Special street frontages for single-family houses:
  - (1) B-2a sewerer, 100 feet
  - (2) B-2b sewerer, 75 feet
  - (3) B-2b unsewerer, 100 feet
11. B-2a, B-2b, B-6, and BP Setbacks:
  - (1) 75 feet for lots with frontage on Route 1
  - (2) 40 feet for lots fronting elsewhere in the district. (Amended 3/2/92, 2/19/02)
12. Street frontage may be reduced to 50 feet for lots that have their frontage and primary vehicular access from a collector or local street, or in the case of arterial streets, no more than one such reduced frontage in each 500 feet of frontage. The lot shall be at least as wide at a potential building site as the frontage measurement required in the district. (Amended 4/2/2001)
13. Notwithstanding the minimum lot size and minimum lot area per dwelling unit requirements shown on Table 412-1, any residential lot that uses subsurface waste disposal system for on-site sewage disposal and any portion of which is located over a mapped sand and gravel aquifer as shown on the map Significant Sand and Gravel Aquifers – 1998 published by the Maine Geological Survey shall have a minimum lot area per dwelling unit of forty thousand (40,000) square feet. (Amended 4/19/02)
14. See definition of shed for special setbacks for certain small sheds in certain districts. (4/7/03-5/7/03)

NOTE: Notes 15 through 18 are proposed to be added to the ordinance as part of the Downtown Zoning amendments.

19. The building must maintain the established relationship of the front walls of buildings to the street for the block in which it is located. The front wall of a new building must be located within +/- five (5) feet of the average of the front setbacks for the existing principal buildings in the same zone facing the same street in the block in which the building is located. Existing buildings that are set back significantly further from the front lot line than the pattern of the block should be excluded from the calculation. Except for single-family and two-family dwellings where parking is provided in a residential driveway, off-street parking must be located to the side or rear of the building and no parking shall be located in the area between the front wall of the principal building and the front property line extending the entire width of the lot. These requirements do not

apply if the building is part of a multi-unit residential project approved by the Planning Board in accordance with 729.

20. The lot area per dwelling unit requirement varies with the size of the unit. For dwelling units with not more than 1 bedrooms and less than 600 SF of total floor area, the requirement is 3,000 SF of lot area per unit and for dwelling units with more than 1 bedroom or more than 600 SF of total floor area regardless of the number of bedrooms, the requirement is 4,000 SF of lot area per unit.

21. The side yard and rear yard shall be a minimum of 25 feet for multifamily buildings or for other principal buildings that are part of a multi-unit residential project if the building is adjacent to a lot line that is shared with a residential lot that is not part of the project unless a different setback is approved by the Planning Board in accordance with Section 729.

\* To be determined as part of subdivision and site plan review procedures

4. Amend Section 729 by adding a new subsection I. Additional Standards in the R2, R3, and R4 Districts that establishes additional design standards for multifamily housing and multi-unit residential projects in the R2, R3, and R4 Districts which shall read:

45) Additional Standards in the R2, R3, and R4 Districts. All multifamily dwellings and multi-unit residential projects located in the R2, R3, or R4 Districts shall conform to the following standards unless the Planning Board finds that a deviation from one or more of these design standards will still enable the project to meet the Intent and Purpose of these standards and be compatible with the neighborhood:

45) Neighborhood Compatibility. Multifamily dwellings and multi-unit residential projects are appropriate in the R2, R3, and R4 Districts only if they are developed in a manner that reflects an urban pattern of development that is compatible with the adjacent, established neighborhood. The overall layout and design of the site and buildings shall be compatible with the general character of the immediate neighborhood adjacent to the proposed development including the relationship of the buildings to the established streetscape, the design and placement of vehicle access, the scale and orientation of the buildings, the treatment of walls facing existing residential units or public streets, the layout of the building sites, provisions for pedestrian facilities, and provisions for a perimeter buffer.

b. Streetscape. The location and design of the buildings shall reflect the established streetscape of the street(s) which provides the vehicular access to the lot. Where there is a reasonably uniform relationship of existing buildings to the street, the placement and orientation of the new buildings must reflect this relationship to the extent feasible. The development should avoid creating gaps or irregularities in the streetscape unless there is a clear benefit in the overall use of the property that is compatible with the neighborhood.

c. Access Drives. The location and design of any streets, driveways or accessways shall minimize the impact on existing residential properties. If an accessway will serve more than two dwelling units, the edge of the travelway should be at least twenty-five (25) feet from any principal residential building on an adjacent lot. The accessway should be no less than eighteen (18) feet wide and no more than twenty (20) feet wide unless the Planning Board determines that a wider travelway is necessary for adequate safety or access to the project due to the unique characteristics of the site or the scale of the development. The design of the accessway including the grade, pavement width, and turning radii at the intersection with the street shall conform to the requirements of the Public Works Department.

A buffer consisting of berms, landscaping, and/or fencing shall be provided to minimize the impact of the accessway on adjacent property whenever the edge of the travelway of an accessway serving more than two dwelling units is located within thirty-five (35) feet of an existing principal residential building on an adjacent lot. The width and treatment of the buffer shall be determined by the Planning Board during the site plan review based

on the physical characteristics of the site and anticipated volume of traffic with more intensive and/or wider buffer treatments required when separation distances are less or the volume of traffic is greater.

d. Scale. The scale of the building(s) shall conform to the standard of E.a above. The horizontal length of walls shall be visually compatible with the length of walls that exist in the surrounding neighborhood. Walls that are longer than typically found in the neighborhood are permissible if the building is designed with offsets or other design features that visually breakup the scale of the wall.

e. Treatment of Walls. Walls that face a public street or that are adjacent to the wall of an existing principal residential building on an adjacent lot shall not be a blank wall and shall be designed with windows, doors, porches, or other building elements that provide scale and openness to the façade.

f. Site Layout. If buildings will get their vehicular access from an internal accessway, the layout and design of the site shall reflect the traditional urban pattern of 'streets' and 'lots' in which the areas devoted to vehicular circulation are physically separated from the areas devoted to the building sites and associated parking. A design that merges the accessway and parking areas into a single large paved surface is unacceptable. The internal accessways should be separated from the buildings and their associated parking by landscaping or other design features.

g. Pedestrian Facilities. If the street(s) serving the development has sidewalks or if sidewalks will be provided as part of the project, pedestrian facilities shall be provided to link the dwelling units to the sidewalk system. The type of pedestrian facility should be appropriate for the scale of the development. A narrow paved and striped shoulder added to the accessway may be appropriate for a limited number of units while a sidewalk or pedestrian path is appropriate for a larger project.

h. Perimeter Buffer. A buffer consisting of landscaping and/or fencing shall be provided to minimize the impact of the development on adjacent residential property whenever a building is located within thirty-five (35) feet of an existing principal residential building on an adjacent lot. The width and treatment of the buffer shall be determined by the Planning Board during the site plan review based on the physical characteristics of the site the scale and massing of the proposed buildings with more intense or wider buffer treatments required when the separation distances are less or the scale of the building is larger.

5. Amend Section 1104-1. BASIC INFORMATION in the Site Plan Review requirements by adding a new item 20 to read:

20. A design analysis demonstrating how the project conforms to the design standards of Section 729 including any district specific additional requirements. This analysis must address each of the applicable design standards and allow the Planning Board to determine if each standard has been met. The analysis must provide information about the proposed development and the characteristics of neighboring properties and the adjacent neighborhood and an analysis demonstrating how the proposed development meets the standards. This analysis should include plans, building elevations, visual simulations, and a narrative as appropriate to document conformance with the standards.

6. Amend Section 302. Meaning of Words to add a definition of "multi-unit residential project" in proper alphabetical order to read:

**Multi-unit residential project:** A residential development consisting of three or more dwelling units in which the buildings are designed and constructed as part of the overall development. The distinguishing characteristic of a multi-unit residential project is that it is designed and developed with a common, consistent architectural style. The dwelling units in a multi-unit residential project may be in single-family dwellings, two-family dwellings, or multifamily dwellings, or any combination thereof and may be located on a single lot or on multiple lots.

7. Amend Section 1102. Applicability so that item 4. Reads as follows:

4. Proposals for the new construction of multifamily dwellings, or the construction of a multi-unit residential project, or for the conversion . . . .

8. Amend Section 1103. Administration by adding a new subsection 9 to read:

9. NEIGHBORHOOD MEETING REQUIRED

45) Applicability and Purpose. An applicant intending to file a site plan review application for certain projects shall hold a neighborhood meeting in accordance with the requirements of this section before submitting an application for Site Plan Review. The goal of the meeting is to inform the public about the project and to identify concerns so they might be addressed in the design and review of the project. The neighborhood meeting, as described in this section, shall be held for any potential application for site plan review that involves:

- 1) the construction or expansion of a commercial, industrial, or other nonresidential structure with more than one thousand (1,000) square feet of total floor area that is located in a mixed use or residential zoning district, or that abuts a residential zoning district.
- 2) the construction or expansion of a multi-unit residential project that will create six (6) or more new dwelling units in a mixed use or residential zoning district, or that abuts a residential zoning district.

b. Timing and Location of the Neighborhood Meeting. An applicant for a site plan review shall conduct at least one neighborhood meeting no more than ninety (90) days prior to submitting the site plan application. The meeting shall be held at a convenient location either in the neighborhood surrounding the proposed site, or at a readily accessible location. All costs associated with the neighborhood meeting shall be borne by the applicant.

c. Procedures for the Neighborhood Meeting.

- 1) Notice. The applicant shall mail notice of the neighborhood meeting to all property owners who will be entitled to receive notice when the site plan review application is filed and to the Planning Department at least ten (10) days before the meeting. The notice shall be mailed by first class mail with a Post Office certificate of mailing. The notice shall contain a brief description of the potential project, the location of the project, the permits for which the applicant will be seeking approval, and the date, time and place of the neighborhood meeting. The Post Office certificate(s) of mailing with the list of the people who were mailed the notice shall be provided to the Planning Department.
- 2) Digital Copy. The applicant shall provide the Planning Department with a digital copy of the neighborhood meeting notice, at least ten (10) days before the meeting, which the City may forward to other interested persons or groups.
- 3) Presentation. At the meeting the applicant shall present a summary of the proposed project and a plan or drawing of the project, indicate what permits and licenses are required for the project, and provide adequate opportunity for public questions and comments.
- 4) Attendance Sheet. At the neighborhood meeting the applicant shall circulate a sign-in sheet for those in attendance who choose to sign. The sign-up sheet shall be submitted to the Planning Department and shall become part of the application submitted to the Planning Board.
- 5) Minutes. The applicant shall keep minutes of the meeting to be submitted to the Planning Department and, as part of the application, to the Planning Board. Any other person attending the meeting may submit comments on the neighborhood meeting to the Planning Department or Planning Board.

Councilor Lovell moved, Councilor Doucette seconded to open the Public Hearing on the document titled, 'Zoning Ordinance Amendment to Implement a Changes with Regard to Infill Development as Proposed in the 2011 Comprehensive Plan, dated July 20, 2011'. The motion passed with unanimous consent.

There were no comments from the public.

Councilor Lovell moved, Councilor Doucette seconded to close the Public Hearing and "Be it Ordered that the City Council set the Second and Final Reading for the 'Zoning Ordinance Amendment to Implement Changes with Regard to Infill Development as Proposed in the 2011 Comprehensive Plan, dated July 20, 2011' for November 7, 2011". Further move to approve the Order. The motion passed with five (5) yeas and one (1) nay – Councilor Tardif.

### **C. SPECIAL ENTERTAINMENT PERMIT EAGLES 3792 – (PUBLIC HEARING)**

Councilor Doucette moved, Councilor Lovell seconded to open the Public Hearing. The motion passed with unanimous consent.

There were no comments from the public.

Councilor Doucette moved, Councilor Lovell seconded to close the Public Hearing and "Be it Ordered that the City Council grant the renewal application submitted by Saco Eagles #3792 for a Special Entertainment Permit for a period of one year concurrent with the establishment's liquor license". Further move to approve the Order. The motion passed with six (6) yeas.

### **D. ZONING ORDINANCE AMENDMENT – PLANNED DEVELOPMENTS – SECOND & FINAL READING**

(~~strike through~~ indicates language to be deleted)

#### ***"Amendment to Zoning Ordinance Section 706-2" dated September 6, 2011***

#### **706-2. PERFORMANCE STANDARDS**

- 1) ~~The minimum area of land in a planned development shall be five acres.~~
- 2) Each building, parking area, and other facility in the proposed development shall be an element of an overall master plan.
- 3) Facilities shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage conditions.
- 4) Where open space is proposed as part of the planned development, it shall be clearly noted on the final subdivision plan.
- 5) To the extent that they may apply, the planned development shall comply with the requirements of the Saco River Corridor Commission, the Maine Department of Environmental Protection, and the Maine Department of Inland Fisheries and Wildlife.

Councilor Cote moved, Councilor Tardif seconded the City Council hereby "Ordains and approves the second reading and final passage of an amendment to the Saco Zoning Ordinance as outlined in the document, 'Amendment to Zoning Ordinance Section 706-2, dated September 6, 2011'."

AMENDMENT – Councilor Lovell moved to retain the language struck by Subsection 1 of Section 706-2 in the prepared order, and to insert the word “one-half” in place of the word “five”. Motion failed due to a lack of a second.

The Mayor called for a vote on the main motion. The motion passed with five (5) yeas and one (1) nay – Councilor Lovell.

## **VII. CONSENT AGENDA**

Councilor Lovell moved, Councilor Blood seconded to adopt items #A, C, and D in the following Consent Agenda. – The City of Saco hereby:

- A. Approves the document titled, “Land Lease, by and between the City of Saco and T-Mobile Northeast, LLC”, and further authorize the City Administrator to execute the Land Lease;
- C. Approve the Notice of Election for the General Election scheduled for November 8, 2011;
- D. Confirm the Mayor’s appointment of Steve Reese to a 3 year term on the Coastal Waters Commission to expire October 18, 2014.

The motion passed with six (6) yeas.

### **B. DECLARE CITY SURPLUS PERSONAL PROPERTY**

Councilor Blood moved, Councilor Lovell seconded “Be it Ordered that the City Council make an exception to Chapter 4, Article VIII of the Administrative Code – Policies and Procedures - §4-40 Loaning or Selling City Property or Equipment to declare as surplus property the list titled, ‘Surplus Personal Property, October 3, 2011 and authorize the City Administrator to dispose of the property in the most advantageous way’”. Further move to approve the Order. The motion passed with six (6) yeas.

### **A. FLAG POND CELL TOWER – T MOBILE/SACO LEASE**

#### **LAND LEASE**

THIS LEASE is by and between the City of Saco, a Maine municipal corporation with a principal address of 300 Main Street, Saco, Maine (“Landlord” or “the City”) and T-Mobile Northeast LLC, a Delaware limited liability company, who maintains a principal address of 4 Sylvan Way, Parsippany, New Jersey 07054 (“Tenant”) (collectively, the “Parties”).

WHEREAS, the Parties acknowledge and agree that Tenant’s use and occupancy of the Premises as described herein predates this Lease and was originally memorialized under the Standard Communication Site Lease Agreement dated May 7, 1999 (“Agreement”) between Landlord and Tenant.

WHEREAS, the Parties acknowledge and agree that the Agreement has been terminated but without prejudice to either; and

WHEREAS, the Parties desire and intend that this Lease will govern their relations going forward; and

WHEREAS, both Parties acknowledge that certain rights described herein are contingent upon and subordinate to the terms and conditions of a certain Easement Deed dated April 23, 1999 (“so-called FAME Easement”) between The Finance Authority of Maine (“FAME”) and The City of Saco, attached hereto as Exhibit C.

#### 1. Lease.

(a) Landlord is the owner of property situated in the City of Saco, County of York, State of Maine, as more fully described on the attached Exhibit A and in a deed recorded in the York County Registry of Deeds in Book

922, Page 149 (the "Property"). Landlord hereby leases to Tenant a certain portion of the Property sufficient for the placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (the "Premises"), subject to the terms herein. The Premises comprises approximately 1000 square feet.

2. Term. The initial term of this Lease shall commence on January 1, 2011 ("Effective Date") and shall terminate on July 26, 2014 (the "Initial Term"), said term matching the duration of the current FAME Easement.

3. Renewal. Provided Tenant is not in breach of any of the terms of this Lease, nor in breach of any of the terms of the FAME Easement, and provided also that FAME has extended the term of its easement to Landlord, then this Lease shall automatically renew for up to three (3) additional and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein.

4. Rent.

(a) Tenant shall pay Landlord, as rent, One Thousand Seven Hundred Fifty dollars (\$1750.00) per month, every month, ("Rent") commencing October 1, 2011. Landlord acknowledges receipt of the sum of \$15,750.00 within fifteen (15) days of the execution of this Lease to cover past due rent for January 1, 2011 through September 30, 2011. Beginning on October 1, 2011, Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 12 below. Landlord, its successors, assigns and/or designee, if any, shall submit to Tenant any documents reasonably required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9.

(b) During the Initial Term and any Renewal Term of this Lease, and upon each January 5th hereafter for so long as this Lease is in effect, the monthly Rent shall be increased to an amount equal to one hundred three percent (103%) of the monthly Rent in effect on the immediately prior December 5th.

5. Permitted Use. Subject to any local permits or approvals and the terms contained therein, the Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, including, without limitation, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

6. Interference. Tenant shall not use the Premises in any way which interferes with the use of the remaining Property of Landlord by Landlord, or other lessees or licensees of Landlord, subject to Tenant's rights under this Lease, including, without limitation, non-interference. Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference, by either party, shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, equipment shelters and/or cabinets and related cables and utility lines and a location based system, as such location based system may be required by any county, state or federal agency/department, including, without limitation, additional antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"). Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall neither interfere with any aspects of construction nor attempt to direct construction personnel as to the

location of or method of installation of the Antenna Facilities and the Easements (as defined below). The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease. All those rights set forth above in this Section are subject to, conditioned upon and limited by any and all local permits, approvals, and contract zone conditions governing the Premises and its use, and nothing hereinabove shall be interpreted as a waiver or relaxation of the legal conditions, obligations and permits governing the Premises, all of which remain in force and effect.

(b) Tenant, at its expense, may use reasonably appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, Tenant has an affirmative duty to remove the tower, and the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Subject to the terms and conditions of the FAME Easement, Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use, at the rate charged by the servicing utility.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant easements on, under and across its property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, including, but not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have reasonable access to the Premises at all times during this Lease. Notwithstanding the preceding, Tenant acknowledges that access to the Premises is provided pursuant to that certain FAME Easement. The Parties acknowledge that there are two gates to access the Premises, one located at the entrance to the Access Road, as described in the FAME Easement, at the point where the Access Road meets Flag Pond Road and the second located at the entrance to the Premises, along the Access Road Boundary Line, as described in the FAME Easement. The Parties agree Tenant shall have a key to the gate that provides access to the Premises, and that a separate key to the gate located at the entrance to the Access Road shall be kept at all times with the City's Department of Public Works ("Saco DPW") for Tenant's access. Tenant covenants that its personnel shall carefully lock the Access Road gate each time they leave, and shall return the key immediately to Saco DPW for safekeeping. Tenant shall leave one key to its Premises with Saco DPW in case the Landlord or FAME needs to access the Tenant's Premises, but no such access shall occur without advance written notice to Tenant, except in the case of emergency, in which case the Landlord shall inform Tenant within 24-hours of said emergency access that the Premises was accessed

(g) Tenant shall maintain the Access Road and access to the Premises in a manner sufficient to allow vehicular and pedestrian access, at its sole expense, except for any damage to such roadways caused by Landlord or FAME, but any such work or maintenance must be approved by FAME before it is undertaken.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days written notice by Landlord if Tenant fails to cure any material default under this Lease within such thirty (30) day period;

(b) immediately upon written notice by Tenant if Tenant does not obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon thirty (30) days' written notice by Tenant if Tenant determines that the Property or the Antenna Facilities are inappropriate or unnecessary for Tenant's operations for economic or technological reasons;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all obligations to pay rent shall continue without abatement; or

(e) at the time title to the Property transfers to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

#### 9. RESERVED.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, including the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which is directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease remains in effect. If Landlord receives notice of any personal property or real property tax assessment against Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment, whether in a Court, administrative proceeding, or other venue, on behalf of Landlord and/or Tenant. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10. In the event real property taxes are assessed against Landlord or Tenant for the Premises or the Property, Tenant shall have the right, but not the obligation, to terminate this Lease without further liability after thirty (30) days' written notice to Landlord, provided Tenant pays any real property taxes assessed as provided herein.

#### 11. Insurance and Indemnification.

(a) Tenant will maintain Commercial General Liability Insurance in amounts of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Proof of such coverage shall be provided at the initiation of this Lease, and maintenance/retention of such coverage is an affirmative obligation of the Tenant for all times this Lease is in effect. Landlord shall be named as an additional insured.

(b) Tenant acknowledges that Landlord will not insure the Premises or any property thereon from fire, theft, loss or casualty, and that it is Tenant's responsibility to insure its personal property from loss and peril.

(c) Reserved.

(d) Subject to the coverage limits set forth in Section 11 (a) above, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, damages, costs, suits, losses, liability and expenses, including reasonable attorney fees (collectively hereinafter "claims"), to the extent such claims are related to,

caused by, or arise out of the negligent acts, omissions or willful misconduct in the operation or activities on the Property by the Tenant, or any of its employees, agents, contractors, licensees, and/or subtenants, or is the result of any breach of any obligation of the Tenant under this Lease, or under the FAME Easement. In addition Tenant covenants not to violate or compromise governing conditions affecting the FAME parcel.

(e) Notwithstanding anything to the contrary in this Lease, the Parties hereby confirm that the provisions of this Section 11(d) shall survive the expiration or termination of this Lease.

(f) Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing environmental conditions or violations of applicable codes, statutes or other regulations governing the Property.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

T-Mobile Northeast LLC  
Attn: Property Management  
4 Sylvan Way  
Parsippany, NJ 07054

With a copy to:

T-Mobile USA, Inc.  
Attn: PCS Lease Administrator  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006

If to Landlord, to:

City of Saco  
Attn: City Administrator  
300 Main Street  
Saco, Maine 04072

With a copy to:

Finance Director  
City of Saco  
300 Main Street  
Saco, Maine 04072

13. Quiet Enjoyment, Title and Authority. As of the Effective Date and at all times during the Initial Term and any Renewal Terms of this Lease, Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute and perform this Lease; (ii) Landlord has good and unencumbered fee title to the Property free and clear of any liens or mortgages, except those heretofore disclosed in writing to Tenant and which will not interfere with Tenant's rights to or use of the Premises; (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord; and (iv) Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord and Tenant shall not introduce or use any substance, chemical or waste on the Property in violation of any applicable law.

15. Assignment and Subleasing.

(a) Tenant shall have the right to assign or otherwise transfer this Lease and the Easements (as defined above) granted herein upon written notice to Landlord. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord.

(b) Landlord may not assign or otherwise transfer this Lease and the Easements granted herein, except upon written approval of Tenant, which consent will not be unreasonably withheld. Landlord may sell the Property without the prior written consent or approval of Tenant, but any sale shall be subject to this Lease, which terms may be recorded.

(c) Additionally, notwithstanding anything to the contrary above, Landlord or Tenant may, upon notice to the other, grant a security interest in this Lease (and, as regards the Tenant, in the Antenna Facilities), and may collaterally assign this Lease (and, as regards the Tenant, in the Antenna Facilities) to any holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord or Tenant, as the case may be, shall execute such consent to leasehold financing as may reasonably be required by Secured Parties.

16. Successors and Assigns. Subject to the terms of Section 15, this Lease and any Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Party's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) In any litigation arising hereunder each party shall bear its own attorneys' fees and court costs, including appeals, if any, except for those fees described in Section 11 (d).

(b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and property covered by this Lease. Any amendments to this Lease must be in writing and executed by both parties.

(c) Landlord agrees to cooperate with Tenant in executing any documents necessary to protect Tenant's rights in or use of the Premises. A Memorandum of Lease in substantially the form attached hereto as Exhibit D may be recorded in place of this Lease by Tenant, at Tenant's expense.

(d) In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant.

(e) Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(f) This Lease shall be construed in accordance with the laws of the state in which the Property is located, without regard to the conflicts of law principles of such state.

(g) If any term of this Lease is found to be void or invalid, the remaining terms of this Lease shall continue in full force and effect. Any questions of particular interpretation shall not be interpreted against the drafter, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act

or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(h) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacities as indicated.

(i) This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(j) All Exhibits referred to herein are incorporated herein for all purposes. The parties understand and acknowledge that Exhibits A and B may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and/or B, as the case may be, may be replaced by Tenant with such final, more complete exhibit(s).

(k) Each party covenants that they have not retained a broker or realtor, nor have procured cause of one, as part of this undertaking, and each has acted on their own advice, and each warrants that no party is responsible for any sales or realty commission, fee or other payment to an agent or broker, as a part hereof.

19. Tower Marking and Lighting Requirements. Tenant, shall be responsible for compliance with all Tower marking and lighting requirements of the Federal Aviation Administration (“FAA”) and the FCC. Tenant shall indemnify and hold Landlord harmless from any fines or other liabilities caused by Tenant’s failure to comply with such requirements. Should Landlord be cited by either the FCC or FAA because the Tower is not in compliance and, should Tenant fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Landlord may either terminate this Lease immediately on notice to Tenant or proceed to cure the conditions of noncompliance at Tenant’s expense, which amounts shall be billed to Tenant in a timely manner and payable by Tenant within forty-five (45) days.

The effective date of this Lease is January 1, 2011, provided both parties have signed where indicated below.

**LANDLORD:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT: T-MOBILE NORTHEAST LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A  
Legal Description**

**The Property is legally described as follows:**

No exhibit included.

**EXHIBIT B**

**The location of the Premises within the Property (together with access and utilities)  
is more particularly described and depicted as follows:**

No exhibit included.

**EXHIBIT C**

No exhibit included.

**EXHIBIT D**

**MEMORANDUM OF LEASE**

A Lease (the "Lease") by and between the City of Saco, Maine, 300 Main Street, Saco, Maine, a Maine Municipal Corporation ("Landlord") and T-Mobile Northeast LLC, a Delaware limited liability company ("Tenant") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Lease is for a term of three (3) years and 3 months, and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the additional right to extend this Lease for three (3) additional and successive five-year terms subject to the terms and conditions of said Lease.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

**LANDLORD:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT: T-MOBILE NORTHEAST LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF Maine  
COUNTY OF York

**This instrument was acknowledged before me on \_\_\_\_\_ [date] by Richard Michaud, as City Administrator of the City of Saco, Maine, a Maine Municipal Corporation, on behalf of said City of Saco; who also gave oath and acknowledged his authority to act on its behalf.**

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_





**C. NOTICE OF ELECTION**

The Notice of Election is submitted to Mayor and Council authorizing the General Election scheduled for November 8, 2011.

The Clerk, as required by Title 21-A, Article §622-A, has prepared the Notice of Election which will be posted, at all polling places, on or before November 1, 2011 by Chief Paul or his designee.

**D. CONFIRM THE MAYORS APPOINTMENT TO THE COASTAL WATERS COMMISSION**

The Coastal Waters Commission shall be composed of seven members, to be appointed by the Mayor for a three-year term and approved by the City Council. Each Commission member shall be a resident of the city, shall be persons qualified to perform the duties of such office and shall serve without compensation.

Gary Marston, Chair of the Coastal Waters Commission, term has expired and is not seeking reappointment. The Mayor requests the appointment of Steve Reese of 4 Kimberly Drive to a 3 year term.

**VIII. RECESS THE CITY COUNCIL MEETING AND GO TO WORKSHOP**

Councilor Lovell moved, Councilor Cote seconded to recess at 7:27 p.m. The motion passed with unanimous consent.

**IX. RECONVENE THE CITY COUNCIL MEETING**

Councilor Lovell moved, Councilor Mills seconded to reconvene to meeting at 8:19 p.m. The motion passed with unanimous consent.

**X. EXECUTIVE SESSION**

Councilor Lovell moved, Councilor Mills seconded "Be it Ordered that the City Council, Pursuant to [M.R.S.A. Chapter 18, Subchapter 1, §405 (6) (C)] move to enter into Executive Session to discuss: (C) the Disposition of Real Property located at 14 Thornton Avenue." The motion passed with six (6) yeas. TIME: 8:19 p.m.

Councilor Doucette moved, Councilor Lovell seconded to move out of executive session at 9:25 p.m. The motion passed with unanimous consent.

**a. REPORT FROM EXECUTIVE SESSION**

Upon return from executive session at 9:25 p.m. Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Marie Doucette, Philip Blood, Arthur Tardif, Eric Cote and Marston Lovell. City Administrator Rick was also present.

There was no report this evening.

**IX. ADJOURNMENT**

Councilor Doucette moved, Councilor Lovell seconded to adjourn the meeting at 9:28 p.m. The motion passed with unanimous.

ATTEST: \_\_\_\_\_  
Michele L. Hughes, City Clerk