

**MIDVALE CITY, UTAH
RESOLUTION NO. 2020-R-22**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
WITH THE UTAH TRANSIT AUTHORITY (UTA) FOR THE DESIGN AND
CONSTRUCTION OF A PEDESTRIAN CROSSING LOCATED AT
CENTER STREET AT THE TRAX CROSSING**

WHEREAS, Midvale City has entered into an agreement with the Utah Transit Authority, (UTA) for the design and construction of a pedestrian crossing located on Center Street at the TRAX crossing; and

WHEREAS, the funding for this project is a combination of funds from a TIGER Grant, secured by UTA, City funds and Salt Lake County Transportation Funds; and

WHEREAS, under this agreement, UTA was the responsible party in securing design and construction services for this project, with input from City staff; and

WHEREAS, this project has been completed to the City's and UTA's satisfaction, and both parties now desire to close out this project; and

WHEREAS, in order to close this project out, there are several items of paper work that need to be complete, including a Bill of Sale transferring the ownership and maintenance of the signal to the City, a Supplement #2 to the Stakeholders Agreement identifying the final funding sources for this project, and finally a Wireline Crossing agreement.

NOW THEREFORE BE IT RESOLVED, that based on the foregoing, the Midvale City Council adopts this resolution authorizing the Mayor to sign the following documents between the City and the UTA;

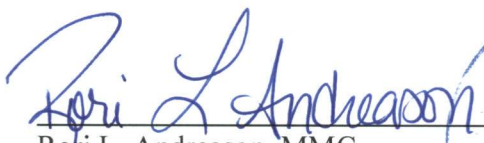
Bill of Sale
Supplement #2 to the Stakeholders Agreement
Wireline Crossing Agreement

APPROVED AND ADOPTED this 19th day of May 2020.

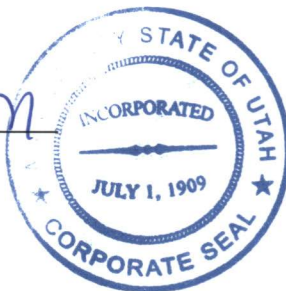


Robert M. Hale, Mayor

ATTEST:



Rori L. Andreason, MMC
City Recorder



Voting by the City Council "Aye" "Nay"

Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heidi Robinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bryant Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Gettel	<input checked="" type="checkbox"/>	<input type="checkbox"/>

BILL OF SALE

This Bill of Sale is executed and delivered this 9th day of May 2020 by and between Utah Transit Authority, a public transit district and political subdivision of the State of Utah ("UTA") and Midvale City, a municipal entity and political subdivision of the State of Utah ("City").

RECITALS

WHEREAS, UTA and the City entered into a April 10, 2018 Stakeholder Agreement (the "Agreement");

WHEREAS, pursuant to the Agreement, UTA has caused the design and construction of a new signalized crosswalk within Midvale City (referred to as project number MID_CWI_1: Crosswalk Improvement; 7628 S St and hereinafter collectively referred to as the "Improvements") on public right of way owned by the City;

WHEREAS, City has been given the opportunity to inspect the Improvements, as constructed, and has agreed to the final acceptance of such Improvements from UTA's contractor; and

WHEREAS, City has agreed to (i) assume full ownership and maintenance responsibility for the Improvements; and (ii) own and maintain the Improvements in a good and workmanlike manner so as to preserve the federal and local investment in the Improvements will last for their full estimated useful life of the Improvements.

AGREEMENT

1. Transfer of Interest. UTA hereby transfers, conveys and assigns to the City any and all interest in, and claims to, the Improvements. UTA agrees to either: (a) assign to the City all contractual warranties UTA has obtained pursuant to the design and construction contracts for the Improvements; or (b) assist the City in the administration and enforcement of such warranties for the City's benefit. The election between items (a) and (b) above shall be made in UTA's sole determination.
2. City Accepts Condition of Improvements. Except for UTA's specific commitment with respect to warranties as set forth in paragraph 1, City hereby accepts the Improvements in an "AS-IS" "WHERE-IS" condition and without any other warranties or guarantees whatsoever.
3. Assumption of Responsibility for Maintenance and Repairs. Except for UTA's specific commitment with respect to warranties as set forth in paragraph 1, City hereby assumes all prospective ownership, maintenance responsibility and liability with regard to the Improvements. City shall maintain and repair the Improvements in a good and workmanlike manner so as to preserve the federal and local investment in the Improvements will last for their full estimated useful life of the Improvements. City shall annually report on the condition of the Improvements as required in the Agreement.

4. UTA Retains Ownership of Real Property. For the avoidance of doubt, this Bill of Sale does not transfer, convey or assign any interest or ownership in underlying or contiguous real property owned by UTA.

IN WITNESS WHEREOF, UTAH TRANSIT AUTHORITY AND MIDVALE CITY
HAVE EXECUTED THIS BILL OF SALE EFFECTIVE AS TO THE DATE FIRST SET FORTH
ABOVE

UTAH TRANSIT AUTHORITY

By _____
Its _____

By _____
Its _____

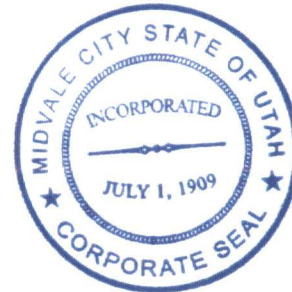
Approved as to Form

UTA Legal Counsel

MIDVALE CITY

By Robert M. Hale
Its Mayer

Attest
By Rui L. Indurason
Its City Recorder



**SUPPLEMENT NO. 2 TO
STAKEHOLDER AGREEMENT
MIDVALE CITY**

TIGER GRANT

TIGER 2016 GRANT No. 2018-02	UTA CONTRACT No. 18-2207BM	STAKEHOLDER CONTRACT No.
SUMMARY OF CITY PROJECTS INCLUDED IN THIS SUPPLEMENT: MID_CWI_1: CROSSWALK IMPROVEMENTS; 7628 S CENTER STREET		PROJECT VALUE OF CITY PROJECTS \$ 573,278
		CITY REPRESENTATIVE: KEITH LUDWIG

THIS SUPPLEMENT NO. 2 TO STAKEHOLDER AGREEMENT ("Supplement"), made and entered into this ____ day of _____, 2020, by and between **UTAH TRANSIT AUTHORITY**, a public transit district ("UTA"), and Midvale City ("City").

The parties hereto entered in to a Stakeholder Agreement dated April 10, 2018, (the "Agreement"), which Agreement contemplated execution of a Supplement outlining specific details for the City Projects to be completed thereunder.

The parties hereto entered in to Supplement No. 1 to Stakeholder Agreement dated April 10, 2018 to outline specific details for City Project MID_CWI_1: Crosswalk Improvements; 7628 S Center Street to be completed thereunder, including the scope, schedule, and estimated budget of the City Project.

The parties hereto desire to enter into this Supplement No. 2 to increase the estimated budget of City Project MID_CWI_1: Crosswalk Improvements; 7628 S Center Street. All definitions and terms of the Agreement remain in full force and effect unless otherwise specified herein.

The parties hereto agree to the increased estimated budget of City Project MID_CWI_1: Crosswalk Improvements; 7628 S Center Street as follows:

1. Estimated Total Cost of Work. The parties hereto desire to increase the estimated budget for City Project MID_CWI_1: Crosswalk Improvements; 7628 S Center Street by Three Hundred Seventy Five Thousand Dollars (\$375,000) for a total estimated budget of Five Hundred Seventy Three Thousand Two Hundred Seventy Eight Dollars (\$573,278). The Estimated Total Cost of Work and funding sources is summarized below:

ESTIMATED BUDGET OF THIS SUPPLEMENT:	<u>\$573,278</u>
ESTIMATED AMOUNT OF TIGER GRANT PARTICIPATION:	<u>\$158,622</u>
ESTIMATED AMOUNT OF CITY PARTICIPATION:	<u>\$ 39,656</u>
ADDITIONAL FUNDING SOURCES (SALT LAKE COUNTY):	<u>\$375,000</u>

2. Payment of Additional Funding Sources. The Interlocal Cooperative Agreement (County Contract No. 0000002129) between Salt Lake County and Midvale City dated February 5, 2019 requires that the City submit Requests for Reimbursement requesting the amount of County

Transportation Funds to be disbursed to the City for Reimbursable Project Costs, up to Three Hundred Seventy Five Thousand Dollars (\$375,000). The Parties acknowledge that UTA has created a separate account code for the County Transportation Funds and will invoice the City for actual costs incurred for City Project MID_CWI_1: Crosswalk Improvements; 7628 S Center Street, which are not paid from TIGER Grant Participation or City Participation, up to Three Hundred Seventy Five Thousand Dollars (\$375,000). City will pay UTA within 60 days of being invoiced. Following payment to UTA for the MID_CWI_1 actual project costs, City will then seek reimbursement from Salt Lake County. UTA will invoice City upon Final completion of the Project.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement No. 2 to be executed in duplicate as of the date first herein written.

UTAH TRANSIT AUTHORITY



By: _____
Title: _____

By: _____
Title: _____

Reviewed and Approved as to Form

UTA Legal Counsel

MIDVALE CITY

By: 
Title: 

ATTESTED AND COUNTERSIGNED

By: _____

**SUPPLEMENT NO. 2 TO
STAKEHOLDER AGREEMENT
MIDVALE CITY**

TIGER GRANT

TIGER 2016 GRANT NO. 2018-02	UTA CONTRACT NO. 18-2702BM	STAKEHOLDER CONTRACT NO.
SUMMARY OF CITY PROJECTS INCLUDED IN THIS SUPPLEMENT: MID_CWI_1: CROSSWALK IMPROVEMENTS; 7628 S CENTER STREET		PROJECT VALUE OF CITY PROJECTS \$ 573,278
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UTAH TRANSIT AUTHORITY

DocuSigned by:
By: Cardyn M. Groat 4/20/2020
OC1EDCBAD5D7410...
Title: Executive Director

DocuSigned by:
By: Mary DeLoretto 4/20/2020
9B93AEE62284418
Title: Chief Service Development Officer

Reviewed and Approved as to Form

DocuSigned by:
By: Mike Bell 4/20/2020
381F18F3870A49
UTA Legal Counsel

MIDVALE CITY

By: [Signature]
Title: Mayor

ATTESTED AND COUNTERSIGNED

By: [Signature]



**SUPPLEMENT NO. 2 TO
STAKEHOLDER AGREEMENT
MIDVALE CITY**

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By: Mary DeLoritto 4/20/2020
9B93AE62284418
Title: Chief Service Development Officer

Reviewed and Approved as to Form

DocuSigned by:
By: Mike Bell 4/20/2020
381F18F337D4A9
UTA Legal Counsel

MIDVALE CITY

By: [Signature]
Title: Mayor

ATTESTED AND COUNTERSIGNED

By: [Signature]





UTAH TRANSIT AUTHORITY

UTA 
669 West 200 South
Salt Lake City, UT 84101

November 20, 2019

Midvale City Corporation
Attn: Keith Ludwig/City Manager
7505 South Holden Street
Midvale, UT 84047

Dear Keith,

Enclosed please find two original copies of the License Agreement between Midvale City Corporation (Licensee) and Utah Transit Authority (UTA) for the work to be performed in conjunction with the Wireline Crossing License **NS/S/6659/U**. Please review the Agreement and have the appropriate individual sign and return both copies to me for final execution by UTA. Also include the one time real estate usage charge described in 2.3 of the Agreement and a copy of Licensee's insurance certificate described in Article XI. It is **important** that the railroad exclusion be removed from the policy. Please send this certificate to my attention, for UTA cannot execute the agreement until an acceptable insurance certificate is submitted.

Thank you for your assistance. If you have any questions, please contact me at (801) 237-1991.

Sincerely,



Shelley Nielsen
Sr. Property Administrator
SNielsen@rideuta.com



WIRELINE CROSSING AGREEMENT
(Interlocal Municipal Wireline Form)

UTA Contract # NS/S/6659/U
Mile Post: NS 10.73
Latitude: 40.611028
Longitude: -111.893753
Midvale, Utah

THIS WIRELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2019 **(to be dated after the final executing signature by UTA)**, by and between UTAH TRANSIT AUTHORITY, a large public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Midvale City Corporation, a municipality and political subdivision of the State of Utah, with a principal address of 7505 South Holden Street, Midvale, UT 84047 (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of a certain railroad corridor known as North South Light Rail Line (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, UTA and Licensee have entered into a separate Stake Holder Agreement for pedestrian crossing and improvements (the "Pedestrian Crossing") as part of Tiger Grant for First Last Mile Connections which shall consist of crosswalk, safety signage and appurtenances necessary to safely operate the Pedestrian Crossing parallel to the Right of Way; and

WHEREAS, UTA's Tiger Grant contractor has installed five (5) two inch (2") PVC conduits, one (1) for Traffic Signal, one (1) for Pre-emption control, three (3) to remain vacant for future Licensee use; via directional bore method of installation, located a minimum of 12 feet below the lowest point of the surface of the Right of Way which cross at approximately Mile Post 10.73 (Latitude 40.611028, Longitude -111.893753) in Midvale, Utah; and

WHEREAS, For purposes of this Agreement the term Contractor shall apply to any future subsequent reconstruction, relocation, restoration or rehabilitation of the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way;

WHEREAS, Licensee desires a license for the continued, operation and maintenance of the Wireline.

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

ARTICLE I
INCORPORATED TERMS AND DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1.1 “Construct” and “Construction” mean the initial installation of the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way.

1.2 “Emergency Access Manager” means the person or office responsible for controlling emergency Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is (801) 562-1229. UTA may change the designated Emergency Access Manager from time to time by delivery of notice in accordance with Article XVI of this Agreement.

1.3 “Freight Operator” means any entity using the Right of Way, or any portion thereof, to provide common carrier freight operations.

1.4 “Governmental Authority” means any federal, state, municipal, local or other division of government, or any agency thereof, having or asserting jurisdiction with respect to any matter related to this Agreement.

1.5 “Hazardous Materials” mean any materials or substances: (i) which are present in quantities and in forms which require investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms “response” and “remedial action” are defined in Section 101 of the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 (24) and (25)) under any applicable federal, state or local environmental law, regulation, ordinance, rule or bylaw, as such are amended from time to time, whether existing as of the date hereof, previously enforced or subsequently amended (each hereafter an “Environmental Law”); or (ii) which are defined as “hazardous wastes,” “hazardous substances,” “pollutants” or “contaminants” under any Environmental Law.

1.6 “Losses” mean any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys’ fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs resulting from: (i) loss of or damage to the property of any Party or Third Person; (ii) death or personal injury to the agents of any Party or to any Third Person; or (iii) the cleanup or other requirements regarding any incident involving Hazardous Materials. The term “Losses” shall not include any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys’ fees, expert witness fees, court costs, amounts paid in settlement judgments, interest or other costs excluded from Licensee’s indemnification obligations and assumed by UTA pursuant to Section 8.1 and 8.2 of this Agreement.

1.7 “Maintain” and “Maintenance” mean the performance of any repair, restoration, rehabilitation, refurbishment, retrofitting, inspection, monitoring, observation, testing, or similar work with respect to the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way.

1.8 “Mater Interlocal Agreement” means that certain Master Interlocal Agreement Regarding Fixed Guideway Systems located Within Railroad Corridors, effective February 13, 2004, entered by and among UTA and the various municipalities and counties within which UTA’s rights of way are situated.

1.9 “Party” and “Parties” mean UTA or Licensee, and UTA and Licensee, respectively.

1.10 “Third Person” means any individual, corporation or legal entity other than UTA and Licensee.

1.11 “Track Improvements” mean any and all tracks, rails, ties, switches, frogs, end of track barricades or bumpers and other barricades or bumpers, derail devices, tie plates, spikes, wires, fastenings and any other appurtenances related thereto, drainage structures, grading, ballast, subgrade stabilization, crossings, tunnels, bridges, trestles, culverts, structures, facilities, leads, spurs, turnouts, tails, sidings, signals, crossing protection devices, communications systems or facilities, catenary systems and wires, poles and all other operating and non-operating appurtenances located within the Right of Way.

1.12 “UTA System” means any light rail, commuter rail, trolley, guided busway, or similar public transportation system constructed by UTA in the Right of Way as contemplated in the Master Interlocal Agreement.

1.13 “Utility” and “Utilities” mean and include all properties, facilities, utilities, crossings, encroachments, lines and similar appurtenances located within the Right of Way by permissive or prescriptive authority including, but not limited to, pipelines, tubelines, water and gas lines or mains, electrical conduits, ditches and other drainage facilities, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances, and all similar installations.

1.14 “Wireline” means the five (5) two inch (2”) PVC conduits, two containing Traffic Signal and Pre-emption fiber, 3 remaining vacant for future use installed and maintained by Licensee pursuant to this Agreement and located a minimum of 12 feet below the lowest point on the surface of the Right of Way at Mile Post NS 10.73 (Latitude 40.611028, Longitude -111.893753) on the North South Light Rail Line in Midvale, Utah as described in Exhibit “A”. The term “Wireline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Wireline that are authorized and approved by UTA pursuant to this Agreement (unless they are the subject of a separate agreement that does not incorporate the terms hereof).

1.15 “Work Window” means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Wireline within the Right of Way is permissible. UTA may, at any time and at UTA’s sole discretion, determine that the Work Window shall not be concurrent with any passenger operations within the Right of Way.

ARTICLE II GRANT OF LICENSE AND REAL ESTATE USAGE CHARGE

2.1 UTA customarily assesses a standard administrative fee reflecting the clerical, administrative and handling expenses incurred in connection with the processing of this Agreement. The standard administrative fee has been waived consistent with the provisions of the Master Interlocal Agreement.

2.2 In consideration of the real estate usage charge to be paid by Licensee, and in further consideration of the covenants and agreements to be kept, observed and performed by Licensee hereunder, UTA hereby grants Licensee a license to Construct, Maintain and operate the Wireline in the location shown and in conformity with the dimensions and specifications indicated on the attached print approved by UTA Engineer dated **October 2, 2019** marked Exhibit “A” (Exhibit “A” is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Licensee agrees to pay UTA a one-time real estate usage charge of **\$0** payable on or before the date of execution. Licensee also agrees to pay an upfront Flagging cost of **\$0** and Special Inspection cost of **\$0** (these fees are more clearly described in Section 5.1).

ARTICLE III ACCESS TO THE RIGHT OF WAY

3.1 Except in the event of an emergency (as provided in Section 3.2 below), Licensee shall request permission from UTA at least ten days (or such shorter period as may be approved by UTA) prior to performing any Construction or Maintenance in or otherwise materially affecting the Right of Way. Licensee's request to access the Right of Way shall be specific as to the time, date and activities for which Licensee seeks permission. The request shall also include a summary of the method and manner in which the Construction or Maintenance will be performed. As part of the application process, UTA may require Licensee (and its contractors or other agents seeking access to the Right of Way) to attend any track access coordination meetings, safety training or other instruction as may be deemed necessary by UTA. Once granted, UTA's permission to enter the Right of Way shall be formalized in writing and delivered to Licensee. After permission has been granted, Licensee shall comply with all conditions, instructions and requirements of such permit and with all instructions or directions given by UTA including, if required, daily telephone notification to the applicable rail dispatch center prior to each entry into the Right of Way. All contact with UTA shall be coordinated through the person designated by UTA from time to time as set forth in Article XVI of this Agreement. Provided that Licensee complies with the provisions of this Section, UTA agrees not to unreasonably withhold, condition, or delay its approval of Licensee's request.

3.2 Licensee shall have the right to enter the Right of Way in the event of an emergency to make repairs necessary to protect against imminent and serious injury or damage to persons or property. Licensee shall take all precautions necessary to ensure that such emergency entry does not compromise the safety of any operations conducted in the Right of Way by UTA or Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed by telephone prior to entering the Right of Way.

ARTICLE IV CONSTRUCTION AND MAINTENANCE OF THE WIRELINE

4.1 All Construction and Maintenance with respect to the Wireline shall be performed to the satisfaction of UTA and in accordance with the conceptual, engineering and/or design plans ("Design Plans") previously approved by UTA and attached hereto as Exhibit "A." All Construction and Maintenance with respect to the Wireline shall be performed in compliance with the standards set forth in the National Electric Safety Code ("NESC") and/or the National Electric Code ("NEC"). UTA may impose requirements in addition to or more stringent than the NESC or NEC, if UTA deems such requirements necessary for the safety of operations conducted in the Right of Way. UTA may also require additional fabrication methods, staging requirements or other precautions. All Construction and Maintenance with respect to the Wireline shall be performed during the designated Work Window. UTA shall have the right, but not the obligation, to observe any and all work performed in or materially affecting the Right of Way in connection with the Wireline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Wireline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval.

4.1.1 With respect to any overhead facilities related to the Wireline, the Design Plans shall include: (a) a vertical clearance of not less than twenty-three and a half (23.5) feet on Commuter Rail between (above) the top of the highest rail and the lowest portion of the Wireline; (b) a vertical minimum of ten (10) feet above Light Rail catenary wires; (c) a side clearance that is as great as reasonably possible but in no event less than eleven (11) feet from the center line of any rail; and (d) in any event not less than the minimum clearance standards set forth in the NESC and/or the NEC.

4.1.2 With respect to any underground facilities related to the Wireline, Licensee shall submit to UTA plans setting out the method and manner of handling all work to be performed under the Track Improvements including, without limitation, the shoring and cribbing, if any, required to protect the operations of UTA, the Freight Operator or the owner of any adjacent tracks. Licensee shall not proceed with any such work until Licensee's proposed methods have been approved by UTA. The Wireline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements.

4.2 Various Utilities exist on, over and under the surface of the Right of Way. Prior to commencing any Construction or Maintenance with respect to the Wireline, Licensee shall properly investigate and determine the location of all such Utilities. In addition to the required investigation, Licensee shall have all Utilities in the area of the Wireline "blue-staked" and clearly marked prior to any excavation. Licensee shall make arrangements for the protection of all Utilities and shall commence no excavation, boring or other penetration in the Right of Way until all such protection has been accomplished.

4.3 Fiber optic cable systems may be buried in the Right of Way. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall be solely responsible for contacting UNION PACIFIC RAILROAD COMPANY during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) and for determining if fiber optic cable is buried near the location of the Wireline. If so, Licensee will contact the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, make arrangements for relocation or other protection of the fiber optic cable. Licensee shall not commence any work until all such protection and/or relocation have been accomplished. Licensee shall be solely responsible for all coordination with Union Pacific and any telecommunications companies. In coordinating the relocation or protection of fiber optic cable, Licensee shall not rely on any statements, engineering drawings or other oral or written representations of UTA or its representatives. In addition to other indemnity provisions in this Agreement, Licensee shall indemnify, defend and hold the UTA Indemnitees (as defined in Section 8.1 of this Agreement) harmless from and against all Losses arising out of: (a) any damage to or destruction of any telecommunications system proximately caused by any Construction, Maintenance or other work performed by Licensee or its agents relative to the Wireline; and/or (b) any injury to or death of any person employed by or on behalf of any telecommunications company, proximately caused by any Construction, Maintenance or other work performed by Licensee or its agents relative to the Wireline. Except to the extent that liability is assumed by UTA as set forth in Section 8.1 and 8.2 of this Agreement. Licensee shall not have or seek recourse against UTA for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using UTA's Right of Way or a customer or user of services of the fiber optic cable on UTA's Right of Way.

4.4 Licensee shall be solely responsible for obtaining any property rights, easements, licenses, rights of way or other permission from Third Persons (collectively "Third Person Property Rights") as may be necessary to Construct, Maintain or operate the Wireline including, without limitation, any needed permission from the owner of any adjacent railroad corridor. Licensee shall also be solely responsible for obtaining any necessary franchises, permits or other necessary approvals from Governmental Authorities (collectively "Approvals"). Licensee agrees to pay any and all costs and expenses relating to such Third Person Property Rights or Approvals, and to assume any and all liability therefor.

4.5 Except as authorized in this Agreement or as may be immediately required for (and only at the actual time of) performance of any Construction or Maintenance contemplated under this Agreement, and then only in full compliance with all clearance standards and other safety requirements, Licensee shall not place, permit to be placed, erect, pile, store, stack, park, suffer or permit any line, building, platform,

fence, gate, vehicle, car, pole, or other structure, obstruction, or material of any kind within the Right of Way.

4.6 Licensee shall Construct, Maintain and operate the Wireline in compliance with all requirements imposed by any Governmental Authority including, without limitation, the requirements of the Federal Railroad Administration, the Occupational Safety and Health Administration and the Utah Department of Transportation. Licensee shall also Construct, Maintain and operate the Wireline in compliance with all applicable environmental laws. Licensee shall take all suitable precautions to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for whatever reason the Construction of the Wireline causes interference with the operation of Track Improvements or any other UTA or Third Person installations or facilities existing prior to the Construction of the Wireline, Licensee shall, upon notification by UTA and at Licensee's sole cost and expense, take such action as is necessary to eliminate the interference.

4.7 If, in connection with the performance of any Construction or Maintenance work, Licensee or its Contractor damages any Track Improvements, Utilities, or any other facilities, Licensee shall repair or replace such facilities with the same or similar materials, if available, as reasonably required by the UTA, consistent with applicable Federal and State laws and regulations and to the satisfaction of UTA.

4.8 At the request of UTA, Licensee shall install markers identifying the location of the Wireline and related appurtenances at the Right of Way boundaries (where the Wireline enters and exits the Right of Way) or other locations where UTA may designate. Markers shall be installed in a form and size as may be determined by UTA and at the sole cost and expense of Licensee. UTA hereby expressly reserves the right to require Licensee to erect and maintain, at Licensee's sole cost and expense, any and all signs of any character and nature whatsoever (e.g. location of Wireline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Wireline. Licensee shall install and/or erect any marker or sign that may be required under this Section within thirty (30) days after receiving written instructions from UTA.

4.9 Upon completion of any Construction or Maintenance relating to the Wireline, Licensee shall restore the surface of the Right of Way to its prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences or other property that Licensee disturbed or removed from the Right of Way.

4.10 If a contractor is to perform any Construction or Maintenance contemplated in this Agreement, then the Licensee shall cause its contractor to comply with all applicable provisions of this Agreement. Additionally, Licensee shall require its contractor to execute UTA's form Contractor's Right of Entry Agreement (the "Contractor Agreement"). Any and all contractors used by Licensee in the Construction or Maintenance of the Wireline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

4.11 If Licensee fails to notify UTA a minimum of 10 days before the initial installation of the Wireline or if Licensee's Contractor fails to obtain a Contractor Agreement Licensee agrees to pay UTA an additional three thousand dollars (**\$3,000**) as a fee for the initial inspection of the Wireline, together with any other additional fees incurred by UTA to verify that the Wireline was installed as per the approved plans. Such review and verification could include exposing the line to verify the depth of/height of and materials installed. If the Wireline was not installed in the approved location, depth/height, and with the approved materials, as described in the approved plans, Licensee agrees to remove the Wireline and reinstall it according to the approved plans at Licensee's sole cost and expense.

ARTICLE V
CONSTRUCTION OBSERVATION BY UTA – LICENSEE TO BEAR ALL COSTS

5.1 The current cost of flagging is \$788/day for an eight (8)-hour day and \$1,058/day for a twelve (12) - hour day. Flagging is charged in blocks, with a minimum billing of an eight (8) - hour period. The current cost for a special inspector is \$76/hour with a two (2) -hour minimum charge per inspection/inspector. UTA has determined that zero (0), eight (8)-hour day for Flagging and zero (0), two (2)-hour day for a Special Inspection will be needed for the construction of this Wireline. Licensee will pre-pay \$0 for Flagging and a Special Inspection at or before the execution of this agreement. If after the construction of the Wireline extra days of Flagging or Special Inspection have been collected, Licensee may submit in writing for a refund from UTA. Submission for refund will need to be submitted to UTA within thirty (30) days of the date of completion of the Wireline. Refunds will only be issued after confirmation from UTA operations that the flagging and special inspection days were not used.

5.2 In the event that UTA, in its sole discretion, determines that any other inspectors (technical or special), monitors, observers, safety personnel, additional flaggers or other persons are required given the nature of the Construction or Maintenance to be performed, UTA may, at its sole discretion, provide such personnel and Licensee shall, within thirty (30) days, reimburse UTA for the reasonable costs thereby incurred.

ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO WIRELINE

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.2 and Article 8 of this Agreement, Licensee shall be solely responsible for any and all costs incurred with respect to any Construction, Maintenance or other work related to the Wireline.

ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF WIRELINE

7.1 The rights granted pursuant to this Agreement shall be subject and subordinate to the prior and continuing right and obligation of UTA to fully use the Right of Way, including the right and power of UTA to construct, maintain, repair, renew, use, operate, modify, or relocate new or existing Track Improvements upon, along, above, or across any or all parts of the Right of Way and other UTA property, all or any of which may be freely done at any time or times by UTA. The grant of license for the Wireline is made without covenants of title or quiet enjoyment. UTA makes no warranties, either express or implied, regarding the nature, extent or status of its title to the Right of Way or regarding the existence or nonexistence of Third Person rights which may be superior to the license granted pursuant to this Agreement.

7.2 Licensee shall, within sixty (60) days after receipt of written notice from UTA, modify or relocate (or, if agreed between the Parties, allow UTA to modify or relocate) all or any portion of the Wireline as UTA may reasonably designate. To the extent that the modification or relocation of the Wireline is necessitated by the construction, reconstruction, modification or relocation of any UTA System, UTA shall be responsible for the costs of such relocation. To the extent that the modification or relocation of the Wireline is necessitated because the Wireline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Wireline, then Licensee shall be responsible for the costs of such modification or relocation. All the terms, conditions and stipulations herein expressed with reference to the Wireline in the location described herein shall, so far as the Wireline remains on UTA property, apply to the Wireline as modified or relocated pursuant to this Section.

7.3 The foregoing grant is also subject to the outstanding superior rights previously conveyed or granted to Third Persons by UTA, or its predecessors in interest, and the right of UTA to renew and extend the same.

ARTICLE VIII INDEMNITY AND RELEASE

8.1 Licensee agrees to protect, defend, release, indemnify and hold harmless UTA, and any affiliates, successors, contractors, officers, directors, agents and employees of UTA (the "UTA Indemnitees") from and against any and all Losses resulting from: (a) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in conjunction with any Construction, Maintenance or other work performed by or on behalf of Licensee with respect to the Wireline; (b) negligence on part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Wireline; or (c) Licensee's breach of any provision of this Agreement. Notwithstanding the foregoing, Licensee shall not be required to indemnify UTA for, and UTA hereby assumes responsibility for, any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs that are proximately caused by the negligence, recklessness or willful misconduct of UTA with respect to the construction, maintenance or operation of any UTA System.

8.2 Licensee acknowledges that the Right of Way may be subject to prospective purchaser agreements and covenants not to sue that UTA has entered with the Utah Department of Environmental Quality and the United States Environmental Protection Agency. Pursuant to such agreements, UTA is required to characterize any excavated soil that appears to contain (or has the potential to contain) Hazardous Materials and to handle and dispose of any such soil in compliance with applicable state and federal laws. Under these agreements, UTA is not required to excavate any soil except as required for construction related to the installation of a UTA System. Accordingly, any excavation that Licensee performs with respect to the Wireline exposes UTA to potential environmental liability that would not otherwise be present. As consideration for the rights granted to Licensee hereunder, Licensee agrees to assume all potential liability and responsibility for, and to indemnify and hold UTA harmless with respect to, any Losses related to the characterization and removal of any Hazardous Materials discovered during the performance of any Construction or Maintenance. Licensee agrees to perform any such characterization and removal in full compliance with all applicable state and federal environmental laws. Notwithstanding the foregoing, Licensee shall not be required to indemnify UTA for, and UTA hereby assumes responsibility for, any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs related to any Hazardous Materials discovered as the result of modification or relocation work performed by or on behalf of Licensee in conjunction with the construction, reconstruction, modification or relocation of any UTA System. To the extent that either Party actually causes a release of Hazardous Materials into the Right of Way, such party shall be responsible for the characterization and removal of such Hazardous Materials and shall indemnify the other Party with respect to all losses resulting therefrom.

8.3 Licensee hereby releases UTA from, and agrees not to seek recourse against UTA with respect to, any claims, damages, fees, expenses or other losses proximately caused by Third Persons including, without limitation, Third Persons having licenses or other interests in the Right of Way. Nothing contained herein shall be construed or deemed to be a release of any Third Persons by Licensee.

8.4 The provisions of this Article shall survive the termination of this Agreement.

ARTICLE IX CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES

9.1 Licensee shall fully pay for all materials joined or affixed to the Right of Way in connection with the Wireline, and for all labor performed with respect to the Wireline. Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

9.2 Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the Wireline to prevent the same from becoming a charge or lien upon the Right of Way and so that any taxes, charges and assessments levied upon or with respect to such property shall not be increased because of the Wireline or any improvements, appliances, or fixtures connected therewith.

ARTICLE X TERMINATION

10.1 UTA may terminate this Agreement if: (a) Licensee ceases to use the Wireline in an active and substantial way for any continuous period of one (1) year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of thirty (30) days after UTA delivers written notice to Licensee identifying the nature of Licensee's breach of this Agreement; provided, however that if the nature of Licensee's breach is such that it cannot be cured within such thirty (30)-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within thirty (30) days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Wireline from the Right of Way.

10.2 Termination of this Agreement for any reason shall not affect any of the rights, obligations or liabilities that have accrued prior to or concurrent with such termination.

ARTICLE XI INSURANCE

11.1 During the life of this Agreement, Licensee shall, at its sole cost and expense, obtain and maintain the insurance described in Exhibit "B" (Exhibit "B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference). Licensee will also provide to UTA a Certificate of Insurance, identifying UTA Contract Number NS/S/6659/U, issued by its insurance carrier confirming the existence of such insurance and indicating that the policy or policies contain the following endorsement:

"Utah Transit Authority is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the Wireline Crossing Agreement NS/S/6659/U in the railroad right of way known as the North South Light Rail Line at approximately Mile Post NS 10.73 in Midvale, Salt Lake County, Utah"

11.2 Failure to maintain insurance as required shall entitle, but not require UTA to terminate the license granted hereby immediately.

11.3 If Licensee is a public entity subject to any applicable statutory governmental immunity laws, the limits of insurance described in Exhibit "B" shall be the limits the Licensee then has in effect or that are required by applicable current or subsequent law, whichever is greater, a portion of which may be self insured with the consent and approval of UTA. Licensee does not waive any of its rights of entitlements to governmental immunity and limitations on liability to Third Persons under the Utah Governmental Immunity Act.

11.4 Licensee hereby acknowledges that it has reviewed the requirements of Exhibit "B", including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the wireline which is the subject of this Agreement.

ARTICLE XII REMOVAL OF WIRELINE UPON TERMINATION OF AGREEMENT

Upon termination of this Agreement pursuant to Article X hereof, Licensee shall, if requested in writing by UTA and at Licensee's sole cost and expense, remove the Wireline from the Right of Way and shall restore, to the satisfaction of UTA, such portions of the Right of Way to at least as good a condition as such were in at the time that Licensee first entered the Right of Way. If Licensee fails to do the foregoing within a reasonable time, UTA may, at its option, perform such removal and restoration work at the expense of Licensee. Licensee shall reimburse UTA for the costs incurred in any restoration or removal work performed under this Article within thirty (30) days after receipt of the bill therefor. In the event UTA removes the Wireline pursuant to this Article, UTA shall in no manner be liable to the Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any other right of action, including the recovery of damages, that UTA may have against the Licensee. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE XIII ASSIGNMENT

Licensee may not assign this Agreement, in whole or in part, or any rights herein granted, without UTA's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Licensee may assign this Agreement and its rights hereunder as part of a consolidation with an entity that: (a) is a successor governmental entity to Licensee; (b) is annexed with, merged into or consolidated with Licensee; or (c) that acquires substantially all of the assets of Licensee provided, however, that in any of the above instances such entity seeking an assignment under this Article must, as a condition to such assignment, assume all terms and conditions of this Agreement without limitation.

ARTICLE XIV SUCCESSORS AND ASSIGNS

Subject to the provisions of Article XIII, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors and assigns.

ARTICLE XV SEVERABILITY

This Agreement is executed by the Parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

ARTICLE XVI NOTICES

Except as specifically provided elsewhere in this Agreement, all notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten (10) days written notice of the change in the manner set forth herein.

If to UTA:

Utah Transit Authority
Attn: Property Management
669 West 200 South
Salt Lake City, UT 84101
PropertyManagement@rideuta.com

With a Copy to:

Utah Transit Authority
Attn: Legal Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Licensee:

Midvale City Corporation
Attn: City Engineer
7505 Holden Street
Midvale, UT 84047

ARTICLE XVII NO IMPLIED WAIVER

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair any future ability of UTA to avail itself of any remedy or right set forth in this Agreement. Neither the right of supervision by UTA, nor the exercise or failure to exercise such right, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part, of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

ARTICLE XVIII ENTIRE AGREEMENT - COUNTERPARTS

This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

**ARTICLE XIX
FORUM SELECTION AND CHOICE OF LAW**

This Agreement shall be construed and interpreted under the laws of the State of Utah and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Salt Lake County, Utah, and each party hereto hereby consents to the jurisdiction of such courts.

**ARTICLE XX
SPECIAL PROVISIONS**

Special provisions, if any, are included in the attached Exhibit "C" (Exhibit "C" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

{Remainder of Page Intentionally Blank}

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

DocuSigned by:
Dane Cooley
33C1D4DB2F314D3
UTA Engineering

DocuSigned by:
Mike Bell
361F16F838704A9
Mike Bell
Assistant Attorney General


UTAH TRANSIT AUTHORITY

By: _____
Paul Drake
Senior Manager Real Estate & TOD

By: _____
Spencer Burgoyne
Manager, Property Administration

By: _____
Shelley Nielsen
Sr. Property Administrator

LICENSEE

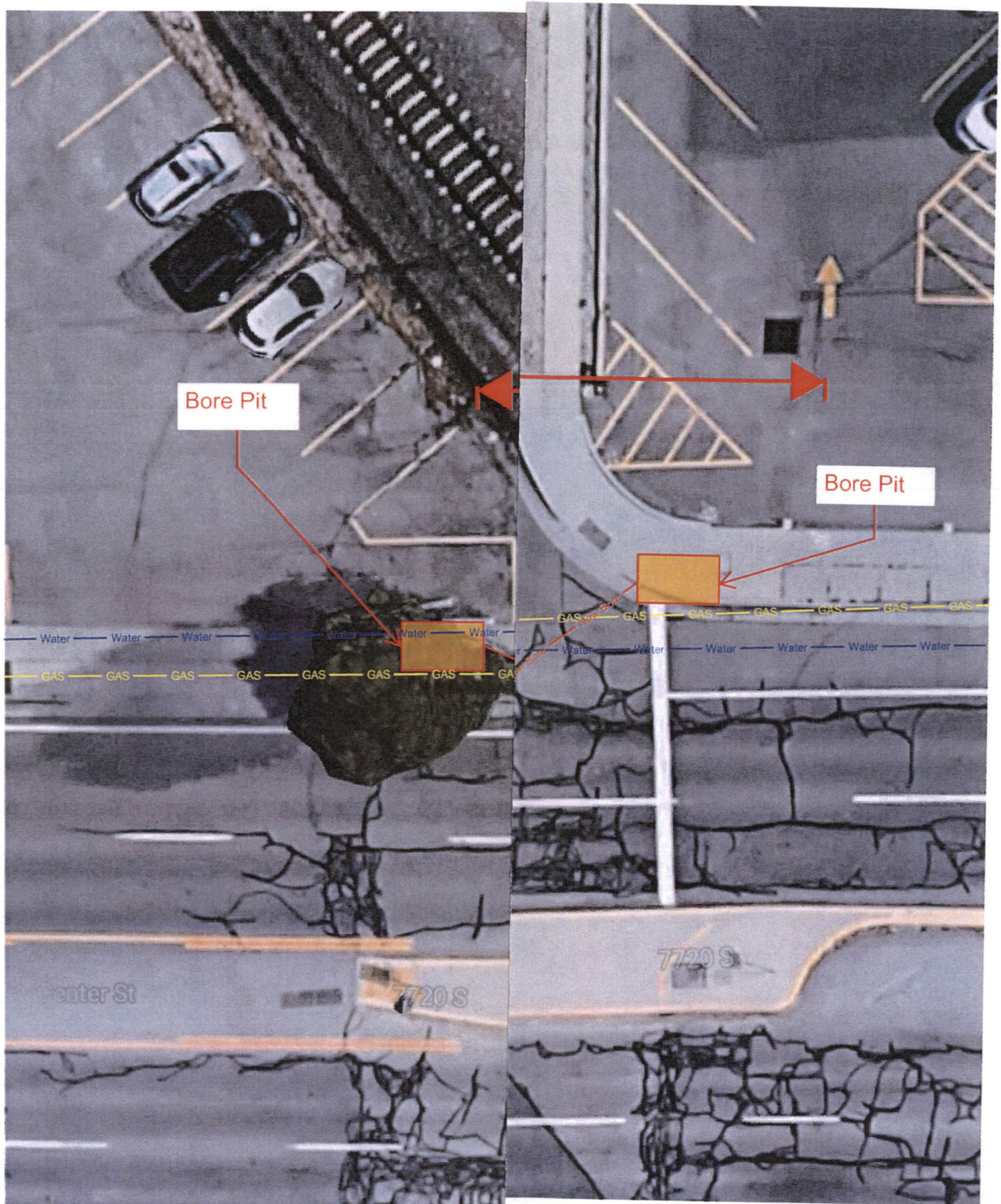
By: 
Robert M Hall/Mayor
Midvale City Corporation

Attest: Lois L Anderson
City Recorder



EXHIBIT "A"
DESIGN PLANS

[Insert engineering drawings showing the proposed crossing including proposed construction methods, shoring and cribbing requirements and mile post location]



Length Depth

5	0
10	-3
20	-5
30	-7
40	-9
50	-11
60	-12
70	-12
80	-12
90	-12
100	-12
110	-11
120	-10
130	-9
140	-8
150	-6.5
160	-5
165	-3
170	-2

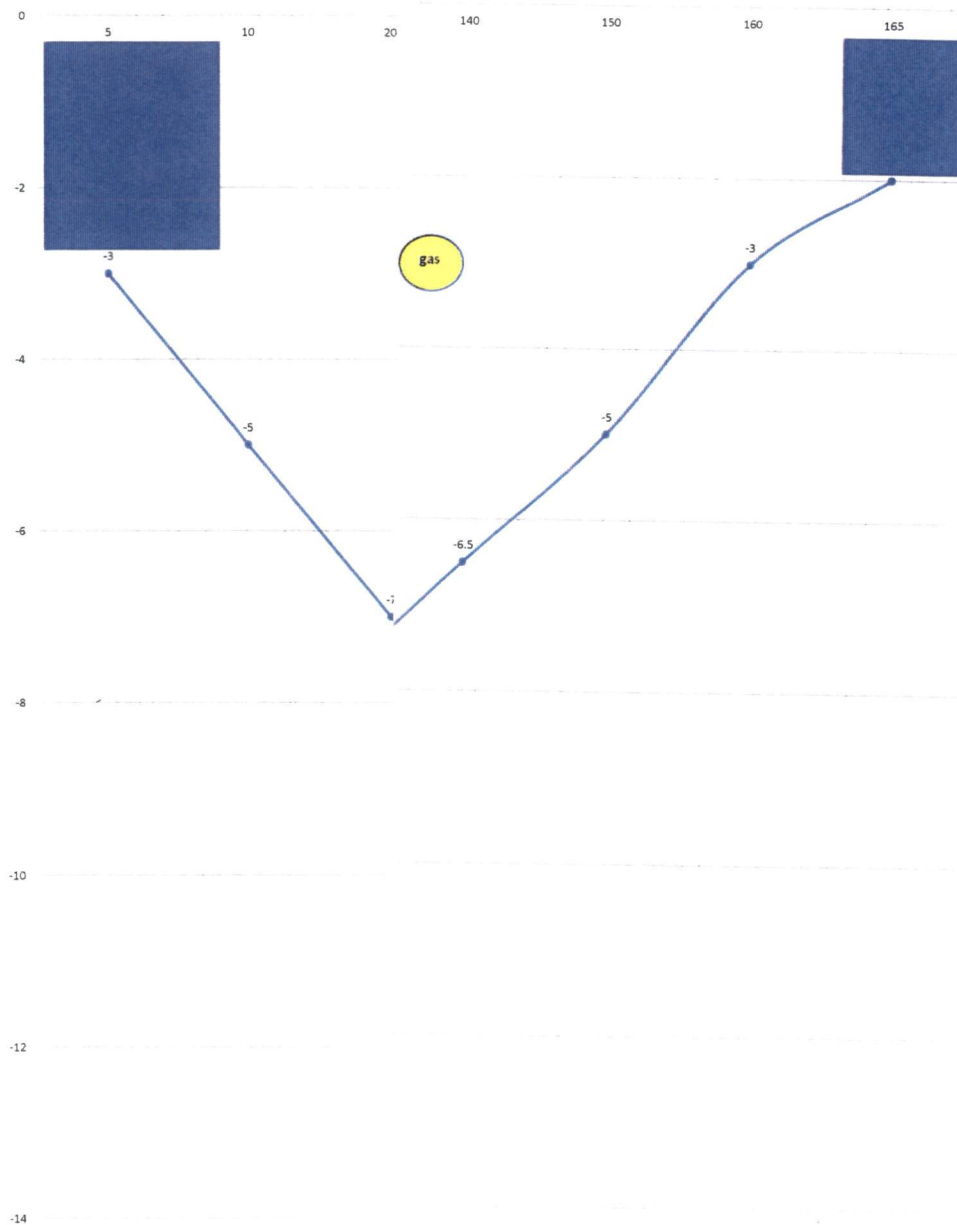


EXHIBIT "B"

INSURANCE REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. **Commercial General Liability Insurance:** Policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. The policy shall contain broad form contractual liability insurance covering the indemnity obligations assumed by Licensee in the Agreement. Exclusions for railroads (except where the Wireline is in all places more than fifty (50) feet from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage provided on a "claims made" form shall provide for at least a two-year extended reporting and discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
 - a. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.
- B. **Automobile Liability Insurance:** Policy providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.
- C. **Worker's Compensation and Employer's Liability Insurance:** Policy covering Licensee's statutory liability under the laws of the State of Utah. If Licensee is self-insured, evidence of State approval must be provided.
- D. **Railroad Protective Liability Insurance (RRPLI):** During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Licensee and/or Licensee's Contractor must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.
 - a. If the Licensee and/or Licensee's Contractor is not enrolling for this coverage under UTA's blanket RRPLI program, the policy provided must have the definition of "JOB LOCATION" AND "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement.
- E. **Umbrella or Excess Insurance:** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

F. Other Insurance Provisions:

- a. Licensee and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Licensee's insurance shall be primary with respect to any insurance carried by UTA. Licensee will furnish UTA at least thirty (30) days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.
- b. The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.
- c. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

**SUBMITTING REQUESTS FOR
RAILROAD PROTECTIVE LIABILITY INSURANCE**
(\$2,000,000 per occurrence/ \$6,000,000 aggregate)

Application forms for inclusion in Utah Transit Authority's Blanket Railroad Protective Liability Insurance Policy may be obtained from a Property Administrator.

If you have questions regarding railroad protective insurance (i.e. premium quotes, application) please contact David Pitcher at:

Phone: (801) 287-2371
Email: depitcher@rideuta.com

Send or hand deliver Checks and Applications to the following address:

Utah Transit Authority
Attn: David Pitcher
669 West 200 South
Salt Lake City, UT 84101

EXHIBIT "C"
SPECIAL PROVISIONS

Licensee or Licensee's contractor must first obtain a TRAX Track Access Permit from UTA before any access will be allowed on UTA property. The current contact person for obtaining a TRAX Track Access Permit is Owen Thompson at (385) 414-7795, or such other contact as shall be identified on UTA's website location noted below.

A copy of the permit that shall be filled out and submitted can be found on UTA's website, under the Track Access Permit tab. <http://www.rideuta.com/PropertyManagement>

Note: Access Permits will not be issued without first having an executed Contractor's Right of Entry Agreement, UTA having received proof of insurance as provided in the Right of Entry Agreement, and verification that the Contractor and all of the Contractor's Employees have gone through UTA's Roadway Worker Training, if applicable.

Licensee or Licensee's contractor shall only cross at designated public crossings

WIRELINE CROSSING AGREEMENT
(Interlocal Municipal Wireline Form)

UTA Contract # NS/S/6659/U
Mile Post: NS 10.73
Latitude: 40.611028
Longitude: -111.893753
Midvale, Utah

THIS WIRELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2019 **(to be dated after the final executing signature by UTA)**, by and between UTAH TRANSIT AUTHORITY, a large public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Midvale City Corporation, a municipality and political subdivision of the State of Utah, with a principal address of 7505 South Holden Street, Midvale, UT 84047 (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of a certain railroad corridor known as North South Light Rail Line (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, UTA and Licensee have entered into a separate Stake Holder Agreement for pedestrian crossing and improvements (the "Pedestrian Crossing") as part of Tiger Grant for First Last Mile Connections which shall consist of crosswalk, safety signage and appurtenances necessary to safely operate the Pedestrian Crossing parallel to the Right of Way; and

WHEREAS, UTA's Tiger Grant contractor has installed five (5) two inch (2") PVC conduits, one (1) for Traffic Signal, one (1) for Pre-emption control, three (3) to remain vacant for future Licensee use; via directional bore method of installation, located a minimum of 12 feet below the lowest point of the surface of the Right of Way which cross at approximately Mile Post 10.73 (Latitude 40.611028, Longitude -111.893753) in Midvale, Utah; and

WHEREAS, For purposes of this Agreement the term Contractor shall apply to any future subsequent reconstruction, relocation, restoration or rehabilitation of the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way;

WHEREAS, Licensee desires a license for the continued, operation and maintenance of the Wireline.

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

ARTICLE I
INCORPORATED TERMS AND DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1.1 "Construct" and "Construction" mean the initial installation of the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling emergency Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is (801) 562-1229. UTA may change the designated Emergency Access Manager from time to time by delivery of notice in accordance with Article XVI of this Agreement.

1.3 "Freight Operator" means any entity using the Right of Way, or any portion thereof, to provide common carrier freight operations.

1.4 "Governmental Authority" means any federal, state, municipal, local or other division of government, or any agency thereof, having or asserting jurisdiction with respect to any matter related to this Agreement.

1.5 "Hazardous Materials" mean any materials or substances: (i) which are present in quantities and in forms which require investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 (24) and (25)) under any applicable federal, state or local environmental law, regulation, ordinance, rule or bylaw, as such are amended from time to time, whether existing as of the date hereof, previously enforced or subsequently amended (each hereafter an "Environmental Law"); or (ii) which are defined as "hazardous wastes," "hazardous substances," "pollutants" or "contaminants" under any Environmental Law.

1.6 "Losses" mean any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs resulting from: (i) loss of or damage to the property of any Party or Third Person; (ii) death or personal injury to the agents of any Party or to any Third Person; or (iii) the cleanup or other requirements regarding any incident involving Hazardous Materials. The term "Losses" shall not include any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement judgments, interest or other costs excluded from Licensee's indemnification obligations and assumed by UTA pursuant to Section 8.1 and 8.2 of this Agreement.

1.7 "Maintain" and "Maintenance" mean the performance of any repair, restoration, rehabilitation, refurbishment, retrofitting, inspection, monitoring, observation, testing, or similar work with respect to the Wireline (or any improvements to the Wireline) in or otherwise materially affecting the Right of Way.

1.8 "Master Interlocal Agreement" means that certain Master Interlocal Agreement Regarding Fixed Guideway Systems located Within Railroad Corridors, effective February 13, 2004, entered by and among UTA and the various municipalities and counties within which UTA's rights of way are situated.

1.9 "Party" and "Parties" mean UTA or Licensee, and UTA and Licensee, respectively.

1.10 "Third Person" means any individual, corporation or legal entity other than UTA and Licensee.

1.11 "Track Improvements" mean any and all tracks, rails, ties, switches, frogs, end of track barricades or bumpers and other barricades or bumpers, derail devices, tie plates, spikes, wires, fastenings and any other appurtenances related thereto, drainage structures, grading, ballast, subgrade stabilization, crossings, tunnels, bridges, trestles, culverts, structures, facilities, leads, spurs, turnouts, tails, sidings, signals, crossing protection devices, communications systems or facilities, catenary systems and wires, poles and all other operating and non-operating appurtenances located within the Right of Way.

1.12 "UTA System" means any light rail, commuter rail, trolley, guided busway, or similar public transportation system constructed by UTA in the Right of Way as contemplated in the Master Interlocal Agreement.

1.13 "Utility" and "Utilities" mean and include all properties, facilities, utilities, crossings, encroachments, lines and similar appurtenances located within the Right of Way by permissive or prescriptive authority including, but not limited to, pipelines, tubelines, water and gas lines or mains, electrical conduits, ditches and other drainage facilities, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances, and all similar installations.

1.14 "Wireline" means the five (5) two inch (2") PVC conduits, two containing Traffic Signal and Pre-emption fiber, 3 remaining vacant for future use installed and maintained by Licensee pursuant to this Agreement and located a minimum of 12 feet below the lowest point on the surface of the Right of Way at Mile Post NS 10.73 (Latitude 40.611028, Longitude -111.893753) on the North South Light Rail Line in Midvale, Utah as described in Exhibit "A". The term "Wireline" shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Wireline that are authorized and approved by UTA pursuant to this Agreement (unless they are the subject of a separate agreement that does not incorporate the terms hereof).

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Wireline within the Right of Way is permissible. UTA may, at any time and at UTA's sole discretion, determine that the Work Window shall not be concurrent with any passenger operations within the Right of Way.

ARTICLE II GRANT OF LICENSE AND REAL ESTATE USAGE CHARGE

2.1 UTA customarily assesses a standard administrative fee reflecting the clerical, administrative and handling expenses incurred in connection with the processing of this Agreement. The standard administrative fee has been waived consistent with the provisions of the Master Interlocal Agreement.

2.2 In consideration of the real estate usage charge to be paid by Licensee, and in further consideration of the covenants and agreements to be kept, observed and performed by Licensee hereunder, UTA hereby grants Licensee a license to Construct, Maintain and operate the Wireline in the location shown and in conformity with the dimensions and specifications indicated on the attached print approved by UTA Engineer dated **October 2, 2019** marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Licensee agrees to pay UTA a one-time real estate usage charge of **\$0** payable on or before the date of execution. Licensee also agrees to pay an upfront Flagging cost of **\$0** and Special Inspection cost of **\$0** (these fees are more clearly described in Section 5.1).

ARTICLE III ACCESS TO THE RIGHT OF WAY

3.1 Except in the event of an emergency (as provided in Section 3.2 below), Licensee shall request permission from UTA at least ten days (or such shorter period as may be approved by UTA) prior to performing any Construction or Maintenance in or otherwise materially affecting the Right of Way. Licensee's request to access the Right of Way shall be specific as to the time, date and activities for which Licensee seeks permission. The request shall also include a summary of the method and manner in which the Construction or Maintenance will be performed. As part of the application process, UTA may require Licensee (and its contractors or other agents seeking access to the Right of Way) to attend any track access coordination meetings, safety training or other instruction as may be deemed necessary by UTA. Once granted, UTA's permission to enter the Right of Way shall be formalized in writing and delivered to Licensee. After permission has been granted, Licensee shall comply with all conditions, instructions and requirements of such permit and with all instructions or directions given by UTA including, if required, daily telephone notification to the applicable rail dispatch center prior to each entry into the Right of Way. All contact with UTA shall be coordinated through the person designated by UTA from time to time as set forth in Article XVI of this Agreement. Provided that Licensee complies with the provisions of this Section, UTA agrees not to unreasonably withhold, condition, or delay its approval of Licensee's request.

3.2 Licensee shall have the right to enter the Right of Way in the event of an emergency to make repairs necessary to protect against imminent and serious injury or damage to persons or property. Licensee shall take all precautions necessary to ensure that such emergency entry does not compromise the safety of any operations conducted in the Right of Way by UTA or Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed by telephone prior to entering the Right of Way.

ARTICLE IV CONSTRUCTION AND MAINTENANCE OF THE WIRELINE

4.1 All Construction and Maintenance with respect to the Wireline shall be performed to the satisfaction of UTA and in accordance with the conceptual, engineering and/or design plans ("Design Plans") previously approved by UTA and attached hereto as Exhibit "A." All Construction and Maintenance with respect to the Wireline shall be performed in compliance with the standards set forth in the National Electric Safety Code ("NESC") and/or the National Electric Code ("NEC"). UTA may impose requirements in addition to or more stringent than the NESC or NEC, if UTA deems such requirements necessary for the safety of operations conducted in the Right of Way. UTA may also require additional fabrication methods, staging requirements or other precautions. All Construction and Maintenance with respect to the Wireline shall be performed during the designated Work Window. UTA shall have the right, but not the obligation, to observe any and all work performed in or materially affecting the Right of Way in connection with the Wireline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Wireline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval.

4.1.1 With respect to any overhead facilities related to the Wireline, the Design Plans shall include: (a) a vertical clearance of not less than twenty-three and a half (23.5) feet on Commuter Rail between (above) the top of the highest rail and the lowest portion of the Wireline; (b) a vertical minimum of ten (10) feet above Light Rail catenary wires; (c) a side clearance that is as great as reasonably possible but in no event less than eleven (11) feet from the center line of any rail; and (d) in any event not less than the minimum clearance standards set forth in the NESC and/or the NEC.

4.1.2 With respect to any underground facilities related to the Wireline, Licensee shall submit to UTA plans setting out the method and manner of handling all work to be performed under the Track Improvements including, without limitation, the shoring and cribbing, if any, required to protect the operations of UTA, the Freight Operator or the owner of any adjacent tracks. Licensee shall not proceed with any such work until Licensee's proposed methods have been approved by UTA. The Wireline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements.

4.2 Various Utilities exist on, over and under the surface of the Right of Way. Prior to commencing any Construction or Maintenance with respect to the Wireline, Licensee shall properly investigate and determine the location of all such Utilities. In addition to the required investigation, Licensee shall have all Utilities in the area of the Wireline "blue-staked" and clearly marked prior to any excavation. Licensee shall make arrangements for the protection of all Utilities and shall commence no excavation, boring or other penetration in the Right of Way until all such protection has been accomplished.

4.3 Fiber optic cable systems may be buried in the Right of Way. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall be solely responsible for contacting UNION PACIFIC RAILROAD COMPANY during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) and for determining if fiber optic cable is buried near the location of the Wireline. If so, Licensee will contact the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, make arrangements for relocation or other protection of the fiber optic cable. Licensee shall not commence any work until all such protection and/or relocation have been accomplished. Licensee shall be solely responsible for all coordination with Union Pacific and any telecommunications companies. In coordinating the relocation or protection of fiber optic cable, Licensee shall not rely on any statements, engineering drawings or other oral or written representations of UTA or its representatives. In addition to other indemnity provisions in this Agreement, Licensee shall indemnify, defend and hold the UTA Indemnitees (as defined in Section 8.1 of this Agreement) harmless from and against all Losses arising out of: (a) any damage to or destruction of any telecommunications system proximately caused by any Construction, Maintenance or other work performed by Licensee or its agents relative to the Wireline; and/or (b) any injury to or death of any person employed by or on behalf of any telecommunications company, proximately caused by any Construction, Maintenance or other work performed by Licensee or its agents relative to the Wireline. Except to the extent that liability is assumed by UTA as set forth in Section 8.1 and 8.2 of this Agreement. Licensee shall not have or seek recourse against UTA for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using UTA's Right of Way or a customer or user of services of the fiber optic cable on UTA's Right of Way.

4.4 Licensee shall be solely responsible for obtaining any property rights, easements, licenses, rights of way or other permission from Third Persons (collectively "Third Person Property Rights") as may be necessary to Construct, Maintain or operate the Wireline including, without limitation, any needed permission from the owner of any adjacent railroad corridor. Licensee shall also be solely responsible for obtaining any necessary franchises, permits or other necessary approvals from Governmental Authorities (collectively "Approvals"). Licensee agrees to pay any and all costs and expenses relating to such Third Person Property Rights or Approvals, and to assume any and all liability therefor.

4.5 Except as authorized in this Agreement or as may be immediately required for (and only at the actual time of) performance of any Construction or Maintenance contemplated under this Agreement, and then only in full compliance with all clearance standards and other safety requirements, Licensee shall not place, permit to be placed, erect, pile, store, stack, park, suffer or permit any line, building, platform,

fence, gate, vehicle, car, pole, or other structure, obstruction, or material of any kind within the Right of Way.

4.6 Licensee shall Construct, Maintain and operate the Wireline in compliance with all requirements imposed by any Governmental Authority including, without limitation, the requirements of the Federal Railroad Administration, the Occupational Safety and Health Administration and the Utah Department of Transportation. Licensee shall also Construct, Maintain and operate the Wireline in compliance with all applicable environmental laws. Licensee shall take all suitable precautions to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for whatever reason the Construction of the Wireline causes interference with the operation of Track Improvements or any other UTA or Third Person installations or facilities existing prior to the Construction of the Wireline, Licensee shall, upon notification by UTA and at Licensee's sole cost and expense, take such action as is necessary to eliminate the interference.

4.7 If, in connection with the performance of any Construction or Maintenance work, Licensee or its Contractor damages any Track Improvements, Utilities, or any other facilities, Licensee shall repair or replace such facilities with the same or similar materials, if available, as reasonably required by the UTA, consistent with applicable Federal and State laws and regulations and to the satisfaction of UTA.

4.8 At the request of UTA, Licensee shall install markers identifying the location of the Wireline and related appurtenances at the Right of Way boundaries (where the Wireline enters and exits the Right of Way) or other locations where UTA may designate. Markers shall be installed in a form and size as may be determined by UTA and at the sole cost and expense of Licensee. UTA hereby expressly reserves the right to require Licensee to erect and maintain, at Licensee's sole cost and expense, any and all signs of any character and nature whatsoever (e.g. location of Wireline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Wireline. Licensee shall install and/or erect any marker or sign that may be required under this Section within thirty (30) days after receiving written instructions from UTA.

4.9 Upon completion of any Construction or Maintenance relating to the Wireline, Licensee shall restore the surface of the Right of Way to its prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences or other property that Licensee disturbed or removed from the Right of Way.

4.10 If a contractor is to perform any Construction or Maintenance contemplated in this Agreement, then the Licensee shall cause its contractor to comply with all applicable provisions of this Agreement. Additionally, Licensee shall require its contractor to execute UTA's form Contractor's Right of Entry Agreement (the "Contractor Agreement"). Any and all contractors used by Licensee in the Construction or Maintenance of the Wireline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

4.11 If Licensee fails to notify UTA a minimum of 10 days before the initial installation of the Wireline or if Licensee's Contractor fails to obtain a Contractor Agreement Licensee agrees to pay UTA an additional three thousand dollars (\$3,000) as a fee for the initial inspection of the Wireline, together with any other additional fees incurred by UTA to verify that the Wireline was installed as per the approved plans. Such review and verification could include exposing the line to verify the depth of/height of and materials installed. If the Wireline was not installed in the approved location, depth/height, and with the approved materials, as described in the approved plans, Licensee agrees to remove the Wireline and reinstall it according to the approved plans at Licensee's sole cost and expense.

ARTICLE V
CONSTRUCTION OBSERVATION BY UTA – LICENSEE TO BEAR ALL COSTS

5.1 The current cost of flagging is \$788/day for an eight (8)-hour day and \$1,058/day for a twelve (12) - hour day. Flagging is charged in blocks, with a minimum billing of an eight (8) - hour period. The current cost for a special inspector is \$76/hour with a two (2) -hour minimum charge per inspection/inspector. UTA has determined that zero (0), eight (8)-hour day for Flagging and zero (0), two (2)-hour day for a Special Inspection will be needed for the construction of this Wireline. Licensee will pre-pay \$0 for Flagging and a Special Inspection at or before the execution of this agreement. If after the construction of the Wireline extra days of Flagging or Special Inspection have been collected, Licensee may submit in writing for a refund from UTA. Submission for refund will need to be submitted to UTA within thirty (30) days of the date of completion of the Wireline. Refunds will only be issued after confirmation from UTA operations that the flagging and special inspection days were not used.

5.2 In the event that UTA, in its sole discretion, determines that any other inspectors (technical or special), monitors, observers, safety personnel, additional flaggers or other persons are required given the nature of the Construction or Maintenance to be performed, UTA may, at its sole discretion, provide such personnel and Licensee shall, within thirty (30) days, reimburse UTA for the reasonable costs thereby incurred.

ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO WIRELINE

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.2 and Article 8 of this Agreement, Licensee shall be solely responsible for any and all costs incurred with respect to any Construction, Maintenance or other work related to the Wireline.

ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF WIRELINE

7.1 The rights granted pursuant to this Agreement shall be subject and subordinate to the prior and continuing right and obligation of UTA to fully use the Right of Way, including the right and power of UTA to construct, maintain, repair, renew, use, operate, modify, or relocate new or existing Track Improvements upon, along, above, or across any or all parts of the Right of Way and other UTA property, all or any of which may be freely done at any time or times by UTA. The grant of license for the Wireline is made without covenants of title or quiet enjoyment. UTA makes no warranties, either express or implied, regarding the nature, extent or status of its title to the Right of Way or regarding the existence or nonexistence of Third Person rights which may be superior to the license granted pursuant to this Agreement.

7.2 Licensee shall, within sixty (60) days after receipt of written notice from UTA, modify or relocate (or, if agreed between the Parties, allow UTA to modify or relocate) all or any portion of the Wireline as UTA may reasonably designate. To the extent that the modification or relocation of the Wireline is necessitated by the construction, reconstruction, modification or relocation of any UTA System, UTA shall be responsible for the costs of such relocation. To the extent that the modification or relocation of the Wireline is necessitated because the Wireline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Wireline, then Licensee shall be responsible for the costs of such modification or relocation. All the terms, conditions and stipulations herein expressed with reference to the Wireline in the location described herein shall, so far as the Wireline remains on UTA property, apply to the Wireline as modified or relocated pursuant to this Section.

7.3 The foregoing grant is also subject to the outstanding superior rights previously conveyed or granted to Third Persons by UTA, or its predecessors in interest, and the right of UTA to renew and extend the same.

ARTICLE VIII INDEMNITY AND RELEASE

8.1 Licensee agrees to protect, defend, release, indemnify and hold harmless UTA, and any affiliates, successors, contractors, officers, directors, agents and employees of UTA (the "UTA Indemnitees") from and against any and all Losses resulting from: (a) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in conjunction with any Construction, Maintenance or other work performed by or on behalf of Licensee with respect to the Wireline; (b) negligence on part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Wireline; or (c) Licensee's breach of any provision of this Agreement. Notwithstanding the foregoing, Licensee shall not be required to indemnify UTA for, and UTA hereby assumes responsibility for, any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs that are proximately caused by the negligence, recklessness or willful misconduct of UTA with respect to the construction, maintenance or operation of any UTA System.

8.2 Licensee acknowledges that the Right of Way may be subject to prospective purchaser agreements and covenants not to sue that UTA has entered with the Utah Department of Environmental Quality and the United States Environmental Protection Agency. Pursuant to such agreements, UTA is required to characterize any excavated soil that appears to contain (or has the potential to contain) Hazardous Materials and to handle and dispose of any such soil in compliance with applicable state and federal laws. Under these agreements, UTA is not required to excavate any soil except as required for construction related to the installation of a UTA System. Accordingly, any excavation that Licensee performs with respect to the Wireline exposes UTA to potential environmental liability that would not otherwise be present. As consideration for the rights granted to Licensee hereunder, Licensee agrees to assume all potential liability and responsibility for, and to indemnify and hold UTA harmless with respect to, any Losses related to the characterization and removal of any Hazardous Materials discovered during the performance of any Construction or Maintenance. Licensee agrees to perform any such characterization and removal in full compliance with all applicable state and federal environmental laws. Notwithstanding the foregoing, Licensee shall not be required to indemnify UTA for, and UTA hereby assumes responsibility for, any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs related to any Hazardous Materials discovered as the result of modification or relocation work performed by or on behalf of Licensee in conjunction with the construction, reconstruction, modification or relocation of any UTA System. To the extent that either Party actually causes a release of Hazardous Materials into the Right of Way, such party shall be responsible for the characterization and removal of such Hazardous Materials and shall indemnify the other Party with respect to all losses resulting therefrom.

8.3 Licensee hereby releases UTA from, and agrees not to seek recourse against UTA with respect to, any claims, damages, fees, expenses or other losses proximately caused by Third Persons including, without limitation, Third Persons having licenses or other interests in the Right of Way. Nothing contained herein shall be construed or deemed to be a release of any Third Persons by Licensee.

8.4 The provisions of this Article shall survive the termination of this Agreement.

ARTICLE IX CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES

9.1 Licensee shall fully pay for all materials joined or affixed to the Right of Way in connection with the Wireline, and for all labor performed with respect to the Wireline. Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

9.2 Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the Wireline to prevent the same from becoming a charge or lien upon the Right of Way and so that any taxes, charges and assessments levied upon or with respect to such property shall not be increased because of the Wireline or any improvements, appliances, or fixtures connected therewith.

ARTICLE X TERMINATION

10.1 UTA may terminate this Agreement if: (a) Licensee ceases to use the Wireline in an active and substantial way for any continuous period of one (1) year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of thirty (30) days after UTA delivers written notice to Licensee identifying the nature of Licensee's breach of this Agreement; provided, however that if the nature of Licensee's breach is such that it cannot be cured within such thirty (30)-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within thirty (30) days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Wireline from the Right of Way.

10.2 Termination of this Agreement for any reason shall not affect any of the rights, obligations or liabilities that have accrued prior to or concurrent with such termination.

ARTICLE XI INSURANCE

11.1 During the life of this Agreement, Licensee shall, at its sole cost and expense, obtain and maintain the insurance described in Exhibit "B" (Exhibit "B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference). Licensee will also provide to UTA a Certificate of Insurance, identifying UTA Contract Number NS/S/6659/U, issued by its insurance carrier confirming the existence of such insurance and indicating that the policy or policies contain the following endorsement:

"Utah Transit Authority is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the Wireline Crossing Agreement NS/S/6659/U in the railroad right of way known as the North South Light Rail Line at approximately Mile Post NS 10.73 in Midvale, Salt Lake County, Utah"

11.2 Failure to maintain insurance as required shall entitle, but not require UTA to terminate the license granted hereby immediately.

11.3 If Licensee is a public entity subject to any applicable statutory governmental immunity laws, the limits of insurance described in Exhibit "B" shall be the limits the Licensee then has in effect or that are required by applicable current or subsequent law, whichever is greater, a portion of which may be self insured with the consent and approval of UTA. Licensee does not waive any of its rights of entitlements to governmental immunity and limitations on liability to Third Persons under the Utah Governmental Immunity Act.

11.4 Licensee hereby acknowledges that it has reviewed the requirements of Exhibit "B", including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the wireline which is the subject of this Agreement.

ARTICLE XII REMOVAL OF WIRELINE UPON TERMINATION OF AGREEMENT

Upon termination of this Agreement pursuant to Article X hereof, Licensee shall, if requested in writing by UTA and at Licensee's sole cost and expense, remove the Wireline from the Right of Way and shall restore, to the satisfaction of UTA, such portions of the Right of Way to at least as good a condition as such were in at the time that Licensee first entered the Right of Way. If Licensee fails to do the foregoing within a reasonable time, UTA may, at its option, perform such removal and restoration work at the expense of Licensee. Licensee shall reimburse UTA for the costs incurred in any restoration or removal work performed under this Article within thirty (30) days after receipt of the bill therefor. In the event UTA removes the Wireline pursuant to this Article, UTA shall in no manner be liable to the Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any other right of action, including the recovery of damages, that UTA may have against the Licensee. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE XIII ASSIGNMENT

Licensee may not assign this Agreement, in whole or in part, or any rights herein granted, without UTA's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Licensee may assign this Agreement and its rights hereunder as part of a consolidation with an entity that: (a) is a successor governmental entity to Licensee; (b) is annexed with, merged into or consolidated with Licensee; or (c) that acquires substantially all of the assets of Licensee provided, however, that in any of the above instances such entity seeking an assignment under this Article must, as a condition to such assignment, assume all terms and conditions of this Agreement without limitation.

ARTICLE XIV SUCCESSORS AND ASSIGNS

Subject to the provisions of Article XIII, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors and assigns.

ARTICLE XV SEVERABILITY

This Agreement is executed by the Parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

ARTICLE XVI NOTICES

Except as specifically provided elsewhere in this Agreement, all notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten (10) days written notice of the change in the manner set forth herein.

If to UTA:

Utah Transit Authority
Attn: Property Management
669 West 200 South
Salt Lake City, UT 84101
PropertyManagement@rideuta.com

With a Copy to:

Utah Transit Authority
Attn: Legal Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Licensee:

Midvale City Corporation
Attn: City Engineer
7505 Holden Street
Midvale, UT 84047

ARTICLE XVII NO IMPLIED WAIVER

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair any future ability of UTA to avail itself of any remedy or right set forth in this Agreement. Neither the right of supervision by UTA, nor the exercise or failure to exercise such right, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part, of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

ARTICLE XVIII ENTIRE AGREEMENT - COUNTERPARTS

This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

**ARTICLE XIX
FORUM SELECTION AND CHOICE OF LAW**

This Agreement shall be construed and interpreted under the laws of the State of Utah and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Salt Lake County, Utah, and each party hereto hereby consents to the jurisdiction of such courts.

**ARTICLE XX
SPECIAL PROVISIONS**

Special provisions, if any, are included in the attached Exhibit "C" (Exhibit "C" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

{Remainder of Page Intentionally Blank}

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

DocuSigned by:
Dane Cooley
33C1D4DB2E314D3
UTA Engineering

DocuSigned by:
Mike Bell
381E16E838704A9
Mike Bell
Assistant Attorney General

UTAH TRANSIT AUTHORITY

By: _____
Paul Drake
Senior Manager Real Estate & TOD

By: _____
Spencer Burgoyne
Manager, Property Administration

By: _____
Shelley Nielsen
Sr. Property Administrator

LICENSEE

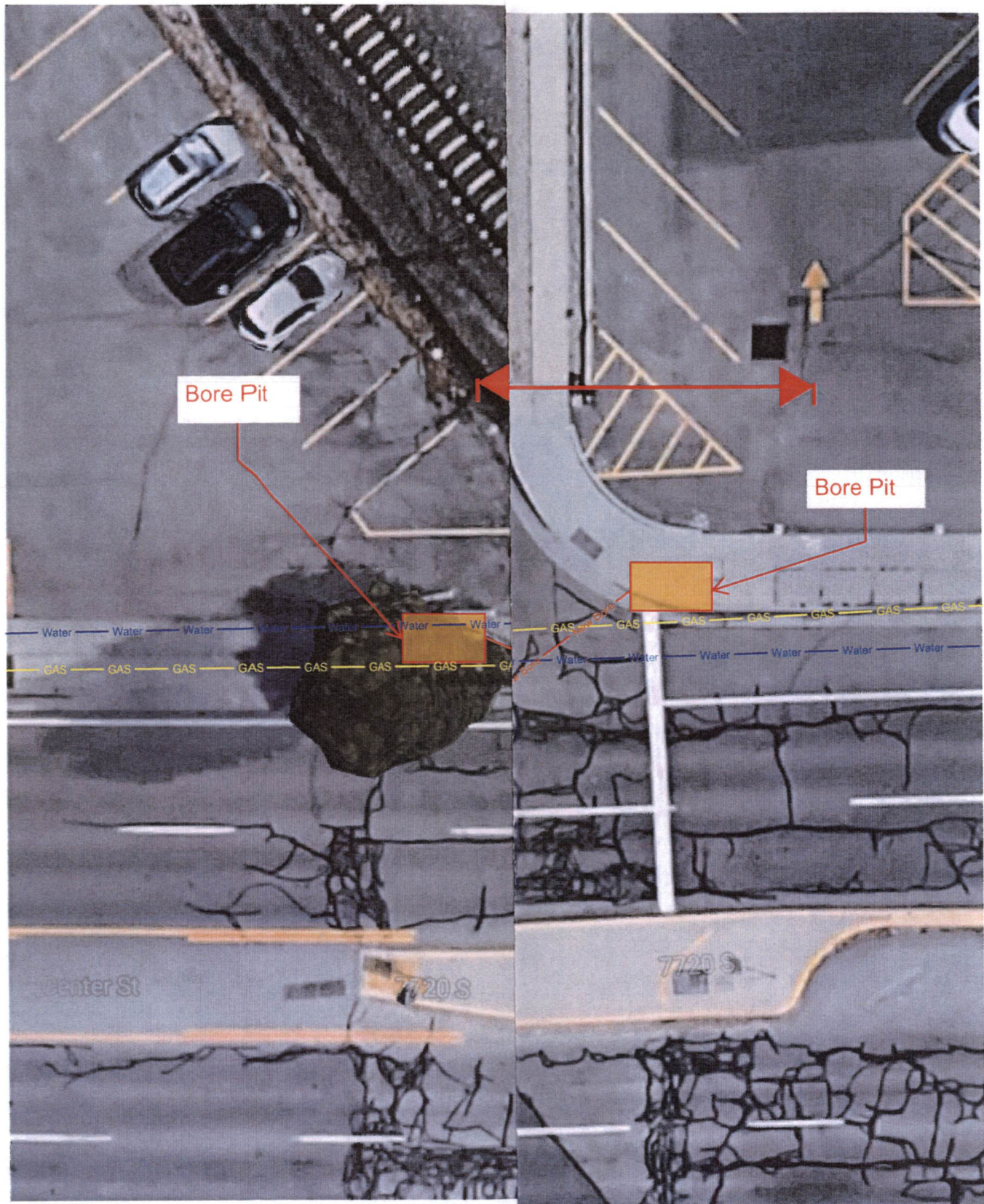
By: Robert M Hall
Robert M Hall/Mayor
Midvale City Corporation

Attest: Rui L. Anderson
City Recorder



EXHIBIT "A"
DESIGN PLANS

[Insert engineering drawings showing the proposed crossing including proposed construction methods, shoring and cribbing requirements and mile post location]



Length Depth

5	0
10	-3
20	-5
30	-7
40	-9
50	-11
60	-12
70	-12
80	-12
90	-12
100	-12
110	-11
120	-10
130	-9
140	-8
150	-6.5
160	-5
165	-3
170	-2

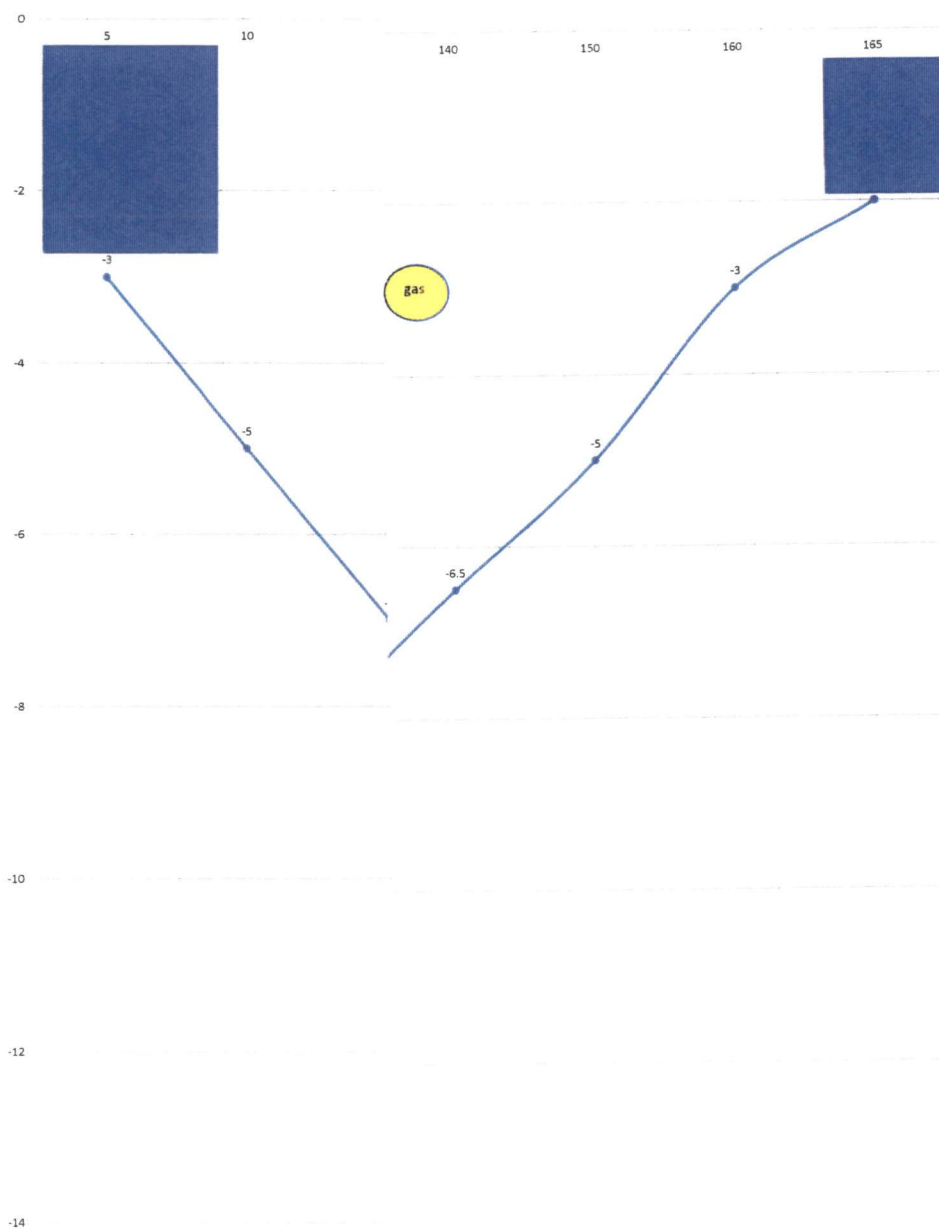


EXHIBIT "B"
INSURANCE REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. **Commercial General Liability Insurance:** Policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. The policy shall contain broad form contractual liability insurance covering the indemnity obligations assumed by Licensee in the Agreement. Exclusions for railroads (except where the Wireline is in all places more than fifty (50) feet from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage provided on a "claims made" form shall provide for at least a two-year extended reporting and discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
 - a. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.
- B. **Automobile Liability Insurance:** Policy providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.
- C. **Worker's Compensation and Employer's Liability Insurance:** Policy covering Licensee's statutory liability under the laws of the State of Utah. If Licensee is self-insured, evidence of State approval must be provided.
- D. **Railroad Protective Liability Insurance (RRPLI):** During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Licensee and/or Licensee's Contractor must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.
 - a. If the Licensee and/or Licensee's Contractor is not enrolling for this coverage under UTA's blanket RRPLI program, the policy provided must have the definition of "JOB LOCATION" AND "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement.
- E. **Umbrella or Excess Insurance:** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

F. Other Insurance Provisions:

- a. Licensee and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Licensee's insurance shall be primary with respect to any insurance carried by UTA. Licensee will furnish UTA at least thirty (30) days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.
- b. The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.
- c. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

**SUBMITTING REQUESTS FOR
RAILROAD PROTECTIVE LIABILITY INSURANCE**
(\$2,000,000 per occurrence/ \$6,000,000 aggregate)

Application forms for inclusion in Utah Transit Authority's Blanket Railroad Protective Liability Insurance Policy may be obtained from a Property Administrator.

If you have questions regarding railroad protective insurance (i.e. premium quotes, application) please contact David Pitcher at:

Phone: (801) 287-2371
Email: depitcher@rideuta.com

Send or hand deliver Checks and Applications to the following address:

Utah Transit Authority
Attn: David Pitcher
669 West 200 South
Salt Lake City, UT 84101

EXHIBIT "C"
SPECIAL PROVISIONS

Licensee or Licensee's contractor must first obtain a TRAX Track Access Permit from UTA before any access will be allowed on UTA property. The current contact person for obtaining a TRAX Track Access Permit is Owen Thompson at (385) 414-7795, or such other contact as shall be identified on UTA's website location noted below.

A copy of the permit that shall be filled out and submitted can be found on UTA's website, under the Track Access Permit tab. <http://www.rideuta.com/PropertyManagement>

Note: Access Permits will not be issued without first having an executed Contractor's Right of Entry Agreement, UTA having received proof of insurance as provided in the Right of Entry Agreement, and verification that the Contractor and all of the Contractor's Employees have gone through UTA's Roadway Worker Training, if applicable.

Licensee or Licensee's contractor shall only cross at designated public crossings