

CLEARFIELD CITY COUNCIL
AGENDA AND SUMMARY REPORT
June 28, 2011 – REGULAR SESSION

City Council Chambers
55 South State Street
Third Floor
Clearfield, Utah

Mission Statement: To provide leadership in advancing core community values; sustain safety, security and health; and provide progressive, caring and effective services. We take pride in building a community where individuals, families and businesses can develop and thrive.

6:30 P.M. WORK SESSION

(TENTATIVE) The Council will consider a motion to enter into Closed Session for the purpose of a strategy session to discuss the purchase, exchange, or lease of real property.
Utah Code Ann. § 52-4-204 and §52-4-205(1)(d)

7:00 P.M. REGULAR SESSION

CALL TO ORDER:

Mayor Wood

OPENING CEREMONY:

Councilmember Fryer

APPROVAL OF MINUTES:

April 20, 2011 – Work Session

May 10, 2011 – Work Session

May 24, 2011 – Work Session

June 8, 2011 – Work Session

June 14, 2011 – Regular Session

PRESENTATION:

1. **PRESENTATION TO DARREN CARPENTER FOR HIS SERVICE AS A MEMBER OF THE PLANNING COMMISSION**

BACKGROUND: Darren Carpenter has served the City as a member of the Planning Commission and recently submitted a letter of resignation. The Mayor and City Council desire to recognize Mr. Carpenter for his service to the City.

PUBLIC HEARINGS:

2. **CONSIDER FSP 1105-0001, AN AMENDED SUBDIVISION PLAT, TO MERGE FOUR PARCELS INTO ONE PARCEL FOR THE TYTON CENTER SITE LOCATED ON 700 SOUTH**

BACKGROUND: This item is a request by Corey Malan, on behalf of Kent Teichert, for an Amended Subdivision Plat to merge four parcels, approximately 0.98 acres total, into one parcel for the purposes of developing a commercial center. This site is located at 772 East 700 South (TINs: 12-068-0005 through 12-068-0008) and the property is in the C-2 (Commercial) zoning district. The Planning Commission held a public hearing on June 15, 2011 and recommended approval.

RECOMMENDATION: Receive public comment.

3. RE-OPEN AND CONSIDER AMENDING THE 2010/2011 FISCAL YEAR BUDGET

BACKGROUND: State Law requires a public hearing before the City Council approves amendments to the City budget. Bob Wylie, Administrative Services Director, will be presenting amendments for the 2010/2011 fiscal year budget.

RECOMMENDATION: Receive public comment.

SCHEDULED ITEMS:

4. CITIZEN COMMENTS

5. APPROVE A PLANNING COMMISSION APPOINTMENT

BACKGROUND: The Planning Commission currently has one vacancy. The Council discussed the issue during a work session on June 21, 2011.

RECOMMENDATION: Consider approval of Mayor Wood's appointment of Barbara Perry, current alternate member of the Planning Commission, to fill the vacancy on the Planning Commission with a term expiring February 2014 and authorize the Mayor's signature to any necessary documents.

6. CONSIDER APPROVAL OF THE PROPERTY EXCHANGE AGREEMENT WITH THE DAVIS SCHOOL DISTRICT RELATING TO THE RECONSTRUCTION OF WASATCH ELEMENTARY SCHOOL

BACKGROUND: This agreement specifically addresses the property exchange of the City's Central Park to the Davis School District and a portion of the Wasatch Elementary School site to the City for the new location of Central Park. The exchange is identical with both parcels a size of 2.152 acres. The Davis School District will be responsible for the demolition and the reconstruction of both parcels.

RECOMMENDATION: Approve the Property Exchange Agreement with the Davis School District and its accompanying Quit Claim Deeds making possible the reconstruction of Wasatch Elementary School and authorize the Mayor's signature to any necessary documents.

7. CONSIDER APPROVAL OF FSP 1105-0001, AN AMENDED SUBDIVISION PLAT, TO MERGE FOUR PARCELS INTO ONE PARCEL FOR THE TYTON CENTER SITE LOCATED ON 700 SOUTH

RECOMMENDATION: Approve FSP 1105-0001, an Amended Subdivision Plat, to merge four parcels into one parcel for the Tyton Center site located on 700 South and authorize the Mayor's signature to any necessary documents.

8. CONSIDER APPROVAL OF THE CHRISAM MEADOWS PHASE 5 SUBDIVISION FINAL ACCEPTANCE AND RELEASE OF ESCROW

BACKGROUND: In accordance with Title 12, Chapter 9, of the Clearfield City Code, the city engineer has completed the final inspection of the ChrisSam Meadows Phase 5 Subdivision and found all improvements to have been installed correctly. The warranty period is over and the city

engineer recommends final acceptance of the improvements for perpetual maintenance and a release of the escrow by the City Council.

RECOMMENDATION: Approve the ChrisSam Meadows Phase 5 Subdivision final acceptance and release of escrow and authorize the Mayor's signature to any necessary documents.

9. CONSIDER APPROVAL OF TWO CHANGE ORDERS TO THE CONTRACT WITH POSITIVE POWER FOR LIGHTING PROJECTS FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT

BACKGROUND: The City received funds from the American Recovery and Reinvestment Act Energy Efficiency and Conservation Block Grant to upgrade the energy systems in some of its existing buildings. Positive Power is the contractor working on the lighting upgrades and found it necessary to include work that was not authorized in the original contract. The company submitted two change orders in order to complete all the necessary work.

RECOMMENDATION: Approve amendments to the contract with Positive Power for lighting upgrades through Change Order Number One in the amount of \$1,380 and Change Order Number Two with a not to exceed amount of \$1,262 and authorize the Mayor's signature to any necessary documents.

10. CONSIDER APPROVAL OF AN AGREEMENT WITH THE UTAH TRANSIT AUTHORITY (UTA) REGARDING THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A 12-INCH SANITARY SEWER LINE IN CONNECTION WITH THE 200 SOUTH ROADWAY PROJECT

BACKGROUND: The City is ready to begin work on the 200 South Roadway project which will include the replacement of City utility lines along the street. The project includes the construction of a new 12-inch sanitary sewer line that will pass through the Utah Transit Authority's (UTA's) right-of-way. The construction of that sewer line makes it necessary to enter into an agreement with the Utah Transit Authority (UTA) to allow for the construction, operation and maintenance of that sewer line.

RECOMMENDATION: Approve the Utah Transit Authority (UTA) Contract Number DR/D/2240/P authorizing the construction, operation and maintenance of a 12-inch sanitary sewer through its Right of Way along 200 South and authorize the Mayor's signature to any necessary documents.

11. CONSIDER APPROVAL OF AGREEMENTS WITH THE UTAH TRANSIT AUTHORITY (UTA) REGARDING THE RELOCATION OF UTILITY LINES ALONG 700 SOUTH IN PREPARATION FOR THE CONSTRUCTION OF THE SR (STATE ROAD) 193 EXTENSION PROJECT

BACKGROUND: The Utah Department of Transportation (UDOT) is preparing for the construction of the SR (State Road) 193 Extension project. There are utility lines along 700 South that will need to be relocated in connection with the expansion and UDOT has asked the City to manage that portion of the project. Relocating the utility lines requires the City to work in the

Utah Transit Authority (UTA) right-of-way. These agreements authorize the construction, operation and maintenance of the affected utility lines.

RECOMMENDATION: Approve the Utah Transit Authority (UTA) Contract Numbers SO/D/2227/P, DR/D/2232/P, SO/D/2220/P, SO/D/2219/P, SO/D/2221/P and SO/D/2218/P with authorization for the City Attorney to negotiate any changes deemed necessary to protect the City's interest in the project and authorize the Mayor's signature to any necessary documents.

12. CONSIDER APPROVAL OF AGREEMENTS WITH THE UNION PACIFIC RAILROAD REGARDING THE RELOCATION OF UTILITY LINES ALONG 700 SOUTH IN PREPARATION FOR THE CONSTRUCTION OF THE SR (STATE ROAD) 193 EXTENSION PROJECT

BACKGROUND: The Utah Department of Transportation (UDOT) is preparing for the construction of the SR (State Road) 193 Extension project. There are utility lines along 700 South that will need to be relocated in connection with the expansion and UDOT has asked the City to manage that portion of the project. Relocating the utility lines requires the City to work in the Union Pacific Railroad right-of-way. These agreements authorize the construction, operation and maintenance of the affected utility lines.

RECOMMENDATION: Approve the Union Pacific Railroad Agreement Numbers 02664-15, 02664-28, 02664-24, 02664-26 and 0262274 with authorization for the City Attorney to negotiate any changes deemed necessary to protect the City's interest in the project and authorize the Mayor's signature to any necessary documents.

13. CONSIDER APPROVAL OF RESOLUTION 2011R-10 PERMITTING THE CLEARFIELD CITY POLICE DEPARTMENT TO DISPOSE OF UNCLAIMED PROPERTY

BACKGROUND: The Clearfield City Police Department periodically is required to dispose of unclaimed property. These 23 bicycles have not been claimed after attempting to find the lawful owner(s). The Council has approved unclaimed bicycles in the past to be donated to charities. Deseret Industries and the Davis County Children's Justice Center are the only two groups at this time that will take these bicycles from the Police Department.

RECOMMENDATION: Approve Resolution 2011R-10 permitting the Clearfield City Police Department to dispose of unclaimed property by donation to the Deseret Industries and/or the Davis County Children's Justice Center and authorize the Mayor's signature to any necessary documents.

14. CONSIDER APPROVAL OF RESOLUTION 2011R-12 ACTING AS THE GOVERNING AUTHORITY OF THE NORTH DAVIS FIRE DISTRICT ADOPTING AND CERTIFYING ITS TAX RATE FOR THE 2011 TAXABLE YEAR

BACKGROUND: The Clearfield City Council acts as the governing authority for the North Davis Fire District (NDFD). The Administrative Control Board of the NDFD desires to establish a certified tax rate of 0.001316 for the 2011 taxable year for the purpose of funding operating expenses and capital improvements and to provide fire protection, emergency medical and ambulance services and consolidated 911 and emergency dispatch services.

RECOMMENDATION: Approve Resolution 2011R-12 acting as the governing authority of the North Davis Fire District (NDFD) and adopting and certifying a tax rate of 0.001316 for the Fire District 2011 taxable year and authorize the Mayor's signature to any necessary documents.

15. CONSIDER APPROVAL OF RESOLUTION 2011R-11 ADOPTING AMENDMENTS TO THE 2010/2011 FISCAL YEAR BUDGET

RECOMMENDATION: Approve Resolution 2011R-11 adopting amendments to the 2010/2011 fiscal year budget and authorize the Mayor's signature to any necessary documents.

COMMUNICATION ITEMS:

Mayor's Report
City Councils' Reports
City Manager's Report
Staffs' Reports

****ADJOURN AS THE CITY COUNCIL AND RECONVENE AS THE CDRA****

1. APPROVAL OF THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) MINUTES FROM THE JUNE 14, 2011 REGULAR SESSION

PUBLIC HEARING:

2. RE-OPEN AND CONSIDER AMENDMENTS TO THE CDRA 2010/2011 FISCAL YEAR BUDGET

BACKGROUND: State Law requires a public hearing before the Board approves amendments to the CDRA budget. Bob Wylie, Administrative Services Director, is here to present amendments for the 2010/2011 fiscal year budget.

RECOMMENDATION: Receive public comment.

SCHEDULED ITEMS:

3. CONSIDER APPROVAL OF RESOLUTION 2011R-03 AMENDING THE CDRA 2010/2011 FISCAL YEAR BUDGET

RECOMMENDATION: Approve Resolution 2011R-03 adopting amendments to the CDRA 2010/2011 fiscal year budget and authorize the Chair's signature to any necessary documents.

4. CONSIDER APPROVAL OF RESOLUTION 2011-04 ADOPTING THE CDRA 2011/2012 FISCAL YEAR BUDGET

BACKGROUND: The Board held a public hearing on the proposed CDRA budget on June 14, 2011. Utah Code requires cities to hold a public hearing relating to the approval of the upcoming fiscal year budget. City staff has prepared and submitted to the Board a balanced final budget for fiscal year 2011/2012 which begins July 1, 2011 and ends June 30, 2012.

RECOMMENDATION: Approve Resolution 2011R-04 adopting the CDRA 2011/2012 fiscal year budget and authorize the Chair's signature to any necessary documents.

****ADJOURN AS THE CDRA****

Dated this 24th day of June, 2011.

Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the 'Americans with Disabilities Act' provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
April 20, 2011

PRESIDING:	Don Wood	Mayor
PRESENT:	Marilyn Fryer Kathryn Murray Bruce Young	Councilmember Councilmember Councilmember
EXCUSED:	Mark Shepherd Doyle Sprague	Councilmember Councilmember
STAFF PRESENT:	Chris Hillman Adam Lenhard Tracy Heun Gary Cohen Kim Read	City Manager Community Development Dir. Community Services Director Recreation Director Deputy City Recorder
EXCUSED:	Nancy Dean	City Recorder

VISITORS: Becky Hawkins – Method Studio, Joe Smith – Method Studio, Gretchen Myers, Alyn Bone

Mayor Wood called the meeting to order at 6:10 p.m.

Joe Smith, Method Studio, reviewed the evening's agenda with the Council. He informed the Council of the key points identified during a lunch meeting with Tracy Heun, Community Services Director.

Councilmember Young arrived at 6:15 p.m.

He requested feedback regarding Mr. Lind's presentation specific to a film festival idea for using the theatre facility. A discussion took place.

Mr. Smith reviewed the revised vision with the Council highlighting the following:

- Cultural facility which encompasses all arts programs
- Self-sufficient premiere destination
- Provide positive experience to all age demographics
- Inviting facility
- Marketable to other cities

Ms. Heun explained the calendaring event her staff participated in and commented the City was already providing a full spectrum of arts which could be completed in the building and shared results with the Council.

Mayor Wood pointed out more than one event could take place in the Community Center because of the number of rooms in the facility. A discussion took place specific to scheduling and expected revenue streams associated with possible programs such as dance classes.

Mr. Smith shared a visual presentation illustrating proposals for optional floor plans and a discussion took place regarding each option. It was determined there was a specific need for a child care area for parents participating in the choir, band or theatre to bring their children. A discussion took place specific to a storage room for band instruments. He explained the challenges associated with removing the ceiling of the first floor in the theatre for a balcony and expressed his opinion that option would not be cost effective. He suggested raking the theatre floor and replacing the seats to accommodate staggered seating.

Councilmember Murray left the meeting at 6:55 p.m.

Mr. Smith shared a visual presentation of exterior suggestions which could be used on the Community Center building. He suggested relocating some of the adjacent handicapped parking spaces to accommodate a plaza area with landscaping amenities such as benches, trees and flowering plants. He emphasized the outdoor amenities would enhance the "experience." A discussion took place specific to parking space. Tracy Heun, Community Services Director, pointed out parking would be available with the rebuilding of Wasatch Elementary School in addition to the parking currently available at the City Building.

Alyn Bone arrived at 7:05 p.m.

Ms. Heun expressed the need for more restrooms and the available space to accommodate more restrooms. Mr. Smith explained all possible options including construction of a small addition for nothing other than restrooms. Ms. Heun also inquired about the need for a "mother's" room which could be used by employees at the City Building. A discussion took place regarding different floor plan options. Mr. Smith believed it would be possible to relocate the restrooms where the kitchen storage room and office were located near the kitchen. Ms. Heun agreed with Mr. Smith's suggestions as they would be ADA (American Disability Act) compliant. Mr. Smith cautioned that once major remodeling/construction began to take place, building code would require the entire building be brought into earthquake and ADA compliance.

Ms. Bone also explained the challenge with a wall near the stage and moving in scenery or a piano. She commented the elimination of the wall and installing a curtain would meet the needs. Ms. Heun believed the wall was a false wall. During the discussion it was suggested to move the entrance doors toward the end of the theatre be moved eliminating lighting problems and locating the rest rooms near those doors.

Mr. Smith explained the phasing options associated with the remodeling of the proposed Community Arts Center. He pointed out it was important to identify priorities if it were determined to proceed with the phasing option as opposed to completing the project all at once. A discussion took place specific to the two options. Mr. Smith reported if the project were completed all at once it would be cheaper in the long term and believed the City would receive more value. He reviewed the estimated costs with the Council and a discussion took place. Mr. Smith roughly estimated the cost for the renovations could be approximately 1.5 million dollars.

Mr. Hillman explained the possible funding options to the Council and a discussion took place specific to bonding and prioritization compared to roads, parks and tennis courts. The Council also discussed whether it would be best to remodel the existing facility or build new and the risks associated with remodeling the current facility. Mr. Smith emphasized the structural engineer had expressed his opinion the building was quite structurally sound and believed the life of the existing building would be at least another 20 years. He pointed out the original building was built at a higher code than required for the time period.

Mr. Hillman reminded the Council operation costs associated with the proposed facility specific to staffing should be considered with the project. A discussion took place regarding possible operation costs. Ms. Heun pointed out participants of classes primarily pay for the instructional costs. Ms. Hawkins reminded the Council of Mr. Lind's comments from the March 23, 2011 meeting regarding facilities which were self sufficient and indicated that information would be provided in the final report of the feasibility study. A discussion took place regarding the costs to the City associated with maintaining the current facility over the previous ten years. Mr. Smith suggested the City could solicit sponsors in conjunction with the project such as purchasing a brick paver or chair in the theatre.

Mayor Wood commented about the recent improvements made to the downtown area using the CDRA with the Health Department, a possible reception/meeting facility and expressed his opinion the Community Arts Center would be another component of the City's vision for downtown. Mr. Hillman stated he would mention the possible use of RDA funds for part of the improvements to Randy Sant, RDA Consultant. He believed the funds would be restricted for the use of landscaping and not necessarily the facility.

Ms. Hawkins reported adjustments would be made to the study and a final assessment would be provided to the Council. She stated a final presentation would be shared with the Council in a formal setting accompanying a final report during a future City Council meeting.

The meeting adjourned at 8:27 p.m.

CLEARFIELD CITY COUNCIL MEETING MINUTES
7:00 P.M. REGULAR SESSION
June 14, 2011

PRESIDING:	Don Wood	Mayor
PRESENT:	Marilyn Fryer Doyle Sprague Bruce Young	Councilmember Councilmember Councilmember
EXCUSED:	Kathryn Murray Mark Shepherd	Councilmember Councilmember
STAFF PRESENT:	Adam Lenhard Brian Brower Mike Stenquist Scott Hodge Donna Russell Gary Cohen Curtis Dickson Steve Guy Sean Montierth Jessica Hardy Nancy Dean Kim Read	Interim City Manager City Attorney Assistant Police Chief Public Works Director Acting Community Services Director Recreation Director Recreation Supervisor City Treasurer IT Manager Accounting Technician City Recorder Deputy City Recorder
EXCUSED:	Bob Wylie Greg Krusi Valerie Claussen	Administrative Services Director Police Chief Acting Community Development Director

VISITORS: Robert & Cheryl Landon, Mike LeBaron, Aimee Matheson, Eve Matheson, Bryan Turner – Davis School District, Joy Brown – American Legion

Mayor Wood informed the citizens present that if they would like to comment during Citizen Comments or the Public Hearings there were forms to fill out by the door.

Youth City Councilmember Alex McMillan conducted the Opening Ceremony.

APPROVAL OF THE MINUTES FROM THE MARCH 29, 2011 WORK SESSION, THE APRIL 12, 2011 WORK SESSION, THE APRIL 19, 2011 WORK SESSION, THE APRIL 26, 2011 WORK SESSION AND THE MAY 24, 2011 REGULAR SESSION

Councilmember Fryer moved to approve the minutes from the March 29, 2011 work session, the April 12, 2011 work session, the April 19, 2011 work session, the April 26, 2011

work session and the May 24, 2011 regular session as written, seconded by Councilmember Young. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

PRESENTATION OF GRANT FUNDS FROM THE UNION PACIFIC FOUNDATION FOR IMPROVEMENTS AT THE COMMUNITY ARTS CENTER

Gary Cohen, Recreation Director, presented a check in the amount of \$1,000 to Councilmember Fryer from the Union Pacific Foundation for grant funds to be used for improvements at the Community Arts Center. He read the letter from the Union Pacific Foundation which accompanied the check.

Councilmember Fryer expressed her pleasure in receiving the grant check on behalf of the City Council. She commented on the meetings she had attended with Method Studio representatives regarding the expansion of the Community Arts Center and expressed her desire for the completion of the project.

RECOGNITION OF AIMEE MATHESON FOR HER VOLUNTEER WORK IN GUATEMALA

Clearfield High graduate, Aimee Matheson, recently received the Prudential Spirit of Community Award, representing the State of Utah in Washington D.C. Her volunteer service consisted of the coordination and construction of a day care and community center in Guatemala which would allow single mothers a safe and nurturing place to take their children while they work. In addition the center would also provide the children with nutritious meals, clothing and basic education and health services.

Councilmember Young presented Ms. Matheson with a certificate from the City Council and commended her for her service.

PUBLIC HEARING TO RECEIVE COMMENT ON THE 2011/2012 FISCAL YEAR BUDGET

Utah Code required cities to hold a public hearing regarding the adoption of the upcoming fiscal budget. The City staff had prepared and submitted to the Council a balanced tentative budget for the fiscal year 2011/2012 which would begin July 1, 2011 and end June 30, 2012. The submitted tentative budget was adopted on May 10, 2011 and included all funds.

Mayor Wood declared the Public Hearing open at 7:16 p.m.

Mayor Wood asked for public comment.

There was no public comment.

Councilmember Sprague moved to close the public hearing at 7:17 p.m., seconded by Councilmember Fryer. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

PUBLIC HEARING ON THE AMENDED SUBDIVISION PLAT TO MERGE AND RE-SUBDIVIDE TWO PARCELS FOR DAVIS SCHOOL DISTRICT'S NEW WASATCH ELEMENTARY SCHOOL SITE

This was a request by Davis School District for an Amended Final Subdivision Plat to merge and re-subdivide two parcels, approximately 9.03 acres total. The site was located at the southwest corner of Center Street and 350 East (TINs: 12-007-0121 and 12-001-0145). The property was zoned C-2 (Commercial). The Planning Commission held a public hearing on June 1, 2011 and unanimously recommended approval.

Mayor Wood declared the Public Hearing open at 7:18 p.m.

Mayor Wood asked for public comment.

There was no public comment.

Councilmember Young moved to close the public hearing at 7:19 p.m., seconded by Councilmember Fryer. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

CITIZEN COMMENTS

Cheryl Landon, resident, stated she had owned a grooming shop and boarding kennel since 1975. She reported she had worked with Kent Bush over the previous five years regarding the purchase of a building permit which would allow her to enclose the expansion of the boarding area and was told at that time no permit was required. She informed the Council she had proceeded with the expansion believing she was meeting all required criteria and was recently informed she would not be allowed to expand as her business license was for an in home business. She indicated she had recently been working with Ms. Valerie Claussen, Acting Community Development Director, about her options regarding the expansion of her business at her home. She stated she had already invested approximately \$10,000 for the expansion and expressed a desire for the City to allow her to continue operating her business.

Mayor Wood responded he had also obtained information from Stacy Millgate, Business License Official, and Ms. Claussen and had been provided a number of documents which he will be reviewing to become familiar with the issue.

Robert Landon, resident, pointed out he had been working on the expansion for approximately five years with Mr. Kent Bush's permission. He reported they originally had provided the City with a plat plan to purchase a building permit and was told by Mr. Bush one was not required because the expansion was not an enclosed structure. Mayor Wood inquired when the concrete pads had been installed as they looked new to him when he visited the site. Mr. Landon responded the concrete had been installed approximately a year and a half to two years.

Joy Brown, American Legion, announced Joe Lipski, the previous commander of the American Legion, had recently passed away and informed the Council a wake would be held at the American Legion on Friday, June 17, 2011, from 3:00-5:00 p.m.

APPROVAL OF AN AMENDED FINAL SUBDIVISION PLAT TO MERGE AND RE-SUBDIVIDE TWO PARCELS FOR DAVIS SCHOOL DISTRICT'S NEW WASATCH ELEMENTARY SCHOOL SITE

Councilmember Sprague moved to approve the Amended Final Subdivision Plat to merge and re-subdivide two parcels for Davis School District's new Wasatch Elementary School Site and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Young. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

APPROVAL OF CHRISSAM MEADOWS PHASE 4 SUBDIVISION FINAL ACCEPTANCE AND RELEASE OF ESCROW

In accordance with Title 12, Chapter 9, of the Clearfield City Code, the City Engineer had completed the final inspection of the ChrisSam Meadows Phase 4 subdivision and found all improvements to have been installed correctly. The warranty period was over and the City Engineer recommended final acceptance of the improvements for perpetual maintenance, and a release of the escrow by the City Council.

Councilmember Young moved to approve the ChrisSam Meadows Phase 4 subdivision final acceptance and release of escrow and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Fryer. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

SET A PUBLIC HEARING TO RE-OPEN THE 2010/2011 FISCAL YEAR BUDGET

The Council requested the budget be re-opened on a semi-annual basis to add items that have become necessary expenditures but were not budgeted for in the original budget. A public hearing was required to re-open the budget. The staff was recommending the public hearing be set for June 28, 2011.

Councilmember Sprague moved to set a public hearing for June 28, 2011, at 7:00 P.M., to re-open the 2010/2011 fiscal year budget, seconded by Councilmember Young. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

APPROVAL OF THE AWARD OF PROPOSAL FOR THE POLE CAMERAS AND VIDEO SURVEILLANCE GRANT PROJECT TO ALPHACORP SECURITY

The Police Department staff solicited proposals for pole cameras and video surveillance equipment. The bid process included screening potential vendors and inviting the top contenders to share a product demonstration. The project would be completely funded by the BJA (Bureau of Justice Assistance) Grant.

Councilmember Fryer moved to approve the award of proposal for the pole cameras and video surveillance grant project to AlphaCorp Security and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Young. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

APPROVAL OF THE AWARD OF BID FOR CRACK PATCH, SLURRY/SEALCOAT RESURFACING FOR CITY PARKING LOTS

Staff solicited bids for crack patch and slurry/sealcoat for Fox Hollow, Steed Park North and the City Building parking lots. Donna Russell, Acting Community Services Director, presented staffs' recommendation to Nickel Creek for the award of bid. Brian Brower, City Attorney, explained several bids were initially received reflecting lower costs and upon further investigation had not been responsive to the bid request. He expressed his opinion Nickel Creek Inc. to be the lowest responsible bidder.

Councilmember Young moved to approve the award of bid for crack patch, slurry/sealcoat resurfacing for city parking lots to Nickel Creek Inc. in the amount of \$15,858 and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Sprague. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

APPROVAL OF RESOLUTION 2011R-07 APPROVING THE CONTRACT WITH DAVIS COUNTY FOR ASSISTANCE WITH THE 2011 MUNICIPAL ELECTION

The city recorder was recommending that this year's municipal election be conducted using electronic voting equipment. Davis County provided pricing for the equipment, programming and poll worker training and recruitment which fit within the City's election budget. This agreement outlined the County's and the City's responsibilities for the election.

Councilmember Sprague moved to approve Resolution 2011R-07 approving the contract with Davis County for assistance with the 2011 Municipal Election and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Fryer. The motion carried upon the following vote: Voting AYE – Councilmembers Fryer, Sprague and Young. Voting NAY – None. Councilmembers Murray and Shepherd were not present for the vote.

COMMUNICATION ITEMS:

Mayor Wood

1. Reported dignitaries including Governor Herbert, Salt Lake City Councilmembers and Mayor Ralph Becker and UTA officials rode Frontrunner promoting Utah's Clean Air Challenge. He stated Councilmember Young was in attendance during the press conference and reported he had boarded the train in Clearfield and rode to Ogden to participate in the event located at that stop.
2. Stated the Mormon Tabernacle Choir performed a concert for military dignitaries on Thursday, June 9, 2011 and reported he had attended.
3. Informed the Council he had attended Clearfield High School's Graduation Ceremony at the Dee Events Center and commented he had been impressed by the speakers.
4. Informed the Council about the death of resident Tech Sergeant Christopher Solesby who had been serving in Afghanistan. He indicated the American Legion had placed flags lining his street to honor his sacrifice.
5. Reported he had attended a farewell for Chief Master Sergeant David Nordell, the highest enlisted officer at HAFB. He had also attended a farewell for Colonel Patrick Higby, the 75th Air Base Wing Commander, who was being transferred to the Pentagon.
6. Stated he had the opportunity to attend and speak at Boys' State. He indicated Richard Fisher, Emergency Services Manager, and Steve Swenson, Police Officer, had also volunteered and participated.
7. Reported he and Councilmember Shepherd had presented the Hope of America Awards to receiving students attending Doxey Elementary.

Councilmember Fryer – nothing to report.

Councilmember Sprague – nothing to report.

Councilmember Young – Reported Youth City Council interviews were conducted on Wednesday, June 8, 2011 and stated he was impressed with the quality of applicants.

Adam Lenhard, Acting City Manager – Directed the Council to their email regarding updates on current City issues.

STAFFS' REPORTS:

Nancy Dean, City Recorder

1. Informed the Council of the following scheduled meetings:
 - Tuesday, June 21, 2011 6:00 p.m.
 - June 28, 2011 policy session
 - July 5, 2011 no meeting
2. Informed the Council Declaration of Candidacy would be July 1-July 15 at 5:00 p.m. She indicated there were three council seats up for election.

Councilmember Fryer moved to adjourn as the City Council and reconvene as the Community Development and Renewal Agency at 7:42 p.m., seconded by Councilmember Sprague. All voting AYE. Councilmembers Murray and Shepherd were not present for the vote.

The minutes for the CDRA are in a separate location



CITY COUNCIL

STAFF REPORT

AGENDA
ITEM #

TO: Honorable Mayor and Council

FROM: Valerie Claussen, MPA, AICP
Acting Community Development Director
vclaussen@clearfieldcity.org (801) 525-2785

MEETING DATE: June 28, 2011

SUBJECT: Public Hearing, Discussion, and Possible Action on **FSP 1105-0001**, a request by Corey Malan, on behalf of Kent Teichert, for an Amended Final Subdivision Plat to merge four parcels, approximately 0.98 acres total, into one parcel for the purposes of developing a commercial center. The site is located at 772 East 700 South (TINs: 12-068-0005 through 12-068-0008) and the property is in the C-2 (Commercial) zoning district.

RECOMMENDATION

Move to **approve, as conditioned**, FSP 1105-0001, an Amended Final Subdivision Plat for Tyton Center, based on the discussion and findings provided in the Staff Report.

PLANNING COMMISSION

The Planning Commission held a Public Hearing and heard this item at their June 15, 2011 meeting. They unanimously recommended approval.

PROJECT SUMMARY

Project Information	
Project Name	Tyton Center Amended Final Plat
Site Location	772 East 700 South
TIN's	12-068-0005 to 12-068-0008)
Applicant	Corey Malan Corey Malan Construction
Owners	Kent Teichert Tyton, LLC
Proposed Actions	Amended Final Subdivision Plat
Current Zoning	C-2 (Commercial)
Land Use Classification	Commercial Area
Gross Site Area	0.918 acres
Merge and Re-subdivide	4 parcels into 1 parcel
Lot 1	0.918 acres

HISTORY

August 1946	Thornley's Subdivision recorded with Davis County
April 6, 2011	Planning Commission approves Tyton Center Site Plan (SP 11-004)
June 15, 2011	Planning Commission recommends approval of the amended Final Plan (FSP 1105-0001)

ANALYSIS

Background

This amended plat is for the purposes of developing the property as a commercial strip center with associated site improvements. The project previously received Site Plan approval for this development at the April 6, 2011 Planning Commission meeting. The developer has since obtained civil permits for site work and is in the process in submitting and obtaining building permits.

Master Plan and Zoning

The parcels are Master Planned and zoned Commercial. The proposed amended plat is consistent with both the Master Plan and zoning.

Subdivision Plat Approval

The four lots were originally platted in the mid-1940's as Thornley's Subdivision. In order to develop the property as a commercial use the lots need to be combined into a single lot. The proposed parcels meet minimum lot size requirements in the C-2 zoning. Potential impacts on the City's infrastructure and services, setbacks, and other development standards were reviewed and ensured through the Site Plan approval process and continue to be reviewed in the civil and building permit construction drawing submittals.

Public Comment

No public comment has been received to date.

CONDITIONS OF APPROVAL

- 1) Pursuant to the Subdivision Ordinance 12-4-5, an estimate of public improvements (as outlined in 12-4-6), shall be submitted, reviewed and approved by the City Engineer prior to obtaining building permits. An Escrow agreement will be subject to approval by the City Engineer and City Attorney and an escrow account shall be established prior to obtaining any certificates of occupancy.
- 2) Pursuant to the Land Use Ordinance 11-13-23(C) and (D) Prior to obtaining any certificates of occupancy, the applicant either completes landscaping improvements or is subject to establishing an escrow account, as reviewed and approved by the City Engineer and City Attorney.

ATTACHMENTS

1. Tyton Center Amended Subdivision Plat

Reopened budget items June 28, 2011

Department	budget unit	account	Title	Expense budget adjustment	department adjust	Description	Revenue account	Title	Revenue budget adjustment
Mayor & Council	104111	645002	Donation expense	7,540.00	7,540.00	donation expenses	10-381008	fund balance	7540
Community Relations	104512	645002	Donation expense	297.00	297.00	donation expenses	10-381008	fund balance	297
Recreation	104561	645002	Donation expense	359.00	359.00	donation expenses	10-381008	fund balance	359
Aquatics Center	104565	645002	Donation expense	11,525.00	11,525.00	donation expenses	10-381008	fund balance	11,525.00
Interdepartment	104151	663001	contingency	-12,352.00	-12,352.00	UPS batteries			
Building and Plants	104161	674001	equipment replacement	12,352.00	12,352.00	UPS batteries			
Building and Plants	104161	673001	Capital Projects	17,150.00		fire station windows	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	70,071.50		upgrade HVAC systems	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	5,480.65		Lighting upgrade	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	30,617.00	123,319.15	upgrade boiler systems	10-334001	State grants	123,319.15
police	104212	674001	equipment purchase	3,607.00					
Police	104212	621101	subscriptions	3,598.00	7,205.00	SAFG grant	10-334001	State grants	7,205.00
Transfer to other funds	104810	691004	transfer to other funds	7,996.00	7,996.00	200 South Bridge	10-381008	fund balance	7,996.00
Highways	454410	673001	Streets	7,996.00	7,996.00	200 South Bridge	45-381004	transfer from general fund	7,996.00
Roadways	104413	681001	debt service principal	749,366.00		Bridge settlement-payoff 2008 excise bonds	10-369005	One time Misc revenue	
Roadways	104413	624101	claims & damages	25,634.00		Bridge settlement	10-369005	One time Misc revenue	775,000.00
Roadways	104413	681001	debt service principal	44,634.00		Payoff 2008 excise bonds early	10-381008	fund balance	
Roadways	104413	681002	debt service interest	-6,352.00	813,282.00	Payoff 2008 excise bonds early	10-381008	fund balance	38,282.00
Community relations	104512	624206	wireless network	90.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	625002	equipment purchase	900.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	631004	bank professional fees	150.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	661001	miscellaneous supplies	860.00	2,000.00	Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	2,000.00
Business License	104613	624006	postage	75.00		increase postage budget for notices	10-381008	fund balance	75.00
CDBG	104632	611501	pass through	12,500.00		Megan James-Urban Planner	10-381008	fund balance	12,500.00
CDBG	104632	693001	Pass Through	26,850.00	26,850.00	CDBG housing assistance returned	10-381008	fund balance	26,850.00
Sales Tax bond	104711	681002	debt service interest	68,594.00		2003 sales tax bond interest	10-381008	fund balance	
Sales Tax bond	104711	631004	bank professional fees	375.00	68,969.00	2010 sales tax bond trustee fees	10-381008	fund balance	68,969.00
CED administration	204611	631006	professional services	20,100.00		Randy Sant contract			
CED administration	204611	631006	professional services	11,250.00		engineering services			
CED administration	204611	648801	appropriated increase fund balance	-31,350.00	0.00	reduce anticipated fund balance increase			0.00
increase fund balance			increase fund balance	94,650.00		Tanner Heritage park improvement	10-369005	One time Misc revenue	94,650.00
Fleet	614441	625203	fleet repair	10,750.00		fire district repairs above initial budget	10-345006	consum. Chrges outside service	10,750.00
G.O. Debt Service	314711	631004	bank professional fees	250.00		G.O. Bond trustee fees	31-381008	fund balance	250.00
				<u>1,195,563.15</u>					<u>1,195,563.15</u>



Clearfield City

Date: 06/23/2011

Actual Month and YTD Revenue Received Fiscal Year 2011 Reported through May - YTD percentage of budget 91.6 %

Fund	Fund Title	Account Code	Account Title	YTD Budgeted Revenue Amt	Period Revenue	YTD Revenue	YTD %
10	GENERAL FUND	311001	CURRENT GENERAL PROPERTY	1,108,679	95,623	803,841	72.50%
		311002	VEHICLE VALUE BASED TAX	183,242	9,510	170,426	93.01%
		312001	DELINQUENT TAXES PRIOR YR	0	9,672	106,902	
		313001	GENERAL SALES & USE TAXES	3,150,000	0	2,661,009	84.48%
		313002	ENERGY USE TAX	1,857,110	150,605	1,898,179	102.21%
		314002	CATV FRANCHISE TAXES	114,170	0	86,099	75.41%
		314003	UTILITY FRANCHISE TAXES	300,630	23,465	285,940	95.11%
		314004	MUNI TELECOM LICENSE TAX	454,000	0	318,376	70.13%
		315001	TRANSIENT ROOM TAX	1,500	0	3,669	244.57%
		321001	BUSINESS LICENSES	130,000	2,044	125,732	96.72%
		321002	LANDLORD REGISTRATION	46,750	437	61,680	131.94%
		322002	SIGN PERMITS	2,500	0	2,378	95.12%
		322101	BUILDING PERMITS	110,000	8,909	97,151	88.32%
		322102	ELECTRICAL,PLUMBING & GAS	18,000	1,980	8,117	45.09%
		322103	EXCAVATION PERMITS	1,665	0	1,491	89.55%
		322104	DEMOLITION PERMITS	100	0	300	300.00%
		322401	CEMETERY & BURIAL PERMITS	14,400	1,200	16,800	116.67%
		331001	GENERAL FEDERAL GRANTS	809,500	0	480,168	59.32%
		331006	CDBG GRANT REVENUE	509,279	14,673	399,275	78.40%
		334001	STATE GRANTS	243,933	70,072	107,392	44.03%
		335001	CLASS "C" ROADS	757,000	0	594,256	78.50%
		335002	LIQUOR FUND ALLOTMENT	48,600	0	46,015	94.68%
		337001	LOCAL GRANTS	0	2,000	2,000	
		341001	ZONING & SUBDIVISION	25,000	750	28,471	113.88%
		341002	PLAN CHECKING FEE	15,000	1,560	6,214	41.43%
		342001	SPECIAL POLICE SERVICES	15,700	764	7,872	50.14%
		342002	DAVIS SD POLICE PROTECTIO	56,996	0	56,996	100.00%
		342003	DUI/SEATBELT (OVERTIME RE	18,000	0	10,595	58.86%
		342004	E-911 SERVICE FEES	206,000	0	142,801	69.32%
		342006	DISPATCH SERVICES	85,000	7,084	77,924	91.68%
		342007	METRO NARCOTICS OVT	0	0	6,019	
		347001	AQUATIC CENTER	1,333,491	157,253	1,198,573	89.88%
		347003	RECREATION	354,510	16,411	302,428	85.31%
		348001	CEMETERY PLOTS	7,200	440	11,030	153.19%
		349002	FIRE DISTRICT BILLING	869	79	871	100.20%
		351001	FINES	950,100	63,228	751,576	79.10%
		351003	CODE ENFORCEMENT FINES	5,000	200	1,800	36.00%
		353001	COURT FILING FEES	2,750	160	2,815	102.36%
		353002	COURT SECURITY FEES	28,000	1,449	17,859	63.78%
		353003	MISC COURT COST REIMB	14,000	178	3,325	23.75%
		361001	INTEREST EARNINGS	26,850	1,441	15,427	57.46%
		362001	COMMUNITY SERVICE RENTALS	60,180	4,700	66,298	110.17%
		362002	RENT REVENUES	80,360	1,102	40,095	49.89%
		364001	SALE OF FIXED ASSETS G/L	0	0	2,627	



Clearfield City

Date: 06/23/2011

Actual Month and YTD Revenue Received Fiscal Year 2011 Reported through May - YTD percentage of budget 91.6 %

Fund	Fund Title	Account Code	Account Title	YTD Budgeted Revenue Amt	Period Revenue	YTD Revenue	YTD %
10	GENERAL FUND	369001	MISC REVENUES	18,600	338	9,015	48.47%
		369003	DONATION REVENUE	100,192	2,605	77,385	77.24%
		369004	RETURN CHECK FEES	2,285	20	1,377	60.26%
		369005	ONE TIME MISC REVENUE	0	0	869,649	
		369007	CLAIMS AND DAMAGES	8,400	75	4,044	48.14%
		371007	FIRE PROTECTION FREEPORT	70,800	8,147	88,702	125.28%
		381001	TRNF OTHER FUNDS	1,464	0	0	0.00%
		381002	TRNF RDA SALES TAX BOND	815,984	0	815,984	100.00%
		381003	TRNF EF SALES TAX BOND	76,176	0	76,176	100.00%
		381005	TRNF FROM EF	15,000	0	0	0.00%
		381008	FUND BAL. APPROPRIATION	829,735	72	498,600	60.09%
		382001	TRNF FROM RDA	122,148	3,750	118,398	96.93%
		382002	EF(S) OVERHEAD ALLOC	946,996	78,943	868,376	91.70%
		382003	PAY IN LIEU DAVIS COUNTY	3,260	0	3,235	99.25%
				16,157,102	740,939	14,459,749	89.49%
20	CDRA	311101	EDA # 1	398,638	0	398,638	100.00%
		311106	RDA #6	235,664	0	231,773	98.35%
		311107	RDA # 7	333,678	0	335,278	100.48%
		311108	RDA # 8	342,524	0	237,229	69.26%
		311109	RDA # 9	283,528	0	284,153	100.22%
		311110	RDA # 10	338,516	0	316,360	93.45%
		361001	INTEREST EARNINGS	7,000	1,095	7,380	105.42%
		361004	INTEREST ON LOANS	1,023	68	960	93.75%
		362002	RENT REVENUES	50,230	4,158	46,793	93.16%
		369001	MISC REVENUES	0	0	2,649	
		381008	FUND BAL. APPROPRIATION	66,748	1,670	63,220	94.72%
				2,057,549	6,991	1,924,432	93.53%
21	MBA	381004	TRNF FROM GF	63,315	0	61,805	97.62%
				63,315	0	61,805	97.62%
31	G.O. DEBT SERVICE	311001	CURRENT GENERAL PROPERTY	861,740	74,324	624,800	72.50%
		381005	TRNF FROM EF	234,460	0	234,460	100.00%
				1,096,200	74,324	859,260	78.39%
40	CAPITAL IMPROVEMENTS PARK	323004	PARK IMPACT FEES	10,236	3,412	16,207	158.33%
		361001	INTEREST EARNINGS	0	77	778	
				10,236	3,489	16,985	165.93%
45	CAPITAL PROJECTS	361001	INTEREST EARNINGS	0	5	137	
		381004	TRNF FROM GF	456,354	9,379	377,439	82.71%



Clearfield City

Date: 06/23/2011

Actual Month and YTD Revenue Received Fiscal Year 2011 Reported through May - YTD percentage of budget 91.6 %

Fund	Fund Title	Account Code	Account Title	YTD Budgeted Revenue Amt	Period Revenue	YTD Revenue	YTD %
45	CAPITAL PROJECTS	381008	FUND BAL. APPROPRIATION	905,630	3,066	12,284	1.36%
				1,361,984	12,451	389,860	28.62%
50	PUBLIC UTILITY	361001	INTEREST EARNINGS	1,900	85	1,002	52.71%
		369006	LATE FEES/PENALTY	128,000	10,623	114,454	89.42%
		371005	WATER SERVICE FEES	14,500	2,750	19,405	133.83%
		371007	FIRE PROTECTION FREEPORT	23,820	0	0	0.00%
		375001	UTILITY ASSISTANCE	(1,000)	(37)	(417)	41.74%
		375002	MILITARY DISCOUNTS	(3,000)	(63)	(826)	27.53%
		381005	TRNF FROM EF	193,984	7,446	119,977	61.85%
		381008	FUND BAL. APPROPRIATION	1,202	0	0	0.00%
				359,406	20,804	253,594	70.56%
51	WATER FUND	323001	WATER IMPACT FEES	72,640	33,534	84,204	115.92%
		331003	HIGHWAYS & STREETS	0	4,000	29,342	
		361001	INTEREST EARNINGS	51,000	3,239	36,425	71.42%
		369005	ONE TIME MISC REVENUE	0	0	130,000	
		369007	CLAIMS AND DAMAGES	0	0	2,757	
		371001	WATER CHARGES	3,120,000	206,806	2,800,726	89.77%
		371003	WATER METER FEE/CONNECTIO	9,350	820	4,410	47.17%
		371006	FIRE HYDRANT RENTAL USE	2,465	39	879	35.67%
		381008	FUND BAL. APPROPRIATION	1,921,086	8,706	536,364	27.92%
				5,176,541	257,144	3,625,108	70.03%
52	SEWER FUND	323002	SEWER IMPACT FEES	39,380	8,076	43,282	109.91%
		331001	GENERAL FEDERAL GRANTS	291,000	0	0	0.00%
		331003	HIGHWAYS & STREETS	0	4,353	39,489	
		349003	ADMIN FEE	1,000	0	260	26.00%
		361001	INTEREST EARNINGS	12,500	1,080	12,114	96.91%
		369001	MISC REVENUES	0	160	160	
		372001	SEWER CHARGES	2,222,200	184,484	1,972,219	88.75%
		381008	FUND BAL. APPROPRIATION	636,101	8,168	76,588	12.04%
				3,202,181	206,321	2,144,112	66.96%
53	STORM SEWER	323003	STORM SEWER IMPACT FEES	27,220	5,584	42,434	155.89%
		331003	HIGHWAYS & STREETS	0	2,470	22,743	
		361001	INTEREST EARNINGS	7,700	785	7,516	97.60%
		369005	ONE TIME MISC REVENUE	0	0	113,688	
		373001	STORM SEWER CHARGES	803,600	68,085	732,398	91.14%
		381008	FUND BAL. APPROPRIATION	661,341	6,751	315,910	47.77%
				1,499,861	83,674	1,234,688	82.32%



Clearfield City

Date: 06/23/2011

Actual Month and YTD Revenue Received Fiscal Year 2011 Reported through May - YTD percentage of budget 91.6 %

Fund	Fund Title	Account Code	Account Title	YTD Budgeted Revenue Amt	Period Revenue	YTD Revenue	YTD %
54	SOLID WASTE	361001	INTEREST EARNINGS	5,760	431	4,470	77.61%
		374001	GARBAGE CHARGES	1,215,000	101,635	1,115,129	91.78%
		381008	FUND BAL. APPROPRIATION	9,568	0	9,568	100.00%
				1,230,328	102,066	1,129,167	91.78%
61	ISF - FLEET MANAGEMENT	344001	FLEET CHARGES FROM GF	160,182	13,348	146,833	91.67%
		344002	FLEET CHARGES FROM WATER	42,461	3,538	38,923	91.67%
		344003	FLEET CHARGES FROM SEWER	23,489	1,957	21,532	91.67%
		344004	FLEET CHARGES STORM SEWER	6,249	521	5,728	91.67%
		344005	FLEET CHARGES UTILITY ADM	4,216	351	3,865	91.67%
		345001	CONSUM. CHRGS FROM GF	179,000	18,108	179,934	100.52%
		345002	CONSUM. CHRGS FROM WATER	29,700	1,490	25,110	84.55%
		345003	CONSUM. CHRGS FROM SEWER	10,200	1,978	21,032	206.20%
		345004	CONSUM. CHRGS STORM SEWER	8,300	3,970	21,148	254.80%
		345005	CONSUM. CHRGS UTIL ADMIN	5,850	538	6,407	109.52%
		345006	CONSUM. CHRGS OUTSIDE SER	31,200	0	13,746	44.06%
		346001	VEHICLE REPLACEMENT GF	175,000	14,583	160,417	91.67%
		346002	VEHICLE REPLACEMENT WATER	60,880	5,073	55,807	91.67%
		346003	VEHICLE REPLACEMENT SEWER	43,793	3,649	40,143	91.67%
		346004	VEHICLE REPLACEMENT STORM	14,000	1,167	12,833	91.67%
		346005	VEHICLE REPLACEMENT UTIL	3,990	160	1,763	44.19%
		364001	SALE OF FIXED ASSETS G/L	0	0	428	
365001	FUEL CHARGES	26,000	2,656	27,543	105.93%		
369007	CLAIMS AND DAMAGES	0	0	2,352			
381008	FUND BAL. APPROPRIATION	42,564	0	42,564	100.00%		
				867,074	73,089	828,107	95.51%
70	PERPETUAL CEMETERY FUND	348002	PERPETUAL CARE	5,650	500	10,350	183.19%
		361001	INTEREST EARNINGS	900	75	770	85.52%
				6,550	575	11,120	169.77%
				33,088,327	1,581,868	<u>26,937,987</u>	



Clearfield City

Date: 06/23/2011

Actual Month and YTD Spending For Fiscal Year 2011

Reported Through May - YTD percentage of budget 91.66 %

Fund	Fund Title	Account	Title	Annual Budget	Period Expenses	YTD Spending	% of Budget Spent	Remaining Budget
10	GENERAL FUND	104111	MAYOR & COUNCIL	298,485	14,605	272,315	91.23%	26,171
		104121	JUSTICE COURT	387,447	30,620	323,142	83.40%	64,304
		104131	CITY MANAGER	293,745	26,623	250,941	85.43%	42,804
		104132	CITY RECORDER	150,116	10,221	126,049	83.97%	24,067
		104133	LEGAL	240,844	18,825	208,187	86.44%	32,658
		104141	HUMAN RESOURCES	259,561	18,734	209,920	80.88%	49,641
		104142	INFORMATION TECHNOLOGIES	635,668	34,911	552,254	86.88%	83,414
		104143	FINANCE	826,696	54,513	657,268	79.51%	169,428
		104151	INTERDEPARTMENTAL SERVICE	1,024,009	71,255	785,615	76.72%	238,394
		104161	BUILDINGS & PLANTS	533,892	80,488	524,840	98.30%	9,052
		104172	ELECTIONS	400	0	0	0.00%	400
		104211	POLICE ADMIN	660,703	48,647	560,282	84.80%	100,420
		104212	PATROL & INVESTIGATIONS	2,989,989	192,216	2,325,626	77.78%	664,363
		104213	EMERGENCY SERVICES	57,678	1,922	38,206	66.24%	19,472
		104215	DISPATCH	522,522	38,435	450,176	86.15%	72,346
		104216	COMMUNICATIONS, E-911	351,117	(35,041)	297,190	84.64%	53,927
		104218	LIQUOR LAW ENFORCEMENT	80,898	6,149	73,043	90.29%	7,855
		104221	FIRE DISTRICT	0	0	0	0.00%	0
		104411	PUBLIC WORKS ADMIN	96,522	4,525	67,385	69.81%	29,137
		104413	ROADWAYS	635,006	19,098	1,123,617	176.95%	(488,611)
		104511	COMMUNITY SVCS ADMIN	245,682	17,047	199,860	81.35%	45,822
		104512	COMMUNITY RELATIONS	163,701	5,209	137,218	83.82%	26,483
		104521	PARKS	746,466	57,024	633,011	84.80%	113,455
		104561	RECREATION	642,213	46,328	457,519	71.24%	184,694
		104565	AQUATICS CENTER	1,508,628	106,667	1,268,408	84.08%	240,220
		104591	CEMETERY	4,715	1,106	2,432	51.57%	2,283
		104611	CED ADMINISTRATION	598,319	18,152	586,527	98.03%	11,792
		104612	COMMUNITY DEV. AGENCY	0	0	0	0.00%	0
		104613	BUSINESS LICENSES	980	40	1,002	102.21%	(22)
		104614	CODE ENFORCEMENT	119,930	6,046	59,272	49.42%	60,657
		104632	CDBG	98,108	35,677	122,254	124.61%	(24,146)
		104641	PLANNING & ZONING	190,151	12,949	57,182	30.07%	132,969
		104642	INSPECTIONS	154,099	10,878	131,476	85.32%	22,624
104711	SALES TAX BOND	968,333	375	1,035,397	106.93%	(67,064)		
104712	TERM BOND PAYMENT	0	0	0	0.00%	0		
104810	TRANSFERS TO OTHER FUNDS	519,669	9,379	439,244	84.52%	80,425		
104830	CONTRIB. TO OTHER FUNDS	0	0	0	0.00%	0		
				16,006,292	963,620	13,976,858	87.32%	2,029,434
20	CDRA	20	CDRA	0	0	0	0.00%	0
		204611	CED ADMINISTRATION	97,400	10,345	112,718	115.73%	(15,318)
		204612	RDA CAPITAL PROJECTS	0	0	0	0.00%	0
		204615	RDA #9	36,095	0	36,095	100.00%	(0)



Clearfield City

Date: 06/23/2011

Actual Month and YTD Spending For Fiscal Year 2011

Reported Through May - YTD percentage of budget 91.66 %

Fund	Fund Title	Account	Title	Annual Budget	Period Expenses	YTD Spending	% of Budget Spent	Remaining Budget
20	CDRA	204616	RDA #6	30,000	0	0	0.00%	30,000
		204617	RDA #7	235,623	0	175,121	74.32%	60,502
		204618	RDA #8	171,503	157,252	171,503	100.00%	0
		204619	RDA #10	154,998	0	154,484	99.67%	515
		204621	EDA#1	0	0	0	0.00%	0
		204810	TRNFR TO OTHER FUNDS	893,132	0	893,132	100.00%	0
				1,618,751	167,596	1,543,052	95.32%	75,699
21	MBA	214711	MBA SALES TAX BONDS	63,315	0	61,815	97.63%	1,500
				63,315	0	61,815	97.63%	1,500
31	G.O. DEBT SERVICE	314711	GO SERIAL BOND	1,096,200	0	1,096,450	100.02%	(250)
				1,096,200	0	1,096,450	100.02%	-250-
40	CAPITAL IMPROVEMEN	404810	TRANSFER TO OTHER FUNDS	0	0	0	0.00%	0
				0	0	0	0.00%	0
45	CAPITAL PROJECTS	454131	CAP PROJ - CITY MANAGER	0	0	0	0.00%	0
		454136	CAP PROJ - IT	0	0	0	0.00%	0
		454138	CAP PROJ - EMERG SERVICES	0	0	0	0.00%	0
		454142	CAP PROJ - IT	0	0	0	0.00%	0
		454143	CAP PROJ - FINANCE	0	0	0	0.00%	0
		454161	CAP PROJ - BUILDINGS	0	0	0	0.00%	0
		454213	CAP PROJ - EMERG SERVICES	20,000	0	0	0.00%	20,000
		454241	CAP PROJ - INSPECT/ENG	0	0	0	0.00%	0
		454410	CAP PROJ - STREETS	905,630	3,066	78,616	8.68%	827,013
		454521	CAP PROJ - PARKS	0	0	0	0.00%	0
		454565	CAP PROJ - AQUATIC CENTER	0	0	0	0.00%	0
		454570	CAP PROJ - COMM SERVICES	0	0	0	0.00%	0
		454591	CAP PROJ - CEMETERY	0	0	0	0.00%	0
		454611	CAP PROJ - CED ADMIN	0	0	0	0.00%	0
		454632	CAP PROJ - CDBG	436,354	9,379	357,300	81.88%	79,054
454642	CAP PROJ - INSPECTIONS	0	0	0	0.00%	0		
454810	TRANSFER TO OTHER FUNDS	0	0	0	0.00%	0		
				1,361,984	12,446	435,917	32.01%	926,067
50	PUBLIC UTILITY	505011	UTILITY ADMINISTRATION	228,083	15,277	182,961	80.22%	45,122
		505012	UTILITY METERS	131,322	6,305	70,991	54.06%	60,331
				359,406	21,582	253,952	70.66%	105,453
51	WATER FUND	515101	WATER DEPARTMENT	3,751,541	173,593	3,262,869	86.97%	488,671
		515110	WATER CAPITAL PROJECTS	1,425,000	9,999	376,798	26.44%	1,048,202



Clearfield City

Date: 06/23/2011

Actual Month and YTD Spending For Fiscal Year 2011 Reported Through May - YTD percentage of budget 91.66 %

Fund	Fund Title	Account	Title	Annual Budget	Period Expenses	YTD Spending	% of Budget Spent	Remaining Budget
				5,176,541	183,593	3,639,668	70.31%	1,536,873
52	SEWER FUND	525201	SEWER DEPARTMENT	2,562,181	180,627	2,293,427	89.51%	268,754
		525210	SEWER CAPITAL PROJECTS	640,000	11,959	60,407	9.44%	579,593
				3,202,181	192,586	2,353,834	73.51%	848,347
53	STORM SEWER	535301	STORM SEWER	999,861	69,988	832,549	83.27%	167,313
		535310	STORM SEWER CAPITAL PRJCT	500,000	9,879	195,718	39.14%	304,282
				1,499,861	79,868	1,028,267	68.56%	471,595
54	SOLID WASTE	545501	SOLID WASTE	1,224,550	91,520	1,022,398	83.49%	202,152
				1,224,550	91,520	1,022,398	83.49%	202,152
61	ISF - FLEET MANAGEME	614441	FLEET MANAGEMENT	800,071	46,068	927,071	115.87%	(126,999)
				800,071	46,068	927,071	115.87%	-126,999-
70	PERPETUAL CEMETERY	70	PERPETUAL CEMETERY FUND	0	0	0	0.00%	0
				0	0	0	0.00%	0
90	FIXED ASSETS	904143	FINANCE - F/A	0	0	0	0.00%	0
				0	0	0	0.00%	0
				32,409,152	1,758,878	26,339,281		6,069,871



CITY COUNCIL

STAFF REPORT

AGENDA
ITEM #

TO: Honorable Mayor and Council

FROM: Valerie Claussen, MPA, AICP
Acting Community Development Director
vlaussen@clearfieldcity.org (801) 525-2785

MEETING DATE: June 28, 2011

SUBJECT: Discussion, and Possible Action on the final acceptance and escrow release for Chrissam Meadows Phase 5 subdivision, located in the vicinity of 1900 South and 275 East.

RECOMMENDATION

Move to accept the subdivision improvements at Chrissam Meadows Phase 5 for perpetual maintenance by the City and release any remaining funds associated therewith in escrow to the Developer.

PROJECT SUMMARY

Project Information	
Project Name	Chrissam Meadows Phase 5
Site Location	1900 South and 275 East
Developer	Ivory Homes Jon Bowen
Proposed Actions	Final Acceptance and Escrow Release

HISTORY

August 26, 2003 City Council approves the Final Plat for Chrissam Meadows Phase 5.

December 9, 2003 Escrow account established for Chrissam Meadows Phase 5 improvements.

November 2009 Chrissam Meadows Phase 5 is placed in warranty.

November 2010 End of one-year warranty period; Final Inspection performed, remaining punch list items identified and subsequently completed.

BACKGROUND

Chrissam Meadows Phase 5 is located in the vicinity of 1900 South and 275 East (See *Attachment 1: Ownership Plat*). In accordance with Title 12, Chapter 9, of the Clearfield City Code, the City Engineer has completed the final inspection of the Chrissam Meadows Phase 5 subdivision and found all improvements to have been installed correctly. The warranty period is over and the City Engineer recommends final acceptance of the improvements for perpetual maintenance, and a release of the escrow by the City Council. The City Engineer's inspection letter and recommendation are attached (See *Attachment 2: Chrissam Meadows Phase 5 Inspection Letter*).

ATTACHMENTS

1. Chrissam Meadows Phase 5 Ownership Plat
2. Chrissam Meadows Phase 5 Inspection Letter

ChrisSam Meadows No. 5

A part of the Northwest 1/4 of Section 13, T4N, R2W, SLB&M, U.S. Survey
Clearfield City, Davis County, Utah

GMW DEVELOPMENT INC dba I. ...
DWNS ALL LOTS NOT MARKED

© ASSOC OF L. T. OWNERS OF CHRISAM MEADOWS

PREFIX
12-540

LAST #
0167

N

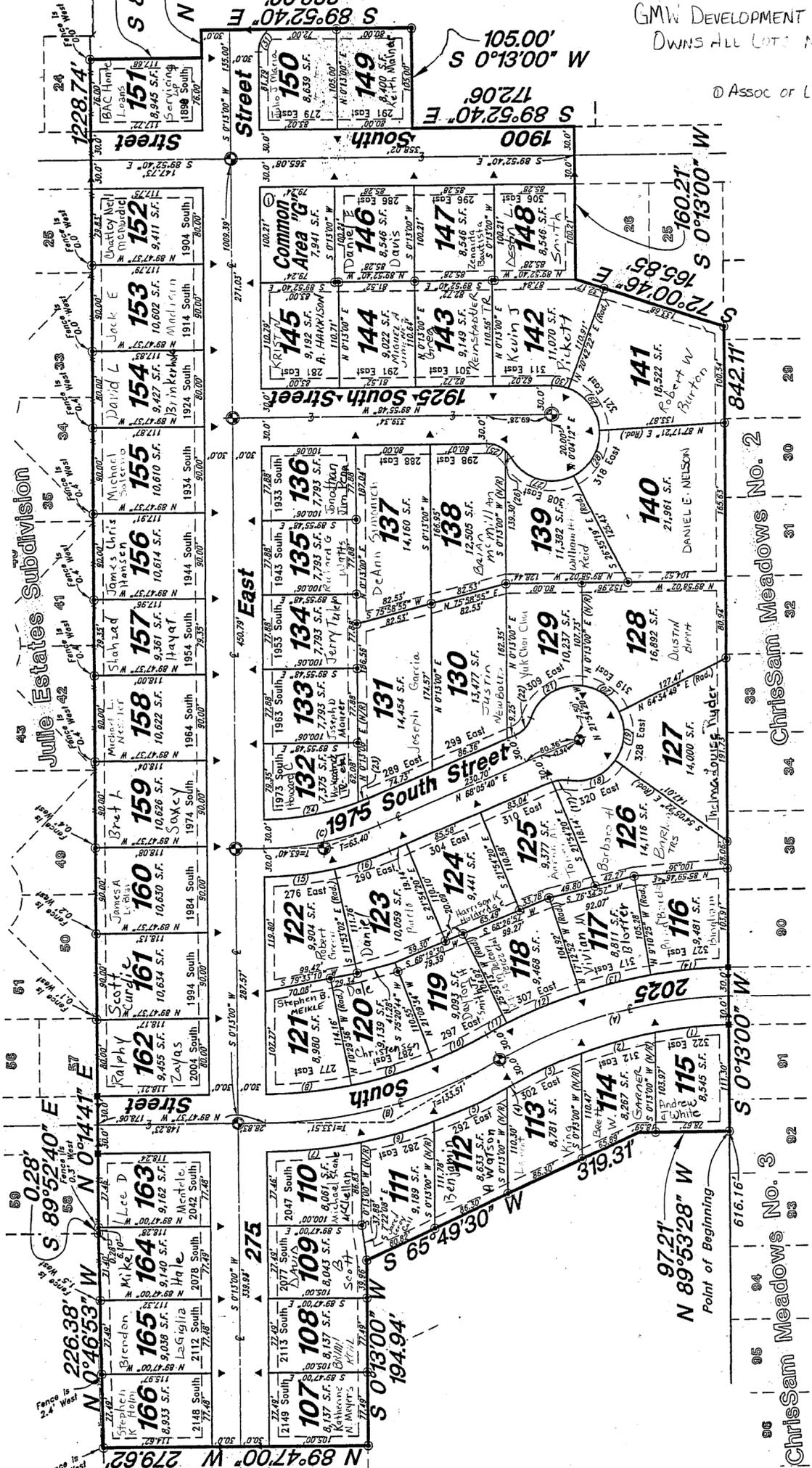


SCALE:
1" = 100'

DEVELOPMENT: CHRISAM MEADOWS NO. 5
COMMON AREA "C"

CITY: CLEARFIELD LOTS: 107 THRU 166 &

NW 1/4 OF SEC 13, T.4N, R. 2W
S.L.M. DAVIS COUNTY, UTAH
FILE # 3997
R 03-19-04



PROPERTY LINE CURVE DATA

(1) A = 912'57" R = 491.52' L = 79.06' LC = 78.97' S 84°47'01" W	(2) A = 9129'13" R = 491.52' L = 81.38' LC = 81.29' S 75°25'56" W	(3) A = 9123'05" R = 491.55' L = 78.93' LC = 78.85' S 66°05'17" W	(4) A = 0°47'01" R = 551.52' L = 7.54' LC = 7.54' S 61°52'46" W	(5) A = 5154'44" R = 551.52' L = 85.79' LC = 85.70' S 65°43'38" W
(6) A = 8°27'13" R = 551.52' L = 100.58' LC = 100.44' S 84°51'41" W	(7) A = 10°26'55" R = 551.52' L = 90.62' LC = 90.49' S 84°47'18" W	(8) A = 10°33'47" R = 103.52' L = 90.62' LC = 90.49' S 84°47'18" W	(9) A = 10°39'58" R = 551.52' L = 91.50' LC = 91.37' S 74°10'25" W	(10) A = 7°21'11" R = 491.52' L = 63.08' LC = 63.04' S 65°09'51" W
(11) A = 2°37'32" R = 551.52' L = 25.27' LC = 25.27' S 62°48'01" W	(12) A = 8°40'21" R = 551.52' L = 83.48' LC = 83.40' S 68°26'57" W	(13) A = 10°02'22" R = 551.52' L = 77.40' LC = 77.34' S 76°48'21" W	(14) A = 8°39'17" R = 551.52' L = 83.31' LC = 83.23' S 85°09'13" W	(15) A = 12°06'02" R = 354.31' L = 74.83' LC = 74.69' N 53°33'15" W
(16) A = 10°01'18" R = 354.31' L = 61.97' LC = 61.89' S 73°06'19" W	(17) A = 32°27'42" R = 30.00' L = 17.00' LC = 16.77' S 84°19'51" W	(18) A = 64°38'44" R = 50.00' L = 56.41' LC = 53.47' N 68°14'00" E	(19) A = 61°19'49" R = 50.00' L = 53.52' LC = 51.00' S 80°16'44" W	(20) A = 56°16'07" R = 30.00' L = 49.10' LC = 47.15' N 53°33'15" W
(21) A = 78°12'10" R = 50.00' L = 69.12' LC = 63.74' S 58°42'57" W	(22) A = 48°59'08" R = 30.00' L = 25.65' LC = 24.88' N 43°36'06" E	(23) A = 21°4'48" R = 294.31' L = 11.54' LC = 11.54' S 80°16'44" W	(24) A = 19°52'32" R = 294.31' L = 102.10' LC = 101.58' S 80°16'44" W	(25) A = 41°34'23" R = 30.00' L = 21.77' LC = 21.29' N 53°33'15" W
(26) A = 18°25'37" R = 30.00' L = 9.65' LC = 9.61' N 39°08'37" W	(27) A = 68°39'31" R = 50.00' L = 75.62' LC = 68.62' S 73°15'34" E	(28) A = 66°07'20" R = 50.00' L = 58.11' LC = 54.55' N 30°21'01" E	(29) A = 66°34'59" R = 50.00' L = 58.11' LC = 54.89' N 35°00'05" W	(30) A = 20°38'10" R = 50.00' L = 18.01' LC = 17.91' N 79°36'43" W
(31) A = 50°45'14" R = 25.58' L = 30.00' LC = 25.71' N 25°35'37" E				

CENTERLINE CURVE DATA

(A) A = 27°57'05" R = 527.52' L = 254.42' LC = 251.50' S 75°27'47" W	(B) A = 28°43'08" R = 521.52' L = 261.41' LC = 258.68' S 75°50'49" W	(C) A = 22°07'20" R = 324.31' L = 125.22' LC = 124.44' T = 63.40'
---	---	--

Legend

- Set Nail In Curb
- ⊙ Set 5/8" Rebar (24" long) & Cap w/ Fencepost
- Set Hub & Tack
- ⊙ Monument to be set
- (Rad.) Radial line
- (N/R) Non-Radial line
- (D.C.S.) Davis County Surveyor

NOTE:

10' Public Utility and Drainage Easements each side of Property line as indicated by dashed lines, except as otherwise shown.

BUILDING SETBACK REQUIREMENTS

- Minimum side yard = 8.0'
- Other side yard required = 10.0'
- Total side yard = 18.0'
- Minimum Rear yard Setback = 25.0'
- Front Yard Setbacks = Even Lots 25.0'
- Odd Lots 30.0'
- Except Lot 167 25.0'
- Minimum Street Setback on Corner = 15.0'

NARRATIVE

This survey and subdivision plat was requested by Mr. Gary M. Wright for purposes of platting sixty (60) residential lots and one (1) common area. Brass Cap Monuments were found at the Northwest corner, the Southwest corner and the Southeast corner of the Northwest 1/4 of Section 13, T4N, R2W. A line bearing S 0°10'11" W between the Northwest corner and the Southwest corner of the Northwest 1/4 was used as the basis of bearing. Lot corners were monumented as depicted on this plat.

GREAT BASIN ENGINEERING NORTH
CONSULTING ENGINEERS AND SURVEYORS



5746 South 1475 East - Suite 200
Ogden, Utah 84403
P.O. Box 150048, Ogden, Utah 84415
Ogden (801)394-4515 Salt Lake City (801)521-0222 Fax (801)392-7544

22nd June 2011

City of Clearfield
55 South State Street
Clearfield City, Utah 84015

Attn: Valerie Claussen, Acting Community Development Director
Proj: **ChrisSam Meadows No. 5 Subdivision**
Subj: Subdivision Improvements Inspection – End of the 1-year “Warranty Period” –
Recommend Release.

Dear Valerie,

I conducted a final on-site inspection with Mr. Jon Bowen of Ivory Homes, for the above referenced subdivision last month.

Since our inspection, Mr. Bowen has directed the repair and replacement of a failed concrete sanitary sewer collar, patching a low spot in the cul-de-sac and repair of a joint between the handicap ramp concrete and the curb & gutter with a flexible mastic material.

All items that were noted in our 19th of November 2010 letter, as needing repair or replacement prior to release, were found completed last month and meeting the City standards.

I herewith recommend approval and warrantee release of the subdivision.

If you have any questions feel free to contact our office.

Sincerely,

CEC, Civil Engineering Consultants, PLLC.



N. Scott Nelson, PE.

City Engineer

Cc. Scott Hodge, Public Works Director
Michael McDonald, City Building Official
Jon Bowen, Ivory Development



CLEARFIELD CITY
55 South State Street
Clearfield, Utah 84015
June 6, 2011

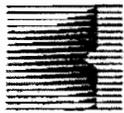
Positive Power LLC. Is pleased to provide a cost for the change order's at the Community Center.

The change orders include:

- *Installing (1) 2 lamp ballast and lamps in the elevator.
- *Installing (19) extra ballasts in the theater to accommodate the dual switching.
- *Installing (2) extra ballasts and lamps to room 61 which on the original audit only showed 4 fixtures in the room.
- *Installing (4) CFL'S in the North side entry recessed lighting.
- *Installing (18) extra ballasts in the North side of the multipurpose room to accommodate the dual switching.
- *Installing (1) extra ballast and lamps to room 45 which on the original audit didn't show the wrap around fixture.

The total cost of this project as described above is \$1,380.00.

We look forward to doing this project for you and feel confident you will be pleased with the quality of our work.



CODALE

ELECTRIC SUPPLY, INC.

5225 W. 2400 S.
 Salt Lake City, UT 84120
 P.O. Box 702070
 Salt Lake City, UT 84170-2070
 Phone (801) 975-7300
 Fax (801) 977-8833

**** Quotation ****

Send P/O To:

Codale Electric Supply, Inc.
 3083 SOUTH 2025 WEST
 OGDEN, UT 84401
 Phone # : 801-624-6100

Bid #: S4289186
 Page #: 1

Bid To:

CITY OF CLEARFIELD
 55 SOUTH STATE STREET
 CLEARFIELD, UT 84015

Phone # : 801-525-2700

Ship To:

CITY OF CLEARFIELD
 55 SOUTH STATE STREET
 CLEARFIELD, UT 84015

JOB: 11-6237

Bid-Date	Expr-Date	Writer	Salesman	Ship Via
06/16/11	06/21/11	Cory Boswell	Andrew Hedrick	507 OGDEN

Qty	Description	Net Prc	Ext Prc
1	METALUX 8TSSF-232-UNV-ICN4P32LWSC-U ENERGY SAVER 4LAMP T8 TANDEM STRIP FLUORESCENT FIXTURE Pn: 3233519	49.152ea	49.15
1	METALUX IC-232-UNV-ADICN2P32LWSC-U Pn: 3262067	33.050ea	33.05
9	LITHONIA TL232-MVOLT-1/4-ADOPL 4LAMP T8 TANDEM STRIP FIXTURE W/ REFLECTOR >.80 BALLAST FACTOR Pn: 3320038	47.750ea	429.75
2	LITHONIA LB232-MVOLT-ADOPL-UMM22 2LAMP T8 WRAP AROUND FLUORESCENT FIXTURE 120/277V <.80 BALLAST FACTOR Pn: 3170549	37.580ea	75.16
50	PHILIPS F32T8/ADV841/ALTO 32WATT FLUOR PREMIUM HIGHER LUMEN LAMP Pn: 435840	1.800ea	90.00

Bid Total			677.11

Bid Amount			677.11

All Sales subject to Codale's Terms and Conditions (T&C's) available at www.codale.com/terms. Price listed on this quotation are subject to change without notice beyond expiration date. Sales Tax is Not included in any Bid. Payment terms are subject to approved credit. Prices listed on this quotation are subject to change without notice beyond expiration date. Prices are exclusive of applicable taxes unless noted.



CLEARFIELD CITY
55 South State Street
Clearfield, Utah 84015
June 20, 2011

Positive Power LLC. Is pleased to provide a cost for the change order's as of June 20th at the Parks Shop, Public Works Shop, and the Mechanics Shop.

The change orders include:

- *Removing (12) fixtures that where not on the audit.
- *Installing (12) fixtures that where not on the audit.
- *Providing proper disposal of the lamps that are in the (12) fixtures.

The total cost of this project as described above is \$1,262.00.

We look forward to doing this project for you and feel confident you will be pleased with the quality of our work.

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # DR/D/2240/P
Mile Post Location: 771.51
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2011 (to be filled in by the last signing party), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the entirety of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Licensee intends to construct a new 12" pvc SDR 35 sanitary sewer line (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee will be using the Pipeline to replace an existing sewer line; and

WHEREAS, Licensee intends to open-cut the Right of Way to install the Pipeline; and

WHEREAS, Licensee is aware that the Right of Way is currently occupied by a Pedestrian Trail; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 "Pipeline" means the 12" pvc SDR 35 sanitary sewer line to be installed by Licensee pursuant to this Agreement and located underneath the surface of the Right of Way at Milepost Number 771.51 of the entirety of the D&RGW Line in Clearfield, Utah. The term "Pipeline" shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 "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.

1.13 "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.

1.14 "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.

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated **April 2011** and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 This is a replacement of an existing pipeline. Due to this the one-time real estate usage charge will be waived.

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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

ARTICLE IV CONSTRUCTION AND MAINTENANCE OF THE PIPELINE

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline “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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

**ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE**

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

**ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE**

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 DR/D/2240/P, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post 771.51 at or near Clearfield, Davis County, Utah"

11.2 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.

**ARTICLE XII
REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an 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 XIV
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).

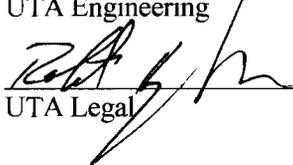
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTAH TRANSIT AUTHORITY



UTA Engineering



UTA Legal

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

EXHIBIT "C"
SPECIAL PROVISIONS

Special Notes for OPEN CUT:

1. OPEN CUT is allowed only when specifically authorized.
2. All soil handling to be dust free. "Meaning strictly dust free"
3. No materials are to be exported. Any and all excess materials must be placed on site as directed in advance by UTA.
4. Aggregate/Soil in ballast section to be segregated and handled separately from embankment soil.
5. When OPEN CUT is allowed, the intent is to restore the soil structure to similar properties and resilience as before being disturbed.
6. Neither "Flowable Fill" nor "Lean Mix" nor any other method is allowed where properties would result that are dissimilar to the original properties.
7. Compaction in the range of 90 to 95% may be adequate. Compaction is to be discussed with UTA at the time of backfill.

Trail Notes

1. Notice to be advertised a week prior to the work that the area will be closed.
2. Licensee to provide an alternative route for trail users to take in order to continue use of the un-closed portions (Directional Detour Signs, etc.).
3. Temporary fencing to be installed to prevent trail users from accessing the construction area.
4. Licensee to restore the trail to the previous condition before the Pipeline was installed (grading, paving, etc.)



CIVIL ENGINEERING
CONSULTANTS, PLLC.
5141 SOUTH 1500 WEST
RIVERDALE, UT 84405
801.866.0550

REVISIONS

NO. DATE BY

DATE:

APRIL 2011

DRAWN:

JLS

CHECKED:

PROJECT / LOCATION:
200 SOUTH ROADWAY IMPROVEMENT
PROJECT FROM 500 WEST TO 1000 WEST STREET
CLEARFIELD CITY, UTAH

TITLE:
PLAN & PROFILE: STA 34+00 - END

CLIENT:

CLEARFIELD CITY

PROJECT NUMBER:

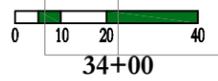
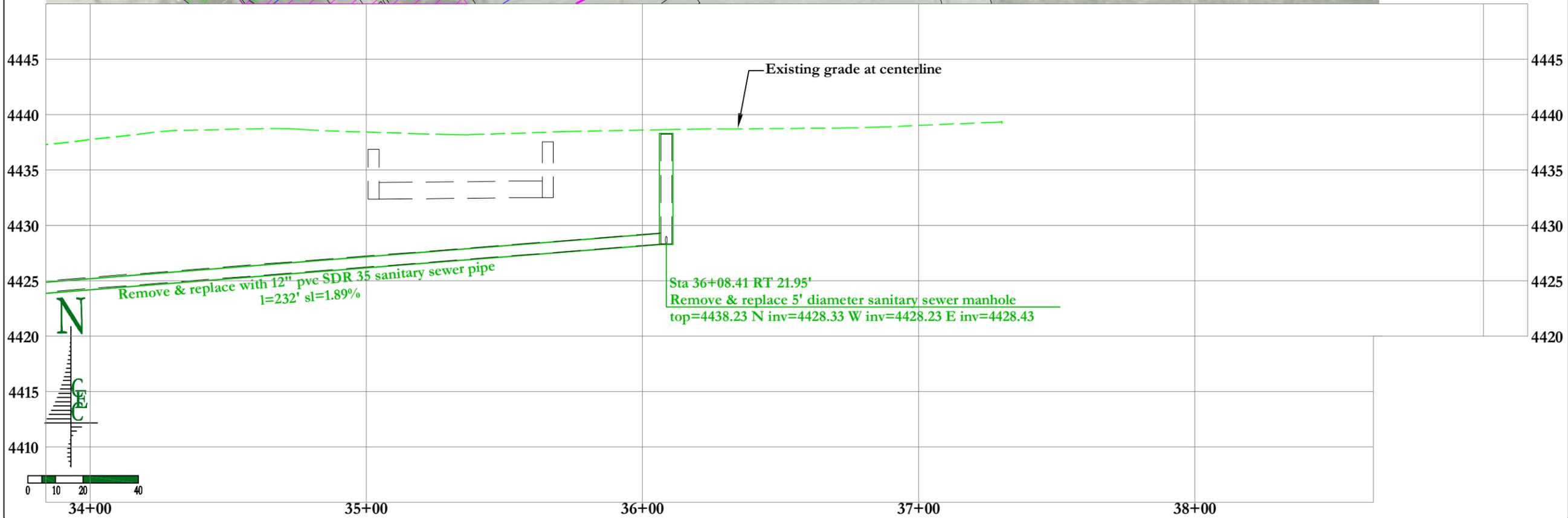
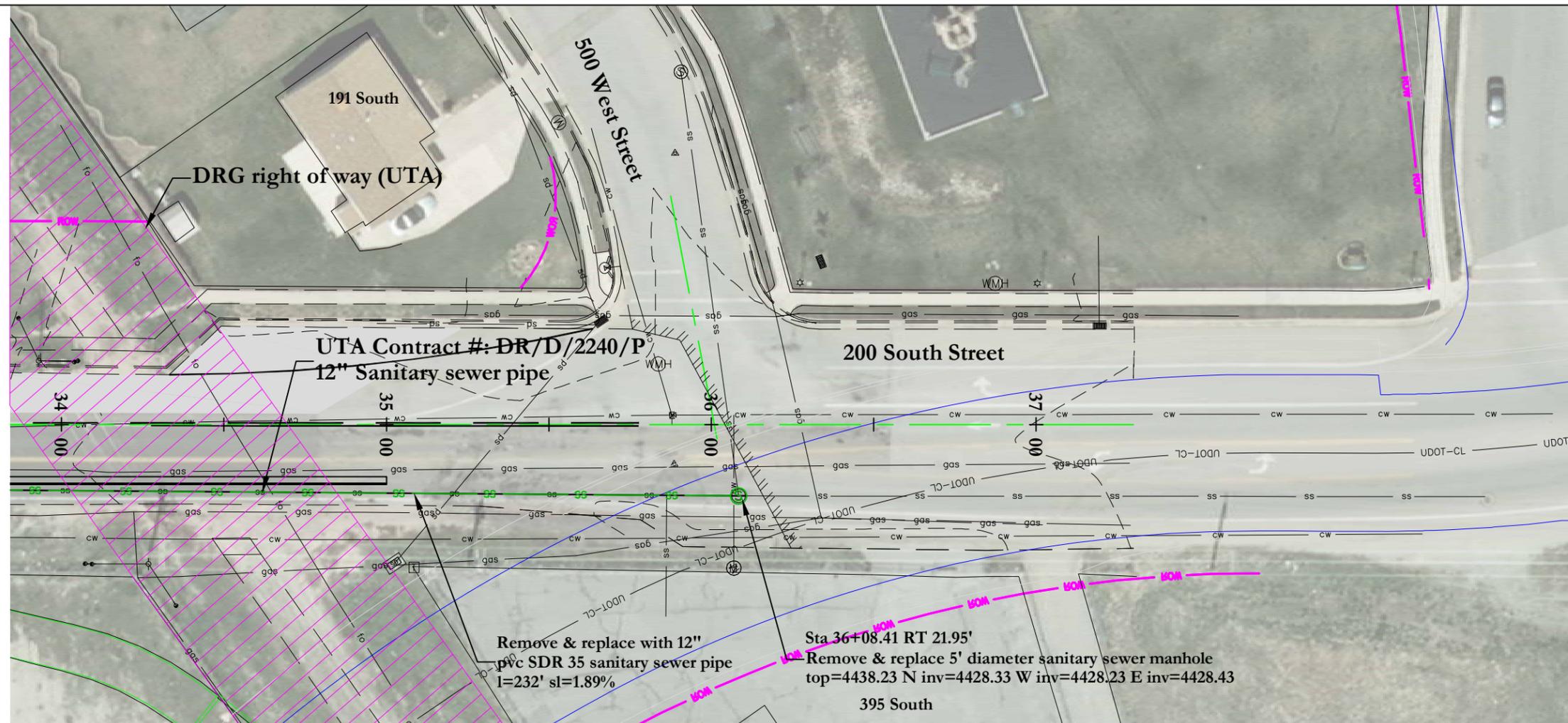
CC.10009

FILE:

~cc10009.dwg

SHEET:

EXHIBIT 3



INTEROFFICE MEMORANDUM

TO: HONORABLE MAYOR AND COUNCIL
FROM: NANCY DEAN, CITY RECORDER
SUBJECT: UTAH TRANSIT AUTHORITY (UTA) AGREEMENTS
DATE: 6/24/2011

The City is managing the relocation of utility lines along 700 South relating to the SR (State Road) 193 Extension project. The Utah Transit Authority (UTA) agreements authorizing the construction, operation and maintenance of the relocated and expanded utility lines have been reviewed by the City Attorney. UTA agreed to the modifications suggested by Brian and the documents provided to the Council include those changes. The city engineers continue to negotiate with UTA in respect to the fee being assessed to Contract Number DR/D/2232/P, which if agreed to by UTA, would modify the agreement from that being presented to the Council at this time. UTA has previously waived the fee for relocated lines while assessing it to any new lines. This particular agreement is a relocated utility line and it is anticipated that UTA will agree to the waiver in this case.

Staff is recommending the Council approve the agreements while authorizing the City Attorney to continue to work with UTA to finalize the fee waiver modification.

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # SO/D/2227/P
Mile Post Location: N26.7
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2011 (to be filled in by the last signing party), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the eastern 30.62' of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Adjacent to the UTA owned property is railroad corridor owned and operated by the Union Pacific Railroad Company;

WHEREAS, Licensee intends to construct a 48" RCP storm drain line (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee will be replacing an existing 36" storm drain line with the Pipeline; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 “Pipeline” means the 48” RCP storm drain line to be installed by Licensee pursuant to this Agreement and located a minimum of 6’ underneath the surface of the Right of Way at Milepost Number N26.7 of the eastern 30.62’ of the Commuter Rail North Line in Clearfield, Utah. The term “Pipeline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 "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.

1.13 "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.

1.14 "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.

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 4-19-2011 and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 This is a relocation of an existing pipeline due to Utah Department of Transportation's SR-193 project. Due to this the one-time real estate usage charge will be waived.

2.4 This License Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

**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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

**ARTICLE IV
CONSTRUCTION AND MAINTENANCE OF THE PIPELINE**

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any

Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline “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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

**ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE**

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

**ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE**

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 **SO/D/2227/P**, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post N26.7 at or near Clearfield, Davis County, Utah"

11.2 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.

ARTICLE XII REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an authorized representative 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 XIV
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).

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

TW JONES
UTA Engineering
Robert Jones
UTA Legal

UTAH TRANSIT AUTHORITY

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

EXHIBIT "C"
SPECIAL PROVISIONS

Licensee or Licensee's contractor must first obtain a Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Track Access Permit is Sheldon Shaw at (801) 514 – 0672.

Special Inspection Provisions:

- Licensee to have a certified inspector on-site to observe the track during the boring
 - Special Inspection shall consist of checking the elevation of the top of rail at a regular interval.
- UTA Flagger/Watchmen to be on site during all construction/boring underneath UTA Frontrunner Line.
 - He will observe and monitor special inspection.
- Special inspection shall occur approximately every 15 minutes, between trains as coordinated by UTA's flagger/watchman.
- The flagger/watchman shall have the right to stop the boring work if, in his sole discretion, he deems it reasonably necessary for safety and/or to protect UTA's rail transit operations or property

Note: Track Access Permits will not be issued without first having an executed License Agreement with UTA and UTA having received proof of insurance as provided in the License Agreement.

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # DR/D/2232/P
Mile Post Location: 770.82
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2011 (to be filled in by the last signing party), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the entirety of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Licensee intends to construct a 42" rcp Class III Storm Drain Line (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee intends to open-cut the Right of Way to install the Pipeline; and

WHEREAS, Licensee is aware that the Right of Way is currently occupied by a Pedestrian Trail; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 “Pipeline” means the 42” rcp Class III Storm Drain Line to be installed by Licensee pursuant to this Agreement and located underneath the surface of the Right of Way at Milepost Number 770.82 of the entirety of the D&RGW Line in Clearfield, Utah. The term “Pipeline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 "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.

1.13 "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.

1.14 "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.

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated **May 2011** and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Upon the execution of this Agreement, Licensee agrees to pay UTA a(n) one time real estate usage charge of **\$2,336.00** payable on or before the execution date of this agreement.

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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

ARTICLE IV CONSTRUCTION AND MAINTENANCE OF THE PIPELINE

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline "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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

ARTICLE VI LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the

breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 DR/D/2232/P, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post 770.82 at or near Clearfield, Davis County, Utah"

11.2 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.

ARTICLE XII REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an 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.

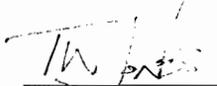
**ARTICLE XIV
SPECIAL PROVISIONS**

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).

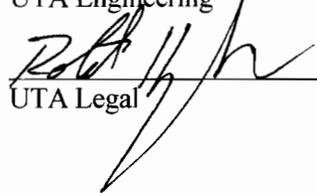
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTAH TRANSIT AUTHORITY



UTA Engineering



UTA Legal

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

EXHIBIT "C"
SPECIAL PROVISIONS

Special Notes for OPEN CUT:

1. OPEN CUT is allowed only when specifically authorized.
2. All soil handling to be dust free. "Meaning strictly dust free"
3. No materials are to be exported. Any and all excess materials must be placed on site as directed in advance by UTA.
4. Aggregate/Soil in ballast section to be segregated and handled separately from embankment soil.
5. When OPEN CUT is allowed, the intent is to restore the soil structure to similar properties and resilience as before being disturbed.
6. Neither "Flowable Fill" nor "Lean Mix" nor any other method is allowed where properties would result that are dissimilar to the original properties.
7. Compaction in the range of 90 to 95% may be adequate. Compaction is to be discussed with UTA at the time of backfill.

Trail Notes

1. Notice to be advertised a week prior to the work that the area will be closed.
2. Licensee to provide an alternative route for trail users to take in order to continue use of the un-closed portions (Directional Detour Signs, etc.).
3. Temporary fencing to be installed to prevent trail users from accessing the construction area.
4. Licensee to restore the trail to the previous condition before the Pipeline was installed (grading, paving, etc.)

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # SO/D/2220/P
Mile Post Location: N26.7
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2011 (to be dated after the final signature), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the eastern 30.62' of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Adjacent to the UTA owned property is railroad corridor owned and operated by the Union Pacific Railroad Company;

WHEREAS, Licensee intends to construct a 12" sanitary sewer PVC line, inside a 24" steel casing (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee will be replacing an existing 12" sanitary sewer line with the Pipeline; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 “Pipeline” means the 12” sanitary sewer PVC line, inside a 24” steel casing to be installed by Licensee pursuant to this Agreement and located a minimum of 6’ underneath the surface of the Right of Way at Milepost Number N26.7 of the eastern 30.62’ of the Commuter Rail North Line in Clearfield, Utah. The term “Pipeline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 “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.

1.13 “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.

1.14 “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.

1.15 “Work Window” means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 4-19-2011 and marked Exhibit “A” (Exhibit “A” is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 This is a relocation of an existing pipeline due to Utah Department of Transportation’s SR-193 project. Due to this the one-time real estate usage charge will be waived.

2.4 This License Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

**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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

**ARTICLE IV
CONSTRUCTION AND MAINTENANCE OF THE PIPELINE**

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any

Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline “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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

**ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE**

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

**ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE**

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 **SO/D/2220/P**, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post N26.7 at or near Clearfield, Davis County, Utah"

11.2 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.

ARTICLE XII REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an 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.

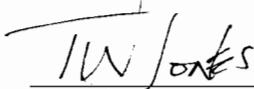
**ARTICLE XIV
SPECIAL PROVISIONS**

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).

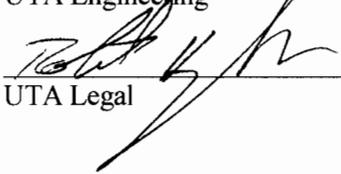
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTAH TRANSIT AUTHORITY



UTA Engineering



UTA Legal

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

EXHIBIT "C"
SPECIAL PROVISIONS

Licensee or Licensee's contractor must first obtain a Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Track Access Permit is Sheldon Shaw at (801) 514 – 0672.

Special Inspection Provisions:

- Licensee to have a certified inspector on-site to observe the track during the boring
 - Special Inspection shall consist of checking the elevation of the top of rail at a regular interval.
- UTA Flagger/Watchmen to be on site during all construction/boring underneath UTA Frontrunner Line.
 - He will observe and monitor special inspection.
- Special inspection shall occur approximately every 15 minutes, between trains as coordinated by UTA's flagger/watchman.
- The flagger/watchman shall have the right to stop the boring work if, in his sole discretion, he deems it reasonably necessary for safety and/or to protect UTA's rail transit operations or property

Note: Track Access Permits will not be issued without first having an executed License Agreement with UTA and UTA having received proof of insurance as provided in the License Agreement.

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # SO/D/2219/P
Mile Post Location: N26.7
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2011 (to be dated after the final signature), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the eastern 30.62' of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Adjacent to the UTA owned property is railroad corridor owned and operated by the Union Pacific Railroad Company;

WHEREAS, Licensee intends to construct a 8" C-900 DR-18 culinary water line installed in a 20" steel casing (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 “Pipeline” means the 8” C-900 DR-18 culinary water line installed in a 20” steel casing to be installed by Licensee pursuant to this Agreement and located a minimum of 6’ underneath the surface of the Right of Way at Milepost Number N26.7 of the eastern 30.62’ of the Commuter Rail North Line in Clearfield, Utah. The term “Pipeline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 "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.

1.13 "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.

1.14 "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.

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 4-19-2011 and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Upon the execution of this Agreement, Licensee agrees to pay UTA a(n) one time real estate usage charge of \$723.00 payable on or before the execution date of this agreement.

2.4 This License Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

**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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

**ARTICLE IV
CONSTRUCTION AND MAINTENANCE OF THE PIPELINE**

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline "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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

**ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE**

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

**ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE**

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 **SO/D/2219/P**, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post N26.7 at or near Clearfield, Davis County, Utah"

11.2 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.

**ARTICLE XII
REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an 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 XIV
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).

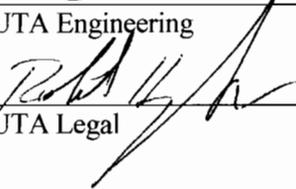
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTAH TRANSIT AUTHORITY



UTA Engineering



UTA Legal

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

**EXHIBIT “C”
SPECIAL PROVISIONS**

Licensee or Licensee’s contractor must first obtain a Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Track Access Permit is Sheldon Shaw at (801) 514 – 0672.

Special Inspection Provisions:

- Licensee to have a certified inspector on-site to observe the track during the boring
 - Special Inspection shall consist of checking the elevation of the top of rail at a regular interval.
- UTA Flagger/Watchmen to be on site during all construction/boring underneath UTA Frontrunner Line.
 - He will observe and monitor special inspection.
- Special inspection shall occur approximately every 15 minutes, between trains as coordinated by UTA’s flagger/watchman.
- The flagger/watchman shall have the right to stop the boring work if, in his sole discretion, he deems it reasonably necessary for safety and/or to protect UTA’s rail transit operations or property

Note: Track Access Permits will not be issued without first having an executed License Agreement with UTA and UTA having received proof of insurance as provided in the License Agreement.

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # SO/D/2221/P
Mile Post Location: N26.7
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2011 (to be dated after the final signature), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the eastern 30.62' of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Adjacent to the UTA owned property is railroad corridor owned and operated by the Union Pacific Railroad Company;

WHEREAS, Licensee intends to construct a 12" C-900 DR-18 culinary water line, inside a 24" steel casing (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee will be replacing an existing 12" culinary sewer line with the Pipeline; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 “Pipeline” means the 12” C-900 DR-18 culinary water line, inside a 24” steel casing to be installed by Licensee pursuant to this Agreement and located a minimum of 6’ underneath the surface of the Right of Way at Milepost Number N26.7 of the eastern 30.62’ of the Commuter Rail North Line in Clearfield, Utah. The term “Pipeline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 "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.

1.13 "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.

1.14 "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.

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 4-19-2011 and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 This is a relocation of an existing pipeline due to Utah Department of Transportation's SR-193 project. Due to this the one-time real estate usage charge will be waived.

2.4 This License Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

**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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

**ARTICLE IV
CONSTRUCTION AND MAINTENANCE OF THE PIPELINE**

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline "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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

**ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE**

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

**ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE**

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 **SO/D/2221/P**, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post N26.7 at or near Clearfield, Davis County, Utah"

11.2 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.

ARTICLE XII REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an 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 XIV
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).

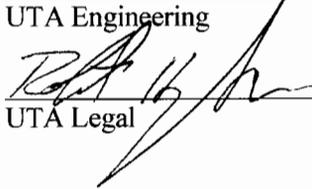
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTAH TRANSIT AUTHORITY



UTA Engineering



UTA Legal

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

**EXHIBIT “C”
SPECIAL PROVISIONS**

Licensee or Licensee’s contractor must first obtain a Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Track Access Permit is Sheldon Shaw at (801) 514 – 0672.

Special Inspection Provisions:

- Licensee to have a certified inspector on-site to observe the track during the boring
 - Special Inspection shall consist of checking the elevation of the top of rail at a regular interval.
- UTA Flagger/Watchmen to be on site during all construction/boring underneath UTA Frontrunner Line.
 - He will observe and monitor special inspection.
- Special inspection shall occur approximately every 15 minutes, between trains as coordinated by UTA’s flagger/watchman.
- The flagger/watchman shall have the right to stop the boring work if, in his sole discretion, he deems it reasonably necessary for safety and/or to protect UTA’s rail transit operations or property

Note: Track Access Permits will not be issued without first having an executed License Agreement with UTA and UTA having received proof of insurance as provided in the License Agreement.

PIPELINE CROSSING AGREEMENT
(Interlocal Municipal Pipeline Form)

UTA Contract # SO/D/2218/P
Mile Post Location: N26.7
Clearfield, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2011 (to be dated after the final signature), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Clearfield City Corporation, an interlocal agency organized under Utah Code Ann. § 11-13-101 et seq. (hereinafter "Licensee").

RECITALS

WHEREAS, UTA is the owner of the eastern 30.62' of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Adjacent to the UTA owned property is railroad corridor owned and operated by the Union Pacific Railroad Company;

WHEREAS, Licensee intends to construct a 8" D-3034 SDR 35 pvc sanitary sewer line installed in a 20" steel casing (the "Pipeline") which will cross underneath the Right of Way; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Pipeline.

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 Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Pipeline (or any improvements to the Pipeline) in or otherwise materially affecting the Right of Way.

1.2 "Emergency Access Manager" means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at (801) 231-7679. 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 (23) and (24)) 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 Sections 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 Pipeline (or any improvements to the Pipeline) 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 “Pipeline” means the 8” D-3034 SDR 35 pvc sanitary sewer line installed in a 20” steel casing to be installed by Licensee pursuant to this Agreement and located a minimum of 6’ underneath the surface of the Right of Way at Milepost Number N26.7 of the eastern 30.62’ of the Commuter Rail North Line in Clearfield, Utah. The term “Pipeline” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Pipeline 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).

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

1.12 "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.

1.13 "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.

1.14 "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.

1.15 "Work Window" means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Pipeline 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 expense 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 Pipeline in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 4-19-2011 and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Upon the execution of this Agreement, Licensee agrees to pay UTA a(n) one time real estate usage charge of \$723.00 payable on or before the execution date of this agreement.

2.4 This License Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

**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 the Freight Operator. Licensee must notify the Emergency Access Manager of the emergency access and the work being performed prior to entering the Right of Way.

**ARTICLE IV
CONSTRUCTION AND MAINTENANCE OF THE PIPELINE**

4.1 All Construction and Maintenance with respect to the Pipeline 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 Pipeline shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. UTA may impose requirements in addition to or more stringent than industry or legal standards 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 Pipeline 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 otherwise materially affecting the Right of Way in connection with the Pipeline to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Pipeline, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. 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 Pipeline shall be placed at the depth acceptable to UTA and shall not interfere with any Track Improvements. The Pipeline shall maintain 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.

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 Pipeline, 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 Pipeline "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 Pipeline. 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 Pipeline; 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 Pipeline. Except to the extent that liability is assumed by UTA as set forth in Sections 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 Pipeline 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 therefore.

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 Pipeline 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 Pipeline in compliance with all applicable environmental laws. The Pipeline shall be sleeved. Licensee shall take all suitable precautions to prevent any leakage or other interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If for any reason the Construction of the Pipeline 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 Pipeline, 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 At the request of UTA, Licensee shall install markers identifying the location of the Pipeline and related appurtenances at the Right of Way boundaries (where the Pipeline 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 Pipeline, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the Pipeline. 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.

4.8 Upon completion of any Construction or Maintenance relating to the Pipeline, 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.

4.9 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"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

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

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, 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 30 days, reimburse UTA for the reasonable costs thereby incurred.

**ARTICLE VI
LICENSEE TO BEAR ALL COSTS RELATED TO PIPELINE**

Except as otherwise set forth in the Master Interlocal Agreement, or in Sections 7.1 and 8.1 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 Pipeline.

**ARTICLE VII
SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF PIPELINE**

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 Pipeline 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 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 Pipeline as UTA may reasonably designate. To the extent that the modification or relocation of the Pipeline 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 Pipeline is necessitated because the Pipeline is conflicting with or causing interference with any UTA or Third Person Track Improvements or Utilities existing prior to the Construction of the Pipeline, then Licensee shall be responsible for the costs of such relocation. All the terms, conditions and stipulations herein expressed with reference to the Pipeline in the location described herein shall, so far as the Pipeline remains on UTA property, apply to the Pipeline 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 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 Pipeline; (b) negligence on the part of Licensee, or any employees, principals, contractors or agents of Licensee, in the use or operation of the Pipeline; 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 Pipeline 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 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 Pipeline, and for all labor performed with respect to the Pipeline. 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 Pipeline 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 Pipeline 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 Pipeline in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 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 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Pipeline 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 Licensee shall, at its sole cost and expense, obtain 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 **SO/D/2218/P**, issued by its insurance carrier confirming the existence of such insurance and, unless otherwise approved by UTA, 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 pipeline crossing located on railroad right of way at Mile Post N26.7 at or near Clearfield, Davis County, Utah"

11.2 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.

ARTICLE XII REMOVAL OF PIPELINE 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 Pipeline 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 30 days after receipt of the bill therefore. In the event UTA removes the Pipeline 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 officers, employees, representatives, 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 Manager
P.O. Box 30810
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority
Attn: General Counsel
P.O. Box 30810
Salt Lake City, UT 84130-0810

If to Licensee:

Clearfield City Corporation
Attn: Don Wood, Mayor
55 S. State Street
Clearfield City, UT 84015

With a Copy to:

Clearfield City Corporation
Attn: City Attorney
55 S. State Street, Suite 332
Clearfield City, UT 84015

**ARTICLE XVII
NO IMPLIED WAIVER**

The waiver by either party of the breach by the other party of any condition, covenant or agreement herein contained shall not impair any future ability of the non-breaching party 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 an 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 XIV
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).

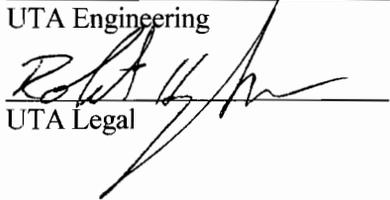
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

UTAH TRANSIT AUTHORITY



UTA Engineering



UTA Legal

By: _____
Paul Edwards
Senior Program Manager

By: _____
Troy Hamilton
Manager of Property Administration

By: _____
Mailia Lauto'o
Property Administrator

LICENSEE

By: _____
Name:
Title:

EXHIBIT "A"
DESIGN PLANS

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

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. General liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. 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 Pipeline is in all places more than 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.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million 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 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.

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's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

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.

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.

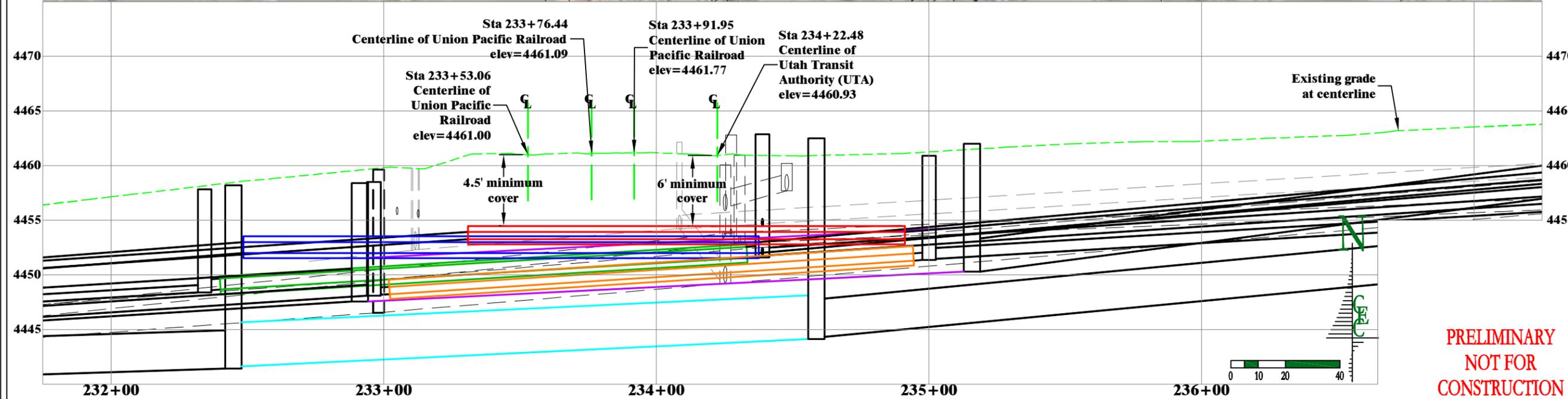
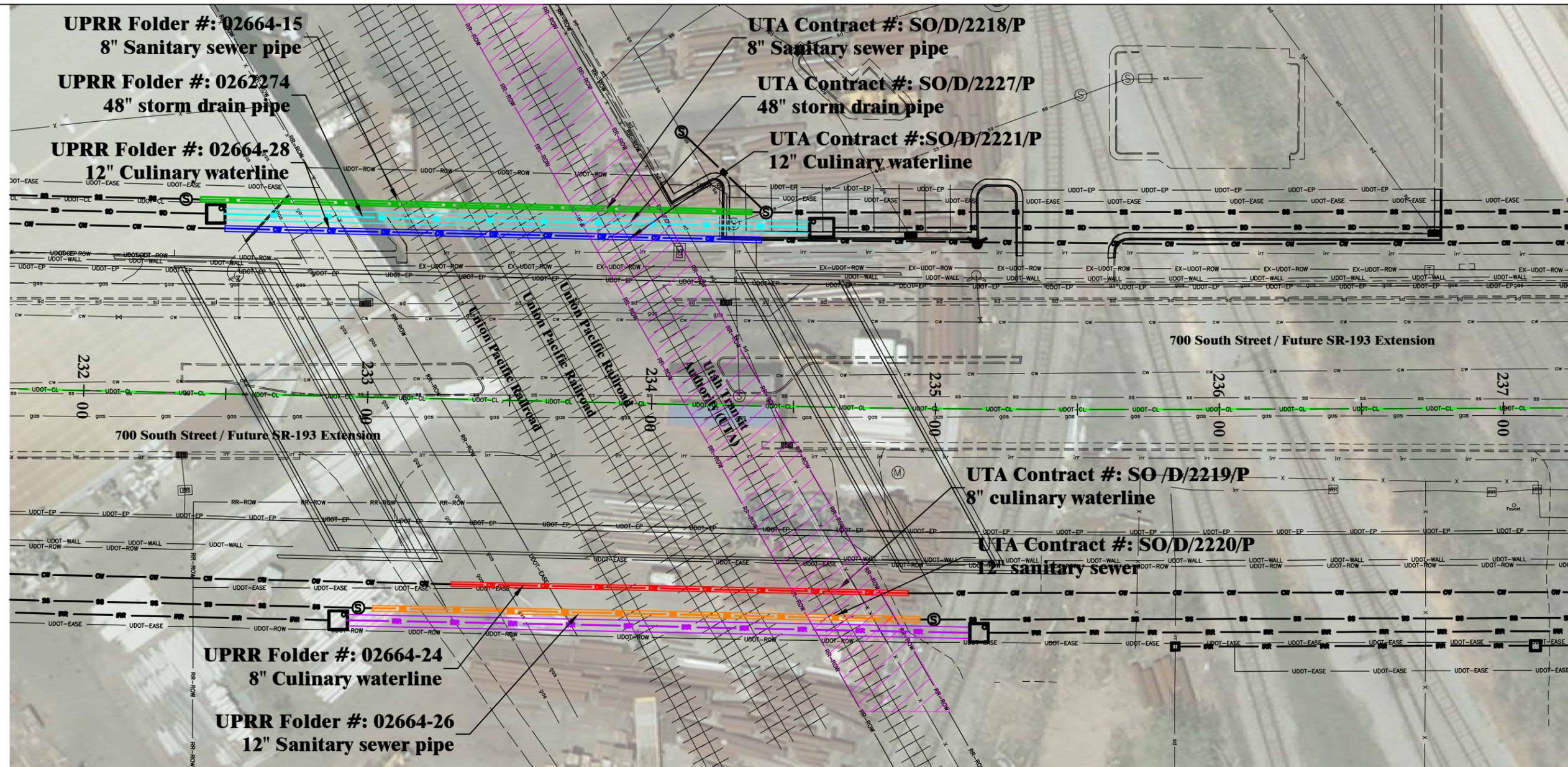
EXHIBIT "C"
SPECIAL PROVISIONS

Licensee or Licensee's contractor must first obtain a Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Track Access Permit is Sheldon Shaw at (801) 514 – 0672.

Special Inspection Provisions:

- Licensee to have a certified inspector on-site to observe the track during the boring
 - Special Inspection shall consist of checking the elevation of the top of rail at a regular interval.
- UTA Flagger/Watchmen to be on site during all construction/boring underneath UTA Frontrunner Line.
 - He will observe and monitor special inspection.
- Special inspection shall occur approximately every 15 minutes, between trains as coordinated by UTA's flagger/watchman.
- The flagger/watchman shall have the right to stop the boring work if, in his sole discretion, he deems it reasonably necessary for safety and/or to protect UTA's rail transit operations or property

Note: Track Access Permits will not be issued without first having an executed License Agreement with UTA and UTA having received proof of insurance as provided in the License Agreement.



**PRELIMINARY
NOT FOR
CONSTRUCTION**



CIVIL ENGINEERING
CONSULTANTS, PLLC.
5141 SOUTH 1500 WEST
RIVERDALE, UT 84405
801.866.0550

NO.	DATE	BY	REVISIONS

DATE: APRIL 2011
DRAWN: JLS
CHECKED: NSN / RTF

PROJECT / LOCATION: 700 SOUTH STREET
UTILITIES RELOCATION FOR UDOT BRIDGE AND
ROADWAY WIDENING PROJECT
CLEARFIELD CITY, UTAH
TITLE: SR-193 PLAN & PROFILE
UTA CONTRACTS

CLIENT: CLEARFIELD CITY
PROJECT NUMBER: CC.10007
FILE: ~cc10007
UTA UPRR .dwg
SHEET: EXHIBIT 1

INTEROFFICE MEMORANDUM

TO: HONORABLE MAYOR AND COUNCIL
FROM: NANCY DEAN, CITY RECORDER
SUBJECT: UNION PACIFIC (UP) RAILROAD AGREEMENTS
DATE: 6/24/2011

The City is managing the relocation of utility lines along 700 South relating to the SR (State Road) 193 Extension project. Time is of the essence on the project in order to take advantage of this year's construction season. Brian Brower, City Attorney, has been working closely with the city engineers and the Union Pacific (UP) to prepare the necessary agreements that will authorize the construction, operation and maintenance of the relocated and expanded utility lines. There are five utility lines being affected by the relocation or expansion and each line has a separate agreement. The agreements are substantially identical except for reference to specific utility lines.

Brian reviewed the agreements and submitted three modifications, all found in Exhibit B that should be implemented on each agreement.

- 1) Delete "or desirable" from Section 5, paragraph A (last two words of the paragraph) of Exhibit B.
- 2) Delete last four lines from Section 10, paragraph B6 (beginning with "...as determined..." through to the end of that sentence of Exhibit B.
- 3) In Section 13, paragraph C, of Exhibit B, change the termination notice period from "thirty (30) days" to "ninety (90) days".

These very same changes were previously approved by UP for our last Railroad Pipeline Crossing Agreement which was entered into in October of 2009 for the City's culinary water line project on 300 North but UP is currently unable to identify the time frame that will be needed to authorize the changes. The project cannot be bid until the agreements have been signed. Brian is willing to remove the request for modification if it becomes a hindrance to moving the project forward so the delays do not cut into the construction season. Staff is asking the Council to approve the agreements with the stipulation that the City Attorney be authorized to finish the negotiations for the three modifications with UP as quickly as possible.



April 14, 2011
Folder: 02664-15

DARYL BALLANTYNE
UTAH DEPARTMENT OF TRANSPORTATION
166 WEST SOUTHWELL STREET
OGDEN UT 84404

Re: Proposed encased 8.4 Inch sanitary sewer Pipeline Crossing of Railroad Property at Mile Post 808.6 on the Salt Lake Subdivision/Branch at or near Clearfield, Davis County, Utah

Daryl Ballantyne:

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return in immediately.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company.

- Payment in the amount of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 02664-15 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8553.

Sincerely,

Connie Alvis
Manager - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 808.6, Salt Lake Subdivision/Branch
Location: Clearfield, Davis County, Utah

THIS AGREEMENT (“Agreement”) is made and entered into as of April 14, 2011, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CLEARFIELD CITY CORPORATION**, to be addressed at 55 South State Street, Clearfield, Utah 84015 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one encased 8.4 inch pipeline for transporting and conveying sanitary sewer only

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 10, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying sanitary sewer, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

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

UNION PACIFIC RAILROAD COMPANY

CLEARFIELD CITY CORPORATION

By: _____
 Manager - Contracts

By: _____

Name Printed: _____

Title: _____

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

Jeff Gale
MTM UPRR CO.
1228 W. 1550 S
Woods Cross, UT 84087
Phone: 801.212.4005
Cell: 801.557.4410

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other

special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary, ~~or desirable~~.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. 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 telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and 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 the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than ~~thirty (30)~~ ^{ninety (90)} days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

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.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will 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 Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

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

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rinsure/insurovr.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001

Fax: (816) 556-4362

Email: william.j.smith@marsh.com

Email: cindy.long@marsh.com

***PLEASE NOTE - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.**

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622



April 14, 2011
Folder: 02664-28

KRISTI NYE
UTAH DEPARTMENT OF TRANSPORTATION
166 WEST SOUTHWELL STREET
OGDEN UT 84404

Re: Proposed 13.2 Inch encased culinary water Pipeline Crossing of Railroad Property at Mile Post 808.6 on the Salt Lake Subdivision/Branch at or near Clearfield, Davis County, Utah

Kristi Nye:

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return immediately.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company.

- Payment in the amount of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 02664-28 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8553.

Sincerely,

Connie Alvis
Manager - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 808.6, Salt Lake Subdivision/Branch
Location: Clearfield, Davis County, Utah

THIS AGREEMENT (“Agreement”) is made and entered into as of April 14, 2011, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CLEARFIELD CITY CORPORATION**, to be addressed at 55 South State Street, Clearfield, Utah 84015 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 13.2 inch encased pipeline for transporting and conveying culinary water only

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 10, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying culinary water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

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

UNION PACIFIC RAILROAD COMPANY

CLEARFIELD CITY CORPORATION

By: _____
 Manager - Contracts

By: _____
Name Printed: _____
Title: _____

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other

special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. 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 telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and 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 the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO,**

RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

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.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will 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 Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D **SAFETY STANDARDS**

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

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

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rrinsure/insurovr.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001

Fax: (816) 556-4362

Email: william.j.smith@marsh.com

Email: cindy.long@marsh.com

*PLEASE NOTE - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622



April 14, 2011
Folder: 02664-24

KRISTI NYE
UTAH DEPARTMENT OF TRANSPORTATION
166 WEST SOUTHWELL STREET
OGDEN UT 84404

Re: Proposed 9.05 Inche encased culinary water Pipeline Crossing of Railroad Property at Mile Post 808.6 on the Salt Lake Subdivision/Branch at or near Clearfield, Davis County, Utah

Kristi Nye:

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return immediately.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company.

- Payment in the amount of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 02664-24 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8553.

Sincerely,

Connie Alvis
Manager - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 808.6, Salt Lake Subdivision/Branch
Location: Clearfield, Davis County, Utah

THIS AGREEMENT (“Agreement”) is made and entered into as of April 14, 2011, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CLEARFIELD CITY CORPORATION**, to be addressed at 55 South State Street, Clearfield, Utah 84404 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 9.05 inch encased pipeline for transporting and conveying culinary water only

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 10, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying culinary water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

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

UNION PACIFIC RAILROAD COMPANY

CLEARFIELD CITY CORPORATION

By: _____
 Manager - Contracts

By: _____
Name Printed: _____
Title: _____

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):
 - Jeff Gale
 - MTM UPRR CO.
 - 1228 W. 1550 S
 - Woods Cross, UT 84087
 - Phone: 801.212.4005
 - Cell: 801.557.4410
- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other



special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. 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 telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and 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 the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO,**

RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

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.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will 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 Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

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

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rrinsure/insurovr.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001

Fax: (816) 556-4362

Email: william.j.smith@marsh.com

Email: cindy.long@marsh.com

***PLEASE NOTE** - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622



April 14, 2011
Folder: 02664-26

KRISTI NYE
UTAH DEPARTMENT OF TRANSPORTATION
166 WEST SOUTHWELL STREET
OGDEN UT 84404

Re: Proposed 12.5 Inch encased sanitary sewer Pipeline Crossing of Railroad Property at Mile Post 808.6 on the Salt Lake Subdivision/Branch at or near Clearfield, Davis County, Utah

Kristi Nye:

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return immediately.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company.

- Payment in the amount of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 02664-26 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8553.

Sincerely,

Connie Alvis
Manager - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 808.6, Salt Lake Subdivision/Branch
Location: Clearfield, Davis County, Utah

THIS AGREEMENT (“Agreement”) is made and entered into as of April 14, 2011, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CLEARFIELD CITY CORPORATION**, to be addressed at 55 South State Street, Clearfield, Utah 84015 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 12.5 inch encased pipeline for transporting and conveying sanitary sewer only

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 10, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying sanitary sewer, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand One Hundred Twenty Dollars (\$4,120.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

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

UNION PACIFIC RAILROAD COMPANY

CLEARFIELD CITY CORPORATION

By: _____
 Manager - Contracts

By: _____
Name Printed: _____
Title: _____

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

JEFFERY D. GALE
MGR TRACK MNTCE
Work Phone: 801/8 212-4005
Fax: 801 212-4049
Cell Phone: 801 557-4410

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other

special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. 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 telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and 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 the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

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.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will 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 Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D **SAFETY STANDARDS**

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

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

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rrinsure/insurovr.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001

Fax: (816) 556-4362

Email: william.j.smith@marsh.com

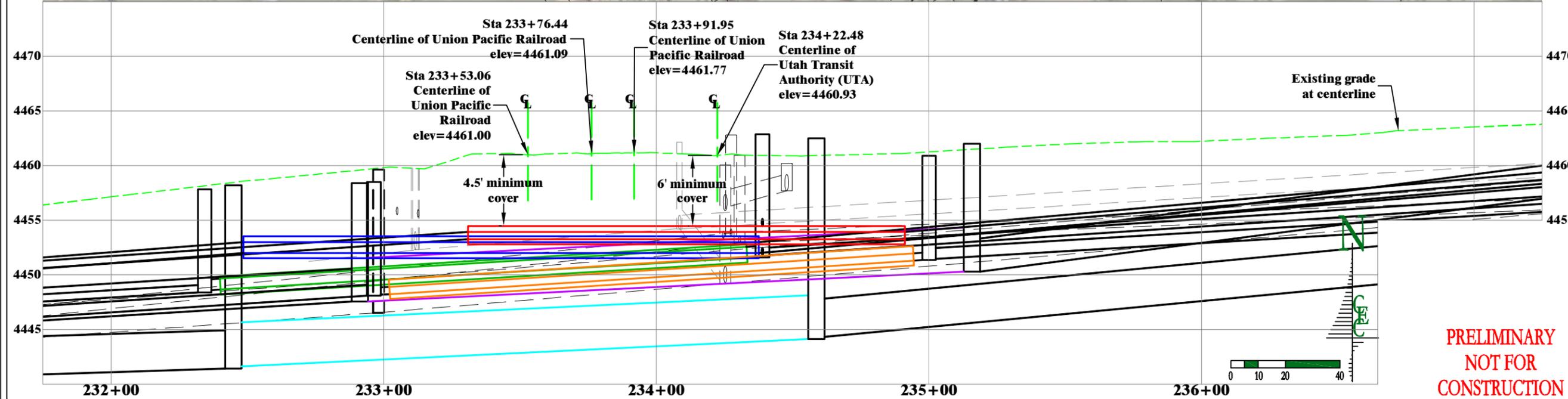
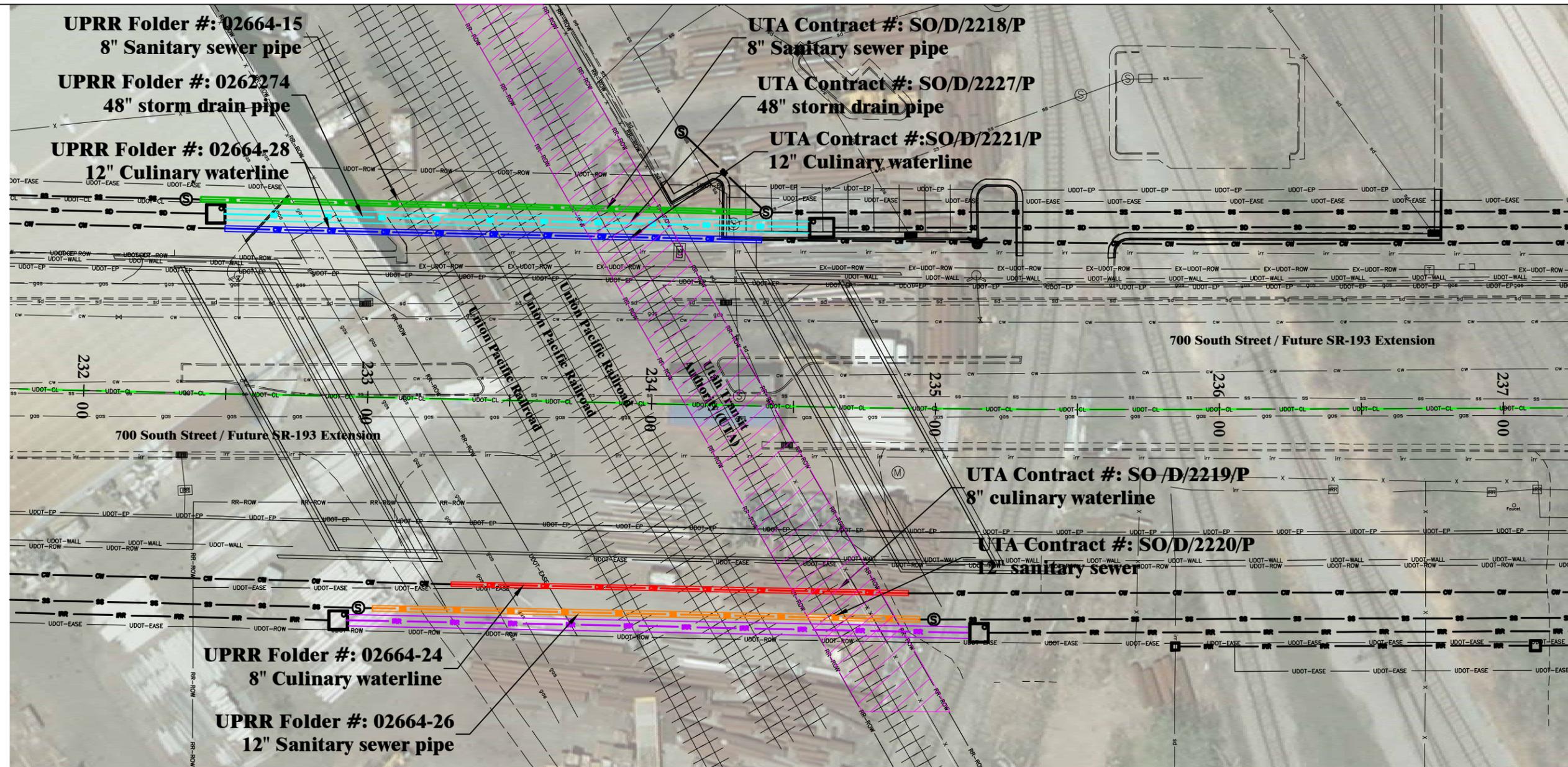
Email: cindy.long@marsh.com

***PLEASE NOTE** - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622



**PRELIMINARY
NOT FOR
CONSTRUCTION**



**CIVIL ENGINEERING
CONSULTANTS, PLLC.**
5141 SOUTH 1500 WEST
RIVERDALE, UT 84405
801.866.0550

REVISIONS

NO. DATE BY

DATE: APRIL 2011
DRAWN: JLS
CHECKED: NSN / RTF

PROJECT / LOCATION: 700 SOUTH STREET
UTILITIES RELOCATION FOR UDOT BRIDGE AND
ROADWAY WIDENING PROJECT
CLEARFIELD CITY, UTAH
TITLE: SR-193 PLAN & PROFILE
UTA CONTRACTS

CLIENT: CLEARFIELD CITY
PROJECT NUMBER: CC.10007
FILE: ~cc10007
UTA UPRR .dwg
SHEET: EXHIBIT 1

CLEARFIELD CITY RESOLUTION 2011R-10

A RESOLUTION AUTHORIZING THE CLEARFIELD CITY POLICE DEPARTMENT TO APPROPRIATE UNCLAIMED CUSTODIAL AND PERSONAL PROPERTY TO PUBLIC INTEREST USE AND DESIGNATING AND APPROVING THE PUBLIC INTEREST USE OF THE PROPERTY

WHEREAS, the Clearfield City Police Department has in its possession certain unclaimed custodial and personal property which, after proper notice, remains unclaimed; and

WHEREAS, Title 77, Chapters 24 and 24a, of the Utah Code allow the City to appropriate such property for public interest use; and

WHEREAS, it is the desire of the Clearfield City Council to authorize such appropriation to public interest use; and

WHEREAS, the Clearfield City Council further desires to designate and approve the public interest use of said property as being donation to a bona fide charity;

NOW, THEREFORE, be it resolved by the Clearfield City Council that:

1. The Clearfield City Police Department is hereby authorized and directed to appropriate the following unclaimed custodial and personal property to public interest use: (See Exhibit A attached).
2. The Clearfield City Council hereby designates that the public interest use of said property in Exhibit A shall be for donation to a bona fide charity.

Passed and adopted by the City Council at its regular meeting on the 28th day of June, 2011.

ATTEST

CLEARFIELD CITY CORPORATION

Nancy R. Dean, City Recorder

Donald W. Wood, Mayor

VOTE OF THE COUNCIL

AYE:

NAY:

**Clearfield Police
Evidence/Property**

Memo

To: Chief Krusi
From: Officer Fiske
Date: 6-7-11
Re: Bicycle Donation

The following is a list of 23 bicycles in the evidence room that has exceeded the 90 day limit regarding found property. Please review and notify me when the city council gives authorization to release the property so I can notify a local charity to pick up. All of the bicycles were checked NCIC and were negative.

<u>Case</u>	<u>Date</u>	<u>Description</u>	<u>Serial Number</u>
10-9149	8-2-10	Razor	GS06070155U
10-9245	8-4-10	Huffy	SNHB208B15604
10-9245	8-4-10	Rallye	00TD035873
10-9245	8-4-10	Pacific	CA7B3755
10-10021	8-20-11	Trek	1766818
10-11016	9-12-10	Rhino	TD2086006148
10-11057	9-13-10	Huffy	BB01D002826
10-12324	10-8-10	Huffy	34612915721200
10-12446	10-10-10	Huffy	W08JC8097
10-12446	10-10-10	Next	37615369
10-12516	10-12-10	Next	1WJDO13318
10-13228	10-27-10	Next	LWHD035202
10-13508	11-2-10	Next	67775888
10-14598	11-27-10	Specialized	P2JF71713
10-14598	11-27-10	Giant	GT4U1249
10-14750	12-1-10	Hyper	DMG07K16
10-14803	12-2-10-	Schwinn	SNFSD07J38184
10-15337	12-14-10	Huffy	HED10A01328
10-15401	12-16-10	Huffy	SNHEJ6059003
10-15933	12-28-10	Roadmaster	SNFSD0937696
11-1089	1-26-11	BMX	AX204098
11-1089	1-26-11	Magna	77166655
11-2739	3-3-11	Trek	C93BK599

CC: Sgt. Bennett

EXHIBIT "A"

RESOLUTION 2011R-12

A RESOLUTION OF THE CLEARFIELD CITY COUNCIL ACTING AS THE GOVERNING AUTHORITY OF THE NORTH DAVIS FIRE DISTRICT ADOPTING AND CERTIFYING A TAX RATE TO THE DAVIS COUNTY CLERK-AUDITOR AND THE BOARD OF COUNTY COMMISSIONERS OF DAVIS COUNTY FOR THE 2011 TAXABLE YEAR

WHEREAS, The Clearfield City Council ("Council") acted as the Governing Authority for the purposes of creating the North Davis Fire District ("District") as a Special Service District in accordance with the Utah Special District Act §17D-1-101 et seq. Utah Annotated, 1953 (the "Act"); and

WHEREAS, the Council created the Administrative Control Board in accordance with the provisions of §17D-1-301 of the Act and delegated to the Administrative Control Board the power to act as the governing authority of the District; and

WHEREAS, the Council cannot delegate to the Administrative Control Board the power to levy a tax on the taxable property of the District and the Council retains the power and duty to levy a tax on the taxable property of the District; and

WHEREAS, the Administrative Control Board desires to establish a certified tax rate for the 2011 taxable year at a rate of 0.001316 per dollar of taxable value on all taxable property within the District for the purpose of funding operating expenses and capital improvements and to provide fire protection, emergency medical and ambulance services and consolidated 911 and emergency dispatch services within the District; and

WHEREAS, the Administrative Control Board has passed and adopted its Resolution No. 2011R-1 on June 9, 2011 requesting that the Council adopt a Resolution certifying a tax rate of 0.001316; and

WHEREAS, a regular meeting was duly noticed and held at which time the Council considered the certified tax rate for the District.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CLEARFIELD CITY COUNCIL OF CLEARFIELD CITY, UTAH, as follows, to wit;

Section One: CERTIFIED TAX RATE ESTABLISHED

That the Certified Tax Rate on all taxable property lying and being within the district boundaries of the North Davis Fire District for the 2011 taxable year be, and the same is hereby fixed, set and established at a rate of 0.001316.

Section Two: CERTIFIED COPIES OF RESOLUTION TO COUNTY OFFICIALS

That the City Recorder of Clearfield City is hereby authorized and directed forthwith to certify a copy of this Resolution and forward and direct one copy each to the Davis County Clerk-Auditor and the Davis County Board of Commissioners of Farmington, Utah.

Section Three: LEVY, COLLECTION AND REMITTANCE OF TAXES

The Clearfield City Council requests that the Board of Commissioners of Davis County include this Certified Tax Rate in its levying process for property taxes for the 2011 taxable years and that such tax be extended and collected in the manner provided by law for the collection of general county taxes and that the proceeds thereof, as collected, be turned over to the treasurer of the North Davis Fire District and that said taxes in all respects be collected and delivered to the North Davis Fire District according to the law

Section Four: EFFECTIVE DATE

This Resolution shall be effective immediately upon passage and adoption.

PASSED AND ADOPTED by the Clearfield City Council of Clearfield City, Davis County, State of Utah this 28th day of June, 2011.

CLEARFIELD CITY CORPORATION

Donald W. Wood
Mayor

ATTEST:

Nancy R. Dean,
City Recorder

VOTE OF THE COUNCIL

AYE:

NAY:

CLEARFIELD CITY RESOLUTION 2011R-11

**A RESOLUTION APPROVING AND ADOPTING
AMENDMENTS TO THE 2010/2011 BUDGET AND
APPROPRIATING FUNDS FOR THE PURPOSES SET FORTH
THEREIN**

WHEREAS, Clearfield City is nearing the end of its budget period which began on July 1, 2010 and ends on June 30, 2011; and

WHEREAS, the City Council has approved some expenditures that were not included in the original budget; and

WHEREAS, Utah state code allows the City Council to make adjustments to the budget; and

WHEREAS, proper notice of the public hearing for this matter was given; and

WHEREAS, Clearfield City has considered and approved those amendments.

NOW, THEREFORE, be it resolved by the Clearfield City Council that the amendments to the Clearfield City budget beginning July 1, 2010 and ending June 30, 2011 as set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference are authorized and approved.

The Mayor is authorized to sign any documents reflecting those amendments.

Passed and adopted at the Clearfield City Council meeting held on June 28, 2011.

Dated this 28th day of June, 2011.

ATTEST

CLEARFIELD CITY CORPORATION

Nancy R. Dean, City Recorder

Donald W. Wood, Mayor

VOTE OF THE COUNCIL

AYE:

NAY:

Reopened budget items June 28, 2011

Department	budget unit	account	Title	Expense budget adjustment	department adjust	Description	Revenue account	Title	Revenue budget adjustment
Mayor & Council	104111	645002	Donation expense	7,540.00	7,540.00	donation expenses	10-381008	fund balance	7540
Community Relations	104512	645002	Donation expense	297.00	297.00	donation expenses	10-381008	fund balance	297
Recreation	104561	645002	Donation expense	359.00	359.00	donation expenses	10-381008	fund balance	359
Aquatics Center	104565	645002	Donation expense	11,525.00	11,525.00	donation expenses	10-381008	fund balance	11,525.00
Interdepartment	104151	663001	contingency	-12,352.00	-12,352.00	UPS batteries			
Building and Plants	104161	674001	equipment replacement	12,352.00	12,352.00	UPS batteries			
Building and Plants	104161	673001	Capital Projects	17,150.00		fire station windows	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	70,071.50		upgrade HVAC systems	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	5,480.65		Lighting upgrade	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	30,617.00	123,319.15	upgrade boiler systems	10-334001	State grants	123,319.15
police	104212	674001	equipment purchase	3,607.00					
Police	104212	621101	subscriptions	3,598.00	7,205.00	SAFG grant	10-334001	State grants	7,205.00
Transfer to other funds	104810	691004	transfer to other funds	7,996.00	7,996.00	200 South Bridge	10-381008	fund balance	7,996.00
Highways	454410	673001	Streets	7,996.00	7,996.00	200 South Bridge	45-381004	transfer from general fund	7,996.00
Roadways	104413	681001	debt service principal	749,366.00		Bridge settlement-payoff 2008 excise bonds	10-369005	One time Misc revenue	
Roadways	104413	624101	claims & damages	25,634.00		Bridge settlement	10-369005	One time Misc revenue	775,000.00
Roadways	104413	681001	debt service principal	44,634.00		Payoff 2008 excise bonds early	10-381008	fund balance	
Roadways	104413	681002	debt service interest	-6,352.00	813,282.00	Payoff 2008 excise bonds early	10-381008	fund balance	38,282.00
Community relations	104512	624206	wireless network	90.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	625002	equipment purchase	900.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	631004	bank professional fees	150.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	661001	miscellaneous supplies	860.00	2,000.00	Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	2,000.00
Business License	104613	624006	postage	75.00		increase postage budget for notices	10-381008	fund balance	75.00
CDBG	104632	611501	pass through	12,500.00		Megan James-Urban Planner	10-381008	fund balance	12,500.00
CDBG	104632	693001	Pass Through	26,850.00	26,850.00	CDBG housing assistance returned	10-381008	fund balance	26,850.00
Sales Tax bond	104711	681002	debt service interest	68,594.00		2003 sales tax bond interest	10-381008	fund balance	
Sales Tax bond	104711	631004	bank professional fees	375.00	68,969.00	2010 sales tax bond trustee fees	10-381008	fund balance	68,969.00
CED administration	204611	631006	professional services	20,100.00		Randy Sant contract			
CED administration	204611	631006	professional services	11,250.00		engineering services			
CED administration	204611	648801	appropriated increase fund balance	-31,350.00	0.00	reduce anticipated fund balance increase			0.00
increase fund balance			Increase fund balance	94,650.00		Tanner Heritage park improvement	10-369005	One time Misc revenue	94,650.00
Fleet	614441	625203	fleet repair	10,750.00		fire district repairs above initial budget	10-345006	consum. Chrges outside service	10,750.00
G.O. Debt Service	314711	631004	bank professional fees	250.00		G.O. Bond trustee fees	31-381008	fund balance	250.00
				<u>1,195,563.15</u>					<u>1,195,563.15</u>

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
7:00 P.M. REGULAR SESSION
June 14, 2011

(This meeting was held following the regularly scheduled City Council Meeting.)

PRESIDING:	Doyle Sprague	Acting Chair
PRESENT:	Marilyn Fryer	Director
	Don Wood	Director
	Bruce Young	Director
EXCUSED:	Kathryn Murray	Chair
	Mark Shepherd	Vice-Chair
STAFF PRESENT:	Adam Lenhard	Interim City Manager
	Brian Brower	City Attorney
	Mike Stenquist	Assistant Police Chief
	Scott Hodge	Public Works Director
	Donna Russell	Acting Community Services Director
	Gary Cohen	Recreation Director
	Curtis Dickson	Recreation Supervisor
	Steve Guy	City Treasurer
	Sean Montierth	IT Manager
	Jessica Hardy	Accounting Technician
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder
EXCUSED:	Bob Wylie	Administrative Services Director
	Greg Krusi	Police Chief
	Valerie Claussen	Acting Community Development Director

VISITORS: Robert & Cheryl Landon, Mike LeBaron, Aimee Matheson, Eve Matheson, Bryan Turner – Davis School District, Joy Brown – American Legion

Mayor Wood moved to appoint Director Sprague as the Acting Chair for the CDRA as Chair Murray and Vice-Chair Shepherd were excused from the meeting, seconded by Director Sprague. All voting AYE.

Acting Chair Sprague called the meeting to order at 7:42 p.m.

PUBLIC HEARING TO RECEIVE COMMENT ON THE CDRA 2011/2012 FISCAL YEAR BUDGET

Utah Code required a public hearing regarding the adoption of the CDRA's upcoming fiscal budget. Staff had prepared and submitted to the Board a balanced tentative budget for the fiscal

year 2011/2012 which would begin July 1, 2011 and end June 30, 2012. The submitted tentative budget was adopted on May 10, 2011 and included all funds.

Acting Chair Sprague declared the Public Hearing open at 7:43 p.m.

Acting Chair Sprague asked for public comment.

There was no public comment.

Director Fryer moved to close the public hearing at 7:44 p.m., seconded by Director Wood. All voting AYE. Chair Murray and Vice Chair Shepherd were not present for the vote.

APPROVAL OF THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) MINUTES FROM THE MAY 10, 2011 WORK SESSION, THE MAY 24, 2011 WORK SESSION AND THE MAY 24, 2011 REGULAR SESSION

Director Wood moved to approve the minutes from the May 10, 2011 work session, the May 24, 2011 work session and the May 24, 2011 regular session Clearfield Community Development and Renewal Agency (CDRA) meeting, as written, seconded by Director Young. All voting AYE. Chair Murray and Vice Chair Sprague were not present for the vote.

SET A PUBLIC HEARING TO RE-OPEN THE 2010/2011 FISCAL YEAR BUDGET

The Board requested the budget be re-opened on a semi-annual basis to add items that have become necessary expenditures but were not budgeted for in the original budget. A public hearing was required to re-open the budget. The staff was recommending the public hearing be set for June 28, 2011.

Director Wood moved to set a public hearing for June 28, 2011, at 7:00 P.M., to re-open the 2010/2011 fiscal year budget, seconded by Director Fryer. All voting AYE. Chair Murray and Vice Chair Shepherd were not present for the vote.

There being no further business to come before the Community Development and Renewal Agency, **Director Wood moved to adjourn as the Community Development and Renewal Agency at 7:46 p.m., seconded by Director Fryer. All voting AYE.** Chair Murray and Vice Chair Shepherd were not present for the vote.

CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
RESOLUTION 2011R-04

A RESOLUTION APPROVING AND ADOPTING A BUDGET FOR
CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
FOR THE PERIOD BEGINNING JULY 1, 2011 AND ENDING JUNE 30, 2012
AND APPROPRIATING FUNDS FOR THE PURPOSES SET FORTH
THEREIN

WHEREAS, a tentative and proposed budget has been prepared and presented to the Board as required by law; and

WHEREAS, a public hearing was advertised as provided by law for Tuesday, June 14, 2011 at 7:00 p.m.; and

WHEREAS, said public hearing was duly held and all persons present to be heard having been heard; and

WHEREAS, the creation of the budget is governed by established financial policies and statements; and

WHEREAS, the Board has duly and fully considered the proposed budget and it now being necessary that a final budget for the period beginning July 1, 2011 and ending June 30, 2012 be passed and adopted for said Clearfield Community Development and Renewal Agency.

NOW, THEREFORE, be it resolved by the Board of the Clearfield Community Development and Renewal Agency fiscal year budget 2012, a copy of which is attached hereto and incorporated herein by this reference, is approved and adopted this Twenty-eighth day of June, 2011.

CLEARFIELD COMMUNITY DEVELOPMENT
AND RENEWAL AGENCY

Kathryn Murray, Chairman

ATTEST:

Nancy R. Dean, Secretary

VOTE OF THE BOARD

AYE:

NAY:

CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
RESOLUTION 2011R-03

A RESOLUTION APPROVING AND ADOPTING AMENDMENTS TO
THE 2010/2011 BUDGET AND APPROPRIATING FUNDS FOR THE
PURPOSES SET FORTH THEREIN

WHEREAS, Clearfield Community Development and Renewal Agency is nearing the end of its budget period which began on July 1, 2010 and ends on June 30, 2011; and

WHEREAS, the Board has approved some expenditures that were not included in the original budget; and

WHEREAS, Utah state code allows the CDRA to make adjustments to the budget; and

WHEREAS, proper notice of the public hearing for this matter was given; and

WHEREAS, Clearfield Community Development and Renewal Agency has considered and approved those amendments.

NOW, THEREFORE, be it resolved by the Clearfield Community Development and Renewal Agency that the amendments to the Clearfield Community Development and Renewal Agency budget beginning July 1, 2010 and ending June 30, 2011 as set forth in Exhibit A which is attached hereto and incorporated herein by this reference are authorized and approved.

The Chairman is authorized to sign any documents reflecting those amendments.

Passed and adopted at the Clearfield Community Development and Renewal Agency meeting held on June 28, 2011.

Dated this 28th day of June, 2011.

ATTEST

CLEARFIELD COMMUNITY DEVELOPMENT
AND RENEWAL AGENCY

Nancy R. Dean, Secretary

Kathryn Murray, Chairman

VOTE OF THE BOARD

AYE:

NAY:

Reopened budget items June 28, 2011

Department	budget unit	account	Title	Expense budget adjustment	department adjust	Description	Revenue account	Title	Revenue budget adjustment
Mayor & Council	104111	645002	Donation expense	7,540.00	7,540.00	donation expenses	10-381008	fund balance	7540
Community Relations	104512	645002	Donation expense	297.00	297.00	donation expenses	10-381008	fund balance	297
Recreation	104561	645002	Donation expense	359.00	359.00	donation expenses	10-381008	fund balance	359
Aquatics Center	104565	645002	Donation expense	11,525.00	11,525.00	donation expenses	10-381008	fund balance	11,525.00
Interdepartment	104151	663001	contingency	-12,352.00	-12,352.00	UPS batteries			
Building and Plants	104161	674001	equipment replacement	12,352.00	12,352.00	UPS batteries			
Building and Plants	104161	673001	Capital Projects	17,150.00		fire station windows	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	70,071.50		upgrade HVAC systems	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	5,480.65		Lighting upgrade	10-334001	State grants	
Building and Plants	104161	673001	Capital Projects	30,617.00	123,319.15	upgrade boiler systems	10-334001	State grants	123,319.15
police	104212	674001	equipment purchase	3,607.00					
Police	104212	621101	subscriptions	3,598.00	7,205.00	SAFG grant	10-334001	State grants	7,205.00
Transfer to other funds	104810	691004	transfer to other funds	7,996.00	7,996.00	200 South Bridge	10-381008	fund balance	7,996.00
Highways	454410	673001	Streets	7,996.00	7,996.00	200 South Bridge	45-381004	transfer from general fund	7,996.00
Roadways	104413	681001	debt service principal	749,366.00		Bridge settlement-payoff 2008 excise bonds	10-369005	One time Misc revenue	
Roadways	104413	624101	claims & damages	25,634.00		Bridge settlement	10-369005	One time Misc revenue	775,000.00
Roadways	104413	681001	debt service principal	44,634.00		Payoff 2008 excise bonds early	10-381008	fund balance	
Roadways	104413	681002	debt service interest	-6,352.00	813,282.00	Payoff 2008 excise bonds early	10-381008	fund balance	38,282.00
Community relations	104512	624206	wireless network	90.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	625002	equipment purchase	900.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	631004	bank professional fees	150.00		Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	
Community relations	104512	661001	miscellaneous supplies	860.00	2,000.00	Utahn Against Hunger grant-food stamp farmers market	10-337001	Local grants	2,000.00
Business License	104613	624006	postage	75.00		increase postage budget for notices	10-381008	fund balance	75.00
CDBG	104632	611501	pass through	12,500.00		Megan James-Urban Planner	10-381008	fund balance	12,500.00
CDBG	104632	693001	Pass Through	26,850.00	26,850.00	CDBG housing assistance returned	10-381008	fund balance	26,850.00
Sales Tax bond	104711	681002	debt service interest	68,594.00		2003 sales tax bond interest	10-381008	fund balance	
Sales Tax bond	104711	631004	bank professional fees	375.00	68,969.00	2010 sales tax bond trustee fees	10-381008	fund balance	68,969.00
CED administration	204611	631006	professional services	20,100.00		Randy Sant contract			
CED administration	204611	631006	professional services	11,250.00		engineering services			
CED administration	204611	648801	appropriated increase fund balance	-31,350.00	0.00	reduce anticipated fund balance increase			0.00
increase fund balance			Increase fund balance	94,650.00		Tanner Heritage park improvement	10-369005	One time Misc revenue	94,650.00
Fleet	614441	625203	fleet repair	10,750.00		fire district repairs above initial budget	10-345006	consum. Chrges outside service	10,750.00
G.O. Debt Service	314711	631004	bank professional fees	250.00		G.O. Bond trustee fees	31-381008	fund balance	250.00
				<u>1,195,563.15</u>					<u>1,195,563.15</u>