MIDVALE CITY, UTAH
RESOLUTION NO. 2015-R-48

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A STATEWIDE UTILITY LICENSE AGREEMENT BETWEEN MIDVALE CITY AND THE UTAH DEPARTMENT OF TRANSPORTATION.

WHEREAS, Midvale City and the Utah Department of Transportation (UDOT) are public agencies as defined by the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 to 314 (1953 as amended) (the “Act”); and

WHEREAS, the Parties are authorized under the Act, to enter into an agreement with one another for joint or cooperative action; and

WHEREAS, Midvale and UDOT have a mutual interest in operating and maintaining utilities within state owned roadways; and

WHEREAS, UDOT owns and maintains multiple roadways with the boundaries of Midvale City; and

WHEREAS, Midvale City owns and maintains multiple utility lines within said State roadways such as culinary water, sanitary sewer, storm drainage and others; and

WHEREAS, the Parties desire to enter into an agreement to construct and maintain utilities within State roadways; and

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve the UDOT Utility License Agreement and authorizes the Mayor to sign the same between Midvale City and the Utah Department of Transportation.

APPROVED AND ADOPTED this 15th day of September, 2015.

JoAnn B. Seghini, Mayor

ATTEST:

Ron L. Andreason, MMC
City Recorder

Voting by the City Council

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<tr>
<th>NAME</th>
<th>“Aye”</th>
<th>“Nay”</th>
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<tr>
<td>Stephen Brown</td>
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<td>Paul Glover</td>
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<td>Paul Hunt</td>
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<td>Wayne Sharp</td>
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<td>Quinn Sperry</td>
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STATEWIDE UTILITY LICENSE AGREEMENT
NONINTERSTATE

THIS AGREEMENT made and entered into this 30 day of Sept, 2015, by and between the UTAH DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "UDOT" and MIDVALE CITY a Political Subdivision in the State of Utah hereinafter referred to as the "CITY".

RECITALS:

WHEREAS, the parties desire to assist in expediting the approval of UDOT permits for operating, constructing and maintaining utility lines and related facilities ("facilities") within state highway rights of way; and excluding longitudinal installations within the interstate highway rights of way; and

WHEREAS, the terms of this agreement shall apply to all permits issued to allow access onto state highway rights of way; and

WHEREAS, this agreement shall apply to approved location and construction permits on state highway rights of way in the State of Utah which are within the responsibility and jurisdiction of UDOT; and

WHEREAS, the parties desire that this agreement supersedes all previous utility license agreements executed between the two parties

NOW THEREFORE, In consideration of the promises and mutual covenants and agreements contained herein, said parties hereby covenant and agree as follows:

(1) UDOT AGREEMENT TO REVIEW APPLICATIONS: This agreement is not a permit or a guarantee of a permit. However, UDOT agrees to promptly review any application for a permit that CITY files pursuant to the procedures established in this agreement and Utah Administrative Code R930-7. CITY and UDOT agree to work together in good faith to reach a mutually beneficial decision on any permit application.

(2) APPROVAL: Unless otherwise stated herein, or in any particular permit or agreement, all permits executed pursuant hereto will be deemed to be governed by the provisions of this agreement. Permit applications shall be presented to the appropriate UDOT Region/District Permits Office which
shall have the authority to issue. All previous and future permits are subject to the requirements of R930-7. **UDOT** may apply special limitations for any work within the right of way. The issuance and approval of a permit enables the **CITY** to proceed with the work and permitted use in accordance with the terms of the permit.

(3) **RESERVATION AND SPECIAL PROVISIONS:** **UDOT** reserves the right to require an agreement or specific permit for any particular location and construction. Special provisions, as particular circumstances may dictate and as required by **UDOT** may be incorporated into any permit issued after this agreement is executed.

(4) **INSPECTION:** **UDOT** may perform routine inspection of utility construction work to monitor compliance with the license agreement, encroachment permit and with state and federal regulations. **UDOT**'s inspection does not relieve the **CITY** of its responsibilities in meeting the permit conditions and **UDOT**'s specifications. The **CITY** is responsible for **UDOT**'s inspection costs.

(5) **COSTS:** The **CITY** shall pay the entire cost of the facilities installation.

(6) **BEGINNING CONSTRUCTION:** The **CITY** shall not begin any work on **UDOT** right of way until **UDOT** issues the permit and provides notice to proceed to the **CITY**. After notice to proceed is received, the **CITY** shall complete construction in accordance with **UDOT** requirements and time period.

(7) **TRAFFIC CONTROL:** In addressing traffic control, the **CITY** shall conduct its construction and maintenance operations in compliance with **UDOT**'s current Utah MUTCD or **UDOT** Traffic Control Plans, whichever is more restrictive. All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. This work shall be performed to minimize closures of intersecting streets, road approaches, or other access points. The **CITY** shall submit in advance traffic control plans showing detours and signing operations to allow **UDOT** reasonable time to review the plans. The **CITY** shall not perform full or partial lane closure without prior approval of **UDOT** Region/District Director or authorized representative. The **CITY** shall conform to **UDOT** approved traffic control plans and permit conditions.

(8) **EXCAVATION, BACKFILL, COMPACTION, AND SITE RESTORATION:** The **CITY** shall perform all work on **UDOT** right-of-way in compliance with R930-7, current **UDOT** Standard Specifications for Highway and Bridge Construction, **UDOT** Permit Excavation Handbook, and all applicable state and federal environmental laws and regulations.
(9) **EMERGENCY WORK:** Emergency work may be done without prior permit if imminent danger of loss of life or significant damage to property exists. In all emergency work situations, the CITY or its representative shall immediately contact UDOT on the first business day after the emergency and complete a formal permit application. Failure to contact UDOT for an emergency work situation and obtain an encroachment permit within the stated time period is considered to be a violation of the terms and conditions of this agreement and R930-7. At the discretion of the CITY, emergency work may be performed by a bonded contractor, public agency, or a utility company. In all cases the CITY shall comply with the State Law requiring notification of all utility owners prior to excavation. None of the provisions of this agreement are waived for emergency work except for the requirement of a prior permit.

(10) **RESTORATION OF TRAFFIC SIGNAL EQUIPMENT:** Any traffic signal equipment or facilities which are disturbed or relocated as a result of the CITY's work must be restored in accordance with plans approved by UDOT. Restoration of traffic signal equipment must be done at the CITY's expense by a qualified electrical contractor experienced in signal installation, retained by the CITY and approved in advance by UDOT. Work shall be scheduled to ensure that disruption of any traffic signal operation is kept to a minimum.

(11) **MAINTENANCE:** The facilities shall at all times be maintained, repaired, constructed and operated by and at the expense of the CITY. The facilities will be serviced without access from any interstate highway or ramp. If the CITY fails to maintain the facilities, UDOT may notify the CITY of any maintenance needs. If the CITY fails to comply with UDOT's notification and complete the needed maintenance, then UDOT reserves the right, without relieving the CITY of its obligations, to reconstruct or make repairs to the facilities, as it may consider necessary, and the CITY shall reimburse UDOT for its cost.

(12) **LIABILITY:** Pursuant to R930-7-6(2)(c), the CITY is not required to post a continuous bond. CITY shall maintain continuous commercial general liability (CGL) insurance with UDOT as an additional insured, in the minimum amount of $1,000,000 per occurrence with a $2,000,000 general aggregate and $2,000,000 completed operations aggregate. The liability of the CITY shall not be limited to the amount of the insurance policy. The policy shall protect CITY and UDOT, from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the CITY's operations under this Permit.

The CITY shall require CGL insurance with the same limits as described above of all its contractors and subcontractors naming the CITY and UDOT as additional insured's. Such insurance shall protect the CITY and UDOT from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from work or operations performed under this Permit by themselves, contractors subcontractors or anyone directly or indirectly employed by any of them from the CITY's operations under this Permit. Such insurance shall provide coverage for premises operations, acts of independent contractors, products and completed operations. This insurance coverage shall be maintained for a continuous period until the CITY's facilities are removed from UDOT's right of way. The CITY shall notify UDOT immediately in writing at the following address if this insurance is planned to be terminated or is terminated:

Statewide Utilities Engineer  
Utah Department of Transportation
Failure to maintain the required insurance is cause for termination of this agreement and cancellation of any permits.

Pursuant to R930-7-6(6)(b) UDOT may require a bond from the CITY for permits issued under this agreement. The amount of the bond, not less than $10,000, will be set according to the permitted scope of work. If a bond is required, UDOT may proceed against the bond to recover all expenses incurred by UDOT, its employees or representatives to restore to UDOT standards the sections of roadway not completed or damaged by the CITY. The liability of the CITY shall not be limited to the amount of the bond.

The CITY will indemnify, defend, and hold harmless UDOT, its employees, and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, or any other related operation during the work or as a result of the work pursuant to permits issued under this agreement.

(13) FUTURE HIGHWAY CONSTRUCTION: As part of the consideration for this agreement UDOT has the right to cross said facilities line at any point necessary in future construction, expansion or improvement of the state highway system provided that UDOT uses due care in the protection of the facilities line in making the crossing.

(14) CANCELLATION OF PERMITS: Any failure on the part of CITY to comply with the terms and conditions set forth in the license agreement or the encroachment permit may result in cancellation of the permit. Failure of the CITY to pay any sum of money for costs incurred by UDOT in association with installation or construction review, inspection, reconstruction, repair, or maintenance of the utility facilities may also result in cancellation of the permit. UDOT also may remove the facilities and restore the highway and right of way at the sole expense of the CITY. Prior to any cancellation, UDOT shall notify the CITY in writing, setting forth the violations, and will provide the CITY a reasonable time to correct the violations to the satisfaction of UDOT.

(15) ASSIGNMENT: Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to file a new permit application.

(16) SUCCESSORS AND ASSIGNS: All covenants and agreements herein contained shall be binding upon the parties, their successors and assigns.

(17) UDOT MAINTENANCE OPERATIONS: Underground facilities must be buried to the proper depth to avoid conflict with UDOT's normal and routine maintenance activities. In entering into this agreement with UDOT and obtaining a permit for the work, the CITY agrees to avoid such conflicts by placing its facilities in compliance with the required horizontal clearance, vertical clearance and minimum depth of bury. Normal maintenance operations are those not requiring excavations in excess of the minimum horizontal clearance and depth of bury.
In all cases the CITY shall protect, indemnify and hold harmless UDOT, its employees, and the State of Utah for damages because of the failure of the facilities to meet the horizontal or vertical clearances. Any noncompliance to the above requirements may result in cancellation of the CITY’s permit. If the noncompliant facilities need to be moved due to a UDOT project, the CITY must pay 100% of the relocation costs if the facilities were installed in violation of UDOT’s required clearances. If the CITY is found to be in violation of its permit with respect to vertical or horizontal location, such violation may also result in cancellation of its permit.

(18) TERMINATION OF LICENSE AGREEMENT: This agreement may be terminated at any time by either party upon 30 days advance written notice to the other. Active permits previously issued and approved under a terminated agreement are not affected and remain in effect on the same terms and conditions set forth in the agreement, permits and R930-7. The obligation to maintain the continuous commercial general liability (CGL) insurance as described in paragraph (12) above continues until CITY’s facilities are removed from UDOT’s right-of-way. The indemnification obligations in this agreement shall survive termination of the agreement.

(19) MISCELLANEOUS:
A. Any changes to this agreement must be in writing and signed by both parties.

B. The failure of either party to insist upon strict compliance of any of the terms and conditions, or failure or delay by either party to exercise any rights or remedies provided in this agreement, or by law, will not release either party from any obligations arising under this agreement.

C. Each party represents that it has the authority to enter into this agreement.

D. This agreement shall be governed by and construed in accordance with the laws of Utah. In the event of a dispute, the venue shall be the Third District Court, Salt Lake County, Utah.

E. If any provision or part of a provision of this agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision. Each provision shall be deemed to be enforceable to the fullest extent under applicable law.
Approved by MIDVALE CITY

Notary: SUBSCRIBED AND SWORN TO BEFORE ME THIS 18TH DAY OF September 2015.

BY: JoAnn B. Seghini

NOTARY PUBLIC

BY: John B. Seghini
Signature

Name (printed)

FOR THE UTAH DEPARTMENT OF TRANSPORTATION

By: Richard Manser, P.E.
UDOT Statewide Utilities Engineer

30 Sep 2015
Date

COMPTROLLER’S OFFICE

By: Cherise Young
UDOT Contract Administrator

10-6-15
Date

APPROVED AS TO FORM: This Form Agreement has been previously approved as to form by the office of the Legal Counsel for the Utah Department of Transportation.