

DESERET PEAK SPECIAL SERVICE DISTRICT
47 SOUTH MAIN STREET
TOOELE, UT 84074

Federal ID No. 27-0343113

24212

STATEWIDE UTILITY LICENSE AGREEMENT
NONINTERSTATE

THIS AGREEMENT made and entered into this 8 day of Dec, 2015, by and between the UTAH DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "UDOT" and DESERET PEAK SPECIAL SERVICE DISTRICT a Special Service District in the State of Utah hereinafter referred to as the "DISTRICT".

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 DISTRICT files pursuant to the procedures established in this agreement and Utah Administrative Code R930-7. DISTRICT 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 **DISTRICT** 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 **DISTRICT** of its responsibilities in meeting the permit conditions and **UDOT's** specifications. The **DISTRICT** is responsible for **UDOT's** inspection costs.

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

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

(7) **TRAFFIC CONTROL:** In addressing traffic control, the **DISTRICT** 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 **DISTRICT** shall submit in advance traffic control plans showing detours and signing operations to allow **UDOT** reasonable time to review the plans. The **DISTRICT** shall not perform full or partial lane closure without prior approval of **UDOT** Region/District Director or authorized representative. The **DISTRICT** shall conform to **UDOT** approved traffic control plans and permit conditions.

(8) **EXCAVATION, BACKFILL, COMPACTION, AND SITE RESTORATION:** The **DISTRICT** 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 **DISTRICT** 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 **DISTRICT**, emergency work may be performed by a bonded contractor, public agency, or a utility company. In all cases the **DISTRICT** 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 **DISTRICT's** work must be restored in accordance with plans approved by **UDOT**. Restoration of traffic signal equipment must be done at the **DISTRICT's** expense by a qualified electrical contractor experienced in signal installation, retained by the **DISTRICT** 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 **DISTRICT**. The facilities will be serviced without access from any interstate highway or ramp. If the **DISTRICT** fails to maintain the facilities, **UDOT** may notify the **DISTRICT** of any maintenance needs. If the **DISTRICT** fails to comply with **UDOT's** notification and complete the needed maintenance, then **UDOT** reserves the right, without relieving the **DISTRICT** of its obligations, to reconstruct or make repairs to the facilities, as it may consider necessary, and the **DISTRICT** shall reimburse **UDOT** for its cost.

(12) **LIABILITY**: Pursuant to R930-7-6(2)(c), the **DISTRICT** is not required to post a continuous bond. **DISTRICT** 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 **DISTRICT** shall not be limited to the amount of the insurance policy. The policy shall protect **DISTRICT** and **UDOT**, from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the **DISTRICT's** operations under this Permit.

The **DISTRICT** shall require CGL insurance with the same limits as described above of all its contractors and subcontractors naming the **DISTRICT** and **UDOT** as additional insured's. Such insurance shall protect the **DISTRICT** 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 **DISTRICT'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 **DISTRICT's** facilities are removed from **UDOT's** right of way. The **DISTRICT** 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
4501 South 2700 West
PO Box 148380
Salt Lake City, Utah 84114-8380

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 **DISTRICT** 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 **DISTRICT**. The liability of the **DISTRICT** shall not be limited to the amount of the bond.

The **DISTRICT** 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 **DISTRICT** 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 **DISTRICT** 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 **DISTRICT**. Prior to any cancellation, **UDOT** shall notify the **DISTRICT** in writing, setting forth the violations, and will provide the **DISTRICT** 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 **DISTRICT** 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 **DISTRICT** 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 **DISTRICT's** permit. If the noncompliant facilities need to be moved due to a **UDOT** project, the **DISTRICT** must pay 100% of the relocation costs if the facilities were installed in violation of **UDOT's** required clearances. If the **DISTRICT** 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 **DISTRICT'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 **DESERET PEAK SPECIAL SERVICE DISTRICT**

Notary: SUBSCRIBED AND SWORN TO BEFORE ME THIS 2 DAY OF Dec, 2015,

BY Wade B. Bitner

Michelle L. Pruden
NOTARY PUBLIC



By: Wade B. Bitner
Signature

_____ Date

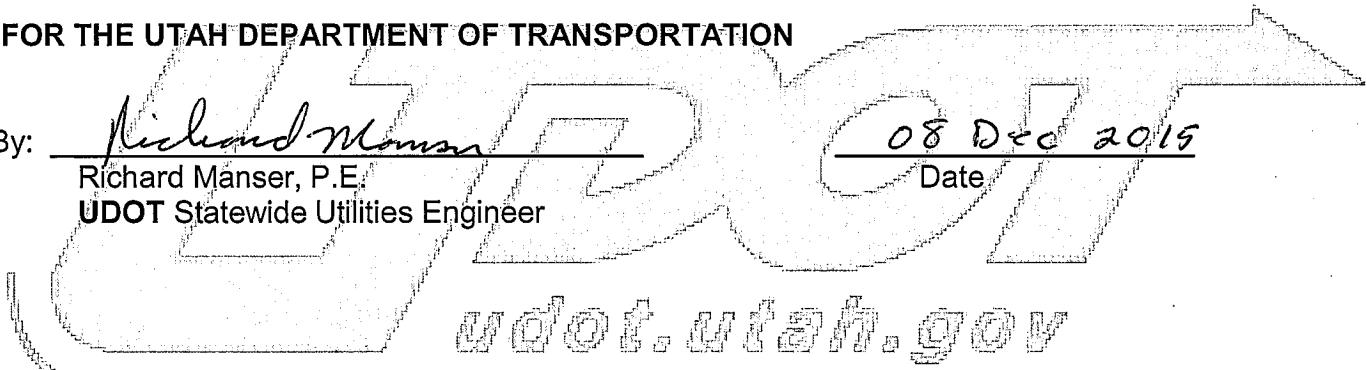
WADE B BITNER
Name (printed)

CHAIRMAN - TOOLEE Co. COMMISSION
Title

FOR THE UTAH DEPARTMENT OF TRANSPORTATION

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

08 Dec 2015
Date



COMPTROLLER'S OFFICE

By: Cherise Young
Cherise Young
UDOT Contract Administrator

12-16-15
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.