Payson Municipal Corporation
439 W. Utah Avenue
Payson, UT 84651
Federal ID No. 87-6000262

STATEWIDE UTILITY LICENSE AGREEMENT
NON-INTERSTATE

This **AGREEMENT** is made by and between the **Utah Department of Transportation**, ("UDOT") and **Payson Municipal Corporation** ("City"), a political subdivision of the State of Utah. Each as party, ("Party") and together as parties, ("Parties").

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 issued encroachment permits; and

WHEREAS, this agreement shall apply to approved location and encroachment 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 Parties.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. **LICENSE**: UDOT grants a non-exclusive license to the City for Facilities that have been granted or will be granted an encroachment permit pursuant to Utah Administrative Code R930-7.

2. **UDOT AGREEMENT TO REVIEW APPLICATIONS**: This agreement is not an encroachment permit or a guarantee of an encroachment permit. However, UDOT agrees to promptly review any application for an encroachment permit that the City files pursuant to the procedures established in this agreement and Utah Administrative Code R930-7.

3. **APPROVAL**: Unless otherwise stated herein, or in any particular encroachment permit or agreement, all permits executed pursuant hereto will be deemed to be governed by the provisions of this agreement. Encroachment permit applications shall be presented to the appropriate UDOT Region/District Permits Office. UDOT may apply special limitations for any work within the right-of-way. The issuance and approval of an encroachment permit enables the City to proceed with the utility construction and permitted use in accordance with the terms of the encroachment permit.

4. **RESERVATION AND SPECIAL PROVISIONS**: UDOT has the right to require an agreement or specific

encroachment permit for any particular location and construction. Special provisions, as particular circumstances may dictate and as required by UDOT may be incorporated into any encroachment permit issued after this agreement is executed.

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

6. **COSTS**: The City shall pay the entire cost of the Facilities installation.

7. **BEGINNING CONSTRUCTION:** The City shall not begin any utility construction on UDOT right-of-way until UDOT issues the encroachment permit. The City shall complete the utility construction in accordance with UDOT requirements and within the allowable time period.

8. **TRAFFIC CONTROL**: The City shall conduct its utility 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 the UDOT Region/District Director or authorized representative. The City shall conform to UDOT approved traffic control plans and encroachment permit conditions.

9. **EXCAVATION, BACKFILL, COMPACTION, AND SITE RESTORATION**: The City shall perform all utility construction on UDOT right-of-way in compliance with R930-7, UDOT's then current Standard Specifications for Highway and Bridge Construction, UDOT's Permit Excavation Handbook, and all applicable state and federal laws and regulations.

10. **EMERGENCY WORK**: Emergency work may be done without prior encroachment permit if imminent danger of loss of life or significant damage to property exists. In emergency work situations where traffic lanes will be partially or fully blocked, the City or its representative will contact the UDOT Traffic Operations Center at (801) 887-3710 prior to establishing traffic control. 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 encroachment 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 encroachment permit.

11. **RESTORATION OF TRAFFIC SIGNAL EQUIPMENT OR TRANSPORTATION FACILITIES**: Any traffic signal equipment or transportation 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 or transportation facilities must be done at the City's expense by a qualified electrical contractor experienced in signal installation or a qualified contractor experienced in restoring other transportation facilities, retained by the City and approved in advance by UDOT. Work shall be scheduled to ensure that disruption of any traffic signal or transportation facilities operation is kept to a minimum.

12. **ACCESS**: Access for Facilities installation on the UDOT right-of-way shall be allowed only by a permit issued by UDOT to the City. The City will obtain the permit and abide by all conditions for policing and other controls in conformance with Utah Administrative Codes R930-6 as amended.

13. **MAINTENANCE**: The City shall at all times maintain, repair, construct and operate its Facilities at its expense. The Facilities will be serviced without access from any interstate highway or ramp except for the storm drain pond at the 800 South interchange which may be accessed via the north bound ramp. If the City fails to maintain its Facilities, UDOT may notify the City of any required 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 to protect the right-of-way, as it may consider necessary, and the City shall reimburse UDOT for its cost.

14. **LIABILITY**: The City is not required to post a continuous bond as long as the City is a current member of the Utah Local Governments Trust. If the City is not a current member, the 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 the 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 in the right-of-way. The City shall notify UDOT immediately in writing at the address listed below if this insurance is planned to be terminated or is terminated.

Or the City shall be self-insured to the limits stated in the Governmental Immunity Act, Utah Code Section 63G-7-604(1). Evidence of self-insurance must be provided by a letter from the City's Attorney or Risk Department. 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 insureds. 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 in the right-of-way by itself, contractors, subcontractors or anyone directly or indirectly employed by any of them. 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.

Statewide Railroad and Utilities Director
Utah Department of Transportation
4501 South 2700 West
Salt Lake City, Utah 84114-8460

UDOT may require a bond from the City for encroachment permits issued under this agreement. Utah Administrative Code R930-7-6(6)(b). The amount of the bond will be set according to the permitted scope of work but not less than $10,000. UDOT may proceed against the bond to recover all expenses incurred by UDOT, its employees or representatives to restore the sections of roadway not completed or damaged by the City to UDOT standards. 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 City's construction, maintenance, repair, or any other related operation during the utility construction or as a result of the work pursuant to permits issued under this agreement.

15. **CANCELLATION OF ENCROACHMENT PERMITS AND LICENSE AGREEMENT**: UDOT may cancel the encroachment permit or this agreement for the following: a) any failure on the part of the City to comply with the terms and conditions set forth in the license agreement or the encroachment permit; and b) the 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 Facilities. 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. This agreement does not limit UDOT's authority under Utah Administrative Code R930-7.

16. **ASSIGNMENT**: Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to execute a license agreement.

17. **SUCCESSORS AND ASSIGNS**: All obligations and agreements herein contained shall be binding upon the parties, their successors and assigns.

18. **FACILITIES CLEARANCE REQUIREMENT**: Facilities must be installed both above ground and buried to the proper vertical and horizontal clearances and minimum depth of bury according to the encroachment permit and

Utah Administrative Code R930-7 to avoid conflict with UDOT's normal and routine maintenance activities. The City shall avoid such conflicts by placing its Facilities in compliance with the required horizontal and vertical clearances and minimum depth of bury. If a variance in horizontal or vertical clearances or minimum depth of bury occurs in the field during utility construction, the City will seek a deviation approval from UDOT and amend the original encroachment permit to reflect the variance and deviation approval. UDOT's normal and routine maintenance operations are those not requiring excavations in excess of the minimum horizontal and vertical clearances 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 required horizontal and vertical clearances and minimum depth of bury. Any noncompliance to the above requirements may result in cancellation of the City's encroachment permit or this agreement. If the noncompliant Facilities need to be moved due to a UDOT project and there was no deviation granted by UDOT for the variance in horizontal or vertical clearances or minimum depth of bury less than minimum standards, the City must pay 100% of the relocation costs for that portion of the Facilities that were installed in violation of UDOT's required clearances at the time the encroachment permit was issued. If the City was granted a deviation, the City must provide the permit describing the deviation.

19. **TERMINATION OF LICENSE AGREEMENT**: This agreement will terminate in five years unless both Parties agree in writing within the five years to renew the agreement for an additional five years. However, this agreement may be terminated at any time by either party upon 30 days advance written notice to the other. Active encroachment 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 (14) 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.

20. **MISCELLANEOUS:**

a. The permitted use and occupancy of right-of-way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public.

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 agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purpose of the Agreement at the request of the other Party.

d. This Agreement does not create any type of agency relationship, joint venture, or partnership between UDOT and City.

e. This Agreement shall be deemed to be made under and shall be governed by the laws of the State of Utah in all respects. Each person signing this Agreement warrants that the person has full legal capacity, power and authority to execute this Agreement for and on behalf of the respective Party and to bind such Party.

f. 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.

g. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were made upon the same instrument. This Agreement may be delivered by facsimile or electronic mail.

h. 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 authorized representatives of each Party.

i. The date of this agreement is the date this agreement is signed by the last Party.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

Approved by Payson Municipal Corporation

By: _____ _____
Signature Date

_____ _____
Name: (printed) Title

FOR THE UTAH DEPARTMENT OF TRANSPORTATION

By: _____ _____
Corey D. Nelson, PE, PTOE Date
Statewide Railroad and Utilities Director

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 on March 5, 2019.