



## CITY COUNCIL AGENDA

Notice is hereby given that the Draper City Council will hold a **Business Meeting** beginning at **5:30 p.m.** on **Tuesday, May 7, 2013** in the City Council Chambers at 1020 East Pioneer Road, Draper, Utah.

*(Timings listed for each item on the agenda are approximate and may be accelerated or delayed)*

**The Agenda will be as follows:**

### STUDY MEETING

- 5:30 p.m.**     **1.0**     Dinner
- 6:00 p.m.**     **2.0**     **Council/Manager Reports**
- 6:30 p.m.**     **3.0**     **Adjourn to Closed Meeting** to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual.

### BUSINESS MEETING

- 7:00 p.m.**     **1.0**     **Call to Order:** Mayor Darrell Smith
- 7:00 p.m.**     **2.0**     **Comment/Prayer and Flag Ceremony:** to be announced
- 7:10 p.m.**     **3.0**     **Citizen Comments:** *To be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be restricted to items not listed on the agenda and limited to three minutes per person per item. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing to the City Recorder prior to noon the day before the meeting. Comments pertaining to an item on the agenda should not be given at this time but should be held until that item is called.*
- 7:30 p.m.**     **4.0**     **Consent Items**
- a.     Approval of Minutes of April 16, 2013, and April 23, 2013, City Council Meetings
  - b.     Resolution #13-25, Appointing Glade Robbins as Public Works Director

- c. Resolution #13-26, Reappointing Marsha Vawdrey and Kent Player to the Planning Commission
- d. Amendment to Agreement #12-99 with TNT Auctions, Inc. to Renew Contact for Retail Sale Services (Auction of Surplus Property)
- e. Final Plat for Galena Grove Subdivision, Located at Galena Park Drive and 700 West
- f. Agreement #13-115 with Acme Construction for 13200 South Construction Agreement
- g. Agreement #13-121, 13490 South/Vista Station Roadway Project Right-of-Entry Agreement with Union Pacific Railroad (Robert Markle)
- h. Agreement #13-122, 13490 South/Vista Station Roadway Project Right-of-Entry Agreement with Utah Transit Authority (Robert Markle)
- i. Agreement #13-125, Memorandum of Understanding with Draper HAM Radio Association
- j. Second Amendment to Agreement #12-40 with Crafcro to renew the Contract for Asphalt Crack Sealing Compound

- 7:35 p.m. 5.0 Public Hearing:** Resolution #13-26, Adoption of Tentative Budget for Fiscal Year 2013-2014. Staff Presentation by Danyce Steck
- 7:50 p.m. 6.0 Public Hearing:** Consideration of Declaring Property Surplus and Authorizing the Sale of the Encroachment to Ted and Cossette Morton, 2116 East Falcon Ridge Drive. Staff Presentation by Russ Fox.
- 8:05 p.m. 7.0 Public Hearing:** Consideration of declaring property surplus and authorizing the sale of the property to David and Jennifer DiMarzio, 15373 S. Falcon Pointe Court. Staff Presentation by Russ Fox.
- 8:20 p.m. 8.0 Public Hearing: Ordinance #1044,** Amending Draper City Municipal Code Regarding Tower Signs. Staff Presentation by Dan Boles.
- 8:35 p.m. 9.0 Adjourn** to Redevelopment Agency Meeting, Municipal Building Authority Meeting, and Traverse Ridge Special Service District Meeting
- 9:00 p.m. 10.0 Adjourn** to Closed Meeting to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual. (If needed)

SALT LAKE COUNTY/UTAH COUNTY, STATE OF UTAH

I, the City Recorder of Draper City, certify that copies of the agenda for the **Draper City Council** meeting to be held the 7<sup>th</sup> day of May, 2013, were posted on the Draper City Bulletin Board, Draper City website

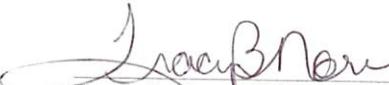
**PUBLIC HEARING PROCEDURE AND ORDER OF BUSINESS**

*In compliance with the American with Disabilities Act, any individuals needing special accommodations including auxiliary communicative aides and services during this meeting shall notify Tracy Norr, CMC, City Recorder, 576-6502 or, [tracy.norr@draper.ut.us](mailto:tracy.norr@draper.ut.us), at least 24 hours prior to the meeting. Meetings of the Draper City Council may be conducted by electronic means pursuant to Utah Code Annotated Section 52-4-207. In such circumstances, contact will be established and maintained by telephone and the meeting will be conducted pursuant to Draper City Municipal Code 2-1-040(e) regarding electronic meetings.*

[www.draper.ut.us](http://www.draper.ut.us), the Utah Public Meeting Notice website at [www.utah.gov/pmn](http://www.utah.gov/pmn), and sent by facsimile to The Salt Lake Tribune, and The Deseret News.

Date Posted: 05/03/2013  
City Seal



  
Tracy B. Norr, MMC, City Recorder  
Draper City, State of Utah

**PUBLIC HEARING PROCEDURE AND ORDER OF BUSINESS**

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# CONSENT

## ITEM #A

**MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY,  
APRIL 16, 2013, IN THE DRAPER CITY COUNCIL CHAMBERS 1020 EAST PIONEER  
ROAD, DRAPER, UTAH.**

*"This document, along with the digital recording, shall constitute the complete meeting minutes  
for this City Council meeting."*

PRESENT: Mayor Darrell Smith, Councilmembers Bill Rappleye, Troy Walker, Alan  
Summerhays, Jeff Stenquist, and Bill Colbert.

STAFF PRESENT: David Dobbins, Doug Ahlstrom, Angie Olsen, Bryan Roberts, Troy  
Wolverton, Rhett Ogden, Garth Smith, Danyce Steck

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**Study Meeting**

**1.0 Legislative Update**

5:52:16 PM

1.1 Jeff Hartley gave an update on the recent legislative action. He discussed the process for the prison relocation and some of the political negotiations that are taking place. He also noted that we must be careful to make sure our interests aren't undermined in this process. Mr. Hartley also discussed proceeding with the steps for Suncrest Road improvements to move that project forward. Discussion was held about the road improvements, using the money in Salt Lake County, changing the county line, renaming the road, and deannexation of some of the property. Mr. Hartley said that some Alpine residents are upset that Draper has posted "no motorized vehicles" on the open space. He also asked the council how they feel about the Thru-U intersection. He said another meeting could be scheduled with business representatives, UDOT and legislative members. Mayor Smith said UDOT also needs to look at timing of the lights and the signage.

**2.0 Adjourn to Closed Meeting**

6:16:16 PM

**2.1 A motion to adjourn to a closed meeting to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual was made by Councilmember Summerhays and seconded by Councilmember Colbert. The motion carried unanimously.**

**Business Meeting**

**1.0 Call to Order**

7:07:25 PM

1.1 Mayor Smith called the meeting to order and welcomed those in attendance.

**2.0 Comment/Prayer and Flag Ceremony**

7:08:08 PM

- 2.1 Councilmember Troy Walker offered the opening prayer. The pledge of allegiance was led by Spender Sanderson, Boy Scout Troop #1016.

**3.0 Presentation – Draper Youth Council**

7:09:51 PM

- 3.1 Maridene Hancock said working with the Youth Council is a pleasure. She noted the advisors in attendance who had been working with the youth council: Shawn Benjamin, Rob Perry, and Connie Atkinson. She thanked them for their work. She listed the new advisors, Stefanie Walker, Rob Perry, Lori Bird, and Connie Atkinson. There are currently 22 members of the Youth Council who attend seven different schools. The mayor of the youth council is Bruce Christy. Ms. Hancock and Mayor Christy thanked Stefania Wilks for the work she has done in directing the youth council. Her smile, creativity, respect, and strong work ethics were noted. They presented a gift and card to Mrs. Wilks. Mrs. Wilks thanked the youth council for the opportunity of working with them. Mayor Christy highlighted the activities of the youth council, including the Easter Egg Hunt. The upcoming Earth Day activities were noted. Some of the activities from the past year included the children's parade, Draper Days activities, the Fun Run, the tree lighting ceremony, and legislature days. Mayor Christy thanked the council for the opportunity he had to be part of the youth council. Ms. Hancock talked about activities and recruiting for the upcoming year.

**4.0 Request by Gregg Sanderson, Regarding Property Encroachment at 1794 East Burning Oak Drive.**

7:31:08 PM

- 4.1 Gregg Sanderson distributed pictures of the property in question. He said there is a small triangle on the north side of his property which is not being used and there is another triangle of encroachment. He said the fence was put on the slope and he didn't realize the fence was on city property until a survey was done. He asked for lenience and proposed a trade of his 480 square feet and a purchase of the remaining 312 square feet of the encroachment. He said the dollar amount of the property when he purchased it was \$5.00 per square foot for the developed property, but the council is asking \$9.00 for raw land. He asked why the land value is so much higher. Councilmember Colbert said the council established the price for selling open space to discourage encroachments and to be consistent. Mr. Sanderson showed where the fence line is on the aerial photos. He said he cleaned up the mess on the property after the city put in a water line. Councilmember Colbert said it was probably a sewer district or Waterpro project, not a city project. Mr. Sanderson said he is the first owner but the encroachment was a mistake. Councilmember Stenquist noted there are seems to only be fencing and landscaping on the city property. He said the council might consider a land swap. Councilmember Rappleye suggested putting the proposal in writing and submitting it to the city attorney.

Mr. Ahlstrom said a public hearing to surplus the property would be noticed after the proposal is submitted. He explained the process to Mr. Sanderson.

## **5.0 Citizen Comments**

7:49:39 PM

5.1 There were no citizen comments given.

## **6.0 Consent Items**

- a. **Approval of Minutes of April 2, 2013 and April 9, 2013 City Council Meetings**
- b. **Construction Agreement for the New Traffic Signal at 1300 East and 13200 South**
- c. **Acceptance of Violence Against Women Act Grant**
- d. **Resolution #13-20, Reappointments to Historic Preservation Commission**
- e. **Resolution #13-21, Appointment of Frank Lewis to Historic Preservation Commission**
- f. **Resolution #13-22, Reappointments to Parks, Trails, and Recreation Committee**
- g. **Agreement #13-105, Environmental Study for 13800 South from 300 East to Bangerter**
- h. **Agreement #13-107 with Morgan Asphalt for Construction of Bunny Bradley Trail**
- i. **Resolution #13-23, Approving the 2013 Draper Polling Locations**
- j. **Resolution #13-24, Appointing Russell Fox as Assistant City Manager**

7:50:42 PM

6.1 **A motion to approve the consent items was made by Councilmember Stenquist and seconded by Councilmember Rappleye.**

7:53:59 PM

6.2 **A roll call vote was taken with Councilmembers Stenquist, Rappleye, Colbert, Walker, and Summerhays voting in favor. The motion carried.**

## **7.0 Memorandum of Understanding with DJI Investments and Dave Mast Regarding Storm Water Drainage Improvements, Road Alignment and Related Issues, and Related Funding Agreement.**

7:54:14 PM

7.1 Jody Burnett, 257 East 200 South, Suite 5, recommended approval of two agreements that will allow the storm drainage project for a regional solution to go forward and replace Detention Basin 7A. He said the staff, Zions Bank, and DJ Investments have been working together for this regional storm drainage solution for several months. He reviewed the overview of the project, saying there would be an overflow structure for Suncrest Drive, with a temporary easement for runoff in Hog Hollow. The storm

drainage will be redirected in a 48" drain pipe on Suncrest Drive to a new amended road dedication alignment, but the road will not be built at this time. A maintenance access to a regional detention basin and dam structure will be constructed. Additional storm drainage easements are included in the agreement. Zions Bank will fund the project, paying the city \$1.9 million immediately for final design and construction. DJ Investments agree to provide a temporary drainage easement through Hog Hollow until a permanent solution is provided by a future developer. The parties will amend the plat providing the maintenance road and realignment of the road. A property exchange is covered to true-up area around the road dedication plat. The project will take about 18 months to complete. On behalf of the staff, Mr. Burnett recommended approval of the two agreements. Councilmember Summerhays asked if the overflow channel will be piped now and was told it would not be. There will be permanent construction but it will be open to utilizing an existing channel as well as unimproved natural drainage into Hog Hollow. He clarified that the land exchange is not acre to acre but is balanced to the benefits of the project. Councilmember Colbert expressed concerns about the proposed time line and dam safety approvals. Mr. Wolverton said that will be addressed in the design aspects.

8:03:58 PM

7.2 Mr. Davis, representing Zions Bank, thanked those from Draper City who have worked hard on this agreement, especially Jody Burnett, Doug Ahlstrom, and Troy Wolverton. He also thanked Dave Mast for mitigating his demands to get the project done. He said this is the best agreement that they thought could happen. Mayor Smith thanked everyone who has taken part in the solution.

8:05:19 PM

**7.3 A motion to approve the agreements was made by Councilmember Walker and seconded by Councilmember Rappleye.**

8:05:34 PM

**7.4 The motion carried unanimously.**

**8.0 Assignment of Rights under Development Agreement, Master Reimbursement Agreement, Galena Park Boulevard Underpass Funding Agreement, and Agreement for Development of Land (ADL)**

8:05:56 PM

8.1 Dustin Holt, Boulder Ventures, explained that the request is add the ADL and reimbursement as additional collateral in the previous assignments of rights. There is also an inter-creditor agreement with a different lender. David Dobbins said the city's obligation to repay for improvements under the reimbursement agreements would be assigned to their lender. He noted the county has not yet signed the interlocal agreement, so he suggested these ADL agreements be subject to finalization by the county.

8:08:59 PM

**8.2 A motion was made by Councilmember Rappleye to approve the assignment of rights, master reimbursement agreement, Galena Park Boulevard Underpass Funding Agreement, and Agreement for Development of Land contingent on the county signing the interlocal agreement. The motion was seconded by Councilmember Walker.**

8:09:32 PM

**8.3 The motion carried by unanimous vote.**

**9.0 Council/Manager Reports**

8:10:04 PM

9.1 Councilmember Summerhays said he was not happy with his vote at the last meeting on the raise for storm drainage fees. If it were presented again, he would vote against the motion. The 25% increase was sufficient instead of the \$1 raise.

8:11:29 PM

9.2 Councilmember Walker said he wasn't able to attend the field trip to the field houses, but he would like to keep the ideas in front of the county. David Dobbins said the county has asked for clear direction as to what the city would like to see, assuming the ZAP funds get renewed next year. They want to know the location and the type of facility. Discussion was held about the benefits of a field house and turf fields. Councilmember Walker asked how the 7 on 7 tournament was shaping up. Rhett Ogden replied there are teams from Weber County to Spanish Fork signed up. He said the letter may help with the youth conference for the next tournament.

8:17:46 PM

9.3 Councilmember Stenquist said Mayor McAdams' event was well attended.

8:18:26 PM

9.4 Councilmember Rappleye asked for a report on the 1300 East open house. Troy Wolverton said a few questionnaires were submitted to get input regarding trees, frontage improvements, and impacts to the front yards. A summary will be provided to the councilmembers. The response was generally positive.

8:20:31 PM

9.5 Councilmember Colbert said it looks like there may be additional development on the mountain. He thinks development outside the TRSSD needs to be discussed in terms of equity and fairness or assessments and service levels outside the district. Discussion was held on forming and amending special service districts. Councilmember Stenquist said it needs to be clear to developers what the service level will be. City Attorney Doug Ahlstrom was asked to research legal options for the service levels. Councilmember Colbert said there had been a request to sell open space due to an encroachment. He suggested going through the baseline regarding the policy on future encroachments. He

said he feels the request was outside the baseline agreement. Mr. Ahlstrom reviewed the ordinance. He said Greg Hilbig is supposed to do an annual inventory of encroachments. The one presented at this meeting is a new encroachment that Mr. Hilbig found and is outside the allowances of the code. Discussion was held about amending the ordinance. Mr. Ahlstrom said he does not believe the property could be sold without re-writing the ordinance. Mr. Ahlstrom said he would try to find out when the fence was built.

8:34:17 PM

9.6 David Dobbins said R.C. Willey has started construction. He said people have commented on the architecture of the last house on the way to the flight park. Draper City does not have regulations on architecture for single family homes. Councilmember Colbert said there is an HOA for that particular development but it has not been active. Mr. Dobbins said there is a lot of interest in housing and in in-fill development, and there is nothing in the code that prohibits design. The council can establish architectural standards if they want to. Mr. Dobbins also said the ordinance on fencing also needs to be clarified. Historically, the practice has been to allow nothing over 4' in the front yard and nothing over 6' in the backyard without a conditional use permit. Proposed changes will be presented to the council. Mr. Dobbins also said discussions have been held with the Council of Governments for a homelessness initiative because Salt Lake City and South Salt Lake City bear disproportionate burdens for providing services to the homeless. Other cities in the county are opting into a non-binding one-time commitment of \$.35 per capita contribution to a fund to help these cities provide services. Draper's contribution would be about \$15,000. Councilmember Colbert suggested basing the contribution on the residents in Draper who live in Salt Lake County, not Utah County. The consensus was to provide the contribution for one year. Mr. Dobbins said an interlocal agreement would be forthcoming.

8:41:33 PM

9.7 Troy Wolverton said this year has been a big year for property acquisition for capital improvement projects, particularly 13200 South, 13490 South, and 300 East at Pioneer Road. Due to difficulties in coming to an agreement on two properties owned by an individual (one at 300 East and one at 13200 South), he asked the council opinion on delaying the 300 East project slightly while taking care of the problem on 13200 South. He said a delay could cause problems with asphalt in this season but the semaphore could be installed now with road widening in the spring. A temporary winter asphalt mix could be utilized but would need to be replaced in the spring. The consensus was to delay the 300 East project to complete the other property acquisitions.

8:46:26 PM

9.8 Garth Smith reminded the council of the Great Shake Out open house.

8:49:14 PM

9.9 Mayor Smith said a concern was expressed at the UFA board meeting about Sandy City pulling out of VECC. When that happens the cost will go up somewhat and response times to 911 cell phone calls may be delayed. There should be no change to mutual aid

responses. Some concerns were also expressed by medical responders about the use of the body cameras because of HIPPA. Mayor Smith also said there are concerns about the higher-than-anticipated enrollment at Corner Canyon High School.

**10.0 Adjournment to Redevelopment Agency Meeting**

8:56:36 PM

**10.1 A motion to adjourn the City Council meeting and convene a Redevelopment Agency Meeting was made by Councilmember Stenquist and seconded by Councilmember Rappleye. The motion carried unanimously.**

**MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, APRIL 23, 2013, IN THE DRAPER CITY COUNCIL CHAMBERS 1020 EAST PIONEER ROAD, DRAPER, UTAH.**

*"This document, along with the digital recording, shall constitute the complete meeting minutes for this City Council meeting."*

PRESENT: Mayor Darrell Smith, Councilmembers Bill Rappleye, Troy Walker, Alan Summerhays, Jeff Stenquist, and Bill Colbert.

STAFF PRESENT: David Dobbins, Doug Ahlstrom, Angie Olsen, Russ Fox, Bryan Roberts, Troy Wolverton, Danyce Steck, Garth Smith, Rhett Ogden

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**Study Meeting**

**1.0 Call to Order**

6:12:42 PM

1.1 Mayor Smith called the meeting to order.

**2.0 2013-2014 Budget**

6:13:48 PM

2.1 David Dobbins said this item was scheduled to have a more informal discussion on the budget and any input or additional projects the council might want included. He led a discussion regarding the merit pay increase. He said he provided a list of the increases done over the past five years. The next several years have challenging budget issues so future increases may be limited. He met with department directors, and they consistently said the employees are the highest priority and our turnover rate is challenging. Over the past four years, the city has lost more than 40% of its employees. Part of that is because we hire at entry level, train employees for a couple of years, and then the employees move to another employer for more money. Eighty-four percent of the employees have been with the city 10 years or more. Department directors were willing to cut their budgets to contribute toward the increase because they feel the employees are a valuable asset. Mr. Dobbins explained how the merit increases have been given over the past years. He said a 3% increase is about \$120,000. The benefits were discussed. Mr. Dobbins said the retirement is a big amount of the benefits the employees receive. Mileage policies for city vehicles were discussed. Mr. Dobbins said health insurance typically has significant increases. This year a 4% increase is anticipated with no change to benefits, due to negotiations by Garth Smith. Mr. Dobbins said other options could be considered for next year based on the impact of Obamacare. The importance of understanding the difference between merit and COLA increases was noted.

6:38:16 PM

2.2 Crossing guards and options for school resource officers (SRO) were discussed. The service impact because of the new high school was reviewed. Chief Roberts said without

a school resource officer, service calls from the school will be prioritized and handled when an officer is available. The city would not receive the \$30,000 from the school district for the full-time SRO salary. Chief Roberts said there are 37 sworn officers: 22 officers on patrol, six in sergeant positions, one detective sergeant and four detectives. If a person is taken from patrol for the school, staffing would be affected and coverage is challenged. Councilmember Walker expressed frustration that a lion's share of property taxes goes to the school district to run the schools but they are telling the cities to provide the school resource officer. He said it should be coming from their budgets, not the general fund. He said there should be a truth in taxation hearing for the public to give input on public safety. He agreed the need is probably there for the SRO.

Councilmember Summerhays said the school district should realistically consider the cost of the SRO. Chief Roberts reminded the council that a benefit of a SRO is the relationship that the officer creates with the students and staff. Danyce Steck said the cost of \$110,000 would mean a 2% tax increase. Adding a vehicle increases the tax increase to 3%.

6:58:04 PM

2.3 Mr. Dobbins said he had also asked Chief Roberts to look at the police department, especially in light of the problems happening in West Valley City. He said it is important to share issues and what is needed for staffing levels. Chief Roberts said the detective sergeant is also filling the role of administrative sergeant. There is a need to create a position for the administrative sergeant. Chad Carpenter is now filling the role of two or three people. An administrative sergeant would oversee training, recruiting, new employee orientations, internal affairs investigations, maintain the manual and audit the equipment, oversee GRAMA requests, emergency preparedness and community academy coordinator, and other duties. The second position is the property officer, which is currently a part-time position. The property officer is also the crime-scene investigator, manages the property room, conducts forensic investigations, provides expert testimony, maintains the chain of custody of property, conducts audits, trains on forensic investigations, responds to crime scenes, and purges and releases property. A full-time employee would cost about \$60,000. Some of that money is available in the current budget, but an increase of \$27,000 is needed to fully fund the position.

7:05:56 PM

2.4 David Dobbins said the other budget comment was about the EOC budget. The fund balance is currently \$270,000. Councilmember Rappleve said there have been a lot of projects done, and he felt the budget could be changed to \$150,000 with \$100,000 held for an emergency. Discussion about CERT trailers, a command trailer, Fire-Wise, water trailers, and other programs was held.

### **3.0 Walking Routes for New Schools**

7:16:55 PM

3.1 Mr. Dobbins said the school district looked at walking routes and met with the neighbors about concerns. Troy Wolverton reviewed the list of the requests from the neighborhood.

He said the first two items related to Crescent Elementary school. They would like additional crossing guards at 300 East and 11400 South. The demand is based on student count or the number of cars. The next requests relate to Crescent Middle School and are for crossing guards, traffic signals, and crosswalks at 13200 South and Fort Street and at 13200 South and 1300 East. Other requests related to the new middle school include crossing guards and sidewalks at 1300 East and Highland Drive and at 13800 South and the Draper Canal Trail. Sidewalks have been requested at 13200 South between Fort Street and Bear Hollow and between 13200 South and 13800 South on 1300 East. Lighting for the Draper Canal Trail and Porter Rockwell Trail was suggested. Crossing guards for Willow Spring Lane and Fort Street was requested because of the new high school. Discussion was held about using UTA bus service for students if possible. Other requests included sidewalks on Pioneer Road and 12500 South, at Hedge Hollow Cove and 300 East, Fort Street from 13800 South to 13200 South, 13800 South between Southfork Drive and Fort Street, 13800 South, and south of 13000 South. Concerns about the TRAX crossings and the crossing at Aintree and Highland Drive were listed. There is a request for a crossing guard at Vestry Road and Rambling Road. Another request is for a crossing guard, cross walk, and traffic light at Vestry Road and Highland Drive. Speed bumps or crossing guards were requested at Newport Dawn and Cougar Ridge Road and at Cascade Glen and Cougar Ridge Road.

7:36:31 PM

3.2 David Dobbins said none of these requests have been put into the budget. They can be included if staff is given that direction. A copy of the list and the map will be given to the council. Chief Roberts said there are 23 crossing guards. Three additional crossing guards have been asked for in the budget.

#### **4.0 Field House**

7:48:12 PM

4.1 Mr. Dobbins said the city needs to determine its position on building a recreation center or field house. The ZAP fund is up for renewal in 2014 so funding would be available in 2015. The county has indicated they would not build a recreation center next to city hall because it is too close to a private facility. However, they would consider a field house. He noted that the county would control the facility if they build it. If the city builds a facility, the residents would be paying for county facilities and the city facility. He said if the city wants to do a bond vote, it must be in November. A suggestion was made to maintain control if the city donates the land. The location and type of a facility was discussed. Acquisition of the Fitzgerald property was noted.

#### **5.0 City Hall Expansion**

\*\*\* This item was held out of order. \*\*\*

7:37:37 PM

5.1 David Dobbins said an architectural firm was hired to look into the possibility of a new public safety building. Their estimate is about \$7 million, which the city cannot afford. He contacted the firm who designed city hall and they believe a wing could be added to the existing building. He said the \$1 million impact fees need to be designated by the end of June, so staff needs direction. He said there is about \$2.5 million in the current budget that could be used for the addition. He said city hall is not designed for EOC, but the addition could be designed as a Category 4 structure to withstand an earthquake. He asked if council wants staff to move ahead with that option. Discussion was held about planning ahead for future needs. Chief Roberts said a needs assessment was done and a three-level addition would be sufficient. David Dobbins said two-levels could be completed and the third level finished at a later time. The price range was discussed. The consensus was to look at the option and try to get a cost.

## **6.0 Council/Manager Reports**

7:59:23 PM

6.1 Mayor Smith asked for an updated on the cost of the lobbying efforts in Washington. David Dobbins said that the lobbyists helped the city acquire about \$10 million of road funding for Suncrest and Lone Peak. Last year we received \$4 million for the TOD roads. Bryan Cunningham helped us acquire funding for some of the water infrastructure and in working with the congressional delegations. He also has contacts with national conservation groups that could help us with Suncrest. The lobbyists offer insight, expertise, and resources that we don't have. They were heavily involved with the prison relocation and aquarium funding.

8:02:29 PM

6.2 Mr. Dobbins said that the county is taking applications for a cultural arts facility. There is some cost and the application is due in two days. He said this isn't high on the priority and it takes a lot of time to make the application.

8:05:56 PM

6.3 Councilmember Summerhays asked how many gallons are being sold per year or month. Danyce Steck said we consumed 1.2 billion gallons in 2012. Councilmember Summerhays said we need to consider the conservation easement the Sewer District is considering and look into secondary water on the west side of the freeway. David Dobbins was asked to keep in contact with Draper Irrigation and Water Pro.

8:11:36 PM

6.4 Councilmember Rappleye said the Chamber's annual miniature golf/family event is scheduled for May 6 at Boondocks. Mayor Smith reminded everyone of the Earth Day activities.

8:12:16 PM

6.5 Councilmember Colbert asked about the eBay ribbon cutting. Mr. Dobbins said it is in May. A reminder will be sent out. The hospital ribbon cutting is in July.

8:13:29 PM

6.6 Councilmember Summerhays asked if the council wants to do a truth-in-taxation. Councilmember Stenquist said that would need a council vote at an upcoming meeting.

**7.0 Adjournment**

8:14:10 PM

**7.1 A motion to adjourn was made by Councilmember Stenquist and seconded by Councilmember Summerhays. The motion carried by unanimous vote.**

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# CONSENT

## ITEM #B

**RESOLUTION NO. 13-25**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF DRAPER TO APPOINT GLADE J. ROBBINS AS PUBLIC WORKS DIRECTOR FOR THE CITY OF DRAPER**

WHEREAS, the Mayor desires to appoint Glade J. Robbins as Public Works Director of the City of Draper in accordance with the appointment procedures provided by law and City Ordinance; and

WHEREAS, Draper City Municipal Code 3-1-080 created the position of Public Works Director who shall act as the Department Head of the Public Works Department; and

WHEREAS, Draper City Municipal Code 3-1-030 requires the advice and consent of the City Council in order for the Mayor to appoint the Public Works Director; and

WHEREAS, Glade J. Robbins has the credentials, experience and professionalism necessary to be the Public Works Director.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. Appointment. The Mayor is hereby authorized to appoint Glade J. Robbins as Public Works Director, in accordance with appointment procedures provided by law and City Code.

Section 2. Severability Clause. If any part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all provisions, clauses and words of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS 7TH DAY OF MAY, 2013.

---

Mayor, Darrell Smith

ATTEST:

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City Recorder

[Return to Agenda](#)

# CONSENT

## ITEM #C

**RESOLUTION NO. 13-26**

**A RESOLUTION REAPPOINTING MARSHA VAWDREY AND KENT PLAYER AS MEMBERS OF THE DRAPER CITY PLANNING COMMISSION**

**WHEREAS**, the Draper City Council has adopted Ordinances which provide for the appointment of members and alternates to the Draper City Planning Commission and:

**WHEREAS**, the Planning Commissions responsible to oversee the proper development of the City in accordance with pertinent City ordinances and provisions of Chapter 9, Title 10, of the Utah Code Annotated, as amended; and

**WHEREAS**, Marsha Vawdrey and Kent Player have expressed a willingness to be reappointed as members of the Draper City Planning Commission and to regularly participate in its deliberations.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH AS FOLLOWS:**

**Section 1. Appointment.** Marsha Vawdrey and Kent Player are hereby appointed as members of the Draper City Planning Commission according to the laws, ordinances and regulations governing the Planning Commission and its members for the terms of July 1, 2013 – June 30, 2017.

**Section 2. Severability.** If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

**Section 3. Effective Date.** This Resolution shall become effective immediately upon its passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS 7<sup>th</sup> DAY OF MAY, 2013.**

**DRAPER CITY**

\_\_\_\_\_  
**Darrell H. Smith, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Tracy B. Norr, MMC, City Recorder**

[Return to Agenda](#)

# CONSENT ITEM #D

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<u>Mayor &amp; City Council</u>
<b>From:</b>	<u>Joe Bryant</u>
<b>Date:</b>	<u>August 17, 2012</u>
<b>Subject:</b>	<u>TNT Auctions Inc, Retail Sales and Auctioneering Services- Amendment #1</u>
<b>Applicant Presentation:</b>	
<b>Staff Presentation:</b>	
<b>RECOMMENDATION:</b> Recommendation to approve contract renewal for the first renewal term of one-year as allowed in the original agreements.	
<b>BACKGROUND AND FINDINGS:</b> The City is in need of Retail Sales and Auctioneering Services for Surplus Vehicles and Equipment. In 2009 Salt Lake City put forth a RFP for auctioneering service and award to TNT Auctions Inc. Draper City Municipal Code Section 3-3-070 (c) (v) allows for contracting for services that have resulted from another City's procurement process. TNT will charge the City 6.8% fee based upon the sales price of the item sold.  Commissions paid last year to TNT Auctions for vehicle and phone equipment sales equaled \$ 910.20	
<b>PREVIOUS LEGISLATIVE ACTION:</b> N/A	
<b>FISCAL IMPACT:</b> Finance Review: 	
<ul style="list-style-type: none"><li>• All sales will result in net revenue that will be deposited back into the General Fund after the sale commission(s) has been deducted.</li></ul>	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Contract 12-99 Amendment #1</li></ul>	

RETAIL SALE SERVICES AGREEMENT

AMENDMENT No.1

between

DRAPER CITY

and

TNT AUCTIONS, INC.

THIS Amendment No. 1 is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Draper City, municipal corporation of the State of Utah (hereinafter referred to as City), and TNT Auction, Inc. a Utah corporation (hereinafter referred to as TNT), with a principal place of business at 2253 North Redwood Road, Salt Lake City, UT 84116. The City and TNT will sometimes be referred to herein collectively as the "Parties."

**RECITALS**

1. TNT and Draper City entered into an agreement (City Agreement No. 12-99, hereafter "Agreement") in which TNT agreed to provide auctioneering services on surplus equipment, hardware and supplies on behalf of the City.

2. The agreement was effective April 21, 2012, through April 20, 2013, with the option to renew the agreement for three (3) optional one-year renewal terms.

3. The parties now desire to exercise the first one-year renewal term, which shall be effective April 21, 2013 through April 20, 2014.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions contained herein, and for the payment of sums of moneys as specified, the Parties agree as follows:

1. To exercise the first, optional one-year renewal term to be effective April 21, 2013 through April 20, 2014.

2. All other terms and conditions of the underlying Agreement and its amendments not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

"CITY"  
DRAPER CITY

ATTEST:

\_\_\_\_\_  
Tracy Norr, City Recorder

\_\_\_\_\_  
Darrell H. Smith, Mayor or designee

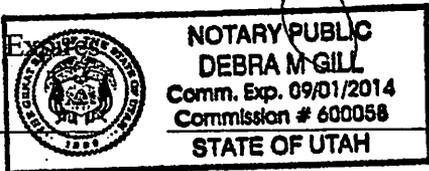
  
"TNT"  
TNT Auction, Inc.

STATE OF UTAH            )  
                                      :SS.  
County of Salt Lake    )

On the 17th day of April, 2013, personally appeared before me Mike  
McKee who being by me duly sworn did say that (s)he is the  
President of TNT Auction Inc., an Utah corporation, and that  
the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its  
Board of Directors; and they acknowledged to me that said corporation executed the same.



My Commission Expires



Notary Public  
Residing at:

\_\_\_\_\_

[Return to Agenda](#)

# CONSENT ITEM #E

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Dennis Workman</b>
<b>Date:</b>	<b>5-2-13 for 5-7-13 CC hearing</b>
<b>Subject:</b>	<b>Galena Grove Final Plat</b>
<b>Applicant Presentation:</b>	<b>Brad Mackay with Ivory Homes</b>
<b>Staff Presentation:</b>	<b>Dennis Workman</b>

**RECOMMENDATION:**

To approve the final subdivision plat for Galena Grove.

**BACKGROUND AND FINDINGS:**

This application seeks final plat approval for the subdivision of an 8.75 acre piece of ground located on the northeast corner of Galena Park Drive and 700 West. The property is zoned RM1, where both single family dwellings and two-family dwellings require a minimum lot size of 10,000 square feet. The proposed subdivision will consist of 23 single family dwelling lots, each with at least 10,000 square feet, and two lots with a combined total of over 10,000 square feet that will contain one two-family dwelling. The RM1 zone allows a density of up to 8 units per acre; density for the proposed subdivision is 2.86 units per acre. The City Council approved the preliminary plat with the following findings:

1. That the proposed subdivision is consistent with the Draper City General Plan.
2. That the proposed subdivision is consistent with the standards in the RM1 zoning district.
3. That the proposed subdivision is in the best interest of the health, safety and welfare of the citizens of Draper City.
4. That the requirements for preliminary plat listed in Title 17-3 have been satisfied.
5. That the proposed plat is consistent with the concept plan approved on July 9, 2007.

**PREVIOUS LEGISLATIVE ACTION:**

February 21, 2013: Planning Commission reviewed and recommended approval of the preliminary plat.  
March 5, 2013: City Council approved the preliminary plat.

**FISCAL IMPACT: Finance Review: \_\_\_\_\_**

- This plat will create 25 additional lots, 23 of which will contain single family dwellings and two of which will contain one two-family dwelling. All will require typical city services.

**SUPPORTING DOCUMENTS:**

- Galena Grove final plat



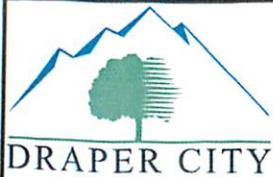
[Return to Agenda](#)

# CONSENT

## ITEM #F

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Todd Hammond, Engineering</b>
<b>Date:</b>	<b>May 7, 2013</b>
<b>Subject:</b>	<b>Agreement #13-115 with Acme Construction, Inc. for the 13200 South Street Widening Project – Phase 1</b>
<b>Applicant Presentation:</b>	
<b>Staff Presentation:</b>	<b>Troy Wolverton, City Engineer</b>
<b>RECOMMENDATION:</b> That City Council authorize the Mayor to sign Construction Agreement #13-115 and Notice of Award to Acme Construction, Inc. for the 13200 South Street Widening Project – Phase 1	
<b>BACKGROUND AND FINDINGS:</b> We recommend awarding the contract to Acme Construction, Inc. for the 13200 South Street Widening Project – Phase 1 in the amount of \$886,613.25. Phase 1 consists of widening 13200 South Street from Bear Hollow Drive to 1420 East and 1300 East Street from 13200 South to 13350 South. Contract documents for the project were made available on April 18, 2013 until the bid opening date on May 1, 2013. Nine bids were received ranging from \$886,613.25 to \$1,343,343.43. The lowest bid was from Acme Construction, Inc.	
<b>PREVIOUS LEGISLATIVE ACTION:</b>	
<b>FISCAL IMPACT: Finance Review:</b> _____ <b>Contract Amount:</b> \$886,613.25  <b>Funding Source: 13200 South Widening CIP Accounts: 41-53-0812, 92-53-0892</b>	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Bid Tabulation</li><li>• Conditional Notice of Award</li><li>• Construction Agreement</li></ul>	



May 1, 2013

## 13200 SOUTH STREET WIDENING PROJECT - PHASE 1 BID TABULATION

BIDS OPENED: MAY 1, 2013 AT 11:00 AM

				Engineer's Estimate		ACME Construction, Inc.		S & L Incorporated		Kilgore Contracting	
Bid Item	Description	Quantity	Unit	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
<b>Schedule A</b>											
1	Storm Water Pollution Prevention	1	LS	\$7,000.00	\$7,000.00	\$2,910.00	\$2,910.00	\$12,072.89	\$12,072.89	\$5,800.00	\$5,800.00
2A	Traffic Control System - General	1	LS	\$45,000.00	\$45,000.00	\$14,510.00	\$14,510.00	\$28,030.94	\$28,030.94	\$33,000.00	\$33,000.00
2B	Traffic Control System - Waterline	1	LS	\$7,000.00	\$7,000.00	\$2,820.00	\$2,820.00	\$3,000.00	\$3,000.00	\$12,200.00	\$12,200.00
3	Pothole Utilities	1	LS	\$5,000.00	\$5,000.00	\$4,040.00	\$4,040.00	\$5,500.00	\$5,500.00	\$6,050.00	\$6,050.00
4	Clearing and Grubbing	1	LS	\$25,000.00	\$25,000.00	\$35,030.00	\$35,030.00	\$24,420.85	\$24,420.85	\$21,150.00	\$21,150.00
5	Roadway Excavation	6,542	CY	\$15.00	\$98,130.00	\$10.50	\$68,691.00	\$12.39	\$81,055.38	\$11.85	\$77,522.70
6	Remove Flood Irrigation System	232	LF	\$16.00	\$3,712.00	\$7.25	\$1,682.00	\$4.34	\$1,006.88	\$16.00	\$3,712.00
7	Relocate Private Sewer Cleanout	6	Ea	\$1,500.00	\$9,000.00	\$785.00	\$4,710.00	\$796.38	\$4,778.28	\$525.00	\$3,150.00
8	Relocate Private Water Facilities	1	LS	\$10,000.00	\$10,000.00	\$16,530.00	\$16,530.00	\$5,802.15	\$5,802.15	\$19,200.00	\$19,200.00
9	Remove Fence	10	LF	\$20.00	\$200.00	\$6.70	\$67.00	\$11.00	\$110.00	\$10.80	\$108.00
10	Relocate Mail Box	15	Ea	\$150.00	\$2,250.00	\$149.00	\$2,235.00	\$220.00	\$3,300.00	\$245.00	\$3,675.00
11	Remove Sign	21	Ea	\$75.00	\$1,575.00	\$59.05	\$1,240.05	\$83.33	\$1,749.93	\$90.00	\$1,890.00
12	Remove Concrete Drainage Structure	1	Ea	\$900.00	\$900.00	\$397.00	\$397.00	\$1,969.00	\$1,969.00	\$350.00	\$350.00
13	Relocate Concrete Drainage Structure	1	Ea	\$2,000.00	\$2,000.00	\$3,230.00	\$3,230.00	\$1,320.00	\$1,320.00	\$4,100.00	\$4,100.00
14	Remove Drainage Pipe	60	LF	\$16.00	\$960.00	\$6.80	\$408.00	\$8.74	\$524.40	\$20.00	\$1,200.00
15	Remove Flashing Sign	2	Ea	\$800.00	\$1,600.00	\$267.00	\$534.00	\$660.00	\$1,320.00	\$130.00	\$260.00
16	4'x4' Cleanout Box	7	Ea	\$4,000.00	\$28,000.00	\$4,710.00	\$32,970.00	\$3,473.92	\$24,317.44	\$3,600.00	\$25,200.00
17	15" Reinforced Concrete Pipe	1,325	LF	\$50.00	\$66,250.00	\$108.00	\$143,100.00	\$81.59	\$108,106.75	\$107.00	\$141,775.00
18	18" Reinforced Concrete Pipe	25	LF	\$60.00	\$1,500.00	\$138.00	\$3,450.00	\$85.72	\$2,143.00	\$110.00	\$2,750.00

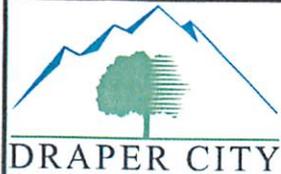


## 13200 SOUTH STREET WIDENING PROJECT - PHASE 1 BID TABULATION

May 1, 2013

BIDS OPENED: MAY 1, 2013 AT 11:00 AM

				Engineer's Estimate		ACME Construction, Inc.		S & L Incorporated		Kilgore Contracting	
Bid Item	Description	Quantity	Unit	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
19	Single Grate Hooded Inlet Box	13	Ea	\$2,500.00	\$32,500.00	\$2,610.00	\$33,930.00	\$2,379.61	\$30,934.93	\$2,700.00	\$35,100.00
20	Loop 6" Pressurized Irrigation Main	1	Ea	\$5,700.00	\$5,700.00	\$5,540.00	\$5,540.00	\$2,352.07	\$2,352.07	\$4,460.00	\$4,460.00
21	Loop 12" Culinary Water Main	1	Ea	\$9,000.00	\$9,000.00	\$6,880.00	\$6,880.00	\$3,122.60	\$3,122.60	\$7,275.00	\$7,275.00
22	Concrete Sidewalk	22,902	SF	\$4.00	\$91,608.00	\$3.25	\$74,431.50	\$3.40	\$77,866.80	\$4.05	\$92,753.10
23	ADA Ramp (2'x4' Detectable Warning)	3	Ea	\$1,000.00	\$3,000.00	\$681.00	\$2,043.00	\$998.80	\$2,996.40	\$715.00	\$2,145.00
24	ADA Ramp (2'x8' Detectable Warning)	3	Ea	\$1,400.00	\$4,200.00	\$967.00	\$2,901.00	\$1,221.00	\$3,663.00	\$930.00	\$2,790.00
25	Concrete Flared Drive Approach	2,724	SF	\$5.00	\$13,620.00	\$3.55	\$9,670.20	\$4.68	\$12,748.32	\$4.30	\$11,713.20
26	Concrete Driveway Transition	1,827	SF	\$5.00	\$9,135.00	\$3.55	\$6,485.85	\$4.68	\$8,550.36	\$4.50	\$8,221.50
27	Asphalt Driveway Transition	655	SF	\$4.00	\$2,620.00	\$4.20	\$2,751.00	\$4.18	\$2,737.90	\$0.95	\$622.25
28	Gravel Driveway Transition	1,825	SF	\$1.00	\$1,825.00	\$0.60	\$1,095.00	\$0.92	\$1,679.00	\$0.90	\$1,642.50
29	Concrete Curb & Gutter	4,339	LF	\$20.00	\$86,780.00	\$11.65	\$50,549.35	\$15.42	\$66,907.38	\$14.00	\$60,746.00
30	Granular Borrow	2,144	CY	\$20.00	\$42,880.00	\$19.45	\$41,700.80	\$19.93	\$42,729.92	\$21.00	\$45,024.00
31	Untreated Base Course	1,436	CY	\$30.00	\$43,080.00	\$22.70	\$32,597.20	\$22.97	\$32,984.92	\$27.00	\$38,772.00
32	HMA Surface Course (PG 64-22)	1,552	Ton	\$65.00	\$100,880.00	\$64.30	\$99,793.60	\$67.78	\$105,194.56	\$64.50	\$100,104.00
33	2" Rotomilling	75,731	SF	\$0.25	\$18,932.75	\$0.20	\$15,146.20	\$0.23	\$17,418.13	\$0.15	\$11,359.65
34	2" HMA Overlay (PG 64-22)	912	Ton	\$70.00	\$63,840.00	\$70.35	\$64,159.20	\$70.00	\$63,840.00	\$66.60	\$60,739.20
35	Manhole to Finish Grade	19	Ea	\$500.00	\$9,500.00	\$310.00	\$5,890.00	\$495.00	\$9,405.00	\$630.00	\$11,970.00
36	Water Valve to Finish Grade	10	Ea	\$400.00	\$4,000.00	\$237.00	\$2,370.00	\$385.00	\$3,850.00	\$420.00	\$4,200.00
37	Monument to Finish Grade	1	Ea	\$450.00	\$450.00	\$297.00	\$297.00	\$440.00	\$440.00	\$580.00	\$580.00
38	Blowoff Vault to Finish Grade	1	Ea	\$1,000.00	\$1,000.00	\$707.00	\$707.00	\$2,643.03	\$2,643.03	\$580.00	\$580.00

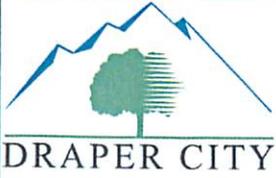


## 13200 SOUTH STREET WIDENING PROJECT - PHASE 1 BID TABULATION

May 1, 2013

BIDS OPENED: MAY 1, 2013 AT 11:00 AM

				Engineer's Estimate		ACME Construction, Inc.		S & L Incorporated		Kilgore Contracting	
Bid Item	Description	Quantity	Unit	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
39	Pavement Striping and Marking	1	LS	\$10,000.00	\$10,000.00	\$7,990.00	\$7,990.00	\$8,888.00	\$8,888.00	\$13,800.00	\$13,800.00
40	Install Sign	23	Ea	\$300.00	\$6,900.00	\$219.00	\$5,037.00	\$305.53	\$7,027.19	\$360.00	\$8,280.00
41	Install Sign with UDOT B3 Slipbase	7	Ea	\$500.00	\$3,500.00	\$438.00	\$3,066.00	\$777.70	\$5,443.90	\$575.00	\$4,025.00
<b>Schedule A Subtotal</b>					<b>\$880,027.75</b>		<b>\$813,584.95</b>		<b>\$823,951.30</b>		<b>\$889,995.10</b>
<b>Schedule B</b>											
42	Irrigation Design	1	LS	\$5,000.00	\$5,000.00	\$533.00	\$533.00	\$2,777.50	\$2,777.50	\$525.00	\$525.00
43	Irrigation System Complete	11	Ea	\$1,500.00	\$16,500.00	\$890.00	\$9,790.00	\$820.83	\$9,029.13	\$1,930.00	\$21,230.00
44	Bubbler Irrigation System Complete	5	Ea	\$1,200.00	\$6,000.00	\$711.00	\$3,555.00	\$811.52	\$4,057.60	\$700.00	\$3,500.00
45	Park Strip Top Soil	98	CY	\$40.00	\$3,920.00	\$17.60	\$1,724.80	\$25.51	\$2,499.98	\$17.50	\$1,715.00
46	Park Strip Sod	7,917	SF	\$0.50	\$3,958.50	\$0.40	\$3,166.80	\$0.47	\$3,720.99	\$0.40	\$3,166.80
47	Park Strip Weed Fabric	6,074	SF	\$0.55	\$3,340.70	\$0.45	\$2,733.30	\$0.14	\$850.36	\$0.40	\$2,429.60
48	Park Strip Rock Mulch	6,074	SF	\$1.75	\$10,629.50	\$0.80	\$4,859.20	\$0.83	\$5,041.42	\$0.80	\$4,859.20
49	Landscape Edging	28	LF	\$10.00	\$280.00	\$10.65	\$298.20	\$11.91	\$333.48	\$10.50	\$294.00
50	Tree	132	Ea	\$350.00	\$46,200.00	\$224.00	\$29,568.00	\$302.81	\$39,970.92	\$220.00	\$29,040.00
51	Restore Private Landscaping	1	LS	\$20,000.00	\$20,000.00	\$14,130.00	\$14,130.00	\$8,092.10	\$8,092.10	\$19,000.00	\$19,000.00
52	Fence Restoration	1	LS	\$3,000.00	\$3,000.00	\$2,670.00	\$2,670.00	\$3,104.20	\$3,104.20	\$5,250.00	\$5,250.00
<b>Schedule B Subtotal</b>					<b>\$118,828.70</b>		<b>\$73,028.30</b>		<b>\$79,477.68</b>		<b>\$91,009.60</b>
<b>Grand Total</b>					<b>\$998,856.45</b>		<b>\$886,613.25</b>		<b>\$903,428.98</b>		<b>\$981,004.70</b>



## 13200 SOUTH STREET WIDENING PROJECT - PHASE 1 BID TABULATION

May 1, 2013

BIDS OPENED: MAY 1, 2013 AT 11:00 AM

				Engineer's Estimate		ACME Construction, Inc.		S & L Incorporated		Kilgore Contracting	
Bid Item	Description	Quantity	Unit	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total

4 VanCon \$1,097,817.25  
 5 Lyndon Jones \$1,167,427.47  
 6 Allstate \$1,178,856.86  
 7 Geneva Rock \$1,199,465.35  
 8 Granite \$1,262,527.55  
 9 Staker Parson \$1,343,343.43

  
 \_\_\_\_\_  
 Project Manager

**CONDITIONAL NOTICE OF AWARD**

TO: Acme Construction, Inc.

PROJECT: 13200 South Street Widening Project

DRAPER CITY has considered the BID submitted by you for the above described WORK in response to its advertisement for proposal dated April 13, 2013.

You are hereby notified that your Bid has been accepted in an amount of **\$886,613.25** on the following conditions:

1. The execution by you and the City of a contract with the City on terms acceptable to both parties;
2. Furnishing PERFORMANCE AND PAYMENT BONDS, each in the amount of 100% of the contract price, as well as a current CERTIFICATE OF INSURANCE pursuant to the Information for Bidders, each of which must be acceptable to the City, within TEN (10) working days from the date of this Notice as outlined in your bid documents ;
3. There be no claims, suits or appeals arising out of the bidding process which in the City's judgment invalidate the award of the contract to you;
4. You continue to demonstrate an ability to perform this project in a satisfactory manner.

This Conditional Notice of Award confers no rights upon the above named bidder until a contract is executed by the parties as required by law.

If you fail to furnish said BONDS and INSURANCE within the TEN (10) working days from the date of the Notice, or if any of the other conditions occur, the CITY shall be entitled to consider all your rights arising out of the CITY'S acceptance of your Proposal as abandoned. The CITY will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Conditional Notice of Award to the CITY.

Dated this 7<sup>th</sup>, day of May, 2013.

By \_\_\_\_\_  
Draper City Mayor

Attest: \_\_\_\_\_  
Draper City Recorder

**CONSTRUCTION AGREEMENT #13-115**

**13200 SOUTH STREET WIDENING PROJECT – PHASE 1**

**PART 1. GENERAL**

**Date:** This Contract made this 7<sup>th</sup> day of May, 2013

**1.1 Contractor**

Name: Acme Construction, Inc.  
Address: 9524 Fuelner Park Rd; West Jordan, UT 84081  
which is a corporation organized in the State of Utah.  
Telephone: 801-280-1232  
Contractor's Representative: Buster Hafen  
Utah License number: 238430-5501

**1.2 Owner** (herein called "Owner" or "City")

**Draper City Corporation**, a municipal corporation of the State of Utah. The Draper Engineering Division is located at 1020 East Pioneer Road; Draper, Utah 84020.

Telephone: (801) 576-6546  
Fax: (801) 576-6388

**1.3 Project.** This project shall be known as the **13200 SOUTH STREET WIDENING PROJECT – PHASE 1** which consists of, but is not limited to, constructing roadway improvements to widen 13200 South Street from 1190 East to 1420 East and 1300 East Street from 13200 South to 13350 South , more specifically described in the Contract Documents, herein called the "Project."

**1.4 Engineer** means the City's representative and agent for this Construction Contract, or any other person designated to the Contractor in writing by the City Engineer.

**1.5 Construction Contract.** The construction contract shall consist of the following documents: the Invitation to Bid, Bidder Information, Additional Instructions to Bidders, Bid of the Contractor, Bid Bond, Conditional Notice of Award, this Construction Agreement, Notice to Proceed, Insurance Requirements, the City of Draper Engineering Standards and Specifications, Project Drawings, Change Orders or Supplemental Agreements, including the Bid Forms, Addenda to the Drawings and/or Specifications, and Measurement and Payment, collectively referred to as the Contract Documents, all of which are incorporated herein by reference. In the case of conflict in the Contract Documents, the documents shall govern in the order set out in General Conditions.



1.6 **DEFINITIONS.** The definitions of words set out in the General Conditions for Municipal Construction (sometimes herein called the "General Conditions") shall apply throughout this Agreement unless the context clearly indicates otherwise.

1.7 **INSURANCE.** The Contractor shall acquire and maintain during the term of the Contract insurance in the amount specified in **EXHIBIT A** attached hereto. Coverage shall be maintained for one year after the Project Acceptance for Maintenance Date.

1.8 **LIABILITY.** The Contractor shall save, keep and hold harmless the City, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorneys fees, that may at any time arise or be set up because of damages to property, bodily injury or personal injury received by reason of or in the course of performing Work which may be occasioned by any willful, negligent or wrongful acts or omissions of the Contractor, any of the Contractor's employees or any subcontractor. The City will not be held liable for any accident, loss or damage to the Work prior to its completion and acceptance.

1.9 **NO DAMAGE CLAUSE.** The Contractor herewith specifically waives claims against the City for damages for any hindrance or delay not caused by the fault of the City. Contractor will, in lieu thereof, be granted extensions of time for delays not the fault of the Contractor, his suppliers, subcontractors, or sub-subcontractors. The Contractor shall not make any claim for damages against the City for any hindrance or delay for claims made until after the City has been notified of the claim and has had 24 hours to respond.

1.10 **PERFORMANCE AND PAYMENT BONDS.** Contractor shall furnish to the City a payment and performance bond satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of 100% of the contract Amount according to the terms of this Agreement. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of one year following the date of Project Acceptance for Maintenance, which guarantee shall be covered by the terms of the performance bond.

**PART 2. SCOPE OF WORK**

**2.1 Generally.**

A. Contractor shall furnish all labor, materials, equipment, bonds, insurance, permits, fees, and all other charges, expenses or assessments of whatever kind or character to complete the Project, consisting of the work described in the Contract Documents.

B. Work shall conform in all ways to the most recent edition of the Draper City Standard Specifications and Details for Municipal Construction, along with all existing ordinances.

C. As required by Section 63G-11-103, Utah Code Annotated (1953 as amended), Contractor certifies it has registered and participates in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the state.

**2.2 Subcontractors.** No part of this contract shall be subcontracted by the Contractor without approval by the Engineer. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by Contractor. The Contractor shall not award work to any Subcontractor in excess of fifty percent (50%) of the contract price, without prior written approval of the City.

**2.3 City's Right to Order Changes in the Work.** Notwithstanding other provisions of this Agreement, the City may, upon written notice to the Contractor, order changes in the work, provided that doing so does not alter the scope of the contract work. If the Contractor believes that any such change cannot be performed within the time allowed for the Project, or for that phase of the Project, or that such a change does alter the scope of the contract work, or that Contractor cannot perform the change except at additional cost, then it shall promptly so notify the Engineer in writing.

**2.4 City's Unilateral Suspension of Work.** Notwithstanding other provisions of this Agreement, the City may, upon written notice to the Contractor, order suspension of the Work for any reason, upon written notice to the Contractor.

**2.5 Differing Site Conditions.** Information provided about the Project construction site is provided by the City or its agents as a convenience to the Contractor and its subcontractors. The Contractor should verify all such information independently unless the parties specifically agree in writing otherwise. In the event that the Contractor encounters site conditions which would have been reasonably foreseeable from a visit to the Project site, and from a review of the materials provided to the Contractor by the City prior to the Contractor's bid submission, then the Contractor shall be responsible for all additional Work, costs and expenses associated with those differing site conditions. If, on the other hand, the Contractor encounters site conditions which would not have been reasonably foreseeable from a visit to the Project site, and from a review of the materials provided to the Contractor by the City prior to the Contractor's bid submission, then the Contractor shall be paid for the reasonable costs and expenses of the Work resulting from the differing site conditions as provided in Section 6.02 of the



General Conditions.

**PART 3. MONEY AND TIME**

**3.1 CONTRACT PRICE**

A. The Contract Price includes the cost of the Work specified in the Contract Documents, plus the cost of all bonds, insurance, permits, fees, and all charges, expenses or assessments of whatever kind or character.

B. The schedule of prices awarded as separate items from the bid schedule are as follows:

Bid Item	Description	Quantity	Unit	Unit Cost	Item Total
<b>Schedule A</b>					
1	Storm Water Pollution Prevention	1	LS	\$2,910.00	\$2,910.00
2A	Traffic Control System - General	1	LS	\$14,510.00	\$14,510.00
2B	Traffic Control System - Waterline	1	LS	\$2,820.00	\$2,820.00
3	Pothole Utilities	1	LS	\$4,040.00	\$4,040.00
4	Clearing and Grubbing	1	LS	\$35,030.00	\$35,030.00
5	Roadway Excavation	6,542	CY	\$10.50	\$68,691.00
6	Remove Flood Irrigation System	232	LF	\$7.25	\$1,682.00
7	Relocate Private Sewer Cleanout	6	Ea	\$785.00	\$4,710.00
8	Relocate Private Water Facilities	1	LS	\$16,530.00	\$16,530.00
9	Remove Fence	10	LF	\$6.70	\$67.00
10	Relocate Mail Box	15	Ea	\$149.00	\$2,235.00
11	Remove Sign	21	Ea	\$59.05	\$1,240.05
12	Remove Concrete Drainage Structure	1	Ea	\$397.00	\$397.00
13	Relocate Concrete Drainage Structure	1	Ea	\$3,230.00	\$3,230.00
14	Remove Drainage Pipe	60	LF	\$6.80	\$408.00
15	Remove Flashing Sign	2	Ea	\$267.00	\$534.00
16	4'x4' Cleanout Box	7	Ea	\$4,710.00	\$32,970.00
17	15" Reinforced Concrete Pipe	1,325	LF	\$108.00	\$143,100.00
18	18" Reinforced Concrete Pipe	25	LF	\$138.00	\$3,450.00
19	Single Grate Hooded Inlet Box	13	Ea	\$2,610.00	\$33,930.00
20	Loop 6" Pressurized Irrigation Main	1	Ea	\$5,540.00	\$5,540.00
21	Loop 12" Culinary Water Main	1	Ea	\$6,880.00	\$6,880.00
22	Concrete Sidewalk	22,902	SF	\$3.25	\$74,431.50



23	ADA Ramp (2'x4' Detectable Warning)	3	Ea	\$681.00	\$2,043.00
24	ADA Ramp (2'x8' Detectable Warning)	3	Ea	\$967.00	\$2,901.00
25	Concrete Flared Drive Approach	2,724	SF	\$3.55	\$9,670.20
26	Concrete Driveway Transition	1,827	SF	\$3.55	\$6,485.85
27	Asphalt Driveway Transition	655	SF	\$4.20	\$2,751.00
28	Gravel Driveway Transition	1,825	SF	\$0.60	\$1,095.00
29	Concrete Curb & Gutter	4,339	LF	\$11.65	\$50,549.35
30	Granular Borrow	2,144	CY	\$19.45	\$41,700.80
31	Untreated Base Course	1,436	CY	\$22.70	\$32,597.20
32	HMA Surface Course (PG 64-22)	1,552	Ton	\$64.30	\$99,793.60
33	2" Rotomilling	75,731	SF	\$0.20	\$15,146.20
34	2" HMA Overlay (PG 64-22)	912	Ton	\$70.35	\$64,159.20
35	Manhole to Finish Grade	19	Ea	\$310.00	\$5,890.00
36	Water Valve to Finish Grade	10	Ea	\$237.00	\$2,370.00
37	Monument to Finish Grade	1	Ea	\$297.00	\$297.00
38	Blowoff Vault to Finish Grade	1	Ea	\$707.00	\$707.00
39	Pavement Striping and Marking	1	LS	\$7,990.00	\$7,990.00
40	Install Sign	23	Ea	\$219.00	\$5,037.00
41	Install Sign with UDOT B3 Slipbase	7	Ea	\$438.00	\$3,066.00
<b>Schedule A Subtotal</b>					<b>\$813,584.95</b>
<b>Schedule B</b>					
42	Irrigation Design	1	LS	\$533.00	\$533.00
43	Irrigation System Complete	11	Ea	\$890.00	\$9,790.00
44	Bubbler Irrigation System Complete	5	Ea	\$711.00	\$3,555.00
45	Park Strip Top Soil	98	CY	\$17.60	\$1,724.80
46	Park Strip Sod	7,917	SF	\$0.40	\$3,166.80
47	Park Strip Weed Fabric	6,074	SF	\$0.45	\$2,733.30
48	Park Strip Rock Mulch	6,074	SF	\$0.80	\$4,859.20
49	Landscape Edging	28	LF	\$10.65	\$298.20
50	Tree	132	Ea	\$224.00	\$29,568.00
51	Restore Private Landscaping	1	LS	\$14,130.00	\$14,130.00
52	Fence Restoration	1	LS	\$2,670.00	\$2,670.00



Schedule B Subtotal		\$73,028.30
Grand Total		\$886,613.25

**GRAND TOTAL IN WRITING: Eight Hundred and Eighty-Six Thousand, Six Hundred and Thirteen Dollars and Twenty-Five Cents**

3.2. **Contract Time, Changes in Contract Time.** The work on this Project shall commence within ten (10) days of receipt of the Notice to Proceed, which will be provided for each schedule. The work for **Schedule A** shall be completed within a maximum of **90 calendar days** of the commencement of the project. The work for **Schedule B** shall be completed within a maximum of **125 calendar days** of the commencement of the project. The parties agree that this is a reasonable time for completion of the work. Work stoppage due to inclement weather conditions and other factors must be approved by the Engineer. The Contractor shall notify the Engineer of a claim of delay due to inclement weather within one (1) week of the days claimed as delayed. Notwithstanding other provisions of this Agreement, the City may, upon written notice to the Contractor, change the time of performance of the Agreement, provided that doing so does not alter the scope of the contract work. If the Contractor believes that any such change cannot be performed except at additional cost or without the extension of time of performance of the contract, or an extension of time for that phase of the contract, then it shall promptly so notify the Engineer in writing. Time is of the essence of this agreement.

3.3 **Punch List Time**

A. Pursuant to Section 5.04 of the General Conditions, the Work will be complete and ready for final payment within thirty (30) days after the date Contractor receives Engineer's Final Inspection Punch List unless exemptions of specific items are granted by Engineer in writing or an exception has been specified in the Contract Documents.

B. Permitting the Contractor to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the Owner of any of Owner's rights under this Agreement.



3.4 **LIQUIDATED DAMAGES.**

**A. Late Completion: Time is of the essence of the Contract Documents.**

Contractor agrees that Owner will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Section 5.06 of the General Conditions. Contractor and Owner agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late completion, Contractor agrees to pay the following sums to the Owner as liquidated damages and not as a penalty.

1. **Late Contract Time Completion: Five Thousand Dollars (\$5,000)** for each day or part thereof that expires after the Contract Time until the Work is accepted as substantially complete as provided in Section 5.03 of the General Conditions, which the parties believe is a fair estimate of the loss the City will suffer due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, and which the parties agree is not a penalty.

2. **Late Punch List Time Completion: Five Thousand Dollars (\$5,000)** for each day or part thereof if the Work remains incomplete after thirty (30) days following the time the punch list is delivered to the Contractor, provided that no such damages shall be collected until after the Contract Completion Date. The parties agree that this is not a penalty. The Punch List shall be considered delivered on the date it is transmitted by facsimile, hand delivery or received by the Contractor by certified mail.

**B. Work Sequence Completion:** Time is of the essence of sequenced work. If a work sequence is specified, then for each day or part thereof that exceeds the specified time and until Engineer determines such work sequence is Substantially Complete, the Contractor agrees to pay the following sums per day to the OWNER as liquidated damages and not as a penalty.

**C. Survey Monuments:** No land survey monument shall be disturbed or moved until Engineer has been properly notified and the Engineer's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that Contractor will pay as liquidated damages the sum of \$1,000 to cover such damage and expense. Only the Engineer's licensed surveyor shall reset the monument, and at the Contractor's sole cost.



**D. Interruption of Public Services:** No interruption of public utility services or damage to public service facilities, defined herein as an interruption to City potable water supply, street lighting, storm water or irrigation systems, herein called Public Service Facilities, shall be caused by Contractor, its agents or employees, without the Engineer's prior approval. Owner and Contractor agree that in the event Owner suffers damages from such interruption, the amount of liquidated damages stipulated above shall not be deemed to be a limitation upon Owner's right to recover the full amount of such damages. Contractor shall immediately notify the owner of the public utility if Contractor, or any subcontractor or other agent or employee of Contractor interrupts or damages Public Service Facilities. In addition, the Contractor shall immediately notify the Engineer of any such interruption, and in the case of an interruption to Public Service Facilities or services, the Contractor shall immediately notify the Public Works Department by the fastest means possible. The Public Works Departments telephone number is 576-6517; the City's emergency dispatch number is 831-4000. The City ENGINEERING or Public Utilities Departments may sometimes also be reached by dialing 911. Contractor shall pay within 30 days of receiving a written statement for any charges for repairs or damages arising out of the damage to or interruption of Public Service Utilities or services.

**E. Deduct Damages from Monies Owed Contractor:** Owner shall be entitled to deduct and retain liquidated damages out of any money which may be due or become due the Contractor. To the extent that the liquidated damages exceed any amounts that would otherwise be due the Contractor, the Contractor shall be liable for such amounts and shall return such excess to the Owner.

### 3.5 PAYMENT PROCEDURES

**A. Progress Payments.** Contractor shall submit applications for payment, but not more often than once every 30 days. Payment shall not become due or payable for any contract item not provided or installed by Contractor according to the Contract Documents, unless otherwise approved by the Engineer. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work.

1. **Withholding Payment.** Owner reserves the right to withhold payment from Contractor for non-compliance with any provision of the Contract Documents.



**B. Final Payment.**

1. **Submittal.** Final payment shall not be made until the Contractor has delivered and Engineer has accepted the following submittals:

- a. A written request for final payment, signed by the Contractor's Representative,
- b. An affidavit from the Contractor's Representative, and reasonable evidence that all payments due and owing to subcontractors, laborers, suppliers of equipment and Materials, and all other outstanding indebtedness of the Contractor related to the Project have been fully paid, discharged, or waived by the person owed the money;
- c. All Project Material inspection and testing reports,
- d. Evidence that the performance bond has been extended for the one year warranty period; and
- e. Waiver of Lien, Full and Final Release form.

2. **Evidence of Payment.** The Engineer may, at his sole option, accept evidence by the Contractor that arrangements have been made for such payments based thereon.

3. **Payment to Subcontractors, Suppliers.** If the City reasonably believes that Contractor has failed to pay Subcontractors, suppliers of Materials, or laborers for work on the Project within a reasonable time of when payment is due, then City may, at its discretion, either pay unpaid bills and withhold from the Contractor's payment, or make a claim against any bond for this Project in the amount of the Engineer's estimate of the amount of money he deems sufficient to pay any such lawful claim. The City shall notify the Contractor of any such payment.

4. **Price Adjustments:** City may, in its discretion, make partial payment to the Contractor for certain non-conforming work in advance of any negotiated settlement reached between the Contractor and the City, provided the Contractor requests in writing that this be done, and the Engineer approves it. Contractor agrees that any such payments made by the City are "payments in advance" and that any money which becomes due when the final settlement is negotiated will not constitute payments "withheld" or "retained" under State law.

5. **City Released From Claims:** The payment and acceptance of the final Contract Price due and the adjustment and payment for any Work done in accordance with any alterations of the same, shall release the City from any and all claims of Contractor on account of Work performed under the Contract Documents or any Change Order thereof, except for those claims specifically agreed to as reserved and unresolved by the City.

3.6 **Extra Work.** No money will be paid to the Contractor for any additions, deletions or revisions in the Work as stipulated in the General Conditions, unless a contract for such has been made in writing and executed by the City and Contractor.

3.7 **Bond Releases.** In addition to those remedies allowed the City under Subsection 3.5(B)(3) above, the City may withhold release of a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person who supplied work or materials to the Project, or any uncorrected substandard work, until Contractor supplies a release of the City satisfactory to it signed by all persons who have supplied labor or materials to the Project. The Contractor shall supply to the Engineer within a reasonable time after his request a signed statement verifying all the suppliers, subcontractors and other persons who have supplied labor or materials to the Project.

3.8 **Change Orders.** Any change order which increases the total contract amount must be approved by a written certification by the ENGINEER.

#### **PART 4. DEFAULT**

4.1 **DEFAULT EVENTS.** Upon the occurrence of one or more of the following events:

A. **Breach.** If Contractor or any Subcontractor should substantially violate any of the provisions of this contract;

B. **Substantial Failure to Perform.** If Contractor substantially fails to perform any part of this Agreement;

C. **Repeated Failure or Inability to Perform.** If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of 72 hours;

D. **Insolvency, Inability to Pay Debts, Bankruptcy.** If Contractor (i) shall become insolvent in a bankruptcy sense; (ii) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. §101[10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of 90 days; (iv) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of 90 days; (v) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of 90 days; (vi) shall be dissolved; (vii) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation,

or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains un-dismissed for a period of 90 days; (viii) shall voluntarily suspend substantially all of its business operations; (ix) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) shall take action for the purpose of any of the foregoing,

**Then** the City may, after serving ten (10) days' written notice (or such time set out in the notice in the City's reasonable discretion) on the Contractor and its surety of the City's intention to terminate the services of Contractor, and if within such notice period after serving such notice, the violation is not corrected to City's reasonable satisfaction, may take over the work and prosecute it to completion by contract or by any other method it may deem advisable. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for such work as provided in this Agreement.

**4.2 HEARING.** The Contractor shall be entitled to a hearing before the City's department head responsible for the Project, or his or her designee(s) upon the issue of termination if it submits a written request there for within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer(s).

**4.3 WAIVER.** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

**4.4 CONTINUE PERFORMANCE.** The Contractor shall continue the performance of this agreement to the extent not terminated under the provisions of this Part.

**4.5 REMEDIES NOT EXCLUSIVE.** The rights and remedies of the City provided in this part shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

**PART 5. MISCELLANEOUS COVENANTS**

**5.1 ASSIGNMENT NOT BINDING WITHOUT WRITTEN CONSENT**

A. City and Contractor agree no assignment of any right or interest in the Contract Documents will be made without the written consent of the City and the Contractor. No assignment will release or discharge the City or the Contractor from any duty or responsibility under the Contract Documents unless specifically authorized in writing.

B. Contractor shall make no assignment of money that is due without the City's written consent (except to the extent that the effect of this restriction may be limited by law or regulation).

**5.2 BINDING TERMS.** City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

**5.3 CONTROLLING LAW.** This Agreement shall be construed in accordance with and enforced under the laws of the State of Utah.

**5.4 ASSIGNMENT.** The Contractor shall not assign nor transfer any interest in this agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

**5.5 UNENFORCEABLE CONTRACT, WAIVERS.** In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

**5.6 ENTIRE AGREEMENT.** This contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written modification signed by the parties.

**5.7 WORKING HOURS.** All work performed by the Contractor, its subcontractors, material-men, agents and employees shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless special prior arrangements for other hours have been requested and approved in writing by the Engineer. Contractor shall minimize noise disturbance to the surrounding neighborhood by maintaining efficient noise attenuation devices on all noise generating equipment as determined by the Engineer and Draper City Council.



5.8 **THIRD PARTY RIGHTS.** Nothing herein is intended to confer rights of any kind in any third party.

5.9 **PARTIES' REPRESENTATIVES.** For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered, or sent by facsimile transmission, or mailed by certified mail, postage pre-paid, to the parties at the following addresses:

Contractor: Contractor's Representative designed at the top of this document, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;

Draper City: Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

5.10 **SEVERABILITY.** Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

5.11 **INTERPRETATION.** The parties hereto acknowledge that the Agreement has been prepared after extensive negotiations and the opportunity for each party to review the Agreement with and obtain advice from their respective legal counsel. In construing the Agreement or any Addendum to it, the fact that one party or the other may have drafted its various provisions shall not affect the interpretation of such provisions.

5.12 **CITY'S GENERAL RIGHT TO TERMINATE.** The City may terminate this Agreement for any reason for its own convenience upon notice to the Contractor, provided that the City shall pay Contractor for Work performed by the Contractor, its subcontractors, and materials supplied according to the Contract Documents. The City shall not owe the Contractor, its subcontractors or sub-subcontractors, any of their officers, employees, or suppliers damages for early termination other than as provided in this paragraph.



5.13 **COMMUNICATIONS, MEETINGS.** Contractor's representative shall promptly and fully respond to communications from the City Representative about the Project work, and shall meet with the City Representative about the Project as often at such times as the City Representative shall request.

IN WITNESS WHEREOF, the parties have entered into this agreement on the day and year set out at the top of this Agreement.

**DRAPER CITY**

\_\_\_\_\_  
DRAPER CITY MAYOR

ATTEST: \_\_\_\_\_  
DRAPER CITY RECORDER

**CONTRACTOR**

\_\_\_\_\_

Type or print: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: (if corporation)

\_\_\_\_\_

Title: \_\_\_\_\_





## EXHIBIT A INSURANCE REQUIREMENTS

### INSURANCE REQUIREMENTS FOR PARTIES CONTRACTING WITH DRAPER CITY

PROJECT: 13200 South Street Widening Project – Phase 1  
DATE: 7 May 2013

Contracting party shall procure and maintain for the duration of the contract insurance against any claims which may arise from or in connection with the performance of the work hereunder by the contracting party, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contracting party's bid.

#### A. MINIMUM LIMITS OF INSURANCE

Contracting party shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate, for bodily injury, personal injury and property damage. Broad Form Commercial General Liability is required.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. "Any Auto" coverage is required.
3. Workers' Compensation and Employer's Liability: (1) Workers' compensation limits as required by the Labor Code of the State of Utah and (2) Employer's Liability limits of \$ 500,000 per accident.

Contracting party shall provide City with copies of certificates for all policies with an endorsement that they are not subject to cancellation without thirty (30) calendar days prior to written notice to the City. The City, its officers and employees, shall be named as additionally insured on the Contracting party's general and automobile liability insurance.



[Return to Agenda](#)

# CONSENT

## ITEM #G

# REQUEST FOR COUNCIL ACTION

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**To:** Mayor & City Council

**From:** Robert Markle, Engineering

**Date:** May 7, 2012

**Subject:** Agreement #13-121; a Pipeline Crossing Agreement with Union Pacific Railroad Company.

**Applicant Presentation:** \_\_\_\_\_

**Staff Presentation:** \_\_\_\_\_

**RECOMMENDATION:**

That City Council authorize the Mayor to sign the Pipeline Crossing Agreement, Agreement #13-121, with Union Pacific Railroad Company for the 24" waterline crossing in association with the 13490 S/Vista Station Roadway Project.

**BACKGROUND AND FINDINGS:**

The City will be constructing 13490 S/Vista Station to connect Bangerter Highway to the new TOD/Frontrunner Station. The Project includes the construction of a 24" culinary waterline to be constructed under the roadway which passes under the Union Pacific and UTA rail-lines And therefor requires crossing agreements.

**PREVIOUS LEGISLATIVE ACTION:**

**FISCAL IMPACT: Finance Review:** \_\_\_\_\_

License Fee = \$8,500

**Funding Source:** CIP Accounts 41-53-1641

**SUPPORTING DOCUMENTS:**

- Pipeline Crossing Agreement



April 15, 2013  
Folder: 2787-48

ROBERT MARKLE  
DRAPER CITY  
1020 E. PIONEER ROAD  
DRAPER UT 84020

Re: Proposed 24 Inch Encased potable water Pipeline Crossing of Railroad Property at Mile Post 727.37 on the Provo Subdivision at or near Draper, Salt Lake County, Utah

Robert Markle:

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 the enclosed self-addressed envelope.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, *if signature authorization is required by your Entity.*

- Payment in the amount of **Eight Thousand Five Hundred Dollars (\$8,500.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 2787-48 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) 544-8549.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathy Nesser".

Kathy Nesser  
Manager - Contracts

## PIPELINE CROSSING AGREEMENT

Mile Post: 727.37, Provo Subdivision  
Location: Draper, Salt Lake County, Utah

**THIS AGREEMENT** ("Agreement") is made and entered into as of February 27, 2013, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **DRAPER CITY**, an Utah municipal corporation to be addressed at 1020 E. Pioneer Road, Draper, Utah 84020 ("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 24 inch encased pipeline for transporting and conveying potable 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 February 27, 2013 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 potable 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.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

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**Article 2.     LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Eight Thousand Five Hundred Dollars (\$8,500.00)**.

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**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 license, 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**

**DRAPER CITY**

By: \_\_\_\_\_  
          **Manager - Contracts**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

2-14-13

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING



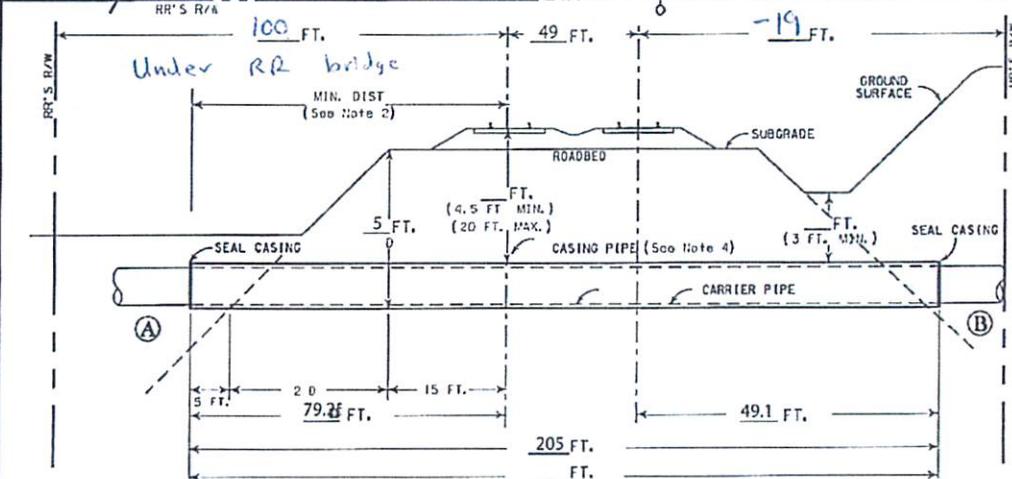
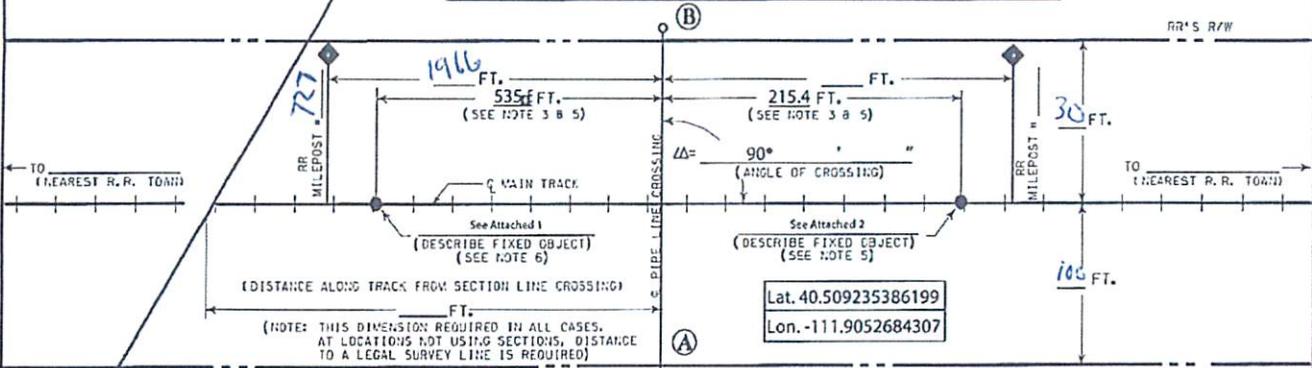
# ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B  
REV 10-22-2007  
www.uprr.com  
NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.

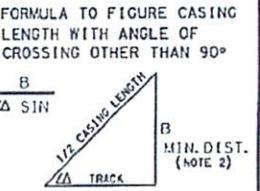
(OR LEGAL SURVEY LINE, WHERE APPLICABLE)

S LINE OF SECTION 35, TOWNSHIP 4, RANGE 1, W MERIDIAN



MINIMUM THICKNESS	DIAMETER OF CASING PIPE	DIAMETER OF CASING PIPE
.2500"	1/4"	12" OR LESS
.3125"	5/16"	OVER 12"-18"
.3750"	3/8"	OVER 18"-22"
.4375"	7/16"	OVER 22"-28"
.5000"	1/2"	OVER 28"-34"
.5625"	9/16"	OVER 34"-42"
.6250"	5/8"	OVER 42"-48"

OVER 48" MUST BE APPROVED BY R. R. CO.  
NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.



- NOTES:
- ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. OF TRACK.
  - CASING TO EXTEND BEYOND THE C. OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
  - MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, C. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
  - SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
  - ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; C. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
  - CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET?  YES;  NO;

B) IF YES, NAME OF STREET GALENA PARK BLVD

D) DISTRIBUTION LINE  OR TRANSMISSION LINE

C) CARRIER PIPE:  
COMMODITY TO BE CONVEYED POTABLE WATER  
OPERATING PRESSURE 115 PSI  
WALL THICKNESS 0.43; DIAMETER 24; MATERIAL DUCTILE IRON;

E) CASING PIPE:  
WALL THICKNESS 5625; DIAMETER 36; MATERIAL STEEL;  
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):  
 DRY BORE AND JACK (WET BORE NOT PERMITTED);  
 TUNNEL; OTHER OPEN CUT

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR?  YES;  NO;

H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK. (30' MIN.)

I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE  DOES;  DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20130214015

**EXHIBIT "A"**  
(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Provo  
SUBSTATION

M. P. 727.37 E. S. 2401+711

ENCASED POTABLE WATER CROSSING AT  
DRAPER Salt Lake UT

DRAPER CITY

RR FILE NO. 0278748 DATE 2-27-13

**WARNING**

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE 1-800-336-9193

## **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"):

Gary Jensen  
Manager of Track Maintenance  
476 E 900 S  
Provo UT 84606

801-360-4485

- 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 Licensee 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 CONTRACTORS, 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 OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

**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.

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 Agreement (except as otherwise provided in this Agreement) 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 and its contractor are 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/index.shtml](http://www.uprr.com/reus/rrinsure/index.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](mailto:william.j.smith@marsh.com)

Email: [cindy.long@marsh.com](mailto: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

[Return to Agenda](#)

# CONSENT

## ITEM #H

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<u>Mayor &amp; City Council</u>
<b>From:</b>	<u>Robert Markle, Engineering</u>
<b>Date:</b>	<u>May 7, 2012</u>
<b>Subject:</b>	<u>Agreement #13-122; a Pipeline Crossing Agreement with the Utah Transit Authority</u>
<b>Applicant Presentation:</b>	
<b>Staff Presentation:</b>	
<b>RECOMMENDATION:</b> That City Council authorize the Mayor to sign the Pipeline Crossing Agreement, Agreement #13-122, with the Utah Transit Authority for the 24" waterline crossing in association with the 13490 S/Vista Station Roadway Project.	
<b>BACKGROUND AND FINDINGS:</b> The City will be constructing 13490 S/Vista Station to connect Bangerter Highway to the new TOD/Frontrunner Station. The Project includes the construction of a 24" culinary waterline to be constructed under the roadway which passes under the Union Pacific and UTA rail-lines and therefore requires crossing agreements.	
<b>PREVIOUS LEGISLATIVE ACTION:</b>	
<b>FISCAL IMPACT: Finance Review:</b> _____ License Fee = \$2,663.50 Special Inspection = \$140.44  <b>Funding Source:</b> CIP Accounts 41-53-1641	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Pipeline Crossing Agreement</li></ul>	

**PIPELINE CROSSING AGREEMENT**  
(Interlocal Municipal Pipeline Form)

UTA Contract #PW/S/2434/P  
Mile Post Location: 727.38  
Draper, Utah

THIS PIPELINE CROSSING AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (to be dated after the final executing signature by UTA), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Draper City, a municipal corporation, and political subdivision of the State of Utah with a principal address of 1020 East Pioneer Road, Draper, UT 84020 (hereinafter "Licensee").

**RECITALS**

WHEREAS, UTA is the owner of the western 70 feet 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 36" steel casing and a 24" ductile iron water line via open trench cut. Pipe to be encased the entire 200 feet of the UP and UTA Right of Way. The Pipe to be backfilled with structural fill and compacted. (the "Pipeline") which will cross at approximately mile post 727.38 within an underpass, 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 emergency Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is Control Room at (801) 287-

5455. 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 36” steel casing and a 24” ductile iron water line via open trench cut. Pipe to be encased the entire 200 feet of the UP and UTA Right of Way. The Pipe to be backfilled with structural fill and compacted. Water line to be installed by Licensee pursuant to this Agreement and located a minimum of 6 feet underneath the surface of the Right of Way at approximately Milepost Number 727.38 (Latitude 40.509235386199, Longitude -111.9052684307) of the western 70 feet or of the Commuter Rail South Line in Draper, 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 4/01/13 and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Licensee agrees to pay UTA a one-time real estate usage charge of **\$2663.50** payable on or before the date of execution. Licensee also agrees to pay an upfront Flagging cost of **\$ 0** and Special Inspection cost of **\$140.44** (these fees are more clearly described in Section 5.1).

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**

5.1 The current cost of flagging is \$688.84/day for an eight (8) hour day and \$921.83/day for a (12) hour day. . The current cost for a special inspector is \$70.22/hour with a two hour daily minimum. UTA has determined that 0-hour days of flagging and one 2-hour days of Special Inspection will be needed for the construction of this Pipeline. Licensee will pre-pay \$140.44 for Flagging and a Special Inspection at or before the execution of this agreement. If after the construction of the Pipeline extra days of Flagging or Special Inspection have been collected, Licensee may submit in writing for a refund from UTA. Submission for refund will need to be submitted to UTA within 30 days of the date of completion of the Pipeline. Refunds will only be issued after confirmation from UTA operations that the flagging and special inspection days were not used.

5.2 In the event that UTA, in its sole discretion, determines that any other inspectors (technical or special), monitors, observers, safety personnel, additional flaggers or other persons are required given the nature of the Construction or Maintenance to be performed, UTA may, at its sole discretion, provide such personnel and Licensee shall, within 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 During the life of this Agreement, Licensee shall, at its sole cost and expense, obtain and maintain the insurance described in Exhibit "B" (Exhibit "B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference). Licensee will also provide to UTA a Certificate of Insurance, identifying UTA Contract Number PW/S/2434/P, issued by its insurance carrier confirming the existence of such insurance and indicating that the policy or policies contain the following endorsement:

"Utah Transit Authority is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the pipeline crossing located on railroad right of way at approximately Mile Post 727.38 at or near Draper, Salt Lake County, Utah"

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

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

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

## **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:

Draper City  
Attn: David Dobbins  
1020 East Pioneer Road  
Draper, UT 84020

**ARTICLE XVII  
NO IMPLIED WAIVER**

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair any future ability of UTA to avail itself of any remedy or right set forth in this Agreement. Neither the right of supervision by UTA, nor the exercise or failure to

exercise such right, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

**ARTICLE XVIII  
ENTIRE AGREEMENT - COUNTERPARTS**

This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by 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 XIX  
FORUM SELECTION AND CHOICE OF LAW**

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

**ARTICLE XX  
SPECIAL PROVISIONS**

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

**Space Intentionally Left Blank.**

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

Reviewed and Approved as to Form for UTA

TW LONES  
UTA Engineering

[Signature]  
UTA Legal

**UTAH TRANSIT AUTHORITY**

By: \_\_\_\_\_  
Paul Edwards  
Senior Program Manager

By: \_\_\_\_\_  
Mailia Lauto'o  
Manager, Property Administration

By: \_\_\_\_\_  
Shelley Nielsen  
Property Administrator

**LICENSEE**

By: \_\_\_\_\_

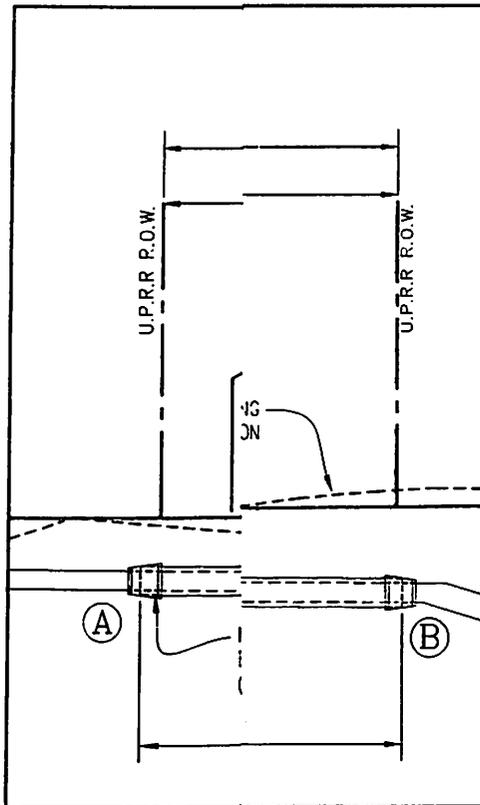
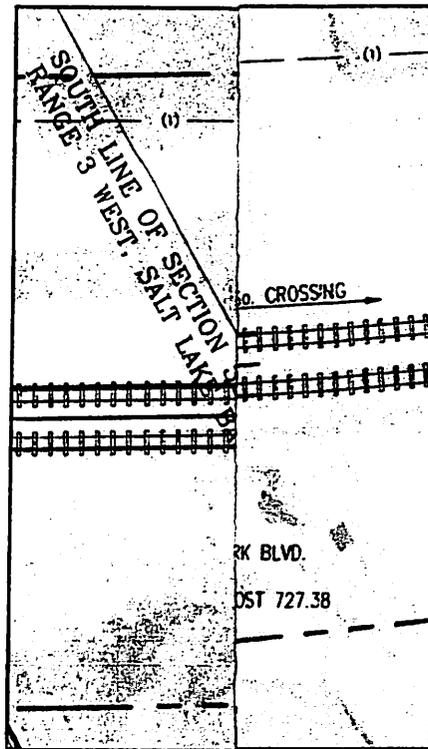
Its: \_\_\_\_\_



**EXHIBIT "A"**  
**DESIGN PLANS**

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

N:\Engineering\1-PROJECTS\Transportation\13490 South Street Construction\dwg\13490 South base\_1\_1\_5087.dwg, 2/15/2013 12:12:31 PM



REVISION			
NO	DATE	REV. BY	ISSUE

PROJECT NAME: **13490 So./GALENA PARK BLVD. ROADWAY PROJECT**

DATE:  

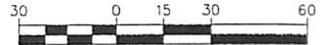
DRAWING: **UPRR PIPELINE CROSSING**

PLAN NO. **RR-1**

SHEET NO. **1 OF 1**

*TW Jones 4/1/13*

GRAPHIC SCALE



( IN FEET )  
 1 inch = 30 ft. (24x36)  
 1 inch = 60 ft. (11x17)

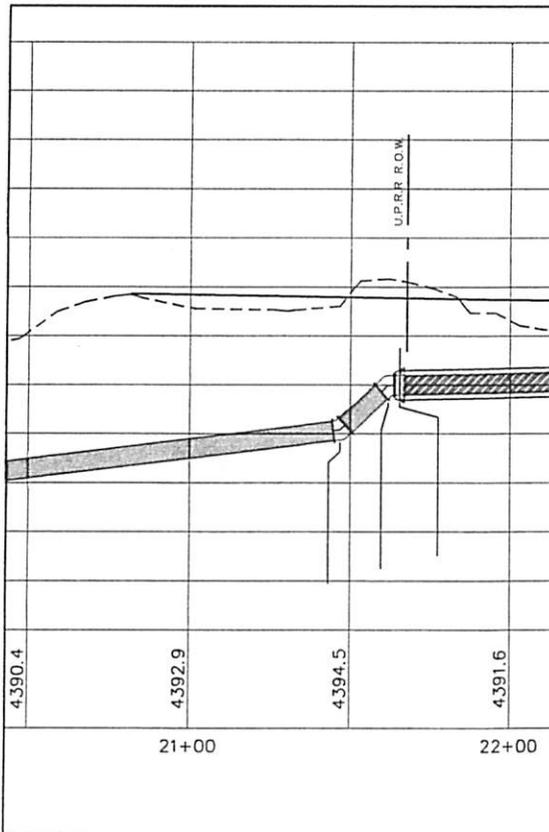
SEE SHEET SD-2 MATCHLINE  
 STA: 20+50



24" DUCTILE IRON WATERLINE

- 35 FURNISH AND LAY 111± LF. OF 24" CLASS 350 DUCTILE IRON PIPE PER DRAPER CITY STANDARDS. SEE STD. DWG. XX-XX FOR DETAILS.
- 36 FURNISH AND INSTALL 22 1/2" MJ BEND COMPLETE W/ THRUST-LOCK RESTRAINED JOINTS PER DRAPER CITY STANDARDS. SEE STD. DWG XX-XX FOR DETAILS.
- 37 FURNISH AND LAY 16± LF. OF 24" CLASS 350 DUCTILE IRON PIPE PER DRAPER CITY STANDARDS. SEE STD. DWG. XX-XX FOR DETAILS.
- 38 FURNISH AND INSTALL 45" MJ BEND COMPLETE W/ THRUST-LOCK RESTRAINED JOINTS PER DRAPER CITY STANDARDS. SEE STD. DWG XX-XX FOR DETAILS.
- 39 FURNISH AND LAY 233± LF. OF 24" CLASS 350 DUCTILE IRON PIPE PER DRAPER CITY STANDARDS. SEE STD. DWG. XX-XX FOR DETAILS.
- 40 FURNISH AND LAY 205± LF. OF 36" DIA 3/16" THICK A53 GRADE B STEEL CASING WITH APS MODEL "SSI" STAINLESS STEEL CASING SPACERS AND APS MODEL "AW" END SEALS. SEE STD. DWG. XX-XX FOR DETAILS.
- 41 FURNISH AND INSTALL 3" AIR/VAC ASSEMBLY COMPLETE PER DRAPER CITY STANDARDS. LOCATION OF AIR VENT STAND PIPE SHALL BE FIELD VERIFIED BY PROJECT ENGINEER. SEE STD. DWG XX-XX FOR DETAILS.
- 42 FURNISH AND INSTALL 24" MJ BUTTERFLY VALVE COMPLETE W/ "MEGA-LUG" TYPE RESTRAINED JOINT AND VALVE BOX PER DRAPER CITY STANDARDS. SEE STD. DWG XX-XX FOR DETAILS.
- 43 FURNISH AND LAY 515± LF. OF 24" CLASS 350 DUCTILE IRON PIPE PER DRAPER CITY STANDARDS. SEE STD. DWG. XX-XX FOR DETAILS.
- 44 CONTRACTOR SHALL FIELD LOCATE EXISTING 24" WATERLINE PRIOR TO LAYING PIPE FROM ITEM 42 AND ADJUST ALIGNMENT AND SLOPE AS NEEDED AND AS APPROVED BY PROJECT ENGINEER. CONNECT NEW PIPE TO EXISTING.

MATCHLINE - SEE PLAN



GENERAL NOTES:

CONTRACTOR SHALL FIELD VERIFY ALL LOCATION AND ELEVATIONS OF ALL WORK SHOWN ON PLANS.



REVISION			
NO	DATE	REV. BY	ISSUE

PROJECT NAME:  
**13490 So./VISTA STATION BLVD.  
 ROADWAY PROJECT**

DATE OF DRAWING:  
**ROADWAY  
 PLAN & PROFILE**

PLAN NO.  
**WT-7**

SHEET NO.  
**4 OF 34**

*TW Jones 4/1/13*

**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

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

- A. **Commercial General Liability Insurance:** Policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. The policy shall contain broad form contractual liability insurance covering the indemnity obligations assumed by Licensee in the Agreement. Exclusions for railroads (except where the 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.
- a. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.
- B. **Automobile Liability Insurance:** Policy providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.
- C. **Worker's Compensation and Employer's Liability Insurance:** Policy covering Licensee's statutory liability under the laws of the State of Utah. If Licensee is self-insured, evidence of State approval must be provided.
- D. **Railroad Protective Liability Insurance:** Licensee must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.
- a. The definition of "JOB LOCATION" AND "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement.
- E. **Umbrella or Excess Insurance:** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Other Insurance Provisions:**
- a. Licensee and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Licensee's insurance shall be primary with respect to any insurance carried by UTA. Contractor

will furnish UTA at least 30 days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.

- b. The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.
- c. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

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

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

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

Phone: (801) 287-2371  
Email: [dcpitcher@rideuta.com](mailto:dcpitcher@rideuta.com)

Send Checks and Applications to the following address:

Utah Transit Authority  
Attn: David Pitcher  
3600 South 700 West  
P.O. Box 30810  
Salt Lake City, UT 84130-0810

**EXHIBIT "C"**  
**SPECIAL PROVISIONS**

Licensee or Licensee's contractor must first obtain a Frontrunner Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Frontrunner Track Access Permit is Andres Alarcon at (801) 381-3475 or Zac Thomas 801-301-6680

A copy of the permit that will need to be filled out and submitted can be found on UTA's website, under the Track Access Permit tab.

[www.rideuta.com/PropertyManagement](http://www.rideuta.com/PropertyManagement)

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

[Return to Agenda](#)

# CONSENT

## ITEM #1

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Garth Smith</b>
<b>Date:</b>	<b>May 7, 2013</b>
<b>Subject:</b>	<b>Approval of Memorandum of Understanding Between Draper City and the Draper Ham Radio Association</b>
<b>Applicant Presentation:</b>	<b>N/A</b>
<b>Staff Presentation:</b>	<b>Garth Smith, Human Resources &amp; Emergency Svcs. Director</b>
<b>RECOMMENDATION:</b> Approve the Memorandum of Understanding Between Draper City and the Draper Ham Radio Association and authorize the City Manager to sign.	
<b>BACKGROUND AND FINDINGS:</b> This agreement allows for cooperation between Draper City and the Draper Ham Radio Association in providing emergency communication in situations that warrant additional assistance. Communication readiness is designated as emergency support function #2 in the adopted Draper City Emergency Management Plan (adopted by City Council Resolution #12-18 on May 1, 2012).	
<b>PREVIOUS LEGISLATIVE ACTION:</b> None	
<b>FISCAL IMPACT: Finance Review:</b> _____ None	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Memorandum of Understanding between Draper City and the Draper Ham Radio Association.</li></ul>	

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
DRAPER CITY AND THE DRAPER HAM RADIO ASSOCIATION**

This Memorandum of Understanding (MOU) is between the City of Draper, Utah (City), 1020 E. Pioneer Road, Draper, Utah 84043, and the Draper Ham Radio Association (DHRA) of 16064 Timber Brook Dr., Draper, UT 84020, Draper, Utah 84043; collectively the "Parties".

**RECITALS**

In emergency situations, amateur radio is often used as a means of communication when wire-line, cell phones, and other traditional means of communications fail. To help facilitate emergency communications, Draper City will make space available for the installation of a HAM radio repeater system in the City-owned Fire Station 122, Police Department Office, located in the Emergency Preparedness District of SunCrest. The repeater will be used to relay amateur radio signals throughout the City in accordance with existing Federal Communications Commission (FCC), State and local regulations.

The DHRA is an established group of Draper City residents who are duly licensed (or in the process of authorized training to acquire licenses) and is qualified per FCC regulations to use amateur radio equipment. The DHRA is a volunteer organization with no compensation to any of the members. As such, individual members of the DHRA may terminate their membership in the association at any time and thereby terminates any responsibilities they may have to the City in regards to the association, its By-laws, and this MOU. DHRA has an elected president with additional officers and members who are highly qualified in the use and maintenance of communications equipment. The DHRA has offered to oversee the repeater operations, scheduling, training of membership/residents, and preventive and general routine limited maintenance of the repeater within its capabilities to do so.

This repeater is available to FCC-licensed amateur radio operators, but as governed by DHRA By-Laws (attached as Exhibit "A"). The first priority use of the repeater shall be for local Draper city, county, state, or national emergency use. The repeater may also become part of a State or National network if emergency situations so require.

Amateur radio operators who are licensed by the FCC provide important emergency and public service communications on a voluntary basis, in time of need, when other modes of communication are unavailable or may be overwhelmed. The City has, therefore, allocated funds for the purchase, installation and maintenance of repeater equipment for use by FCC-licensed amateur radio operators in the DHRA.

DHRA is the legal holder and trustee of an amateur repeater license (attached as Exhibit "B") and as of this writing is authorized to operate the repeater with call-sign KC9APG on frequency pair of 447.100/442.100 Mhz (pl tone 100.0 Hz) as coordinated with the Utah VHF Society Frequency Coordinator.

## **MEMORANDUM OF UNDERSTANDING**

The City and the DHRA hereby enter this Memorandum of Understanding to operate the City's repeater under the terms specified as follows:

The DHRA ...

1. Will establish a set of by-laws for association governance and repeater operations and provide a current copy (attached as Exhibit A) to the City and its Emergency Preparedness Executive Committee (DEPEC) for their review/ comment/ recommendations, which shall be attached hereto and by this reference made a part hereof.
2. Will make the repeater available 24 hours per day on an "open" basis, for use by locally licensed amateur radio operators, with preference (to the extent possible allowed by FCC regulations) given those who are participating in emergencies, drills, and community services in connection with Draper City. Use by guests on the system will be governed by the DHRA By-Laws and applicable governmental regulations.
3. Will make quarterly written reports to the City on the operational status of the repeater system.
4. Will make periodic reports/presentations to the members of the Draper City Emergency Preparedness District Representative Committee (DEPDRC) describing the status of the repeater system, how it is equipped, and how it is operated.
5. Will maintain a Repeater Committee with a membership of at least three (3) who have been trained in the operations/functions of the repeater. Contact information for these trained individuals is to be made available to the Chairmen of the DEPEC and DEPDRC for use as necessary to address various issues that may arise with the repeater.
6. Will provide supervised audit visits of repeater systems on a quarterly basis, if needed, to authorized City Council representative(s), and with coordination with the Draper City Police Department.
7. Will coordinate with the Draper City Police Department for access, as needed, to the office space provided at Fire Station 122, where the repeater is located.

8. Will continually assess “best needs” and “best practices” and make recommendations for upgrades or enhancements to the repeater system, seeking necessary funding to be provided by the City.
9. Will understand that no members are to be paid for their labors in the operation, preventative and general routine maintenance of the repeater system. If approved by the City and prior to any work being completed, a qualified member may be contracted to make repairs associated with repeater on an “as needed” basis.
10. Will maintain the repeater system to the best of its capability of existing members, realizing that the DHRA is a volunteer organization with no public funding, and will not be paid by the City for their time in doing so, except a qualified member may be contracted, if requested and approved by the City, to make repairs associated with repeater.
11. Will not perform exterior maintenance on the antenna or modifications to the fire station without prior coordination and assistance from the City.
12. May volunteer to participate, when possible, in all citywide emergency drills or training where emergency communications are deemed essential. Individual DHRA members are free to decline volunteer requests from the City for reasons of safety, conflicts of interest, or any other reason.
13. May volunteer to participate, when possible, in major City events to help support communications needs. Individual DHRA members are free to decline requests from the City for volunteer reasons of safety, conflicts of interest, or any other reason.
14. May maintain a website to keep Draper residents informed of DHRA activities and encourage recruitment and training for additional volunteers/members.
15. Acknowledge that all system equipment is owned by the City whether purchased or donated. No equipment may be moved, sold, traded, or exchanged without City approval.
16. Will advise the City of any proposed changes to the repeater callsign or frequency changes.
17. Will advise the City of changes to the DHRA officers or trustee(s).
18. Will disable the repeater if unauthorized persons obtain physical access or control of the repeater.
19. Will periodically provide to the City of Draper a contact list of its volunteer members who may from time to time volunteer their amateur radio skills to assist with emergency communications. This contact list will include each respective member’s name, callsign, phone and emergency district.

**The City will:**

1. Acquire, at City expense, an adequate repeater system capable of enhancing emergency communications capabilities by amateur radio operators for the residents of Draper.

2. Entrust operations of the repeater system to the DHRA, and may make recommendations to the DHRA about its By-Laws in reference to governance of the repeater.
3. Assist DHRA with around the clock (24/7) physical access to the repeater equipment as coordinated with the Draper City Police Department, which controls the room wherein the equipment is located.
4. Assist DHRA with support as may be necessary to access antenna equipment which is attached to Fire Station 122, ensuring all installation/workmanship complies with applicable building codes.
5. As owner of all repeater system equipment, whether donated or purchased, review and provide funding deemed necessary and reasonable to maintain or repair repeater system equipment.
6. Review recommendations of the DHRA and provide funding for reasonable upgrades or enhancements deemed essential to further benefit the emergency readiness and communications of the citizens of Draper City.
7. Acquire all equipment, supplies, maintenance and repairs following Draper City Administrative Code Sections 3-3-060, 3-3-070 (a), (b), (c).
8. Will ensure that all repeater system equipment installed complies with applicable building codes in cooperation with Draper City Public Works.

Each of the Parties hereby agrees, on behalf of itself, its members, and its permitted successors and assigns, to waive any claims, demands, liabilities, actions or causes of action, including without limitations, attorney fees and litigation costs, against the other Party and its respective agents, officers, officials, employees, and other representatives arising out of or resulting from, or in connection with the negligence of that other Party related to actions undertaken pursuant to this MOU.

This MOU shall take effect when signed below by authorized representatives of the City and DHRA. The MOU may only be modified by the mutual written consent of the Parties and may be terminated by any party with thirty (30) days written notice.

Executed and effective this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

DRAPER CITY

\_\_\_\_\_  
Tracy Norr, City Recorder

\_\_\_\_\_  
Draper City Manager

*Mary L. Turton, President*  
\_\_\_\_\_  
Draper Ham Radio Association Officer

**Draper Ham Radio Association (DHRA) By-Laws**

**16064 Timber Brook Dr., Draper, UT 84020**

**5 April 2013**

**Article I. Preamble**

The mission of the Draper Ham Radio Association (DHRA) is to provide licensed amateur radio operators living within the boundaries of Draper City's nine emergency preparedness districts the opportunity to serve the community, primarily for emergency communications. The DHRA holds a weekly public safety net for licensed amateur radio operators to test their equipment, improve operating skills, pass message traffic and prepare for emergency operation in the event of a real emergency, and is conducted in support of and in cooperation with the public safety efforts of local, state, and national emergency response organizations. In cooperation with the City of Draper, the DHRA will operate and maintain the city-owned repeater for the primary use of the DHRA and the City, in accordance with a Memorandum of Understanding between the DHRA and the City. The weekly public safety net will be conducted by the DHRA on the Draper City-owned amateur radio repeater. Nets may also be conducted on simplex frequencies from time to time as needed. We encourage all amateur radio licensed operators in and around the City of Draper to understand emergency preparedness for themselves and their families and for their community, to learn how to operate their radio equipment and to train in proper radio skills and protocols in the event of an emergency where emergency response is needed.

**Article II. Membership and Membership Removal**

**Section 1. Membership**

Membership in the DHRA is open to licensed amateur radio operators living within the boundaries of any of the nine emergency preparedness districts of the City of Draper, Utah. Membership includes voting privileges. Non-licensed persons or non-Draper emergency district residents licensed amateur radio operators may join the DHRA as associate members. Associate members do not have voting privileges. There are no annual dues at this time. Individual members are free to decline requests from the City of Draper for reasons of safety, conflicts of interest, or other reasons. The DHRA is a volunteer organization, with no compensation to any of the members. As such, individual members of the DHRA may terminate their membership in the association at any time and thereby terminates any responsibilities they may have to the DHRA and to the City of Draper. Contact must be made with the President or Vice President to join the DHRA.

**Section 2. Membership Removal**

Any member may be removed by an affirmative vote by the majority of the DHRA Board.

**Article III. The DHRA Board – Officer Tenure, Resignation and Removal**

The DHRA Board consists of 6 officers: President, Vice President, Secretary, Net Coordinator, Station Engineer and Assistant Station Engineer, and others as deemed necessary. All officers must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

**Section 1. Officer Tenure**

Election of Officers will be held on a rotating annual basis, on the 4<sup>th</sup> Thursday of the month in January at the January monthly face-to-face meeting. Elections for President, Net Coordinator and Station Engineer will be held on odd years, and elections for Vice President, Secretary and Assistant Engineer will be held on even years. These annual elections will commence in January 2014. The Annual DHRA meeting is also held in conjunction with the January monthly face-to-face meeting held on the 4<sup>th</sup> Thursday.

**Article III. The DHRA Board – Officer Tenure, Resignation and Removal (Cont'd)**

**Section 2. Officer Removal**

If an Officer of the Board fails to serve the board or fails to be available to send and receive communications in a timely manner, the said Officer may be removed from his/her position by an affirmative vote of the majority of the DHRA Board.

**Section 3. Officer Voluntary Resignation**

If an Officer finds himself or herself no longer able to perform in his or her officer role, and desires to resign from his/her officer role, the DHRA Board will release the Officer from said duties and convene to find and elect a replacement for the departing officer.

**Article IV. Officer Duties & Responsibilities**

**Section 1. Duties of the President:**

Must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

Coordinate and liaison with the Draper City Emergency Preparedness committees, including attending their meetings, and other meetings as required.

Serve as a contact for the DHRA, and as an Officer on the DHRA Board.

Supervise dissemination of all public information about the DHRA.

Coordinate with other members of the board as needed.

Create other positions and committees as needed in cooperation with Board members.

Keeper of all official DHRA documents.

**Section 2. Duties of the Vice President**

Must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

Assist President in responsibilities.

Takes over when President is not available.

Serve as a contact for the DHRA, and as an Officer on the DHRA Board.

**Section 3. Duties of the Secretary**

Must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

Administer the DHRA internet website as coordinated with the President.

Disseminate of information to the public, as approved by the President.

Maintain membership database contact information, and keep minutes of meetings.

Ensure that the President is informed of all activities and has access to all information.

## **Article IV. Officer Duties & Responsibilities (Cont'd)**

### **Section 4. Duties of the Net Coordinator**

Must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

Ensures weekly running of the DHRA Public Safety Net.

Train and provide others with the opportunity to be Net Control.

Prepare training items for the net

Post weekly net check-in results to the DHRA internet website.

Serve as an Officer on the DHRA Board.

### **Section 5. Duties of the Station Engineer**

Must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

Be willing to act as designated Control Operator of the repeater, in assisting the Licensee Trustee, in accordance with FCC Part 97 regulations.

Be trained in the operation of the repeater system.

Maintain the repeater system and its schematics.

Advise when technical advice and repair is needed, and provide information to the Board as needed.

Act as Chairman of the Repeater Committee and call and conduct meetings as needed.

Serve as an Officer on the DHRA Board.

Be trained in the operation, tuning and maintenance of the repeater system.

Train others on the Repeater Committee as needed.

### **Section 6. Duties of the Assistant Station Engineer**

Must have a reliable amateur radio, phone, email and internet and be able to post to the DHRA website.

Support, advise and back up the Station Engineer as needed.

## **Article V. Nets**

The weekly public safety nets are open, directed nets that are held on each Thursday evening at 8:30pm, operating at 145.77 in simplex mode except for the fourth Thursday evening when the monthly face-to-face meeting is held. This frequency and band is subject to change. Check-ins are by emergency preparedness district in Draper, followed by a visitor check-in. The nets are directed and ensured by the Net Coordinator, who also may act as Net Control.

## **Article VI. Meetings**

Monthly face-to-face meetings are open to the public and are held on the fourth Thursday evening of the month at 7pm, to replace the Thursday evening public safety net. These meetings will be held at the LDS Eastridge Stake Center at 1187 East Draper Parkway in Draper, Utah (or at the Public Library at 1136 Pioneer Road in Draper, Utah) unless otherwise noted, and meeting times and agendas will be posted no later than one week in advance of the meeting on the DHRA blog, and also by email. Members and non-members alike are welcome to attend these meetings. For any other meetings that need to be held, at least one week's notice must be given.

## **Article VI – Meetings (Cont'd)**

Notices will be posted in the email and on the DHRA website, which is currently draperhamradio.wordpress.com. An annual meeting will be held on the 4<sup>th</sup> Thursday of the month in January, at which annual elections will also be held. Notice of this meeting will be posted one month in advance with information on nominations.

## **Article VII. Internet Presence and Website Security**

DHRA maintains an internet website blog, currently at draperhamradio.wordpress.com. The Secretary will manage and administer the content on the blog as approved by the President. The Net Coordinator will post weekly net check-in results. Website admin access will be given to officers.

## **Article VIII. Elections, Voting and Quorum Definition**

### **Section 1. Elections**

Elections will be held on a rotating annual basis, on the 4<sup>th</sup> Thursday of the month in January at the January monthly face-to-face meeting. Elections for President, Net Coordinator and Station Engineer will be held on odd years, and elections for Vice President, Secretary and Assistant Engineer will be held on even years. These annual elections will commence in January 2014. The Annual DHRA meeting is also held in conjunction with the January monthly face-to-face meeting held on the 4<sup>th</sup> Thursday.

### **Section 2. Nominations**

Nominations must be made a month in advance and notice of these election nominations will be published at the monthly face-to-face meeting a month before the election and on the DHRA website a month before the election.

### **Section 2. Voting**

Votes in an election may be submitted by phone, email or face-to-face at the January meeting. Votes by telephone and by email must be received by the President or the Vice President no later than 24 hours before the start of the election meeting the next day. Election results will be determined by the majority of votes cast.

## **Article IX. Repeater, Licensee Trustee and Repeater Committee**

### **Section 1. Repeater Equipment & Location**

The repeater system consists of a repeater and software cable, duplexer, power supply, antenna, mast, lightning protection and/or arrestor, heliax cable, other coax cables, connectors and miscellaneous hardware. This repeater system equipment is owned by the City of Draper. It is located at the firestation atop Traverse Mountain in the SunCrest development, United Fire Authority (UFA) #122. The antenna is on an exterior mast mounted from the ground. The repeater equipment is in an interior room controlled by the Draper City Police Department, housed in a rack that also contains a repeater owned and operated by the Draper City Police Department.

### **Section 2. Care of Repeater System**

DHRA volunteers will provide the operation and general, preventive maintenance of the repeater. Needed access to the interior room controlled by the Draper City Police Department at the SunCrest firestation for the purpose of maintaining, repairing or auditing the repeater system is coordinated by the DHRA with the Draper City Police Department and/or the Draper City Public Works Department.. Any needed access for repairs to the antenna will be coordinated with the Draper City Public Works Department. Needed repeater maintenance funds or needed contracted technical advice shall be requested of and provided by the City of Draper on an as needed basis.

**Article IX. Repeater, Licensee Trustee and Repeater Committee (Cont'd)**

**Section 3. Licensee Trustee, Control Operator, Station Callsign, and Repeater usage availability.**

The DHRA will operate and maintain an open repeater with the frequency pair 447.100/442.100 as coordinated with the Utah VHF Society. The repeater will be available 24 hours per day on an "open" basis, for use by locally licensed amateur radio operators, with preference (to the extent possible allowed by FCC regulations) given those who are participating in emergencies, drills, and community services in connection with Draper City. Use by guests on the system will be governed by the DHRA By-Laws and applicable FCC regulations. The station callsign for the repeater is KC9APG, and as of this writing, the DHRA Licensee Trustee is the legal holder of this station callsign (attached as Exhibit A).

The DHRA Licensee Trustee is designated by the President or by the Vice President of the club and must hold an amateur service operator license grant (see Section 97.5(b)(2) of the FCC Rules). Under all circumstances, the station licensee trustee is ultimately responsible for the correct and proper station operation, and is assumed to be the designated Control Operator by the FCC unless the Licensee Trustee designates someone else to be the designated Control Operator. The FCC rules consider both to be equally responsible (see page 12 of the FCC Rules and Regulations effective February 23, 2007, and per FCC Part 97.103(a) of Title 47 of the Code of Federal Regulations). As of this writing, the Licensee Trustee has designated the Station Engineer as the Control Operator and as an Assistant Licensee Trustee.

**Section 4. Repeater Committee**

The Repeater Committee members are appointed by the majority of officers on the board. They will consist of the License Trustee, the Station Engineer, the Assistant Station Engineer and others as appointed. They serve at the request and pleasure of the Board. The Station Engineer will serve as Chairman of the Repeater Committee, thus calling and conducting meetings as needed, for the purpose of discussing and conducting maintenance of the repeater system, suggesting and developing policies for use of the repeater frequencies in correlation with the Board and the City of Draper, and making recommendations for any updates or additions, changes or removal of the repeater system and antenna equipment.

The Repeater Committee members are appointed by and serve at the pleasure of the Board. At a minimum, they will consist of the License Trustee, the Station Engineer and Assistant Station Engineer and others as needed. The Chairman/Station Engineer may make recommendations to the Board for appointees.

**Article X. Approving, Adopting and/or Amending DHRA By-laws**

An affirmative vote of the majority of the DHRA Officers is needed to approve, adopt and/or amend DHRA By-Laws.

**APPROVED:**

We the undersigned officers of the Draper Ham Radio Association (DHRA) certify that we have adopted and approved these By-Laws for the DHRA on this the 6<sup>th</sup> day of April, 2013 and these By-laws will be effective immediately.

Mary L. Turton  
Name

President  
Officer Position

Mavis Mad  
Name

Vice President  
Office Position

Scott Turner  
Name

Net Coordinator  
Officer Position

Ben Hunter  
Name

Station Engineer  
Officer Position

Steve Rinke  
Name

ASSIST. STATION ENGINEER  
Officer Position

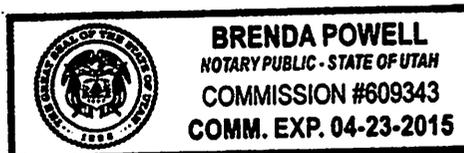
\_\_\_\_\_  
Name

\_\_\_\_\_  
Officer Position

Subscribed and sworn/affirmed to before me on this 6 day of  
April 2013 by LYNETT MADRIP

[Signature]  
Notary Public

April 23, 2015  
My Commission Expires



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# CONSENT

## ITEM #J

# REQUEST FOR COUNCIL ACTION

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<b>To:</b>	<u>Mayor &amp; City Council</u>
<b>From:</b>	<u>Joe Bryant</u>
<b>Date:</b>	<u>April 19, 2013</u>
<b>Subject:</b>	<u>Asphalt Crack Sealing Compound- Agreement # 12-40 Amendment #2</u>
<b>Applicant Presentation:</b>	
<b>Staff Presentation:</b>	
<b>RECOMMENDATION:</b> Recommendation to approve contract renewal for the first renewal term of one-year as allowed in the original agreements.	
<b>BACKGROUND AND FINDINGS:</b> Amendment #2 need to extend the term of the agreement to allow for additional product purchases through next contract term. This renewal extends term through April 9, 2014.  No additional cost increases are allowed during this renewal term.	
<b>PREVIOUS LEGISLATIVE ACTION:</b> N/A	
<b>FISCAL IMPACT:</b> Finance Review: 	
<ul style="list-style-type: none"><li>• Funds currently budgeted under streets maintenance.</li></ul>	
<b>SUPPORTING DOCUMENTS:</b> <ul style="list-style-type: none"><li>• Contract 12-40 Amendment #2</li></ul>	

# ASPHALT CRACK SEALING COMPOUND AGREEMENT

## AMENDMENT No.2

between

DRAPER CITY

and

CRAFCO Inc.

THIS Amendment No. 2 is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Draper City, municipal corporation of the State of Utah (hereinafter referred to as City), and Crafc, Inc. a Arizona corporation (hereinafter referred to as vendor), with a principal place of business at 420 N, Roosevelt Ave. Chandler, AZ 85226. The City and Vendor will sometimes be referred to herein collectively as the "Parties."

### RECITALS

1. Vendor and City entered into an agreement (City Agreement No. 12-40, hereafter "Agreement") in which vendor agreed to provide Asphalt Crack Sealing Compound to the City.

2. Amendment #1 parties agreed to accept alternative and additional product(s) that meets standards and reduces cost of materials to the City.

3. The agreement was effective April 10, 2012, through April 9, 2013, with the option to renew the agreement for three (3) optional one-year renewal terms.

4. The parties now desire to exercise the first one-year renewal term, which shall be effective April 10, 2013 through April 9, 2014.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions contained herein, and for the payment of sums of moneys as specified, the Parties agree as follows:

1. To exercise the first, optional one-year renewal term to be effective April 10, 2013 through April 09, 2014.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

"CITY"  
DRAPER CITY

ATTEST:

\_\_\_\_\_  
Tracy Norr, City Recorder

\_\_\_\_\_  
Darrell H. Smith, Mayor or designee

"Vendor"  
Crafco, Inc.

STATE OF <sup>Utah</sup> ARIZONA )  
County of Box Elder :ss.

On the 17 day of April, 2013, personally appeared before me Scott Goodliffe who being by me duly sworn did say that (s)he is the Utah Sales Manager of Crafco, Inc., and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and they acknowledged to me that said corporation executed the same.

Scott Goodliffe

My Commission Expires:

10/20/2013

Notary Public  
Residing at: 110 S. main.

Kimberly A. Roeder



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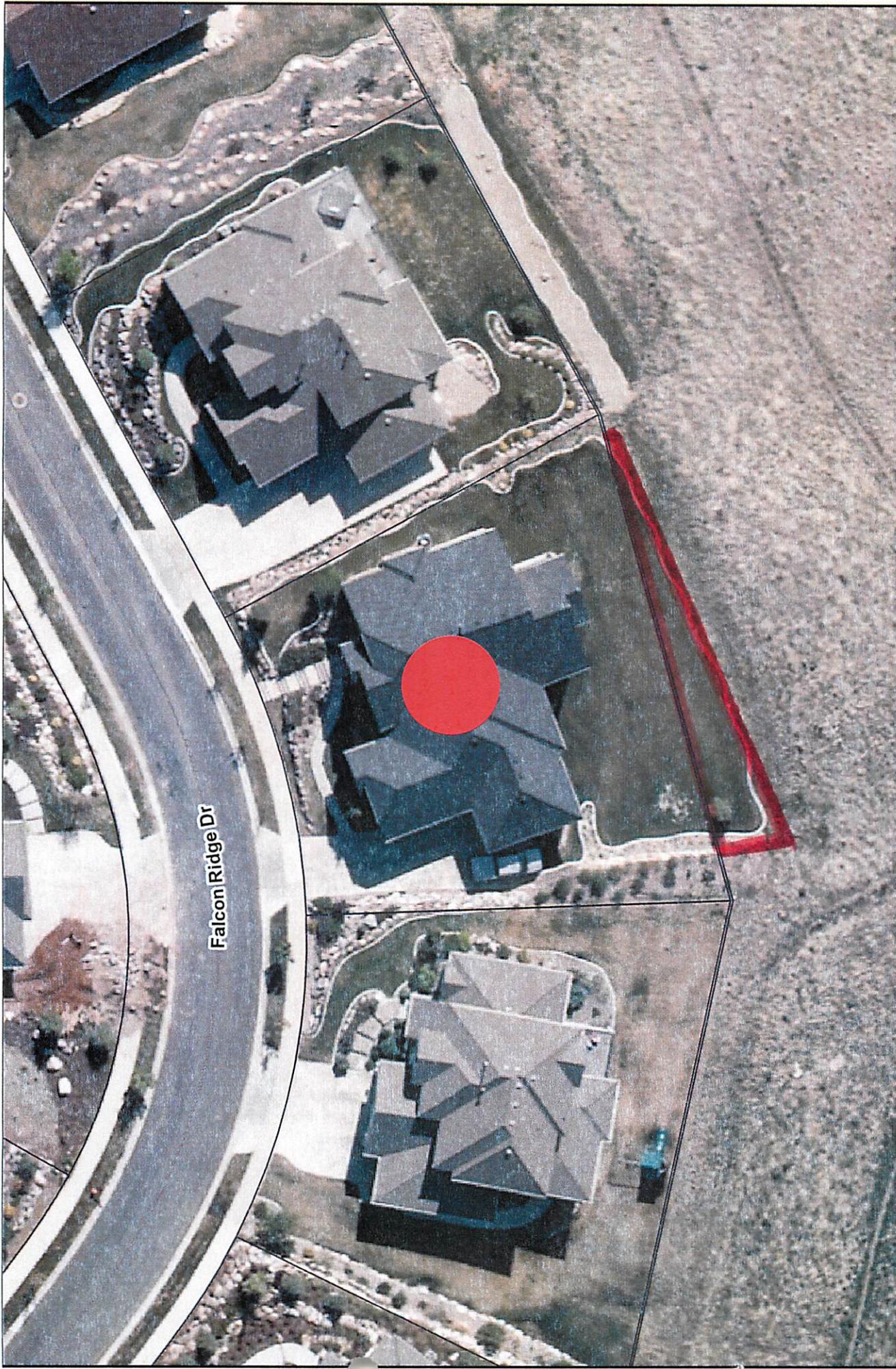
# ITEM #5

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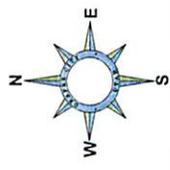
# ITEM #6

**Public Hearing Item  
Ted & Cossette Morton  
2116 E. Falcon Ridge Dr.**

**They are requesting to purchase open space they have encroached  
onto**



Falcon Ridge Dr

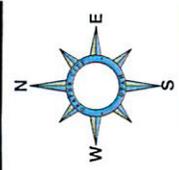


2116 E. Falcon Ridge Dr.





Corner Canyon Regional Park



# 2116 E. Falcon Ridge Dr.



## **Doug Ahlstrom**

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**From:** Cossette Morton  
**Sent:** Saturday, April 06, 2013 9:46 AM  
**To:** Doug Ahlstrom  
**Cc:**  
**Subject:** Possible encroachment in SunCrest

Dear Mr. Ahlstrom,

We are in receipt of your letter detailing the landscape curbing and rock wall extending into the City's property. We have located the apparent property corners and it does appear you are correct. We apologize, and would offer the following:

1. Our rough measurement estimate is that we have extended into the city property approximately 15' feet, tapering down to 0' at the opposite corner. The extension has been landscaped with grass, and a decorative landscape curb which lines the drainage swale. Additionally, we have a few feet (est. 6') of rock retaining wall which tapers down to the drainage swale.
2. Our measurements appear that the triangular strip of land is roughly 944 sq feet.
3. We would offer to purchase this triangular strip from the city after paying for a survey and having a deed prepared. Our only other alternative is to have the grass strip removed as well as the landscape curbing and a few landscape / retainer rocks. We would prefer the opportunity to purchase. Accordingly, we would like to offer to purchase the strip of land from the city for \$9.00 a foot, which our rough calculation is \$8,500.00.

Again, our apologies for the apparent encroachment. We look forward to your response.

Sincerely,

Ted and Cossette Morton

2116 East Falcon Ridge Drive

Draper, Utah

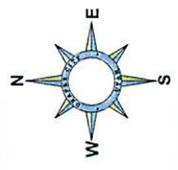
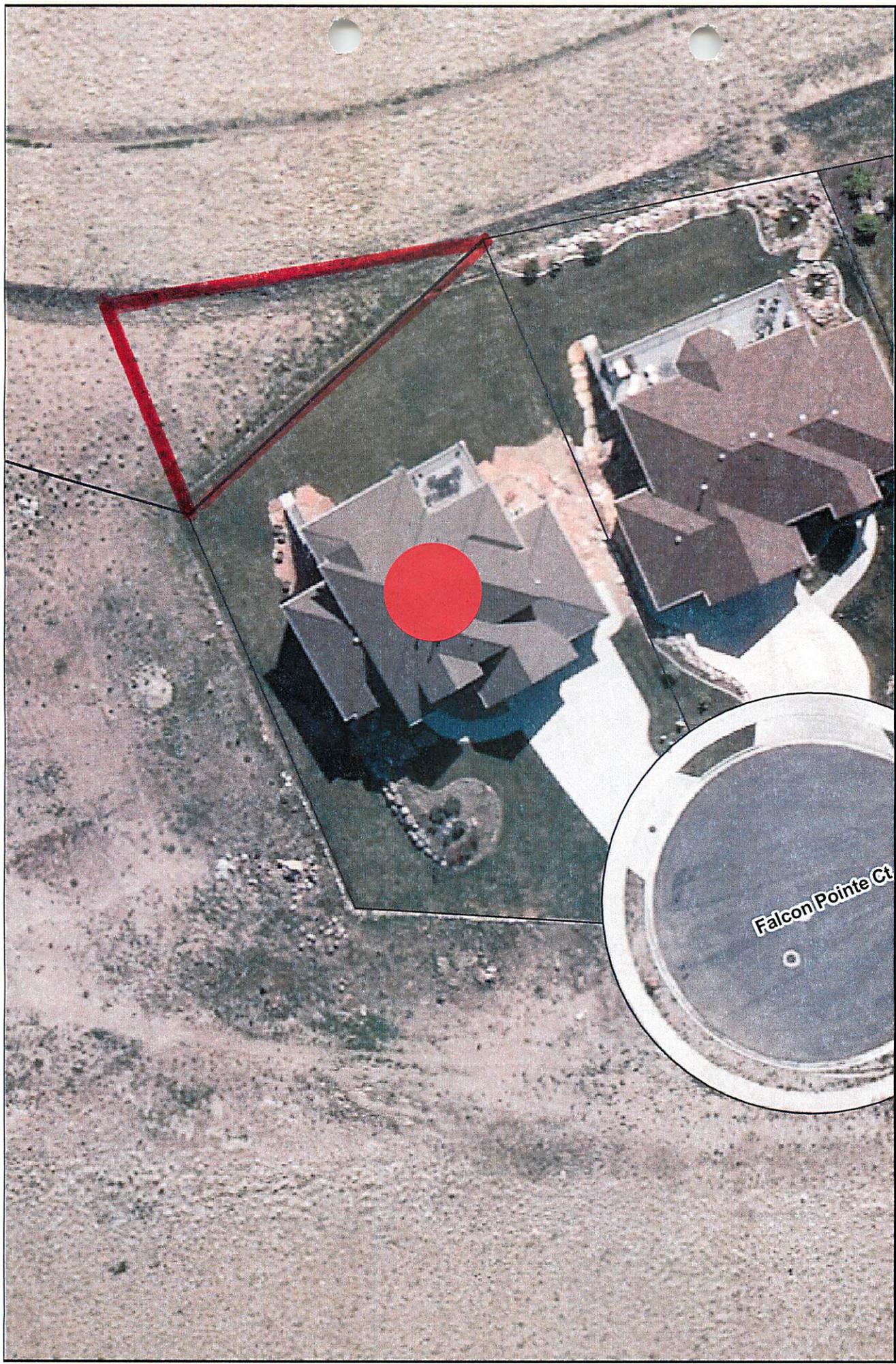
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Return to Agenda

# ITEM #7

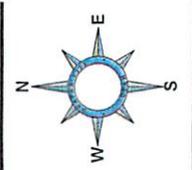
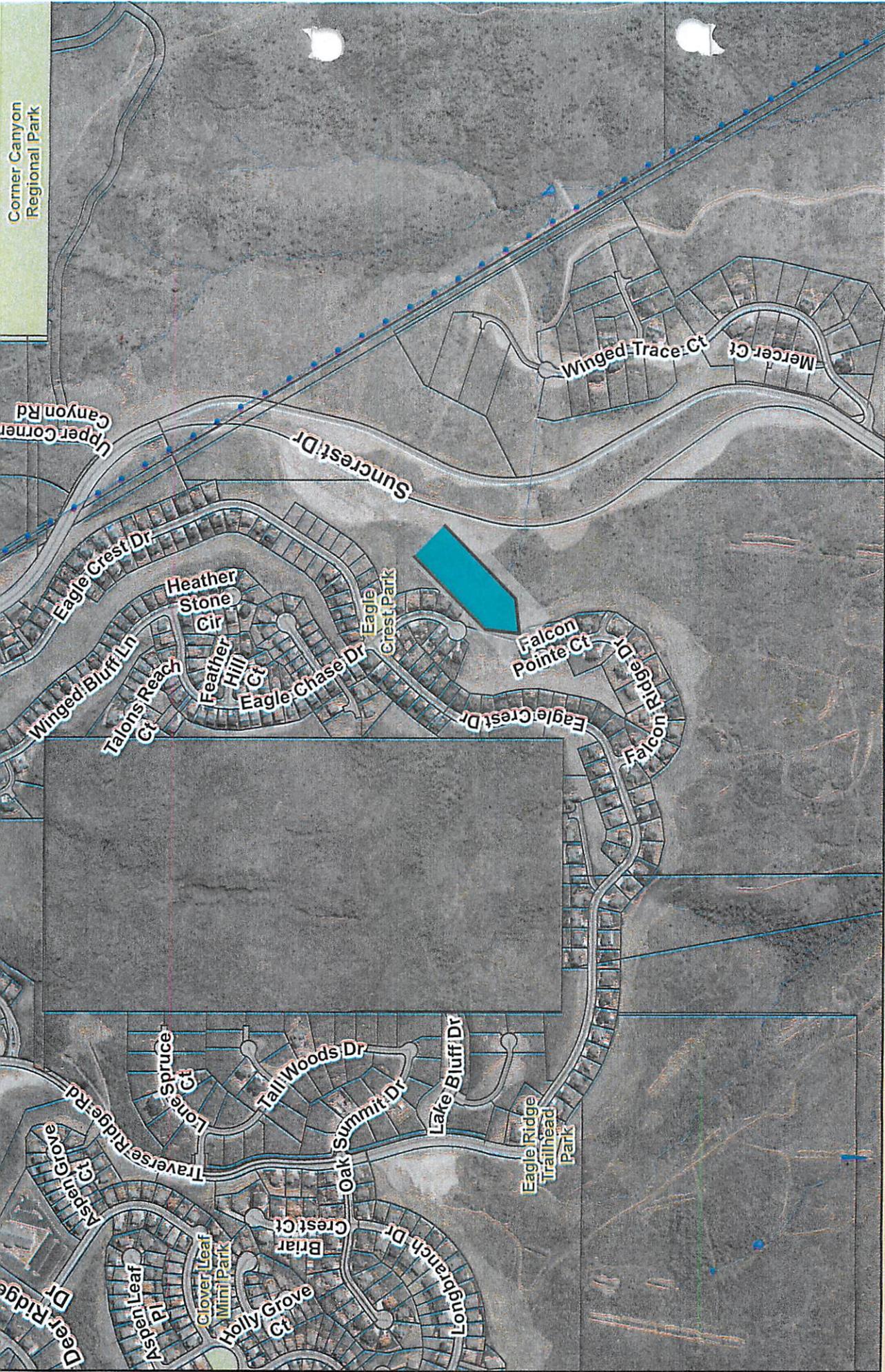
**Public Hearing Item  
David & Jennifer DiMarzio  
13573 S. Falcon Pointe Court**

**They are requesting to purchase open space (they have not  
encroached)**

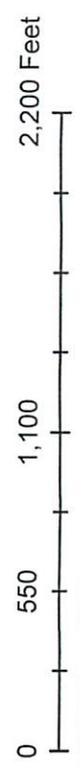


**15373 S. Falcon Pointe Court**





# 15373 S. Falcon Pointe Ct.



Corner Canyon Regional Park

Upper Corner Canyon Rd

Winged-Trace Ct

Mercer Ct

Suncrest Dr

Eagle Crest Dr

Heather Stone Cir

Eagle Crest Park

Falcon Pointe Ct

Winged Bluff Ln

Talons Reach Ct

Feather Hill Ct

Eagle Chase Dr

Eagle Crest Dr

Local In Ridge Dr

Lone Spruce Ct

Tall Woods Dr

Lake Bluff Dr

Eagle Ridge Trailhead Park

Aspen Grove Ct

Der Ridge Dr

Aspen Leaf Pl

Clover Leaf Mimi Park

Holly Grove Ct

Briar Crest Ct

Longbranch Dr

Oak Summit Dr

Traverse Ridge Rd

March 18, 2013

David and Jennifer DiMarzio  
15373 S. Falcon Pointe Court  
Draper City, UT 84020

To: Draper City Town Council  
Darrell Smith  
Bill Colbert  
William Rappleye  
Jeff Stenquest  
Alan Summerhays  
Troy Walker

This is a request to purchase approximately 2,100 ft of land bordering our property for the purpose of landscaping our property.

The said property is bordering our current lot at 15373 S. Falcon Pointe Court located in Suncrest in Draper City. The triangular shaped lot is 95ft long and 45 ft wide.

This property acquisition would allow us to square off our property and to landscape therefore beautifying the neighborhood.

The property is not including or encroaching on the swell or the overflow basin, both located adjacent to the property. See photographs.

Thank you for your consideration on this matter. Additionally, an expeditious decision is much appreciated.

David and Jennifer DiMarzio

[Return to Agenda](#)

# ITEM #8

**ORDINANCE NO. 1044**

**AN ORDINANCE OF DRAPER CITY AMENDING CHAPTER 9-26 OF THE DRAPER CITY MUNICIPAL CODE RELATING TO ELECTRONIC MESSAGE CENTER SIGNS.**

**WHEREAS**, Utah State law grants to Draper City the authority to regulate and approve signs; and

**WHEREAS**, the legal case law has determined that municipal authority over signs is limited to aspects of time, place, and manner; and

**WHEREAS**, the City has the desire to provide allowances for signage that is complimentary to and effective for the businesses it represents; and

**WHEREAS**, the City Council of Draper City has determined that it is in the best interest of the city and its citizens to provide adequate signage to promote the businesses located in Draper;

**NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:

**Section 1. Amendment.** Chapter 9-26-090(B) of the Draper City Municipal Code is hereby amended in part to read as set forth in Exhibit "A," attached hereto and incorporated herein by reference.

**Section 2. Severability.** If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

**Section 3. Effective Date.** This Ordinance shall become effective 20 days after publication or posting, or 30 days after final passage, whichever is closer to the date of final passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

**ATTEST:**

**DRAPER CITY:**

\_\_\_\_\_  
**City Recorder**

By: \_\_\_\_\_  
**Mayor**

**EXHIBIT A**  
**DRAPER CITY MUNICIPAL CODE**  
**SECTION 9-26-090(B)**

B. Freeway Frontage Road. The intent of this subsection is that the areas of the community directly oriented and related to the I-15 freeway warrant specialized standards for signage where those properties possess limited and unique visibility constraints due to higher speeds of traffic and differences in elevation between businesses and passers-by. Any freestanding business or group of businesses shall be allowed the signs described in this subsection. In addition to subsections (1)(i) and (ii) herein, to qualify for such signs the business or group of businesses, if located on more than one lot or parcel, must have a common driveway and unrestricted cross access between the adjoining lots or parcels.

1. To qualify for such signs the business or group of businesses shall:
  - i. abut or have direct access to those designated sections of Pony Express Road, Minuteman Drive, State Street, 165 W. (Election Rd.), or Bangerter Highway depicted in Exhibit "A" to this chapter;
  - ii. be located on a lot or parcel that abuts Interstate 15. When property abuts I-15 and is not abutting on a designated section of a freeway frontage road, any qualifying freeway frontage road sign must be placed in such a location that it is clearly visible from I-15 traffic and in no case shall the sign be located more than 200 feet from the I-15 right-of-way; or
  - iii. be located within development areas identified within Exhibit "B" to this chapter where the entirety of the development area is entitled to a maximum of one sign identified in subsection (B)(2) herein, in addition to all other allowed signage.
2. Businesses or a group of businesses within a single development which meet the qualifications of subsection (B)(1) and would otherwise qualify for a tower sign may be allowed one of the following sign types:
  - i. one monolithic sign, where:
    - (a) the maximum height shall be 40 feet in the Freeway Frontage Road Designated Area A; the maximum height shall be 30 feet in the Freeway Frontage Road Designated Area B.
    - (b) the ratio of width to height does not exceed 1:4.5;
    - (c) the sign is internally lit; and
    - (d) the sign face area shall not exceed 360 square feet, nor 200 square feet measured around the lettered copy within the sign face; or
  - ii. one tower sign where:

- (a) the maximum height shall be 40 feet in the Freeway Frontage Road Designated Area A; the maximum height shall be 30 feet in the Freeway Frontage Road Designated Area B;
  - (b) the tower sign's structural support shall be a minimum width of five feet or a minimum of 36 inches each for signs with two or more structural supports located near the outside width dimensions of the sign;
  - (c) the structural supports of the tower sign shall be finished architecturally with detailed masonry products exclusive of concrete masonry units, brick, or stone, which shall be architecturally and aesthetically designed to match the building or development to which it is associated;
  - (d) the tower sign shall be finished with architectural or decorative elements that serve to relate the sign to the building or development to which it is associated; and
  - (e) the sign area shall not exceed 200 square feet in the Freeway Frontage Road Designated Area A; the sign area shall not exceed 100 square feet in the Freeway Frontage Road Designated Area B.
3. Properties eligible for freeway frontage signage allowances outlined within this subsection and which have frontage on two public rights-of-way shall be allowed one monument along the non-freeway frontage street.
  4. Properties eligible for freeway frontage signage allowances shall be allowed wall signs outlined in Section 9-26-070(A)(1).
  5. Properties eligible for freeway frontage signage allowances shall be allowed banner signs not to exceed 120 square feet. All other provisions outlined in Section 9-26-080(D) regarding banner signs shall apply.
  6. Businesses or a group of businesses within a single development which meet the qualifications of subsection (B)(1), which are located in the CBP, CR, ~~or~~ CI, or CC zones, and which have ~~15~~ 3 acres and have a minimum of 400 lineal feet of lot frontage shall be allowed one electronic message center where:
    - i. such signs may not exceed 50% of the approved sign area of a tower or monolithic sign;
    - ii. such signs shall display full color messages or images only and the use of single colored text and images is prohibited;

- iii. such signs shall display static images for a period of eight seconds before transitioning to another static image;
  - iv. transitions from one static image shall fade out and fade in to the next static image without the use of flashing, animation, or movement whatsoever; and
  - v. such signs shall come equipped with automatic dimming or photocell technology which automatically adjusts the sign's brightness with natural ambient light conditions which shall not exceed 80% of full brightness during the day and shall not exceed 15% of full brightness after dusk; these settings shall be subject to review at anytime by Draper City.
7. Signage outlined in Sections 9-26-070(A)(4), (5), (6), and (7) shall be allowed as outlined in those subsections.
8. Other Signs. Signage allowable under Sections 9-26-090 and 100 shall be allowed with the added requirements of this subsection.

# REQUEST FOR COUNCIL ACTION

<b>To:</b>	<b>Mayor &amp; City Council</b>
<b>From:</b>	<b>Dan Boles, AICP, Senior Planner</b>
<b>Date:</b>	<b>May 7, 2013</b>

<b>Subject:</b>	<b>Tower Sign Text Amendment</b>
<b>Applicant Presentation:</b>	<b>Stacy Baker, representing Impact Signs</b>
<b>Staff Presentation:</b>	<b>Dan Boles</b>

**RECOMMENDATION:**  
To approve the request for a Text Amendment, as unanimously recommended by the Planning Commission, and as reflected in Ordinance #1044, including its Exhibit "A".

**BACKGROUND AND FINDINGS:**  
This recommendation is based on the following findings:

1. The proposed amendment will help further the goals, objectives and policies of the City's General Plan, such as:
  - i. Encourage the establishment of a strong tax base by accommodating commercial and industrial development in appropriate areas.
  - ii. Nurture and support established businesses as well as new businesses.
  - iii. Support businesses in adapting to the constantly changing market as a result of new technologies and support those companies that are integral to the "new economy".
  - iv. Emphasize the retention and expansion of businesses in Draper and provide support mechanisms for small businesses in Draper.
2. That many of the objectives outlined in section 9-26 of the Draper City Municipal Code will be enhanced through the proposed changes, specifically:
  - i. to enhance the economic strength of the City;
  - ii. to provide for public convenience by directing persons to various activities and enterprises;
  - iii. to provide a reasonable system for controlling signs within the community;
  - iv. to provide business owners the flexibility to have signs that meet the needs of the individual businesses;
3. That adding the CC zoning to the list of approved zoning for electronic message centers, reducing the size of required land and adding a requirement that a site have 400 feet of lot frontage for such signs will likely not add a proliferation of electronic message centers.

In 2009, the City Council initiated a rewrite of the entire sign ordinance. During that process, provisions for tower signs along the freeway corridor were created. In February of 2011, ordinance 963 was approved granting businesses that met the criteria for a freeway frontage tower sign, which had 15 acres and were in the CR or CI zones an electronic message center. The CBP zone was later added to that list of zoning designations which would allow an electronic message center provided the business met all of the previously mentioned criteria.

The application now before the City Council has been highly refined from its initial form. The applicant initially made the request to add the CC zone to the list of zones and reduce the acreage from 15 to four. The Planning Commission was concerned about that request opening the doors too wide for electronic message centers along the freeway corridor. As such the applicant made several revisions until the proposal reflected in ordinance #1044 was proposed to the Planning Commission. That proposal does the following:

1. Adds the CC zone to the list of zones to allow an electronic message center;

2. Reduces the requirement from 15 to three acres; and
3. Adds a requirement for 400 feet of lot frontage.

With the proposed changes, staff calculates that approximately 16 properties would qualify for electronic message centers keeping the number of such signs along the freeway down (see attached map entitled "Tower Signs").

**FISCAL IMPACT: Finance Review:** \_\_\_\_\_

- No fiscal impact is anticipated with approval of this application.

**SUPPORTING DOCUMENTS:**

- Ordinance #1044 with its exhibits
- Staff Report with Supporting Documentation
- Planning Commission Minutes – April 4, 2013 (as prepared)



## MEMORANDUM

**From:** Dan Boles, AICP Senior Planner  
**To:** Planning Commission  
**Date:** March 28, 2013  
**Re:** Tower Sign Text Amendment Request

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### **Subject: Tower Sign Text Amendment Request**

On September 20, 2012, the Planning Commission heard a request by Stacy Baker of Impact Signs to change the sign ordinance as it relates to the size and qualifying factors of tower signs. The following were under consideration:

1. Raising the sign height allowances for a monolithic and tower sign from 40 to 50 feet overall height.
2. Increasing the size of the sign area from 200 to 250 square feet allowed on a tower sign.
3. Adding the CC (Community Commercial) zone to the list of approved zones that allow an electronic message center.
4. Reducing the acreage needed to allow an electronic message center from 15 acres to four acres.
5. Allowing the electronic message center to be 60% of the approved sign area of a tower or monolithic sign instead of 50% allowed currently by code.

At the meeting, the Planning Commission discussed the request (see minutes attached). While the Commission felt that there was some merit to allowing some businesses along the freeway tower signs and potentially electronic message centers, they were not comfortable with the changes in size and leaving the potential so open. Direction was given to the applicant to go back to the drawing board.

On February 21, 2013, the applicant returned with a new proposal. The new proposal removed any requests to enlarge the size of the signs and simply added the CC zone and reduced the acreage needed from 15 to four acres. At the meeting, it was determined that the applicant's parcel did not have the four acres required by under the proposed ordinance change. Additionally, the Planning Commission still found that the proposal did nothing to abate the concerns that the proposal would leave the potential for too many electronic message center signs along the I15 corridor. After a motion died, the Planning Commission suggested the applicant try again.

The applicant now brings a new proposal to the table. The following changes are now proposed:

1. Addition of the CC zone to the allowable zones for an electronic message center.
2. Reducing the acreage needed to allow an electronic message center from 15 acres as currently required to three acres.
3. Addition of language requiring a minimum of 400 lineal feet of lot frontage



The ordinance uses the 400 feet of frontage as a standard in other sections of the sign code as a spacing requirement along 12300 South to allow additional signage. As such, the same number is being applied to this proposal. By applying this standard, it reduces the number of potential signs along the freeway corridor while still allowing some properties to take advantage of this provision. The final standards for a person to be eligible for an electronic sign would be as follows:

1. An applicant would have to qualify for the tower signs by being on an approved frontage road, being adjacent to I-15 or being an approved parcel outlined in 9-26 of the Draper City Municipal Code;
2. Would have to be in the CR, CBP, CI or CC zone;
3. Would have to have a minimum of three acres;
4. Would have to have a minimum of 400 feet of lot frontage.

As such, by staffs calculations, approximately 16 properties would meet this threshold (see attached map).

**Findings for approval:**

1. The proposed amendment will help further the goals, objectives and policies of the City's General Plan, such as:
  - i. Encourage the establishment of a strong tax base by accommodating commercial and industrial development in appropriate areas.
  - ii. Nurture and support established businesses as well as new businesses.
  - iii. Support businesses in adapting to the constantly changing market as a result of new technologies and support those companies that are integral to the "new economy".
  - iv. Emphasize the retention and expansion of businesses in Draper and provide support mechanisms for small businesses in Draper.
2. That many of the objectives outlined in section 9-26 of the Draper City Municipal Code will be enhanced through the proposed changes, specifically:
  - i. to enhance the economic strength of the City;
  - ii. to provide for public convenience by directing persons to various activities and enterprises;
  - iii. to provide a reasonable system for controlling signs within the community;
  - iv. to provide business owners the flexibility to have signs that meet the needs of the individual businesses;
3. That adding the CC zoning to the list of approved zoning for electronic message centers, reducing the size of required land and adding a requirement that a site have 400 feet of lot frontage for such signs will likely not add a proliferation of electronic message centers.

**Findings for Denial:**

1. The proposed amendment is not consistent with goals objectives and policies of the City's General Plan, such as:



- i. Agree on project design standards prior to granting land use allocations, to aid in the beautification and improvement of living conditions in the community.
        - ii. Respect for the existing and historical context of the built environment.
        - iii. Recognition of the community's unique identity and reputation.
        - iv. A rich mix of living, working, and playing environments that do not violate or intrude upon the values that make each place unique or special.
        - v. Aesthetic design of uses to fit with the surrounding character and scale.
2. That many of the objectives outlined in section 9-26 of the Draper City Municipal Code will be violated through the proposed changes, specifically:
  - i. to foster a community character that has a minimum of visual clutter;
  - ii. to encourage signs that are compatible with land uses;
  - iii. to minimize light pollution, glare, visual obstructions, distraction, and traffic and safety hazards with the free flow of travel and activity for vehicles and pedestrians;
  - iv. to provide aesthetic protection for entry areas and primary corridors of Draper;
  - v. to provide protection from visual clutter;
  - vi. to promote public safety; and
  - vii. for the protection and promotion of community appearance.
3. That the addition of electronic message centers would not be harmonious with the character of the area as there are no electronic message centers in the area.

### **MODEL MOTIONS**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Tower Sign Text Amendment Request by Stacy Baker, representing Impact Signs to allow the changes to the sign code as shown in Exhibit 'A', application 120810-11762S, based on the following findings:

1. List any findings ...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Tower Sign Text Amendment Request by Stacy Baker, representing Impact Signs to allow the changes to the sign code as shown in Exhibit 'A', application 120810-11762S, based on the findings listed in the staff report dated August 28, 2012:”

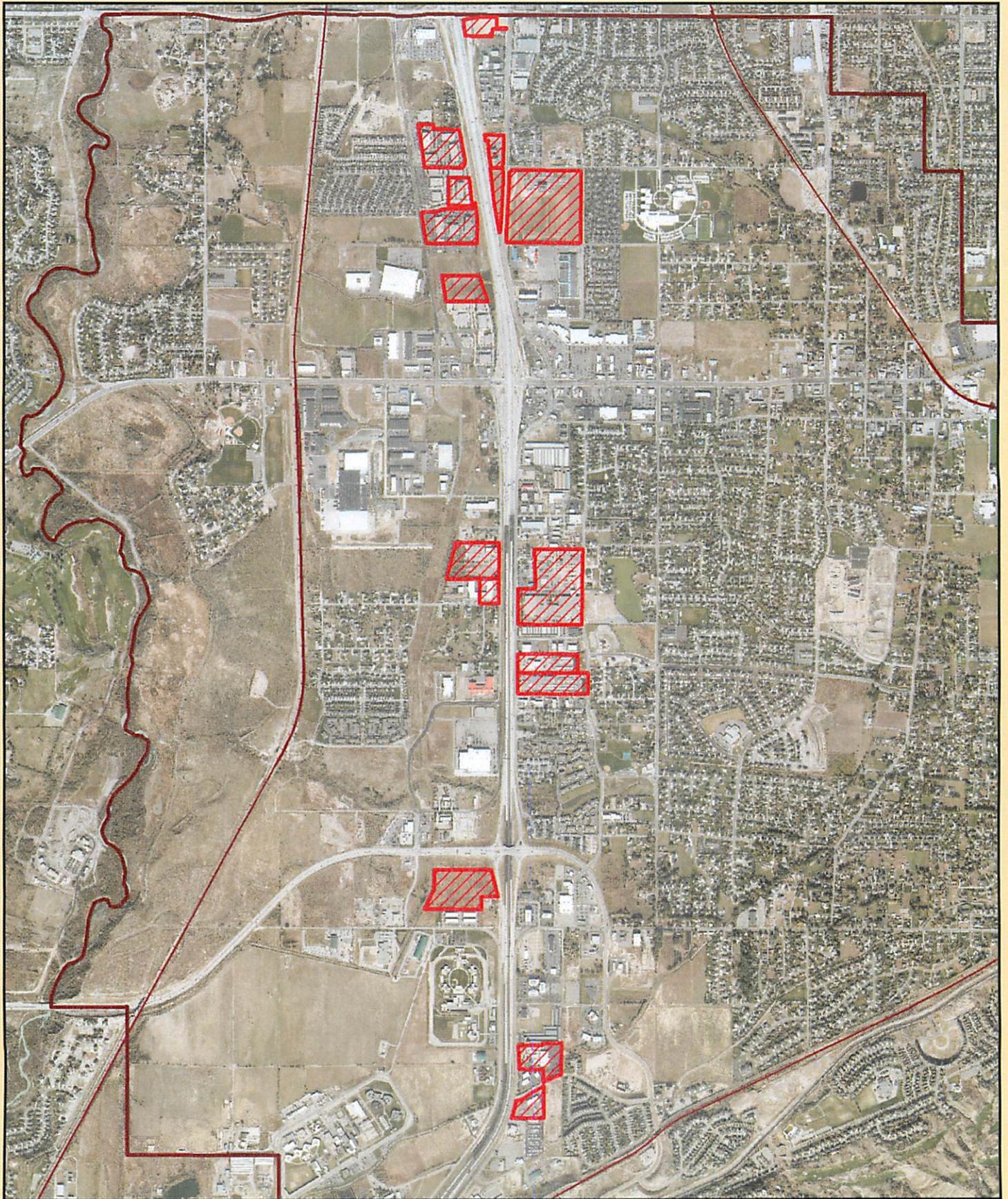
1. List any additional findings...

B. Freeway Frontage Road. The intent of this subsection is that the areas of the community directly oriented and related to the I-15 freeway warrant specialized standards for signage where those properties possess limited and unique visibility constraints due to higher speeds of traffic and differences in elevation between businesses and passers-by. Any freestanding business or group of businesses shall be allowed the signs described in this subsection. In addition to subsections (1)(i) and (ii) herein, to qualify for such signs the business or group of businesses, if located on more than one lot or parcel, must have a common driveway and unrestricted cross access between the adjoining lots or parcels.

1. To qualify for such signs the business or group of businesses shall:
  - i. abut or have direct access to those designated sections of Pony Express Road, Minuteman Drive, State Street, 165 W. (Election Rd.), or Bangerter Highway depicted in Exhibit "A" to this chapter;
  - ii. be located on a lot or parcel that abuts Interstate 15. When property abuts I-15 and is not abutting on a designated section of a freeway frontage road, any qualifying freeway frontage road sign must be placed in such a location that it is clearly visible from I-15 traffic and in no case shall the sign be located more than 200 feet from the I-15 right-of-way; or
  - iii. be located within development areas identified within Exhibit "B" to this chapter where the entirety of the development area is entitled to a maximum of one sign identified in subsection (B)(2) herein, in addition to all other allowed signage.
2. Businesses or a group of businesses within a single development which meet the qualifications of subsection (B)(1) and would otherwise qualify for a tower sign may be allowed one of the following sign types:
  - i. one monolithic sign, where:
    - (a) the maximum height shall be 40 feet in the Freeway Frontage Road Designated Area A; the maximum height shall be 30 feet in the Freeway Frontage Road Designated Area B.
    - (b) the ratio of width to height does not exceed 1:4.5;
    - (c) the sign is internally lit; and
    - (d) the sign face area shall not exceed 360 square feet, nor 200 square feet measured around the lettered copy within the sign face; or
  - ii. one tower sign where:

- (a) the maximum height shall be 40 feet in the Freeway Frontage Road Designated Area A; the maximum height shall be 30 feet in the Freeway Frontage Road Designated Area B;
  - (b) the tower sign's structural support shall be a minimum width of five feet or a minimum of 36 inches each for signs with two or more structural supports located near the outside width dimensions of the sign;
  - (c) the structural supports of the tower sign shall be finished architecturally with detailed masonry products exclusive of concrete masonry units, brick, or stone, which shall be architecturally and aesthetically designed to match the building or development to which it is associated;
  - (d) the tower sign shall be finished with architectural or decorative elements that serve to relate the sign to the building or development to which it is associated; and
  - (e) the sign area shall not exceed 200 square feet in the Freeway Frontage Road Designated Area A; the sign area shall not exceed 100 square feet in the Freeway Frontage Road Designated Area B.
3. Properties eligible for freeway frontage signage allowances outlined within this subsection and which have frontage on two public rights-of-way shall be allowed one monument along the non-freeway frontage street.
  4. Properties eligible for freeway frontage signage allowances shall be allowed wall signs outlined in Section 9-26-070(A)(1).
  5. Properties eligible for freeway frontage signage allowances shall be allowed banner signs not to exceed 120 square feet. All other provisions outlined in Section 9-26-080(D) regarding banner signs shall apply.
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    - i. such signs may not exceed 50% of the approved sign area of a tower or monolithic sign;
    - ii. such signs shall display full color messages or images only and the use of single colored text and images is prohibited;

- iii. such signs shall display static images for a period of eight seconds before transitioning to another static image;
  - iv. transitions from one static image shall fade out and fade in to the next static image without the use of flashing, animation, or movement whatsoever; and
  - v. such signs shall come equipped with automatic dimming or photocell technology which automatically adjusts the sign's brightness with natural ambient light conditions which shall not exceed 80% of full brightness during the day and shall not exceed 15% of full brightness after dusk; these settings shall be subject to review at anytime by Draper City.
7. Signage outlined in Sections 9-26-070(A)(4), (5), (6), and (7) shall be allowed as outlined in those subsections.
8. Other Signs. Signage allowable under Sections 9-26-090 and 100 shall be allowed with the added requirements of this subsection.



**Tower Signs**  
CR, CBP, CI & CC Zoning  
3 Acres, with 400 Feet Frontage

