

Willard City Corporation

80 West 50 South
Box 593



Willard, Utah 84340
(435)734-9881

WILLARD CITY COUNCIL N O T I C E

The Willard City Council of the Willard City Corporation will hold its Regular meeting on Thursday, May 27, 2021. The meeting will be held at the Willard City Offices 80 W 50 S. The meeting will be held in accordance with current COVID-19 guidelines. The meeting will begin promptly at 6:30 p.m. The agenda will be as follows:

1. Call to Order

- a. Invocation
- b. Pledge of Allegiance

2. Open Comment Period (Individuals have three minutes for open comments. If required, items may be referred to department heads for resolution. Items requiring action by the City Council will be placed on the agenda for a future meeting.)

3. Business

- a. Consideration of Discussion Regarding People Speeding Through Granite Subdivision and Request for a Reduction of Speed from 25 mph to 15 mph – Megan Olsen
- b. Presentation by Tyler Rasmussen, Strata Communications, Regarding Fiber Optics for Willard City
- c. Consideration of Discussion and Approval of the Expenditure of Funds to Explore a Secondary Water System for Willard City
- d. Discussion Regarding Proposed Water Impact Fees, Fred Philpot, Lewis, Young, Robertson & Burningham, Inc.
- e. Discussion Regarding a Proposed Utah Transit Authority (UTA) Agreement with Willard City for Infrastructure in the UIC Corridor
- f. Consideration of Review and Approval of Pay Request No. 3 in the Amount of \$128,787.98 to Allied Underground Technology for the Granite Ridge Upper Pressure Zone Water Line Project

4. Planning Commission

No agenda items

5. Approval of Minutes

May 13, 2021 Regular City Council Meeting

6. Financial

- a. Warrants
- b. Vouchers
- c. Reports

7. Department Reports

- a. Maintenance Department
- b. Police Department
- c. Fire Department

8. Council Member Reports

- a. Brad Robb
- b. Josh Braegger
- c. Fred Ward
- d. John Seamons
- e. Kaleb Kunzler

9. Mayor's General Correspondence and Information

10. City Manager's Report

11. Consideration of Motion to Enter a Closed Session (if necessary) pursuant to UCA §52-4-205 (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual; (b) strategy sessions to discuss collective bargaining; (c) strategy sessions to discuss pending or reasonably imminent litigation; (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares; (f) discussion regarding deployment of security personnel, devices, or systems; or (g) investigative proceedings regarding allegations of criminal misconduct.

12. Adjourn

/s/ Michelle K. Snarr
Recorder, Willard City

I, designated City Recorder for Willard City hereby certify that the foregoing notice and agenda was posted at the Willard City Hall and on the State of Utah Public Meeting Notice Website <https://www.utah.gov/pmn/index.html> and sent to the Box Elder News Journal May 25, 2021.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify the City Office at 80 West 50 South, Willard, Utah 84340, phone number (435) 734-9881, at least three working days.

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CITY COUNCIL AGENDA ITEM REQUEST FORM

All agenda items and any materials to be presented to the City Council need to be submitted the City Office **by noon on the Friday prior** to the meeting. **8 copies** of all items are required. In addition an electronic copy (CD or email) will be required for all documents containing more than 8 pages or larger than 11" x 17".

All meetings are open meetings and the information presented will become part of the permanent public record.

Please note there is a three minute public comment period at the beginning of each City Council meeting for individuals to make comments. Items requiring action by the City Council will be placed on the agenda for a future meeting.

Date of meeting requested: 5/27/2021 Date form submitted: 5/13/2021

Time allotment requested: ☐ 2 min. ☐ 5 min. ☒ 10 min. ☐ Other _____

Subject to be presented: 15 MPH speed limit sign
(Please use specific language as to how you want the item noticed)

Person &/Or Organization submitting item: Megan Olsen

Contact information: Megan Olsen

Phone number: 435-730-7305

Reason for request: People speeding through area
Putting children at risk. Due to area
requesting 15 MPH

Official action requested: _____

Suggested Motion: _____

Please remember to submit 8 copies of all materials that will be presented to the City Council and electronic copies if required.

Have contracts, ordinances, resolutions and/or agreements been approved by the City Attorney? Yes ☐ No ☐

WILLARD PIPELINE ENCROACHMENT AGREEMENT

THIS PIPELINE ENCROACHMENT 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 large public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Willard City, a municipal corporation of the State of Utah, with a principal address of 80 West 50 South, Willard, Utah 84340 (hereinafter "Licensee").

RECITALS

WHEREAS, the Utah Department of Transportation ("UDOT") is in the process of surplusing a portion of the Utah Idaho Central Corridor ("Right of Way") in Box Elder County;

WHEREAS, the Right of Way will be acquired by UTA;

WHEREAS, UTA, as the future owner of Right of Way, intends to develop Right of Way for its rail service and expansion of its public transportation system in Box Elder County;

WHEREAS, UTA must preserve not less than fifty (50) feet of Right of Way against encroachment, including encroachment by subgrade utilities, for its transportation purposes;

WHEREAS, Licensee entered into a Utility License Agreement ("UDOT License", attached as Exhibit "A" and incorporated herein by reference) with UDOT regarding the installation of a pipeline ("Pipeline") in Right of Way;

WHEREAS, pursuant to the UDOT License, Licensee plans to install Pipeline in a portion of the eastern sixteen (16) feet of Right of Way as depicted in Exhibit "B" ("Design Plans"); and

WHEREAS, Licensee desires to enter into a license with UTA 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 Parties agree as follows:

1. UDOT License. The parties acknowledge UTA is a third-party beneficiary to the UDOT License, and that the terms and covenants described therein are hereby incorporated into this Agreement.

2. UTA License Agreement. Promptly following UTA's acquisition of Right of Way and its recording of the deed thereto, Licensee agrees to approve, execute and deliver to UTA a license agreement substantially in the form of Exhibit "C" ("UTA License"), and to be bound by the terms of the UTA License.

3. Railroad Corridor. Licensee acknowledges that the Property is a part of what was, at one time, a historic railroad corridor. UTA expressly disclaims any representations, covenants or warranties regarding the physical or environmental condition of Right of Way.

4. Risk of Loss. Licensee agrees to bear all risk of casualty or other loss or damage to its Pipeline, or resulting from its performance of work thereupon, and Licensee agrees to indemnify, defend and save harmless UTA from any and all damages, claims, suits, costs, attorney's fees and actions arising from or related to its actions or omissions or the acts or omissions of its officers, agents, or employees in connection with the performance and/or subject matter of this Agreement, except as to any loss or damage caused by the acts of gross negligence of UTA, its officers, agents, or employees.

Commented [TM(AG1)]: Accepted

5. Survival. It is expressly understood by the parties that the terms of this Agreement and of the UDOT License, and of the UTA License, shall survive closing and the recording of the deed transferring ownership of Right of Way to UTA.

6. Miscellaneous.

a. The failure of any party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein.

b. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

c. This Agreement may be executed in counterparts by UTA and the Licensee.

d. This Agreement shall be governed by the laws of the State of Utah both as to the resolution of claims and disputes.

e. This Agreement contains the entire agreement between the parties, with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid.

f. If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, it shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

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

Tim Merrill
Assistant Attorney General

UTAH TRANSIT AUTHORITY

By: _____
Paul Drake
Director, Real Estate & TOD

By: _____
Spencer Burgoyne
Manager, Property Administration

By: _____
Shelley Nielsen
Sr. Property Administrator

LICENSEE

Reviewed and Approved as to Form for
Willard City

Willard City Attorney

By: _____
Kenneth Braegger
Mayor

ATTEST:

Willard City Recorder

EXHIBIT "A"
||NEED FINAL VERSION||

Commented [TM(AG2): Since this is a UDOT agreement, they will need to sign off on these changes as well.

UDOT UTILITY LICENSE AGREEMENT

THIS UTILITY LICENSE AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2020, by and between the Utah Department of Transportation ("UDOT") and Willard City ("City"), a political subdivision of the State of Utah.

RECITALS

- A. UDOT currently owns a portion of the Utah Idaho Central Corridor ("Corridor") as shown in Exhibit A, which is incorporated by reference. The Corridor is sixty-six (66) feet wide.
- B. UDOT is proceeding with this Corridor property through the surplus property process. Utah Transit Authority ("UTA"), a large public transit district organized and existing pursuant to the laws of the State of Utah, ~~intends shall~~ purchase the Corridor from UDOT for a future commuter rail line ("Rail Line").
- C. UTA requires not less than fifty (50) feet for its Rail Line which it must preserve against encroachment, including encroachment by subgrade utilities ("Preserved Area").
- D. The City desires to install a sewer pipeline ("Pipeline") within a portion of the Corridor for a development prior to the transfer of the Corridor to UTA.
- E. UTA is willing to allow City to proceed with installation of the Pipeline in a portion of the eastern sixteen (16) feet of Corridor ("Licensed Area") as shown in Exhibit B, provided City does not encroach upon Preserved Area.

Commented [CM3]: In the event this does not happen or fails to occur within an agreed upon (some lengthy) time period, the City would request the license become an easement or that the license become irrevocable.

Commented [TM(AG4R3): Changed to UTA "shall purchase" property.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. The Recitals set forth above are hereby incorporated by reference into the terms of this Agreement.
- 2. UDOT hereby grants a revocable, non-exclusive license ("Licensed Area") to the City to install, protect, inspect, operate, and maintain sewer pipeline within the area described in Exhibit B, which is incorporated by reference.
- 3. The City shall obtain a permit from UDOT Region 1 Permits Office and provide the plans to UDOT and UTA prior to installation of the sewer pipeline. The City shall address any

of UDOT's and UTA's concerns. City's plans shall not be approved until UTA confirms that Pipeline does not encroach upon Preserved Area. Upon obtaining a permit from UDOT, the City may proceed with the installation of the sewer pipeline.

4. The construction and installation of Pipeline shall be strictly performed in accordance with the approved plans. UDOT may perform inspections during the installation of the Pipeline. The City shall abide by all applicable ordinances, laws, rules and regulations, and the requirements of any governmental authorities having jurisdiction over the installation of the Pipeline. After the installation of the Pipeline, the City shall restore the grade of the Licensed Area to the condition prior to the installation. The City shall remove any construction debris. Upon completion of the installation of the Pipeline, the City shall provide UDOT and UTA the as-builts for the Pipeline. The City shall operate and maintain the sewer pipeline to prevent any damage to the Licensed Area. Once Licensed Area has been transferred to UTA, City acknowledges and agrees that it will be required to enter into a separate license agreement with UTA governing the ongoing maintenance, operation, repair, and access to Pipeline relative to its Rail Line.

5. The City shall not access its sewer pipeline from the Corridor outside the Licensed Area. Any construction access or temporary construction use of the Corridor outside of the Licensed Area will require a permit.

6. The City consents to UDOT assigning this Agreement to UTA when UTA purchases the Corridor. The City may only assign this Agreement to another political subdivision or to those development entities who shall be responsible for the design and construction of Pipeline. UTA shall be considered a third-party beneficiary to this Agreement. City further agrees that should an appraisal conclude that the existence of this License Agreement lessens the value of the Corridor, City shall pay UDOT any difference in value as part of UDOT's surplus sale of the Corridor to UTA as determined by the then current value of the land when sold with the proposed pipeline versus what the value would have been without the pipeline.

Commented [CM5]: If the property is not transferred for numerous years then the property value will rise and the City could incur a substantial cost. This could be the case regardless of the existence of the pipeline. The City would request this language be removed or further clarified to expressly state that independent of when the land is sold the City is only paying the difference between the then current value of the land when sold with a pipeline versus without a pipeline.

Commented [TM(AG6R5)]: Added requested language.

Commented [TM(AG7)]: Accepted

7. UDOT and the City are both governmental entities subject to the Utah Governmental Immunity Act. The City agrees to indemnify, defend and save harmless UDOT from any and all damages, claims, suits, costs, attorney's fees and actions arising from or related to its actions or omissions or the acts or omissions of its officers, agents, or employees in connection with the performance and/or subject matter of this Agreement except as to any loss or damage caused by the acts of gross negligence of UTA, its officers, agents, or employees. The obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act. This paragraph shall not be construed as a waiver of the protections of the Governmental Immunity Act. The indemnification in this paragraph shall survive the expiration or termination of this Agreement.

8. The failure of any party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein.

9. Each party represents that it has the authority to enter into this Agreement.

10. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

11. This Agreement may be executed in counterparts by the UDOT and the City.

12. This Agreement shall be governed by the laws of the State of Utah both as to the resolution of claims and disputes.

13. This Agreement contains the entire agreement between the parties, with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid.

14. If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses, or paragraphs herein contained, shall not affect the remaining portions hereof, or any part thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly-authorized representatives as of the date first hereinabove written.

UTAH DEPARTMENT OF TRANSPORTATION

By: _____
Title: _____
Date: _____

WILLARD CITY

By: _____
Title: _____
Date: _____

Attest: _____

Approved as to form:

City Attorney

EXHIBIT "B"
[NEED DESIGN DRAWINGS]

DESIGN DRAWINGS

EXHIBIT "C"

UTA LICENSE AGREEMENT FORM

[WILLARD PIPELINE ENCROACHMENT LICENSE]

UTA Contract # Enter Contract No.
Mile Post: Enter Mile Post
Latitude: Enter Latitude
Longitude: Enter Longitude
Willard, Utah

THIS PIPELINE ENCROACHMENT LICENSE 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 large public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Willard City, a municipal corporation of the State of Utah, with a principal address of 80 West 50 South, Willard, Utah 84340 (hereinafter "Licensee").

RECITALS

WHEREAS, Licensee entered into a Utility License Agreement with the Utah Department of Transportation ("UDOT") regarding the installation of a pipeline ("Pipeline") in a portion of the Utah Idaho Central Corridor; and

WHEREAS, UTA is now the owner of a certain railroad corridor known as the Select RR Line (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system;

WHEREAS, Licensee desires to install a pipeline ("Pipeline") in a portion of the eastern sixteen (16) feet of Right of Way via Enter Method located a minimum of Enter depth requirement feet below the lowest point on the surface of the Right of Way which will cross at approximately Mile Post Enter Mile Post (Latitude Enter Latitude, Longitude Enter Longitude) in Willard, Utah, as depicted in Exhibit "<x>" ("Design Plans");

WHEREAS, UTA must preserve not less than fifty (50) feet of Right of Way against encroachment, including encroachment by subgrade utilities for its transportation purposes; 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 shall be reached at (801) Select phone number. 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 (24) and (25) 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 Enter pipeline description line to be installed and maintained by Licensee via Enter Method for the "work" method of installation, pursuant to this Agreement and located a minimum of Enter depth requirement feet below the lowest point on the surface of the Right of Way at Mile Post Enter Mile Post (Latitude Enter Latitude, Longitude Enter Longitude) on the Select RR Line in Willard, Utah as described in Exhibit "A". 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 Select Date and approved by UTA Engineer on Select Date 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 \$34,900.00 payable on or before the date of execution. Once UTA has begun to install UTA System infrastructure Licensee also agrees to pay an upfront Flagging cost of \$Enter Flagging Fee and Special Inspection cost of \$Enter Special Inspection Fee (these fees are more clearly described in Section 5.1).

Commented [TM(AG8)]: The Real Estate Usage charge cannot be waived, but because Willard has an interlocal with UTA, it gets the discounted rate of 30% as follows: 1.5 miles x 5,280 feet in a mile = 7,920 feet x 16 feet = 126,720 Sq Ft / 43,560 Sq Ft in an acre = 2.909 acres x \$40,000 per acre x 30% factor = \$34,909

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. Once UTA has begun improving Right of Way, 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

Commented [CM9]: City is already required to pay UDOT for the difference in value of the property with the pipeline. Moreover, being that there are currently no track improvements in this location and unlikely to be any by the time the pipeline is installed, the City would suggest this provision be modified to include language that this provision does not become operative until such time as there are track improvements or be removed altogether.

Commented [TM(AG10R9)]: Added language regarding flagging and inspection fees only apply for work done by City subsequent to UTA installing its infrastructure.

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", which shall satisfy UTA design standards and safety requirements. Any modification to design plans shall be subject to UTA approval. 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. During initial installation phase, 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.

Commented [CM11]: Can we clarify that this applies only to the installation phase?

Commented [TM(AG12R11)]: Added language.

4.2 Various Utilities may 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 therefor.

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 encased.~~ 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 If, in connection with the performance of any Construction or Maintenance work, Licensee or its Contractor damages any Track Improvements, Utilities, or any other facilities, Licensee shall repair or replace such facilities with the same or similar materials, if available, as reasonably required by the UTA, consistent with applicable Federal and State laws and regulations and to the satisfaction of UTA.

4.8 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.

4.9 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, but pursuant to the UDOT License, Licensee may restore the grade with road base, and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences, if any, or other property that Licensee disturbed in the Right of Way. No soil shall be removed from Right of Way. Any waste soils shall be integrated into the surface so that no mounding occurs.

4.10 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"). 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.

4.11 If Licensee fails to notify UTA a minimum of ten (10) days before the initial installation of the Pipeline or if Licensee's Contractor fails to obtain a Contractor Agreement, Licensee agrees to pay UTA an additional three thousand dollars (**\$3,000**) as a fee for the initial inspection of the Pipeline, together with any other additional fees incurred by UTA to verify that the Pipeline was installed as per the approved plans. Such review and verification could include exposing the line to verify the depth of and materials installed. If the Pipeline was not installed in the approved location, depth, and with the approved materials, as described in the approved plans, Licensee agrees to remove the Pipeline and reinstall it according to the approved plans at Licensee's sole cost and expense.

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

5.1 UTA shall have the right to inspect any Work. ~~Subsequent to Onee-UTA commencing installation of UTA System infrastructure and~~ transportation improvements in Right of Way, Licensee ~~is-will be~~ subject to the following: The current cost of flagging is \$788/day for an eight (8)-hour day and \$1,058/day for a twelve (12) - hour day. Flagging is charged in blocks, with a minimum billing of an eight (8) - hour period. The current cost for a special inspector is \$76/hour with a two (2) -hour minimum charge per inspection/inspector. UTA has determined that Select # of days, Select # hours -hour day for Flagging and Select # of days, Select # of hours -hour day for a Special Inspection will be needed for the construction of this Pipeline. Licensee will pre-pay \$Enter total Fees 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 thirty (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 thirty (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 7.2 and Article 8 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.

Commented [CM13]: Being that there are no improvements and none are expected, these provisions seem unnecessary at the present time.

Commented [TM(AG14R13)]: Clarified language applies only after UTA begins improvements.

7.2 Licensee shall, within sixty (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.

Commented [CM15]: Are there any existing utility easements in the corridor?

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.

Commented [TM(AG16R15)]: Not that I'm aware of.

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 only terminate this Agreement for the following: if: (a) Licensee ceases to use the Pipeline in an active and substantial way for any continuous period of one (1) year after the pipeline is put into service and connections are made thereto; (b) Licensee continues in default with respect to any provision of this Agreement for a period of thirty (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 thirty (30)-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach

Commented [CM17]: After installation the pipeline may sit idle for a time until users begin connecting at the pace of development.

Commented [TM(AG18R17)]: Added language that the one year only applies after it is in use

within thirty (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 Enter Contract No., 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 Agreement Enter Contract No. in the railroad right of way known as the Select RR Line at approximately Mile Post Enter Mile Post in Willard, Box Elder County, Utah"

11.2 Failure to maintain insurance as required shall entitle, but not require UTA to terminate the license granted hereby immediately. Prior to termination of the license, UTA shall provide Licensee with notice of the lapse or Licensee's failure to maintain insurance. Licensee shall have a reasonable period of time to obtain insurance coverage before termination.

Commented [TM(AG19)]: Agreed.

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 thirty (30) days after receipt of the bill therefor. 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 Management
669 West 200 South
Salt Lake City, UT 84101
PropertyManagement@rideuta.com

With a Copy to:

Utah Transit Authority
Attn: Legal Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Licensee:

Willard City
Attn: City Manager
80 West 50 South
Willard, Utah 84340

**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).

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

UTA Engineering

Tim Merrill
Assistant Attorney General

UTAH TRANSIT AUTHORITY

By: _____
Paul Drake
Director, Real Estate & TOD

By: _____
Spencer Burgoyne
Manager, Property Administration

By: _____
Shelley Nielsen
Sr. Property Administrator

LICENSEE

By: _____
Kenneth Braggger
Mayor

ATTEST

CITY RECORDER

EXHIBIT "A"
DESIGN PLANS

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

EXHIBIT "B"
INSURANCE REQUIREMENTS

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

- A. **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 fifty (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 (RRPLI):** During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Licensee and/or Licensee's Contractor 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. If the Licensee and/or Licensee's Contractor is not enrolling for this coverage under UTA's blanket RRPLI program, the policy provided must have 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. Licensee will furnish UTA at least thirty (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: depitcher@rideuta.com

Send or hand deliver Checks and Applications to the following address:

Utah Transit Authority
Attn: David Pitcher
669 West 200 South
Salt Lake City, UT 84101

EXHIBIT "C"
SPECIAL PROVISIONS

1. Grant of Temporary Construction License.
 - A. UTA hereby grants to Licensee and its contractors, agents and employees, a non-exclusive, temporary license for pedestrian and vehicular access (including access by construction vehicles) on, over, across, and through the Right of Way for purposes related to the initial construction and installation of Pipeline.
 - B. Licensee may utilize the entire width of Right of Way, including using Right of Way as a staging area, during the initial construction and installation of Pipeline.
 - C. The temporary construction license shall terminate upon completion of the installation of the Pipeline.
 - D. UTA agrees to waive its fee for a temporary construction license.
2. Environmental Containment.
 - A. Licensee is allowed to use an open cut installation for the initial construction of the Pipeline.
 - B. No materials are to be exported from Right of Way. All material and soil are to remain onsite.
 - C. Licensee shall restore the soil structure to similar properties and resilience as before being disturbed. Compaction shall be 95% Modified Proctor.
3. As-Built Drawings. Licensee shall provide UTA a complete copy of its As-Built Drawings of Pipeline.
4. Access Points/Crossings.
 - A. UTA shall designate access points and crossing locations for Licensee to access Right of Way to perform ongoing maintenance and repairs of Pipeline.
 - B. Upon commencement of UTA's utilization of Right of Way for transportation purposes, Licensee or Licensee's contractor must first obtain a Select Track Access Permit from UTA before any access will be allowed on UTA property. The current contact person for obtaining a Select Track Access Permit is Select Permit Coordinator, or such other contact as shall be identified on UTA's website location noted below.

A copy of the permit that shall be filled out and submitted can be found on UTA's website, under the Track Access Permit tab. <http://www.rideuta.com/PropertyManagement>

Note: 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, if applicable.

Granite Ridge Upper Pressure Zone Water Line Project

Contractor: Allied Underground Technology
 PO BOX 297
 Wellsville, UT 84339



Original Contract: \$328,536.50
***Revised Contract:** \$328,536.50

Notice to Proceed: 3/22/2021
Substantial Completion: 4/30/2021
***Revised Substantial Completion:** 4/30/2021
Final Completion: 5/30/2021
***Revised Final Completion:** 5/30/2021

PAY REQUEST SUMMARY

Estimate #: 3
Invoice Date: 5/5/2021

Total Work Completed & Materials Stored to Date: \$326,005.61
 Less 5% Retainage: \$16,300.28
 Less Previous Payments: \$180,917.35

Amount Due This Request: \$128,787.98

Work Completed to Date: 98.05%
 Time Used to Date: 113%

DocuSigned by:

Brett LaMont

Contractor: Allied Underground Technology

DocuSigned by:

Eac Burk

City Engineer: Jones & Associates

Director of Public Works

City Administrator

Director of Finance

Account Number

***APPROVED CHANGES TO DATE**

(additional days)

CO #1: \$	-	
CO #2: \$	-	
CO #3: \$	-	
CO #4: \$	-	
CO #5: \$	-	
Recon CO: \$	-	
Total Changes: \$	-	- days

PREVIOUS PAYMENTS

Pay Request #1 \$	82,633.75
Pay Request #2 \$	98,283.60
Pay Request #3 \$	-
Pay Request #4 \$	-
Pay Request #5 \$	-
Pay Request #6 \$	-
Total Payments: \$	180,917.35

By signing, the Contractor certifies, to the best of its knowledge, the following: (1) All previous progress payments received from Owner on account of Work done under Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Pay Requests; (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Pay Request, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interests, or encumbrances); and (3) All Work covered by this Pay Request is in accordance with the Contract Documents and is not defective.



JONES & ASSOCIATES
 Consulting Engineers

Granite Ridge Upper Pressure Zone Water Line Project*Allied Underground Technology*

Estimate #: 3

Invoice Date: 5/5/2021

Date Prepared: 5/6/2021



ITEM NO.	LINE ITEM DESCRIPTION	Qty	Unit	UNIT PRICE	CURRENT UNITS OR % COMPLETE	TO DATE UNITS OR % COMPLETE	CURRENT BILLING	TOTAL BILLED TO DATE
1	Mobilization	1	LS	\$ 15,850.00	0.45 LS	1 LS	\$ 7,132.50	\$ 15,850.00
2	Traffic Control	1	LS	\$ 767.00	0.66 LS	1 LS	\$ 506.22	\$ 767.00
3	SWPPP	1	LS	\$ 1,398.00	0.75 LS	1 LS	\$ 1,048.50	\$ 1,398.00
4	Remove existing asphalt	6,500	sf	\$ 0.35	6,480 sf	6,480 sf	\$ 2,268.00	\$ 2,268.00
5	New 12" PVC Waterline - Includes Bedding, backfill, and surface restoration.	4,400	lf	\$ 43.37	2,624 lf	4,240 lf	\$ 113,802.88	\$ 183,888.80
6	12" Gate Valve	3	ea	\$ 2,975.00	1 ea	2 ea	\$ 2,975.00	\$ 5,950.00
7	12" Water Line Loop w/ thrust block	6	ea	\$ 4,789.00	ea	ea		
8	12" 90° Bend w/ thrust block	2	ea	\$ 1,252.00	ea	1 ea		\$ 1,252.00
9	12" 45° Bend w/ thrust block	7	ea	\$ 1,175.00	14 ea	19 ea	\$ 16,450.00	\$ 22,325.00
10	12" 22.5° Bend w/ thrust block	6	ea	\$ 1,129.00	ea	1 ea		\$ 1,129.00
11	12" 11.25° Bend w/ thrust block	3	ea	\$ 909.00	ea	3 ea		\$ 2,727.00
12	Cap and mark end of waterline	1	ea	\$ 297.00	1 ea	1 ea	\$ 297.00	\$ 297.00
13	Road Base	525	ton	\$ 13.70	35.26 ton	288.63 ton	\$ 483.06	\$ 3,954.23
14	Granular Borrow	500	ton	\$ 11.36	1,696.16 ton	1,696.16 ton	\$ 19,268.38	\$ 19,268.38
15	Connect to existing high pressure water line	1	LS	\$ 13,599.00	LS	0.95 LS		\$ 12,964.00
16	Potholing for existing utilities	24	hr	\$ 205.00	39.50 hr	98.75 hr	\$ 8,097.50	\$ 20,243.75
17	Combo Air Vac assembly and manhole on 12" line	3	ea	\$ 6,833.00	1 ea	3 ea	\$ 6,833.00	\$ 20,499.00
18	New Fire Hydrant	1	ea	\$ 7,342.00	1 ea	1 ea	\$ 7,342.00	\$ 7,342.00
TOTAL VALUE OF WORK COMPLETED							\$ 186,504.04	\$ 322,123.16
THIS ESTIMATE								TO DATE



Materials Stored To Date

Granite Ridge Upper Pressure Zone Water Line Project

Allied Underground Technology

Date: 5/5/2021

SUPPLIER	INVOICE DATE	INVOICE NO.	Item #	DESCRIPTION	QUANTITY	UNIT	USED TO DATE	QUANTITY REMAINING	UNIT PRICE	VALUE REMAINING
Core & Main	2/26/2021	N768529	5	12" C900 Pipe	1,960	If	1,960	-	\$ 19.41	\$ -
Core & Main	3/3/2021	N815566	5	12" C900 Pipe	2,480	If	2,320.00	200	\$ 19.41	\$ 3,882.45
TOTAL MATERIALS STORED AT END OF PERIOD										\$ 3,882.45

WILLARD CITY CORPORATION – CITY COUNCIL

The City Council of Willard City met in **Regular Meeting**, on May 13, 2021, at 6:31 p.m. in the Council Chambers of the Willard City Offices, located at 80 West 50 South, Willard, UT 84340.

Present: Kenneth Braegger, Mayor
John Seamons, Council Member
Brad Robb, Council Member
Kaleb Kunzler, Council Member
Josh Braegger, Council Member
Fred Ward, Council Member

Staff Present: Chris Davis, City Manager
Colt Mund, City Attorney
Theron Fielding, Police Chief
Bryce Wheelwright, City Planner
Van Mund, Fire Chief
Michelle Snarr, City Recorder
Ryan Child, City Treasurer (Child Richards CPAs)
Erin Winterton, Child Richards CPAs

Others in Attendance: Diana Baker, Rew Wiley, Chad Braegger, Jen Johnson, Abbey Sleeman, Kendra Thurgood, Travis Mote, Ryan Talbot, and Lew Swain

Call to Order

Mayor Braegger called the meeting to order at 6:31 p.m.

- a. Invocation
The invocation was offered by Council Member Kunzler.
- b. Pledge of Allegiance

Open Comment Period (Individuals have three minutes for open comments. If required, items may be referred to department heads for resolution. Items requiring action by the City Council will be placed on the agenda for a future meeting.

Jennifer Johnson – 71 East 100 North

Ms. Johnson indicated she would like to talk about the speed on the streets and discuss the option of speed tables in the community. She stated she had lived in Willard City her entire life. She went on to say it was hard to monitor the speed in the city, and by her home, the traffic was worse - drivers are going over 25 mph.

Ms. Johnson referred to Roy City. She pointed out that two years ago, Roy City had speed tables installed on a dead-end road. It was her option the City needed to look into those types of speed tables for the community. Ms. Johnson expressed concern for the pedestrians in the city. She stated this was something she was passionate about, and she thought they needed to look into it.

Rew Wiley – 825 N 75 West

Mr. Wiley explained he was in Ogden a few weeks ago, and he took a tape measure and measured the distance between two homes. He stated there was 10 feet between the homes. Mr. Wiley mentioned he was a friend of Sid Bodily (Planning Commission Chair), and he was aware that Mr. Bailey wanted to annex property into the city and build a subdivision. He went on to say, Mr. Bailey's first plan had been put down by the city. He pointed out, the plan had two full-sized parks and soccer fields. He expressed he thought the Council should reconsider Mr. Bailey's plan. He was going to put the parks in, which he thought would be a good asset for the city. He urged the City Council to reconsider Mr. Bailey's first proposal. He said he would hate Willard City to become like Adams Avenue.

Kendra Thurgood – 426 North 200 West

Ms. Thurgood stated she agreed with Jennifer Johnson regarding the speed issue. She went on to say 200 West was a freeway. Ms. Thurgood explained there was a ditch on the other side of the road from her home and a

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1 teenager was speeding, lost control and went into the ditch. She expressed concern for her children, and she was
2 even more terrified with the opening up 250 West. She stated we only have a few police officer, and they cannot
3 do the speed traps. She pointed out that today there were cars driving 40-plus mph. She said she knew the speed
4 humps were supposed to be illegal on a public road, but the city could do the speed tables. She asked that the
5 Council do something before someone got killed.
6

Presentation by Tyler Rasmussen, Strata Communications, Regarding Fiber Optics for Willard City

7
8 Mr. Davis informed the Council Mr. Rasmussen had a logistical challenge, and he requested the Council to table
9 the agenda item until May 27, 2021.
10

Willard City 2021-2022 Tentative Budget

11
12 Consideration of Review and Approval of the Willard City Fiscal Year 2021-2022 Tentative Budget and

13 Consideration of Setting a Public Hearing Date for the Willard City Fiscal Year 2021-2022 Final Budget

14 Mr. Davis explained what the Council had before them this evening was a tentative budget; another item on the
15 agenda was to set a public hearing for the final budget and the proposed amended budget for fiscal year 2020-
16 2021. He went on to say Box Elder County indicated they would be able to get the certified tax rate to the city by
17 the first week of June. Mr. Davis reminded the Council they had a budget work session and there are still some
18 issues that needed to be worked on. He referred to the tentative budget worksheets, which the Council was
19 provided and indicated the City Treasurer was present to answer any questions the Council may have.
20

21 Mr. Child, City Treasurer, addressed the Council. He noted they had already gone through a budget work session,
22 and at this point, he would like to hit a few highlights of the tentative budget. He pointed out the General Fund
23 for Fiscal Year 22 had total Revenues of \$1,628,00 and total Expenditures, including a transfer to Capital Projects
24 Fund, of \$1,688,035. He pointed out the Capital Project Fund showed the transfer coming in from the General
25 Fund at \$200,000.
26

27 Mr. Child noted the Water Fund showed revenues of \$684,000 and expenditures of \$553,660. He explained the
28 expenditures did not include any payments on the water bond. It is hoped the water bond would be paid off this
29 fiscal year.
30

31 Mr. Child pointed out the Sewer Fund showed revenues of \$885,280 and expenditures of \$1,082,353 for a
32 depreciation over revenues of \$187,000.
33

34 Mr. Child inquired if the Council had any questions. There were none at this time.
35

36 **Motion:** Council Member Ward moved to adopt the Willard City Fiscal Year 2021-2022 Tentative Budget and
37 set a public hearing for the Willard City Fiscal Year 2021-2022 Final Budget for June 10, 2021.

38 Council Member Seamons seconded the motion. Members voting aye: Council Members Kunzler,
39 Robb, Seamons, Braegger and Ward. Council Member voting nay: none.
40

Consideration of Discussion of a Sewer Agreement with Blue Ox Development, Willard Land LLC, and Valley Estates

41
42 Mr. Davis pointed out this agreement and issue pre-dated his time with the city. The city had three (3) different
43 developers who wanted to annex into the city. He noted that he, Colt Mund, Mayor Braegger, Bryce Wheelwright,
44 and the city engineer had worked on this agreement extensively. He realized the Council had not discussed it prior
45 to this evening; they had only heard them talk about it.
46
47

48 Mr. Davis explained the developers were going to install the sewer line down to Valley Estates, which was just
49 south of the LDS Stake Center on Highway 89. He went on to say it was about a 1.8-million-dollar project.
50 However, since the original estimate of the project, the prices had gone up dramatically. Mr. Davis indicated one
51 thing the Council had done was authorize an update being worked on for the sewer impact fee. He noted that the

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1 study would include these three (3) parcels. The anticipation was the developers would install and be responsible
2 for the infrastructure, and the sewer line would be upsized to accommodate for future growth, which would be
3 paid back by impact fees. Mr. Davis stated the other aspect was it required another upgrade to the sewer lift
4 station. He pointed out there were several exhibits that were not in the agreement yet because they had not gotten
5 to that point. Mr. Davis stated it was not on the agenda to be adopted. They were looking for comments and
6 concerns from the Council.
7

8 Mr. Davis updated the Council on some critical aspects, primarily the UIC Corridor, which was the railroad
9 corridor. He informed the Council the city owned the corridor through the city limit. The Utah Department of
10 Transportation (UDOT) owned the corridor south of the city. He went on to say the piece of corridor owned by
11 UDOT had finally been appraised, and the appraisal had been accepted by UDOT and the Utah Transit Authority
12 (UTA). He went on to explain, the Utah Transit Authority has set aside funds to purchase the UIC Corridor from
13 UDOT, and they had the funds available. Mr. Davis said staff had been working on an agreement with UTA, and
14 the agreement was favorable to Willard City. It allowed the city to run the sewer line across easements; in
15 addition, there would also be a waterline. Mr. Davis informed the Council the easement was 66-feet wide, and
16 UTA needed 50 feet of the easement.
17

18 Council Member Kunzler said the one thing it did not say was how much they would be reimbursed. He inquired
19 how much would they receive. Mr. Davis explained repayment for the infrastructure would come through
20 reimbursement of impact fees on the sewer. It would not touch the connection fees. Council Member Kunzler
21 said he did not have a problem with reimbursement from impact fees.
22

23 Council Member Seamons said as he read through the agreement, he was under the impression the Marriott
24 property was a part of the agreement, and he did not understand how they would come in under this agreement.
25 Mr. Davis explained years ago the Valley Estates and the Marriott properties had agreed they would be taxed in
26 with the Perry/Willard annual property taxes. Someday the Marriott property would be able to have sewer service;
27 however, at this point, they have not expressed any interest. Mr. Davis explained the agreement before the
28 Council was a conditional agreement, and it was contingent upon annexation. He added that some of the
29 developers expressed interest if they were not annexed into the city, that they would still like to have sewer as far
30 as the UIC Corridor. Mr. Davis mentioned he had a Zoom meeting with UTA next week, and they have an
31 agreement, which Mr. Mund and he had been working on that seemed workable. He added that it was contingent
32 on the right-of-way for the sewer line to go through.
33

34 Council Member Ward inquired if Parsons paid into the sewer fund. Mr. Davis indicated he did not know the
35 answer to that. Mayor Braegger stated there were supposed to be three (3) property owners that paid into the
36 sewer fund, and to his understanding, there was one that does not pay. Council Member Ward's opinion was
37 Marriott would be crazy not to participate. Mr. Davis said the anticipation was they would participate at some
38 time. Council Member Seamons questioned if they were going to upsize to accommodate Marriott. Mayor
39 Braegger stated the cost to upsize the sewer line without Marriott's participation would be astronomical.
40

41 Mr. Lew Swain, Willard Land, provided a map to the Council, which identified the three (3) three participants of
42 the sewer line. In addition, it showed Marriott as a participant. He explained the sewer line had been sized to
43 accommodate everything in the area, including the Marriott property; it was an 18-inch sewer line. Plus, it would
44 accommodate for everything in between the properties. He stated it was all dependent on what was approved. Mr.
45 Swain went on to explain, it was an extremely large pipeline, which was planned to be installed in the right-of-
46 way. The plans are totally completed from Valley Estates to the pump station, and it included an upgrade to
47 accommodate hundreds of homes. He added it had been reviewed and approved by Jones and Associates. It was
48 their intent, subject to approval of the city, to move forward whether the city chose to annex them or not;
49 however, the document was drafted to anticipate annexation. Mr. Swain informed the Council if they were not

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1 annexed, they would request the Council's approval to move forward with the installation of the sewer line. He
2 noted that they needed 282 lot connections to pay everything back. He informed the Council Willard Land had
3 approximately 262 lots; Blue Ox had approximately the same amount; and Valley Estates had about the same
4 amount. Mr. Swain stated it was not a stretch to make sure the line was paid for.

5
6 Council Member Ward questioned between the three developers, would phase one pay for the sewer line? Mr.
7 Swain indicated it would depend on how large phase one was. He went on to say, they could not build part of a
8 sewer system. If they were approved, Valley Estates wanted to proceed as well. He added Mr. Marriot had
9 expressed an interest, but it would be on his own time; it would or would not happen. However, the three groups
10 on the plan were prepared to proceed.

11
12 Mr. Swain said as the Council contemplated the agreement, as Mr. Davis had very clearly defined, it was their
13 request that the city allow them to proceed with the installation of the sewer line as it was approved; the design
14 had been reviewed and approved by Jones and Associates to permit them to install the sewer line - with or without
15 annexation.

16
17 Council Member Seamons clarified the number of lots required to pay for the sewer line. Mr. Swain
18 indicated it was 282 lots and that was based on the budget price of the sewer line at approximately 1.7
19 million dollars. He explained the proposal and agreement was about \$6,000 and the city would receive
20 about \$1,200. The sewer impact fee was \$7,200 and the connection fee was \$500.

21
22 Council Member Kunzler said before approval of the agreement, he thought there should be either
23 annexation or an agreement on how they would handle the installation of a sewer line (without
24 annexation) with an agreement.

25
26 Mr. Davis explained he had to talk to Mr. Jason Burningham and find out how that mechanism could be
27 done. Normally, to collect impact fees, the property had to be within the city's limits. He went on to
28 explain, that was not envisioned within this agreement.

29
30 Council Member Robb questioned if Valley Estates was in on this, and were they willing to proceed
31 without annexation. Mr. Swain indicated they (Valley Estates) had been paying all the costs for Marriott
32 to date. They are in fact participating.

33
34 Council Member Ward stated they would need to talk to Valley Estates concerning water. Mayor
35 Braegger indicated Valley Estates had contracted with Bear River Water Conservancy to provide them
36 water. Council Member Ward stated that became more complicated for the City. The City would not
37 receive anything for that. Mayor Braegger pointed out monthly sewer fees would be collected.

38
39 Council Member Kunzler pointed out they were not talking about water rights at this point; they were
40 just talking about sewer. Council Member Ward pointed out they had to have their water regardless. In
41 addition, they still had to have use of the water; they had to have water to run the sewer systems.

42
43 Mr. Swain informed the Council their legal counsel had suggested he and Mr. Bailey water bank their
44 water rights with the city. He added, it was suggested to water bank two phases at a time and have the
45 transfer done at that time.

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Mr. Davis informed the Council he had a meeting coming up with Jason Burningham. The next step would be to pass this agreement. He suggested the agreement could be on the May 27, 2021, agenda. He questioned if there were other issues the Council wanted addressed. Mr. Mund added the agreement was contingent upon the city being able to access the UIC Corridor. Council Member Ward indicated there was no sense on having a meeting on the agreement unless they knew they could install a sewer line.

Discussion followed regarding the collection of impact fees out of the city's limits. Mayor Braegger said there were ways to collect fees monthly sewer fees outside the city. Council Member Robb added he knew other cities do it; however, what would happen if they did that, and individuals don't pay their sewer. The city would not have control over the water and could not turn off the water. Mr. Davis indicated staff would check with other cities and see what they do. Mr. Mund added it did create complications that had to be addressed to enforce it. Mayor Braegger stated it was a good reason, with Willard Land, to look at their annexation. It would simplify that.

Consideration of Ordinance 2021-5 a Special Order for Willard City Imposing Special Fire and Fireworks Restrictions within the City Limits East of Highway 89 beginning June 1, 2021, Until September 12, 2021

Mayor Braegger indicated the Council discussed this agenda item in their previous meeting of April 22, 2021; in addition, they are having an extremely dry year.

Motion: Council Member Ward moved to adopt Ordinance 2021-5 a Special Order for Willard City Imposing Special Fire and Fireworks Restrictions within the City Limits East of Highway 89 beginning June 1, 2021, Until September 12, 2021. Council Member Robb seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Council Member voting nay: none. The motion passed unanimously.

Consideration of Discussion Regarding an Update to the Willard City Appeal Authority

Mr. Davis said as you may recall, the city used to have a Board of Adjustments; and it was dissolved years ago. He pointed out the Council was the Appeal Authority. He explained that most entities now have an appeal authority. It would allow the Council to have a separate appeal authority with expertise in land use.

Council Member Ward questioned if the Council entertained this, should they reflect that into the budget. Mr. Davis indicated they could; however, it would be hard to figure. He noted, one, they do not know how much it would cost; and two, they do not know how often it would be. However, they would be able to get a cost once they had an individual. Mayor Braegger inquired if the cost could be passed along to the individual. It was indicated it could not, but a fee could be applied to file.

Mr. Davis explained that most cities are going to a hearing officer. He said it was long overdue, and staff would recommend the Council take a look at this so if there was an appeal, they city would have an appeal authority. Mr. Davis indicated the next step would be for the item to go to the Planning Commission.

Motion: Council Member Ward moved to direct staff to forward the proposed amendments of the Willard City Appeal Authority to the Planning Commission for consideration. Council Member Braegger seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Council Member voting nay: none. The motion passed unanimously.

Planning Commission

Consideration of Ordinance No. 2021-4 an Ordinance Approving a Rezone Request for Trisha Heath for the Property Located at 110 South 250 West, Parcel No. 02-054-0003, from A5 to R1/2

Mr. Wheelwright informed the Council the Planning Commission heard this rezone request from Trish Heath (Barker/Braegger). He added that the Planning Commission went the rounds on it. He noted it was determined the request met the city's ordinance, and it was recommended that it be zoned from A5 to R1/2.

Council Member Kunzler clarified it was not a subdivision request, which would require some access, but the rezone does not require access. Mr. Mund stated the City's *subdivision* ordinance would require two accesses. Mr. Wheelwright informed the Council the petitioner's ultimate goal was to create a few lots and to do that, they would have to have a second access. Council Member Kunzler stated this was preliminary to the subdivision and that cleared up his concerns.

Motion: Council Member Kunzler moved to adopt Ordinance No. 2021-3 an Ordinance Approving a Rezone Request for Trisha Heath for the Property Located at 110 South 250 West, Parcel No. 02-054-0003, from A5 to R1/2. Council Member Seamons seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Council Member voting nay: none. The motion passed unanimously.

Consideration of Discussion Regarding a Proposed Amendment to the Subdivision Land Use Authority (SULA)

Mr. Davis informed the Council this agenda item was the same topic as the Appeal Authority. The agenda item would need to go before Planning Commission. He explained they currently have three members that attend SLUA, the City Planner, the City Manager, and the City Engineer. The Fire Chief was a member; he was busy doing his day-job. The Police Chief was a member; however, he does not have expertise in land use. He pointed out the city had a deputy city recorder that has extensive experience in land use and attends the meetings, and she currently cannot vote.

Motion: Council Member Seamons moved to direct staff to forward the proposed amendment of the Subdivision Land Use Authority (SULA) to the Planning Commission for their consideration.

Council Member Ward inquired if the Council accepted the proposed amendment, and it went to the Planning, did that mean the Council would not see it again (items from the Planning Commission). Mr. Davis explained the City had to have the SLUA already. He recapped the proposed amendments would remove the Police Chief from the voting members and it would add two individuals that already attend the meetings on a regular basis and allow them to vote. It would not change items that came from the Planning Commission.

Call the Question: Council Member Kunzler seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Council Member voting nay: none. The motion passed unanimously.

Approval of Minutes

April 22, 2021 Regular City Council Meeting

April 29, 2021 Budget Work Session

Motion: Council Member Robb moved to approve the Regular City Council meeting minutes of April 22, 2021, and the Budget Work Session of April 29, 2021, as presented. Council Member Seamons seconded the

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motion. Members voting aye: Council Members Kunzler, Robb, Seamons, and Braegger. Members voting nay. None. Members Abstaining: Council Member Ward. The motion passed with four votes in favor and one abstention.

Financial

- 1) Warrants
- 2) Vouchers
- 3) Purchase

The Warrants and Vouchers were presented to the Council for review. The items were reviewed individually.

Department Reports

Maintenance Department

Consideration of Award of Bid for Tree Removal at the Willard City Baseball Park

Mr. Davis indicated the Council had four (4) bids before them for tree removal services. The low bid was for \$25,670, which included stump grinding. Mr. Thompson indicated the last time he talked to the contractor; he would have it done by the end of June.

Mr. Davis explained the contractors that have looked at the trees, have indicated there are seven (7) dead trees, and the trees that are not dead, are diseased. Council Member Ward inquired if the contractor would be able to work around the baseball program. Mr. Davis indicated they would.

It was questioned if the bid included the new trees. Mr. Davis indicated it did not; it was for tree removal only. The city had a small grant from Rocky Mountain Power for trees, and they would need to talk about what kind of trees to plant in the park. He said staff would get back to the Council regarding the planting of the new trees.

Motion: Council Member Kunzler moved to award the bid to Clean Cuts Trees for the complete removal of trees at the Willard City Baseball Park in the amount of \$25,670. Council Member Ward seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Members voting nay. None. The motion passed unanimously.

Police Department

Chief Feilding informed the Council the speed trailer was no longer working. He said it had been tested; however, it cannot be replaced - the board is too old. Chief Fielding discussed the option of purchasing two (2) mobile speed signed. Chief Fielding indicted a 90-inch sign would cost approximately \$2,400 dollars without blue tooth capability. The sign with blue tooth capability, would cost over \$3,000.

It was inquired what the blue tooth capability added. Chief Fielding indicated they would be able to add an application to their phones, and they would know when to be in the area. Council Member Kunzler was in favor of knowing when the violations occurred. He thought it would add a lot of value.

Chief Fielding informed the Council he sat on 100 North below 200 East, and he had one car at 34 mph. He noted the city's court would not usually hear a citation unless it was over 10 mph.

It was inquired if there were cities that utilized cameras. Chief Fielding indicated they would be dealing with privacy issues and they do not utilize cameras anymore. Council Member Kunzler reiterated; he thought the city should get mobile speed signs with blue tooth capability.

Mr. Davis said the Council could include that in the budget for this year or next budget year if they wanted. Mayor Braegger suggested two (2) mobile signs on 200 West and two (2) additional mobile signs for 100 North and one (1) mobile sign for Center Street. Council Member Kunzler added he thought they should get the blue tooth capability on the speed signs.

Mayor Braegger questioned Mr. Davis what his knowledge was of speed tables. Mr. Davis indicated he went over two of them multiple times a day. He explained they used to have speed humps; however, now they are speed tables. Mr. Davis said his neighbor said they had made a difference. Mr. Davis went on to explain speed tables

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are either asphalt or cement, they are raised platforms (not humps), and they just plow over them year around. (Please Note: Speed tables are midblock traffic calming devices that raise the entire wheelbase of a vehicle to reduce its traffic speed. Speed tables are longer than speed humps and flat-topped, with a height of 3–3.5 inches and a length of 22 feet.) Council Member Ward express he thought they should entertain the mobile speed signs first.

Fire Department

Chie Mund addressed the Council; he said some of the prices on the list were not quite right. He requested \$4,700 for a pump for the squad truck; \$1,500 for the replacement of fire helmets; \$2,500 for lights, which do not work, and batteries (they are going to go with LED lights), and \$1,000 for fire prevention and public education materials. The items totaled \$9,700. He added they were already approved for vest and they are just purchasing those now.

Motion: Council Member Kunzler moved to approve up to \$9,700 for the Fire Department for the items that were discussed (pump, LED lights and batteries, helmet replacements and fire prevention and public education material). Council Member Robb seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Members voting nay: None. The motion passed unanimously.

Council Member Reports

Brad Robb

Council Member Robb had nothing to report at this time.

Josh Braegger

Council Member Braegger inquired about the progress of the Nature Park restroom. Mr. Wheelwright informed the Council the water was on in the restrooms; however, he has not heard from the plumber. He went on to say there were two coats of mud, but it still needed to be painted.

Council Member Braegger inquired about the Master Plan Community Zone. He stated that talk was cheap; let's get going on it. Mr. Davis explained that he and Mr. Wheelwright had an hour conversation with Bruce Parker regarding the Mater Plan Community Zone. During that conversation, they expressed the Council's concern about adopting the zone without the Mater Plan Update. Mr. Parker has some graduate students, and Mr. Parker was going to have those graduate students work on the zone. They would have an update, which involved the Master Plan Community Zone. Council Member Braegger inquired if they needed to have another work session with the Planning Commission once they received that. Mr. Davis indicated they could, or they could move forward by themselves, as a Council. Mr. Wheelwright added that Mr. Parker was meeting with the Planning Commission on May 20, 2021. He invited the Council Members to come and sit in on the discussion if they would like.

Finally, Council Member Braegger thanked everyone that help with the city clean up.

Fred Ward

Council Member Ward had nothing to report at this time.

John Seamons

Council Member Seamons recalled a few weeks ago, the Council had a conversation on secondary water. He questioned where they were at with secondary water. Mr. Davis reported staff had a short update from Ben Quick, General Manager, Pineview Water. He pointed out the Council had a copy of a letter from the Governor's Office regarding the drought conditions in Utah, and Mr. Quick emphasized that today. Mr. Davis indicated they had a conceptual discussion, and Mr. Quick was excited about the possibility to serve Willard City. He said they talked about water shares, and the city has 600 water shares between Pineview Water, Willard Irrigation, and North Willard Irrigation. Mr. Davis informed the Council that one share of Pineview Water was worth 1-acre foot. Mr. Davis added they spoke with Sierra Homes, and they have a few artisan wells, which he said were not worth pursuing.

Mr. Davis informed the Council that Pineview was going to get back to then with the amount of water

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that was available in Willard City with the thought they would be able to service Willard City with secondary water. Mr. Davis noted the Kunzler property has Pineview Water and North Willard Water shares.

Kaleb Kunzler

Council Member Kunzler recalled last year the City made an agreement to have to City's code digitized. He pointed out they had not had an update in some time. Mr. Davis explained the process of updating the City's code and having it codified. He went on to say, the challenge has been a lot of the city's ordinances have not been digitized and a lot of research has been on going.

Mayor's General Correspondence and Information

Mayor Braegger reported he met with the 4th of July committee. The activities are going to be old style type activities. They are trying to come up with some activities that will entertain people. He indicated that they were looking for volunteers for the activities.

He noted they would be moving the celebration from the East Park to the Nature Park because that was where they would have the fireworks. However, the catch was they would have to park at the East Park; there was not adequate parking at the Nature Park.

Mayor Braegger reported the had the sky divers scheduled; it would cost \$1,200 for the sky divers. They would be landing at the Nature Park. He went on to say, the one thing they were lacking was a flagpole. He inquired if they could install a flagpole in at the Nature Park for the flag ceremony. It was questioned if the flagpole would be lit, and Mayor Braegger indicated it would; it could be lit with solar lights. He asked the rest of the Council to come back with their ideas.

City Manager's Report

Mr. Davis update the Council on multiple projects throughout the City. He explained Parsons had to pull off the 200 West project; however, they would be back. He went on to say they had a pre-construction meeting for the 300 East project regarding the paving aspect. He reported that Allied Underground would come back and go up Spring Street past the Gilmore property. Finally, Post Const was ready to move ahead on paving. Mayor Braegger added with the new street construction, they changed the 200 East intersection. They discovered they had enough funds to straighten out the intersection.

Mr. Davis referred to the Fitzgerald property regarding Brad Brown's request for a disconnect from the city. Mr. Davis informed the Council Mr. Brown was going to withdraw his request, and he would come back to the city for a potential development.

Mr. Davis referred to a handout they were presented with this evening, which is a list of surrounding cities and their water rates. He added that Mr. Thompson mentioned that someone from Rural Water was supposed to contact the city so they could talk about water rates. He informed the Council the city had not been able to qualify for low interest loans because of the city's water rates. He recalled in a previous discussion with the Council, it was the Council's desire to look at raising the base amount for water and lowering the usage from 25,000 gallons to another amount. He indicated the city could do that by resolution. Finally, staff would get the required information from Rural Water.

Mayor Braegger said, like you said, this is an extremely dry year. The amount of snow had mostly gone into the ground. Mayor Braegger updated the Council on the stream. He noted that they did make it up the canyon, worked on the stream, and channeled more water into the city's culinary system. However, the stream was not flowing extremely great, and he did not think the heavy flow would last a long time. Mayor Braegger stated he thought they do need to go out and encourage people to be conservative with the water usage. He noted that Pineview Water's recommendation was to water enough to keep landscape alive – not green. In addition, they know we are having an extremely dry year, and he would encourage everyone to be conservative on how they

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water their yards. Council Member Kunzler suggested putting something in the next newsletter. Council Member Braegger added he thought they should monitor the situation carefully, and if they had to, they would have to put the kibosh on outdoor watering.

Consideration of Motion to Enter a Closed Session (if necessary) pursuant to UCA §52-4-205 (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual; (b) strategy sessions to discuss collective bargaining; (c) strategy sessions to discuss pending or reasonably imminent litigation; (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares; (f) discussion regarding deployment of security personnel, devices, or systems; or (g) investigative proceedings regarding allegations of criminal misconduct.

Mayor Braegger entertained a motion to enter closed session pursuant to UCA §52-4-205(c) strategy sessions to discuss pending or reasonably imminent litigation.

Motion: Council Member Robb moved to enter closed session pursuant to UCA §52-4-205(c) strategy sessions to discuss pending or reasonably imminent litigation Council Member Seamons seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Members voting nay. None. The motion passed unanimously.

The Council entered closed session at 8:08 p.m.

The City Council of Willard City met in **Closed Session**, on May 13, 2021, at 8:08 p.m. in the Council Chambers of the Willard City Offices, located at 80 West 50 South, Willard, UT 84340.

Present: Kenneth Braegger, Mayor
John Seamons, Council Member
Brad Robb, Council Member
Kaleb Kunzler, Council Member
Josh Braegger, Council Member
Fred Ward, Council Member

Excused: None

Staff Present: Chris Davis, City Manager
Colt Mund, City Attorney
Bryce Wheelwright, City Planner
Michelle Snarr, City Recorder

Others in attendance: Wade Budge, S&W Law Offices, on behalf of the Helen Jane Lemon Trust

Those present discussed strategy sessions to discuss pending or reasonably imminent litigation.

Motion: Council Member Braegger moved to close the closed session. Council Member Ward seconded the motion. Members voting aye: Council Members Kunzler, Robb, Seamons, Braegger and Ward. Members voting nay. None. The motion passed unanimously.

The closed session closed at 8:49 p.m.

Adjourn

With no further business coming before the Council at this time, Council Member Braegger moved to adjourn the meeting. Council Member Ward seconded the motion. The meeting adjourned at 8:49 p.m.

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1 Minutes were read individually and approved on: _____.

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Mayor

Recorder