



Sandy City Copy

UTA Contract #UT-03-045JL

Please return to:
Dianne H. Aubrey, CMC/AAE
Sandy City Recorder
10000 Centennial Parkway
Sandy, Utah 84070

GENERAL LICENSE AGREEMENT FOR MULTIPLE USE TRAIL

THIS GENERAL LICENSE AGREEMENT FOR MULTIPLE USE TRAIL ("Agreement") is made and entered into as of the 22 day of May 2003, by and between UTAH TRANSIT AUTHORITY, a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Code Annotated 1953, as amended (hereinafter "UTA"), and SANDY CITY CORPORATION, a municipal corporation of the State of Utah (hereinafter "Licensee") that desires to obtain from UTA a license for use of a portion of the below-defined railroad right of way. UTA and Licensee may hereinafter be collectively referred to as "parties," and either may be individually referred to as "party," all as governed by the context in which such words are used.

RECITALS

WHEREAS, UTA is the owner of the Right of Way (as defined below) upon which UTA operates a portion of a light rail transportation system;

WHEREAS, Licensee desires to construct a trail for use by the public over the below-specified portion of the Right of Way according to the terms, conditions and limitations specified below; and

WHEREAS, UTA is supportive of alternate transportation modes such as pedestrian and bicycle trails and, subject to the terms and conditions of this Agreement, is willing to grant a license allowing for the construction and operation of the trail.

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 1. DEFINITIONS

In addition to other defined terms set forth above and below, and as used throughout this Agreement, the following capitalized terms shall have the meanings indicated below.

"Freight Operator" means the Salt Lake City Southern Railroad Company, which currently uses a portion of the Right of Way to provide freight service to customers along the Right of Way. "Freight Operator" shall also mean any successor or assignee of the Salt Lake City Southern Railroad Company or any other railroad operator using the Right of Way to provide freight service.

"Governmental Authority" or "Governmental Authorities" means one or more federal, state, municipal or local governmental bodies or agencies.

"Hazardous Materials" means any pollutants, toxic substances, hazardous wastes, hazardous substances, oils of any kind or in any form (including petroleum, fuel oil, diesel oil, crude oil or any fraction thereof), and any other substances defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Response, Compensation and Liability Act, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any other 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 enacted.

ORIGINAL DOCUMENTS OFFICE
PROPERTY OF SANDY CITY RECORDERS OFFICE

"Loss" or "Losses" means any and all losses, damages, claims, demands, actions, causes of action, penalties, costs, expenses, court costs, attorneys' fees, amounts paid in settlement, judgments, prejudgment and post-judgment interest and any other costs incurred as the result of: (i) loss of or damage to the property of any party or third person; (ii) injury to or death of any party or third person; or (iii) economic loss to a party.

"Multiple Use Trail" means that portion of the Right of Way for which Licensee is obtaining a license to develop a public trail (in accordance with Exhibit "A") for pedestrian and bike traffic.

"Right of Way" means the railroad corridor purchased by UTA from Union Pacific Railroad Company in April 1993 consisting of: (i) approximately 23.55 miles of the Provo Subdivision Line from approximately 900 South in Salt Lake City to the Salt Lake County and Utah County boundary line; and (ii) approximately 1.4 miles of the Midvale Spur which departs from the Provo Subdivision Line at approximately 6400 South. The term "Right of Way" also means any real property owned or acquired by UTA that is abutting, adjoining or in near proximity to the Provo Subdivision Line and/or Midvale Spur.

"Track" or "Tracks" means any and all tracks, rails, ties, switches, frogs, end of track barricades or bumpers, derail devices, tie plates, spikes, fastenings, drainage structures, grading, ballast, crossings, subgrade stabilization, tunnels, bridges, trestles, culverts, structures, facilities, leads, spurs, turnouts, tails, sidings, signals, crossing protection devices, catenary systems and wires, conduits, railroad communications systems, poles and all other operating and non-operating railroad or railway appurtenances, whether located on or adjacent to the Right of Way.

"Track Access Manager" means the individual specified or designated as such by UTA. As of the date of this Agreement, UTA's Track Access Manager is Alan Miner. Track Access Manager also refers to any designees or successors to Mr. Miner as may be designated by UTA, provided that written notice of a change in the Track Access Manager is provided as set forth in this Agreement.

"TRAX Control Center" means the radio control room designated by UTA to authorize and monitor the movement of vehicles, individuals and other objects along the Right of Way.

"UTA Engineer" means the individual specified or designated as such by UTA. As of the date of this Agreement, the UTA Engineer is Crosby Meacham. UTA Engineer also refers to any designees or successors of Mr. Meacham as may from time to time be designated by UTA, provided that written notice of a change in the UTA Engineer is provided to Licensee as set forth in this Agreement.

"Utility" or "Utilities" means any and all properties, facilities, utilities, crossings, encroachments, lines and other appurtenances of third parties existing from time to time on or about the Right of Way by permissive or prescriptive authority including, but not limited to, pipelines, tube lines, water and gas mains, electrical conduits, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances and all other structures and facilities.

ARTICLE 2. USE OF A PORTION OF RIGHT OF WAY; LICENSE

A. In consideration of the fee to be paid by Licensee, and subject to the covenants, conditions and agreements herein contained, UTA hereby grants to Licensee, without any warranty whatsoever, a non-exclusive license (hereinafter the "License") to construct, maintain and use, and to allow the public to use, at Licensee's sole cost and expense, the Multiple Use Trail inside the boundaries of the Right of Way.

Licensee shall have no property interest whatsoever in the Right of Way, and Licensee is granted only the License referred to herein. UTA makes no representation or warranty regarding its right or ability to grant the License. Licensee has conducted its own investigation and is relying on its own information and conclusions with respect to the right or ability of UTA to grant the License.

B. The Multiple Use Trail shall be constructed between 8400 South and 11400 South or approximately Milepost Location Numbers ___ and ___, all in conformity with Exhibit "A." The License is for the sole purpose of developing the Multiple Use Trail. The Multiple Use Trail shall be used solely for public pedestrian and bicyclist use and other uses supplementary thereto, including trail maintenance and police patrolling and law enforcement. Horseback riding and other equestrian use is expressly excluded on the Multiple Use Trail from 8400 South to 10000 South from the scope of the License but is expressly permitted between 10000 Street and 11400 South. Licensee shall not allow any other use of the Multiple Use Trail and UTA expressly reserves the right to prohibit any other use of the Right of Way which is incompatible with the passenger and freight operations conducted in the Right of Way.

C. The rights herein granted to Licensee shall lapse and become void if the construction of the Multiple Use Trail is not commenced within twelve (12) months of the date of execution of this Agreement.

D. Except for areas located adjacent to at-grade road crossings, or as otherwise shown on the attached Exhibit "A," Licensee shall maintain the fencing which was installed by UTA between 8400 South and 10000 South which separates the Multiple Use Trail from the remainder of the Right of Way. Furthermore, Licensee shall erect and maintain a six-foot vinyl-coated chain link fence (or other type and quality of the fencing as may be approved by the UTA Engineer from time to time) separating the Multiple Use Trail from the remainder of the Right of Way between 10000 South Street and 11400 South at such time as a light rail transportation system is operational. Licensee shall also erect such signage, physical barriers and other protective devices as shown on Exhibit "A," as well as such additional signage, physical barriers and other protective devices as may be required from time to time by UTA or the Freight Operator.

E. In addition to other conditions and limitations otherwise provided herein, the License shall not be construed as granting Licensee the right to install or to authorize the installation of any pipes, pipelines, sewer or underground structures, or any telegraph, telephone, fiber optics, communication lines, electric power lines or other similar facilities in, upon, over, under, across or along the Right of Way, unless such facilities or improvements are necessary for the Multiple Use Trail. The inclusion of any such facilities in Exhibit "A" or in plans and specifications approved by the UTA Engineer shall not be deemed a waiver of UTA's right to require owners of such proposed facilities to go through the normal application and approval process and to enter into license agreements with UTA and to pay UTA its standard administrative and license fees for Utility crossings of the Right of Way.

ARTICLE 3. SUBORDINATION OF LICENSE TO EXISTING USES OF RIGHT OF WAY

A. The License is subject and subordinate to the prior and continuing right and obligation of UTA to use and maintain its Right of Way and other property including, without limitation, the right and power of UTA to construct, maintain, repair, renew, use, operate, change, modify or relocate Tracks and other UTA facilities 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 without liability to Licensee or to any other party for compensation or damages.

B. The License is also subject and subordinate to any and all prior and continuing rights and obligations of third parties having permissive or prescriptive authority to use the Right of Way to construct, maintain, repair, renew, use, operate, change, modify or relocate Utilities and other third party facilities upon, along, above or across such portions of the Right of Way as may also be subject to the License. The grant of the License is made to Licensee without covenant of title or for quiet enjoyment.

C. Licensee acknowledges the continuing right and obligation of UTA to use the Right of Way, including its right and power to construct, use and operate (and permit the construction, use and operation of) existing Tracks and Utilities upon, along or across any or all parts of the Right of Way. The grant of the License shall not be construed to in any way limit the right of UTA to use the Right of Way for any purpose or to regulate the use of the property subject to the License by present or future licensees of UTA. In the event that UTA intends to expand, modify, relocate or otherwise change the character, nature or location of the Tracks or any Utility or related facility within the Right of Way, and such expansion, modification, relocation or change requires the relocation, modification or elimination of the Multiple Use Trail, or any portion thereof, then Licensee shall perform such relocation, modification or elimination of the Multiple Use Trail as soon as is reasonably possible under the circumstances and at Licensee's sole cost and expense. Furthermore, a change in the Multiple Use Trail or its appurtenances might be required by or as a result of the enactment or modification of any law, ordinance, regulation, or other contingency over which UTA has no control. In any such event, Licensee shall bear the entire cost and expense of the required change. Licensee shall not be entitled to any damages or other compensation as the result of UTA's exercise of its rights under this paragraph. However, UTA agrees to exercise its rights under this paragraph in good faith. Similarly, Licensee agrees to comply with this paragraph and to accommodate the interests of UTA wholly and in good faith.

ARTICLE 4. PLANS AND SPECIFICATIONS

In advance of the commencement of any construction, all general and detailed plans and specifications for the Multiple Use Trail shall have been approved in writing by the UTA Engineer. The plans and specifications delivered to the UTA Engineer shall set out the method and manner of handling the work so as to protect UTA's Right of Way and operations, and the operations of the Freight Operator. The UTA Engineer shall have the right to approve the plans and specifications, or withhold approval with respect to the plans and specifications, in his sole discretion. Licensee shall cause all construction to be in strict conformity with such approved plans and with Exhibit "A," unless advance written waiver of this requirement is obtained from the UTA Engineer. All additional work to be performed by Licensee subsequent to the initial construction shall also be conducted pursuant to plans and specifications to be reviewed and approved by the UTA Engineer pursuant to the terms and conditions of this paragraph. The parties acknowledge that UTA assumes no responsibility for the design or construction of the Multiple Use Trail. Licensee shall ensure that the design and construction of the Multiple Use Trail is proper and sufficient, and Licensee shall implement any necessary or appropriate safety features or devices. The review of Licensee's plans and specifications as set forth in this Article shall be solely for the purpose of ensuring, to the maximum extent possible, that the Multiple Use Trail does not interfere with the passenger and freight operations conducted in the Right of Way. The review of the plans and specifications as set forth in this Article shall not be construed to be a waiver of any other legal rights UTA may have under this Agreement or otherwise. No review conducted by UTA shall be construed to be a warranty, guarantee or assurance of the adequacy of the Licensee's work (or that of any contractor of Licensee) or the adequacy of the safety measures employed by Licensee (or those of any contractor of Licensee). The review conducted is for UTA's sole benefit and is for no other person's benefit, including that of Licensee.

ARTICLE 5. CONSTRUCTION AND MAINTENANCE OF MULTIPLE USE TRAIL

A. Licensee, at its sole cost and expense, shall perform all grading and shall install all necessary drainage improvements and facilities required in connection with the safe construction and operation of the Multiple Use Trail within the Right of Way. Licensee shall arrange to modify any overhead and/or

underground Utilities or other facilities to meet UTA specifications, as determined solely by UTA. Licensee shall not suffer or permit drainage water to flow or collect upon the Right of Way or other UTA property because of the construction or operation of the Multiple Use Trail. Licensee shall provide adequate passageway for the waters of any runoff, streams, bodies of water and drainage facilities (either natural or artificial, including water from UTA culvert and drainage facilities). Licensee shall ensure that no water is impeded, obstructed, diverted or caused to back up, overflow or damage the Right of Way or other property of UTA or third parties.

B. UTA shall have the right, but not the duty, to observe and inspect any and all construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail and other work concerning or related to the Multiple Use Trail, and to require safety or other precautions and standards to be met or used during any such work. Licensee and its contractors shall comply with the rules, regulations and instructions of UTA and its representatives with respect to work performed in conjunction with the Multiple Use Trail including, without limitation, those related to the protection of UTA facilities at and in the vicinity of the Multiple Use Trail. The right to inspect work as set forth in this provision shall be solely for the purpose of ensuring, to the maximum extent possible, that the Multiple Use Trail does not interfere with the passenger and freight operations conducted in the Right of Way. The exercise of such right shall not be construed to be a waiver of any other legal rights UTA may have under this Agreement or otherwise. No inspection conducted by UTA shall be construed to be a warranty, guarantee or assurance of the adequacy of the Licensee's work (or that of any contractor of Licensee) or the adequacy of the safety measures employed by Licensee (or those of any contractor of Licensee). The inspection conducted is for UTA's sole benefit and is for no other person's benefit, including that of Licensee.

C. Licensee shall procure any needed property rights, easements, rights of way, franchises, permits or other permission for the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail including without limitation those necessary to traverse over and across any public street, road or highway. Licensee assumes all costs and expense related to the acquisition of such rights and shall pay any fees or costs imposed by any Governmental Authority or other entity as the result of the Multiple Use Trail.

D. In the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail, Licensee shall take all suitable precautions to prevent any interference with the operation of any Tracks or Utilities including, without limitation, signals, grade crossings, communication lines and catenary systems and wires. If, at any time, the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail results in any interference with the operation of the Tracks or any Utility or other facility as now existing or which may hereafter be constructed, Licensee shall, at its sole cost and expense, immediately take such action as may be necessary to eliminate such interference. In the event that the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail damages the Tracks or any Utility or other facility, Licensee shall immediately restore or repair such at Licensee's sole cost and expense. UTA, at its sole option, shall also have the right, without notice to Licensee, to cause the restoration or repair any such Tracks, Utilities or other facilities and seek reimbursement of all reasonable costs incurred in conjunction therewith.

E. The Multiple Use Trail shall be constructed, operated and maintained by Licensee in such a manner as not to be or constitute a hazard. In the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail, Licensee, at its sole cost and expense, shall comply with the requirements of all laws, rules, regulations, ordinances or orders

of any applicable Governmental Authority. Licensee shall not cause or permit the importation of any Hazardous Materials onto the Right of Way.

F. Licensee shall replace and maintain any soil disturbed during or because of work performed in conjunction with the Multiple Use Trail being sure the replaced soil is thoroughly compacted and the grade even with the adjacent surface of the ground.

G. Licensee shall bear the cost of any modifications to UTA's Tracks, other structures, communication facilities, catenary systems and wires, and other facilities or improvements required by the construction, use and/or existence of the Multiple Use Trail, as well as Losses sustained by UTA as the result of such modifications.

H. All landscaping, pavements, fencing and other improvements installed with respect to the Multiple Use Trail shall be maintained by Licensee in a good and workmanlike manner and in a manner consistent with Licensee's other public trails or parkways. All maintenance shall be performed consistent with the conditions or standards as may be required by the laws, rules, regulations, ordinances or orders of applicable Governmental Authorities, and so as to ensure the safety of the Multiple Use Trail and the public invites thereto. All bushes, trees, plants, and the like installed with respect to the Multiple Use Trail shall be maintained by Licensee so as not to cross the vertical plane created by the fence separating the Multiple Use Trail from other areas of the Right of Way. Any landscaping, bushes, trees, plants, and the like installed with respect to the Multiple Use Trail shall also be maintained by Licensee in a manner such that there is no interference with clearances, including clearances for line-of-sight and other visibility, for freight and passenger operations or with rail safety requirements, all as determined by UTA in its sole discretion. Licensee shall remove or modify any landscaping or other vegetation not complying with this provision within five (5) calendar days of receiving written notice of such noncompliance. All obligations of Licensee under this paragraph shall be fulfilled at Licensee's sole expense.

I. As between the parties, Licensee shall be solely responsible for all patrolling, law enforcement, security and other protective measures as may be necessary for the safe operation of the Multiple Use Trail. Licensee shall cause its police force to respond to incidents occurring on the Multiple Use Trail in a manner consistent with other locations within Licensee's jurisdiction.

ARTICLE 6. ACCESS TO RIGHT OF WAY FOR CONSTRUCTION, MAINTENANCE AND OTHER WORK

A. Before beginning any construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of or regarding the Multiple Use Trail within the Right of Way, Licensee, and any contractors, agents or other parties acting on behalf of Licensee, shall first obtain permission to enter the Right of Way from UTA. The permission sought by Licensee shall be specific to the time, date and activities for which Licensee seeks permission. Licensee shall apply in writing at least 10 days in advance as directed by the Track Access Manager of UTA. Licensee's application for access to the Right of Way will be handled in a weekly access meeting during which Right of Way access requirements for the following week are reviewed, coordinated and authorized. Simple notification is not sufficient. Prior permission must be obtained through the Track Access Manager. Permission will be formalized in writing in a summary of track access activities. After having obtained permission to enter the Right of Way at a specific time and for a specific purpose, Licensee shall notify the TRAX Control Center at least 48 hours, but no more than 72 hours, before first entering the Right of Way and shall continue to notify the TRAX Control Center on a daily basis so long as work continues.

B. Prior to entering the Right of Way for any purpose other than those described in the immediately preceding paragraph, such as visual observation or the taking of measurements, Licensee shall first obtain permission from the TRAX Control Center at least 48 hours, but no more than 72 hours, before entering the Right of Way and shall continue to be in contact with the TRAX Control Center on a contemporary basis so long as Licensee is on or about the Right of Way. This permission must be by direct oral communication and shall not be by message or by a third party. All communication with the Track Access Manager or TRAX Control Center will be coordinated with the UTA Engineer.

ARTICLE 7. PROTECTING RIGHT OF WAY DURING CONSTRUCTION AND OTHER WORK

During any construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of or regarding the Multiple Use Trail, UTA and/or the Freight Operator may, in the event they deem necessary, arrange for training, flagging, lighting, flashing signal barricades or other protection as required by UTA, the Federal Railroad Administration or other Governmental Authorities. Any such protection furnished by UTA and/or the Freight Operator shall be at Licensee's sole cost and expense. UTA and/or Freight Operator may employ and furnish, at the expense of Licensee, such flagmen and watchmen as may be reasonably necessary to protect passenger or freight operations and traffic during the progress of the work contemplated by this Agreement and during any work related to the Multiple Use Trail.

ARTICLE 8. IF WORK IS TO BE PERFORMED BY CONTRACTOR

If a contractor is to do any construction work to be performed regarding the Multiple Use Trail, then Licensee shall require such contractor to execute UTA's Agreement With Contractor Form. Licensee acknowledges receipt of a copy of the form and understands its terms, provisions and requirements. Licensee shall inform its contractor or contractors of the requirement to execute this form and deliver the same to UTA prior to entry upon or the performance of any work inside the boundaries of the Right of Way or other UTA property. Under no circumstances shall Licensee's contractor be allowed on the Right of Way without first executing and delivering to UTA the Agreement With Contractor Form and providing the required proof of insurance.

ARTICLE 9. LICENSE FEE

The parties agree that Licensee shall pay to UTA a one-time fee of ONE HUNDRED DOLLARS (\$100.00) upon the execution of this Agreement. Acceptance of the License Fee by UTA in advance shall not act as a waiver of UTA's right to terminate this Agreement as herein provided.

ARTICLE 10. UTA TO BE REIMBURSED BY LICENSEE

In addition to the License fee, Licensee shall pay to UTA a one-time Administrative Fee of FIVE HUNDRED DOLLARS (\$500) in part to cover the cost of document and exhibit preparation, engineering and legal review and/or evaluation related to this Agreement. UTA acknowledges that said Administrative Fee has been paid.

ARTICLE 11. RESTORATION OF UTA'S PROPERTY

A. In the event UTA authorizes Licensee to move or disturb any property of UTA (or that of any third party having permissive or prescriptive authority to be located in the Right of Way) in connection with

the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of or regarding the Multiple Use Trail, Licensee shall, as soon as possible and at Licensee's sole cost and expense, restore such property to the identical condition as the same were in before such property was moved or disturbed.

B. In the construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of or regarding the Multiple Use Trail, Licensee shall take every reasonable precaution to prevent damage to, or the impairment of the stability of, the poles in any pole line of UTA (or that of any third party having permissive or prescriptive authority to be located in the Right of Way). Licensee shall, under the direction of UTA and at its own expense, reset or relocate any pole or poles that are, or are reasonably likely to be, damaged or weakened because of the construction of the Multiple Use Trail or the maintenance or improvement thereof. Licensee shall further reimburse UTA for the reasonable cost of resetting or relocating any such pole or poles if UTA elects to do the work itself.

C. Upon occasion of any damage or impairment to the Right of Way or other UTA property as the result of the actions of Licensee or any agent of Licensee, UTA may, in its sole discretion, proceed with repair of such damage or impairment with notice to Licensee. Licensee shall bear all reasonable costs and expenses incurred by UTA to repair such damage or impairment. Costs incurred by UTA shall be subject to recovery by UTA in accordance with Article 18 of this Agreement.

ARTICLE 12. SAFETY

In addition to the provisions set forth herein, UTA shall have the right in its sole discretion to issue, and Licensee shall comply with, additional reasonable rules and regulations related to safety.

A. Except as may be immediately required for (and only at the actual time of) performance of physical construction of any work contemplated under this Agreement, Licensee shall not place, permit to be placed, erect, pile, store, stack, park, maintain or permit any line, building, platform, fence, gate, vehicle, car, pole or other structure, obstruction or material of any kind on the Right of Way, and Licensee shall not permit any of its contractors, subcontractors, agents or the public to do any of the above. Licensee shall keep the Multiple Use Trail and the immediately surrounding area clean and neat and free from combustible materials. Any equipment or material located on the Right of Way during construction shall only be allowed if in full compliance with all clearance standards and safety requirements of UTA and applicable Governmental Authorities.

B. Various Utilities and other crossings or encroachments exist on, over and under the surface of the Right of Way. Licensee shall properly investigate and determine the location of all Utilities and similar encroachments and shall not disturb or damage any Utilities or similar encroachments unless otherwise permitted by UTA and the relevant owner(s). In addition to the required investigation, Licensee shall have all Utilities in the area of the Multiple Use Trail blue-staked and clearly marked prior to any construction regarding the Multiple Use Trail. Licensee shall make arrangements for protection of all Utilities and other encroachments and shall commence no work on the Right of Way until all such protection has been accomplished.

C. Fiber optic cable systems may be buried or otherwise located on the Right of Way. Protection of 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 contact the telecommunications company(ies) with permissive or prescriptive rights to use the Right of Way, arrange for a cable locator,

and make arrangements for protection of the fiber optic cable. Lessee shall commence no work on or affecting the Right of Way until such protection has been accomplished.

D. Upon construction of the Multiple Use Trail, Licensee, at its sole cost and expense, will install markers identifying the location of Utilities constructed under the surface of the Multiple Use Trail. Licensee shall also install, at its sole cost and expense, such additional markers, signs, barriers or other improvements, of whatever character or nature, which UTA or the Freight Operator in their sole judgment may from time to time deem necessary or advisable in connection with the construction or operation of the Multiple Use Trail. Licensee shall install or erect any marker, sign or other improvement as may be required under this paragraph within 30 days of receiving written notice to such effect from UTA.

E. Licensee shall comply with, and shall require all contractors and all tiers of subcontractors to comply with, all applicable Governmental Authority regarding the safety of personnel and conservation of property in the Right of Way. The Licensee and all contractors and all tiers of subcontractors shall adhere to the UTA Construction Safety Manual as modified from time to time. In addition to other provisions set forth in the UTA Construction Safety Manual, Licensee and its contractors and subcontractors shall adhere to provisions regarding: (i) the procedures regarding access to the Right of Way and work to be performed proximate to the 750 Volt Overhead Contact System and underground return circuits; (ii) requirements that construction-orange vests or similar clothing be worn by all personnel performing construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal work within the Right of Way, including retro-reflective striping complying with appropriate ANSI or OSHA requirements for nighttime work; and (iii) OSHA and EPA requirements regarding the handling of any materials deemed to be Hazardous Materials.

ARTICLE 13. INDEMNITY

Licensee hereby acknowledges that the Right of Way may be used daily on a 24-hour basis for both freight and passenger operations. Licensee, as the owner and operator of the Multiple Use Trail, is responsible for ensuring the safe design and construction of the Multiple Use Trail, and for ensuring that adequate protections are implemented to separate the Multiple Use Trail from adjacent train traffic. As consideration for the License, Licensee agrees to protect, defend, release, indemnify and hold UTA, and its employees, officers, directors, trustees and agents harmless from any Losses sustained by UTA including, without limitation, those caused by or arising from: (i) the prosecution of any work to be performed by Licensee or its agents pursuant to the License including the design, construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal work related to the Multiple Use Trail; (ii) negligence or alleged negligence with respect to the design, construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal of the Multiple Use Trail including, without limitation, Losses stemming from the alleged failure to implement any safety precaution deemed reasonably necessary to separate train traffic from the Multiple Use Trail; (iii) the lack or alleged lack of sufficient or continuous fencing or barriers between the Tracks and the Multiple Use Trail, or the failure to adequately maintain such fencing or barriers; (iv) Licensee's failure or alleged failure to reasonably maintain the Multiple Use Trail; (v) Licensee's failure or alleged failure to comply with the requirements of any applicable Governmental Authority; (vi) the breach of any obligation assumed by Licensee pursuant to this Agreement; (vii) any personal injury sustained by the public on the Multiple Use Trail or within that portion of the Right of Way subject to the License proximately caused by the negligence, recklessness or willful or wrongful misconduct of Licensee; (viii) any claims asserted by property owners adjacent to the Multiple Use Trail, whether such claims relate to the existence, maintenance or operation of the multiple use trail; and (ix) the failure or alleged failure to adequately light or patrol the Multiple Use Trails. Notwithstanding the foregoing

provisions of this Article, Licensee's obligation to indemnify UTA shall not extend to any Losses, to the extent that such Losses are proximately caused by the negligence, recklessness or other willful or wrongful misconduct of UTA or its agents in its operations on the Right of Way. UTA agrees to protect, defend, release, indemnify and hold Licensee, its officers, employees, agents and volunteers harmless from said losses. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 14. INSURANCE

Licensee shall use only properly licensed contractors and subcontractors to perform all design, construction, installation, maintenance, repair, renewal, modification, reconstruction, relocation and/or removal work related to the Multiple Use Trail, and shall cause each contractor or subcontractor performing any such work to maintain Commercial General Liability Insurance or equivalent, including Broad form Contractual Liability coverage covering the indemnity and other liability provision of this Agreement, and Broad form Property Damage coverage, and Underground Hazard, Products and Completed Operations coverage, providing for: (i) limits of not less than \$5 million per occurrence; and (ii) worker's compensation insurance consistent with the statutory limits of the State of Utah. Such insurance shall contain a contractual liability endorsement which will cover all work related to this Agreement and an endorsement naming UTA as an additional insured. In addition, such insurance shall contain notification provisions whereby the insurance company agrees to give thirty (30) days written notice to UTA of any change in or cancellation of the policy. All contractors or subcontractors shall be required to maintain payment and performance bonds in an amount reasonable for the work being contracted.

ARTICLE 15. CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES

A. Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of UTA in connection with construction regarding the Multiple Use Trail, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee. Licensee shall protect, defend, release, indemnify and hold UTA harmless from and against any and all liens, liability, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the Multiple Use Trail, to prevent the same from becoming a charge or lien upon property of UTA, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance or use of the Multiple Use Trail or any improvement, appliance or fixture connected therewith placed upon such property, or on account of Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to Licensee, then Licensee shall reimburse to UTA the amount of such taxes.

C. Licensee shall pay and continue to pay so long as the Multiple Use Trail is used any and all taxes and assessments, general and special, including any privilege or beneficial use tax, that may be levied or assessed against such portion of the Right of Way or Multiple Use Trail as are used by Licensee or others pursuant to this Agreement; and shall pay for all damages to adjacent or abutting property by reason of construction regarding the Multiple Use Trail. No special or any other assessments for establishing or improving the Multiple Use Trail located upon the Right of Way or other UTA property are to be made against UTA, the Right of Way or other UTA property, and the Licensee agrees to protect UTA against and save it harmless from such assessments.

ARTICLE 16. TERMINATION

A. UTA may forthwith terminate this Agreement and all rights of Licensee and all others hereunder if:

1. Licensee ceases to use the Multiple Use Trail in an active and substantial way for any continuous period of twenty-four months; or

2. Licensee continues in default in the performance of any covenant, term or condition contained in this Agreement for a period of 45 days after written notice from UTA to Licensee specifying such default; provided that if a default by Licensee is deemed by UTA to be dangerous or hazardous, UTA may immediately suspend its performance under this Agreement during the 45-day default cure period and terminate this Agreement at the end of such period if there is no cure; and provided, however, that UTA shall have no obligation to terminate this Agreement after giving notice of default and may continue to perform hereunder without terminating this Agreement and without waiving the right to terminate. No additional notice of such termination or declaration of forfeiture shall be required and UTA may at once reenter upon the premises and repossess itself thereof and remove all persons therefrom or may resort to an action of forcible entry and detainer, or any other action, to recover the same or obtain appropriate relief, including without limitation, removal of any portion of the Multiple Use Trail.

3. UTA, in its sole discretion, reasonably determines that the continued use of the Right of Way by Licensee interferes with an expansion of the passenger or freight operations occurring on the Right of Way or with the continued safe operation of the Right of Way by UTA, Freight Operator or other permissive or prescriptive users of the Right of Way. Termination under this paragraph shall occur 45 days after UTA delivers written notice to Licensee of UTA's determination that the Multiple Use Trail must be removed pursuant to UTA's exercise of rights hereunder.

B. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the Parties hereto which may have accrued hereunder, or liabilities, accrued or otherwise, which may have arisen hereunder prior thereto.

ARTICLE 17. SURRENDER UPON TERMINATION

Upon termination of this Agreement howsoever, Licensee shall vacate and surrender the quiet and peaceable possession of the Right of Way. If directed by UTA, Licensee shall, at its cost and expense, remove from the Right of Way all improvements constructed with respect to Multiple Use Trail and restore the Right of Way and other UTA property to good operating condition and to at least as good condition as the same was in before the date of this Agreement.

ARTICLE 18. PAYMENT OF BILLS; ASSIGNABLE COSTS

Bills for expense or assignable costs properly chargeable to Licensee pursuant to this Agreement shall be paid by Licensee within thirty (30) days after presentation except as otherwise provided. Bills to Licensee not paid within thirty (30) days shall be subject to interest at the rate of 15% per annum.

ARTICLE 19. AGREEMENT NOT TO BE ASSIGNED

Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of UTA, and it is agreed that any transfer or assignment or attempted transfer or

assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of UTA, shall terminate this Agreement.

ARTICLE 20. SUCCESSORS AND ASSIGNS

Subject to the provisions of the previous Article hereof, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors and assigns.

ARTICLE 21. SEVERABILITY

This Agreement is executed by all Parties under current interpretation of any and all applicable federal state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every paragraph, clause, phrase, item, term, condition, covenant or agreement contained in this Agreement shall have independent and severable status from each other division, or combination thereof, for the determination of legality, such 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 22. NOTICES

A notice or demand to be given by one party to another shall be given in writing by personal service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

- A. In the case of a notice or communication to UTA,
 - Attention: General Manager, P.O. Box 30810, Salt Lake City, Utah 84130-0810.
 - With Copy to: General Counsel, P.O. Box 30810, Salt Lake City, Utah 84130-0810.

- B. In the case of a notice or communication to Licensee
 - Attention: _____, 10000 South Centennial Parkway, Sandy, Utah 84070
 - With Copy to: City Attorney, 10000 South Centennial Parkway, Sandy, Utah 84070

Or addressed in such other way in respect to any party as that party may, from time to time, designate in writing dispatched as provided in this Article. All notices, demands, requests, or other communications under this Agreement shall be in writing and shall be deemed properly served and to have been duly given: (i) on the date of delivery, if delivered personally on the party to whom notice is given; or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed.

ARTICLE 23. NO IMPLIED WAIVER.

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair the right of UTA to avail itself of any subsequent breach thereof. Furthermore neither the right of supervision by UTA, nor the exercise or failure to exercise such rights, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part, of the work contemplated

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assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of UTA, shall terminate this Agreement.

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With Copy to: General Counsel, P.O. Box 30810, Salt Lake City, Utah 84130-0810.

B. In the case of a notice or communication to Licensee
Attention: _____, 10000 South Centennial Parkway, Sandy, Utah 84070
With Copy to: City Attorney, 10000 South Centennial Parkway, Sandy, Utah 84070

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ARTICLE 23. NO IMPLIED WAIVER

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair the right of UTA to avail itself of any subsequent breach thereof. Furthermore neither the right of supervision by UTA, nor the exercise or failure to exercise such rights, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part, of the work contemplated

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by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

SANDY CITY CORPORATION

By [Signature]
Tom Dolan, Mayor



APPROVED AS TO FORM

ATTEST:

By Molly Berigan Spier
City Recorder, Deputy

By _____
Senior City Attorney

UTAH TRANSIT AUTHORITY

By [Signature] (acting) 5-22-07 APPROVED AS TO FORM
John M. English, General Manager

By [Signature]
Kenneth D. Montague, Jr., Treasurer

By [Signature]
Utah Transit Authority Legal Counsel

12-11-01 Mrs
SANDY CITY APPROVALS
Department [Signature] 1/2/02
Risk Mgt. [Signature]
Budget [Signature]
Legal Form [Signature]
Purchasing Completed [Signature]