

**LICENSE AND INDEMNIFICATION AGREEMENT
FOR SEWER PIPELINE CONSTRUCTION AND MAINTENANCE**

THIS LICENSE AND INDEMNIFICATION AGREEMENT FOR SEWER PIPELINE CONSTRUCTION AND MAINTENANCE, dated for identification purposes as of the date last executed by the parties below (the "Effective Date"), is entered by and between STEAMBOAT CANAL AND IRRIGATION COMPANY, a Wyoming corporation ("Steamboat"), and WASHOE COUNTY ("Licensee").

Recitals

WHEREAS, Steamboat operates a ditch system within the greater Truckee Meadows within easements, the location of which has been established by eminent domain, statutory dedication, prescription or grant, and the scope of which variously includes the channel of the ditch ("Steamboat Canal"), ditch banks, bank slopes, adjacent access roads or trails (the "Steamboat Easement"), which easement is acknowledged by Licensee; and

WHEREAS, Licensee desires to construct and maintain a Sewer Pipeline (as defined below) which Sewer Pipeline Licensee desires to construct and place underneath a portion of the Steamboat Easement and Steamboat Canal at or about the location shown in Exhibit "A".

WHEREAS, Steamboat is willing to grant Licensee access to the Steamboat Canal and to permit the construction, operation and maintenance of the Sewer Pipeline within the Steamboat Easement only upon the terms and conditions set forth in this Agreement, each of which terms and conditions is a material inducement for Steamboat's consent.

NOW, THEREFORE, in consideration of the mutual covenants of good faith and promises by and between the parties set forth herein, it is agreed as follows:

1. LICENSE

1.1 Access to Steamboat Easement. Subject to the terms set forth below, STEAMBOAT hereby grants Licensee, its contractors and agents a nonexclusive license to (i) use that portion of the Steamboat Easement approximately twenty (20) feet in width located at the intersection of the Sewer Pipeline and the Steamboat Canal (the "License Area"), as more particularly described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by reference, for the sole and exclusive purpose of constructing, operating and maintaining a sewer pipeline and appurtenances for the transmission of sanitary sewer and appurtenant reinforcement facilities as more particularly described in Exhibit "B" attached hereto and incorporated herein (collectively, the "Sewer Pipeline"); and (ii) a right to enter over, upon and across any property owned, operated or controlled by the Steamboat within the License Area to construct, operate, repair, replace and maintain the Sewer Pipeline, as contemplated by this Agreement; provided, Licensee's construction, use, occupancy, operation, repair or maintenance of the Sewer Pipeline does not impair, impede or in any manner disrupt any present or historic use of the Steamboat Canal or Steamboat's Easement by Steamboat, including without

limitation, the transportation of irrigation water through the Steamboat Canal. Licensee and its successors shall be solely and exclusively responsible for all cleaning, repair, replacement, operation and maintenance of the Sewer Pipeline in the License Area and provided further, however, except in emergency situations, Licensee shall not perform any repairs or modifications within the Steamboat Canal without Steamboat's prior consent which consent will not be unreasonably withheld.

1.2 Duration of License. The term of this Agreement shall be perpetual provided Licensee is not in material default of any provision hereunder.

1.3 No interference. The licenses herein granted are limited and shall not permit the Licensee to use the Steamboat Canal or any of Steamboat's Easement in any manner as to impair, impede or in any manner disrupt any present or historic use of the Steamboat Canal, or Steamboat's Easement by Steamboat, including without limitation, the delivery of irrigation water through the Steamboat Canal or the quality of water naturally flowing in the Steamboat Canal or diverted from the Truckee River by Steamboat.

1.4 Owner Consent. All or a portion of the License Area may be located on property the underlying fee interest to which is not owned by Steamboat. This agreement is conditional upon Licensee obtaining all necessary and appropriate approvals of the owner of the underlying fee interest to perform the work herein, and to operate, maintain and repair the Sewer Pipeline.

2. CONSTRUCTION OF SEWER PIPELINE.

2.1 Construction. Licensee shall be solely responsible for all design, plans and construction of the Sewer Pipeline; provided, however, the Sewer Pipeline shall be designed and constructed in full conformance with Steamboat's specifications and requirements and shall be designed and constructed to meet Steamboat's historic or present flow capacity requirements and to minimize interference with and access to, and the regular cleaning and maintenance of, the Steamboat Canal. All designs and plans shall be submitted to Steamboat for review and approval. All work performed by Licensee on or about the Steamboat Canal, including without limitation construction of the Sewer Pipeline, must be reviewed and approved in writing in advance by Steamboat. Licensee shall be solely responsible for prosecuting the work on the Sewer Pipeline, and agrees to coordinate such construction with Steamboat in advance so as to minimize adverse impacts on Steamboat's canal and/or irrigation operations. Licensee shall notify Steamboat no later than 48 hours prior to commencing any construction or other work on the Sewer Pipeline.

2.1.1 Construction Completion Deadline/Liquidated Damages. No construction may proceed on the Sewer Pipeline or any other work contemplated hereunder until this Agreement has been executed by Steamboat and Licensee. LICENSEE SHALL COMPLETE ALL CONSTRUCTION WITHIN THE LICENSE AREA NO LATER THAN MAY 18, 2019. Licensee acknowledges and agrees that Steamboat intends to commence delivery of irrigation water sometime after April 15, 2019, and Licensee shall perform the work diligently, expeditiously, and with adequate resources so as to complete all the work in a manner that does not delay, impair, or adversely affect Steamboat's delivery of irrigation water. If

Licensee fails to complete the work and Licensee's project interferes, impedes or prevents Steamboat from fully utilizing the Steamboat Canal for irrigation purposes on April 15, 2019, Licensee shall pay Steamboat, as liquidated damages, and not as a penalty, the sum of \$10,000.00 per day until the earlier of the completion of the work or the restoration of the Steamboat Canal to full operational capacity, which sum, in view of the difficulty of estimating such damages with exactness, is hereby expressed, fixed, computed, determined, and agreed upon as the damages that will be suffered by the Steamboat by reason of such default. It is understood and agreed by the parties that the liquidated damages herein mentioned are in lieu of the actual damages arising from such delay breach.

2.2 Stormwater Drainage. No storm water drainage or dumping of any hazardous materials shall be permitted into the Steamboat Canal in connection with the Sewer Pipeline or Licensee's work hereunder. The Sewer Pipeline shall be designed, constructed and maintained to ensure that the storm water drainage from Licensee Area into the Steamboat Canal shall not increase (as compared to the drainage existing prior to the Sewer Pipeline installation) nor structural integrity of the Steamboat Canal decrease as a result of any the construction of the Sewer Pipeline. Licensee further acknowledges and agrees that the City of Reno and Washoe County utilizes the Steamboat Canal for stormwater discharge purposes outside of the irrigation season, and Licensee shall take all appropriate actions to prevent any escape of stormwater discharge from the Steamboat Canal during any work on the Sewer Pipeline.

2.3 Cost of Construction. Licensee shall be independently and solely responsible for all costs and expenses, including without limitation labor, material, maintenance, operation, reconstruction and construction related costs and expenses, arising from the Sewer Pipeline, including without limitation any claims, disputes, lawsuits, changes in work, unforeseen conditions or other claims arising from or in connection with such work, and any adverse impacts on the structure or integrity of the Steamboat Canal. Licensee shall also pay Steamboat's encroachment application fees to review plans and specifications for Sewer Pipeline and any subsequent work performed by Licensee within License Area under this Agreement, including without limitation review pursuant to Section 2.1 and 2.2 subject to the not-to-exceed sum of \$4,000.00. Licensee shall indemnify and hold harmless Steamboat and its agents, employees, officers and directors from and against any and all claims, damages, losses, costs and expenses arising from labor, material, maintenance or construction costs and expenses in connection with the Sewer Pipeline and construction thereof, and shall immediately remove any lien placed on Steamboat's Easement in connection with such work.

2.4. Ownership of Sewer Pipeline. The parties acknowledge and agree that Licensee shall be the sole and exclusive owner of the Sewer Pipeline.

2.5. Maintenance. During the term of this Agreement, Licensee and its successors and assigns shall be solely responsible for performing, and all costs incurred in connection with, all maintenance, cleaning, repairs, operation and replacements of the Sewer Pipeline. Licensee shall maintain the Sewer Pipeline in good condition and repair such that it does not impair or impede the conveyance of water through the Steamboat Canal. If Licensee fails to timely perform its obligations under this Section 2.5 after notice from Steamboat, Steamboat may elect to perform such work at Licensee expense. Except in the event of an emergency or routine

cleaning of the interior of the Sewer Pipeline, Licensee shall not perform any other repairs or replacement work on the Sewer Pipeline between April 15th and October 15th during any year, and shall provide Steamboat with 48 hours advance notice before doing such work on the Sewer Pipeline within the License Area.

3. LICENSEE DUTIES AND RESPONSIBILITIES

3.1 Cost Reimbursement. Prior to performing any work and during the term of this License, Licensee shall submit the required application fee to Steamboat for review and approval of the Sewer Pipeline. Steamboat acknowledges prior receipt and approval of an encroachment application for this project.

3.2 Liability Insurance. At all times during the construction of the Sewer Pipeline and any other construction activities adjacent to the Steamboat Canal, Licensee for itself, or through Licensee's contractor performing the work in the License Area, shall provide at its expense and keep in force a commercial general liability and commercial automobile policy protecting Licensee, Licensee's contractor(s) and Steamboat against liability occasioned by negligent acts or omissions by Licensee, its officers, employees, agents, contractors or its invitees ("Licensee Parties") in or about the License Area arising as a result of the exercise by Licensee Parties of the rights and privileges under this Agreement, including Licensee's obligations to indemnify, defend and hold Steamboat harmless in Section 6. Steamboat shall be named as a Certificate Holder and an additional insured for the commercial general liability, commercial auto liability. The amount of such liability insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage under commercial general liability and \$1,000,000 combined single limit for bodily injury and damage under commercial automobile liability. Certificates of insurance evidencing the required coverage shall be delivered to Steamboat. Licensee shall request an endorsement precluding cancellation of said policy without at least thirty (30) days prior written notice to Steamboat. If Licensee's insurers cannot provide endorsements providing such notice of cancellation to Steamboat, then Licensee shall be responsible to provide notice as soon as practicable after receiving notice of cancellation from any insurers providing coverage required in this Agreement. Liability coverage shall be written as primary coverage for Steamboat as the named additional insured and any insurance, or self-insurance maintained by Steamboat shall be excess of and noncontributory with any insurance or self insurance carried or offered as a protective device by Licensee on behalf of Steamboat. Insurance coverage, or any self-insurance or other protective device program/coverage maintained by the Licensee or its subcontractors shall apply on a first dollar basis. Licensee shall require Licensee's contractor to provide, statutory worker's compensation and employer's liability insurance coverage for any individuals who will be using the License Area in the manner authorized under this Agreement. The employer's liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. A waiver of subrogation shall be provided in favor of Steamboat from any and all claims of damages alleged or otherwise by Licensee, its subcontractors, or either's insurance company against Steamboat, as an additional insured. Copies of the insurance coverage, any self-insurance or other protective device program referenced in this paragraph shall be provided to Steamboat by Certificates of Coverage,

including specific insurance policy endorsements. All insurance certificates and proof of workers' compensation coverage must be provided to Steamboat prior to commencing the work.

Licensee shall also provide at its expense and keep in force during all times after completion of the construction of the Sewer Pipeline and so long as this Agreement remains in force and/or the Sewer Pipeline remains in operation, a commercial general liability policy protecting Steamboat against liability occasioned by the Sewer Pipeline or negligent acts or omissions by Licensee, its officers, employees, agents or its invitees in or about the License Area arising as a result of the exercise by Licensee of its rights and privileges under this Agreement, including Licensee's obligations to indemnify, defend and hold Steamboat harmless in Section 6. The amount of such liability insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage under commercial general liability and \$1,000,000 combined single limit for bodily injury and damage under commercial automobile liability. Licensee's commercial general liability shall be primary coverage for Steamboat as the additional insured and any insurance, or self-insurance maintained by Steamboat shall be excess of and noncontributory with any insurance, or self insurance carried or offered by Licensee on behalf of Steamboat. Insurance coverage, or any self-insurance or other coverage maintained by the Licensee, or its subcontractors shall apply on a first dollar basis. A waiver of subrogation shall be provided in favor of Steamboat from any and all claims of damages alleged by Licensee, or its insurance company against Steamboat, as an additional insured. Copies of the insurance coverage, any self-insurance or other program referenced in this paragraph shall be provided to Steamboat by Certificate of Coverage, including copies of program endorsements clearly indicating that required in this paragraph. Said policies of insurance (or certificates thereof) shall be delivered to Steamboat before the completion of this project and shall include an endorsement precluding cancellation of said policy or change of said self-insurance program, or other protective device transfer method being used currently by Licensee without at least thirty (30) days prior written notice to Steamboat.

To the extent Licensee is self-insured, Licensee may satisfy License's insurance obligations through such self-insurance, and Licensee agrees that all the foregoing insurance requirements apply to and will be covered by Licensee's self-insurance programs and that Licensee has sufficient assets to cover any insured losses if they occur.

4. LICENSEE REPRESENTATIONS AND WARRANTIES. Licensee represents and warrants to Steamboat at the time of execution and continuing during the term of this Agreement:

4.1 Licensee shall not, nor at any time shall the construction, operation, maintenance or repair of the Sewer Pipeline, impair, impede or interfere with the delivery of water, the quality of water within, or use of Steamboat Canal by Steamboat; and

4.2 Licensee shall comply with all applicable laws, rules and regulations with respect to the construction, maintenance and repair of the Sewer Pipeline.

5. STEAMBOAT DISCLAIMERS

Licensee acknowledges and agrees that the Steamboat Canal is subject to flooding or overflow in times of extreme precipitation or other excessive flow events and Steamboat makes no representation or warranty, implied or expressed, as to the suitability of the location of the Sewer Pipeline or Licensee's intended use of the License Area, or any expressed purpose whatsoever. Licensee acknowledges and agrees that it has been given a full opportunity to inspect and investigate every aspect of the Steamboat Easement and for the purpose of its intended use and accepts the property condition of the Steamboat Easement in all respects. Licensee specifically acknowledges and agrees that the Steamboat Easement is being licensed by Steamboat on an "AS IS" basis and in the condition as of the date of this Agreement and Steamboat makes no representations or warranties, express or implied, concerning the title to the real property constituting the Steamboat Easement, or scope, size or duration of such Steamboat Easement, suitability for Licensee's intended purpose, and that the rights granted to Licensee under this Agreement do not extend beyond such right, title or interest as Steamboat may have in and to the Steamboat Easement.

6. INDEMNITY.

Except as otherwise provided in Section 2.1.1, Licensee, for itself and on behalf of its successors and assigns ("Indemnifying Party"), releases, and shall indemnify, defend and hold harmless Steamboat and its officers, directors, and employees from and against any and all losses, claims, liabilities, damages to persons or property, costs and expenses, including reasonable attorneys' fees, made against or incurred by Licensee or Steamboat resulting or arising from:

- (i) any willful or negligent act or omission of Indemnifying Party related to or affecting the use, operation, repair or maintenance of the Sewer Pipeline;
- (ii) any breach of this Agreement or any representation or warranty by Indemnifying Party;
- (iii) water seeping in or otherwise escaping from the Steamboat Canal caused by or attributable to the Sewer Pipeline;
- (iv) the rights granted Indemnifying Party under this Agreement and Indemnifying Party's use of the Steamboat Canal;
- (v) any point source pollution attributable to or arising from Licensee's work on the Sewer Pipeline, or water quality issues attributable to the Sewer Pipeline;
- (vi) asserted by any person as a result of an incident on the License Area which is the result of the acts or omissions of Indemnifying Party, its officers, employees, or agents or any use by any person of the Sewer Pipeline;
- (vii) any failure of the Sewer Pipeline, or unplanned impairment or interruption in the delivery of water caused by Indemnifying Party, excluding therefrom claims arising from physical damage to the Sewer Pipeline directly caused solely by the negligent or willful misconduct of Steamboat.

7. MISCELLANEOUS

7.1. It is understood and agreed that rights granted to the Licensee under this Agreement apply only to the License Area.

7.2 Any and all rights granted by Steamboat to Licensee under this Agreement are understood and agreed to be irrevocable by Steamboat during the term as long as Steamboat continues to own and operate the Steamboat Canal and Licensee is not in default of any obligation or provision herein. Licensee shall not be in default unless (1) Steamboat has delivered a "Notice of Default" to Licensee, which describes the default and the steps necessary to cure it and (2) Licensee fails to cure the default within 10 business day or, for non-monetary defaults that cannot reasonably be cured with such time period, fails to take all necessary steps to cure such default within 10 business days and diligently pursues such cure in a timely manner.

7.3. Except as otherwise expressly provided, this Agreement may be modified or amended only in writing with mutual consent of both parties.

7.4. This Agreement is intended only to benefit the parties hereto and their permitted successors and assigns, and does not create any rights, benefits or causes of action for any other person, entity or member of the general public. This License shall be binding upon and inure to the benefit of each of the parties hereto and to their respective successors and assigns of the Licensee Property, and all Licensee obligations hereunder are intended to and shall be binding upon successors and assigns to the Sewer Pipeline. Other than to a successor owner of Sewer Pipeline, Licensee shall not assign its rights or obligations under this License without the prior written consent of Steamboat.

7.5. Should any provision in this Agreement be declared invalid, the remaining valid provisions shall remain in full force and effect.

7.6. This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada. Disputes will be adjudicated in the County of Washoe.

7.7. All notices, demands or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be deemed delivered when personally delivered to a party (by personal delivery to an officer or authorized representative or a corporate party) or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the parties as follows:

If to STEAMBOAT: Steamboat Canal and Irrigation Company
Attn: Gene Curti
555 Geiger Grade
Reno, Nevada 89511

If to Licensee: Washoe County
Attn: Dwayne Smith, P.E.,
Division Director, Engineering and Capital Projects
Community Services Department,
1001 E. 9th Street
Reno, Nevada 89512

Any person may change its address for notice by written notice given in accordance with the foregoing provisions.

7.8. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement, and that the parties are authorized by law to perform the services set forth herein.

7.9 This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

7.10 The parties may record a memorandum of this Agreement with the Washoe County Recorder on the License Area property at any time in their sole discretion.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date and year stated below.

“STEAMBOAT” STEAMBOAT CANAL AND IRRIGATION COMPANY, a Wyoming corporation By: _____ GENE CURTI, President Dated: _____	“LICENSEE” WASHOE COUNTY By: _____ Its: _____ Chair Dated: _____, 2019 Attest: _____ County Clerk Approved as to Form: _____ Deputy District Attorney
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