

11179981

WHEN RECORDED MAIL TO:

Jordan Valley Water
Conservancy District
Attn: Property Manager
8215 South 1300 West
West Jordan, UT 84088-0070

11179981

05/09/2011 04:02 PM \$0.00
Book - 9923 Pg - 4652-4663
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
JORDAN VALLEY WATER
CONSERVANCY DISTRICT
8215 S 1300 W
WEST JORDAN UT 84088
BY: NEH, DEPUTY - WI 12 P.

PARCEL ID NUMBERS:

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2109353008
2108101007

PIPELINE AGREEMENT

This Agreement is made as of the 9th day of October 2009 (the "Effective Date"), between the Utah & Salt Lake Canal Company, a Utah non-profit corporation ("Grantor"), and the Jordan Valley Water Conservancy District, a water conservancy district organized under the laws of the State of Utah ("Grantee").

RECITALS:

- A. Grantor owns, or has easements, rights-of-way, or other possessory interests in lands which have been and are being used for the canal known as the "Utah & Salt Lake Canal" (collectively referred to as the "Canal Property");
- B. Grantee is authorized by law to obtain easements and rights-of-way and to construct water works facilities and pipelines within them;

- C. Grantee intends to install a 16-inch PVC or HDPE (approximately 18-inch O.D.) water pipeline and associated water system equipment and facilities (collectively referred to as the "Pipeline") within portions of the Canal Property; and,
- D. Grantee desires to obtain from Grantor, and Grantor is willing to grant to Grantee, a permanent, non-exclusive underground Pipeline easement together with a right-of-way in, on, over, under, across, and through portions of the Canal Property, consistent with the terms set forth in this Agreement.

TERMS:

The parties agree as follows:

1. Grantor grants to Grantee a permanent, non-exclusive underground easement in, on, over, under, across, and through portions of the Canal Property for the conveyance of water to and from adjacent property, and for the construction, installation, operation, maintenance, repair, inspection, removal, and replacement of the Pipeline. The easement is described in attached Exhibit 1 and is referred to as the "Easement Property."
2. Grantor grants to Grantee a permanent, non-exclusive right-of-way in, on, over, across, and through the Easement Property for vehicular and pedestrian access, ingress, and egress to and from adjacent property, and permanent, non-exclusive use of existing roads to access the Easement Property and the right-of-way. The description of the right-of-way is identical to the description of the Easement Property in attached Exhibit 1.
3. (a) Prior to installation and construction of the Pipeline, Grantee shall deliver to Grantor a copy of the associated plans, drawings, and specifications for the

Pipeline for Grantor's review and approval. Grantor's approval shall not be unreasonably withheld, conditioned, or delayed.

(b) Grantee may place in the Easement Property such air vents, water vents, valves, and other structures it deems necessary for the normal operation and maintenance of the Pipeline. These structures shall be constructed in such a way as to avoid interference with, and to allow continued use of, the existing maintenance road in the Canal Property and shall generally be placed underground except for those above ground structures which are specifically approved in writing by Grantor. The bottom of the Pipeline shall be set approximately one foot (1') above the operating water level in the canal, except as the parties otherwise may mutually agree.

(c) Following completion of installation and construction, Grantee shall deliver to Grantor a copy of "as-built" drawings of the Pipeline.

4. Following the initial construction and installation of the Pipeline, Grantee, at its sole expense, shall: (i) restore disturbed portions of the Easement Property as near as reasonably possible to their pre-construction conditions; (ii) refill all excavations made by Grantee within the Easement Property with fill material sufficient to prevent leakage through the canal bank; (iii) grade level the surface of the Easement Property; and, (iv) lay not less than five inches (5") of untreated base course material over the surface of the Easement Property.

5. Any damage caused by Grantee to the Canal Property resulting from the reconstruction, operation, repair, replacement, and maintenance of the Pipeline shall be repaired by Grantee, at its sole expense, as near as reasonably possible to its pre-construction condition.

6. Grantee shall be required, at its sole expense, to repair and/or replace, as near as reasonably possible to its pre-construction condition, any and all perimeter fencing along the Canal Property which is damaged as a result of construction and installation of the Pipeline. All work shall be completed by Grantee as soon as weather conditions permit.

7. Grantee shall exercise due care to avoid damage to or obstruction of the Canal Property and to avoid any interference with the use, operation, maintenance, and repair of the canal by Grantor. Grantee shall conduct its operations within the Easement Property to prevent unnecessary destruction, scarring, or defacing of the landscape.

8. (a) Except as otherwise provided in this Agreement, all rights hereunder shall be held by Grantee at all times subordinate and subject to the rights of Grantor to use, operate, maintain, reconstruct, and repair the Canal Property. Grantor reserves the right to unlimited ingress and egress to and from the Easement Property for the purpose of exercising, enforcing, and protecting Grantor's rights reserved in this Agreement.

(b) Except in emergency situations, Grantor shall give ten (10) days written notice to Grantee before removing or excavating cover or materials from the Easement Property.

(c) Grantor may cross or cover the Easement Property with sidewalks, curbs and gutters, asphalt roadways, driveways, gates or other similar non-permanent improvements.

(d) Should gates and locks be installed in the future on the Easement Property, Grantor and Grantee shall coordinate to maintain reasonable access.

9. Grantor may grant additional easements, licenses, or rights-of-way within the Easement Property, provided, however, that Grantee shall have the right to modify

alignments and depths of utilities in order to ensure protection of the Pipeline following construction.

10. (a) Grantee shall reimburse Grantor for actual, out-of-pocket costs and expenses incurred by Grantor for the legal and engineering review of this Agreement and of the associated plans, drawings, and specifications prepared by Grantee for the Pipeline. Reimbursement shall be made within thirty (30) calendar days following the last to occur of: (i) Grantee's receipt from Grantor of an itemized invoice, and supporting paperwork that explains and verifies all charges and expenses set forth on the invoice; and (ii) Grantee's receipt of Grantor's approval in accordance with subparagraph 3(a). Grantee's reimbursement obligations under this subparagraph shall not exceed the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00).

(b) (i) As consideration for this Agreement, Grantee shall pay Grantor annually for twenty (20) years an amount equal to twenty-five percent (25%) of Grantor's prior calendar year's actual maintenance expenses for the Canal Property, but not to exceed twenty-five percent (25%) of the previous three (3) year rolling average for such actual maintenance expenses. For purposes of this paragraph 10, maintenance expenses shall include company employees' salaries (except as attributable to the canal check structures), and legal and engineering expenses related to maintaining and protecting the canal (but not including those legal and engineering expenses associated with utility crossing agreements or other agreements for which the Company assesses fees to reimburse its legal and engineering expenses); but shall not include Grantor's capital expenditures, expenses or salaries for maintenance of the canal check structures, or any other operating expenses.

(ii) Payments by Grantee under this subparagraph shall begin in calendar year 2010 based on the actual maintenance expenses for 2009. Grantor shall submit to Grantee a written, detailed invoice no later than the 15th day of January 2010 and on the 15th day of January in each subsequent year through 2030. Each invoice shall itemize the maintenance expenses for each of the preceding three years. Grantee shall pay the appropriate amount due within thirty (30) days following receipt of an invoice.

(c) (i) Beginning January 2030, Grantee shall pay Grantor annually an amount equal to ten percent (10%) of Grantor's prior calendar year's actual maintenance expenses, as defined above, for the Canal Property.

(ii) Grantor shall submit to Grantee a written, detailed invoice no later than the 15th day of January 2030 and on the 15th day of January in each subsequent year. Each invoice shall itemize the maintenance expenses for the preceding year. Grantee shall pay the amount due within thirty (30) days following receipt of an invoice.

(d) Any amount not paid when due shall bear simple interest of three percent (3%) per annum above the prime interest rate until paid in full. If at any time Grantee remains delinquent in the payment of any amount due under this Agreement for a period in excess of one-hundred twenty (120) days following written notice of the delinquency from Grantor, then this Agreement shall terminate and Grantee's right, title, and interest in and to the Pipeline shall transfer to Grantor.

11. Grantee may assign this Agreement, any of its rights under this Agreement, and the right-of-way and/or easement granted it by this Agreement.

12. Grantor warrants that to the best of its knowledge there are no unrecorded liens, encumbrances, contracts, or leases which burden, claim an interest in, are secured

by, or otherwise affect the interests and/or rights granted by this Agreement to Grantee in the Easement Property.

13. (a) Grantee shall indemnify and hold harmless Grantor and any of its principals, agents, and employees from and against all claims, loss, liability, suits, and damages, including attorney's fees, charges, or expenses for injury or damages to any persons or property that result from the construction, installation, operation, maintenance, repair, inspection, removal, and/or replacement of the Pipeline, except for claims, losses, suits or damages resulting from or arising out of the sole negligence or willful misconduct of Grantor or its principals, agents, or employees. Grantee acknowledges and agrees that it has assumed the sole obligation and duty to provide a safe place to work for its employees on the Canal Property, and agrees that Grantor has no responsibility therefore, and that any claim for damages by employees of Grantee or its subcontractors against Grantor, alleging that Grantor failed to furnish a safe place to work, shall not be construed as relieving Grantee of its indemnity obligations to Grantor under the terms of this Agreement.

(b) Nothing in this Agreement shall adversely affect any immunity from suit, or any right, privilege, claim, or defense which Grantee or its employees, officers, and trustees may assert under state or federal law, including but not limited to the Utah Governmental Immunity Act, Utah Code Ann. (2008) §§ 63G-7-101 et seq. (the "Act"). All claims against Grantee or its employees, officers, and trustees are subject to the provisions of the Act, which Act controls all procedures and limitations in connection with any claim of liability.

(c) Grantee shall require its Pipeline contractor(s) to provide performance and payment bonds to insure that the construction and installation of the Pipeline will be

completed and all subcontractors and suppliers will be paid. Grantee shall keep the Easement Property free of liens arising out of the Pipeline construction and installation.

14. Upon ninety (90) days written notice to Grantor, Grantee may abandon the Pipeline and terminate the easement and right-of-way granted in this Agreement. In that event, Grantee shall cap and seal all above-ground access points to the Pipeline; Grantee's obligations pursuant to subparagraph 10(b) shall terminate without further notice or condition; and, upon written request by Grantor, Grantee shall convey by quit claim deed all of its right, title, and interest in and to the Pipeline.

15. The parties acknowledge that Salt Lake County has a right to conduct storm drainage and flood water in the Canal Property for the period of, and as controlled by, the Storm Drainage and Flood Control Agreement, dated May 27, 1992, between Grantor and Salt Lake County.

16. This Agreement may be amended only by written instrument executed by the parties.

17. All of the grants, covenants, terms, provisions, and conditions in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors, and administrators of the parties.

18. This Agreement, including exhibits, constitutes the entire agreement of the parties and supersedes all prior understandings, representations, or agreements of the parties regarding the subject matter in this document.

19. Each individual executing this Agreement does hereby represent that he or she has been duly authorized to sign this Agreement in the capacity and for the entities shown.

20. The parties shall perform those acts and/or sign all documents required by this Agreement and which may be reasonably necessary to effectuate the terms of this Agreement.

21. The provisions of this Agreement shall be governed by and construed under Utah law, and any legal action based on this Agreement may be filed only in the Third Judicial District Court of Salt Lake County, Utah.

22. Grantor and Grantee have sought legal counsel to the extent each deemed necessary to protect their respective interests. This Agreement is the result of arms length negotiations by the parties and it is expressly agreed that this Agreement shall not be construed in favor of or against either party as the drafter of the document.

23. All notices required or permitted by this Agreement shall be in writing and shall be given by personal delivery or by certified mail, with return receipt requested, to the following addresses or to such other addresses as the parties may designate in writing:

If to Grantor, to:
Utah & Salt Lake Canal Company
Attn: President
Nelson Peterson
4758 West 4100 South
West Valley City, UT 84120

With a copy to:
Utah & Salt Lake Canal Company
Attn: Secretary
Carolyn McCauley
P.O. Box 1181
West Jordan, UT 84084

If to Grantee, to:
Jordan Valley Water Conservancy District
Attn: Property Manager
8215 South 1300 West
P. O. Box 70

West Jordan, UT 84088-0070

With a copy to:

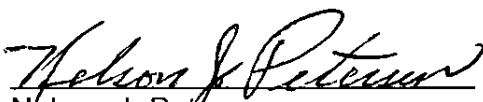
Jordan Valley Water Conservancy District
Attn: General Manager
8215 South 1300 West
P.O. Box 70
West Jordan, UT 84088-0070

Notice shall be effective on the date it is received by the other party.

24. Any party may record this Agreement.

"Grantor":


Utah & Salt Lake Canal Company

By: 
Nelson J. Petersen
Its President

Address: P. O. Box 1181
West Jordan, UT 84084

"Grantee":

Jordan Valley Water Conservancy District

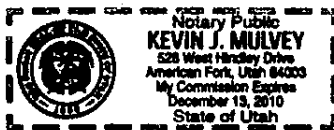
By: 
Its: General Manager

Address: 8215 South 1300 West
P. O. Box 70
West Jordan, UT 84088-0070

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 9th day of October, 2009 by Nelson J. Petersen as President of the Utah & Salt Lake Canal Company.

Commission expires: 12/13/10

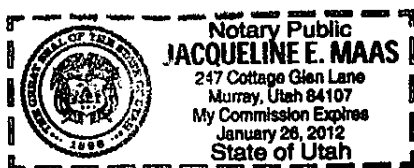


Kevin J. Mulvey
Notary Public
Residing in Utah

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 9 day of October, 2009, by Richard Bay as General Manager of the Jordan Valley Water Conservancy District.

Commission expires: 1-26-2012



Jacqueline E. Maas
Notary Public
Residing in Murray, UT

Exhibit 1

Description of the Easement Property

The Easement Property consists of a strip of land twenty feet more or less in width which lies between, and is bounded by, the northeast bank of the Utah & Salt Lake Canal and the northeasterly boundary line of the Canal Property. The Easement Property begins at a point which is east 1,320 feet more or less and north 995 feet more or less from the west quarter corner of Section 22, Township 2 South, Range 1 West, Salt Lake Base & Meridian, said point of beginning is also north 45 feet more or less from the southwest corner of Memorial Estates – Redwood, Inc. property (Salt Lake County Recorder Parcel # 21-22-176-001), and runs thence northerly and westerly along and adjacent to the Utah & Salt Lake Canal approximately 10 miles traversing through Sections 22, 21, 16, 9, 8, 7, 6 of Township 2 South, Range 1 West and Section 1 of Township 2 South, Range 2 West and Sections 35, 34, 33, 32, 31, 30 of Township 1 South, Range 2 West, Salt Lake Base & Meridian, to a point which is west 2,460 feet more or less and north 1,300 feet more or less from the southeast corner of Section 30, Township 1 South, Range 2 West, Salt Lake Base & Meridian, said point coincides with the east right-of-way line of 9200 West Street.

An additional segment of the Easement Property consists of a strip of land twenty feet more or less in width which lies between, and is bounded by, the southwest bank of the Utah & Salt Lake Canal and the southwesterly boundary line of the Canal Property. This additional segment begins at a point which is east 1,290 feet more or less and south 810 feet more or less from the northwest corner of Section 1, Township 2 South, Range 2 West, Salt Lake Base & Meridian, said point coincides with the west right-of-way line of 5400 West Street and runs thence northwesterly along and adjacent to the Utah & Salt Lake Canal approximately 2,000 feet traversing through Sections 1 & 2 of Township 2 South, Range 2 West, Salt Lake Base & Meridian, to a point which is west 550 feet more or less and south 40 feet more or less from the northwest corner of Section 2, Township 2 South, Range 2 West, Salt Lake Base & Meridian, said point coincides with the south right-of-way line of 4100 South Street.