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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
METROPOLITAN WATER DIST OF SL
3430 E DANISH RD
COTTONWOOD HEIGHTS UT 84093
BY: MBA, DEPUTY - MA 8 P.

When Recorded Return to:
Metropolitan Water District of Salt Lake & Sandy
Attn: General Manager
3430 East Danish Road
Cottonwood Heights, Utah 84093-2139

Application No.: S-10-1115.1
Version: 03-08-18

PARCEL NO.: 2810476030, 2810476002

**ADDENDUM No. 1
TO ENCROACHMENT AGREEMENT**

This Addendum No. 1 to Encroachment Agreement is entered into effective this 15th day of January, 2019, by the METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY ("District") and DAN C. SIMONS, JR. and DEBRA R. SIMONS of 2522 Granite Crest Circle, Sandy, Utah 84092 ("Applicant"). DAN C. SIMONS, JR. and DEBRA R. SIMONS shall be jointly and severally responsible to the District under the Agreement described below as amended by this Addendum.

ADDENDUM PURPOSES

District owns and operates the Salt Lake Aqueduct ("SLA") and SLA Corridor ("Aqueduct Corridor") and certain improvements located within or on the Aqueduct Corridor. District is a subdivision of the State of Utah responsible for transporting and treating public water, and as such District has regulatory authority to protect the Aqueduct, Aqueduct Corridor, District improvements and operations, and District water.

Applicant is currently using District's SLA Corridor pursuant to an Encroachment Agreement ("Agreement") between District and DAN C., JR. AND DEBRA R. SIMONS dated January 24, 2012, and recorded January 27, 2012 as Entry 11322152 in Book 9986 Pages 2792-2809, in the records of the Salt Lake County Recorder, Application No. S-10-1115. The Agreement expired on January 24, 2017. The Agreement permits, and Applicant has requested, renewal of the Agreement for an additional five-year term.

NOW, THEREFORE, in consideration of the mutual covenants described in the Agreement as amended by this Addendum, the parties hereby amend the Agreement as follows:

1. Paragraph I(A) of the Agreement entitled "Description of Applicant's Use of SLA Corridor:" shall be replaced with the following language:

(A) Description of Applicant's Use of SLA Corridor:

Applicant may continue to utilize District lands for gardening and landscaping purposes limited to garden crops, lawn (including sprinkler system), shrubs (no greater than 4-feet tall when mature), existing trees, and existing fence. Applicant shall remove wood swing and stone underlayment prior to January 24, 2024. The shed and concrete pad must be removed before home ownership changes or District activities require removal, whichever occurs first. The four trees located within 20 feet of the SLA centerline were permitted by appeal in 2010, and will be permitted until home ownership changes, the trees die, or District determines that its activities require removal, whichever occurs first. No new trees shall be located within the District property.

The wood pile and metal cover should be completely removed before January 13, 2019.

In the event that the District requires access to the aqueduct for the purpose of maintenance, repair or replacement, the existing fence shall be removed. The fence may be replaced in its current location at Applicant's sole expense unless District exercises its right to create an open corridor in the area.

2. The term of the Agreement shall be for an additional seven years (through January 24, 2024), as described in Section I(B) of the Agreement entitled "Term."

3. Paragraph VI of the Agreement entitled "Contractors, Insurance, Bonds." shall be replaced with the following language:

VI. CONTRACTORS, INSURANCE, BONDS.

(A) Applicant shall be jointly and severally liable for any act, fault, error, omission or non-compliance with this Agreement by Applicant or any of Applicant's contractors, employees or subcontractors. Applicant warrants that all persons or entities performing earthwork or construction work on the SLA Corridor on behalf of Applicant will provide insurance and bonds in strict compliance with Exhibit B attached hereto and incorporated herein.

(B) Applicant will request that Applicant's insurer issue an endorsement to Applicant's homeowners policy listing District, its Trustees, officers, and employees as additional insureds for liability coverage for claims arising out of Applicant's use of the SLA Corridor. Such coverage for District and its Trustees, officers and employees is intended to be primary to any other coverage for District. Applicant shall make reasonable and diligent effort to provide an insurance certificate evidencing compliance with this provision at least annually. Applicant shall reasonably cooperate with District's efforts to obtain compliance from Applicant's insurance broker and insurer

4. Paragraph VII of the Agreement entitled "Defense, Indemnity." shall be replaced with the following language:

VII. DEFENSE, INDEMNITY.

Applicant shall defend, indemnify and hold District and its officers, trustees and employees harmless, including costs and attorneys' fees, from any claim, demand, action or cause of action: (i) alleging that District was at fault in allowing Applicant's use of the SLA Corridor; or (ii) alleging that District was at fault in failing to supervise, inspect, direct, instruct, warn or otherwise manage or control Applicant's use of the SLA Corridor, or (iii) alleging that District knew of, should have known of, or had constructive knowledge of a dangerous condition created by Applicant or any employee, agent or contractor of Applicant; or (iv) alleging District is vicariously liable for acts or omissions of Applicant or any employee, agent or contractor of Applicant (under the Peculiar Risk Doctrine or otherwise), or (v) challenging in any manner Applicant's use of the SLA Corridor. This defense and indemnity obligation is not intended to hold District or its officers, trustees, or employees harmless from any claim that is not derivative of Applicant's use of the SLA Corridor. In no event shall any fault of Applicant or Applicant's employees or contractors be reapportioned to District, its officers, trustees or employees. Applicant shall indemnify and hold District and its officers, trustees and employees harmless from any such reapportionment of fault. The described duty to defend and indemnify is not intended to run to the benefit of any District liability insurer to the extent such insurer would be responsible for defense costs or indemnity beyond District's deductible or self-insured retention.

5. Paragraph XIX of the Agreement entitled "Notices." shall be replaced with the following language:

XIX. NOTICES.

Any notice required by this Agreement shall be deemed given when mailed or delivered to:

Metropolitan Water District of Salt Lake & Sandy
Attn: General Manager
3430 East Danish Road
Cottonwood Heights, Utah 84093
Phone: (801) 942-1391
Email: rightsofway@mwdsls.org

Mr. And Mrs. Dan C. Simons, Jr. *or current occupant*
2522 Granite Crest Circle
Sandy, UT 84092
Phone: (801) 943-8283
Email: d-simons@comcast.net

Each party may change the designation of the addressee or the address for that party to receive notice by sending written notice of the change.

6. Exhibit A of the Agreement shall be replaced with Exhibit A, attached hereto.

7. Exhibit B of the Agreement entitled "Insurance/Bond Requirements" shall be replaced with Exhibit B, attached hereto.

8. Description of Applicant's Real Property ("Property"):

Lot 12, of the Granite View Estates subdivision, Salt Lake County Parcel 2810476030 with a street address of 2522 Granite Crest Circle, Sandy, Utah 84092.

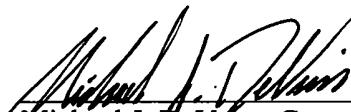
9. The person(s) signing this instrument represents and warrants that they have been duly authorized to execute this Addendum No. 1 to Encroachment Agreement on behalf of the Applicant. Those signing as or on behalf of the Applicant represent and warrant that they are duly authorized to sign on behalf of all those persons claiming an interest in the property described in Section 8 above.

10. The remaining terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum No. 1 to Encroachment Agreement to be executed the day and year first above written.

DISTRICT:

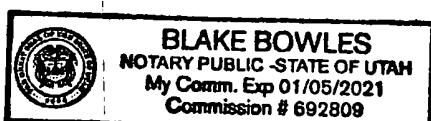
METROPOLITAN WATER DISTRICT
OF SALT LAKE & SANDY



Michael J. DeVries, General Manager

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

On the 28th day of November, 2018, personally appeared before me Michael J. DeVries, and having been first duly sworn by me acknowledged that he is the General Manager of the Metropolitan Water District of Salt Lake & Sandy, that he was duly authorized by the Board of Trustees of the Metropolitan Water District of Salt Lake & Sandy to execute the above Addendum No. 1 to Encroachment Agreement for and on behalf of the Metropolitan Water District of Salt Lake & Sandy, and that he executed the above Addendum No. 1 to Encroachment Agreement on behalf of the Metropolitan Water District of Salt Lake & Sandy.


NOTARY PUBLIC

APPLICANT:


Dan C. Simons, Jr.
Debra R. Simons

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

On the 15 day of January, ²⁰¹⁹ 2018, personally appeared before me Dan C. Simons, Jr. and Debra R. Simons, the Applicants in the foregoing Addendum No. 1 to Encroachment Agreement, and having been duly sworn, acknowledges that they executed the same.

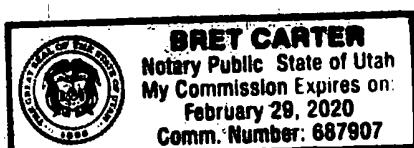

NOTARY PUBLIC

EXHIBIT A
AERIAL IMAGE

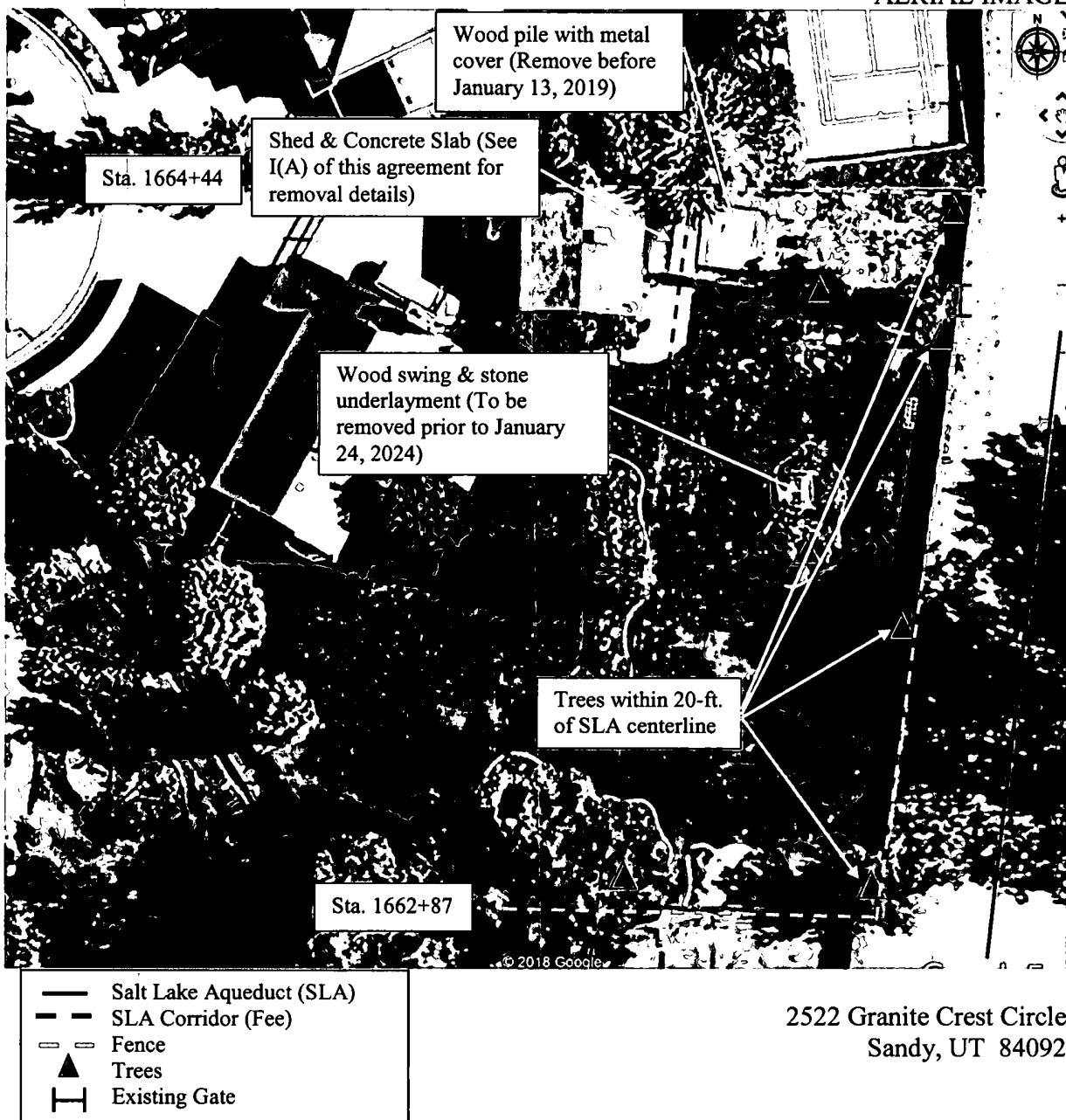


EXHIBIT B

**INSURANCE AND BOND REQUIREMENTS FOR
PARTIES ENTERING INTO AGREEMENTS WITH METROPOLITAN WATER
DISTRICT OF SALT LAKE & SANDY**

Last Update: June 4, 2018

Applicant's contractors and subcontractors shall maintain, at no cost to the District, the following insurance, and provide evidence of compliance satisfactory to District.

A. MINIMUM LIMITS OF INSURANCE

Except as approved in writing by District in advance Contractor and all of Contractor's subcontractors shall maintain limits no less than:

1. **GENERAL LIABILITY (including claims arising from: premises-operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract.):**
 - i. Combined Single Limit (Bodily Injury and Property Damage):
 1. \$2,000,000 Per Occurrence
 - ii. Personal Injury (including completed operations and products liability):
 1. \$2,000,000 Each Occurrence
 - iii. General Aggregate:
 1. \$3,000,000
 - iv. Products - Comp/OP Aggregate:
 1. \$3,000,000
 - v. Limits to apply to this project individually.
2. **AUTOMOBILE LIABILITY:**
 - i. \$2,000,000 Per Occurrence
 - ii. "Any Auto" coverage required.
3. **WORKERS' COMPENSATION and EMPLOYERS LIABILITY:**
 - i. Workers' compensation statutory limits.
 - ii. Employers Liability statutory limits.
4. **CONTRACTORS POLLUTION LIABILITY:**
 - i. \$1,000,000 Per Claim
 - ii. \$1,000,000 Aggregate
 - iii. Coverage applies to this project individually.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions (SIRs) must be declared to and approved by the District in writing. At the option of the District, either; the insurer may be required to reduce or eliminate such deductibles or SIRs as respects the District, its trustees, officers, and employees as additional insureds; or the Contractor may be

required to procure a bond or other instrument guaranteeing payment of losses and related investigations, claim distribution, and defense expenses of the District, its trustees, officers, and employees as additional insureds.

The District does not ordinarily approve deductibles in an amount exceeding 2.5% of the required minimum limits described above or \$50,000, whichever is less. The District does not ordinarily approve SIRs in an amount exceeding 1.0% of the required minimum limits described above or \$20,000, whichever is less. With respect to any deductible or SIR, the Contractor shall pay for costs related to losses, investigations, claim distribution, and defense expenses of the District, its trustees, officers, and employees as additional insureds that would otherwise be covered by an insurer under the coverages described in these insurance requirements if no deductible or SIR existed.

C. OTHER INSURANCE PROVISIONS

The General Liability, Automobile Liability, and Pollution Liability coverages are to contain, or be endorsed to contain, the following provisions:

1. District, its trustees, officers, and employees are to be covered as additional insureds as respects: claims arising out of any activities conducted on District lands or interests in lands. The coverage shall contain no special limitations on the scope of protection afforded to District, its trustees, officers, and employees.
2. Additional insured coverage shall be on a primary basis for ongoing and completed work.

A waiver with respect to the District, its trustees, officers and employees of Worker's Compensation subrogation shall be provided.

D. ACCEPTABILITY OF INSURERS

Insurance and bonds are to be placed with insurers admitted in the State of Utah with a Bests' rating of no less than A-, IX, and in the limits as listed in this document, unless approved in writing by the District.

E. APPLICANT STRICTLY LIABLE FOR COMPLIANCE OF CONTRACTORS

Applicant shall see that each of Applicant's contractors, and each of their subcontractors, complies with these insurance requirements, and Applicant shall be strictly liable for any failure of such contractors and subcontractors to meet these requirements.

F. PERFORMANCE AND PAYMENT BONDS

All persons and entities performing any work on District lands or District's interest in lands will provide performance and payment bonds for the full sum of their contracts, naming the District as co-obligee.