

13-118

WHEN RECORDED MAIL TO:
Jordan Valley Water
Conservancy District
Attn: Property Manager
8215 South 1300 West
West Jordan, Utah 84088

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12/09/2019 01:50 PM \$0.00
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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
JORDAN VALLEY WATER
CONSERVANCY DISTRICT
8215 S 1300 W
WEST JORDAN UT 84088
BY: MGF, DEPUTY - MA 13 P.

[PARCEL ID # 26-24-100-009]

ENCROACHMENT AGREEMENT

This Encroachment Agreement is made as of December 4, 2019 between the Jordan Valley Water Conservancy District, a water conservancy district organized under the laws of the State of Utah ("District"), and South Jordan City, a municipality organized under the laws of the State of Utah ("City").

RECITALS:

- A. The District holds an easement and right-of-way (collectively referred to as the "Easement/Right-of-Way," and described on attached Exhibit A) under authority of a written agreement, and it utilizes, or will utilize, them for constructing, installing, operating, maintaining, inspecting, repairing and/or replacing a water pipeline and related facilities;
- B. The City has requested permission to encroach upon the Easement/Right-of-Way of the District in a manner more particularly specified in this Agreement; and,
- C. The District is willing to agree to the encroachment, upon the terms and conditions set forth in this Agreement.

TERMS:

The parties agree:

1. (a) The District hereby agrees to encroachment upon the Easement/Right-of-Way by the City, but only to this extent and for this purpose: The City may construct, operate, and maintain one (1) 8" irrigation water line, together with two (2) .1.5" PVC conduits and PVC related power supply for street lighting (collectively referred to as the "Encroachment Improvements"), as shown on attached Exhibit B.

(b) By entering into this Agreement, the District is giving its consent for the City to encroach upon the Easement/Right-of-Way held by the District. However, the District does not hold fee title to the real property within the Easement/Right-of-Way. Accordingly, the District does not warrant title to the underlying property, nor does the District represent or warrant that the City's encroachment on or across the District's Easement/Right-of-Way: (i) is suitable for the City's purposes; (ii) is allowed by the terms or conditions of the District's Easement/Right-of-Way agreement with those who hold fee title to the underlying real property; and, (iii) does not require the consent of others to encroach upon the District's Easement/Right-of-Way, which consent may be withheld for any or no reason.

(c) This consent for encroachment is granted by the District only to the extent of, and with no actual or implied diminishment of, the District's rights and interests in the Easement/Right-of-Way and without any express or implied warranty of any kind.

2. The City shall comply with the District's Guidelines for Encroachment upon the Easement/Right-of-Way as set forth in attached Exhibit C.

3. The City and its contractor(s) and agent(s) shall perform all work within the Easement/Right-of-Way in accordance with the plans, drawings, guidelines, and/or maps set forth in Exhibit B, and in a manner satisfactory to the District.

4. If the installation, construction, operation, maintenance, repair, replacement or inspection of any structures, equipment, facilities or pipeline(s) of the District located, or to be located, in the Easement/Right-of-Way should be made more expensive by reason of the Encroachment Improvements or the activities of the City, the City shall pay to the District the full amount of such additional expense upon receipt of an itemized statement. The District has the right to remove any/all of the Encroachment Improvements without any liability to the City for removal, damages, or any cost or expense, and the City, at its sole expense and labor, may replace and/or re-install them within the Easement/Right-of-Way consistent with the terms of this Agreement.

5. The City shall construct, install, use, maintain, repair and replace its Encroachment Improvements in such a manner as not to (i) damage or obstruct the District's structures, equipment, facilities and/or pipelines; or, (ii) interfere with the installation, construction, operation, maintenance, inspection, repair or replacement of the District's structures, equipment, facilities and pipelines.

6. In consideration of the District agreeing to encroachment upon the Easement/Right-of-Way, the City shall:

(a) Indemnify, defend and hold harmless the District, its agents, employees, officers, trustees, assigns and successors from and against all claims, demands, causes of action, liability or judgment of any kind, including attorney's fees and costs, which directly or indirectly arise from the negligence of the City [or its agent(s) or

contractor(s)], or from the existence, construction, installation, operation, maintenance, repair, replacement, condition, use or presence of the Encroachment Improvements within the Easement/Right-of-Way;

(b) Release the District and its agents, employees, officers, trustees, assigns and successors, from liability for all loss or damage of every description or kind whatsoever which may result to the City from the construction, installation, operation, maintenance, inspection, repair and replacement of District structures, equipment, pipelines and facilities within the Easement/Right-of-Way, provided the loss or damage was not due solely to the negligence of the District; and,

(c) Hereby acknowledge that it accesses and uses the Easement/Right-of-Way at the City's risk and hazard and, without limiting the generality of the foregoing, the City agrees that the District shall not be responsible for any harm, damage or injury that may be suffered or incurred by the City, its agents, employees, contractors, licensees, guests or invitees associated with the use or condition of the Easement/Right-of-Way, except to the extent the harm, damage or injury was caused by the reckless or intentional misconduct of the District.

7. The City and its contractor(s) and agent(s) shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any federal, state, or local governmental body having jurisdiction over the Encroachment Improvements and/or the Easement/Right-of-Way.

8. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties; provided, however, that no such successor or assign of the City shall have the right to use, alter, or modify the Encroachment

Improvements in a manner which will increase the expense or burden to the District of the City's encroachment on the Easement/Right-of-Way.

9. (a) This Agreement, and the encroachment granted to the City by this Agreement, shall terminate without further notice or condition if (i) the City does not continuously use the Encroachment Improvements as intended by this Agreement for any twelve (12) month period; or, (ii) the City breaches this Agreement.

(b) In the event of termination, the City, at its expense, shall immediately remove the Encroachment Improvements from the Easement/Right-of-Way and restore the surface of the Easement/Right-of-Way to its pre-encroachment condition.

10. (a) The City may assign this Agreement with the prior written consent of the District, which consent shall not be unreasonably withheld.

(b) The District may assign this Agreement.

11. This Agreement may be amended only by written instrument executed by all parties.

12. 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.

13. This Agreement, including exhibits, constitutes the entire agreement of the parties and supersedes all prior understandings, representations or agreements of the parties regarding its subject matter.

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

15. 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.

16. Any party may record this Agreement.

"District":

Jordan Valley Water Conservancy District

Dated: 12-4-19

By: Richard P. Bay
Richard P. Bay
Its General Manager/CEO

"City":

South Jordan City

Dated: 11/25/2019

By: Ray L. Whetall
Its: City Manager

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

The foregoing instrument was acknowledged before me this 4th day of December 2019, by Richard P. Bay as General Manager/CEO of the Jordan Valley Water Conservancy District.

Beverly M Parry
Notary Public



STATE OF UTAH)
 :ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 25 day of November 2019, by Gary L Whatcott as City Manager of South Jordan City.

Melanie Edwards
Notary Public



EXHIBIT A

DESCRIPTION OF DISTRICT'S EASEMENT/RIGHT-OF-WAY

A 20-foot wide strip of land whose western boundary line lies along the section line and is described as follows:

Beginning at the southwest corner of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian; running thence North 0°05'52" East 2,688.89 feet along the section line.

EXHIBIT B
ENCROACHMENT IMPROVEMENTS

ENCROACHMENT_SJC_K3129_ITC.DOC

EXHIBIT C

GUIDELINES FOR ENCROACHMENT

A. Surface structures that may be constructed within the District's Easement/Right-of-Way, but only upon the prior written consent of the District, include asphalt roadway, with no utilities within roadway; non-reinforced parking lot, curb, gutter, sidewalk, walkway and driveway; and non-masonry fence with gated opening. However, where the District's facilities or pipeline(s) has specific maximum and minimum cover designations, the special requirements for structures crossing over the pipeline(s) shall be obtained from the District for the maximum allowable external loading or minimum cover. It is understood that all surface structures shall be analyzed and considered by the District on an individual basis.

B. Structures that may not be constructed in, on, over, across or along the District's Easement/Right-of-Way include but are not limited to permanent structures such as footings, foundations, masonry block walls, buildings, garages, decks, carports, trailers, swimming pools and athletic courts, as designated and characterized by the District.

C. No trees are allowed within the Easement/Right-of-Way.

D. All changes in ground surfaces within the Easement/Right-of-Way are considered encroaching structures. Earthfills and cuts on adjacent property shall not encroach onto the Easement/Right-of-Way without the prior written consent of the District.

E. Existing gravity drainage of the Easement/Right-of-Way shall be maintained. No new concentration of surface or subsurface drainage may be directed onto, under or across the Easement/Right-of-Way without adequate provision for removal of drainage water or adequate protection of the Easement/Right-of-Way.

F. Prior to any construction within the Easement/Right-of-Way, an excavation must be made to determine the location of existing District facilities and pipeline(s). The excavation shall be made by or in the presence of the District, at the City's expense.

G. All construction activities within the Easement/Right-of-Way shall be limited to construction of the Encroachment Improvements previously approved by the District, and the Encroachment Improvements shall be constructed strictly in accordance with the plans and specifications previously approved by the District.

H. The ground surfaces within the Easement/Right-of-Way shall be restored to the condition, elevation and contour which existed prior to construction or as shown on the plans, drawings, guidelines and/or maps set forth in Exhibit B.

I. The City shall notify the District upon completion of construction and shall, at its expense, provide the District with one (1) copy of as-built drawings showing actual Encroachment Improvements within the Easement/Right-of-Way.

J. Following completion of construction of the Encroachment Improvements, and except in case of emergency repairs, the City shall give the District at least ten (10) days written notice before entering upon the Easement/Right-of-Way for the purpose of accessing, maintaining, inspecting, repairing, or removing the Encroachment Improvements.

K. If unusual conditions are proposed for the Encroachment Improvements or unusual field conditions within the Easement/Right-of-Way are encountered, as designated and characterized by the District, the District may, at its discretion, impose conditions or requirements which are different from or more stringent than those prescribed in these Guidelines.

L. All backfill material within the Easement/Right-of-Way shall be compacted to ninety percent (90%) of maximum density, unless otherwise allowed or required by the District. Mechanical compaction shall not be allowed within six inches (6") of any of the District's facilities and pipeline(s). Mechanical compaction using heavy equipment, as designated and characterized by the District, will not be allowed over District facilities and pipeline(s) or within eighteen inches (18") horizontally.

M. Backfilling of any excavation or around any facilities or pipeline(s) within the Easement/Right-of-Way shall be compacted in layers not exceeding six inches (6") thick to the following requirements: (1) cohesive soils to 90 percent (90%) maximum density specified by ASTM Part 19, D-698, method A; (2) noncohesive soils to 70 percent (70%) relative density specified by ANSI/ASTM Part 19, d-2049, par. 7.1.2, wet method.

N. To enable the District to locate non-metallic Encroachment Improvements below ground level, the City shall install a "locator wire" as required by District specifications.

O. The City shall notify the District at least seventy-two (72) hours in advance of commencing initial construction of the Encroachment Improvements in order to permit inspection by the District.

P. No encroachment shall involve the use or storage of hazardous material(s), as designated and characterized by the District.