

9898828

WHEN RECORDED MAIL TO:

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

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11/03/2006 03:41 PM \$0.00
Book - 9376 Pg - 2244-2256
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
JORDAN VALLEY WATER
CONSERVANCY DISTRICT
8215 S 1300 W
WEST JORDAN UT 84018
BY: KJE, DEPUTY - MA 13 P.

PARCEL ID #27-28-301-012
#27-29-428-005

ENCROACHMENT AGREEMENT

This Encroachment Agreement is made as of September 20, 2006, between the Jordan Valley Water Conservancy District, a water conservancy district organized under the laws of the State of Utah ("District"), and Pacificorp, an Oregon corporation qualified to do business and doing business in the State of Utah as Rocky Mountain Power, A Division of Pacificorp ("Company").

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;

JVWCD NO. 95CI103A-35-36-37

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B. The Company 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. The District hereby agrees to encroachment upon the Easement/Right-of-Way by the Company, but only to this extent and for this purpose: The Company may install four (4) four-inch (4") PVC conduits with one (1) primary electric conductor in each (collectively referred to as the "Encroachment Improvements"), to service the Heritage Farms Subdivision, located in Riverton City, Utah, as shown on attached Exhibit B.

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

3. The Company 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. The installation, construction, operation, maintenance, repair, replacement, and/or inspection of the District's structures, equipment, facilities, or pipelines located, or to be located, in the Easement/Right-of-Way will be made more difficult and expensive by reason of the Encroachment Improvements. Accordingly, the Company,

(i) contemporaneously with the execution of this Agreement, shall pay to the District the amount of Four Thousand and 00/100 Dollars (\$4,000.00) as full payment for the additional expense to the District; and, (ii) hereby authorizes the District, at its expense, to remove the Encroachment Improvements, if necessary, during construction and installation of the District's structures, equipment, facilities, or pipelines, and to replace any removed Encroachment Improvements following completion. The District hereby acknowledges receipt of full payment from the Company.

5. The Company 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 Company 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 Company [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

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whatsoever which may result to the Company 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 Company's risk and hazard and, without limiting the generality of the foregoing, the Company agrees that the District shall not be responsible for any harm, damage, or injury that may be suffered or incurred by the Company, 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 Company 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 Company 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 Company's encroachment on the Easement/Right-of-Way.

9. (a) This Agreement, and the encroachment granted to the Company by this Agreement, shall terminate without further notice or condition if (i) the Company does

not continuously use the Encroachment Improvements as intended by this Agreement for any twelve (12) month period; or, (ii) the Company breaches this Agreement.

(b) In the event of termination, the Company, 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 Company 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: 10-16-06

By: Richard P. Bay
~~David G. Ovard~~ Richard P. Bay
Its Chief Executive Officer
and General Manager
a

"Company":

PACIFICORP DBA ROCKY MOUNTAIN
POWER, A DIVISION OF PACIFICORP

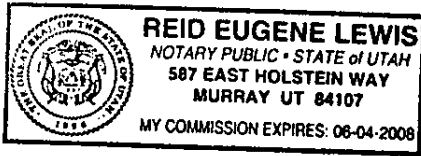
Dated: 10/5/06

By: A. Ouellet
Its: Property Agent.

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

The foregoing instrument was acknowledged before me this 16th day of OCTOBER, 2006, by Richard P. Boy as ~~Chief Executive Officer~~ and ~~Assistant~~ General Manager of the Jordan Valley Water Conservancy District.

Commission expires: JUNE 4, 2008

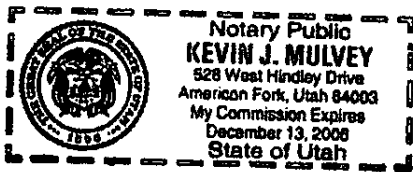


[Signature]
NOTARY PUBLIC
Residing in MURRAY UT.

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

The foregoing instrument was acknowledged before me this 5th day of October, 2006, by Harold Dudley as Property Agent of Pacificorp dba Rocky Mountain Power, A Division of Pacificorp.

Commission expires: 12.13.06



[Signature]
NOTARY PUBLIC
Residing in Utah

EXHIBIT A

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

A strip of land situated in Sections 28 and 29, Township 4 South, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, State of Utah, being more particularly described as follows:

Parcel No. 35:

Beginning at the Northeast corner of property, said corner being the East Quarter corner of said Section 29, thence S 0°07'11" E (basis of bearing) along the section line (East property line) 1351.33 feet, more or less, to South property line; thence along said South property line N 89°57'41" W 47.37 feet, more or less; thence N 0°03'57" E 1351.31 feet, more or less, to the quarter section line and North property line; thence S 89°58'51" E 43.00 feet, more or less, to the point of beginning and the East Quarter corner of said Section 29.

Contains 1.4017 acres.

Parcel No. 36:

Beginning at the Northwest corner of property, said corner lies S 0°07'11" E along the section line (basis of bearing) 499.22 feet from the West Quarter corner of said Section 28, thence S 89°59'19" E 25.40 feet, more or less, along North property line; thence S 0°03'51" W 499.20 feet, more or less, to South property line; thence along said South property line S 89°57'20" W 23.80 feet, more or less, to West property line and West line of said section; thence along said West property line N 0°07'11" W (basis of bearing) 499.22 feet, more or less, to the point of beginning.

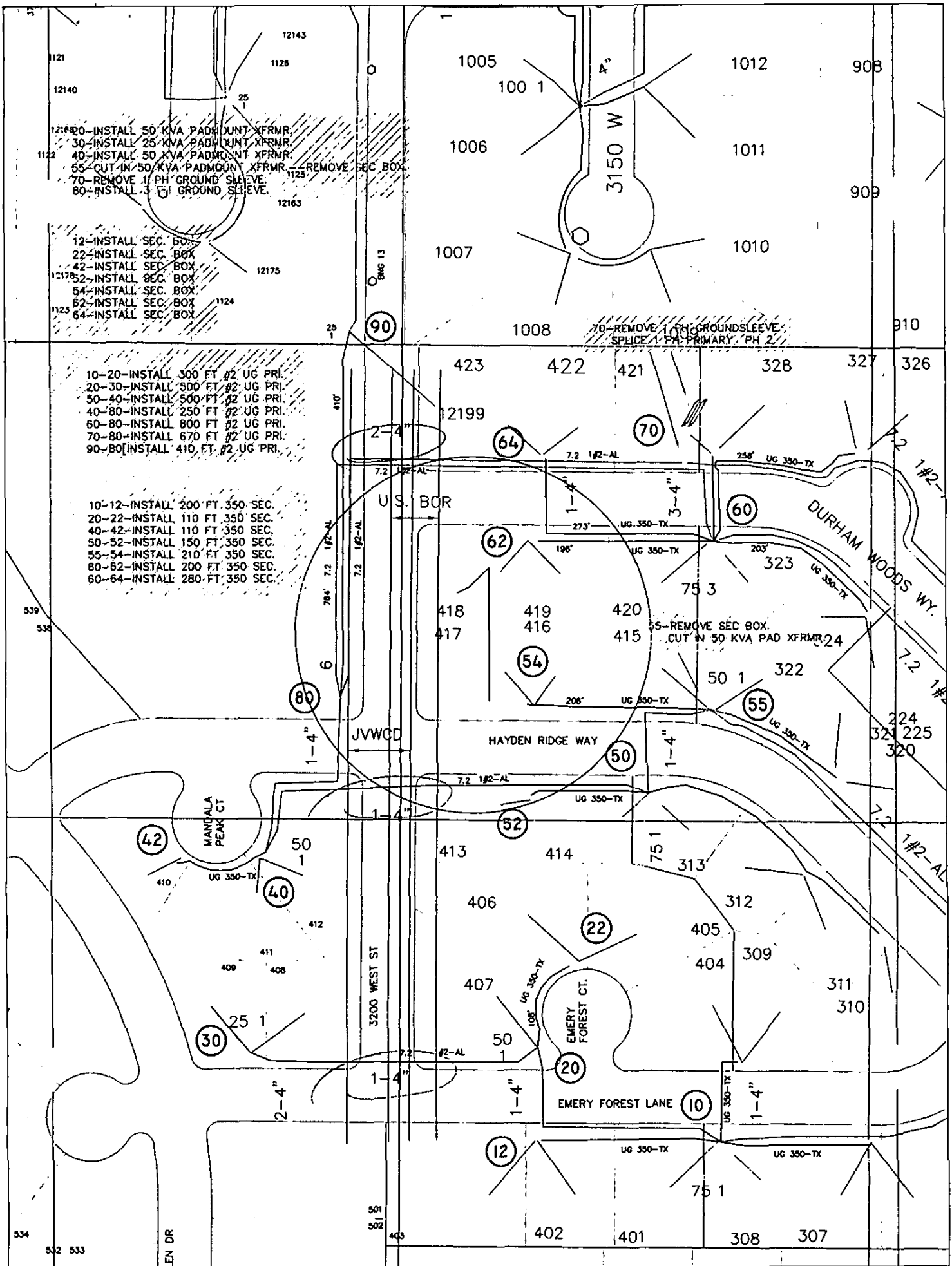
Contains 0.2819 acre.

Parcel No. 37:

Beginning at the Northwest corner of property, said corner being the West Quarter corner of said Section 28, thence S 89°58'42" E 27.00 feet, more or less, along the quarter section line (North property line); thence S 0°03'51" W 499.20 feet, more or less, to South property line; thence along said South property line S 89°59'19" W 25.40 feet, more or less, to West property line and West line of said section; thence along said West property line N 0°07'11" W (Basis of Bearing) 499.22 feet, more or less, to the point of beginning.

Contains 0.3003 acre.

EXHIBIT B
ENCROACHMENT IMPROVEMENTS



12140
12143
12128
25
12163
12175
1124
1123

80-INSTALL 50 KVA PADMOUNT XFRMR.
30-INSTALL 25 KVA PADMOUNT XFRMR.
40-INSTALL 50 KVA PADMOUNT XFRMR.
55-CUT-IN 50 KVA PADMOUNT XFRMR. REMOVE SEC BOX.
70-REMOVE 1" PH GROUND SLEEVE.
80-INSTALL 3" GROUND SLEEVE.

12-INSTALL SEC. BOX
22-INSTALL SEC. BOX
42-INSTALL SEC. BOX
52-INSTALL SEC. BOX
54-INSTALL SEC. BOX
62-INSTALL SEC. BOX
64-INSTALL SEC. BOX

10-20-INSTALL 300 FT #2 UG PRI.
20-30-INSTALL 500 FT #2 UG PRI.
50-40-INSTALL 500 FT #2 UG PRI.
40-80-INSTALL 250 FT #2 UG PRI.
60-80-INSTALL 800 FT #2 UG PRI.
70-80-INSTALL 670 FT #2 UG PRI.
90-80-INSTALL 410 FT #2 UG PRI.

10-12-INSTALL 200 FT 350 SEC.
20-22-INSTALL 110 FT 350 SEC.
40-42-INSTALL 110 FT 350 SEC.
50-52-INSTALL 150 FT 350 SEC.
55-54-INSTALL 210 FT 350 SEC.
80-82-INSTALL 200 FT 350 SEC.
60-64-INSTALL 280 FT 350 SEC.

70-REMOVE 1" PH GROUND SLEEVE
SPlice / PH PRIMARY / PH 2

55-REMOVE SEC BOX.
CUT IN 50 KVA PAD XFRMR. 24

534
532 533

LEN DR

501
502

403

402

401

308

307

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 Company'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 Company 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 Company 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 90 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 Company shall install a "locator wire" as required by District specifications.

O. The Company 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.