Contract No. 001-2022

**Encroachment Agreement**

**between**

**Salem Irrigation and Canal Company**

**and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Applicant)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Encroachment Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, between the **Salem Irrigation and Canal Company (Company**) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Applicant)

This agreement is for modifications to irrigation facilities by Applicant at approximately \_(Address)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in (Payson or Salem, Utah.

WITNESS THAT:

WHEREAS, the Applicant, at its sole cost and expense, proposes to utilize Company rights-of-way to modify an existing Company ditch.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, the Company hereby grants to the Applicant permission to encroach and modify Company facilities for the following purposes and in the location described below:

1. Purpose: To modify an existing Company irrigation ditch by installing and related structures within a Company right-of-way, hereinafter referred to as Project Works.
2. Period: Permanent modification.
3. Location: Approximately in (Payson or Salem, UT Zip
4. Plans, Drawing and Maps: Attached hereto and made part of this agreement are:

|  |  |
| --- | --- |
| **SHEET** | **SHEET TITLE** |
| Cover | Cover |
| Plat A | Plat A |
| 1 | Demolition Plan |

1. Land Status: Permanent easement granted on Plat Map or Prescriptive easement

1. WORK SATISFACTORY:

1. The Applicant shall perform all work under this agreement in accordance with the plans, drawings, or maps attached hereto, and in a manner satisfactory to the Company.
2. The Company agrees to waive the value of the right-of-use. The Applicant advanced funds in the amount of $8,000 to the Company to be used to cover the administrative costs associated with this agreement and associated construction observation. If the Company incurs additional expenses associated with this agreement, the Applicant will reimburse the Company for the actual costs incurred.
3. RIGHTS RESERVED: This Encroachment Agreement and all rights hereunder shall be held by the Applicant at all times subject to the rights of the Company. Jurisdiction and supervision of the concerned rights-of-way and facilities are not surrendered or subordinated by execution of this agreement. The Company reserves the right to issue additional Encroachment Agreements, rights-of-way, or permits for compatible uses of the right-of-way involved with this agreement. There is also reserved the right of the Company, its officers, agents, employees, licensees, and permittees at all proper times and places freely to have ingress to, passage over, and egress from all of said lands for the purpose of exercising, enforcing, and protecting the rights reserved herein.
4. HOLD HARMLESS:
   1. The Company, its officers, agents, employees, and assigns do not assume any liability resulting from the granting of this encroachment or the exercise thereof and the Applicant agrees to indemnify and hold the Company, its officers, agents, employees, and assigns harmless for injury or damage to any persons or property that may result from the exercise of any of the privileges herein conferred or the work performed.
   2. The Applicant further agrees that the Company, its officers, agents, employees, and assigns, shall not be held liable for any damage to the Applicant’s improvements or works by reason of the exercise of the rights herein reserved; nor shall anything contained in this paragraph be construed as in any manner limiting other reservations in favor of the Company contained in this Encroachment Agreement.
5. RELEASE FROM LIABILITY: The Applicant hereby releases the Company, its officers, agents, employees, and assigns, from liability for any and all loss or damage of every description or kind whatsoever, which may result to the Applicant from the construction, operation, and maintenance of Project Works, provided that nothing in the Encroachment Agreement shall be construed as releasing the Company from liability for its own negligence.
6. EXTRAORDINARY MAINTENANCE OR REPAIR COSTS: The Applicant agrees that if the maintenance or repair of any or all project structures and facilities located on such lands should be made more expensive by reason of the existing improvements or works of the Applicant thereon, the Applicant will pay to the Company, its officers, agents, employees, and assigns, responsible for Project operation and maintenance, the full amount of such additional expense within thirty (30) days of receipt of an itemized bill thereof. Also, any damage to project structure after construction and during the life of the project will be at the sole expense of the Applicant and with the approval of the Company in terms of the contractor selected to make such repairs.
7. THE APPLICANT TO DEFEND TITLE: The Applicant shall defend the Company from and against any action which challenges the Applicant’s use of Project rights-of-way or facilities under this agreement, provided the Company promptly tenders such defense prior to the time an answer is due in the proceedings.
8. INTERFERENCE PROHIBITED: The Applicant shall use, occupy, and maintain said facilities with due care to avoid damage to or obstruction of the Project Works of the Company, and avoid any interference in any way with the operation and maintenance of the same.
9. TERM OF AGREEMENT: The Company, at its option, may terminate this agreement for non-use of the encroachment lands by the Applicant for a period of one (1) year. In any event this agreement shall expire by limitation at the end of the period recited in Article B on page 1. All rights granted to the Applicant under this agreement are subject to termination upon failure of the Applicant to comply with the terms of this agreement.
10. REMOVAL OF FACILITIES: The Company, its officers, agents, employees, and assigns, will determine if the Applicant’s facilities will be removed upon termination. If the Company, its officers, agents, employees, and assigns, determine that the Applicant’s facility shall be removed, removal will be made within thirty (30) days after termination, and the site will be restored as nearly as practicable to its original condition. Removal of the facilities and restoration of the site will be at the sole expense of the Applicant.
11. ASSIGNMENT OR TRANSFER: The agreement shall not be assigned or transferred by the Applicant without the prior written consent of the Company.
12. SUCCESSORS IN INTEREST OBLIGATED: The Encroachment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
13. NO WARRANTY: The Company makes no warranty, expressed or implied, as to the extent or validity of the grant contained herein.
14. COVENANT AGAINST CONTINGENT FEES: The Applicant warrants that no person or selling agency has been employed or retained to solicit or secure the agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Applicant for the purpose of securing business. For breach or violation of this warranty, the Company shall have the right to annul this Encroachment Agreement without liability or in its discretion to require the Applicant to pay, in addition to the Encroachment Agreement consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
15. OFFICIALS NOT TO BENEFIT: Neither the Applicant nor any Company official shall be admitted to any share or part of this Encroachment Agreement or to any benefit that may arise herefrom, unless fully disclosed to and agreed to by the governing bodies of both the Applicant and the Company.
16. ENVIRONMENTAL COMPLIANCE: The Applicant agrees to abide by all applicable Federal, State, and local laws and regulations pertaining to pollution control and environmental protection.
17. LANDSCAPE PRESERVATION:
    1. The Applicant shall exercise care to preserve the natural landscape and shall conduct its construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works, all trees, native shrubbery, and vegetation shall be preserved and shall be protected from damage that may be caused by the Applicant’s construction operations and equipment. Movement of crews and equipment within the rights-of-way and over routes provided for access to the work shall be performed in a manner to prevent damage to grazing land, crops, or property.
    2. Upon completion of the work, the construction site shall be smoothed and graded in a manner to conform to the natural topography of the landscape and shall be repaired, replanted, reseeded, or otherwise corrected as directed by the Company at the Applicant’s expense.

17. SPECIAL PROVISIONS:

1. Performance Bonding. A performance bond in the amount of one-hundred ten (110) percent of the total estimated project costs is required. The purpose of the bond is to provide funds for restoration of Project Works if the Applicant’s works are not completed in accordance with this Encroachment Agreement. One hundred (100) percent of the performance bond will be released upon satisfactory completion of the Project Works, and after water has been turned into the ditch or canal, if no problems develop with the Project Works. Ten (10) percent will be released one calendar year after the project is finished if no problems develop with the Project Works.
2. Notification of Construction. The Applicant shall notify the Company at least 72 hours in advance of start of construction. Notify Cody Orton at (801) 362-5548.
3. All backfill material around structures or pipe shall be compacted to ninety-five (95) percent of maximum dry unit weight according to ASTM D 698.
4. All concrete shall have 28 day strength of 4,000 psi or greater. All concrete shall include between 5% and 7% air entrainment and shall not contain any set accelerators, retardants or plasticizers without approval of the Company Consulting Engineer. Concrete shall have smooth, troweled finishes and be free from all honeycomb.
5. All pipe material shall be high-density polyethylene (HDPE) pipe. The HDPE pipe shall have a minimum wall thickness of ¾-inch and fused according to industry standards.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

Approved:

SALEM IRRIGATION AND CANAL COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Soren Christensen, President

Attest:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_