

# City Council Staff Report

May 20, 2015

**Applicant:** Don Korth,  
Mountain View Irrigation  
Association

**Prepared by:** Cory Branch

**Public Hearing:** No

## DISCUSSION ITEM

A discussion item regarding a proposed agreement between Mountain View Irrigation Association and Mapleton City relating to a right-of-way easement on property located approximately between 600 East to 1100 East and 1600 South.

*Cory Branch, City Administrator*

## BACKGROUND AND PROJECT DESCRIPTION

1. Mountain View Irrigation Association currently has an existing pipe within Mapleton City's right-of-way (ROW) located approximately between 600 East to 1100 East and 1600 South. The pipe connects to the existing Central Utah Pipe (CUP) and provides irrigation water to the existing homeowner's of Sierra View Estates, Plats A through F Subdivision, Don Korth Subdivision, and D&L Korth Subdivision. (see below Figure 1)
2. Based on the fact that the CUP pipe will now be pressurized the Association wants to install a new pipe as they are concerned with the current condition of the existing pipe.
3. Eric Johnson, City Attorney drafted a proposed License Agreement which was issued to the applicant (see Attachment 1). The applicant has some concerns with the proposed Agreement and would like to discuss his concerns with the council. Some of the concerns raised by the applicant include the termination clause, requirement of all owner's to sign a indemnification, and whether or not the city will require the owner's to hook up to the city's pressurized irrigation system in the future.

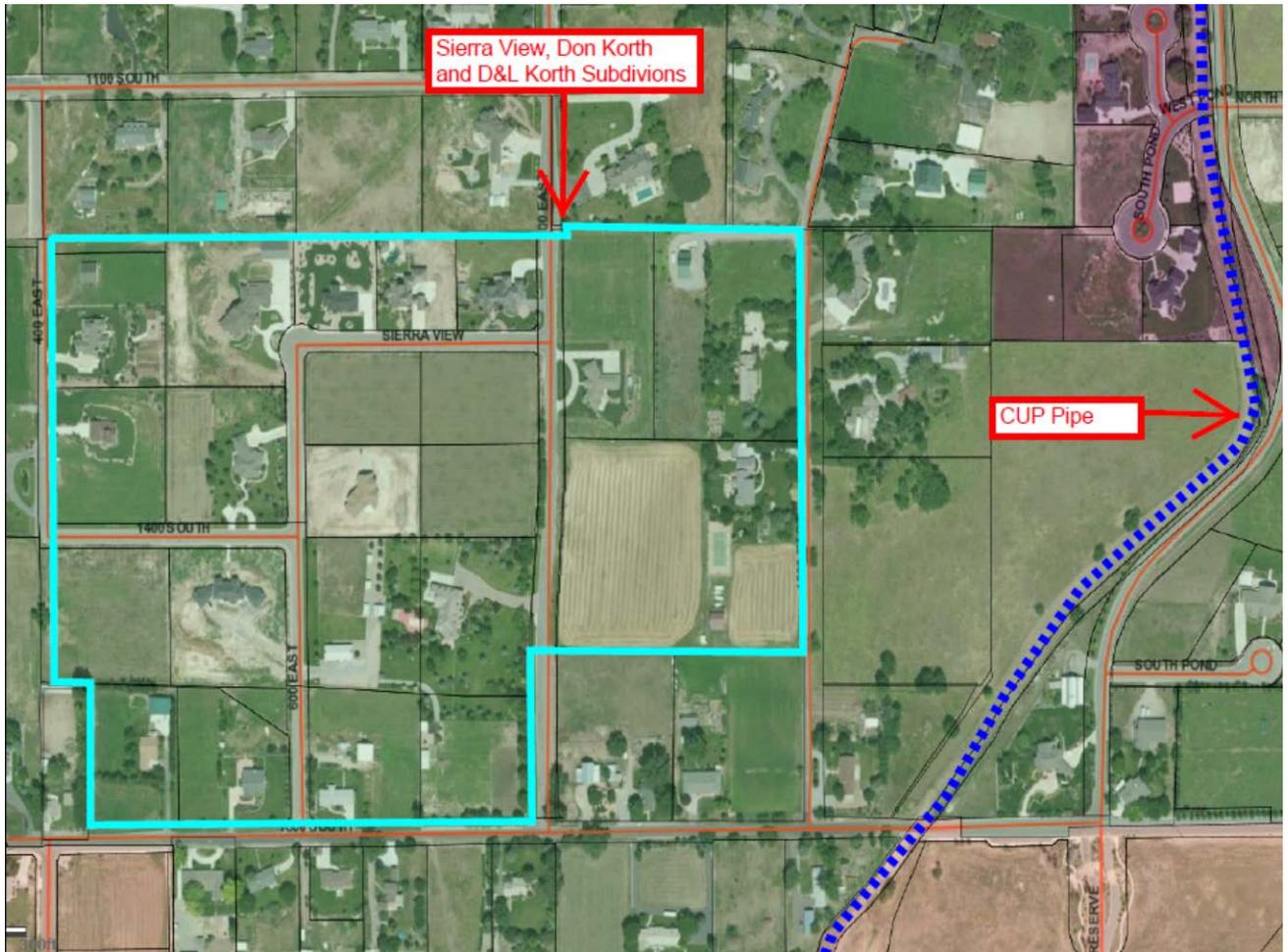
## STAFF'S POSITION

The purpose of the proposed Agreement is to ensure that the city is held harmless from any future claims which may arise regarding the pipe. Staff also wants to ensure consistency recognizing that there are other home owners within the city which currently utilize a private irrigation system.

## ATTACHMENT

Proposed License Agreement

Figure 1



WHEN RECORDED MAIL TO:  
Eric Todd Johnson  
Blaisdell, Church & Johnson, LLC  
5995 South Redwood Rd  
Salt Lake City, Utah 84123

## LICENSE AGREEMENT

This License Agreement (“Agreement”), is entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between the Mountain View Irrigation Association and its individual members (see Exhibit B attached hereto), or their successors or assigns, hereinafter collectively called (“Licensee”), and Mapleton City, a Utah municipality, hereinafter called (“Licensor”) for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and constitutes a conditional license to use a portion of the Licensor’s certain described property, owned in fee by the Licensor. At times herein Licensee and Licensor are collectively called “the parties.”

### Recitals

WHEREAS, Licensor is a municipal corporation and owner in fee of a right of way commonly known as 1600 South, and described on Exhibit A attached hereto (“ROW”); and

**Comment [g1]:** Add – crossings on 1000 East, 800 East and 600 East.

WHEREAS, Licensee is the owner of certain real property described on Exhibit B attached hereto, and commonly known as Sierra View Estates, Plats A-F, Don Korth, and D&L Korth, Mapleton Utah (“Benefited Property”); and

WHEREAS, Licensor desires to grant Licensee a limited license to use a portion of the ROW to make certain improvements therein, and Licensee desires to accept such license;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**1. License.** Subject to the provisions of this Agreement, Licensor grants to Licensee a non-exclusive, conditional and revocable license to replace, install, maintain, repair, and remove a \_\_\_ inch pipeline along the north side of the ROW from approximately 1100 West to 800 West in Mapleton, Utah, for the purpose of conveying irrigation water to the Benefited Property (“Use”). The area of the Use is limited to that portion of the ROW described on Exhibit C attached hereto (“Licensed Property”). Water conveyed through the water line will be used in the Licensee’s irrigation system located on the Benefited Property and shall not be used on any other properties for any purpose or reason.

**Comment [g2]:** Not sure of size of exiting pipeline.

**2. Revocation.** Licensee acknowledges that this is a revocable license and that Licensor may withdraw its consent and/or terminate this License for its own convenience at any time upon ninety (90) days’ notice to Licensee. Upon termination of this Agreement or withdrawal of the License, Licensee will immediately discontinue the Use and, if requested, remove any improvements made under, through, within, or upon the Licensed Property.

3. **Conditions.** Licensee's Use of the Licensed Property is expressly conditioned upon the following:

- a. Before installing the water line, Licensee will apply to Mapleton City, requesting permission to do so, to ensure compliance with applicable City ordinances. Such application shall include plans for and descriptions of the nature of the excavation, pipe, connections, backfill and compaction. Licensee shall not commence to construct improvements until after receiving explicit written approval from Licensor
- b. Licensee must provide written evidence of all consents or permissions or rights for the Use of the water as proposed necessary or desirable from any other individuals, entities, or regulatory bodies.
- c. Licensee must enter into and abide by the terms of this Agreement.
- d. Licensee, after installing the water line, will backfill and compact the land to Licensor's specifications.
- e. Licensee will maintain and repair the water line once it is installed. It is understood and agreed that Licensor is not responsible for the maintenance and repair of the water line.
- f. Licensee will indemnify and hold Licensor harmless for any and all claims related to or arising out of the Use (HOW IS THIS DONE FOR A GROUP OF INDIVIDUALS – SHOULD THEY CREATE AN INCORPORATED ENTITY). Licensee hereby appoints \_\_\_\_\_ to handle any and all claims related to or arising out of the Use.
- g. Licensee will abandon its irrigation system and Use or transfer them to the Licensor and connect to Licensor's pressure irrigation system within one (1) year of the expansion of Licensor's system onto the Benefited Property.
- h. Licensee will not add additional users or connections or properties to its irrigation system without the express written consent of Licensor.

4. **Licensor's Right of Reentry.** Licensor may re-enter the Licensed Property at any time as it is a public right of way.

5. **No Easement Created.** Nothing in this Agreement shall be deemed to be, or create, an easement in the Licensed Property or to grant or recognize in Licensee any preexisting, subsequent, or additional rights or interests of any kind.

6. **Disclaimer of All Warranties and Liabilities.** LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND LIABILITIES, INCLUDING ANY IMPLIED WARRANTIES, WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, WARRANTIES OF TITLE, FITNESS OF USE, OR FITNESS FOR INTENDED PURPOSE. LICENSEE ASSUMES ALL RISK AND LIABILITY FOR ITS USE OF THE LICENSED PROPERTY, EXCEPT FOR LICENSOR'S OWN NEGLIGENT OR INTENTIONAL ACTS. LICENSEE WILL HOLD LICENSOR HARMLESS FOR ANY INJURY TO LICENSOR OR ITS INVITEES ON THE LICENSED PROPERTY. LICENSEE WILL INDEMNIFY AND HOLD LICENSOR HARMLESS FOR ANY AND ALL CLAIMS RELATED TO OR

ARISING OUT OF THE USE OF THE LICENSED PROPERTY, INCLUDING, BUT NOT LIMITED TO, CLAIMS RELATED TO THE INSTALLATION OF THE WATER LINE, THE MAINTENANCE, REPAIR, RELOCATION OR REMOVAL THEREOF, WATER LEAKS, FLOODS, INADEQUATE OR EXCESSIVE WATER PRESSURE, WATER SUPPLY AND DELIVERY, METERING, BILLING, CHARGES, CONNECTION, DISCONNECTION, FAILURE TO CONSULT BLUE STAKES, ETC.

7. **Effective Date; Term and Termination.** The Effective Date of this Agreement shall be deemed the date when this Agreement is fully executed. The term of this Agreement shall be for twenty (20) years unless terminated earlier by either party. The Agreement shall be automatically renewed for subsequent ten (10) year terms unless Licensee refuses in writing to renew this Agreement.

8. **Governing Law and Compliance with Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Utah. To the best knowledge of the Licensor's and Licensee's, all applicable laws, ordinances, regulations, statutes and rules relating to the Licensed Property and this Agreement or any part thereof, have been complied with.

9. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties, including each individual member of the Mountain View Irrigation Association, and shall not be modified except in a writing signed by both parties hereto.

10. **Binding Effect on Assignees.** This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and assigns.

11. **Enforcement of Rights.** Licensor shall have the right to recover from Licensee all costs and expenses, including reasonable attorneys' fees, necessary to enforce its rights herein.

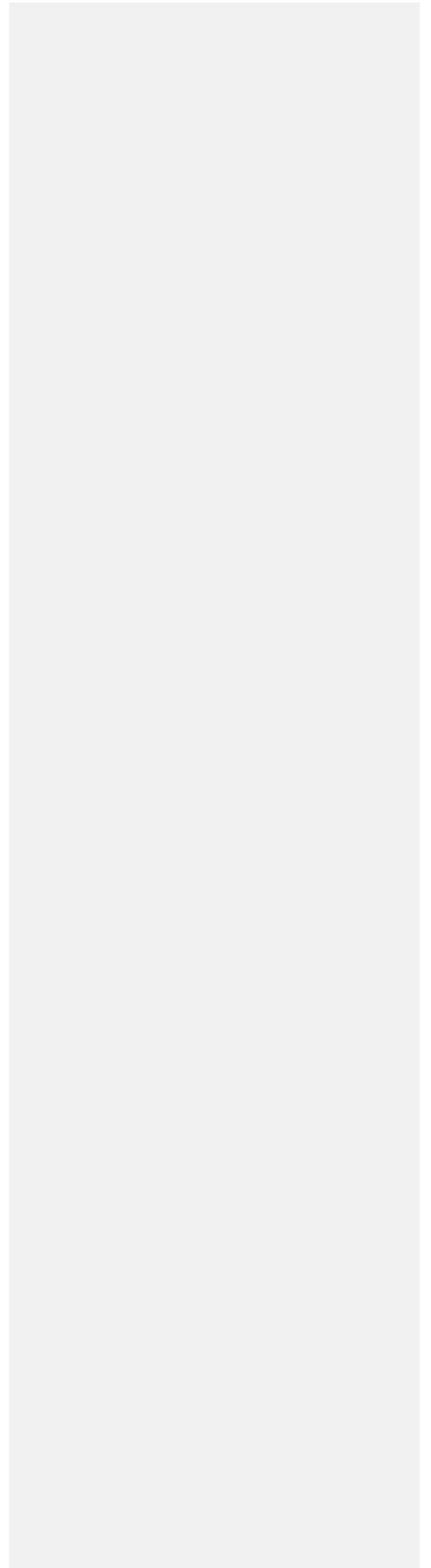
12. **Invalid Provisions.** If any provision hereof is deemed by any court of competent jurisdiction to be invalid, this agreement shall continue in effect with the invalid provision eliminated.

13. **Services or Improvements.** Licensor shall not be required to provide any services or improvements to the Licensed Property, including but not limited to landscaping or repair services, except in the event that Licensor or its agents or assigns performs temporary work on the Licensed Property, Licensor shall restore the Licensed Property to a reasonably flat and level condition.

14. **Licensee's Improvements.** Before making any improvements on the Licensed Property, Licensee must contact Blue Stakes to locate and identify the location of all utilities that might be affected by the improvements. Licensee shall be responsible for the costs of repairing any damage to utilities caused when placing improvements on the Licensed Property.

**15. Warranty of Authority.** The undersigned individuals warrant and represent that they have full authority, authorization and the consents necessary to enter into this Agreement.

**16. Integration.** This Agreement sets forth the entire agreement of the Parties and supersedes all prior representations, understandings, and agreements of the Parties concerning the subject matter hereof.



IN WITNESS WHEREOF, each of the parties has executed this Agreement.

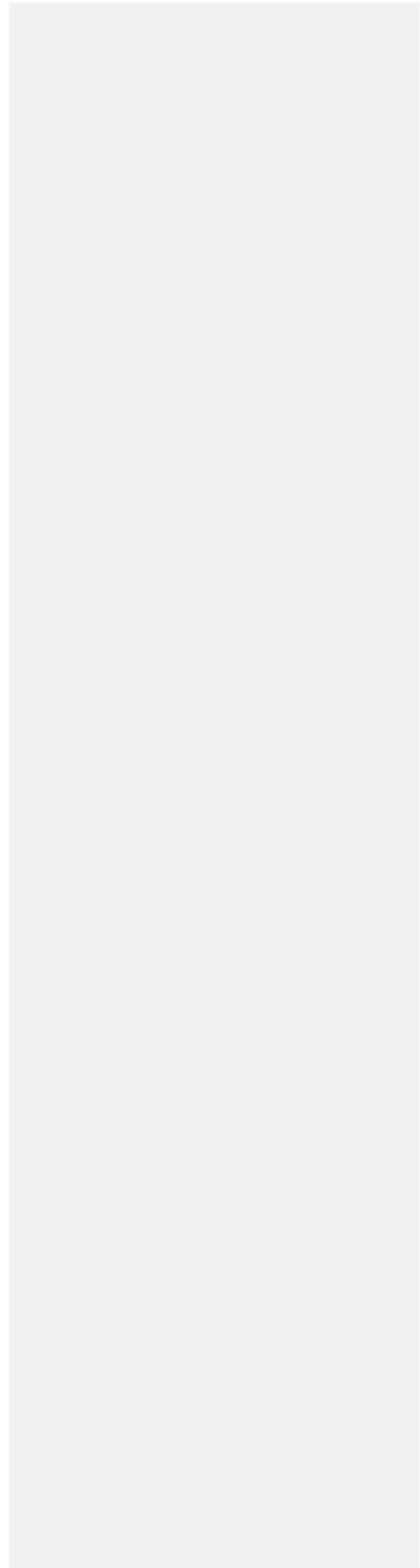
EXECUTED by Licensee this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF UTAH        )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, personally appeared before me \_\_\_\_\_, who duly acknowledged to me that he/she is the signer of the foregoing instrument and that averments therein are true and correct to the best of his/her information.

\_\_\_\_\_  
NOTARY PUBLIC



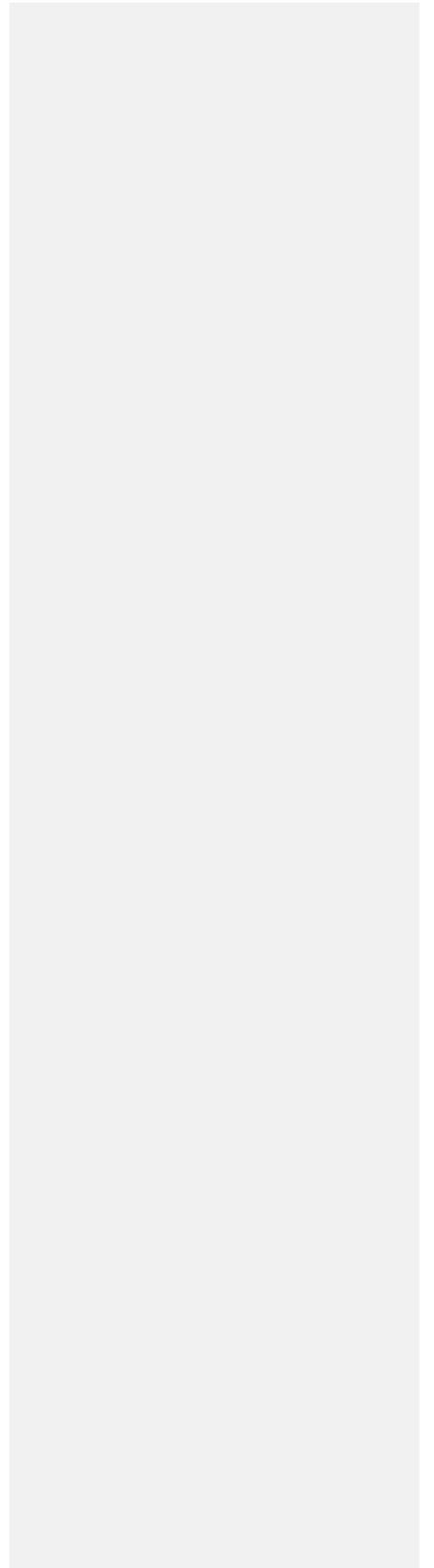
EXECUTED by Licensee this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF UTAH        )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, personally appeared before me \_\_\_\_\_, who duly acknowledged to me that he/she is the signer of the foregoing instrument and that averments therein are true and correct to the best of his/her information.

\_\_\_\_\_  
NOTARY PUBLIC



EXECUTED by Licensor this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Mapleton City Mayor

Attest:

\_\_\_\_\_  
Mapleton City Recorder

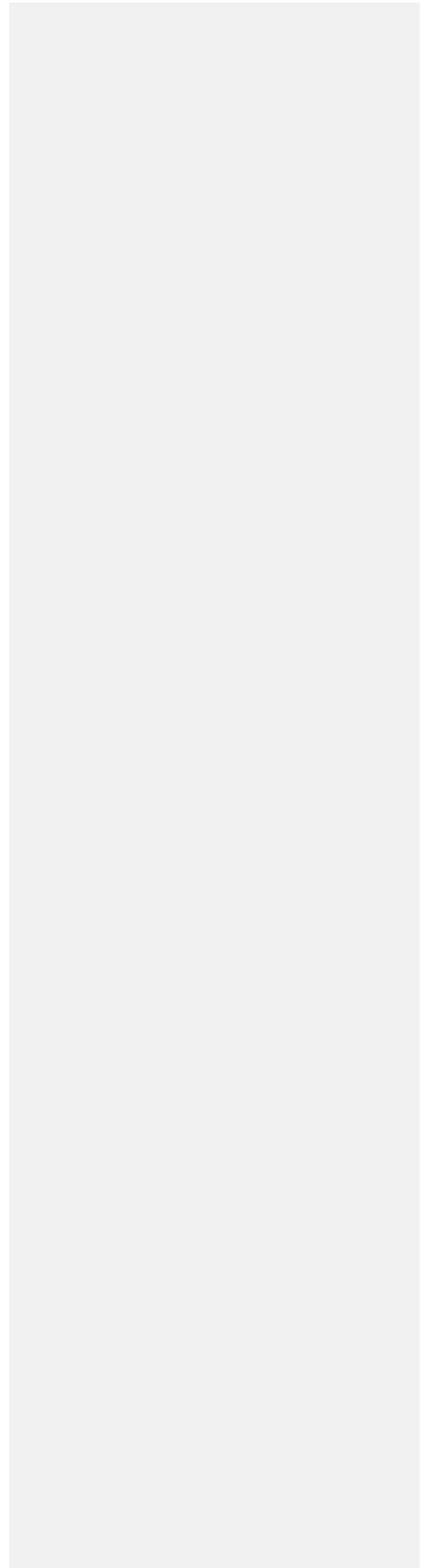


EXHIBIT A

(Description of Licensor's Right of Way)

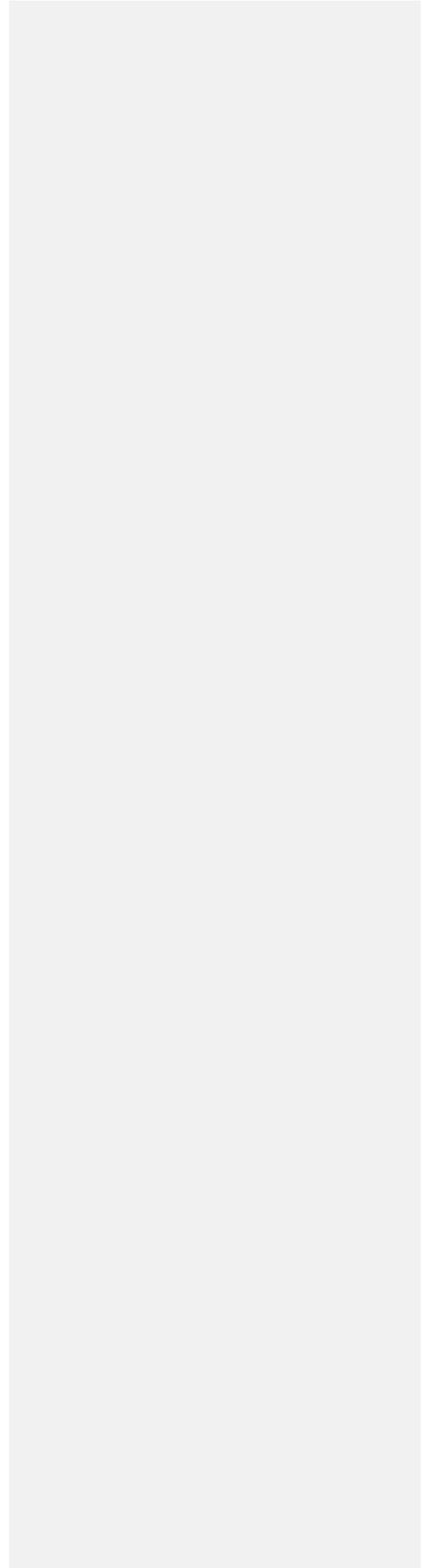


EXHIBIT B

(List of Mountain View Irrigation Association Members  
and description of Benefited Property)

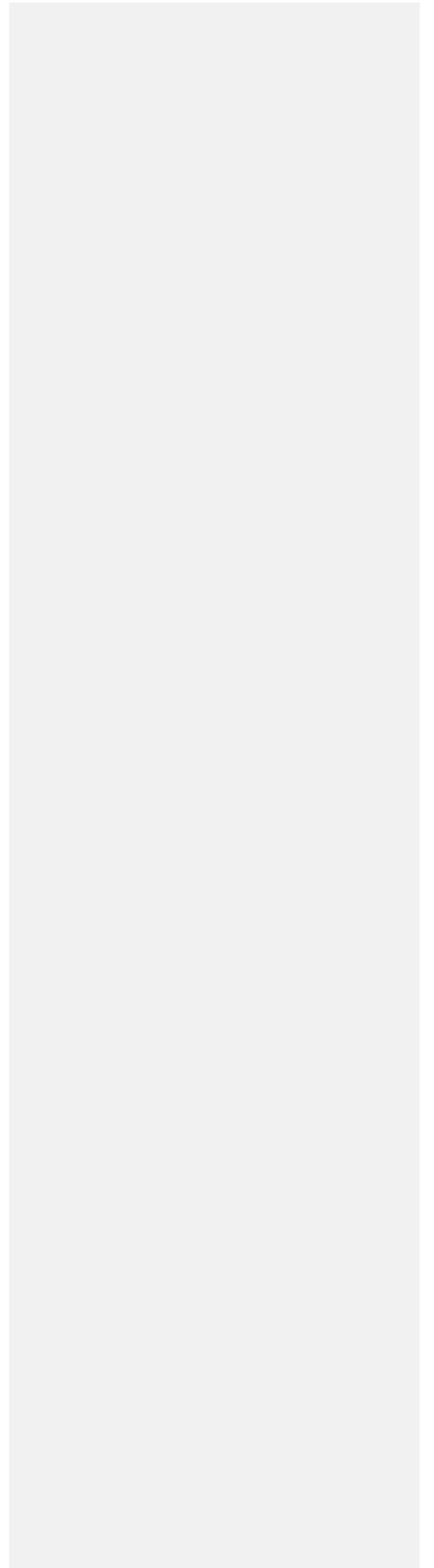


EXHIBIT C  
(Description of Licensed Property)

