

City Council Staff Report

December 2, 2015

Applicant: Sierra View
Irrigation Association, LLC
Prepared by: Cory Branch
Public Hearing: No

ACTION ITEM

Consideration of approval of a License Agreement between Mapleton City (“Licensor”) and Sierra View Irrigation Association, LLC (“Licensee”) granting the “Licensee” the ability to use a portion of the “Licensor” ROW for a private irrigation pipeline.

BACKGROUND AND PROJECT DESCRIPTION

1. Sierra View Irrigation Association, LLC 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 Figure 1)
2. With the recent modifications to the CUP pipe the Association and City Staff recommend that a license agreement be entered into.
3. On May 20, 2015 this proposal came before the city council as a discussion item. The city council recommended that the Association redline the proposed Agreement as per the concerns raised at the council meeting.
4. Attached to this staff report includes the proposed License Agreement with redlines.

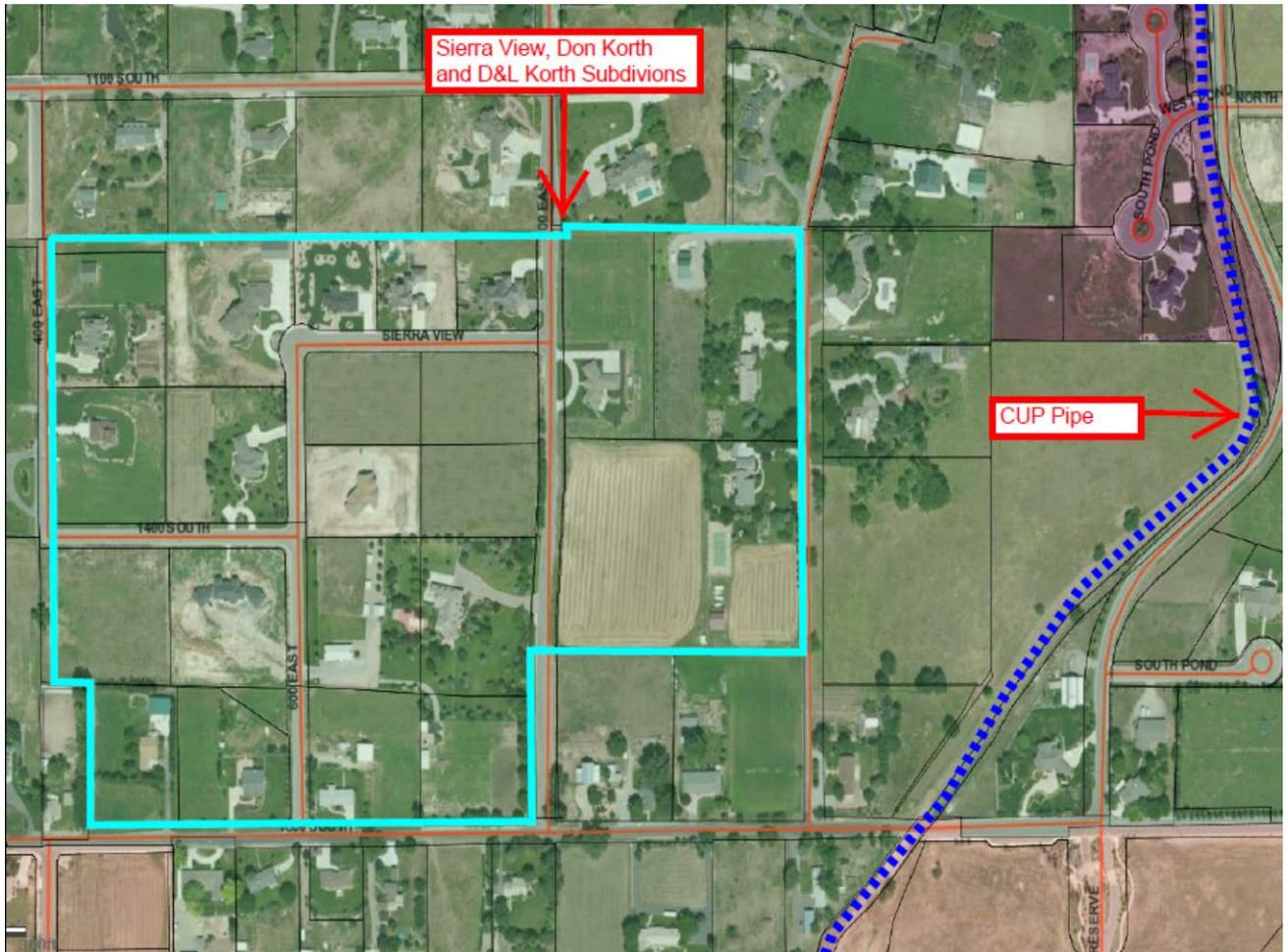
STAFF’S POSITION

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, Sierra View Irrigation Association, LLC 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~~, as ~~shown described~~ in Exhibit A attached hereto (“ROW”); and

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 ~~shown described~~ on Exhibit A 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.

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 as described in Exhibit C (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~~ managing members of **Sierra View Irrigation Association, LLC** 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__.

Sierra View Irrigation Association, LLC

Gene Cook, Managing Member

Don Korth, Managing Member

Stephen R. Mooney, Managing Member

Jeril B. Wilson, Managing Member

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 – “ROW” Map

Exhibit B

Mountain View Irrigation Association Don Korth

Name	Address	Lot Size	Subdivision	Parcel #
Arbon	915 E. 1600 S.	2.85 Acres	None	26:073:0004
Cook	649 E. Sierra View Dr.	1 Acre	Sierra View Estates	66:021:0003
Erickson - No Home	748 E. Sierra View Dr.	1.4 Acres	Sierra View Estates	66:258:0003
Foutz	555 E. 1600 S.	1.74 Acres	Don Korth	44:071:0001
Frischknecht	1360 S. 1000 E.	6.57 Acres	Sierra View Estates	52:661:0002
Frampton	705 E. 1280 S.	1 Acre	Sierra View Estates	66:021:0004
Hakes	753 E. 1280 S.	1 Acre	Sierra View Estates	66:021:0005
Hamilton	615 E. 1600 S.	1.89 Acres	D&L Korth	37:119:0001
Harris	589 E. 1400 S.	2.14 Acres	Sierra View Estates	66:021:0001
Lassiter - No Home	1323 S. Sierra View Dr.	1.4 Acres	Sierra View Estates	66:258:0002
Kendrick	544 E. 1400 S.	2.1 Acres	Sierra View Estates	52:762:0002
Korth	1295 S. 800 E.	2.52 Acres	Sierra View Estates	52:661:0001
LPK Prop - No Home	1354 S. 800 E.	1.4 Acres	Sierra View Estates	66:258:0004
McLean	1353 S. Sierra View Dr.	1.4 Acres	Sierra View Estates	66:258:0001
Mooney	1333 S. 400 E.	2.04 Acres	Sierra View Estates	52:762:0004
Wood	1276 S. Sierra View Dr.	2.45 Acres	Sierra View Estates	66:021:0002
Mapleton Ranch	1350 S. 1000 E.	4.04 Acres	Sierra View Estates	52:661:0003
Wilson	1245 S. 400 E.	2.04 Acres	Sierra View Estates	52:762:0005
Landures	452 E. 1400 S.	2.08 Acres	Sierra View Estates	52:762:0003
Israelson	731 E. 1600 S.	1.75 Acres	D&L Korth	37:119:0002
Israelson	1428 S. 800 E.	2.26 Acres	Sierra View Estates	52:705:0003
Israelson	1449 S. 600 E.	2.26 Acres	Sierra View Estates	52:762:0001

Exhibit C

LETTER OF INDEMNIFICATION DATED JUNE 30, 2015

The undersigned managers of Sierra View Irrigation Association, LLC, agree that In consideration of Mapleton City issuing an excavation permit and allowing Sierra View Irrigation Association, LLC, the right to repair and upgrade its irrigation system located within Mapleton City boundaries; Sierra View Irrigation Association, LLC, agrees that the conditions of Mapleton City's excavation permit shall be complied with.

It is understood and agreed that Mapleton City is not responsible for maintenance or repairs of Sierra View Irrigation Association, LLC, irrigation system.

It is further agreed that Sierra View Irrigation Association, LLC, will indemnify and hold Mapleton City harmless for any and all claims relating to or arising out of the excavation, improvements, and operation of its irrigation system, except claims caused by the negligence of Mapleton City.

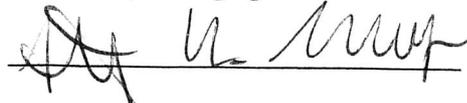
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