


RECORDING REQUESTED BY
ALTA IRRIGATION DISTRICT

AND WHEN RECORDED RETURN TO:
ALTA IRRIGATION DISTRICT
289 NORTH L STREET
DINUBA, CALIFORNIA 93618

—NO FEE—

Benefit of Alta Irrigation District
Pursuant to Government Code § 6103


2019-0016760
FRESNO County Recorder
Paul Dictos, CPA
Wednesday, Feb 20, 2019 09:36:28 AM
Titles: 1 Pages: 12
Fees: \$0.00
CA SB2 Fee: \$0.00
Taxes: \$0.00
Total: \$0.00
ALTA IRRIGATION DISTRICT

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") is made and entered into this 13th day of February, 2019 (the "Effective Date"), by and between ALTA IRRIGATION DISTRICT, a California irrigation district (the "District") and the CITY OF REEDLEY, a California incorporated city (the "City"). The District and City are sometimes collectively referred to in this Agreement as the "Parties" or singularly as a "Party" or by their individual names.

RECITALS

A. WHEREAS, the District has prior rights and was formed on August 14, 1888 for the purpose of delivering surface water from the Kings River to landowners in the Counties of Fresno, Kings, and Tulare; and

B. WHEREAS, the District is a California Irrigation District organized and existing under and by virtue of the Irrigation District Law, Division 11 of the California Water Code.

C. WHEREAS, the District must have full access to and control over its facilities and the operation thereof, so the District may have to take possession and control of any improvements in the District's right-of-way to prevent damage to those facilities or impairment of the operations thereof; and

D. WHEREAS, the District holds in fee title or an easement and right-of-way for ditches, canals, pipelines, and other water conveyance facilities known as the East Reedley Ditch ("District Property").

E. WHEREAS, the City desires to obtain from the District, and District is willing to grant to City the right to encroach underground upon the District Property as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. **Right to Encroach.** For consideration, and subject to the terms and conditions of this Agreement, the District hereby grants to the City the right to place and maintain one (1) water pipeline crossing and one (1) curb return ("Encroachment") over District Property.

2. **Encroachment.** The authorized Encroachment (near the intersection of East Avenue and Dinuba Avenue in the city of Reedley) is limited to ductile iron pipe and curb return, including sidewalk, at the northwest corner of Dinuba Avenue and East Avenue. The pipeline will have a nominal diameter of about eight (8) inches, installed at a depth such that there is a minimum vertical separation of one (1) foot between the exterior walls of the Encroachment and District facility, and crossing at approximately ninety (90) degrees to the centerline of District facility. Encroachment will maintain that depth associated with the vertical separation requirement for a straight pipe run of at least twenty-four (24) feet, centered over the District facility; no grade breaks. Exhibit "A" is a tabular summary of key parameters associated with the Agreement. Improvements not authorized under this Agreement include, but are not limited to, the following: signage, poles, pull boxes, valves, valve boxes, or any other improvements altering District operations or maintenance activity.

3. **Location.** The location where the Encroachment is permitted on District Property is described in Exhibit "B" and shown on Exhibit "C", attached hereto and incorporated herein by these references. Exhibit "C" contains plan and profiles views i) delineating horizontal and vertical separation between Encroachments and District facility, ii) labeling flow line elevations for Encroachment and District facility, iii) identifying Encroachment and District facility(ies), and iv) showing limits of District Property.

4. **Cost and Fee.** City acknowledges and agrees to pay, in full as part of the execution of this Agreement, an encroachment fee of Four Hundred Dollars and No Cents (\$400.00) per crossing. Encroachment fee will accompany two (2) signed originals of this Agreement. If payment is not provided with the signed originals, then execution of this Agreements will be delayed.

5. **Limitations; Obligations.**

(a) The exercise by City of its rights pursuant to the Agreement is subject to the right of District to the full and beneficial use and enjoyment of the District Property. City shall not in any way interfere with or disrupt District's use of the District Property.

(b) Prior to placement of the Encroachments, City, at its sole cost and expense, shall obtain all necessary permits, licenses, authorizations, approvals or other governmental dispensations required to proceed with City's activities pursuant to this Agreement.

(c) City shall ensure that all activities performed on District Property with respect to the Encroachments are performed (i) in conformance with all applicable federal and State laws and regulations, and (ii) in a good and workmanlike manner.

(d) City shall promptly pay all claims, especially those secured by a mechanic's or materialman's lien against the District Property or any interest therein, for

labor or materials furnished or alleged to have been furnished to or for City at or for use on the Encroachments thereto.

6. **Placement, Maintenance and Repair.** City shall not enter the District Property for any reason, including the installation, placement, maintenance, or repair of the Encroachment, without the prior written consent of the District. Furthermore, City shall not install or place the Encroachment until the manner of placement, the plans and specifications for such placement, and the description of materials to be used have been submitted in writing to the District and have been approved in writing by the District. The placement, installation, maintenance, repair, and replacement of the Encroachment shall be at the sole cost and expense of the City. In no event shall the District be responsible for any damage to such Encroachment, whether caused by District maintenance and cleaning operations, or otherwise. City further agrees at all times to keep the Encroachment in a state of good and safe repair, at City's sole cost and expense. Moreover, City shall be responsible for all costs and expenses associated with replacing, restoring, or relocating the Encroachment if District, at the sole discretion of District, repairs, replaces, updates, or maintains District facilities or the District Property.

Notwithstanding anything else to the contrary in this Agreement, District shall at all times have the right (but not the obligation) to stop the use of the Encroachment if District determines it to be in an unsafe condition. Upon such cessation and at City's sole cost and expense, City shall take actions determined by the District to be necessary to bring the Encroachment into a good and safe condition. If within a reasonable time City fails to take such necessary actions to bring the Encroachments into a good and safe condition, then District may terminate City's rights under this Agreement by providing notice to the City of such termination.

7. **Inspection.** City agrees to notify the District's Superintendent at least two (2) business days before Work commences within the District's Property. At the City's sole cost and expense, the District may inspect the Work to ensure that the Project, as built, conforms to the Plans and Specifications. Such inspections may extend to all phases of the Work, including, but not limited to, the preparation of materials to be used. Failure of the District to detect any deviation from the Plan and Specifications, deficient materials or workmanship or any other defects in the Work shall not (i) release the City or Contractor from any obligation to correct such defects or from any liability resulting therefrom, or (ii) impose any liability on the District.

8. **Rights Not Exclusive.** The rights granted herein by the District are not exclusive and shall not in any way interfere with District's use of the District Property. The District reserves the right to the full and beneficial use and enjoyment of the District Property for any and all District purposes. To maintain District facilities, District shall have the right to use any Encroachments placed, maintained, or constructed. City shall construct, operate, or maintain the Encroachments in a manner that does not diminish or restrict the ability of the District to use District Property for any District purpose and City shall have no right to encroach upon the District Property other than as expressly granted by the District pursuant to this Agreement. City shall have no right to increase the extent of the encroachment into the District Property as granted within this Agreement, without the express written authorization of the District.

9. **Term.** The term of this Agreement shall be ten (10) years, commencing on the Effective Date of this Agreement and ending on the tenth (10th) anniversary thereof. After the initial ten (10) years, the term of this Agreement is automatically extended for additional one (1)-year terms, unless at least thirty (30) days prior to the end of the previous term either Party gives written notice of termination. Notwithstanding any other provision in this Agreement to the contrary, it is understood and agreed by both Parties that the rights granted hereunder are permissive in character, and that the District shall have the right to terminate the right to encroach granted hereunder in the sole and exclusive judgment of the District whenever the District determines it is necessary to do so to protect the interests of the District or the public, or to protect and preserve the property or facilities of the District. Notwithstanding the above, District may terminate this Agreement upon the termination of use or abandonment of the Encroachments. Abandonment shall occur upon the non-use of the Encroachments for one (1) year. Upon any termination of this Agreement, City shall promptly stop the use of and remove said Encroachments from the District Property, at City's sole cost and expense.

10. **Indemnity; Liability Insurance.** City agrees to indemnify, defend, and hold the District and its directors, officers, employees, agents and consultants, harmless from and against any and all claims, demands, losses, obligations, damages, liabilities, causes of action, costs, and expenses (including without limitation, reasonable attorneys', paralegals, and other professionals fees and costs) arising out of or in connection with any rights granted herein, the placement of the Encroachments as permitted by this Agreement, or its use, operation, maintenance, or repair, including, without limitation, all damage to property of the City or District, District Utilities, and personal injury and property damage to third parties.

City shall procure and maintain for the duration of the contract, Commercial General Liability (CGL) insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Encroachments, condition of the District Property, and any improvements thereon. Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 0001 covering on an "occurrence" basis, with limits no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The District and its directors, officers, employees, agents and consultants, are to be covered as additional insured's on the CGL. Upon demand, at the sole discretion of the District, and as a condition to the continued exercise of the rights granted hereunder, City may be required to provide the District with a certificate of such insurance naming the District and its directors, officer, employees, agents and consultants. The insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days prior written notice (10 days for non-payment) has been provided to the District.

11. **Notices.** All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission and shall be deemed sufficiently given if served in a manner specified in this

Section 11. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices.

To District: Alta Irrigation District
289 North L Street
Dinuba, California 93618
Telephone: (559) 591-0800
Facsimile: (559) 591-5190

To City: City of Reedley
Engineering Department
1733 9th Street, Reedley, CA 93654
Telephone: (559) 637-4200
Facsimile: (559) 637-2139

Either Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this section and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier. Notices transmitted by facsimile transmission shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

12. **Entire Agreement.** This Agreement and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

13. **Amendments.** No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of both Parties.

14. **Successors.** The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assignees of the respective Parties.

15. **Assignment.** City may assign any or all of his or her rights under this Agreement, provided that City shall remain directly liable to the District for the performance of any and all provisions of this Agreement or any agreement relating hereto.

16. **Governing Law.** This Agreement and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California (without giving effect to any choice of law principles).

17. **Severability.** If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

18. **Headings.** The subject headings of the sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

“City”

CITY OF REEDLEY,
a California incorporated City

By 

Nicole R. Zieba, City Manager

“District”

ALTA IRRIGATION DISTRICT,
a California irrigation district

By 

Jack Brandt, President

By 

Chad B. Wegley, Secretary

EXHIBIT "A"

Encroachment Owner	City of Reedley
Type of Encroachments	Ductile Iron Curb Return
Purpose of Encroachment	Potable Water Line
Ditch Crossing	East Reedley
Diameter / Size	8 inches
Year Installed	2019
Minimum Vertical Separation	1 foot
Latitude @ Entrance (Dinuba Ave.) Longitude @ Entrance (Dinuba Ave.)	36.589772° -119.444456°
Latitude @ Exit (Dinuba Ave.) Longitude @ Exit (Dinuba Ave.)	36.589772° -119.444626°

EXHIBIT “B”

Real property in the County of Fresno, State of California, described as follows:

East Reedley Ditch (East Avenue and Dinuba Avenue, Reedley, CA)



EXHIBIT "C"

Plan and Profiles Views of Encroachments (not part of recording; see project folder at Alta Irrigation District, 289 North "L" Street, Dinuba CA. 93618).

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Tulare)

On February 14, 2019 before me, Luis Miguel Rios, Notary Public
(insert name and title of the officer)

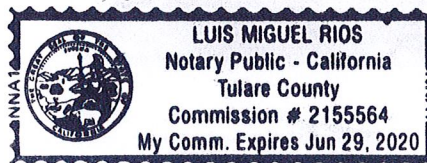
personally appeared Jack Brandt and Chad B. Wegley,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

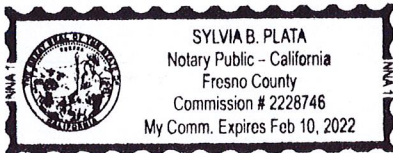
State of California

County of Fresno

On February 13, 2019 before me, Sylvia B. Plata, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Nicole R. Zieba
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Sylvia B. Plata
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Encroachment Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer is Representing: _____

Signer's Name: _____
☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer is Representing: _____

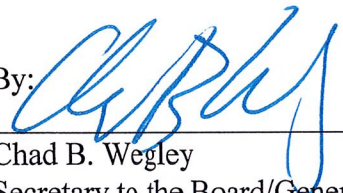
CERTIFICATE OF ACCEPTANCE

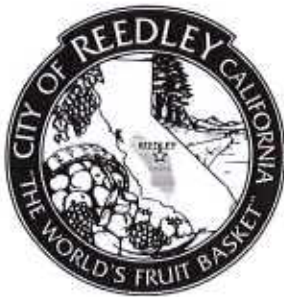
In accordance with the provision of Section 27281 of the California Government Code of the State of California, this will certify that the interest in real property conveyed by the attached instrument dated **February 13, 2019**, Alta Irrigation District did authorize the signature of the **Encroachment Agreement** at a regular meeting of Alta Irrigation District held on **February 14, 2019**, by Jack Brandt, President and Chad B. Wegley, Secretary of Alta Irrigation District.

Alta Irrigation District hereby consents to the recordation of the attached instrument by and through its undersigned duly authorized officer.

Dated: **February 14, 2019**

By:


Chad B. Wegley
Secretary to the Board/General
Manager



REEDLEY CITY COUNCIL

- ☒ **Consent**
- ☐ **Regular Item**
- ☐ **Workshop**
- ☐ **Closed Session**
- ☐ **Public Hearing**

ITEM NO: 4

DATE: February 12, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH ALTA IRRIGATION DISTRICT FOR THE CDBG No. 17571 REEDLEY CITY STREET IMPROVEMENTS (PHASE VIII) PROJECT.

PREPARED: Linda Thao *LT*
Senior Engineering Assistant

SUBMITTED: John S. Robertson, P.E. *JSR*
City Engineer

APPROVED: Nicole Zieba
City Manager *NZ*

RECOMMENDATION

Staff recommends that the City Council approve and authorize the City of Reedley City Manager to enter into an Encroachment Agreement with Alta Irrigation District (AID) for the Community Development Block Grant Project No. 17571, Reedley City Street Improvements (Phase VIII) Project (Project).

EXECUTIVE SUMMARY

Staff is requesting that the City of Reedley City Manager execute 2 original sets of the Encroachment Agreement with AID for the Project. Staff will deliver said agreement to AID on or before February 14, 2019 for the AID Board of Directors' approval. Once fully executed, the City will be able to proceed with construction within AID's easement for said project. The Project will begin construction mid-February of 2019.

BACKGROUND

On January 8, 2019, the Reedley City Council awarded a construction contract to AJ Excavation Inc. for the Project. The scope of work for the Project consists of, in general, demolition and removal of roadway on Dinuba Avenue from Southern Pacific Railroad to East Avenue and grind and overlay of East Avenue from Dinuba Avenue to G Street. In addition to the roadway improvements the Project will include: improvements to the water and waste water system within the project limits, upsize the storm drainage to 30-inch per the City's Integrated Master Plan, install ADA curb ramps and sidewalk and replace the existing in-pavement cross walk lighting with a rectangular rapid flashing beacon system.

The City Engineering Department worked with AID during the project planning to locate their easement and irrigation lines. The City must now enter into an Encroachment Agreement with AID to complete the improvements within their easement. Excavation cannot occur within AID's easement during their annual water run which begins, on average, in April and can run until November.

FISCAL IMPACT

The funds for this project were appropriated in the adopted 2018-2019 City Budget. Staff will be submitting request for reimbursement payments from CDBG funds to Fresno County in accordance with the executed City-County Agreement.

COMMITTEE/COMMISSION REVIEW/ACTIONS: N/A

PRIOR COUNCIL ACTIONS

On January 8, 2019, the City Council adopted resolution No. 2019-006 amending the fiscal year 2018-2019 budget to appropriate additional funds and resolution No. 2019-007 awarding construction contract to AJ Excavation Inc.

ATTACHMENTS

1. Alta Irrigation District Encroachment Agreement

Motion: _____

Second: _____