

**EAGLE MOUNTAIN CITY  
CITY COUNCIL MEETING  
July 19, 2016**

<b>TITLE:</b>	Agreement for Exchange of Water Rights and Water Works		
<b>FISCAL IMPACT:</b>	\$0		
<b>APPLICANT:</b>	Staff		
<b>GENERAL PLAN DESIGNATION</b>	<b>CURRENT ZONE</b>	<b>ACREAGE</b>	<b>COMMUNITY</b>
N/A	N/A	N/A	Citywide

**NOTICES:**

- Posted in 2 public places
- Posted on City webpage

**REQUIRED FINDINGS:**

<b>Planning Commission Action / Recommendation</b>
<b>Vote: N/A</b>

<p><b>Prepared By:</b> Jeremy R. Cook City Attorney</p>
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**NOTES/COMMENTS:**

**RECOMMENDATION:**

The City Council approve the Agreement for Exchange of Water Rights and Water Works.

**BACKGROUND:**

In 2001, Meadow Ranch, L.C. transferred to the City Water Right No. 59-1629. The City was never able to able to obtain approval from the State Engineer to use the water rights within the City and therefore the water has remained “banked” with the City. HHH Investment Group, L.C., Stanford J. Ricks, and The Ranches, L.C. each owns an interest in the banked water.

The water rights have no value to the City since it is beneficially owned by other parties. Accordingly, the City has agreed to exchange the water for a new easement for a water line to the North of SR7 3 over property owned by Autumn Valley Land, LC.

## **AGREEMENT FOR EXCHANGE OF WATER RIGHTS AND WATERWORKS**

THIS AGREEMENT FOR EXCHANGE OF WATER RIGHTS AND WATER WORKS (this "Agreement") is entered the 19<sup>th</sup> day of July, 2016 between Eagle Mountain City, a municipal corporation of the State of Utah (the "City"), Autumn Valley Land, LC, a Utah limited liability company ("Autumn"), HHH Investment Group, L.C. a Utah limited liability company ("HHH"), Stanford J. Ricks ("Ricks") and the Ranches, L.C. ("Ranches").

This Agreement is made with reference to the following facts:

The City requires property owners within Eagle Mountain to contribute at no cost to the City the water rights and other public improvements required by the City to serve the properties developed by the property owners.

HHH, Ricks and Ranches, through their agent Meadow Ranch, L.C., transferred to the City by deed the right to use 35.95 acre-feet of water from Water Right No. 59-1629, now evidenced by Water Right No. 54-1111 (the "Water Right"). The Water Right is not usable by the City for reasons that are not material to the terms of this Agreement.

The City is prohibited from transferring or returning to HHH, Ricks and Ranches water rights and interests in water under the provisions of the Utah Constitution.

The parties desire to enter into this Agreement which the City is permitted under the terms of the Utah Constitution to return the unusable interests in water and water rights to HHH, Ricks and Ranches upon the conveyance by Autumn to the City of equivalent or greater value of waterworks which are suitable for use by the City and acceptable for dedication under the terms of the policies and ordinances of the City.

Autumn desires to dedicate and transfer to the City an Easement for the construction of a new main water line for the City's water system in exchange for the transfer of the water rights back to HHH, Ricks and Ranches.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties contained herein, The City, HHH, Ricks and Ranches hereby agree as follows:

1. The City will transfer and convey to HHH, Ricks and Ranches their respective interests in any portion of Water Right No. 54-1111 conveyed to the City by HHH, Ricks and Ranches. A copy of the form Water Right Deed is attached hereto as Exhibit "A" and incorporated herein by reference.

2. In exchange for the City conveying to HHH, Ricks and Ranches their interest in Water Right No. 54-1111, as set forth in paragraph 1, Autumn hereby agrees to provide for the conveyance to the City of an easement for the purposes of constructing a new water line and

related appurtenances. A copy of the Easement is attached hereto as Exhibit "B" and incorporated herein by reference. The parties acknowledge that the Easement is a greater value to the City than the water rights exchanged by the City to HHH, Ricks and Ranches.

3. This Agreement shall be binding upon and inure to the benefit of the successors, heirs and assigns of the parties hereto, and to any entities resulting from the reorganization, consolidation, or merger of any party hereto,

4. This Agreement constitutes the entire understanding and agreement between the parties, and supersede any previous agreement, representation, or understanding between the parties relating to the subject matter hereof.

5. The provisions of this agreement are not severable, and should any provision hereof be deemed void, unenforceable or invalid, such provision shall effect the remainder of this agreement, and shall provide grounds for dissolution of the agreement at the option of the parties in the exclusive discretion of each of them.

6. Any waiver by any party hereto of any breach of any kind or character what so ever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

7. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

8. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

9. In the event of default on the part of any party to this Agreement, that party shall be liable for all costs and expenses incurred by the other parties in enforcing the provisions of this Agreement, whether or not legal action is instituted.

10. This Agreement may be executed in any number of counterparts, all of which together shall constitute but one instrument.

EAGLE MOUNTAIN CITY, a Utah  
municipal corporation

ATTEST:

By: \_\_\_\_\_  
Fionnuala B. Kofoed, City Recorder

By: \_\_\_\_\_  
Christopher Pengra, Mayor

HHH INVESTMENT GROUP, L.C

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

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

Title: \_\_\_\_\_

AUTUMN VALLEY LAND, LC,

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

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

Title: \_\_\_\_\_

THE RANCHES, L.C.

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

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

Title: \_\_\_\_\_

\_\_\_\_\_  
STANFORD J. RICKS

# EXHIBIT A

WHEN RECORDED, RETURN TO:

Eagle Mountain City  
1650 E. Stagecoach Run  
Eagle Mountain, Utah 84005

**WATER RIGHT DEED**

Eagle Mountain City, a Utah municipality (“Grantor”), hereby quitclaims, without warranty, to \_\_\_\_\_ (“Grantee”), for TEN DOLLARS (\$10.00) and other valuable consideration the following described water right registered in the Office of the State Engineer of the State of Utah as follows:

Water Right Number:  
Change Application Number:  
Quantity in Acre Feet:

IN WITNESS WHEREOF, the Grantor has executed this Deed the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

EAGLE MOUNTAIN CITY, a Utah  
municipal corporation

ATTEST:

By: \_\_\_\_\_  
Fionnuala B. Kofoed, City Recorder

By: \_\_\_\_\_  
Christopher Pengra, Mayor

STATE OF UTAH            )  
  )ss.  
COUNTY OF UTAH        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016 personally appeared before me \_\_\_\_\_ who acknowledged to me that he/she had authority to and did execute the foregoing document on behalf of the Grantor.

\_\_\_\_\_  
Notary Public

# EXHIBIT B

WHEN RECORDED, RETURN TO:

Eagle Mountain City  
c/o Fionnuala Kofoed, City Recorder  
1650 E. Stagecoach Run  
Eagle Mountain, UT 84005

**Parcel No. 58:033:0380**

**DEED OF EASEMENT  
FOR CONSTRUCTION, OPERATION, MAINTENANCE AND  
REPLACEMENT OF MUNICIPAL WATER LINE**

AUTUMN VALLEY LAND, LC (“Grantor”), does hereby convey and warrant to EAGLE MOUNTAIN CITY, Utah, a municipal corporation of the state of Utah, (the “City” or “Grantee”), of Utah County, Utah, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, a permanent easement and right-of-way for the purpose of constructing, operating, maintaining and replacing one or more water lines and related appurtenances within the area of the easement granted herein for the use of the City as necessary and as may be permitted by the City in the exclusive discretion of the City, over, across, through and under the premises of the Grantor (the “Property”) situated in Utah County, Utah which are more specifically described on Exhibit 1 of this Easement, attached hereto and incorporated herein.

Also granting to the City a perpetual right of ingress and egress to and from and along said right-of-way and with the right to operate, maintain, repair, replace, augment and/or remove the water line as deemed necessary by the City for the construction, operation and maintenance of the facilities in the easement. The Grantor covenants that Grantor will not construct or erect or allow or cause to be constructed or erected any permanent structure of any kind on the easement, except as approved in writing by the City, or any plants, trees and other improvements that could damage the facilities.

The Grantor agrees that the City may enter on the premises subject to this easement and remove all improvements which may interfere with the use of the easement by the City. The Grantor specifically waives and releases the City from any and all liability and claims for the removal of plants, trees and other improvements by the City under the provisions of this easement.

The easement granted herein is subject to the condition that the Grantee shall indemnify and hold harmless, the Grantor, his heirs and successors against any and all liability caused by the acts of the City, its contractors or agents, during the construction, operation or maintenance of the facilities provided for in this easement; the Grantors right to indemnification or to be held harmless by the City under the terms of this paragraph

are expressly conditioned upon prompt and immediate notice to the City of any claim or demand which would cause a claim against the City and upon the City's right to defend any claim against the Grantor which would cause a claim of indemnification against the Grantor.

Grantor and Grantee acknowledge and agree that the Grantor recently received approval from the City for the Gateway Park Phase B Preliminary Plat, which plat includes a proposed extension of Talons Drive across the easement, and that the elevation and grade of Talons Drive has not been determined. Accordingly, in the event Talons Drive is constructed and the grade and elevation of Talons Drive is not compatible with the grade and elevation of the water line or other facilities in the easement, the City shall, at the City's sole cost and expense, adjust the grade of the water to be compatible with the elevation and grade of Talons Drive.

Notwithstanding the foregoing, this Easement shall terminate upon the conveyance of the Property to the Utah Department of Transportation ("UDOT") and issuance of a replacement permit or right-of-way by UDOT for the facilities of Grantee that are located within the Easement.

WITNESS the hand of said Grantor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**AUTUMN VALLEY LAND, LC**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF UTAH )

COUNTY OF UTAH )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me \_\_\_\_\_ the signor of the foregoing instrument, who did personally acknowledged to me that the foregoing easement was executed by, for, or on behalf of the Grantor.

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

# **EXHIBIT 1**