

Contract No. 19-LA-40-0250

Parcel Nos. SFS-54 (P), SFS-54 (T)

UNITED STATES
DEPARTMENT OF THE INTERIOR

UTAH LAKE DRAINAGE BASIN WATER DELIVER SYSTEM

SPANISH FORK SANTAQUIN PIPELINE – PAYSON SPRING LAKE REACH

CENTRAL UTAH PROJECT COMPLETION ACT

CONTRACT AND GRANT OF EASEMENT

THIS CONTRACT AND GRANT OF EASEMENT, is made this _____ day of _____, 20__, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation Laws, particularly the Colorado River Storage Project Act, Act of April 11, 1956 (70 Stat. 110, et seq.), as amended; and the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), as amended, among the UNITED STATES OF AMERICA, its successors and assigns, hereinafter referred to as the United States, and PAYSON CITY, A MUNICIPAL CORPORATION, WHICH ACQUIRED TITLE AS JAMES FINLAYSON, MAYOR OF PAYSON CITY IN UTAH COUNTY, UTAH IN TRUST FOR THE SEVERAL USE AND BENEFIT OF THE OCCUPANTS OF THE TOWNSITE OF PAYSON CITY, hereinafter referred to as the Grantor,

WITNESSETH, That for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

1. The Grantor, by this Contract and Grant of Easement, hereby conveys and warrants to the United States, free of lien or encumbrance, except as otherwise provided herein, the following described interests in real property situated in the County of Utah, State of Utah, to-wit:

Two parcels of land situated within Section Sixteen (16), Township Nine (9) South, Range Two (2) East, Salt Lake Base and Meridian, containing a combined area of 0.24 acre, more or less, and more particularly described as follows:

A Perpetual Easement to construct, reconstruct, operate and maintain and replace underground water pipeline or pipelines and appurtenant structures, on, over, under, or across the following described land:

Parcel No. SFS-54 (P) (Perpetual Easement)

Commencing at the South Quarter Corner of Section 16, Township 9 South, Range 2 East, Salt Lake Base & Meridian, thence West 200.58 feet; thence North 2263.80 feet to a point on the easterly boundary of Lot 1 of the Canyon Cove Estates Subdivision as recorded in Entry 30212:1996 by the Utah County Recorder Office, the True Point of Beginning; thence following said easterly boundary North 19°21'48" West 29.30 feet, more or less, to a point on the southerly boundary of Payson City Block 4 of Plat Q; thence along said southerly boundary South 89°12'47" East 220.86 feet, more or less, to a point on the mid-section line of said Section 16; thence along said mid-section line South 00°15'51" West 9.04 feet; thence West 60.98 feet; thence South 84°04'43" West 150.91 feet to the point of beginning.

Said Parcel SFS-54(P) contains an area of 0.08 acre, more or less.

ALSO:

A Temporary Easement for construction purposes during construction of the pipeline and appurtenant structures, on over, and across the following described land:

Parcel No. SFS-54 (T) (Temporary Easement)

Commencing at the South Quarter Corner of Section 16, Township 9 South, Range 2 East, Salt Lake Base & Meridian, thence West 200.58 feet; thence North 2263.80 feet to a point on the easterly boundary of Lot 1 of the Canyon Cove Estates Subdivision as recorded in Entry 30212:1996 by the Utah County Recorder Office, the True Point of Beginning; thence North 84°04'43" East 150.91 feet; thence East 60.98 feet, more or less, to a point on the mid-section line of said Section 16; thence along said mid-section line South 00°15'51" West 39.80 feet, more or less, to a point on the northerly boundary of Payson City Block 3 of Plat Q; thence continuing along said northerly boundary North 89°07'00" West 203.52 feet, more or less, to a point on said easterly boundary of Lot 1, thence continuing along said boundary North 19°21'48" West 22.35 feet to the point of beginning.

Said Parcel SFS-54(T) contains an area of 0.16 acre, more or less.

1a. The Grantor warrants that Grantor is the owner of the real property whereon the above-described easement lies.

1b. The Grantor, for itself, its successors and assigns, agrees that, within the perpetual easement area described herein, it shall not: (i) erect, construct, or permit to be constructed, any permanent building, structure, or improvement of any kind (except as may be defined hereinafter), nor shall Grantor construct or permit others to construct or install any fences, hard surfaced areas, or other permanent or temporary obstructions or improvements within the boundaries of the easement area that might interfere with the United States ability to gain access to the easement for operation, maintenance, repair, and replacement purposes. Any such obstruction installed or

permitted to be constructed, installed, or maintained within the boundaries of the easement area shall be removed at Grantor's sole expense; (ii) plant any tree or shrubs on any portion of the easement, nor dig or drill any holes or wells, nor increase or decrease the ground elevations existing at the time this document is executed, on all or any portion of the easement; (iii) remove materials from the area without the approval of the United States, its agents or assigns.

1c. In the event that Grantor, its heirs, successors, or assigns, places or permits to be placed, any encroachment on any portion of the easement, the United States shall have the right to remove the encroachment after five (5) days written notice to Grantor, and Grantor, its heirs, or successors, or assigns, agrees to pay all costs incurred by the United States in removing the encroachment. All costs shall earn interest at the rates set by Utah law for interest on judgments until Grantor has reimbursed the United States for the cost of removal of any such encroachment. Any damage to the United States' property or appurtenant structures caused by the Grantor's use or encroachment of the easement shall be repaired at the sole cost and expense of the Grantor.

1d. The Grantor, for itself, its successors and assigns, understands and agrees that any alteration, modification, change, or placement of improvements, by Grantor or any third party, within the above-described easement area, subsequent to the date of execution of this Contract and Grant of Easement, shall be made at Grantor's own risk, and Grantor hereby releases the United States from liability for any and all loss or damage of every description or kind whatsoever which is caused by or as a direct result of such alteration, modification, change, or placement of improvements within said area; provided, however, that nothing in this Article shall be construed as releasing the United States from liability for its own negligence or the negligence of its employees, agents or contractors. The United States' liability is governed by the provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 982 (28 U.S.C. §1346(b), 2671 et seq.) or other applicable law.

1e. The rights to be granted to the United States, as described in Article 1 hereof, shall be free from lien or encumbrance except: (i) coal, oil, gas, and other mineral rights reserved to or outstanding in Grantor and/or in third parties if not administratively objectionable; (ii) rights-of-way for roads, railroads, telephone lines, transmission lines, ditches, conduits, or pipelines, on, over, under, or across said lands if not administratively objectionable; and (iii) court liens, judgments or financial encumbrances, such as Deeds of Trust, for which a formal consent has been obtained from the court or the lien holder.

1f. The Temporary Easement herein granted shall terminate thirty-six (36) months from the date of this contract or at the end of construction, whichever comes first. No continuing access is allowed on the Temporary Easement area described herein once construction is completed or the Temporary Easement expires without the express written consent of the Grantor.

1g. During construction, subject to statutory authority and available appropriations, the United States shall restore or repair, at the expense of the United States with material of like kind and equal quality, any fence, grass, soil, shrubbery, trees, bushes, flowers, other vegetation, sprinkler system, irrigation system, gravel, concrete, or asphalt damaged or displaced from the exercise of the easement rights granted herein.

1h. The United States may, in its sole discretion, erect, maintain, or use gates in all fences which now cross or later may cross any portion of the easement(s) to enable the United States to take equipment along the easement(s) to perform required maintenance and repair. Grantor may lock any such gate to prohibit the public from unlawful access to the easement area, but Grantor shall provide the United States a key to any such lock at Grantor's expense.

1i. The United States shall also be entitled to trim, cut, or clear away trees, brush, or other vegetation or flora from time to time as the United States determines in its sole discretion without additional compensation.

2. The following SPECIAL PROVISION sets forth additional details, terms, and specifications hereby agreed to in connection with construction of the Spanish Fork Santaquin Pipeline (Pipeline), Payson Spring Lake Reach, which is the subject matter of this Contract and Grant of Easement.

(a) The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

(b) The Pipeline will be constructed in accordance with the plan drawings and specifications submitted to and received by Payson City. In the event that unidentified buried utilities, other hidden obstacles or unexpected geotechnical subsurface conditions are encountered during construction, the United States shall have the right to adjust the Pipeline grade or location in consultation with the Grantor. Such changes in Pipeline grade or location will be noted on as-built drawings provided to the Grantor. The Grantor agrees to record a corrected permanent easement to reflect the as-built pipeline facility locations if requested by the United States.

(c) The plan drawings and standards and specifications will detail how the project is to proceed. The Contract C-2020-01 Volume 1-Specifications and Volume 2-Drawings for this project (Specifications and Drawings) have been reviewed and approved by the Grantor and shall be incorporated and made a part of this contract.

(d) Any Payson City utilities damaged or relocated during construction will be repaired or replaced to a condition at least equal to the existing condition.

(e) The United States agrees to design and construct the Pipeline in accordance with sound engineering standards.

(f) It is understood that the contractor hired to construct the Pipeline will construct the Pipeline in such a manner so as to not block the adjoining residents from ingress and egress to their homes or businesses for more than a 24-hour period, unless the contractor makes other arrangements with the affected property owners or businesses. In order to facilitate this process, the contractor will be required to hire a public information manager available at all hours of the day or night to deal with homeowner, renter, and business owner occupant issues related to the construction project. Grantor agrees to allow the construction contractor to sequentially close sections of roadway for construction work and to detour traffic in accordance with the Specifications and Drawings.

(g) The Grantor agrees that for all future utility projects, road ways, parking lots, trails or other hardened surface project crossing or within the permanent easement granted by this contract to the United States, the Grantor shall submit notification to the United States for review. Said notification shall be submitted prior to the commencement of construction thereof and shall include details of the proposed action, including any applicable maps, engineering drawings to scale and specification.

Within 15 days of receipt of Grantor's notification, the United States shall review the notification, determine if additional information is necessary and which additional reviews, including NEPA, are required. The United States shall notify the Grantor of any additional requirements and the estimated time of completion of any required reviews. If Grantor does not receive a response from the United States within 15 days, Grantor may complete projects for which notification was submitted. Said notification and response will serve to provide mutual protection of the Pipeline and Payson City utilities at no cost to the Grantor. The United States agrees that following any such review and response, approval will not be unreasonably withheld.

(h) Six peach trees and two apple trees will be within the temporary easement shall be protected during construction. Removal of trees shall not occur prior to March 31, 2020 to allow time for landowner to salvage trees during dormant period prior to construction.

(i) The surface area where a concrete slab and fruit trees are removed west of the toe of the Strawberry Highline Canal shall be restored by placing sod at the end of construction. All other disturbed area shall be reseeded with a dryland seed mix.

(j) To the extent authorized by law, the United States of America agrees to waive fees for future encroachment permits filed by the Grantor for encroachments along or crossing the Pipeline.

3. The acquiring federal agency is the Department of the Interior represented by the officer executing this Contract and Grant of Easement, his duly appointed successor, or his duly authorized representative.

4. The United States shall purchase said easement on the terms herein expressed, and on execution and delivery of this Contract and Grant of Easement, and approval by the proper officials of the United States, it shall cause to be paid to the Grantor as full purchase price the sum of Seven Thousand Eight Hundred Fifty Dollars (\$7,850.00).

5. Abstracts or certificates of title or title insurance will be procured by the United States at its expense unless otherwise provided in this Contract and Grant of Easement. The expense of recording this Contract and Grant of Easement shall be borne by the United States.

The United States shall reimburse the Grantor in an amount deemed by the United States to be fair and reasonable for the following expenses incurred by the Grantor:

(a) Recording fees, transfer taxes and similar expenses incidental to granting the easement described herein to the United States.

(b) Penalty cost for prepayment of any pre-existing recorded mortgage entered into in

good faith encumbering said real property.

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

The Grantor agrees to furnish the United States evidence that these items of expenses have been billed to and paid by Grantor and further agrees that the United States alone shall determine the fairness and reasonableness of the expenses to be paid.

6. In the event that liens or encumbrances other than those expressly provided herein do exist, the United States may, at its option, remove any and all such outstanding liens and encumbrances by reserving from the purchase price herein set forth the necessary amount and discharge same with the money so reserved, but this provision shall not be construed to authorize the incurrence of any lien or encumbrance as against this Contract and Grant of Easement, nor as an assumption of any lien or encumbrance by the United States.

7. It is agreed that, at its election, the United States may draw its check in payment for granting the above-described easement to the order of the title contractor or closing agent, and the Grantor hereby authorizes the said contractor or agent to cash the check and make disbursements out of the proceeds to satisfy and pay any taxes, assessments, and encumbrances which are a lien against the real estate; to pay any State and local recording or transfer taxes where required, and any other expenses incident to the closing of title which are properly chargeable to the Grantor; and to remit the balance of the proceeds to Grantor; together with an itemized statement of the payments made on Grantor's behalf.

8. This Contract and Grant of Easement shall become effective to bind the United States to purchase said easement immediately on its execution by the contracting officer acting under the authority of the Secretary of the Interior and shall inure to the benefit of and be binding on the heirs, executors, administrators and assigns of the Grantor, and the assigns of the United States.

9. After execution of this contract by the United States, the proper officers, agents, and assigns of the United States shall, at all times, have unrestricted access to said easements for any purpose including the construction, reconstruction, operation, or maintenance of the Spanish Fork Santaquin Pipeline, Payson Spring Lake Reach, free of any claim for damage or compensation on the part of the Grantor, except as otherwise provided for in this contract.

10. If the Secretary of the Interior determines that the title to the easement should be acquired by the United States by judicial procedures, either to procure a safe title or to obtain title more quickly, then the award to be made for the interest acquired in said lands in said proceedings shall be the same amount as the purchase price herein provided.

11. Nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 982 (28 U.S.C. §1346(b), 2671 et seq.) or other applicable law.

12. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Contract and Grant of Easement, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

13. Time is of the essence in the performance of this Contract and Grant of Easement.

14. The terms of this Contract and Grant of Easement will survive the grant provided for herein.

15. All notices and other communications under this Contract and Grant of Easement shall be in writing and shall be deemed duly given when delivered (a) personally or by certified mail, with a record of receipt, or (b) the day of transmission if sent by facsimile or e-mail (with a copy promptly sent by mail or certified mail) to the parties at the following addresses or facsimile numbers (or to such other addresses or facsimile number as a party may have specified by notice given to the other party pursuant to this provision), or (c) in case of emergency by telephone contact (with a copy promptly sent by mail or certified mail):

Payson City
Attn: City Manager
439 W. Utah Avenue
Payson, Utah 84651

Department of Interior
CUPCA
302 East 1860 South
Provo, Utah 84606

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above-written.

THE UNITED STATES OF AMERICA

By _____
Regional Realty Officer

PAYSON CITY

By _____
Bill Wright, Mayor, Grantor

ACKNOWLEDGMENT OF THE UNITED STATES

State of Utah)
) ss.
County of Salt Lake)

On the _____ day of _____, 20__, personally appeared before me _____, known to me to be the Regional Realty Officer of the Bureau of Reclamation, Upper Colorado Region, the United States Department of the Interior, the signer of the above instrument, who duly acknowledged to me that he/she executed the same on behalf of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public in and for the
State of _____
Residing at _____
My commission expires: _____

ACKNOWLEDGMENT OF PAYSON CITY

State of)
) ss.
County of)

On this _____ day of _____, 20__, personally appeared before me Bill Wright, who, being duly sworn, did say that he is the Mayor of Payson City, a municipal corporation, and that he executed the within instrument on behalf of said corporation by authority of a resolution of City Council and duly acknowledged to me that said corporation/city council executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public in and for the
State of _____
Residing at _____
My commission expires: _____