

## REQUEST FOR COUNCIL ACTION

**Subject:**

Approval of an Agreement between North Jordan Irrigation Company and the City of West Jordan for the construction of the Jordan River Trail

**Discussion:**

The City of West Jordan desires to construct the Jordan River Trail between 8300 S and 9000 S. In order to construct this section of trail, the City is in need of acquiring an Agreement from North Jordan Irrigation Company prior to construction.

**Fiscal Impact:**

Funds for construction of the Jordan River Trail Project are provided from several agencies and the West Jordan "Open Space" fund as previously approved by the City Council. A one-time Bridge Crossing Design & Review Fee of \$5,000 is required for securing this Agreement. This fee will be provided from the budgeted Open Space funds approved for this project.

**Recommendation:**

Staff recommends approval of this Agreement for the construction of the Jordan River Trail.

Motion

"I move to adopt Resolution No. 14-35, authorizing and directing the Mayor to sign the attached Agreement from North Jordan Irrigation Company for the construction of the Jordan River Trail.

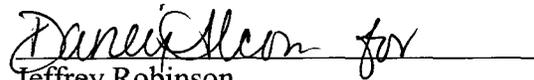
Roll Call

**Prepared by:**



Charles Tarver  
CDBG/Grants Manager

**Approved as to Legal Form by:**



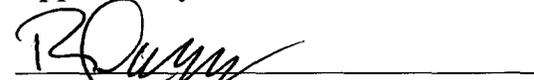
Jeffrey Robinson  
City Attorney

**Reviewed by:**



Tom Burdett  
Director, Community Development

**Approved by:**



Richard L. Davis  
City Manager

**Narrative:**

The City is proposing to construct the Jordan River Trail between 8300 S and 9000 S to provide a continuous trail between the North and South boundary of the City. Funding for this project is being provided through the West Jordan Open Space fund, Utah State Legislature, Salt Lake County, Sandy City, State Parks Non-Motorized Trail Program, LeRay McAllister Open Space Fund and the Rotary Club.

In order to complete this project, the City is in need of securing an Agreement from North Jordan Irrigation Company. This Agreement requires a one-time Bridge Crossing Design & Review Fee (\$5,000) that will allow for access by the City to construct the Jordan River Trail and for future maintenance/repair of the Jordan River Trail crossing the North Jordan Irrigation Company canal. This fee will be paid from previously budgeted and allocated Open Space funds.

This agreement, as attached, has been reviewed by the West Jordan Attorney's Office. No other fees are required for the securing of this Agreement.

**THE CITY OF WEST JORDAN, UTAH**

A Municipal Corporation

**RESOLUTION NO. 14-35**

**A RESOLUTION TO ENTER INTO AN AGREEMENT WITH  
NORTH JORDAN IRRIGATION COMPANY**

Whereas, the City of West Jordan has an approved budget to construct its Jordan River Trail project (the "Project"); and

Whereas, the Project requires the acquisition of an Agreement across the North Jordan Canal operated by the North Jordan Irrigation Company; and

Whereas, North Jordan Irrigation Company has agreed to convey an Agreement to the City with a one-time Bridge Crossing Design & Review fee of \$5,000 fee required and based on the terms and conditions stated in the agreement attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is hereby authorized and directed to sign the attached Agreement with North Jordan Irrigation Company so the City can complete the Project.

Section 2. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 26<sup>th</sup> day of February, 2014.

CITY OF WEST JORDAN

ATTEST:

By: \_\_\_\_\_  
Kim V. Rolfe, Mayor

\_\_\_\_\_  
MELANIE S. BRIGGS, MMC  
City Clerk/Recorder

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga

\_\_\_\_\_

\_\_\_\_\_

Judy Hansen

\_\_\_\_\_

\_\_\_\_\_

Chris McConnehey

\_\_\_\_\_

\_\_\_\_\_

Chad Nichols

\_\_\_\_\_

\_\_\_\_\_

Ben Southworth

\_\_\_\_\_

\_\_\_\_\_

Justin D. Stoker

\_\_\_\_\_

\_\_\_\_\_

Mayor Kim V. Rolfe

\_\_\_\_\_

\_\_\_\_\_

**AGREEMENT**  
**(City of West Jordan Recreation Trail and Pedestrian Bridge)**

THIS AGREEMENT is made and entered into by and between the North Jordan Irrigation Company, a Utah corporation organized and existing under the laws of the State of Utah, hereinafter referred to as "Company," and the City of West Jordan, a municipal corporation, hereinafter referred to as "City."

WHEREAS, City is the owner of certain real property located at approximately 8600 South and 900 West (the "Property"); and

WHEREAS, Company operates and maintains a canal upon the Property and has acquired a prescriptive easement for said canal and nothing in this Agreement is intended to change the rights or obligations owed between the prescriptive easement holder and the underlying property owner; and

WHEREAS, City is preparing plans and specifications for construction of a recreational trail and a pedestrian bridge upon the Property for the use and enjoyment of the public (the "Project"); and

WHEREAS, the pedestrian bridge to be constructed with the Project is designed to cross over the canal (the "Pedestrian Bridge"); and

WHEREAS, Company and City (collectively the "Parties" and each a "Party") desire to enter into this Agreement regarding the Project.

NOW, THEREFORE, the above recitals are incorporated herein, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties further agree as follows:

1. Plans and Specifications. City shall prepare, either by City staff or consultant, plans and specifications (the "Plans and Specifications") for the Project. At City's sole expense, City shall provide Company with one (1) copy of the Plans and Specifications at least thirty (30) days before construction of the Project commences.
2. Review. Company shall have the opportunity to review the Plans and Specifications and shall provide comments, if any, within ten (10) days of Company's receipt of its copy. City shall review and respond to comments that are received by the City within the specified time. City will not review or respond to comments that are not received within the specified time. The City will pay a one time Bridge Crossing Design & Review fee of \$5,000 to be paid along with this agreement.
3. Construction. City shall construct the Project in accordance with the Plans and Specifications as finally approved by the City, subject to change orders approved by the City. City shall inform Company of change orders, if any, affecting the Pedestrian Bridge.

4. Maintenance. City shall be solely responsible for the cost of installation, operation and maintenance of the Project. Company shall continue to be solely responsible for the operation and maintenance of the canal.

5. Design, Construction and Operation. The Parties agree to the following regarding design, construction and operation of the Project:

a. Company shall notify City at least twenty-four (24) hours in advance of desired Pedestrian Bridge closure for chemical treatment of the canal, dredging, and other canal operations and maintenance activities that necessitate such closure. Prior to closure, but no less than twenty-four (24) hours after receiving notice from Company, City shall post signs indicating closure. City shall provide other active means of closing the Pedestrian Bridge during chemical treatment of the canal. Company shall notify City as soon as reasonably possible after completion of the activity for which trail closure was requested.

6. Termination and Expiration. This Agreement shall not expire or be terminated except as follows:

a. If the Project is not commenced within one calendar year following execution of this Agreement, this Agreement shall terminate without any further action of the Parties.

b. If the Project is vacated or abandoned by City action, City shall notify Company of such vacation or abandonment.

7. Immunity. The Project will be available for recreational use by the public, without charge; thus, U.C.A. §§ 57-14-201 et seq. apply. Pursuant to §§ 57-14-201 et seq., the Parties owe no duty of care to entrants to keep the premises safe, or to provide warning of any dangerous condition, use, structure or activity. Moreover, it is the intent of the Parties that Company will be immune from suit pursuant to U.C.A. § 73-1-8, and this Agreement is intended to meet the requirements of U.C.A. §§ 73-1-8 and 201 et seq., to the extent necessary. Nothing herein shall be construed as a waiver of governmental immunity pursuant to the Governmental Immunity Act of Utah.

8. Miscellaneous.

a. Each of the Parties agrees to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement to the other.

b. Should an action be brought to enforce the terms of this Agreement by either party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in any such matter.

c. The individuals whose signatures appear below represent and warrant that they have full power and authority to enter into this Agreement on behalf of the Parties for whom this Agreement is executed, and no further act on behalf of any such party shall be or is required to effectuate the terms hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF WEST JORDAN, a municipal corporation

ATTEST:

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

\_\_\_\_\_  
City Clerk

Name, Title: \_\_\_\_\_

NORTH JORDAN IRRIGATION COMPANY,  
a Utah corporation

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

Name, Title: \_\_\_\_\_

**Acknowledgment**

STATE OF UTAH            )  
                                  : SS  
COUNTY OF SALT LAKE )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared before me, \_\_\_\_\_, who being by me duly sworn did say that he is the President of North Jordan Canal Company, a corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

Residing in \_\_\_\_\_  
County \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**  
West Jordan City Attorney

By: Daniel Klein Date: 2-19-14