



Title of Document: LICENSE AGREEMENT

Date of Document: _____, 2017

Grantor: CITY OF LEE'S SUMMIT, MISSOURI

Grantee: TRI-COUNTY WATER AUTHORITY

Grantee Address: 28405 East Blue Valley Road
Independence, MO 64058

Legal Description: See page 7

Reference Book and Page(s):

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this ____ day of _____, 2017, by and between the CITY OF LEE'S SUMMIT, MISSOURI (hereinafter called "City" and to be indexed as "GRANTOR"), and TRI-COUNTY WATER AUTHORITY, a Missouri nonprofit corporation (hereinafter called "Licensee" and to be indexed as "GRANTEE").

WITNESSETH:

WHEREAS, City owns an Easement, described in paragraph 1 below, and the City desires to license to Licensee and the Licensee desires to license from the City a portion of the Easement ("Licensed Premises") for the construction and maintenance of water transmission lines ("Improvements").

NOW, THEREFORE, City, in consideration of the obligations hereby assumed by Licensee, hereby licenses and authorizes Licensee, its officers, members, contractors, agents, and guests, to enter and go upon the Licensed Premises, at all times during the continuance of this Agreement, and there to use and enjoy the Licensed Premises for the Improvements, subject to the following:

1. **LICENSED PREMISES.** The area that Licensee will encroach upon is described on Exhibit "A" attached, (and generally known as Unplatted Legacy Park - Woodland Shores easement).

2. **USE OF LICENSED PREMISES.** Licensee, its officers, members, contractors, agents and guests shall have the right to use the Licensed Premises solely for the construction and maintenance of the Improvements which are one water main. The Improvements on the Licensed Premises shall comply with all ordinances of the City and are subject to approval of the City. Licensee shall coordinate use of the Premises and any construction or maintenance work with the City's Park Department Administrator and at least 72 hours in advance unless there is a need for emergency action by Licensee.

3. **MAINTENANCE.** Licensee agrees to maintain, at its sole cost, the Improvements to the Licensed Premises and the Licensed Premises, at all times during the continuation of this Agreement. Licensee agrees to return the Licensed Premises to as good or better condition than existed at the time of any work on such Premises including but not limited to sidewalks, surface structures, landscaping, and sod or grass to the reasonable general satisfaction of the Park Department Administrator.

4. **RESTRICTION AS TO WASTE.** Licensee shall not, except so far as may be reasonably necessary for the maintenance of the Improvements on the Licensed Premises and the Licensed Premises as aforesaid, commit or permit any waste thereon. Licensee shall be liable for any damage done to the Licensed Premises, except as is permitted by this Agreement, by any persons entering upon the Licensed Premises on behalf of Licensee pursuant to the terms of this Agreement.

a. Licensee shall repair or replace to the same or better condition all structures such as sidewalks and paved areas as part of this construction.

b. Licensee shall replace dirt, plantings, and structures (which would include sidewalks and paved areas) to the same or better condition as prior to construction, maintenance or repair and grass will be replaced with seed, mulch, and fertilizer.

5. GENERAL INDEMNITY.

A. GENERAL. To the extent permitted by law, Licensee shall indemnify, release, defend, become responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, subject to the provisions set forth in the Missouri Sovereign Immunity Statute, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property to the extent arising out of or resulting from any act, error, omission, or intentional act of Licensee or its agents, employees, or subcontractors, arising out of or in any way connected with the operations expressly authorized herein; provided, however, that Licensee need not save harmless the City from claims, demands, losses and expenses (A) to the extent arising out of the sole negligence or misconduct of the City, its employees, agents, or contractors or (B) to the extent the claim, demand, loss, or expense is actually paid by insurance proceeds received by or for the City from its insurance coverages.

B. NO LIMITATIONS OR WAIVER. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for Licensee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by Licensee. The City does not, and shall not, waive any rights against Licensee which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by Licensee, of any of the insurance policies described in this Agreement. Except as provided in subpart A above, this indemnification by Licensee shall apply regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

C. NOTIFICATION OF CLAIMS. With respect to any claims which are subject to indemnity hereunder, Licensee shall immediately notify the City of any and all claims filed against Licensee or Licensee and the City jointly, and shall provide the City with a copy of the same.

D. CHALLENGES TO CONTRACT. Licensee shall indemnify, defend and hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, against any and all claims or challenges brought against the City with respect to the validity of the terms and conditions of this Agreement.

E. USE OF INDEPENDENT CONTRACTORS. The fact that Licensee carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, Licensee's duty of defense and indemnification under this section.

6. CONSTRUCTION OF AGREEMENT.

A. LICENSE. The license created by this Agreement shall be construed as a simple license.

B. HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

C. NON-WAIVER. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

D. JOINTLY DRAFTED. This Agreement shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.

E. APPLICABLE LAW. This instrument shall be construed in accordance with the laws of the State of Missouri.

7. UNASSIGNABLE. The license created by this Agreement is solely for Licensee, its officers, members, servants, agents and guests and no others. Neither the license nor this Agreement, in whole or part, is assignable, except that at the request of Licensee, the City will consider assigning this Agreement to a home association.

8. NON-SEVERABLE. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be deemed invalid and unenforceable, provided, however, that the terms and provision of paragraph 5 shall not be affected thereby and each term and provision of said paragraph 5 shall be valid and enforced to the fullest extent permitted by law.

9. NOTICE. Whenever any notice is required by this Agreement to be made, given or transmitted to the City, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, addressed to:

City Manager
City of Lee's Summit
220 SE Green
Lee's Summit, MO 64063

and notices to Licensee shall be addressed to:

Tri-County Water Authority
28405 East Blue Valley Road
Independence, MO 64058

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the item shall be considered received the third day after the date of mailing.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties hereunder and all other representations of statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

CITY OF LEE'S SUMMIT, MISSOURI

By _____
Mayor

Attest:

City Clerk

APPROVED AS TO FORM:

Nancy Yendes, City Attorney

LICENSEE:
TRI-COUNTY WATER AUTHORITY
a Missouri nonprofit corporation

By _____
John Overstreet, Manager

Attest:

Secretary

Exhibit "A"

All of the east 25 feet of the south 1966.41 feet of the Southeast Quarter of Section 27, Township 48 North, Range 31 West, Jackson County, Missouri.

Said tract being a part of vacated Old Blackwell Road and part of the existing 50 foot wide utility easement granted to the City of Lee's Summit, Missouri, per Document No. 2007E0017804, Jackson County Records.

