

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (hereinafter the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between West Valley City, a Utah municipal corporation (hereinafter the "City") located at 3600 Constitution Boulevard, West Valley City, Utah, 84119, and North Jordan Irrigation Company (hereinafter "NJIC"), a Utah corporation with principal offices located at 4788 S. Hidden Cove Drive, Taylorsville, Utah, 84123. Collectively the City and NJIC are referred to as the "Parties".

### **RECITALS:**

**WHEREAS**, the City owns the property located at 3750 South 3600 West in West Valley City (hereinafter "the Property"), and further described as parcel #15-32-276-039-0000 consisting of .17 acres, and described in Exhibit A; and

**WHEREAS**, the City has determined that it is in the best interests of the City to lease the Property to NJIC for canal operations; and

**WHEREAS**, NJIC desires to lease the Property, and has agreed to maintain the Property on behalf of the City;

**NOW, THEREFORE**, in consideration of the mutual promises of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **AGREEMENT:**

#### **1. PURPOSE**

The purpose of this Agreement is to grant a lease of the Property and Improvements on the property to NJIC for the purpose of operating an irrigation company, storing equipment, and making improvements on the property toward that purpose. Existing improvements are defined and limited to the chain link fence located on the property at the time of execution of this Agreement and will be referred to in this document as "Improvements".

#### **2. PROPERTY LEASE**

The City does hereby lease, rent, and demise to NJIC, and NJIC does hereby take, accept, and lease from the City, the Property and its Improvements, upon the terms and conditions and for the purposes set forth in this Agreement, to have and hold for the term set forth in this Agreement. The Property and its Improvements are leased to NJIC "as-is, where-is," with no warranty offered by the City as to their condition or suitability for NJIC's purposes. The physical description of the Property is attached to this Agreement as Exhibit A.

#### **3. TERM OF LEASE**

The Term of this Agreement shall commence on the date of the execution of this Agreement by the Parties and shall end on July 1, 2035. If neither party seeks termination of the Lease prior to its expiration, the Lease shall automatically renew under the terms listed in this Agreement for consecutive 12 month periods, or until either party terminates the lease.

#### **4. TERMINATION**

Either the City or NJIC may terminate this Agreement at any time with ninety days' written notice.

During the Term of this Agreement, NJIC shall have the right to the use and occupancy of the Property for the purposes and on the terms and conditions set forth herein.

#### **5. CONSIDERATION; RENTAL AND FEE PAYMENTS**

As consideration for the lease to occupy and use the Property herein granted to NJIC, and for the agreements of the City contained herein, NJIC hereby agrees to pay one dollar (\$1.00) annually to the City.

#### **6. LAWFUL USE; NEGATIVE COVENANTS OF NJIC**

- A. NJIC hereby agrees to comply with all applicable federal, state, and local laws, rules, ordinances, and regulations while managing, operating, or conducting activities at the Property during the Term of this Agreement.
- B. NJIC shall not do, or permit or authorize others to do, any of the following:
  - i. Knowingly or intentionally engage in any act that, to an ordinarily prudent person in the position of NJIC, would be reasonably foreseeable to cause substantial or irreparable damage to the Property and/or its Improvements.
  - ii. Knowingly use or occupy, or knowingly permit the Property, or any part thereof to be used or occupied, for any unlawful, disreputable, or hazardous use (including the prohibited or unauthorized use, storage, or disposal of any Hazardous Substance), or operate or conduct the business of the NJIC in any manner known to constitute or give rise to a nuisance of any kind.

#### **7. NEGATIVE COVENANTS OF CITY**

The City shall not interfere with NJIC's rights or benefits granted by this Agreement.

#### **8. FIXTURES**

NJIC may make improvements and install fixtures on the property. Upon expiration of the Term, NJIC must remove all Fixtures from the property, and repair and restore the Property and Improvements to their pre-Agreement condition.

**9. LIENS**

NJIC shall not permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect, or any other person or entity arising out of work, material or services performed or supplied or contracted for NJIC, or those claiming by, through or under it, to be or remain a lien upon the Property. NJIC shall indemnify, defend, and hold the City harmless from any such liens.

**10. FEES; TAXES; ASSESSMENTS**

NJIC shall pay all applicable fees, charges, and taxes, both personal and property, if any, resulting from its possession, occupancy, management, and use of the Property. In the event a "possessory interest tax" or privilege tax is imposed on NJIC, such tax shall be the sole responsibility of NJIC, and shall be paid by NJIC.

**11. MAINTENANCE AND CARE OF THE PROPERTY**

- A. NJIC agrees that it shall comply with all applicable building and fire codes in its use and of the Property.
- B. NJIC agrees to keep the Property and its Improvements free from damage by NJIC, its employees, agents, or invitees.
- C. In the event of damage to the Property and/or its Improvements due to the acts or omissions of NJIC, its employees, agents, or invitees, NJIC agrees to, at the City's option, pay the sums needed to restore the Property or Improvements or repair the damage.

**12. VACATING AND RESTORING THE PROPERTY**

- A. Upon termination of the Agreement, NJIC shall vacate the Property and return possession of the Property to the City in a condition similar to which it was received by NJIC. However, prior to such return, NJIC shall, at its sole cost, restore the Property to its condition as of the execution of this Agreement.

**13. HAZARDOUS WASTE**

- A. For the purpose of this Agreement, the following terms shall be defined as provided below, unless the context clearly requires a different meaning:
  - i. Law or Regulation shall mean any environmentally-related local, state, or federal law, regulation, ordinance, or order (including, without limitation, any final order of any court of competent jurisdiction of which NJIC has knowledge) now or hereafter in effect, including, but not limited to, the

Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

- ii. Hazardous Substance shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination, or cleanup.
- B. The City represents and warrants that to the best of its knowledge, the Property does not contain any Hazardous Substance found to be in violation of any applicable Law or Regulation. The City shall not cause to occur upon, in, or about the Property, or permit the Property to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. The City will comply with every applicable Law and Regulation regulating any Hazardous Substance found in, on, or about the Property and promptly remedy any violation of each such Law or Regulation caused by the City or its employees or contractors.
- C. NJIC shall comply with every applicable Law and Regulation regulating any Hazardous Substance found on or about the Property, and shall not cause to occur upon, on, or about the Property, or use the Property to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. NJIC shall provide the City with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence NJIC receives from, or provides to, any governmental unit or agency in connection with NJIC's handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance in or about the Property.
- D. If either party violates any of the terms of this section concerning the presence or use of any Hazardous Substance or the handling or storing of hazardous wastes, such party promptly shall take such action as is necessary to mitigate and correct the violation. If NJIC does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in its place, to come onto the premises, and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the City determines that NJIC is in violation of any Law or Regulation, or that NJIC's actions or inactions present a threat of violation or a threat of damage to the Property, the City reserves the right to enter onto the Property and take such corrective or mitigating action as the City

deems necessary. All costs and expenses incurred by the City, where an actual violation had or would have occurred, shall become immediately due and payable by NJIC upon presentation of an invoice therefore by the City.

#### 14. INDEMNITY/WAIVER

- A. To the fullest extent permitted by law, NJIC shall indemnify, hold harmless, and, at the City's option, defend the City from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees or other liability, for death or injury to any person or damage to property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent act or omission of NJIC, including its agents, its employees, independent contractors, concessionaires, and patrons, in or about the Property. Employees of the City or the City who are guests of NJIC shall be considered members of the general public.
- B. If the City, pursuant to the provisions of this section, exercises their option to require NJIC to defend them, then NJIC may participate in said defense for the purpose of ensuring that the attorney's fees and costs of defense are reasonable and necessary.

#### 15. SURVIVAL

NJIC's responsibilities contained in this Agreement, Section 14 INDEMNITY/WAIVER, shall survive the expiration or termination of this lease.

#### 16. INSURANCE

- A. NJIC, throughout the Term of this Agreement, shall:
  - i. Maintain public liability insurance against claims for bodily injury, personal injury, or death or damage to property occurring upon, in, or about the Property in a minimum amount of Two Million Dollars (\$2,000,000) combined single limit per occurrence, and not less than Five Million Dollars (\$5,000,000) in the aggregate. The coverage shall be in the nature of Broad Form Commercial General Liability coverage and shall specifically include, at minimum, the following types of coverage: (i) Premises Operations; (ii) Product Completed Operations Hazard; (iii) Broad Form Contractual Insurance; (iv) Independent Contractors; (v) Comprehensive Form; (vi) Broad Form Property Damage; and (vii) Personal Injury.
  - ii. Maintain worker's compensation coverage in a minimum amount at no times less than as required by the workers compensation laws of the State of Utah.
- B. All insurance policies required under this section shall:

- i. Be issued by insurers of recognized responsibility, licensed or permitted to do business in the State of Utah. Insurance is to be placed with insurers with an AM Best rating of no less than an A- Carrier, with a rating of VII or higher.
  - ii. Provide that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, or otherwise materially altered, without at least thirty (30) days' prior written notice by certified mail, return receipt requested, to the City. Certificates evidencing such shall be submitted to the City upon execution of this Agreement.
- C. All public liability policies maintained under this section shall include the City and their respective employees, officers, officials, agents, volunteers, and assigns as primary insured. Any reference to the City, either in the provisions of this section or in any policies provided pursuant to this Agreement, shall be deemed to include the City and the City's employees, officers, officials, agents, volunteers, and assigns.
- D. The coverage provided by the insurance policies maintained under this section shall be primary insurance with respect to the City, and the City's employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City and/or City employees, officers, officials, agents, volunteers, and assigns shall be in excess of NJIS's insurance and shall not contribute to or with it. Accordingly, underwriters shall have no right of recovery or subrogation against the City or City employees, officers, officials, agents, volunteers, and assigns, it being the intent of the Parties that the insurance policies maintained under this section shall protect all Parties and be primary coverage for any and all losses covered by the insurance.

## **17. FORCE MAJEURE**

If either party to this Agreement is prevented from performing its obligations under the terms of this Agreement due to the acts of third parties, other than those hired by or affiliated with the City or NJIC, an Act of God, or some other force majeure, it is hereby stipulated that no claim shall be made against the other party for damages.

## **18. BREACH BY NJIC**

The following acts and omissions shall constitute a default and material breach of this Agreement:

- A. NJIC's violation of any material condition, representation, warranty, covenant, provision, or obligation on its part contained in this Agreement, where such default or deficiency in performance was not remedied within fifteen (15) days of receipt of written notice of such violation or deficiency.

- B. NJIC's failure to pay to the City, when due, the Rental Payments and Fees, or any other amounts due under this Agreement.

**19. BREACH BY CITY**

The following acts and omissions shall constitute a default and material breach of this Agreement by the City:

- A. The City's violation of any material condition, warranty, representation, covenant, or provision of this Agreement, where such default or deficiency in performance was not remedied within fifteen (15) days of receipt of written notice of such default or deficiency.

**20. NOTICE AND REMEDIES FOR BREACH**

- A. In the event either party fails to perform any obligation required by this Agreement, whether imposed by law, ordinance, regulation, or otherwise, or violates any provision of this Agreement, the other party shall notify the breaching party of such failure or violation and, except where impracticable, shall provide the other with a reasonable period to correct, remedy, or cease such failure or violation, which period shall not exceed fifteen (15) days after the date of such notice, unless the nature of the notified party's obligation is such that more than fifteen (15) days is reasonably required for its performance, in which case the notified party shall not be in default, if, within such fifteen (15) day period, it commences the activity necessary to enable it to perform, and thereafter diligently undertakes such activity to its completion. Nothing in this Agreement shall enable NJIC to avoid liability for interest on any delinquent payments due to the City.
- B. After expiration of the cure period provided in Subsection 20(A) above:
  - i. In the event NJIC fails to correct, remedy, or cease such breach or violation within the time specified in the City's notice, the City may, at the City's sole option, terminate this Agreement; reenter the Property; lease and license others to use the Property; and receive rent and license fees therefore as if this Agreement had not been made. The City shall also have such other remedies as may be available to it, which shall include, without limitation, the right to injunctive relief to restrain any breach or violation, and the right to invoke any remedy allowed by law or in equity, including the right to money damages and consequential damages, but not including punitive damages. The City shall take reasonable measures to mitigate any damages.
  - ii. In the event the City fails to correct, remedy, or cease such breach or violation within the time specified in NJIC's notice, NJIC's sole remedy shall consist of the right to injunctive relief to restrain any breach or violation and/or specific performance.

- C. At any time after the Term of this Agreement, the City may remove from the Property. Any items removed by the City pursuant to this section shall be returned to NJIC at NJIC's cost, if any.
- D. The rights and remedies given to the Parties in this Agreement are distinct, separate, and cumulative remedies, and none of them, whether or not exercised by the party, shall be deemed to be in exclusion of any of the others provided herein or by law or equity.
- E. The provisions of this section shall survive the termination of this Agreement.

**21. NOTICES**

- A. Unless otherwise provided in this Agreement, all notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by telecopy (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective Parties listed below. Notice shall be deemed delivered upon receipt or refusal to accept delivery at the addresses specified in this section, but each party may change its address by written notice given in accordance with this section.

To NJIC:                      North Jordan Irrigation Company  
   Attn: Larry Wiley  
   4788 S. Hidden Cove Drive  
   Taylorsville, Utah 84123

To the City:                      West Valley City  
   Attn: City Manager  
   3600 Constitution Boulevard  
   West Valley City, Utah 84119

**22. ASSIGNMENT BY NJIC**

This Agreement may be assigned or transferred by NJIC only with the prior written permission of the City, which may be withheld in the City's sole discretion.

**23. ASSIGNMENT BY CITY**

Upon written notice to NJIC, the City may assign any and all obligations and rights that it may have under this Agreement.

**24. ATTORNEY'S FEES**

In the event there is a default under this Agreement, and it becomes reasonably necessary for either party to employ the services of an attorney in connection with the litigation or arbitration of a default, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing or in terminating this Agreement.

**25. ENTIRE AGREEMENT**

This Agreement, including all exhibits attached hereto and all other documents incorporated herein by reference, contains the entire agreement between the Parties, and no statement, promise, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified, or altered, except in writing signed by both Parties.

**26. CONSTRUCTION OF AGREEMENT**

This Agreement is the result of the joint efforts and negotiations of the Parties and all of the Parties assume joint responsibility for the form and of the contents of this Agreement.

**27. APPLICABLE LAWS**

This Agreement shall be construed under and in accordance with the laws of the State of Utah and the laws of the United States of America. The venue for all actions related to this Agreement shall be Salt Lake County, Utah.

**28. AMENDMENT**

No amendments, modifications, or alterations of the terms of this Agreement shall be binding unless the same be in writing, date subsequent to the date of this Agreement, and duly executed by the Parties hereto.

**29. SEVERABILITY; NON-WAIVER**

- A. The illegality or unenforceability of any of the provisions of this Agreement shall not render the remainder unenforceable.
- B. Waiver by the City or NJIC of any Term of this Agreement in any specific circumstance shall not be deemed a waiver in any subsequent circumstance.

**10. NO JOINT VENTURE**

This Agreement is not intended to create an agency or joint venture relationship between NJIC and the City.

**31. DISCRIMINATION PROHIBITED**

NJIC, in its policies with respect to the use and operation of the Property, shall comply with applicable federal, state, and local laws governing nondiscrimination in business and employment practices.

**32. EFFECTIVE DATE**

The terms, conditions, and obligations of this Agreement shall become effective upon the execution of this Agreement.

**33. MISCELLANEOUS OBLIGATIONS AND REPRESENTATIONS**

- A. NJIC agrees, pledges, and commits that it is duly organized, validly existing, and has the power and authority necessary to execute and deliver this Agreement and to perform its obligations hereunder; that this Agreement has been approved by all requisite action of its governing board; and that this Agreement is valid, binding, and enforceable against NJIC in accordance with its terms.
- B. The City hereby represents and warrants to NJIC that it has the power and authority to execute and deliver this Agreement; that this Agreement has been approved by all requisite action of its governing board; and that this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

*(Signatures follow on the next page.)*



## EXHIBIT A

### Description of the Property

Real property located at 3750 South 3600 West, West Valley City Utah. Further described as parcel # 15-32-276-039-000, consisting of 0.17 acres. Property Legal Description:

BEG S 89-55'22" W 1336.5 FT & N 159.75 FT FR E ¼ COR OF SEC 32, T 1S,  
R 1W, S L M; N 50 FT; S 44-57 '40" W 35.38 FT; S 89-55'20" W 169.94 FT; N  
64-30' W 65.8 FT; S 5341 FT M OR L; N 89-55'20" E 253.42 FT M OR L TO  
BEG. 0.173 AC 6099-2057