Ivins City Staff Report
City Council Meeting 2/2/2017

Agenda Item: Approval of revised agreement for the acquisition of an easement for the Kayenta Debris Basins project

Submitted by: Charles R. Gillette, P.E. Public Works Director/City Engineer

Recommended City Council Action:
Approve revised agreement for the acquisition of an easement for the Kayenta Debris Basins project

BACKGROUND:
The City Council has approved this agreement on December 15, 2016. Kayenta has requested that an additional provision be added to the agreement to address future sediment removals. The attached agreement shows the new language.

FINDINGS AND ANALYSIS:
Staff has reviewed the agreement and find the terms to be reasonable considering that the property is being donated at no cost.

SUPPORT MATERIALS:
- Revised Easement Agreement showing markup changes

FINANCIAL IMPACT:
None

Respectfully Submitted:

Charles R. Gillette, P.E., Public Works Director/City Engineer

Content Review:

Dale Coulam, City Manager

WHEN RECORDED, MAIL TO:

KARI JIMENEZ
IVINS CITY RECORDER
55 NORTH MAIN
IVINS, UT 84738

APN: I-7-1-24-3021, I-7-1-24-3400, I-78-1-24-310, I-7-1-24-311

EASEMENT AGREEMENT
For Kayenta Debris-Detention Basins

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into effective this ____ day of _____ 2016, by and between R Terry Marten (also known at R T Marten) of Ivins City, Canadian Capital Corporation of California, and Kayenta Homesites Incorporated of Utah ("Grantors"), and Ivins City, a Utah Municipality, ("Ivins").

Whereas, Grantors own property in the northwest area of Ivins City identified as Kayenta where property has been identified for the construction of flood debris and detention basins.

Whereas, Ivins City has received federal funding to support the construction of said debris and detention basins and desires to acquire a perpetual easement for its construction and maintenance as described on Exhibit A, Legal Description and generally depicted on Exhibit B, Easement Map. The proposed improvements are also depicted on Exhibit B.

Now, Therefore, in consideration of $10.00 and for other good and valuable consideration including the mutual agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree for themselves and their heirs, successors and assigns as follows:

1. Easement to Ivins City – Subject to the provision of this agreement, Grantors do hereby grant, convey, transfer and assign to Ivins and warrants to hold Ivins harmless against all claims by others, a non-exclusive perpetual easement per the attached exhibits for the purpose of installing, replacing, removing, protecting, repairing, inspecting and maintaining the proposed improvements.
2. Access – Ivins City shall be granted permission to access the proposed improvements using any improved fire access road per the previous fire access road agreement including all amendments between the City and R Terry Marten/Kayenta. The City shall not expand or widen any of these existing accesses without express consent from R Terry Marten/Kayenta.
3. Boundary – Ivins City shall not disturb any property outside of the boundary of the easement for the construction, operations and maintenance for the dam structures.
4. Minimize Disturbance – In addition, Ivins City shall not disturb natural landscaping outside of a boundary offset 3 feet from the proposed structure. Fencing shall be installed to prevent such disturbance and shall be inspected by the Grantors representative prior to any land disturbance.
5. Sediment Collection Area – Ivins City shall not disturb any property outside of the boundary of the sediment collection area for the removal of such sediments.

6. Landscaping – Ivins City will revegetate the dam structures with plant material per Exhibit XX~~compatible with dam safety standards~~. It is understood by all parties that irrigation of any plant materials will not be possible during revegetation or at any time in the future. Ivins City will continue to maintain the landscaping into perpetuity.
7. Operation and Maintenance of the Dam – The operations and maintenance of the dam and debris/detention basin will be in accordance with requirements imposed by NRCS (Natural Resource Conservation Service) rules and shall include the following activities: period inspections, removal of animal burrows, controlling and stabilizing erosion, repairs or replacements of inlet and outlet work. Any changes to the proposed improvements that might be needed or required, shall not be implemented until there has been a consultation and understanding achieved between the parties.
    a. Sediment Removal - Exhibit XX, identifies the sediment collection area which is defined by the elevation of the top of the culvert headwalls of each basin. The City will remove any accumulated sediment within one year of the sediment accumulating to more than 50 percent of the available volume in the area. While removing sediment, the City will not stockpile any sediment against the natural side slopes of the canyon above the sediment storage elevation or increase the disturbance of natural vegetation in any manner if it was not already disturbed by the deposition of sediments.
8. Stockpiling of Rock at 600 W 450 N – Ivins City acknowledges the need to stockpile rock removed from the fire access road and acknowledges that the rock may be temporarily stored at 600 West 450 North.
9. Flood Plain Study – Ivins City agrees to conduct a study to revise the flood plain downstream from the new debris/detention basins, and shall submit an application including the study to FEMA within 4 years of the completion of the improvements.
10. Covenants Run With Land – Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Grantor's property or the Easement Property to the extent that such portion is affected or bound by the easement, covenant or restriction in question, or to the extent that such easement, covenant or restriction is to be performed on such portion; and (c) shall benefit and be binding upon any person whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.
11. Limit on Benefit – The grant of the Easement to Ivins is limited in use for the benefit solely of Ivins and cannot be used by, or transferred for the benefit of, any other property. Nothing contained in the Easement Agreement shall be deemed a gift or dedication of any portion of the Easement Property to the general public.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement the day and year first above written.

IVINS CITY:

By:_____
Chris Hart, Mayor

Attest:

By:_____
Kari Jimenez, Ivins City Recorder

STATE OF UTAH
County of Washington

On this ___ day of _____, 20__, before me personally appeared Chris Hart and Kari Jimenez whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of Ivins City, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.

_____
Notary Public

GRANTORS:

By:_____
R Terry Marten or R T Marten

STATE OF UTAH
County of Washington

On this ___ day of _____, 20__, before me personally appeared R Terry Marten whose identity is personally known to or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

_____
Notary Public

CANADIAN CAPITAL CORPORATION

By:_____
Robert McJilton, Chief Executive Officer

STATE OF UTAH
County of Washington

On this ___ day of _____, 20__, before me personally appeared Robert McJilton whose identity is personally known to or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily on behalf of Canadian Capital for its stated purpose.

_____

Notary Public

KAYENTA HOMESITES INC.

By:_____
R T Marten, President

STATE OF UTAH
County of Washington

On this ___ day of _____, 20__, before me personally appeared Lance Anderson whose identity is personally known to or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily on behalf of Kayenta Homesites for its stated purpose.

_____
Notary Public