

APPENDIX D

Ordinance 5606 of the Municipal Code of the City of Glendale, CA

City of Glendale

ORDINANCE NO. 5606

AN ORDINANCE OF THE CITY OF GLENDALE AMENDING AND ADDING CERTAIN PROVISIONS TO THE GLENDALE MUNICIPAL CODE, 1995, RELATING TO TRESPASS AND RELATING TO OBSTRUCTING, IMPEDING OR INTERFERING WITH CITY BUSINESS

WHEREAS, the Glendale Municipal Code ("GMC") currently prohibits persons from remaining on any public park, playground, recreation facility, or recreation facility grounds; the Civic Center Square; or any library or library grounds; which are owned, operated, administered or maintained by the city after having been found to have violated any city rule or regulation where that person has been given a warning by authorized city personnel or a peace officer to cease the violation; and

WHEREAS, this trespass prohibition does not specifically prohibit trespass on property owned, operated, administered or maintained by either the Glendale Redevelopment Agency and/or the Glendale Housing Authority; and

WHEREAS, the GMC currently prohibits the obstruction, impeding, or interference with city business on city owned or controlled property, but the GMC does not specifically prohibit such conduct on Glendale Redevelopment Agency or Glendale Housing Authority owned or controlled property; and

WHEREAS, the Glendale Redevelopment Agency and the Glendale Housing Authority independently own, manage, control or operate numerous properties within the City of Glendale including, but not limited to, the Alex Theatre, The Greens open space in The Americana at Brand project, numerous parking lots, buildings, and vacant

lots or vacated buildings that are being held for future development as affordable housing sites; and

WHEREAS, the Housing Authority owned properties, particularly those properties held vacant or vacated pending future development have experienced and are currently experiencing incidents of trespass, vandalism, theft, squatting and debris dumping that could be better controlled if the GMC provisions prohibiting trespass on city owned, operated, administered or maintained property were extended to Housing Authority owned, operated, administered or maintained properties as well; and

WHEREAS, the Housing Authority's ability to effectively conduct its business would also be improved if the GMC provisions that prohibit obstructing, impeding or interfering with city business on city owned or controlled property were also extended to Housing Authority owned or controlled properties; and

WHEREAS, the Glendale Redevelopment Agency owns the open space in the center of The Americana at Brand project, which is set to open on May 2, 2008, and will be operated pursuant to a set of Rules and Regulations governing use, event calendaring, conduct and enforcement procedures that the developer is obligated to administer pursuant to a Declaration of Covenants, Conditions, Restrictions and Easements for The Americana at Brand between the Agency and the project developer;

and

WHEREAS, the Agency anticipates that The Americana at Brand project will attract numerous visitors from Glendale and from the Los Angeles County region

generally such that it will be imperative to maintain good order and safe conditions at the site from the day of opening with support from the Glendale Police Department; and

WHEREAS, unless the ordinance amending the GMC trespass prohibition and the prohibition against obstructing, impeding, or interfering with city business is considered as an urgency measure the ordinance will not take effect until thirty (30) days after its adoption which, will be twenty-nine (29) days after The Americana at Brand opens, and will be an additional thirty days within which additional trespass, vandalism and other deleterious activities can occur on Authority owned or controlled properties; and

WHEREAS, pursuant to Glendale City Charter Article VI, Section 7, the City Council may, upon a 4/5ths vote, adopt an urgency ordinance upon the declaration by the City Council that the ordinance is necessary as an emergency measure for the immediate preservation of the public peace, health or safety.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE:

SECTION 1. The City Counsel hereby finds and determines as follows:

(A) All the recitals herein above are true and correct and area hereby incorporated herein by this reference.

SECTION 2. Section 9.20.070 of the Glendale Municipal Code, 1995 is hereby amended to read as follows:

9.20.070 Trespasses upon private property prohibited.

A. 1. No person shall remain upon any private property or business premises, after being notified by the owner, owner's agent, lessee, or by a peace officer acting at the request of the owner or owner's agent to remove there from. For purposes of this section a lessee includes a tenant in lawful possession of real property.

2. The owner or the owner's agent may make a single written request for a peace officer's assistance when the peace officer's assistance in dealing with a trespass is requested. However, such single written request shall cover a limited period of time not to exceed ninety days and identified by specific dates and times. During such times and dates, a peace officer may act to remove a trespasser as set forth herein without the necessity of the owner or the owner's agent making a separate request on each occasion when the peace officer's assistance in dealing with a trespass is requested.

B. No person, without permission, expressed or implied, from the owner, owner's agent or lessee, shall enter upon such private property or business premises after having been notified by the owner, owner's agent or lessee to keep off or keep away there from.

C. No person shall enter or remain upon posted property without the permission, expressed or implied, of the owner, owner's agent, tenant or lessee of such posted property or premises.

D. Exceptions. This section shall not apply in any of the following circumstances.

1. Where its application results in or is coupled with acts prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of color, race, religion, creed, ancestry or national origin;

2. Where its application results in, or is coupled with, any act prohibited by Section 365 of the Penal Code of the state of California or any other provision of law relating to duties of innkeepers and common carriers;

3. Where its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities;

4. Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech, but not limited to peaceful expressions of political or religious opinions; or

5. Where the person who is upon another's private property or business premises is there under claim or color of legal right. This exception is applicable, but not limited to, the following types of situations involving disputes wherein the participant or participants have available to them practical and effective civil remedies; marital and post-marital disputes; child custody or visitation disputes; disputes regarding title to or rights in real property; landlord/tenant disputes; disputes between members of the same family or between persons residing upon the property with an interest in the dispute; employer-employee disputes; business-type disputes such as those between partners; debtor/creditor disputes; and instances wherein the person claims a right to be present pursuant to order, decree or other process of a court of competent jurisdiction.

E. Trespass Upon Public Property Prohibited. No person shall remain upon any public park, playground, recreation facility, recreation facility grounds, or open space, including The Americana at Brand open space, vacant or developed lot or parcel; the Civic Center Square; or any library or library grounds; which are owned, operated, administered or maintained by the city, redevelopment agency or housing authority after having been found to have violated any city, redevelopment agency, or housing authority rule or regulation, where that person has been given a warning by authorized city, redevelopment agency or housing authority personnel or a peace officer to cease the violation, and where that person continues the violation after the giving of the warning and after being notified by authorized city, redevelopment agency or housing authority personnel, or by a peace officer, to remove there from.

F. Banning From Public Property for Violation of Rules or Regulations. Any person who has been found by authorized city, redevelopment agency or housing

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authority personnel, or by a peace officer, to have violated any rule or regulation of the city, redevelopment agency or housing authority, or any department thereof, may be banned by said personnel, in accordance to the procedures and for the time set forth in the rules and regulations, from any city, redevelopment agency or housing authority owned or controlled public park, playground, recreation facility, recreation facility grounds, or open space, including The Americana at Brand Open Space, vacant or developed lot or parcel; the Civic Center Square; or any library or library grounds; providing that said violation of the rule or regulation relates to the facility from which the person has been banned.

G. **Entering or Remaining on Public Property After Being Banned.** No person shall enter or remain upon any city, redevelopment agency or housing authority owned or controlled public park, playground, recreation facility, recreation facility grounds, or open space, including The Americana at Brand open space, vacant or developed lot or parcel; the Civic Center Square; or any library or library grounds after having been banned there from.

1. **Exceptions.** This section shall not apply in any of the following circumstances:

a. Where its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities;

b. Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech, including, but not limited to, peaceful expressions of political or religious opinions;

c. Where its application would result in an interference with or inhibition of any exercise of a statutory right;

d. Where it is necessary for the person to enter the city, redevelopment agency or housing authority owned or controlled property from which that person has been banned in order to conduct city, redevelopment agency or housing authority related business in which case the person may enter the city, redevelopment

agency or housing authority owned or controlled property and remain only as long as is necessary to conduct the city, redevelopment agency or housing authority business.

SECTION 3. Section 9.20.100 of the Glendale Municipal Code, 1995 is hereby amended to read as follows:

Section 9.20.100 Obstructing, Impeding or Interfering with city, redevelopment agency, or housing authority business.

A. No person or group of persons shall, at any time, obstruct, impede or interfere in any way whatsoever with the regular course of city, redevelopment agency or housing authority business by, including but not limited to, walking, gathering, sitting, standing or lying on any city-owned or controlled property, or any redevelopment agency owned or controlled property, or any housing authority owned or controlled property, or attempt to do same.

B. No person or group of persons shall, at any time, on any city, redevelopment agency or housing authority property, obstruct, impede or interfere with the access of any person or persons to any city, any redevelopment agency or any housing authority office, facility or personnel while such personnel are engaged or occupied in municipal, redevelopment agency or housing authority duties by, but not limited to, walking, gathering, sitting, standing or lying on any city-owned or controlled, or any redevelopment agency owned or controlled, or any housing authority owned or controlled property, or attempt to do same.

C. "City business" means and includes all or any part of the operation of all municipal pursuits and functions, both governmental and proprietary, through all the various city offices and divisions by all city personnel, including appointed officials as well as employees.

D. "Redevelopment Agency business" means and includes all or any part of the operation of all redevelopment agency pursuits and functions, both governmental

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and proprietary, through all the various redevelopment agency offices and divisions by all redevelopment agency personnel, including appointed officials as well as employees.

E. "Housing Authority business" means and includes all or any part of the operation of all housing authority pursuits and functions, both governmental and proprietary, through all the various housing authority offices and divisions by all housing authority personnel, including appointed officials as well as employees.

SECTION 4. By making the findings of the hereinbefore findings of fact, which facts are hereby declared to constitute an urgency, for the immediate preservation of the public health, safety or welfare, this Ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption.

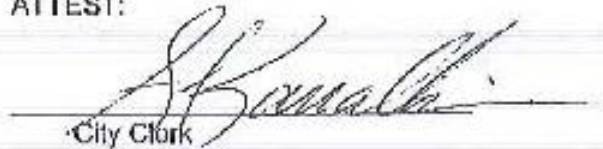
SECTION 5. The City Clerk shall certify as to the passage of this Ordinance and cause the same to be published in the Glendale Newspress, consistent with requirements of applicable State and local law.

Adopted this 29th day of April, 2008.



Mayor

ATTEST:



City Clerk

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) SS

I, ARDASHES KASSAKHIAN, City Clerk of the City of Glendale, certify that the foregoing urgency Ordinance No. 5606 was adopted by the Council of the City of Glendale, California, at a regular meeting held on the 29th day of April, 2008, and that same was adopted by the following vote:

Ayes: Najarian, Quintero, Weaver, Yousefian, Drayman

Noes: None

Absent: None

Abstain: None



City Clerk

APPROVED AS TO FORM


General Counsel - Redevelopment Agency
Date: 4/29/08

ENCROACHMENT PERMIT AGREEMENT FOR THE OPERATION AND
MAINTENANCE OF THE CVWD INTERCEPTOR SEWER FOR THE CONVEYANCE
OF WASTEWATER IN THE PUBLIC RIGHT-OF-WAY

THIS ENCROACHMENT PERMIT AGREEMENT ("Agreement") is made and entered into this 17th day of November, 2005 by and between the CITY OF GLENDALE, a municipal corporation, hereinafter referred to as "CITY," and CRESCENTA VALLEY WATER DISTRICT, a political subdivision of the state of California, hereinafter referred to as "PERMITTEE," collectively, the "PARTIES."

WITNESSETH:

WHEREAS, PERMITTEE is engaged in providing wastewater services to its subscribers in the La Crescenta and La Canada-Flintridge areas; and

WHEREAS, CITY is the owner of all public rights-of-way including but not limited to the streets within the CITY ("Premises"); and

WHEREAS, effective April 22, 1980, the Glendale City Council approved an agreement between CITY and PERMITTEE providing for the treatment, transportation and disposal of wastewater, and said agreement was subsequently amended November 7, 1980 and January 17, 1984 (collectively, the "JPA Agreement"); and

WHEREAS, said JPA Agreement provided PERMITTEE with an established amount of treatment capacity in the Los Angeles-Glendale Water Reclamation Plant (the "Plant") and Los Angeles' Hyperion System; and obligated PERMITTEE to reimburse CITY for PERMITTEE's portion of operation and maintenance charges plus the cost of CITY's administration of the JPA Agreement; and

WHEREAS, pursuant to the JPA Agreement, PERMITTEE conveyed wastewater through its wholly-owned connecting sewer pipeline known as the "CVWD Interceptor Sewer" across the CITY's Premises to a point generally located above the headworks at the Plant for treatment and disposal; and

WHEREAS, in July 2003, Glendale entered into an amalgamation wastewater treatment agreement ("Amalgamation Agreement") with the City of Los Angeles which radically changed the methodology by which wastewater treatment costs are calculated and as a result, said JPA Agreement with PERMITTEE required substantial modification or termination; and

WHEREAS, on November 7, 2002, in anticipation of the change in methodology for PERMITTEE's wastewater treatment costs, CITY gave PERMITTEE a one-year notice to amend the JPA Agreement and, in the alternative, a two-year notice to terminate the JPA Agreement; and

WHEREAS, PERMITTEE chose to directly negotiate with the City of Los Angeles for treatment and disposal of its wastewater rather than amend the JPA Agreement and therefore, the JPA Agreement expired November 7, 2004; and

WHEREAS, PERMITTEE subsequently negotiated and approved an agreement with the City of Los Angeles for future treatment and disposal of its wastewater; and

WHEREAS, CITY initiated a lawsuit against PERMITTEE entitled City of Glendale v. Crescenta Valley Water District Case No. BC039037 for the recovery of unpaid invoices owed to CITY by PERMITTEE under the JPA Agreement; PERMITTEE cross-complained against CITY claiming entitlement to certain offsets and credits; and PERMITTEE initiated a lawsuit against CITY entitled Crescenta Valley Water District v. City of Glendale Case No. BC317366 seeking declaratory relief and CITY cross-complained against PERMITTEE for declaratory relief, inverse condemnation and indemnification; and

WHEREAS, as a part of an overall settlement to the aforementioned disputes, the PARTIES determined that it is in the public interest to enter into this Agreement for the issuance of an Encroachment Permit to PERMITTEE, subject to the restrictions, terms, and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the PARTIES hereto and each of them do agree as follows:

1. Grant, Term and Payment.

- a. Scope of Grant. CITY hereby grants an encroachment permit ("Encroachment Permit") to PERMITTEE for permission to operate and maintain the CVWD Sewer Interceptor, in its present and existing location and size, for conveyance of wastewater under, along, across or upon the Premises of CITY in the manner provided herein. The PARTIES agree to execute any and all other documents reasonably necessary to carry out the purposes of this Agreement. PERMITTEE agrees to operate and maintain PERMITTEE's connecting sewer without cost to CITY. PERMITTEE agrees to reimburse CITY for all costs incurred by CITY caused by PERMITTEE's use of its connecting sewer.
- b. Limitation of Uses. The rights granted by this Agreement are granted based solely upon PERMITTEE's wastewater uses. Any other proposed uses such as telecommunications or other non-wastewater system uses must be approved in advance by CITY under an ordinance wherein CITY reserves the right to charge full, reasonable, and competitively neutral compensation for the use of the CITY's rights-of-way and/or to impose other lawful requirements.
- c. Definitions. For the purposes of this Agreement, the following words shall have the meanings ascribed to them, unless otherwise noted:
 - (i) "CVWD Sewer Interceptor" or "Facilities" means PERMITTEE's wastewater conveyance facilities composed of but not limited to pipes, pipelines, traps, vents, vaults, manholes, appurtenances and any other of PERMITTEE's property located in, upon, along, across, under or over the streets of CITY, and used in the conveyance of PERMITTEE's wastewater, all as legally described in Exhibit A and as located in the public rights-of-way map shown in Exhibit A, exhibit is attached hereto and by this reference incorporated herein.

- (ii) "Premises" means all CITY streets, alleys and public rights-of-way occupied or affected by the CVWD Sewer Interceptor.
- d. Term. Upon approval of the Glendale City Council, the term of this Agreement is unlimited; unless terminated by operation of this Agreement or by law.
- e. There will be a one time Encroachment Permit Fee at the prevailing rate at the time this Agreement is executed by both Parties. There shall be no periodic fees charged by CITY to DISTRICT for this Agreement.
2. Default. Should PERMITTEE at any time fail, neglect or refuse to comply with or to fulfill any one or more of the terms or conditions of this Agreement or any obligation which may be imposed on PERMITTEE by reason of the grant of an Encroachment Permit, and shall not within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then CITY shall have cause and may, upon notice and opportunity to be heard, commence an action to revoke the Encroachment Permit; provided however, that if such failure of compliance or fulfillment shall be due to a cause of Force Majeure as set forth in Section 34 herein, then the Encroachment Permit shall not be so revoked. The right of CITY to revoke or terminate the Encroachment Permit pursuant to the terms of this Section 2 shall be in addition to all other rights and remedies which may otherwise accrue to the City by reason of any failure or refusal of PERMITTEE to perform any obligation imposed by the terms of this Agreement.
3. Street Excavations--General. Unless otherwise prohibited, PERMITTEE shall have the right, subject to the provisions of this Agreement and existing or future CITY regulations, to make all necessary excavations in the streets for the operation, maintenance and use of the CVWD Sewer Interceptor. PERMITTEE shall comply with the provisions of any ordinance or law that may be or become in force at the time, requiring permits to be obtained and/or fees to be paid for such permits before such work can be done.
4. Excavations
- a. Before any excavation work may be commenced for the installation, replacement or relocation of any of PERMITTEE's Facilities, PERMITTEE shall file with the Director of Public Works complete plans showing the proposed locations of PERMITTEE's Facilities. Such locations shall be subject to the approval of the Director of Public Works which shall not be unreasonably withheld, who shall have the power to require changes to avoid interference with sewers, pipes, conduits or other structures lawfully in or under the Premises. All such construction work shall be subject to the inspection of the City Engineer and done to his or her satisfaction.
- b. Work may commence only upon the issuance of applicable permits by CITY, which permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by PERMITTEE for the protection of its Facilities, CITY's property or other persons or property, PERMITTEE may proceed without first obtaining the normally required permits. In such event PERMITTEE must: (1) take all necessary and prudent steps to protect, support,

and keep its facilities safe from harm, or any part thereof; CITY's Premises or any other public property; or other persons or property, and to protect the public health and safety; and (2) immediately thereafter, must obtain the required permits and comply with all conditions of said permit.

- c. Unless such condition or regulation is in conflict with a state or federal requirement, CITY may condition the granting of any permit or other approval that is required under this Agreement, in any manner the Director of Public Works deems necessary for the safe use and management of the public rights-of-way or CITY's Premises or property including, by way of example and not limitation, bonding, insurance, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any rights-of-way improvements, private facilities and public safety.
- d. All excavations shall be so made as not to interfere unreasonably with the free use of the Premises by the public except such temporary interference as may be authorized by the Director of Public Works. Any damage or injury suffered by any person by reason of any excavations being improperly guarded during such work shall be borne by the PERMITTEE and PERMITTEE shall indemnify, defend and hold CITY harmless for same.
- e. Traps and manholes shall at all times be kept flush with the surface of the street and shall not interfere with the use of the street for travel, and shall otherwise be constructed and maintained in conformity with law, provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line. All such vents extending above the surface shall be subject to review and approval by the Director of Public Works, which review and approval shall not be unreasonably withheld, prior to construction or installation of same.
- f. All portions of the Premises which have been excavated or otherwise injured thereby shall be repaired and restored to the satisfaction of the Director of Public Works and in the manner prescribed by ordinances, rules, regulations, standards and policies that may be in force at the time of the performance of the work. PERMITTEE shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during PERMITTEE's work.
- g. PERMITTEE acknowledges that it is presently a member of "Underground Service Alert of Southern California" and agrees to maintain and keep current its membership in said organization throughout the term of this Agreement.

5. PERMITTEE shall maintain and operate all pipes and appurtenances in accordance with and in conformity with all applicable state and federal regulations heretofore or hereafter adopted by the Glendale City Council in the exercise of its police powers, provided, however, that in the event any such ordinances, rules or regulations compromises the material terms of this Agreement in the opinion of

PERMITTEE, the process set forth in Paragraph 36 herein may be invoked. PERMITTEE shall comply with all applicable federal, state or local laws and regulations, including but not limited to, the user charge provisions of the Federal Water Pollution Control Act. PERMITTEE shall require all persons, firms, corporations or agencies discharging wastewater to PERMITTEE to comply with all applicable laws and regulations.

6. Public Nuisance. In the event PERMITTEE fails to perform any or all of the obligations of this Agreement, such failure shall be conclusively presumed to constitute a public nuisance.
7. Repairs. Should any of the Premises be damaged by PERMITTEE or its Facilities for any reason including leaks in any pipes and appurtenances maintained or operated by PERMITTEE pursuant to this Agreement, or by reason of any other cause arising from the operation or existence of the CYWD Sewer Interceptor and its appurtenances, PERMITTEE shall, at its own cost and expense, immediately repair all such damage (including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support) and restore the Premises under the direction of the City Engineer and to the reasonable satisfaction of the City Engineer. All re-paving, resurfacing and repair work shall be in accordance with the standards, codes and laws established by the CITY and the Public Works Division.
8. CITY Liability for Repairs. Should any of PERMITTEE's Facilities be damaged by CITY or anyone acting by permission of CITY, CITY shall pay to repair all such damage and restore the Facilities, and shall be responsible for any resulting damages to third parties or fines.
9. CITY In the event PERMITTEE defaults or fails to perform any of its obligations under this Agreement within a reasonable period after delivery of written notice of such failure and should CITY perform any work including, but not limited to, repairing or maintaining PERMITTEE's improvements over, under or across the Premises, CITY shall only be obligated to perform such work in a manner consistent with the standard practices of CITY in performing street work and construction. CITY shall not be obligated to repair or replace any materials, improvements or Facilities in a form or manner consistent with Exhibit A, or any plans and specifications, and CITY shall not be responsible for any damages as a result of CITY performing such work, including, but not limited to, severance damages. In such event, PERMITTEE shall reimburse CITY for its full costs, including allocated overhead, of any work performed by CITY pursuant to this Section 9.
10. Incident and Emergency Response.
 - a. PERMITTEE shall, after being notified of an emergency, cooperate with CITY and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

- b. PERMITTEE shall provide CITY with copies of incident reports of all spills or overflows that PERMITTEE submits to any State, County or Federal Agency.
- c. As a condition of approval of this Agreement, PERMITTEE shall promptly submit to CITY its disaster preparedness plan, including any Sanitary Sewer Overflow Response Plan; and thereafter submit to CITY any updates to said plans as soon as same are available. As part of said Response Plan, PERMITTEE shall clearly outline how PERMITTEE shall respond to any sewer overflows.

11. Relocation.

- a. Should the Director of Public Works determine that it is reasonable and necessary that the CVWD Sewer Interceptor, PERMITTEE's Facilities or appurtenances thereof be relocated or protected due to vacation of the Premises or, be abandoned, temporarily or permanently disconnected, temporarily or permanently removed therefrom, temporarily or permanently relocated therein, or abandoned and substitute facilities installed in such Premises in order that CITY, or other governmental agency or instrumentality, when acting in a governmental capacity only, may relocate, change grade, construct, use, maintain, or change any street improvement, the Director of Public Works shall give notice, in writing, to PERMITTEE. Said notice shall state the determination of the Director of Public Works, identify PERMITTEE's properties affected thereby, and describe the work to be done to said properties and designate the new location when required.
- b. Within thirty (30) days after the service of said notice upon PERMITTEE, or upon the local manager or agent of PERMITTEE, PERMITTEE shall begin and diligently prosecute the designated work to completion and shall bear the entire cost and expense, and, upon failure to do so, the Director of Public Works may cause the work described in said notice to be completed, and PERMITTEE shall immediately pay for the same upon presentation of an itemized account of cost thereof. PERMITTEE shall not be required to bear the expense of any removal or relocation made at the request of CITY on behalf or for the benefit of any private developer or other third party.
- c. In the event that all or part of PERMITTEE's facilities are required to be abandoned or permanently removed from the street or portion thereof affected, the Director of Public Works shall designate such conditional streets or portions thereof as may be necessary to permit the installation of substitute facilities. PERMITTEE shall be subject to the abandonment provisions of Section 12.08.190B of Glendale Municipal Code, 1995, and as may subsequently be amended.

12.

In the event of the permanent discontinuance of the use of the CVWD Sewer Interceptor, PERMITTEE's facilities, or any portion thereof, maintained or operated pursuant to this Agreement, PERMITTEE shall, within thirty (30) days thereafter make written application to the Director of Public Works for instructions as to the disposal to be made of such facilities. Such application shall describe said

facilities and shall be accompanied by a map designating its location with respect to street lines and pavements. The Director of Public Works shall, within sixty (60) days of the receipt of such application, order said facilities to be removed, or, upon request of the PERMITTEE, permit said facilities to be abandoned in place; provided however, that if the Director of Public Works shall determine that such removal will materially injure or shorten the life of the remaining portion of the pavement, said facilities shall be required to be abandoned in place. Should the Director of Public Works permit the abandonment of said facilities, same shall be capped, plugged, or otherwise abandoned in such manner as may be prescribed by the Director of Public Works consistent with state law.

13. Title, Successors. PERMITTEE hereby acknowledges the title of CITY or any other public agency having jurisdiction, in and to the Premises and covenants and agrees never to assail, contest or resist said title. The terms, covenants, agreements, conditions, limitations and restrictions herein contained shall be binding upon the heirs, assigns and successors in interest of PERMITTEE and all persons who may occupy or have the right to possession of the adjacent real property of PERMITTEE.
14. Faithful Performance Bond. In the event that the CITY Engineer finds it necessary by reason of failure of PERMITTEE to prevent discharge of wastewater from its facilities or defaults from the terms of this Agreement in any way that would cause a public nuisance or damage to CITY property, PERMITTEE shall, within five (5) days from the date of notice thereof, file with the City, and at all times thereafter maintain in full force and effect, a corporate surety bond acceptable to the City Attorney, in duplicate, in the amount of not less than One Million Dollars (\$1,000,000) until such time as the CITY Engineer relieves PERMITTEE from the need to maintain such surety bond. The bond shall expire after one year, unless at the end of the year the CITY Engineer reasonably requires its renewal. Said bond shall be conditioned that in the event PERMITTEE fails to comply with any one or more of the provisions of this Agreement, including but not limited to excavations and repairs, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by CITY as a result thereof, or until PERMITTEE has liquidated all of its obligations with CITY that may have arisen from the acceptance of this Agreement by PERMITTEE or from its exercise of any privilege herein granted. Neither the provisions of this Section 14, any bond accepted by CITY pursuant thereto, nor any damages recovered by CITY hereunder shall be construed to excuse faithful performance by PERMITTEE or limit the liability of PERMITTEE under this Agreement or for damage, either to the full amount of the bond or otherwise.
15. Insurance.
 - a. At its own expense, PERMITTEE shall obtain, pay for and maintain during the life of the Agreement an "occurrence" policy for Commercial General Liability (including Contractual Liability) and for Automobile Liability which shall protect it and CITY from claims for injuries and damages arising out of the operations of PERMITTEE. The policy shall add the City of Glendale, its officers, agents and employees as additional insureds under the policy in the following amounts:

- b. Commercial general or excess liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence for personal injuries, including accidental death, to any one person; property damage insurance in an amount not less than Ten Million Dollars (\$10,000,000); and
- c. Automobile liability or excess liability insurance covering all vehicles (whether rented, leased, hired, scheduled, owned or non-owned), in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence for personal injuries, including accidental death, to any one person; property damage insurance in an amount not less than Ten Million Dollars (\$10,000,000), or combined single limit of insurance in an amount not less than Ten Million Dollars (\$10,000,000).
- d. Pollution Liability (Environmental), if commercially available at a commercially reasonable price, covering all operations in an amount not less than Ten Million Dollars (\$10,000,000) for each accident covering all operations including but not limited to bodily injury and property damage arising out of the actual, alleged or threatened sudden and accidental discharge, dispersal, seepage, migration, release or escape of pollutants. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, fuels, lubricants and other operating fluids and waste. "Waste" includes materials to be recycled, reconditioned or reclaimed. Coverage shall, at a minimum, cover the following:
- (1) At or from any premises, site or location which is or was at any time owned or occupied by, rented, permitted, or loaned to any insured;
 - (2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom PERMITTED may be legally responsible;
 - (4) Any loss, cost or expense arising out of any:
 - (i) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
 - (ii) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.
 - (5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations.
 - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

- (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.
- d. At all times, the insurance company (ies) issuing said policies shall be an "admitted" insurer(s) in the State of California. Alternatively, such insurance company (ies) shall be authorized to do business in the State of California. In either case, such insurance company (ies) shall carry an A.M. Best & Company minimum rating of "A:VII."
- e. All policies shall contain a "Primary Coverage" clause and a "Severability of Interest" clause for any loss arising out of or caused by PERMITTEE's performance of its obligations.
- f. PERMITTEE shall deliver to CITY a "certificate of insurance" and an "additional insured endorsement," both documents countersigned by the insurance carrier(s) or its authorized representative, or forms satisfactory to the City Attorney, which set forth the above provisions. In addition, the certificate of insurance shall contain a statement of obligation on the insurance carrier's part, or its authorized representative, to notify CITY, by registered mail, at least thirty (30) days in advance of any policy cancellation, termination or reduction in the amount of coverage.
- g. The countersigned certificate, along with the additional insured endorsement, shall state: The City of Glendale, its officers, agents and employees are named as additional insureds under this policy. This insurance is primary to the coverage of the City of Glendale. Neither City nor any of its insurers shall be required to contribute to any loss. This insurance applies separately to each insured.
- h. Any deductibles or self-insured retentions shall be set forth on the certificate and shall be subject to CITY's review and approval. PERMITTEE shall deliver to CITY the required certificate(s) of insurance and endorsement(s) as a condition of granting this Agreement.
- i. PERMITTEE's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which CITY may terminate or suspend this Agreement.
- j. If PERMITTEE fails to maintain required insurance, CITY, in its sole discretion, may obtain PERMITTEE's insurance, and CITY may pay all or part of the premiums, but only after PERMITTEE has had thirty (30) business days from date notice from CITY is sent to PERMITTEE of CITY's intent to obtain insurance for PERMITTEE to remedy the breach. Upon demand, PERMITTEE shall repay CITY all monies paid to obtain said insurance.
16. **CITY's Right to Audit and Inspect Property and Records.** At all reasonable times, PERMITTEE shall permit the Director of Public Works to examine all Encroachment Permit facilities of PERMITTEE constructed, installed, maintained, or operated pursuant

to this Agreement, together with any appurtenant properties or facilities of PERMITTEE, whether such property be situated within or without CITY, and to examine any and all books, accounts, papers, maps and other records kept or maintained by PERMITTEE or under its control pertaining to the operations, affairs, transactions, property or financial condition of PERMITTEE with respect thereto and to transcribe, record or copy same. If any of the books, accounts, papers, maps or other records referred to in this Section 16 are kept outside CITY and if the Director of Public Works shall reasonably determine that an examination thereof is necessary or appropriate to the performance of any of his or her duties, then all reasonable expenses necessarily incurred in making such examination shall be paid by PERMITTEE. In order to verify compliance with the provisions requiring wastewater standards, a representative of CITY accompanied by a representative of PERMITTEE shall at all reasonable times have the right to enter the territorial boundaries of PERMITTEE to inspect, test or otherwise investigate PERMITTEE's wastewater facilities and/or all persons, firms or corporations within PERMITTEE's territorial boundaries that are using any wastewater facilities should it be deemed necessary by CITY.

17. Transfer of Rights. The rights and benefits of this Agreement cannot be transferred in whole or in part, and it is not to be sold, transferred, leased, assigned, or disposed of, either by forced sale, merger, consolidation, operation of law, or otherwise, without prior consent of CITY expressed in writing, which shall not be unreasonably withheld, and then only under such reasonable conditions as may be therein prescribed; provided, however, that no such consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness. In the event CITY consents to an assignment or delegation, the assignee, delegatee, or its legal representative shall agree in writing to personally assume, perform, and be bound by all the covenants, conditions, obligations and provisions of this Agreement.
18. Superiority. This grant is made in lieu of all other permits, agreements, rights, or privileges owned by PERMITTEE, or by any successor of PERMITTEE in any rights under this Agreement, for conveyance of wastewater within the limits of CITY, as said limits now or may hereafter exist, and the execution of this Agreement shall operate as an abandonment of all such other permits, rights and privileges within the limits of CITY, as such limits now or may hereafter exist, in lieu of which this Agreement is granted.
19. Encroachment Permit to Be Given No Value in Case of Eminent Domain. The Encroachment Permit to be granted hereunder shall not in any way or to any extent impair or affect the right of CITY to acquire the property of PERMITTEE hereof either by purchase or through the exercise of the right of eminent domain, and nothing hereunder contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, CITY's right of eminent domain in respect to PERMITTEE or any public utility. Nor shall this Agreement ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to PERMITTEE of the necessary publication and any other sum paid by it to CITY therefor at the time of the acquisition thereof.

20. Indemnification. PERMITTEE's obligation to indemnify, defend and hold harmless as set forth in this Section 20 shall remain in effect and shall be binding upon PERMITTEE whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement. PERMITTEE's failure to comply with this section's provisions, after a ten (10) day notice from CITY to PERMITTEE to cure such failure, shall constitute a material breach upon which CITY may immediately terminate or suspend this Agreement and the Encroachment Permit.

a. General Indemnification. PERMITTEE shall indemnify, defend and hold harmless CITY from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by CITY in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of any or all of PERMITTEE's Facilities (including actions by its agents, employees, subcontractors or by anyone PERMITTEE directly or indirectly employs), or from the existence of the CVWD Sewer Interceptor and other appurtenant Facilities. If any action or proceeding is brought against CITY by reason of said Facilities or its appurtenances, PERMITTEE shall defend CITY at PERMITTEE's complete expense.

b. Environmental Indemnification. PERMITTEE shall indemnify, defend and save CITY harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by CITY in defense thereof, arising directly or indirectly from (a) PERMITTEE's breach of any environmental laws applicable to PERMITTEE's Facilities including but not limited to the CVWD Sewer Interceptor and its appurtenances; or (b) from any release of any hazardous substances on or from said Facilities; or (c) any other activity related to this Agreement by PERMITTEE, its agents, contractors or subcontractors.

This indemnity includes but is not limited to (a) liability for any governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

21. Waiver. Any waiver by either Party of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of either Party to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein

contained be construed as in any manner changing the terms of this Agreement or stopping either party from enforcing the full provisions hereof.

22. Not a Lease. This Agreement is not a lease and shall not be deemed or construed as such. The permission granted hereunder shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title or interest in the public right-of-way, or any part thereof, shall vest or accrue in PERMITTEE by reason of this Agreement or the issuance of an Encroachment Permit or exercise of the privilege given thereby.
23. Non-Exclusive. The granting of the Encroachment Permit or any of the terms or conditions contained herein shall not be construed to prevent CITY from granting any identical or similar Encroachment Permit to any person, firm or corporation other than the PERMITTEE.
24. Delegation of Rights, Powers And Duties. Any right or power conferred, or duty imposed upon any officer, employee, department, or board of CITY, shall be subject to transfer by operation of law to any other officer, employee, department, or board of CITY.
25. Time of Essence. Time is declared to be of the essence of this Agreement. By accepting or permitting performance of any obligation due from the PERMITTEE under this Agreement, CITY shall not waive or bar its right to require prompt performance, when due, of all other obligations of the PERMITTEE arising under this Agreement.
26. Possessory Interests. The PARTIES agree that no possessory interest is created by this Agreement. However, to the extent that a possessory interest is deemed created, PERMITTEE acknowledges that notice is and was hereby given to PERMITTEE pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. PERMITTEE shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against PERMITTEE's right to possession, occupancy, or use of any public property pursuant to any right of possession occupancy, or use created by this Agreement.
27. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the PARTIES hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.
28. Attorneys Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he, she or it may be entitled.

29. Governing Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the PARTIES hereunder, shall be governed by the laws of the State of California.
30. Severability. Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.
31. Notices. All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below, or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or when sent via facsimile to a party at the facsimile number set forth below or to such other or further facsimile number provided in a notice sent under the terms of this paragraph, on the date of transmission of that facsimile. Should PERMITTEE have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from either party shall be given as follows:

CITY: City of Glendale
Attn: Director of Public Works
633 E. Broadway, Room 209
Glendale, CA 91206-4385
Tel. No. (818) 548-3900
Fax. No. (818) 546-2207

PERMITTEE: Crescenta Valley Water District
Attn: General Manager
2700 Moorhill Boulevard
La Crescenta, CA 91214
Tel. No. (818) 248-3925
Fax. No. (818) 248-1659

32. CEQA. The granting of a the Encroachment Permit for the use of existing structures or facilities involving negligible or no expansion of use is hereby determined to be exempt from the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 et seq. PERMITTEE's Property is also exempt from CEQA under Public Resources Code Section 21080.21, 14 California Code of Regulations 15302 and 15302(c) and where a CEQA review of impacts includes impacts from utility installations. The requirements of CEQA as to the installation or construction of new facilities which are not exempt will be satisfied by compliance with CEQA through the review of such projects by the Department of Public Works in accordance with the CITY's Guidelines, as modified from time to time.

33. Force Majeure. Neither PARTY shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest. Any delays beyond the control of either Party shall automatically extend the time schedule as set forth in this Agreement by the period of any such delay.
34. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the PARTIES shall sign a sufficient number of counterparts, so that each PARTY will receive a fully executed original of this Agreement.
35. Modification of Agreement.
- a. During the unexpired term of this Agreement, either Party may request that the other Party negotiate, in good faith, modifications of this Agreement which the requesting Party believes are necessary because of any of the following changed circumstances:
 - (1) There is a material change in the regulatory framework, ordinances, rules or regulations that would appear to be no longer fair and equitable;
 - (2) In the event that PERMITS determines the pollution liability insurance required in Paragraph 16 herein, becomes commercially unavailable at a commercially reasonable price;
 - (3) There is a proposed change in the physical configuration of the Facilities that the existing terms or conditions of the Agreement do not adequately address.
 - b. All other provisions shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions of said modification(s) and the original Agreement, the provisions of said modification shall control in all respects.
 - c. However, if after one (1) year of good faith negotiations, the Parties have been unable to reach a mutual agreement to one or more of the aforementioned events; it shall be the right of either Party to request, in writing, a formal, non-binding mediation concerning the renegotiation of the aforementioned event(s). The non-requesting Party must accept a timely written request for non-binding mediation.
 - d. The good faith negotiations shall not be deemed complete until the formal, non-binding mediation process has concluded by written statement of the mediator or the term of this Agreement has ended.

- c. If the parties cannot agree on one mediator, the matter shall be submitted to a panel of three mediators, of whom one shall be appointed by CITY, one by PERMITTEE and the third by the two mediators so appointed. Said mediator or mediators shall consider the matter in dispute and determine the matter pursuant to the mediation rules of California Evidence Code §§ 1115 through 1128, as amended.

Executed at Glendale, California, on the day and year first written.

CITY OF GLENDALE	CRESCENTA VALLEY WATER DISTRICT
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Title: <u>Director of Public Works</u>	Title: <u>General Manager</u>
Date: <u>11/10/05</u>	Date: <u>27 September 2005</u>

APPROVED AS TO FORM

[Signature]
Senior Assistant City Attorney

Date: 11-9-05

EXHIBIT A

**LEGAL DESCRIPTION AND MAP SHOWING CVWD SEWER
INTERCEPTOR AND APPURTENANT FACILITIES AND
STRUCTURES OF CVWD SEWER INTERCEPTOR AND
APPURTENANT FACILITIES AND STRUCTURES**