

DATE SUBMITTED 11/30/2023
 SUBMITTED BY City Attorney
 DATE ACTION REQUIRED December 6, 2023


COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION:
 Acceptance of deed for Water Distribution Line at Ironwood Acres Estates.

BACKGROUND/SUMMARY:
 Ironwood Acre Estates is a residential development built in approximately 2000. Coyne was the developer and initial owner involved in this development. A water distribution pipeline was installed at the time of development to provide service to these homes through the City of Imperial (as provided to other residents). Upon review of the records, the water distribution property was intended to be transferred to the City of Imperial after completion of the development. The residents have been paying the City of Imperial for water services and those services were provided to those homeowners. The attached deed will formally transfer these water distribution lines to the City of Imperial as was initially intended. The Ironwood Acre Estates Landowners Association has been coordinating and cooperating with the City to complete this matter.


FISCAL IMPACT: The maintenance and operation will continue to be completed by the City of Imperial Public Services Department and residents would continue to be billed for traditional services pursuant to City Ordinance (maintaining the status quo).

FINANCE INITIALS 

STAFF RECOMMENDATION: Agree to accept transfer of the Deed from Coyne to the City of Imperial and recommend the City record the deed with the County of Imperial.

DEPT. INITIALS _____

MANAGER'S RECOMMENDATION:
approve stop recommendation

CITY MANAGER'S INITIALS 

MOTION:
 SECONDED: APPROVED () REJECTED ()
 AYES: DISAPPROVED () DEFERRED ()
 NAYES:
 ABSENT: REFERRED TO:

**Recording Requested by and
When Recorded Return to:**

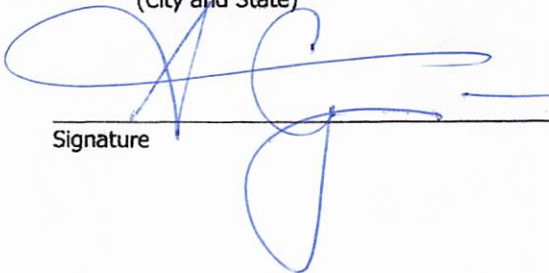
Kristina Shields, City Clerk
City of Imperial
420 S. Imperial Avenue
Imperial, California 92251

SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, I, Martin D. Coyne, represent that, as the present fee title owner(s) of record of the herein described real property, do hereby grant to the City of Imperial all right, title and interest the existing water distribution pipeline situated along Worthington Road between "B" Street and Nance Road, on Nance Road between Worthington Road and Coyne Road, and within the Ironwood Acres Subdivision, partially in the City of Imperial, California, and partially in the unincorporated area of Imperial County, together with all appurtenant right associated with the operation and maintenance of said water line.

Executed on NOVEMBER 20, 2023, at EL CENTRO, CALIFORNIA
(Date) (City and State)



Signature

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

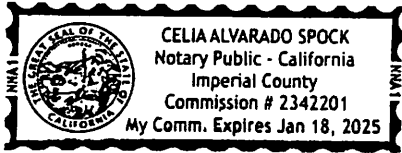
) ss.

COUNTY OF IMPERIAL)

On NOV. 20th, 2023 before me, CELIA ALVARADO SPOCK, Notary Public, personally appeared MARTIN O. COYNE who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Celia Alvarado Spock
Notary Public

WATER DISTRIBUTION LINE AGREEMENT

This Water Distribution Line Agreement (“Agreement”), is entered into on July __, 2022 (“Effective Date”) in Imperial, California by and between Martin D. Coyne, an individual, and any affiliated companies of Martin D. Coyne, (“Coyne”), and the City of Imperial, a subdivision of the State of California (“City”), and Ironwood Acre Estates, Landowners Association For Track 901, 915, 916 & 934 (“Association”). In this Agreement, Coyne, City and Association are sometimes referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

- A. Ironwood Acre Estates is a residential development built in approximately 2000; and
- B. Coyne was a developer and owner involved in building Ironwood Acre Estates; and
- C. A water distribution pipeline was installed during the time of development to provide water service to homes including the Ironwood Acre Estates residences from the City of Imperial; and
- D. Current property records shows that water distribution pipeline situated along Worthington Road as described in **Exhibit A** is still owned by Coyne; and
- E. As part of the development, the Association was formed to address all property matters, including the water distribution line, in Ironwood Acre Estates including Tracks 901, 915, 916 and 934; and
- F. For over a decade, the City has been providing water service and has been charging monthly fees for such service; and
- G. The Parties desire to have the City accept ownership of the Water Distribution Line and operate the line in the City’s normal course of business; and
- H. The City is willing to accept ownership of the line, continue to charge and operate the line consistent with all applicable rules and regulations; and
- I. It is the intent of the Parties to resolve this matter at no charge and to have the City take ownership of responsibility for service and maintenance; and

TERMS AND CONDITIONS

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

- 1.0 Transfer of Property
- 1.1 Coyne will transfer the waterlines to the City.
- 1.2 City intends to continue owning the waterlines and serving the parties at the rates adopted by the City for such service.
- 1.3 Association and Coyne agree to transfer all required legal rights to the waterlines to City.

1.4 During any transition and prior to execution of agreement, Association and Coyne agree to authorize City and their authorized employees, agents, contractors, consultants and subcontractors, a non-exclusive, temporary license to perform any work necessary to continue providing water services necessary for these lines.

2.0 RELEASE

2.1 Release of Claims by Coyne

Except as reserved in herein, Coyne releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Coyne or any of its agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Owner and their agents, shareholders, representatives, sureties, insurers, employees, predecessors, successors and/or assigns, based upon or arising out of the transfer or work necessary to meet the terms of this agreement.

2.2 Release of Claims by Association

Except as reserved in herein, Association releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Association or any of its agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Owner and their agents, shareholders, representatives, sureties, insurers, employees, predecessors, successors and/or assigns, based upon or arising out of the transfer or work necessary to meet the terms of this agreement.

2.1 Release of Claims by City

Except as reserved in herein, City releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which City or any of its agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Owner and their agents, shareholders, representatives, sureties, insurers, employees, predecessors, successors and/or assigns, based upon or arising out of the transfer or work necessary to meet the terms of this agreement.

2.3 Released Matters

The releases are collectively referred to as the “Released Matters.”

2.4 Matters Not Included in the Released Matters

2.4.1 The Released Matters do not include any liability or obligation created by this Agreement.

2.5 Waiver of Rights Pursuant to Civil Code Section 1542

With respect to the Released Matters, each Party expressly waives any and all rights which it may have under the provisions of section 1542 of the California Civil Code, which section reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, with knowledge of the provisions of section 1542, and for the purpose of implementing a full and complete release of the Released Matters, each Party acknowledges this Agreement is intended to include in its effect, without limitation, all of the claims that were or could have been raised, even those which a Party did not know of or suspect to exist in its favor at the time of execution of this Agreement and that this Agreement contemplates extinguishment of all such claims that were or could have been raised, even those which would have materially affected the releasing Party’s decision to enter into this Agreement. Each Party similarly waives any and all rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, that is similar, comparable, or equivalent to section 1542.

3.0 GENERAL PROVISIONS

3.1 Admissibility of Release

No evidence of this Agreement or any of its terms, and no evidence of any discussion or communications made or information or materials transmitted in the course of negotiations for this Agreement, shall be admissible or presented in any action or proceeding before any court, agency, or other tribunal, as evidence of or relevant to any Released Matters, or as evidence that a Party or any of their respective agents, shareholders, representatives or employees have committed any violation of contract or law, or are liable to any person for any reason other than for the enforcement of this Agreement.

3.2 No Reliance

Each Party acknowledges: (i) this Agreement is the resolution of a fully matured set of facts and each Party individually declares and represents it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any

statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any Party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

3.3 Discovery

Each Party acknowledges it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters and agree this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

3.4 Opportunity for Advice of Attorneys

Each Party further represents, warrants and agrees that in executing this Agreement, it does so with full knowledge of any and all rights which it may have with respect to the other Party and that each Party has received, or had the opportunity to receive, independent legal advice from such Party's attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to such Party's rights and asserted rights arising out of such facts.

3.5 Assignment of Rights

Each Party represents and warrants it has not assigned its rights in any of its claims against the other to any other person or entity and each Party has full authority to bind the Party for which it signs to this Agreement.

3.6 Entire Agreement

The provisions of this Agreement constitute the entire agreement among the Parties and supersede all prior negotiations, proposals, agreements and understandings regarding the subject matter of this Agreement.

3.7 Additional Documents

The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Agreement.

3.8 Assignees

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties, and to all affiliates, dba's or any other associated entities.

3.9 Interpretation of Agreement

This Agreement and its provisions shall not be construed or interpreted for or against any Party because that Party drafted or caused the Party's attorney to draft any of its provisions.

3.10 Execution in Counterparts

This Agreement may be signed by the Parties in multiple counterparts, all of which shall be taken together as a single document. A facsimile signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

3.11 No Promise or Warranty

No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

3.12 Modification

No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

3.13 Choice of Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

3.14 Enforcement of Agreement

In the event that any portion of this Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Agreement would be frustrated.

**PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS
A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.**

The Parties have executed and delivered this Agreement consisting of (6) pages and zero exhibits.

Coyne

Signature: _____

Printed Name: _____

Date: _____

Association

Title: _____

Signature: _____

Date: _____

City of Imperial

Signature: _____

Printed Name: _____

Title: _____

Date: _____