

## **STAFF REPORT**

**To:** Coastside County Water District Board of Directors

**From:** David Dickson, General Manager

**Agenda:** July 11, 2017

Report

Date: July 6, 2017

**Subject:** License and Commercial Right of Entry Agreement for Strawflower Village Pipeline Installation

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### **Recommendation:**

Authorize the General Manager to execute the attached License and Commercial Right of Entry Agreement for Strawflower Village pipeline installation.

### **Background:**

At its January 10, 2017 meeting, the Board of Directors approved a contract with Andreini Brothers for the Strawflower Village Pipeline Replacement Project at a cost of \$148,255. Before the project can begin, we need to obtain a new easement from the Strawflower Village property owner, Regency Centers Corporation (Regency). Given the time required for them to convey new permanent easements and the fact that they are selling the property, Regency proposed the attached License and Commercial Right of Entry Agreement. The Agreement, which has a term of 5 years with automatic renewal for an additional five years, will allow us to proceed with pipeline installation now. We will then work with the new owner on permanent easements once we have determined what additional easements we will need and which existing easements we will ultimately reconvey to the owner.

The Agreement requires a nominal administrative fee payment of \$500 to Regency Centers.

### **Fiscal Impact:**

Cost of \$500.

## LICENSE AND COMMERCIAL RIGHT OF ENTRY AGREEMENT

**THIS LICENSE AND COMMERCIAL RIGHT OF ENTRY AGREEMENT** (this "Agreement") is entered into as of the \_\_\_\_\_ day of July, 2017 (the "Effective Date"), by and between Coastside County Water District ("District"), and Regency Centers Corporation ("Owner").

### RECITALS

A. Owner is the landlord (whether pursuant to a fee simple or leasehold interest) of that certain property located at 50-80 North Cabrillo Highway, Half Moon Bay, California 94019 (the "Property") within the shopping center commonly known as Strawflower Village;

B. District owns and operates a water distribution system serving district customers, including tenants and/or occupants located at the Property; and

C. Subject to the terms and conditions of this Agreement, Owner is willing to permit District to construct, replace, operate, lay, improve, remove, repair, operate and/or maintain its water distribution system, which includes water pipelines, valves, and related appurtenances, through, over, under and across the Water System Facilities License Area (as hereinafter defined).

### AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

#### **1. Recitals; Water System Facilities License; Right of Entry**

- (a) The recitals set forth above are true and correct and incorporated herein by reference.
- (b) During the Term (as hereinafter defined) of this Agreement and subject to the terms and conditions set forth herein, Owner does hereby grant, create and establish for the benefit of District a non-exclusive license through, over, under and across those portions of the Property (collectively, the "Water System Facilities License Area"), all as described or shown on the plans approved by Owner and attached hereto as Exhibit A (the "Plans"), to construct, replace, operate, lay, improve, remove, repair, operate and/or maintain water distribution system as shown on the Plans, all at District's sole cost and expense.
- (c) Such license includes a non-exclusive right of entry benefitting District over all paved driveways, entranceways and roadways located within the Property to access the Water System Facilities License Area for the purposes described in and subject to the terms and conditions of this Agreement. Owner reserves the right for its property manager and/or other representative(s) to accompany District while on the Property.
- (d) Upon completion of the work required to locate any system facilities within the Water System Facilities License Area, District agrees to return any disturbed areas and any areas used for ingress, egress and construction to as close to their original condition including materials, prior to District's installation, as is commercially reasonable.

#### **2. Term**

This Agreement shall have an initial term of sixty (60) full calendar months, commencing on the Effective Date (the

“Initial Term”). This Agreement shall automatically renew for one (1) successive period of sixty (60) full calendar months (the “Renewal Term”); however, either party may provide the other party with a minimum of three hundred sixty-five (365) days prior written notice of its intention not to renew the Term of this Agreement at the end of the then current term (the “No Renewal Notice”), in which case this Agreement shall expire at the end of the then current term. The “Initial Term” and the “Renewal Term” are collectively referred to as the “Term”. Owner and District acknowledge that this Agreement is being entered into in anticipation of Owner conveying permanent easements for the water system facilities installed within the Water System Facilities License Area once the parties determine the location of all the easements required for replacing the existing water system facilities and when the parties determine the existing easement for the existing water system facilities can be reconveyed back to the Owner.

### **3. Installation, Ownership and Maintenance of Water System Facilities**

- (a) District will not make any material changes to the Plans without the prior written consent of Owner, such consent shall not be unreasonably withheld, conditioned or delayed.
- (b) District will comply with all land use, building, subdivision, zoning, pollution, and similar laws, rules and ordinances, and regulations promulgated by any governmental authority and applicable to the work.
- (c) The Property or any part thereof shall not be subject to liens for work done or materials used on the Property made at the request of, or on order of, or to discharge an obligation of, District. This Section shall be construed so as to prohibit, in accordance with the provisions of State law, the interest of Owner in the Property or any part thereof from being subject to any lien for any improvements made by District or any third party on District’s behalf (except Owner) to the Property. If any lien or notice of lien on account of an alleged debt of District or any notice of lien by a party engaged by District or District’s contractor or materialmen to work on the Property shall be filed against the Property or any part thereof, District, within thirty (30) days after notice by Owner of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; provided that District may, subsequent to bonding, contest, in good faith and by appropriate proceedings any such liens. If District shall fail to cause such lien or notice of lien to be discharged and released of record within the period aforesaid, then, in addition to any other right or remedy, Owner may discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding procedures. Any reasonable amount so paid by Owner, including reasonable attorneys’ fees and court costs incurred by Owner in connection therewith, shall be paid by District to Owner within thirty (30) days of written demand from Owner.
- (d) District shall: (i) perform all work in a safe and workmanlike manner consistent with generally accepted construction standards; (ii) perform all work in a manner that will not materially interfere with the operations of Owner, its employees, tenants/occupants, invitees, contractors or representatives or violate any matters of record such as existing easement agreements; and (iii) obtain, prior to the commencement of any work, the necessary federal, state and municipal permits, licenses and approvals. Owner acknowledges that the District will be working within the roadway for entering the Property and that such work will not be deemed to materially interfere with the operations of Owner.
- (e) District shall install, own and maintain the Water System Facilities at its own expense. District agrees: (i) to keep the Water System Facilities in good order, repair and condition throughout the Term of this Agreement, and to promptly and adequately repair all damage to the Property caused by District or its agents, contractors or employees as a result of the construction, replacement, operation, laying, improvement, removal, repair, operation and/or maintenance of the Water System Facilities; (ii) to comply with any applicable federal, state and municipal laws, orders, rules and regulations ; and (iii) except as contemplated herein, not to unreasonably disrupt, adversely affect or interfere with the facilities or equipment of other providers of similar services at the Property or with any tenant’s or occupant’s use and enjoyment of its leased space or the common areas of the

Property. Owner agrees to use commercially reasonable efforts to notify District of any damage to the Water System Facilities of which it becomes aware. However, Owner's failure to notify District of any damage to the Water System Facilities shall not be deemed a default of Owner under this Agreement and shall not give rise to an action at law or in equity against Owner by District.

- (f) The Water System Facilities shall be and remain the personal property of District and may be removed by District at any time.
- (g) Nothing in this Agreement shall be construed to require District to construct, install, or operate the Water System Facilities within the Water System Facilities License Area; however, should District fail to construct, install or operate the Facilities within three hundred sixty-five (365) days from the Effective Date, then this Agreement shall automatically terminate and be of no further force or effect except with respect to any obligations stated to survive the early termination of this Agreement.

#### **4. Insurance**

During the Term of this Agreement, District shall maintain (a) commercial general liability insurance with a policy limit of at least \$5,000,000 per occurrence to protect Owner and Users against bodily injury or property damage resulting from installation, operation or maintenance of the Facilities; (b) workman's compensation insurance in statutory amounts; and (c) automobile liability insurance with a policy limit of at least \$2,000,000 per occurrence. Prior to installation of the Facilities, and thereafter upon request by Owner at the renewal of required policies, District shall provide a certificate of insurance of the foregoing policies. All policies written pursuant to this Section shall be with insurers who (i) are licensed to do business in the state in which the Property is located, and (ii) carry an A.M. Best rating of at least A-VII. All certificates of insurance, including any renewals thereof, shall list Owner as an additional insured.

#### **5. Indemnification**

District agrees to indemnify, defend and save Owner and its principals, partners, affiliates, officers, directors, tenants/occupants, invitees, contractors, agents and employees harmless from and against any and all loss, cost, damage or claims (including reasonable attorneys' fees and costs) arising from or out of (a) the construction, replacement, laying, improvement, removal, repair, and/or maintenance of the Water System Facilities by District or its agents, contractors or employees, or (b) the material breach of any representation, warranty or covenant made by District in this Agreement (collectively, "Indemnified Claims"), except to the extent that any such Indemnified Claims are caused by the negligence or willful misconduct of Owner or its contractors, employees, or tenants. District's obligations hereunder shall survive the expiration or earlier termination of this Agreement.

#### **6. Limitation of Liability**

Neither party shall be liable to the other party for any lost profits, special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages.

#### **7. Default; Early Termination**

- (a) This Agreement may be terminated by either party if the other party violates any material provision of this

Agreement; provided, however, that the defaulting party shall be given notice specifying the nature of the default and shall have thirty (30) days from receipt of such notice in which to cure. However, should a cure reasonably take more than thirty (30) days, such party shall have a commercially reasonable time to cure so long as such party is diligently and continually pursuing the same with good faith and commercially reasonable efforts but in no event shall it take more than ninety (90) days to cure. In addition, in the event such default remains uncured, the non-defaulting party shall have the option of pursuing, on a cumulative basis, any and all other remedies available to it under this Agreement, at law or in equity. Without limiting the foregoing, any indemnification and insurance obligations (including insurance proceeds therefrom) specifically set forth in this Agreement shall not be limited by Section 7 hereof. In addition and notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that any judgment against Owner resulting from any default or other claim under this Agreement shall be satisfied only out of the net rents, issues, profits and other income actually received from the operation of the Property, and District shall have no claim against Owner or any of Owner's personal or other assets for satisfaction of any judgment with respect to this Agreement. In addition, District shall have no rights or claims against Owner's agents, members, partners, officers, employees, representatives, shareholders, directors or any other party.

- (b) Owner or District may terminate this Agreement upon ninety (90) days' written notice to the other party if Owner or District is unable to honor its obligations under this Agreement due to any governmental law, rule, regulation, judgment of any court, force majeure or any other reason beyond the reasonable control of Owner or District.

## **8. Assignment**

- (a) Owner may assign or transfer this Agreement at any time without the prior written consent of District. Upon any such assignment or transfer by Owner and the assumption of Owner's obligations hereunder by the assignee or transferee, Owner shall be released of any further liability under this Agreement.
- (b) District shall not assign or transfer this Agreement without the written consent of Owner, which consent will not be unreasonably withheld, conditioned or unduly delayed.

## **9. Miscellaneous**

- (a) This Agreement, including the exhibits hereto, constitutes the entire agreement between the parties and supersedes any and all previous agreements of whatever nature between the parties with respect to the subject matter hereof. This Agreement shall not be changed, amended or supplemented except by an agreement in writing signed by all parties.
- (b) This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. If any party hereto is obligated to incur costs in order to enforce any provisions of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party its reasonable attorneys' fees and court costs.
- (c) If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.
- (d) This Agreement shall bind and benefit the parties and their respective successors and assigns.

- (e) Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

## **10. Notices**

All notices to be given by any party to this Agreement to the other party shall be in writing, by certified mail return receipt requested or by a nationally recognized overnight carrier, to the addresses indicated below in this Agreement. Any party may designate a different place or places of notice by delivering written notice thereof to the other party in accordance with this Section.

If to Owner:

c/o Regency Centers Corporation  
2999 Oak Road, Suite 1000  
Walnut Creek, CA 94597  
Attn.: Property Manager

With copy to:

c/o Regency Centers Corporation  
One Independent Drive, Suite 114  
Jacksonville, FL 32202  
Attention: Legal Department

If to District:

Coastside County Water District C  
766 Main Street  
Half Moon Bay, CA 94019  
Attn.: General Manager

## **11. Consideration**

As consideration for Owner making the grants set forth in this Agreement, District has agreed to pay Owner an administration fee in the amount of Five Hundred Dollars (\$500.00). District shall pay the Fee to Owner in good funds no later than ten (10) business days after mutual execution of this Agreement and District's receipt of such mutually executed Agreement.

The parties have executed this License and Commercial Right of Entry Agreement as of the Effective Date first above written.

**District:**

Coastside County Water District

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Owner:**

Regency Centers Corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

PLANS