



JOINT INFORMATION MEETING

Agenda #:

MEETING DATE: September 16, 2019

SUBMITTING DEPT: Town/County Attorneys

PRESENTER: Gingery and Colasuonno.

SUBJECT: Encroachment Agreement for Fire Station #1

STATEMENT/PURPOSE

Approval of Town of Jackson Encroachment Agreement to allow encroachment into Town of Jackson Alleyway by the Fire Station #1 construction. The encroachment will allow subsurface placement of temporary shotcrete and soil nail retaining wall associated with the temporary slope stabilization for construction of the stormwater infiltration and elevator pit for Fire Station #1. Additionally, given the batter (backward slope) of the wall and proximity to the property line, a portion of the shotcrete wall will also encroach into the alley right of way.

BACKGROUND/ALTERNATIVES

Background

Since 2017 the Town has required projects utilizing Town rights-of-way and easements for permanent or temporary shoring to enter into encroachment agreements with the Town as called for in Jackson Municipal Code § 12.08.030 Agreement Required. Staff determined that the ten (10) feet below the road surface where municipal utilities are typically installed should be free of any permanent building foundations or anchors. Temporary anchors that do not interfere with municipal operations and that can be easily removed have been allowed with an advance removal payment to compensate the Town for possible costs during future work. Most recently this fee was \$50.00 "per soil nail anchor." Further, these agreements provide for indemnity and mandate that removal of the anchors in the future will not impact the permanent building structure.

Request

ENCROACHMENT

The request seeks subsurface placement of approximately twenty-eight (28) temporary "soil nails" (defined as steel bars encapsulated in grout), which will encroach into the subsurface of the easement approximately nine to nineteen (9-19) feet. Eighteen (18) of the nails enter the ground within ten (10) feet of the alley surface. All of the shoring is associated with the slope stabilization for construction of the stormwater infiltration and elevator pit for Fire Station #1. Additionally, given

the batter (backward slope) of the wall and the proximity to the property line, a portion of the shotcrete wall will also encroach into the alley right-of-way.

The proposed shoring nails are generally located within fifteen (15) feet of the alley surface and in the proximity of our sewer utilities. It is the responsibility of the applicant's contractor, and standard practice, to verify the exact location of our utilities and install the anchors around them.

FEE WAIVER

This application is by a joint department in the Teton County and Jackson governments for a project that has community benefit for the whole of Jackson and requests that any removal fee for the temporary nails be waived.



STAKEHOLDER ANALYSIS

Stakeholders include the Town as owner of the roadway and utilities, the applicant constructing its building, and Town residents that use the roadway. The applicant proposing construction activities on its property has the greatest risk regarding the ability to utilize its property. The Town as owner of the roadway and utilities has a responsibility to maintain this infrastructure. These two stakeholders will mutually benefit from the information contained in a recorded encroachment agreement regarding future use and maintenance of the roadway and utility infrastructure.

FISCAL IMPACT

None. Request is to waive any removal fee for the temporary anchors.

LEGAL REVIEW

Gingery and Colasuonno.

ATTACHMENTS

Town of Jackson Encroachment Agreement

RECOMMENDATION

Town staff recommended approval of the Encroachment Agreement between the Town of Jackson and Teton County to allow shoring nails to encroach into the Town's alley and the Town Council approved with direction for the Encroachment Agreement to be drafted and brought back to the parties for approval.

SUGGESTED MOTION

Town Council

I move to approve the Encroachment Agreement to allow temporary shoring nails and related temporary construction to encroach into the Town's alley right-of-way south of 60 East Pearl Ave.

Board of County Commissioners

I move to approve the Encroachment Agreement and agree to the obligations and rules as delineated in the Town of Jackson Encroachment Agreement.

TOWN OF JACKSON ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT ("Agreement"), by and between TETON COUNTY, WYOMING, a county of the State of Wyoming, with an address of P.O. Box 1727, 83001 hereinafter referred to as "Encroaching Party" and the TOWN OF JACKSON, a municipal corporation of the State of Wyoming, with an address of P.O. Box 1687 Jackson, WY 83001 hereinafter referred to as "Town," together "Parties," provides as follows:

WHEREAS, Encroaching Party is the owner in fee simple of that certain real property in Teton County, Wyoming, described as follows:

Street Address: 60 East Pearl Avenue

Location: Lots 4-5-6, Block 6, Cache Creek Addition, 1st ADD.

PIDN: 22-41-16-34-2-06-008.02

WHEREAS, the Town is the owner of that certain public right-of-way known as Plat 102, Block 6 Alley (aka Fire Station Alley), which public right-of-way adjoins Encroaching Party's property; and

WHEREAS, the Encroaching Party shall use a portion of the subsurface areas approximately one foot and six inches (1' and 6") or more below the surface, as shown on the attached plans, that do not interfere with existing utilities of the above noted public rights-of-way as set forth in Exhibit A (hereinafter "Encroaching Property") hereto for:

- a. Subsurface placement of approximately twenty-eight (28) "soil nails" (defined as hollow steel bars encapsulated in grout), which will encroach into the subsurface of the right-of-way for distances of approximately nine (9) feet to nineteen (19) feet, respectively and as more specifically shown on the attached plans, all associated with the shoring of walls during construction of a building on Encroaching Party's property; and
- b. Said soil nails are designed to be abandoned in place and remain as an encroachment into the subsurface areas of the rights-of-way as described above following completion of construction, provided, however, that the soil nails may be disturbed, destroyed or removed in connection with any construction, installation, excavation, maintenance or replacement of the right-of-way, or any public utilities located therein, following completion of construction of the building on Encroaching Party's property, provided, further, that any additional costs incurred by the Town as a result of the presence of the soil nails or any steel bars installed by or on behalf of Encroaching Party will be borne by the; and

WHEREAS, on July 15, 2019 as Planning item P19-140, the Jackson Town Council voted to authorize staff to prepare an Encroachment Agreement between the Town of Jackson and the Encroaching Party for the Encroaching Property subject to final review and approval by the Town Attorney and the following conditions:

1. Applicant shall provide all exhibits to the Agreement to the satisfaction of the Town Engineer;
2. Exhibits shall show the property line and the encroachment dimensioned from the property line;
3. Record drawings of the installed shoring shall be provided to the Town Engineer;

4. Any portion of the temporary wall constructed within the public alley right-of-way shall be removed to a depth of ten (10) feet below the surface during backfill; and
5. Soil nails shall not be installed above, interfere with, or contact existing Town utilities; and

WHEREAS, Encroaching Party recognizes that it cannot acquire any right, title, or interest in and to the said public rights-of-way by adverse possession or otherwise due to the encroachment.

NOW, THEREFORE, IT IS HEREBY AGREED that for and in consideration of the aforesaid premises and good and valuable consideration, the receipt of which is hereby acknowledged, paid by each of the said parties to the other, Encroaching Party and the Town do mutually covenant and agree as follows:

1. ACKNOWLEDGMENT OF TOWN'S RIGHTS:

Encroaching Party acknowledges the Town's exclusive rights, title, and interest in the public rights-of-way and that it cannot acquire any right, title, or interest in the afore-referenced public right-of-way now or hereafter.

2. AGREEMENT TO ALLOW ENCROACHMENT:

The Town agrees that Encroaching Party shall have the right to have the Encroaching Property within the Town right-of-way to the extent set forth herein.

The Town agrees that Encroaching Party shall have the right to have the Encroaching Property extend beyond the boundary line of above noted right-of-way and to encroach and rest within the subsurface of the Town right-of-way, provided, however, that no permanent soil nails will be placed below the surface of the right-of-way. Further that (a) the soil nails may be disturbed, destroyed or removed in connection with any construction, installation, excavation, maintenance or replacement of the right-of-way or any public utilities located therein following completion of construction of the building on Encroaching Party's property, and (b) any additional costs incurred by the Town as a result of the presence of the soil nails or any steel bars installed by or on behalf of Encroaching Party will be borne by the Town. Completion of construction of said building shall be deemed to have occurred upon issuance of certificates of occupancy for the building or for any of the individual units within the building.

The Encroaching Party shall submit to the Town Engineer record drawings of the shoring to document the shoring's "as-built" location.

3. RIGHT TO MAINTAIN:

Encroaching Party shall have the right from time to time to go upon the adjoining public right-of-way for the purpose of maintaining the Encroaching Property, provided that any damage occurring to the property of the Town as a result of such maintenance shall be corrected or repaired at the sole expense of Encroaching Party or its successors and assigns. Under no circumstances shall the Encroaching Party be allowed to increase the existing encroachment, absent written approval (including applicable regulatory approval) from the Town. Notwithstanding the foregoing, no provision in this Agreement shall limit or prohibit the Town from pursuing its right of eminent domain with regard to the Encroaching Property and no provision of this Agreement shall limit or prohibit Encroaching Party from defending its property therefrom.

4. RELEASE OF CLAIMS:

Encroaching Party hereby releases and holds harmless the Town of Jackson from any and all damage, claim, cause, or right of action which may arise from normal Town use, maintenance, construction, repair or replacement activities by the Town associated with the right-of-way in its present configuration and alignment and any of the present utilities within the Town right-of-way and which may arise due to the proximity of the Encroaching Property to the work activity being conducted by the Town. In elaboration of the foregoing, Encroaching Party hereby expressly authorizes the Town, acting through its contractors and agents, to disturb, damage or remove the Encroaching Property in connection with the above-described work activity at any time following completion of the building being constructed on Encroaching Party's property. Encroaching Party hereby releases and holds harmless the Town of Jackson from any and all damage, claim, cause, or right of action which may arise from disturbance, damage or removal of the Encroaching Property by Town or its agents, including, without limitation, any of the foregoing that may result in instability of the building being constructed on Encroaching Party's property or any of the appurtenances thereto, except to the extent the same is caused by the malicious or negligent acts or omissions of the Town or its contractors.

5. INDEMNIFICATION:

Encroaching Party, and its successors in interest and assigns, hereby agrees to indemnify and hold harmless the Town of Jackson from any and all losses, damages, claims, causes of action, or rights of action, including reasonable attorney's fees, which the Town may incur as a result of or in any way related to the construction, use, and/or maintenance of the Encroaching Property. The Town will give the Encroaching Party prompt notice of any claims against it arising from or related to such Encroaching Property and the Encroaching Party will be kept fully informed and advised of material matters relating to the defense and handling of such claim by the Town, its insurers, or its attorneys. Nothing in this Agreement shall alter, amend, modify, or diminish the existing statutory, constitutional, or legal defenses of the Town in relation to such claims under the Wyoming law.

6. BINDING COVENANT:

The provisions of this Agreement shall operate as a covenant running with all parcels of land above described and shall bind both parties hereto and their respective successors and assigns in ownership.

7. TERM OF AGREEMENT:

This instrument and all the covenants contained herein shall remain in force and effect until such time as the Encroaching Property is removed partially or in its entirety. Removal of Encroaching Property, or any portions thereof, shall be based on legitimate municipal interests, including but not limited to the Town's need to use additional right-of-way (or easement). Following completion of the building being constructed on Encroaching Party's property as defined in Section 2, no notice of removal is required. Upon extension, removal, or destruction of the Encroaching Property partially or in its entirety, all rights of Encroaching Party, its successors, and assigns, hereunder to the encroachment, shall cease.

8. NO THIRD-PARTY BENEFICIARY:

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person or entity will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

9. HEADINGS:

Headings used in this Agreement are for convenience only and shall not be deemed to constitute a part hereof, or shall not be deemed to limit, characterize, or in any way affect the provisions of this Agreement.

10. MODIFICATION IN WRITING:

No modification, waiver, amendment, addition or cancellation of this document shall be effective unless in writing and signed by both parties.

11. BINDING EFFECT:

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. RECORDING:

This Agreement shall be executed upon its approval by the Jackson Town Council and shall thereupon be filed with the Town Clerk and recorded in the Land Records of Teton County, Wyoming at the Encroaching Party's sole cost.

13. GOVERNING LAW AND FORUM:

This Agreement shall be construed in accordance with the laws of the State of Wyoming. The parties agree that the Courts of the State of Wyoming and the Federal Courts of the United States located in the State of Wyoming shall have sole and exclusive jurisdiction over any dispute, claim, or controversy which may arise involving this Agreement or its subject matter. The parties irrevocably submit and consent to such jurisdiction and venue and waive any right they may have to seek a change of jurisdiction or venue.

14. COUNTERPARTS:

This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together constitute one and the same instrument.

15. SOVEREIGN IMMUNITY:

The Town of Jackson does not waive its sovereign immunity by entering into this agreement, and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Encroachment Agreement.

IN WITNESS WHEREOF, The effective date of this agreement is [Day Month Year].

[signatures follow on next page]

DRAFT

By: _____

Its: _____

Witness my hand and official seal.

My commission Expires:

Attest: _____
Sandra P. Birdyshaw, Town Clerk

By: _____
Lea Colasuonno, Interim Town Attorney

[illegible]

The foregoing instrument was acknowledged before me by Lea Colasuonno as Town Attorney of the Town of Jackson this _____ day of _____, 2019.

Witness my hand and official seal.

Notary Public

My commission Expires:

By: Brian Lenz, Town Engineer

STATE OF WYOMING)
COUNTY OF TETON)ss.

The foregoing instrument was acknowledged before me by Brian Lenz as Town Engineer of the Town of Jackson this _____ day of _____, 2019.

Witness my hand and official seal.

Notary Public

My commission Expires: