

RESOLUTION 22-36

**A RESOLUTION OF THE SOUTH WEBER CITY COUNCIL
ADOPTING HILL AIR FORCE BASE (HAFB) LICENSE AGREEMENT**

WHEREAS, Hill Air Force Base (HAFB) is required to monitor potential groundwater pollutants in certain areas of South Weber City; and

WHEREAS, they currently have monitoring wells on both private and city-owned property; and

WHEREAS, there is a request to continue current monitoring and add additional locations if needed up to a total of 20; and

WHEREAS, Council supports HAFB efforts to monitor the groundwater for the safety of all citizens;

NOW THEREFORE BE IT RESOLVED by the Council of South Weber City, Davis County, State of Utah, as follows:

Section 1. Adoption: Hill Air Force Base License Agreement is hereby adopted as attached herein as Exhibit 1.


Section 2: Repealer Clause: All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED by the City Council of South Weber, Davis County, on the 28th day of June 2022.

Roll call vote is as follows:

Council Member Halverson	<input checked="" type="radio"/> FOR	<input type="radio"/> AGAINST
Council Member Petty	<input type="radio"/> FOR	<input checked="" type="radio"/> AGAINST
Council Member Soderquist	<input checked="" type="radio"/> FOR	<input type="radio"/> AGAINST
Council Member Alberts	<input checked="" type="radio"/> FOR	<input type="radio"/> AGAINST
Council Member Dills	<input checked="" type="radio"/> FOR	<input type="radio"/> AGAINST

Excused


Rod Westbroek, Mayor




Attest: Lisa Smith, Recorder

EXHIBIT 1
HAFB GROUNDWATER LICENSE
AGREEMENT

HILL AIR FORCE BASE, UTAH LICENSE NO. USAF-AFMC-KRSM-20-1-0072

LICENSE

BETWEEN

SOUTH WEBER CITY

AND

THE UNITED STATES AIR FORCE

WHEREAS, South Weber City, a body politic of the State of Utah, (hereinafter “Grantor”) whose business address is 1600 East South Weber Drive, South Weber, Utah 84405-9659, has agreed to grant the United States Air Force (hereinafter “USAF”), a license which allows the USAF to locate and maintain groundwater monitoring wells and conduct groundwater and soil testing in connection with groundwater monitoring project (hereinafter “Project”), at various locations (hereinafter “Premises”) which are located within the boundaries of South Weber City and owned by the Grantor.

WHEREAS, the Grantor and the USAF entered into that certain License No. AFMC-HL-7-13-770, to conduct the Project within the Premises (defined above), which by its terms expired on 28 February 2018.

WHEREAS, the Parties acknowledge that USAF has continued to conduct the Project within the Premises since 1 March 2018; and

WHEREAS, this License continues to grant USAF approval to conduct the Project within the Premises in accordance with the terms set forth in Section 1 hereof.

NOW, THEREFORE, the Grantor and the USAF agree as follows:

AGREEMENT

1. Subject to the terms and conditions set forth herein, the Grantor hereby grants to USAF a non-exclusive and temporary right to access the Premises for the exclusive purpose of conducting the Project on the Premises. The USAF shall have access to the Premises to conduct the Project for a term of **one year beginning 1 March 2018 through 28 February 2019**. The USAF shall have **nineteen** one-year options to renew this license, and provided that unless and until the USAF shall give notice of termination in accordance with provision 7 hereof, this license shall remain in force thereafter from year to year without further notice; provided further that adequate appropriations are available from year to year for payment of rentals. This license shall in no event extend beyond **28 February 2038**.

2. In consideration of and for the rights granted under this license, and subject to the availability of appropriations therefore, the USAF shall pay the Grantor rent at the following rate: **five hundred dollars (\$500.00) per year**, payable at the end of the term and at the end of each renewal term. Payment shall be made by the Defense Finance and Accounting Service. If the

license is terminated for any reason before the end of a full term, rental periods of less than one year shall be prorated.

3. The routes of ingress and egress to, from and across the Premises for Project purposes are primarily via covered roadways maintained by the Grantor. It is agreed that the USAF will have access daily to the Premises by vehicle to collect water samples, measure groundwater levels, and conduct any necessary maintenance at the location of each monitoring well. The USAF agrees to carry out its operations at its own risk and expense, and the Grantor shall not be responsible or liable for any injuries to persons or damage to property when such injuries or damage is caused by or results from the operations, acts or omissions of the USAF in the exercise of its rights and use of the Premises for Project purposes under this license and is not due to the negligence of the Grantor. USAF agrees to repair and damage to public improvements occurring in the Premises as a result of the Project. Rental amounts include wear to roadways due to the ingress and egress to access monitoring locations.

4. The Grantor agrees that access to the Premises shall be granted to the Utah Department of Environmental Quality, or its successor, under the same terms and conditions as access is granted to the USAF.

5. If Grantor decides to sell any interest in the Premises, Grantor shall inform the purchaser of the terms of this license before the sale is finalized. Grantor also agrees to notify by certified mail, the Hill Air Force Base Installation Support Team of the Environmental Directorate – Operations for the Air Force Civil Engineer Center, with an address of:

AFCEC/CZOM
7290 Weiner St (Bldg 383)
Hill AFB UT 84056–5003

of the Grantor's intent to sell any interest in the Premises at least thirty days prior to any conveyance of the Premises. If the Grantor fails to notify the USAF of the conveyance, all rentals accrued during the preceding payment period shall be forfeited.

6. The USAF shall have the right, during the existence of this license to attach fixtures, and erect structures or signs, in or upon the Premises hereby granted. Said fixtures shall consist of up to **20 monitoring wells or piezometers** to be placed at various locations. The actual number and location of monitoring wells or piezometers (not to exceed the maximum number) may vary during the duration of this license based on the needs of the USAF or the city. The USAF shall provide updated maps and location information both initially after signature of this license and then subsequently each time a monitoring well or piezometer is added or removed. Such notification shall be made in writing to the addresses in Paragraph 8 below. Monitoring wells or piezometers which may be required by the USAF after the signature of this license shall be installed only with the approval of an authorized official of the Grantor. In no case shall the USAF install a monitoring well or piezometer without the authorization of the Grantor. Any such fixtures, structures, or signs, so placed upon or attached to the Premises shall be and remain the property of the USAF and may be removed or otherwise disposed of by the USAF. If Grantor finds that any fixture, structure, or sign (existing or new) poses a threat to public safety, Grantor

is responsible to notify USAF in writing and USAF will be responsible to remedy the threat within thirty (30) days of notification.

7. Either party may terminate this license at any time by giving thirty day notice in writing to the other party, and no rental shall accrue after the effective date of termination.

8. Any notice under the terms of this license shall be in writing signed by a duly authorized representative of the party giving such notice. If given by the USAF, notice shall be addressed to:

South Weber City
Attn: City Manager
1600 E South Weber Dr.
South Weber, UT 84405-9659

If given by the Grantor, notice shall be addressed to

75 CEG/CL
5713 Lahm Ln (Bldg 593 N)
Hill AFB UT 84056-5410

9. The Grantor warrants that no person or selling agency has been employed or retained to solicit or secure this license upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Grantor for the purpose of securing business. For breach or violation of this warranty the USAF shall have the right to annul this license without liability or in its discretion to deduct from the license price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this license or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this license if made with a corporation for its general benefit.

11. (a) The USAF may, by written notice to the Grantor, terminate the right of the Grantor to proceed under this license if it is found, after notice and hearing, by the Secretary of the Air Force or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise), were offered or given by the Grantor, or any agent or representative of the Grantor, to any officer or employee of the USAF with a view toward securing a license or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such license; provided that the existence of fact upon which the Secretary of the Air Force or his duly authorized representative makes such findings shall be an issue and may be reviewed in any competent court.

(b) In the event this license is terminated as provided in paragraph (a) hereof, the USAF shall be entitled (i) to pursue the same remedies against the Grantor as it could pursue in the event of a breach of the license by the Grantor, and (ii) as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the

Secretary of the Air Force or his duly authorized representative) which shall not be less than three nor more than ten times the costs incurred by the Grantor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the USAF provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this License.

12. Within ninety (90) days after termination or expiration of this license, the USAF, at its cost and expense shall, subject to the availability of appropriations therefore, remove all above ground structures, signs and other appurtenances installed on the Premises, remove and cap the monitoring wells to natural ground level, and use all practicable efforts to return all affected ground surfaces of the Premises to the condition that existed immediately prior to the installation of the monitoring wells, reasonable wear and tear and damage by the elements or other circumstances over which the USAF has no control excepted.

13. The Grantor agrees that the Comptroller General of the United States or any duly authorized representatives shall, until the expiration of three years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Grantor involving transactions related to this license.

14. Other than as indicated in Paragraph 6, this agreement may only be modified or amended by mutual agreement of the parties in writing and signed by each of the parties hereto.

15. The Grantor warrants they are the owners of the property and if it is later determined they are not the owners, Grantor will reimburse the USAF the rentals paid during the term of this license.

16. If Grantor is a corporation, partnership, trust, estate or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind Grantor.

17. The conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the representatives, successors, and assigns of the Grantor.

18. The invalidity of any claims, part or provision of this agreement shall not affect the validity of the remaining portion or portions hereof.

19. This license is not subject to Title 10, U.S.C. 2662.

20. USAF hereby indemnifies and agrees to hold Grantor, its officers, employees, representatives, successors and assigns ("Indemnified Parties") for, from and against any and all claims, liabilities, losses, suits, judgments, causes of action, fines, penalties, costs and expenses, including but not limited to court costs and attorney fees and cost of investigation, of any nature, kind or description which may be incurred by the Indemnified Parties, or any of them, at any time as a result of any damage to any property or persons in connection with or arising out of the location, construction, installation, operation, use, maintenance or existence of the Project and any related improvements constructed or installed over and through the Premises in any manner

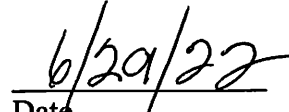
associated therewith unless such claims arise from and are materially attributed to the gross negligence of the Indemnified Parties.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names.

SOUTH WEBER CITY



DAVID LARSON
City Manager



Date

THE UNITED STATES OF AMERICA
by The Secretary of the Air Force

JEFFREY P. DOMM, SES, DAF
Director, Installations Directorate

Date