

**PESCADERO RECLAMATION DISTRICT 2058
ENCROACHMENT PERMIT AGREEMENT
(MAJOR PROJECT)**

DATE: _____
APPLICANT: _____
LOCATION: _____
PROJECT: _____

RECITALS

1. Pescadero Reclamation District (hereinafter “District”) is a California reclamation district formed pursuant to the Reclamation District Act of the California Water Code (§ 50000 et seq.) for the purpose of operating an irrigation and drainage system and providing levee maintenance within its boundaries.
2. The District has jurisdiction over the culverts, canals, structures, and other facilities (“District Facilities”) within its boundaries that are used for flood control, drainage, and irrigation purposes.
3. The District contracts with Nick Prichard with Giuliani and Kull, Inc. (District Engineer) for engineering services.

4. *Property Description:*

Location, Assessor’s Parcel Number (APN), acreage, reference to attached legal description (Exhibit A). Owner name, description of work planned on listed property, and City or County approval date and reference number. Reference to submitted site improvement plans (Exhibit B). If dewatering or surface discharge of project site water into District Facilities, a notice of Applicability from the State Water Board shall be provided and an Exhibit C will be added. – Provided by Applicant

5. *District Exiting Facility Description:*

-Provided Owner with input by District Staff

6. *Description proposed work to be done within the District existing or proposed right-of-way:*

-Provided by Owner with input from District Staff

7. The District is willing to grant Applicant an encroachment permit allowing Applicant to encroach, utilize, and/or relocate District Facilities upon the terms and conditions specified herein.

Therefore, the parties agree as follows:

AGREEMENT

The District hereby grants Applicant and Applicant's agents, the right to encroach, utilize, and/or relocate District Facilities only on the terms and conditions specified herein:

1. Application and Issuance of Encroachment Permit: The signing of this Encroachment Permit Agreement ("Agreement") and deposit of sums required by Paragraph 2 are required in order for this Agreement to be effective.
2. Reimbursement of Costs:
 - a. The District has incurred, and will incur, legal, administrative, engineering, and consultant costs and fees in drafting this Agreement and carrying out its duties hereunder. Applicant must reimburse District for these additional costs. All additional costs incurred by the District as a result of the Project will hereinafter be referred to as "District Costs."
 - b. This Agreement shall not be effective until Applicant submits to the District a fully executed copy of this Agreement and a check in the amount of \$5,000.00 as a security deposit toward the faithful performance of Applicant's obligation to reimburse District Costs. District Costs that exceed the security deposit will be invoiced to Applicant and shall be paid to the District within 30 days of demand (which demand shall include an appropriate back-up invoice).

- District staff shall review & comment on submitted plans, prepare legal documents, and conduct site visits under the initial deposit. Once the deposit is depleted, the District shall contact the owner to work out additional payment options of an additional deposit or time based on fee schedule. In addition, the District Staff (engineer and/or inspector) will

be required to be on-sit during construction of District facilities. The District staff shall contact owner to work out payment, generally hourly, based on fee schedule.

- c. When the Project has been completed in accordance with this Agreement and the Applicant has provided the District with all required drawings and documentation, and the District's legal counsel and the District Engineer have approved the same, and there are no remaining obligations due from Applicant to the District, then at that time the District will return the balance of the security deposit, if any, to the Applicant, and the District will accept the Facility improvements completed by Applicant (at which time, District shall be responsible for all maintenance and repairs thereafter, subject to the warranty period set forth herein). The District will return any unused balance of the security deposit within thirty (30) days of receipt of Applicant's Notice of Completion.
3. Project Scope: Applicant will be permitted to encroach upon, utilize, and/or relocate the District Facility to construct improvements related to the Project in accordance with the plans described above and in Exhibit B. Applicant agrees, at Applicant's expense to *(modify, relocate, or access)* the District Facility in accordance with the terms and conditions outlined herein and all applicable laws, regulations, rules and orders of any federal, state or local governmental authority or agency with jurisdiction.
4. Care During Construction: Applicant shall provide the standard of care necessary to protect the District Facility. Applicant agrees to replace any and all facilities under the District's jurisdiction that become damaged or are impacted by construction. Applicant will permit the District Engineer to inspect all work performed on the District Facility in order to ensure they meet District specifications. The District shall notify the Applicant within 60 days after the completion of construction if there is any damage to the District Facility. Applicant shall keep the District Engineer & General Manager informed of the progress of work performed on the District Facility to enable proper inspection. Applicant shall make any modification reasonably requested by the District Engineer & General Manager.
5. Approval of Plans and Specifications: Applicant shall cause such relocation of the District Facility to be performed only in accordance with plans and specifications approved by the District Engineer, which approved plans and specifications are described on Exhibit B attached hereto. The Applicant shall submit the final plans, as well as any and all related permits or approvals, to the District Engineer as soon as they are available and shall incorporate into said plans all terms and conditions requested by the District Engineer. Applicant shall notify the District Engineer and District General Manager one (1) week before initiating any construction activity within the District and, when there is no activity for a period of fifteen (15) working days, then twenty-four (24) hours notice prior to resumption of construction shall be given. The District Engineer or his agents shall have the right to inspect the construction of the Project at any time, and shall inspect the work

completed within five (5) days after Applicant notifies the District Engineer that the work has been completed.

- District Office at 209-835-2293
- District General Manager at 209-482-2520
- District Engineer at 209-847-8726 x 202

6. Project Timing: The District's irrigation season runs from March 15th to November 1st. In some locations, the District uses the facilities to remove stormwater from the local areas, generally between December 1st to March 15th.

Work on the District Facility during the irrigation season is discouraged due to the possible need for the District to convey irrigation water through the proposed construction site. Work to be performed on the Facility during the District's irrigation season can only be done with the express authorization of the District's General Manager. An up-to-date construction schedule must be provided in order for the District to determine if construction activities can occur during the irrigation season. The District generally does not have the ability to bypass the construction site when irrigation or storm water must be conveyed through the pipeline system. An approved bypass pumping plan must be submitted and approved by the District prior to demolition of the existing District Irrigation or Drainage Facility.

-District staff may modify text to better describe the site specific location and the need to flow irrigation water or storm water through the District Facility in question.

7. Warranty: Applicant shall warrant all work performed on or related to the District Facility for a period of one (1) year from the date the Notice of Completion is filed with the District. Notwithstanding the one (1) year warranty period, Applicant will at all times be responsible for any and all repairs required as result of the Project, but only to the extent such damage is attributable to the Project.

8. Liability/Indemnity:

- To the fullest extent permitted by law Applicant shall immediately defend, indemnify, and hold harmless District and its Trustees, agents, employees, and contractors from any and all losses, damages, liabilities, claims, demands, litigations, and expenses, including attorney's fees, (each a "Claim") to the extent such Claim arises out of, or results from Applicant's obligations or activities under this Agreement, excepting only such injury or harm as may be caused by the negligence or intentional acts of the District or its Trustees, officers, agents, employees, and contractors.
- Applicant shall immediately defend upon the District's tender, at Applicant's own

cost, expense, and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its Trustees, agents, employees and contractors, notwithstanding whether Applicant's liability is or can be established. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by District, or its Trustees, agents, employees, or contractors.

- c. Applicant hereby waives, as to the District's Trustees, engineer, attorney, consultants, employees or agents, any and all claims, damages, liability or losses arising from or related to, review, or approval of the plans, designs, specifications, and other documents and data related to the Project except when damage results from data or information provided by the District. This waiver shall be binding on any and all successors to Applicant.

9. Insurance: Applicant shall secure and maintain in full force and effect, until the satisfactory completion and acceptance of the Project by District, such insurance as will protect it and the District in such a manner and in such amounts as set forth below. The premiums for said insurance coverage shall be paid by Applicant. Failure to comply with these insurance requirements may constitute a material breach of this Agreement, in the sole discretion of the District.

- a. Certificates of Insurance. No later than ten (10) days after the effective date of this Agreement, Applicant shall furnish District with Certificates of Insurance and endorsements verifying the insurance coverage required by this Agreement is in full force and effect. The District reserves the right to require complete and accurate copies of all insurance policies required under this Agreement.

b. Required Provisions

- i. **Primary Coverage**. The insurance policies provided by Applicant shall be primary insurance and any self-insured retention and/or insurance carried by or available to the District or its employees shall be excess and non-contributory coverage so that any self-insured retention and/or insurance carried by the District shall not contribute to any loss or expense under Applicant's insurance.
- ii. **Additional Insured**. The policies of insurance provided by Applicant shall include as additional insureds: the District, its Trustees, employees, and agents when acting in their capacity as such in conjunction with the performance of this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to the District, its Trustees, employees, or agents.

- iii. **Cancellation.** Each certificate of insurance and insurance policy shall provide that the policy may not be non-renewed or cancelled (for reasons other than non-payment of premium) without first giving thirty (30) days advance written notice to the District, or ten (10) days advance written notice in the event of cancellation due to non-payment of premium.
 - iv. **Claim Reporting.** Applicant shall endeavor to not fail to comply with the claim reporting provisions or cause any breach of a policy condition or warranty of the insurance policies required by this Agreement that would affect the coverage afforded under the policies to the District.
 - v. **Deductible/Retention.** If the insurance policies provided by Applicant contain deductibles or self-insured retentions, any such deductible or self-insured retention shall not be applicable with respect to the coverage provided to the District under such policies. Applicant shall be solely responsible for any such deductible or self-insured retention.
- c. **Insurance Company Requirements.** Applicant shall provide insurance coverage through insurers that have at least an “A” Financial Strength Rating and a “VII” Financial Size Category in accordance with the current ratings by the A.M. Best Company, Inc. as published in Best’s Key Rating Guide or on said company’s website. In addition, any and all insurers must be authorized to conduct business in the State of California and be a participant in the California Insurance Guaranty Association, as evidenced by a listing in the appropriate publication of the California Department of Insurance.
- d. **Policy Requirements.** The insurance required under this Agreement shall meet or exceed the minimum requirements set forth below:
- i. **General Liability.** Applicant shall maintain, or cause to be maintained, Commercial General Liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence or claim and two million dollars (\$2,000,000) aggregate. The policy shall include, but not be limited to, coverage for bodily injury, property damage, personal injury, products, completed operations, and contractual liability to cover, but not be limited to the liability assumed under the indemnification provisions of this Agreement. In the event the Commercial General Liability insurance policy is written on a “claims made” basis, coverage shall extend for two (2) years after the satisfactory completion and acceptance of the Project by the District.
 - ii. **Automobile Liability.** Applicant shall maintain, or cause to be maintained, Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars

(\$1,000,000.00) each occurrence for any owned, hired or non-owned vehicles.

10. Drawings: Applicant shall within ninety (90) days after completion of Project supply the District with “as-built” drawings of the Project.
11. Notice of Completion: The Project shall be completed within two (2) years of the date first written above and, upon completion, Applicant shall promptly file a Notice of Completion with the District.
12. Termination: This Permit and Agreement shall be subject to termination by the District’s Board of Trustees upon failure of Applicant to adhere to the terms and conditions provided herein following written notice of default and a cure period of at least thirty (30) days. The Permit and Agreement shall automatically terminate if construction on the Project has not commenced within twenty-four (24) months of the date first written above.
13. Laws and Regulations: Applicant shall be responsible for compliance with all applicable laws and regulations, including the California Environmental Quality Act.
14. Easements: Applicant shall grant the District an easement for the *(modified or relocated)* District Facility that provides the District with a right to access the *(modified or relocated)* District Facility so that the District may operate and maintain the relocated Facility. Applicant shall prepare and submit a Grant of Easement and Agreement, along with any associated legal description(s) and map(s), to the District for its review and approval within thirty (30) days of Applicant’s execution of this Agreement.

-The District will only require a recorded easement for modifications and relocations of existing District Facilities. Access to or through district right-of-ways shall not require a new easement document to be recorded.

15. Miscellaneous:
 - a. The terms and conditions herein shall bind the heirs, assigns, executors, administrators and transferees of both Applicant and District. Applicant agrees as a condition of any transfer to obtain from the transferee its written agreement to comply with the terms of this Agreement. Applicant shall notify the District of the name and address of any transferee and provide to District a copy of said transferee’s agreement within ten (10) days of the transfer.
 - b. This Agreement is intended to reflect the entire understanding between the parties, and no alteration or modification shall be valid unless made in writing and signed by the parties.

- c. The parties agree to cooperate with each other and coordinate their respective activities in a good faith effort to accomplish the objectives recited above. In order to facilitate such cooperation, the parties have designated the following positions responsible for implementation and performance of this Agreement.

District:
General Manager
Reclamation District No. 2058
3650 West Canal Blvd.
Tracy, California 95376

Applicant:

- d. Time is of the essence of this Agreement.
- e. In the event of any controversy, claim, or dispute relating to this Agreement, or the seeking of a declaration of any rights or obligations under this Agreement, or for the performance, nonperformance or breach of any of the provisions hereof, whether sounding in contract or in tort or both, in which a lawsuit is filed and/or the services of an attorney, mediator, arbitrator or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including, without limitation, reasonable attorneys' fees, costs, experts' fees and all other fees listed in Code of Civil Procedure 1033.5(b), in addition to all other amounts awarded by the court, arbitrator or mediator.
- f. This Agreement shall not be valid until an original which is fully signed by an authorized representative of Applicant is returned to the District. The signing party warrants and represents that he or she has full authority to enter this Agreement and fulfill the terms and conditions set forth herein. The Agreement may be signed in counterparts.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized officers as of the date first above written.

DISTRICT

By: _____
President, Board of Trustees

By: _____

Name: _____

Title: _____

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

EXHIBIT B
SITE IMPROVEMENT PLANS