

**RECLAMATION DISTRICT 2058
ENCROACHMENT PERMIT AGREEMENT
(MINOR PROJECT)**

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

RECITALS

- A. 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.
- B. 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.
- C. The District contracts with Nick Prichard with Giuliani and Kull, Inc. (District Engineer) for engineering services.

D. 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.

E. District Exiting Facility Description:

-Provided Owner with input by District Staff

F. *Description of desired access to or across District's right-of-way:*

-Provided by Owner with input from District Staff.

Reference to submitted site map showing locations and activities within District's right-of-way (Exhibit B). – Provided by Applicant

G. The District is willing to grant Applicant an encroachment permit allowing Applicant access to the District's right-of-way 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 access the District Facility 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 \$1,000.00 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. 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 the District right-of-way per the requirements of the listed project scope as described above and in Exhibit B.
 4. Care During Use: 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 Applicant's access to the District's Facility. Applicant will permit the District Engineer and General Manager to inspect all work performed within the District's right-of-way.
 5. Project Timing and Notice: 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.

Applicant will provide 24-hour notice to District staff before Applicant, or its agents, access the District right-of-way. If District staff cannot be reached, Applicant will contact either the District General Manager or District Engineer to provide the 24-hour notice. Applicant will use the contact information below to provide the District with such notice:

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

6. Liability/Indemnity:
 - a. 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.

- b. 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.
- 7. 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.

8. Notice of Completion: The Project shall be completed before the termination of this Agreement, the date for which is set forth below, and upon completion, Applicant shall promptly provide written notice of completion to the District.
9. Termination: This 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 after written notice of default and at least thirty (30) days opportunity to cure any default and shall automatically terminate on (- *date* -).
10. Laws and Regulations: Applicant shall be responsible for compliance with all applicable laws and regulations, including the California Environmental Quality Act.
11. 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.

Pescadero Reclamation District

By: _____
President, Board of Trustees

By: _____

Name: _____

Title: _____

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

EXHIBIT B
SITE MAP