

**KERN DELTA WATER DISTRICT PART
2 – GENERAL PROVISIONS**

1. Acceptance of Provisions: Permittee agrees that upon the performance of any work, this permit shall constitute an acceptance by Permittee of the provisions hereof.
2. Surety Bond(s): A Surety Bond or Bonds in such form and amounts as are satisfactory to District may be required to insure performance in accordance with all the terms, conditions, and restrictions hereof. Amounts of Bond, if required, shall be set forth in Part 1 – SPECIAL PROVISIONS.
3. Insurance: Permittee shall obtain and maintain during the term of this permit, at Permittee's sole cost and expense, public liability and property damage insurance, and any other insurance required by District, in the amounts set forth in PART 1 – SPECIAL PROVISIONS. Said insurance shall be in a form and with companies satisfactory to District, shall cover the liability of Permittee under this permit, and shall name Kern Delta Water District, its officers, agents, servants, and employees as additional insureds. Permittee shall have the right to self-insure with respect to any of the insurance requirements required under this Permit. By request, Permittee shall submit a letter of self-insurance signed by a duly authorized representative, evidencing that the self-insurance program is in full force and effect and in compliance with and subject to all the terms, conditions and provisions of this permit.
4. Consideration: As consideration for this Encroachment Permit, Permittee shall pay to the District the amount or amounts set forth in PART 1 – SPECIAL PROVISIONS in the manner provided therein.
5. Notice: Prior to commencing any work authorized herein, Permittee shall give at least three (3) days' notice to the District Engineer.
6. Permit on Work Site: This permit shall be kept on the premises during construction and upon request must be shown to any representative of District.
7. Satisfaction of District: All work to be performed hereunder shall be performed to the satisfaction of District.
8. Protection of District Facilities: Permittee shall properly construct, maintain and repair any facilities authorized hereunder, protect all District facilities in place, and exercise reasonable care in inspecting for any injury to District facilities, immediately notify the District of any injury to District facilities, and be prepared to immediately repair any injury to District facilities which occurs as a result of the existence of said encroachment or as the result of any work performed hereunder, at the sole discretion of and direction of the District.
9. **NO INTERFERENCE WITH WATER DELIVERIES: PERMITTEE UNDERSTANDS AND ACKNOWLEDGES THAT: (a) DISTRICT IS A PUBLIC ENTITY RESPONSIBLE FOR THE DELIVERY OF IRRIGATION WATER TO ITS CUSTOMERS WITHIN ITS SERVICE AREA; (b) SAID DELIVERIES ARE NEEDED TO MEET CROP DEMANDS ON A SEASONAL BASIS AND THE FAILURE TO ADEQUATELY AND TIMELY DELIVER WATER TO MEET SUCH CROP DEMANDS MAY SUBJECT DISTRICT TO LIABILITY NOT**

ONLY AS TO THE VALUE OF THE WATER DELIVERED BUT ALSO AS TO CROPS WHICH MAY BE DAMAGED OR DESTROYED BY DISTRICT'S FAILURE TO ADEQUATELY AND TIMELY DELIVER SUCH WATER; AND (c) TO MEET THESE OBLIGATIONS DISTRICT MUST BE ABLE TO OPERATE AND USE THE FULL CAPACITY OF ITS FACILITIES WITHOUT INTERFERENCE OR OBSTRUCTION OF ANY SORT EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN PART 1 – SPECIAL PROVISIONS. PERMITTEE EXPRESSLY REPRESENTS TO DISTRICT THAT IT UNDERSTANDS AND ACKNOWLEDGES SUCH FACTS AND CIRCUMSTANCES AND FURTHER REPRESENTS THAT THE WORK BEING PERFORMED UNDER THIS ENCROACHMENT PERMIT WILL NOT INTERFERE WITH DISTRICT'S SAID WATER DELIVERIES EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN PART 1 – SPECIAL PROVISIONS.

10. Handling of Storm Waters: Permittee is advised and understands that District's facilities are used for disposal of nuisance waters at all times, and surface waters during rain events and extreme weather conditions, and Permittee shall not interfere with such use except as allowed under PART 1 – SPECIAL PROVISIONS. The Permittee shall be responsible for restoring District facilities to such condition as is required to handle or transport such flows at no cost to District.

11. Indemnity: Permittee agrees to protect, defend (with counsel acceptable to District), indemnify and hold District and its officers, agents, servants and employees free and harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character (including the amount of judgment, penalties, interest, court costs, and legal fees incurred by District or its officers, agents, servants and employees in defense thereof) arising in favor of any party (including governmental agencies or bodies) on account of taxes, claims, liens, debts, personal injuries, or death (including injury to or death of officers, employees, servants, and agents of District) or damages to property (including property of District) and, without limitation by enumeration, all other claims or demands of every character occurring or in any wise incident to, in connection with or arising directly or indirectly out of Permittee's facilities or performance or non-performance by Permittee hereunder; except to the extent of rising out of the negligence or willful misconduct of District, its officers, employees or contractors. Permittee further agrees to investigate, handle, respond to, provide defense (with counsel acceptable to the District) for and defend any such claim, demand or suit at its sole cost and expense, and agrees to bear all other costs and expenses related thereto even if the claim, demand or suit is groundless, false or fraudulent. District will give notice to Permittee of any known event wherein Permittee shall be obligated to perform under this indemnity provision. Permittee's obligation to indemnify, defend, and hold harmless hereunder includes any and all claims or allegations pertaining or related to the California Environmental Quality Act and any obligations thereunder.

12. Hazardous Material Cleanup, Indemnification, and Notice: Permittee shall be solely responsible for the payment of all remediation and cleanup costs associated with the release, spill, or discharge of any hazardous substance upon the premises including, but not limited to, any oil or gas leak, spill or release. Permittee shall also be responsible for any and all cleanup costs necessary for compliance with any applicable State or Federal environmental law or regulation that arises as a result of Permittee's discharge, release or spill of hazardous substance upon the premises.

Permittee shall indemnify, defend (with counsel acceptable to District) and hold District harmless from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen, including without limitation counsel, engineering, and other professional or expert fees, that District may incur by reason of any release, spill, leak or discharge caused by Permittee or Contractor, and subsequent cleanup and remediation of any hazardous substance released, spilled, leaked or discharged on the premises by Permittee or Contractor.

Permittee shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Permittee to the U.S. Environmental Protection Agency, the California Environmental Protection Agency, the United States Occupational Safety and Health Administration, or any other local, state, or federal authority that requires submission of any information concerning environmental matters or hazardous wastes or substances released, spilled, leaked or discharged on the premises by Permittee or Contractor. Permittee shall also supply District with written confirmation of any notices or reports regarding such releases of hazardous wastes or substances that Permittee makes orally or by telephone to any such governmental agency.

13. Restoration: Permittee shall restore the premises (including fencing) as nearly as possible to the same state they were in prior to the construction and, in any event, to a condition fully satisfactory to District. Said restoration shall be accomplished in a manner which does not adversely affect the capacity or flow characteristics and/or safety of District's facilities and rights-of-way.
14. Relocation: At such time or times as, in the opinion of District, the facilities constructed and installed hereunder interfere with District's reasonable use of, or operations upon, its right-of-way, Permittee shall, at its own risk and expense, within sixty (60) days after notice from District, relocate and reconstruct said facilities as specified by District in its notice (or, if it reasonably would require more than sixty (60) days to perform such work, within such reasonable time that would be required to perform the work, provided that Permittee has undertaken to perform such work within such sixty (60) day period and diligently pursues such efforts to completion), and Permittee shall promptly thereafter restore the premises as provided in Paragraph 13 hereof.
15. Removal: Permittee agrees that, in the event this permit be terminated for any cause, Permittee shall, at its own risk and expense, within sixty (60) days, remove all facilities (or, if it reasonably would require more than sixty (60) days to perform such work, within such reasonable time that would be required to perform the work, provided that Permittee has undertaken to perform such work within such sixty (60) day period and diligently pursues such efforts to completion), and Permittee shall promptly thereafter restore the premises as provided in Paragraph 13 hereof.

16. No Interest in real Property: It is agreed and understood that no interest in real property is conveyed hereby but merely the right of encroachment on the surface of the premises for the purpose stated herein.
17. No Precedent: This permit is granted with the understanding that no precedent shall be established with regard to permitting any certain kind of encroachment within District rights-of-way.
18. Termination: Except as may be otherwise provided in PART 1 – SPECIAL PROVISIONS, this permit shall continue in full force and effect until terminated by operation of law, by mutual consent, by terms contained within the Permit, or by Permittee's abandonment of the facilities constructed hereunder. Abandonment shall be conclusively presumed following twelve (12) months continuous non-use of said facilities. The District may, at any time with one hundred eighty (180) days notice to Permittee, revoke and terminate this permit based upon changed circumstances or other reasonable cause, as determined by District.
19. Other Permits: Permittee shall secure, whenever required by law, a written order or consent to the performance of the work contemplated hereunder from any public board or body having jurisdiction, and this Permit shall not be valid or effective until such order or consent is obtained. In addition, Permittee shall secure, whenever necessary, the written permission of any other persons or entities having or claiming to have any interest in the Premises prior to the start of construction, it being understood that District does not warrant or guaranty its title to said property nor the nature and extent of its interest therein.
20. Non-Assign ability: This encroachment permit is personal to the Permittee and shall not be assigned by said Permittee, either in whole or in part, without the written consent of District first had and obtained.
21. Successors in Interest: This encroachment permit shall endure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns.
22. Use of District Facilities: This permit strictly authorizes the Permittee to encroach upon District's easement and facilities in accordance with the specifications referenced herein. The District makes no warranty, expressed or implied, with respect to the quality or condition of said District easement and facilities. Permittee understands this encroachment permit in no way entitles the Permittee to water rights nor guarantees the use of District facilities.