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Vallecitos Water District
201 Vallecitos de Oro
San Marcos, CA 92069

APN:

(Space above for Recorder's use)
Document Transfer Tax: None

**VALLECITOS WATER DISTRICT
ENCROACHMENT AGREEMENT**

THIS AGREEMENT is entered into by and between the VALLECITOS WATER DISTRICT, organized and existing pursuant to the County Water District Law, California Water Code ' 30000 et. seq., (hereinafter DISTRICT) and the _____ hereinafter (PERMITTEE).

RECITALS

1. THE DISTRICT presently holds title to an easement as more particularly described in Exhibit A attached hereto and incorporated herein by reference.
2. PERMITTEE desires to encroach upon this easement.
3. The parties agree that PERMITTEE shall be entitled to encroach upon this easement only to the extent and in the manner specified in this Agreement. No other encroachment shall be allowed without the express prior written consent of the DISTRICT.

COVENANTS

1. **Permission to Encroach on Easement.** PERMITTEE is hereby granted permission to encroach upon the easement described in Exhibit A, attached hereto, and incorporated herein by reference, in the manner specified in Exhibit B subject to all conditions specified in Exhibit B and subject to all terms of this Agreement.
2. **Limitations of Rights Granted to PERMITTEE.** Rights being granted to PERMITTEE in accordance with this Agreement shall extend only to such rights as the DISTRICT may grant to PERMITTEE in accordance with the terms of the easement presently held by DISTRICT. PERMITTEE shall be solely responsible for verifying that the rights being granted by DISTRICT may be granted to

PERMITTEE in accordance with the terms of the DISTRICT's easement.

3. Construction of Encroachment. PERMITTEE shall be solely responsible for all fees, costs and expenses of whatever type or nature associated with construction of the encroachment. The DISTRICT shall be notified at least forty-eight (48) hours prior to commencement of construction of the encroachment and shall be permitted to inspect and approve all encroachment construction. All encroachment construction shall be carried out as specified by the DISTRICT in its sole discretion.

PERMITTEE shall pay all costs of the DISTRICT including, but not limited to, the costs of inspection, administration, legal fees and engineering relating to the construction and exercise of permission granted to PERMITTEE by this Agreement.

4. Maintenance of Encroachment Facilities and Area. PERMITTEE shall maintain the encroachment facilities and encroachment area at all times in a safe, sanitary and good condition at PERMITTEE's sole cost and expense. PERMITTEE shall promptly perform all maintenance and repair of the facilities and encroachment area requested by the DISTRICT from time to time in its sole discretion.

5. Protection of DISTRICT Facilities in Encroachment Area. All facilities of the DISTRICT in the encroachment area shall be protected by PERMITTEE as directed by the DISTRICT from time to time in its sole discretion.

6. Permit for all Damages and Expenses Caused by Encroachment. PERMITTEE shall pay for all damages of whatever type or nature which may occur to the DISTRICT's easement or facilities within the easement as a result of construction, maintenance, use, repair, removal or relocation of PERMITTEE's facilities.

PERMITTEE shall also pay for all fees and costs incurred by the DISTRICT to remove, demolish or relocate PERMITTEE's facilities in order to repair, maintain, replace, relocate or remove DISTRICT's facilities in the easement or to install new facilities in the easement as the DISTRICT may determine in its sole discretion.

Should the DISTRICT determine that PERMITTEE's facilities must be relocated, as the DISTRICT may determine in its sole discretion, PERMITTEE shall pay all fees and costs to remove and relocate these facilities.

All such payments shall be made within thirty (30) consecutive days following receipt of a written demand from the DISTRICT. The written demand shall specify the amount due and the type of losses or incurred expenses. Any amounts not received by the DISTRICT within this thirty (30) consecutive day period, shall earn interest at the maximum rate authorized by California law.

7. Indemnity. PERMITTEE hereby indemnifies the DISTRICT and its agents, servants, employees, consultants and officers from any and all losses, damages or expenses to any persons,

entities or property caused by or related to the encroachment. This indemnity shall include all DISTRICT attorney's fees and court costs if the DISTRICT is named as a party in any litigation related to the encroachment.

8. DISTRICT not Liable for Damage to Encroachment or Encroachment Area. The DISTRICT shall not be liable for any damages whatsoever to the encroachment facilities or encroachment area related in any way to the DISTRICT's continued use of the easement or as a result of the DISTRICT's construction, use, repair, replacement or relocation of any DISTRICT facilities within the easement.

9. Other Uses Forbidden. PERMITTEE is limited to the specific encroachment area and facilities granted by this Agreement. No other encroachment is permitted without the express prior written consent of the DISTRICT.

10. Prior Rights. This Agreement shall not alter, modify or terminate, in any way, any of the prior rights of DISTRICT to use of the easement in accordance with its terms. PERMITTEE shall not be considered as acquiring any permanent interest of any kind or nature in the easement which is inconsistent with the rights of the DISTRICT.

11. General Conditions. The encroachment shall be subject to each of the following general conditions:

11.1 A minimum clearance of _____ shall be maintained between the DISTRICT's facilities and the approved encroachment facilities.

11.2 A minimum and maximum ground-level cover shall be maintained over the DISTRICT facilities as shown on the improvement plans approved by the DISTRICT Plans for the Improvement of _____.

11.3 No heavy equipment is permitted on the easement.

11.4 The existing ground level over the DISTRICT's facilities shall not be changed without the prior written consent of the DISTRICT.

11.5 No blasting shall be permitted without the prior inspection and approval of the DISTRICT.

12. Termination of any of the terms of this Agreement by PERMITTEE shall constitute a material breach of this Agreement entitling the DISTRICT to terminate this Agreement, in addition to such other relief as may be afforded by applicable law. Upon receipt of notice of termination from the DISTRICT, PERMITTEE shall promptly remove all encroachment facilities and restore the encroachment area in the manner directed by the DISTRICT in its sole discretion. All fees, costs and expenses of removal and restoration shall be paid solely by PERMITTEE.

13. Agreement as Covenant Running with Land and Binding on Successors. The

parties expressly agree that this Agreement shall be construed as a valid and binding equitable servitude and covenant running with the land which shall be binding upon the heirs, personal representatives, successors, assignees or transferees of the parties hereto. The parties expressly waive the right to challenge the enforceability of this Agreement as a legal and binding equitable servitude and covenant running with the land in any subsequent arbitration or litigation between the parties or their successors.

14. Attorney's Fees. In the event of any legal or equitable proceeding to enforce or interpret the terms or conditions of this Agreement, the prevailing party shall be entitled to all reasonable attorneys' fees and court costs in addition to such other relief as may be afforded by applicable law.

15. Law Applied. The validity, interpretation, construction and performance of this Agreement shall be construed under the laws of the State of California and the applicable rules and regulations of the DISTRICT.

16. Venue. In the event of any arbitration or litigation to interpret or enforce the terms of this Agreement, venue shall lie only in the state or federal courts in or nearest to the North County Judicial District, County of San Diego, and State of California.

17. No Warranties. There are no warranties or representations of any kind being made.

18. Modification. This Agreement shall not be altered in whole or in part except by a modification in writing executed by both parties to this Agreement.

19. Meaning of PERMITTEE. The word PERMITTEE as used in this Agreement shall mean the PERMITTEE or any person or entity deriving any interest in this encroachment permit from PERMITTEE or its successors-in-interest.

20. Attorney Representations. The PERMITTEE acknowledges that this Agreement has been prepared by The Law Offices of Scott and Jackson, general counsel, who represents only the DISTRICT. The PERMITTEE is hereby notified to seek the advice of independent counsel concerning this Agreement and its terms. PERMITTEE acknowledges that PERMITTEE has had the opportunity to do so prior to executing this Agreement.

21. Effective Date. The effective date of this permit is _____, 2017.

22. Board of Directors' Approval. This Agreement is executed by the DISTRICT pursuant to Resolution No. 1358, dated July 21, 2010, which authorizes the secretary of the District from time to time to consent to the acceptance of any encroachment granted by this District for and on behalf of property owners, and to cause an encroachment to be recorded in the Office of the County Recorder of San Diego County.

DISTRICT
VALLECITOS WATER DISTRICT

Accepted By: _____

Date: _____, 2017

Glenn Prum, Secretary
Board of Directors
Vallecitos Water District

PERMITTEE

Name: _____

Title: _____

Company: _____

Signature*: _____

Date: _____, 2017

Name: _____

Title: _____

Company: _____

Signature*: _____

Dated: _____, 2017

*** Acknowledgment of the signature(s) of authorized representative(s) of PERMITTEE executing this agreement, by a Notary Public, is required. Attach acknowledgment to this page.**

EXHIBIT A

EXHIBIT B

1. **Encroachment Facilities:**

2. **Encroachment Area:**

3. **Special Conditions of Encroachment:**