

Permit Number: _____

Term of Permit: _____

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| <p>CARLSBAD IRRIGATION DISTRICT 5117 Grandi Road - Carlsbad, NM 88220 Phone - (575) 236-6390 Fax - (575) 236-6396 cid@plateautel.net</p> |
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RIGHT OF USE PERMIT*

Grantee: (Name, address, phone and e-mail)

Purpose: (Specify use requested: what, quantities, dimensions, etc.)

Legal and other description of Permitted Property: (aerial photo, map, GPS, etc.)

Administration Fee: \$ _____

Right of Use and License Fee: \$ _____

Additional Administration Cost: \$ _____

Total Fee Due: \$ _____

Right of use permit subject to CID Board of Directors approval and fee structure. The Grantee has read and reviewed the language contained on the Permit and hereby accepts this Permit subject to the terms and conditions expressed or implied herein. The Grantee also understands the rules and regulations of Carlsbad Irrigation District and agrees to abide by same during the term of this Permit.

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| Sign names as written in body of permit, for co-partnership, permittees should sign as "members of firm", for Corporation, the officer authorized to execute contracts, etc. should sign with title. | |
| GRANTOR | GRANTEE |
| CARLSBAD IRRIGATION DISTRICT (CID) | NAME _____ |
| SIGNATURE _____ | SIGNATURE _____ |
| TITLE _____ | TITLE _____ |
| DATE _____ | DATE _____ |

* Right of Use includes leases, permits, licenses or agreements issued by CID to permit the occupation, use or traversing of lands under the ownership, administration, control or management of CID.

GENERAL CONDITIONS

SECTION 1. Assignment and Binding Nature: The provisions of this Permit shall inure to the benefit of and be binding upon the heirs, executors, administrators, personal representatives, successors, and representative, successor or assign of the Grantee shall have the right to use, alter, or modify the installation/encroachment in a manner which will not materially increase the burden of the installation/encroachment on the property. This Permit shall not be assignable by the Grantee without prior written approval from the Grantor and which request to assign shall be accompanied by a non-refundable \$500.00 fee.

SECTION 2. Termination of the Permit:

2.1 If grantee fails to comply with any of the conditions set forth herein Grantor (CID) may terminate this permit upon not less than thirty (30) days notice.

2.2 If Grantee fails to comply with the conditions set forth herein, or if either party terminates this Permit as permitted herein, Grantee shall remove at its own cost, within thirty (30) calendar days after written notice from Grantor, any materials, improvements or facilities placed on Permitted Property by Grantee, its directors, officers, employees, or agents. If Grantee fails to remove any of the materials, improvements or facilities within the thirty (30) day period, Grantor at its election, (i) with or without giving notice to Grantee, may remove and store the materials, improvements or facilities or (ii) give notice to Grantee that Grantor will retain the materials, improvements or facilities. Upon Grantor's giving notice to Grantee that Grantor will retain the materials, improvements, or facilities, Grantee's right, title and interest in the materials, improvements, or facilities immediately shall vest in Grantor.

2.3 If Grantor removes any materials, improvements or facilities pursuant to Section 2.2, Grantee shall reimburse Grantor for the costs of such removal or storage within ten (10) calendar days after Grantor presents Grantee a statement of such costs. Grantee shall release Grantor from all damages resulting to Grantee from such removal or storage.

2.4 If Grantee's right, title and interest in any of the materials, improvements or facilities vest in Grantor pursuant to Section 2.2, then Grantor shall execute, acknowledge and deliver to Grantor an instrument, acceptable to Grantor, transferring to Grantor all Grantee's right, title and interest in the materials, improvements or facilities. The provisions of this Section shall survive termination of this Permit.

SECTION 3. Maintenance of Permitted Property and Interface with Grantor's Use of Permitted Property:

3.1 Grantee, at its own expense, shall maintain the Permitted Property and all Grantee's materials, improvements and facilities thereon in good, sanitary and safe condition as conclusively determined by Grantor. Such maintenance shall involve but not be limited to, (a) repair and upkeep of the structure(s); (b) the removal of deposited sediment, trash, and other debris from within and adjacent to the structure(s); (c) control of vectors and other pests associated with the structure(s); and (d) repair of damages to the affected facilities of the Carlsbad Irrigation District (CID) as determined by the CID. Such maintenance shall be conducted by the Grantee annually or on request by the CID between the end of each irrigation season and December 31 of the same year, or at other times upon written notification by the CID. Such maintenance shall not interfere in any manner whatsoever with the construction, operation, and maintenance of any part of the CID project. CID shall be notified at least forty-eight (48) hours in advance of any planned maintenance, unless under emergency conditions when notifications shall be timely. Neither Grantee nor its agents shall interfere with the use of the Permitted Property by Grantor, or the interest of any other individual or entity in the Permitted Property.

3.2 If Grantee defaults in the performance of any provisions of Section 3.1, as conclusively determined by Grantor, and Grantor gives notice of the default, Grantee shall correct such default to the satisfaction of Grantor within the required period of time set forth in the notice (Correction Period). If Grantee fails to correct the default within the Correction Period, Grantor may take any action determine by Grantor to be necessary to correct such default, including without limitation making any repair or modification to or removing any such materials, improvements or facilities. Grantee shall reimburse Grantor for the costs of correcting such default, as conclusively determined by Grantor, within ten (10) calendar days after Grantor presents Grantee a statement of such costs. Grantee shall release Grantor from all damages resulting to Grantee from correcting such default, including without limitation those damages arising from all repairs or modifications to or removal of any materials, improvements of facilities on the Permitted Property.

SECTION 4. Nonexclusive Rights: This Permit is nonexclusive and nothing herein shall prevent Grantor from accessing or using the Permitted Property or prohibit Grantor from permitting another entity to access or use the Permitted Property. Grantor shall not be liable to Grantee for any damage to public or private property or installations located upon the Permitted Property. Nothing in this Permit shall be construed to deny or lessen the powers and privileges granted Grantor by the laws of the State of New Mexico.

SECTION 5. Existing Easements and Permits: This Permit is subject to all existing easements, Permits and matters of record.

SECTION 6. Tort Claims Act: By entering into this Agreement, the District and its public employees as defined in the New Mexico Tort Claims Act, and the Grantee and its public employees as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense(s) and/or do not waive any limitation(s) of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act. However, within the limitations set forth above, each party shall be responsible for their own negligent acts. This Agreement is not intended by any of its provisions to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a part to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION 7. Indemnity: Grantee (Indemnitor), its successors and assigns, shall indemnify and hold harmless Grantor (Indemnitee), and the directors, officers, employees, agents, successors and assigns thereof against and from any claim, demand, lawsuit or action of any kind for damages or loss; whether directly or indirectly arising out of (a) acts or omissions of Grantee, his agents, officers, directors or employees, (b) Grantee's use of occupancy of the Permitted Property for the purposes contemplated by this Permit, including but not limited to claims by third parties

who are invited or permitted onto the Licensed Property either expressly or implied by Grantee or by the nature of Grantees development or other use pursuant to the Permit, or (c) Grantee's failure to comply with or fulfill its obligations established by the Permit or by law, and whether such damage of loss is to person or property. Such obligation to indemnify shall extend to and encompass all costs incurred by Grantor in defending against subject claims, demands, lawsuit, or other actions, including though not limited to attorney, witness and expert witness fees, and any other litigation related expenses, Grantor shall have no obligation to indemnify Grantee gains liability directly attributable to the negligence or willful action of the Grantor, its directors, officers, employees, agents, successors or assigns. The provisions of this section shall survive termination of the Permit.

SECTION 8. Insurance: Without limiting any liabilities or any other obligations or duty of Grantee, CID at its option may require insurance and proof of insurance as condition to this Permit. If the insurance is required, the Grantee will be notified by letter, which letter shall specify the amount and type of insurance required by CID.

SECTION 9. Construction:

9.1 Prior to making any installations on the Permitted Property, Grantee shall submit to Grantor for its approval a detailed plan showing the location of any such installations and pay Grantor all review and inspection fees required by Grantor. All construction on the Permitted Property shall be performed in accordance with specifications approved by Grantor. At least ten (10) days prior to the beginning of any construction on the Permitted Property, Grantee shall provide Grantor notice of the date that construction will begin and a schedule listing all construction activities and the dates when such construction will be performed. Grantee shall give Grantor written notice of all changes in the schedule and delays in construction immediately upon it being reasonably foreseeable that such change or delay will occur.

9.2 Grantee shall contact Grantor a minimum of 72 hours in advance of start of construction to obtain a construction clearance. Phone Number: 575-236-6390 or 575-361-3152. NOTE: A CONSTRUCTION CLEARANCE DOES NOT ASSURE THAT THE CANALS, LATERALS OR DRAINS WILL BE WITHOUT WATER.

9.3 Grantee's materials, facilities, improvements and appurtenances constructed, installed, operated and maintained on the Permitted Property shall not interfere with Grantor's use of Grantor's existing and or of any future irrigation facilities on or adjacent to the Permitted Property.

9.4 Grantor may regulate the scheduling of construction, if any, located on the Permitted Property relating to irrigation operation, traffic control, backfilling, compacting, or paving and locating or relocating the material, facilities, improvements or appurtenances.

9.5 If any of Grantee's materials, facilities, and/or improvements are required to be relocated by or on behalf of Grantor, Grantee shall bear the entire cost of relocating said materials, facilities, improvements and appurtenances.

9.6 Grantor shall not exercise its right to require relocation of Grantee's facilities in an unreasonable or arbitrary manner.

SECTION 10.

Permits, Statutes and Codes: Grantee shall comply with the applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of legally constituted authorities with jurisdiction. Grantee shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by Grantee's actions pursuant to this Permit.

SECTION 11. Grantor's Right to Inspect:

11.1 Grantor may enter any part of the Permitted Property at all reasonable times to make an inspection thereof. During any construction by Grantee, Grantor may inspect all trenching, backfilling and other related items and require conformance with all requirements and specifications established by Grantor.

11.2 Grantee shall release Grantor for all damages arising out of any delay, whether reasonable or unreasonable, or foreseeable or unforeseeable, by Grantor in permitting or inspecting any work on the Permitted Premises. The provisions of this section shall survive termination of this Permit.

SECTION 12. Force Majeure: If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Permit, other than the obligation of Grantee to make payments of amounts due hereunder, then the obligations of both Grantee and Grantor, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied within a reasonable time. The term force majeure as employed in this Permit shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, interruptions by government not due to the fault of the parties, civil disturbances, explosions, or unforeseeable action or no action by governmental bodies in approving the applications for approvals or permits or any material change in circumstances arising out of legislation, regulation or litigation. Nothing in this section shall require Grantor to settle a strike.

SECTION 13. Entire Agreement; Changes After Execution: This Permit, including its specified addenda and exhibits, if any, constitutes the entire agreement between the parties, and any amendment hereto must be in writing, signed by both parties.

SECTION 14. Water Damage: Grantor shall not be liable for any loss sustained by Grantee, its officers, employees, agents, assigns or invitees on the Permitted Property because of water damage from any sources whatsoever, including but not limited to, flood, drainage or run-off, irrespective of any prior knowledge by Grantor of the possibility of such flood, drainage or run-off, or any act, omission or negligence of Grantor, members of its governing body, directors, its officers, employees, agents or assigns, arising from operation or maintenance of any CID project dam, canal, drain or other works.