

**RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:**

Olivenhain Municipal Water District
1966 Olivenhain Road
Encinitas, California, 92024-5699

(This space for recorder's use)
A.P.N. No.

**OLIVENHAIN MUNICIPAL WATER DISTRICT
PRIVATE ENCROACHMENT PERMIT AGREEMENT NO.**

THIS ENCROACHMENT PERMIT No. Permit No. (hereinafter "Agreement") entered into by and between the OLIVENHAIN MUNICIPAL WATER DISTRICT organized and existing pursuant to the Municipal Water District Act of 1911, California Water Code §71000, et seq. (hereinafter "DISTRICT"), and Permittee Name (hereinafter "PERMITTEE").

R-E-C-I-T-A-L-S

1. The DISTRICT presently holds title to an easement as more particularly described in the DISTRICT's document no. Doc. No., recorded Recordation Date as File/Page Record No., Official Records, San Diego County, not attached hereto, but incorporated herein by reference.
2. PERMITTEE desires to encroach upon this easement.
3. PERMITTEE is the owner of property described in Exhibit "A" attached hereto.
4. 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 encroachments shall be allowed without the express prior written consent of the DISTRICT.

C-O-V-E-N-A-N-T-S

1. **Permission to Encroach on Easement:** PERMITTEE is hereby granted permission to encroach upon the easement referred to above 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.

3.1. PERMITTEE shall pay all costs of the DISTRICT’s, 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. **Payment 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.

6.1. 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.

6.2. 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.

6.3. 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 expenses incurred. 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 agrees to hold harmless, defend and indemnify the DISTRICT and its agents, servants, employees, consultants, and officers from any and all claims, actions, liability, losses, costs, damage, or expense of whatever type or nature to any persons, entities, or property caused by, or claimed to be caused, in whole or in part, by the construction, maintenance, repair, replacement or use of the encroachment facilities or encroachment areas except claims caused by the sole active negligence or intentional misconduct of the DISTRICT or its agents or employees. This indemnity shall include all DISTRICT's attorney's fees, expert fees and costs, 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 (where applicable):

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

11.2. A horizontal clearance of five (5) feet shall be maintained between the DISTRICT's underground facilities and the approved underground encroachment facilities.

11.3. The horizontal clearance to be maintained between the DISTRICT's facilities and the above ground encroachment facilities shall be determined at the sole discretion of the DISTRICT.

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

11.5. Heavy equipment is not permitted on the easement without DISTRICT notification and approval.

12. **Termination:** Violation of any of the terms of this Agreement by PERMITTEE shall constitute a material breach of this Agreement entitling the DISTRICT to unilaterally terminate this Agreement by written notice to PERMITTEE, in addition to all other relief 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, assigns, 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 attorney 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, 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 Representation: The PERMITTEE acknowledges that this Agreement has been prepared by the Law Offices of Nossaman LLP, 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 _____, 20 ____.

22. **Board of Director's Approval:** This Agreement is executed by the DISTRICT pursuant to Board action of _____, 20 ____.

“DISTRICT”

OLIVENHAIN MUNICIPAL WATER DISTRICT

Dated: _____, 20 ____

By: _____
Kimberly A. Thorner
General Manager

“PERMITTEE”*

Dated: _____, 20 ____

By: _____

*PERMITTEE’S SIGNATURE MUST BE NOTARIZED WITH NOTARY SEAL.

EXHIBIT "A"
Sheet 1 of 1

Legal Description

EXHIBIT “B”
Sheet 1 of 2

1. **Encroachment Facilities:**

A.

2. **Encroachment Area:**

3. **Special Conditions of Encroachment:**