

CVP-2170
20-0828
LND-08-35
Index No. 2/Unit No. 12

Contract Number 15-LC-

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

Friant-Kern Canal, Central Valley Project
LICENSE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF
FACILITIES

THIS LICENSE is given this _____ day of _____, 2015, in pursuance of the Act of June 7, 1902 (32 Stat. 388) and Acts amendatory thereof or supplementary thereto, by THE UNITED STATES OF AMERICA, acting by and through its Bureau of Reclamation, Department of the Interior, represented by the duly authorized officer executing this License, hereinafter styled the "United States" to:

City of Fresno DPU
Water Division
2101 G Street, Building A
Fresno, CA 93706-1620
(559) 621-1622

hereinafter styled "Licensee."

RECITALS:

The United States Bureau of Reclamation (Reclamation) acquired certain lands for the right-of-way of the Friant-Kern Canal (FKC) in connection with the Central Valley Project (CVP), Fresno County, California; and

WHEREAS, the Friant Water Authority (FWA) as the Operating Non-Federal Entity is responsible for the operation and maintenance (O&M) of the FKC; and

WHEREAS, the Licensee has requested, in writing, authorization for long-term access to Reclamation ROW on the FKC to construct and O&M certain facilities (Facilities) at approximate Milepost 7.58 as shown on the Vicinity Map, labeled as "**Exhibit A**," attached hereto and made a part hereof; and

WHEREAS, this License, allows temporary construction ingress and egress from the Licensee's private construction easement; including long term O&M ingress and egress from Auberry Road to the Facility site shall constitute Licensee's access (Access); and

WHEREAS, said Licensed Facilities shall consist of an antenna, a building, and a portion of access road, as labeled as "**Exhibit B**," attached hereto and made a part hereof. All Facilities will be accessed from Auberry Road on Reclamation ROW; and

WHEREAS, the "Contracting Officer" shall mean Reclamation's duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

THEREFORE, Reclamation has determined that the installation, operation and maintenance of the Facilities is not, at this time, incompatible with the purpose for which the land was obtained.

1. Subject to the following terms and conditions, the United States issues to the Licensee, without warranty of title, a non-exclusive License for Access on, over and across Reclamation ROW, including access from Auberry Road along Reclamation ROW and to the Facility site, for the purpose of construction, and/or ongoing operation and maintenance, for that portion of certain lands acquired by the United States for the Friant Division described as follows:

Said lands located in Section 4, of Township 12 South, Range 21 East, M.D.B.M., in Fresno County, California, being a portion of the FKC right-of-way at approximate Milepost 7.58 as shown on "Exhibit A".

2. The land use fees for the License granted herein are waived in accordance with 43 CFR 429.26(a)(3). In accordance with 43 CFR 429.17, the Licensee shall be responsible for all administrative fees incurred by Reclamation in processing, issuing, and monitoring this License. After this License is issued, periodic field reviews will be conducted to monitor the use to ensure it is in compliance with the provisions herein.

3. This permission given herein will neither constitute nor be construed as any surrender of the jurisdiction and supervision by the United States over the lands described herein.

4. This License is granted subject to the existing rights in favor of the public or third parties for highways, roads, railroads, telegraph, telephone and electrical transmission lines, canals, laterals, ditches, flumes, siphons, and pipelines on, over, and across said land.

5. This License is personal, revocable, and nontransferable and will become effective on the date hereinabove first written and, unless otherwise sooner terminated, will continue for **twenty-five (25) years**, and will be revocable upon thirty (30) days written notice to Licensee in accordance with the provisions of Article 6. Upon such revocation or termination, the aforesaid Facilities and all accessories will be removed without delay at the expense of Licensee pursuant to Article 22. Licensee will leave the site(s) in a condition satisfactory to Reclamation and the FWA.

6. This License may be revoked by Reclamation upon thirty (30) days written notice

to Licensee if:

- (a) Licensee's use of the land interferes with existing or proposed facilities; or
- (b) The land contained in the License is needed for any United States purpose; or
- (c) The United States disposed of its interest in the land contained in this License; or
- (d) Licensee fails to comply with any other terms or conditions of this License and, upon notification of the violation, Licensee fails to adequately cure the violation in a timely manner. Reclamation will have the final determination regarding the adequacy of the cure.

7. Licensee will not:

- (a) Store any hazardous material on the FKC right-of-way.
- (b) Leave waste and debris on the FKC right-of-way.

8. Any activity deemed to be illegal on Federal lands will be cause for immediate termination of this License.

9. All improvements and construction will be in compliance with plans and specifications received by Reclamation and FWA, titled "Raw Water Pipeline" sheet number 27, 35, 43 and 44, prepared by Provost and Pritchard and AECOM, dated September 23, 2015 signed and stamped by Matthew W. Kemp, Registered Professional Engineer, No. 66088, Exp.09-06-16; and "Raw Water Pipeline" sheet number 51, prepared by AECOM, dated September 23, 2015 signed and stamped by Henry W. Liang, Registered Professional Engineer, No. C68442, Exp.09-30-15; and "Raw Water Pipeline" sheet number 55-56, prepared by AECOM, dated September 23, 2015 signed and stamped by Allen J. Randall, Registered Professional Engineer, No. E9206, Exp. 09-30-16; and "Raw Water Pipeline" sheet number 58-62, prepared by AECOM, dated September 23, 2015 signed and stamped by Maris Jackson, Registered Professional Engineer, No. C92913, Exp. 12-03-16, which are labeled as "**Exhibit D**" and made a part hereof, and have been reviewed by Reclamation and FWA. A set of final plans will be submitted by Licensee and a written acceptance from Reclamation must be obtained by Licensee prior to any on-site activity. Any changes to project requirements in subsequent addendums, modifications, change orders, or items agreed to in construction meeting(s) which have the potential to adversely affect Reclamation facilities will be submitted to and accepted by Reclamation and FWA, and upon acceptance are hereby included and made a part hereof. Copies of all changes to project requirements will be provided to Reclamation and FWA within five (5) days of their issuance.

10. Within sixty (60) days of the completion of the construction activities licensed herein, Licensee will provide two (2) reproducible "as built" drawing sets to Reclamation.

11. Construction and O&M will be conducted in accordance with all applicable Federal, State of California, and local safety and environmental regulations and to the satisfaction of the General Manager, FWA, and the Area Manager, South-Central California Area Office, Bureau of Reclamation. Licensee will notify Reclamation's Operations Division at

(559) 487-5116 and the Staff Engineer at FWA, at (559) 562-6305, a minimum of seventy-two (72) hours prior to initiating any ground disturbance and/or other activities on United States' lands or facilities outside of those detailed in this License. Other activities on United States' lands or facilities not covered in this License will require written approval by Reclamation prior to initiating that activity.

12. Licensee and its contractors shall comply with requirements of the latest edition (currently the 2014 edition) of the Reclamation Safety and Health Standards handbook while conducting any activity on Reclamation land or facilities. A copy can be downloaded from Reclamation's public web site at:

<http://www.usbr.gov/ssle/safety/RSHS/rshs.html>

13. Licensee will comply with all applicable water, ground, and air pollution laws and regulations of the United States, the State of California and local authorities. In addition, Licensee will comply with the following hazardous materials restrictions:

- (a) Licensee may not allow contamination or pollution of Federal lands, waters or facilities and for which Licensee has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to: hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.
- (b) Licensee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal lands, waters or facilities.
- (c) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.
- (d) Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, Licensee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to the Contracting Officer. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

- (e) Violation of any of the provisions of this Article, as determined by the Contracting Officer, may constitute grounds for termination of this License. Such violations require immediate corrective action by the Licensee and shall make Licensee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.
 - (f) Licensee agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third-party contract it may enter into pursuant to this License.
 - (g) Reclamation agrees to provide information necessary for Licensee, using reasonable diligence, to comply with the provisions of this Article.
14. Access to the FKC by Licensee and their contractor(s) is restricted to the immediate vicinity of that portion of the FKC described in Article 1, above.
15. Licensee will ensure access for Reclamation and FWA O&M needs during the times of construction and coordinate any closings of access with Reclamation's existing authorized users.
16. Reclamation reserves the right for their officers, employees, contractors and representatives, and assigns, to have ingress to and egress from said premises for the purpose of exercising, enforcing, and protecting the rights of Reclamation in and on the premises. Licensee will provide Reclamation and FWA personnel safe ingress and egress to the FKC.
17. Licensee must contact the Underground Service Alert (telephone: (800) 227-2600) at least two (2) working days prior to any excavation work to identify any buried utilities within the proposed excavation area.
18. Licensee hereby agrees to indemnify and hold harmless the United States, FWA, their employees, agents, and assigns from any loss of damage and from any liability on account of personal injury, property damage, or claims from personal injury or death arising out of the Licensee's activities under this License.
19. Damage to Reclamation property, including but not limited to the FKC, service roads, access roads, culvert crossings, siphon barrels, farm bridges, fence gates and posts resulting from Licensee's activities under this License will be corrected promptly at Licensee's expense to the satisfaction of Reclamation and FWA.
20. Licensee, and/or its contractor for the duration of contractors' activities, will maintain in force policies of liability insurance providing limits of not less than \$1,000,000 for each person and \$2,000,000 for each occurrence for bodily injury or death, and not less than \$1,000,000 for property damage.

Said policies will name the United States and FWA as additional insureds (with the ISO CG 2010 endorsement form or equivalent) and will provide that they will not be canceled

or reduced in coverage without ten (10) days prior written notice to Reclamation and FWA. Prior to commencement of said construction, Licensee will cause to be delivered to Reclamation and FWA a copy of the certificate of insurance reflecting all essential coverage. The endorsement will reference Contract No. 15-LC-20-0828 in the description portion of the endorsement form.

21. TERMINATION. This License will terminate and all rights of Licensee hereunder will cease, and Licensee will quietly deliver to the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:

(a) At the expiration of the term as provided by Article 5; or

(b) On first date written above, of any year, upon written notice to Licensee, served ten (10) days in advance thereof; or

(c) After failure of Licensee to observe any of the conditions of this License, and on the tenth (10th) day following service of written notice on the Licensee of termination because of failure to observe such condition.

The notices provided by this Article will be served by certified mail addressed to the respective post office addresses given in Article 29 and the mailing of any such notice properly enclosed, addressed, stamped, and certified, will be considered service. If this License is terminated under Article 13(e), the United States reserves the right to bar Licensee from the authorization to use acquired or withdrawn public land on the CVP, FKC, for a period of time as determined by the Area Manager.

22. REMOVAL OF FACILITIES. Upon the expiration, termination, or revocation of this License, if all administrative charges and damage claims due Reclamation have been paid, Licensee shall remove all Facilities, structures, equipment, or other improvements made by it from the premises at no cost to the United States. Upon failure to remove any such improvements within sixty (60) days of expiration, termination, or revocation, any remaining improvements shall, at the option of the United States, be removed or become the property of the United States. Licensee shall pay all expenses of the United States, or its assigns, related to removal of such improvements.

23. ENVIRONMENTAL COMMITMENTS. An Environmental Assessment (EA-07-124) has been prepared for this Project. Environmental commitments have been identified and are listed in the Environmental Commitments Table, labeled as "**Exhibit C**" attached and made a part hereof. The Licensee shall comply with all environmental commitments as specified therein. All questions or comments about the ECT should be directed to Reclamation's Supervisory Natural Resource Specialist (559) 487-5116.

24. CULTURAL RESOURCES PROTECTION. Licensee shall immediately provide an oral notification to Reclamation's authorized official of the discovery of any and all antiquities or other objects of cultural, historic, or scientific interest on Reclamation lands.

Licensee shall forward a written report of its findings to Reclamation's authorized official within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, or artifacts discovered as the result of activities under this License. Licensee shall cease activity, stabilize, and protect such discoveries until authorized to proceed by Reclamation's contracting official. Protective and mitigative measures specified by Reclamation's authorized official shall be the responsibility of Licensee.

25. **DISCOVERY OF HUMAN REMAINS.** Licensee shall immediately provide an oral notification to Reclamation's authorized official of the discovery of human remains on Reclamation land. Licensee shall forward a written report of its findings to Reclamation's authorized official within forty-eight (48) hours by certified mail. Licensee shall cease activity, stabilize, and protect such discoveries until authorized to proceed by the Regional Archaeologist for Reclamation (916-978-5041). Protective and mitigative measures specified by the Regional Archaeologist shall be the responsibility of Licensee.

26. **SEVERABILITY.** Each provision of this License shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this License shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of this License as a whole.

27. No member of or delegate to Congress or the Resident Commissioner will be admitted to any share or part of this License or to any benefit to arise therefrom, but this restriction will not be construed to extend to this License if made with a corporation or company for its general benefit.

28. Licensee warrants that no person or agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees and bona fide commercial agencies maintained by Licensee for the purpose of securing business. For breach or violation of this warranty, Reclamation will have the right to revoke this License without liability or, in its discretion, to require Licensee to pay the full amount of such commission, percentage, brokerage, or contingency fee to the United States.

29. **NOTICES.**

(a) Any notice, demand, or request required or authorized by this License to be given or made to or upon the United States shall be deemed properly given or made if delivered or mailed postage-prepaid to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, CA 93721-1813.

(b) Any notice, demand, or request required or authorized by this License to be given or made to or upon the Licensee shall be deemed properly given or made if delivered or mailed postage-prepaid to the City of Fresno DPU, Water Division, 2101 G Street, Building A, Fresno, CA 93706-1620, telephone (559) 621-1622.

(c) Any notice, demand, or request required or authorized by this License to be given or made to or upon the Licensee shall be deemed properly given or made if delivered or mailed postage-prepaid to the Friant Water Authority, 854 North Harvard Avenue, Lindsay, California 93247.

(d) The designation of the person to or upon whom any notice, demand, or request is to be given or made, or the address of such person, may be changed at any time by notice given in the same manner as provided in this Article for other notices.

IN WITNESS WHEREOF this License is given as of the date of execution first written above.

UNITED STATES OF AMERICA

ACCEPTED:

Licensee, and its authorized representative, by signature below, agree to the terms and conditions above.

Deputy Area Manager DATE
South-Central California Area Office
Bureau of Reclamation

City of Fresno

THOMAS C. ESQUEDA DATE
Director of Public Utilities

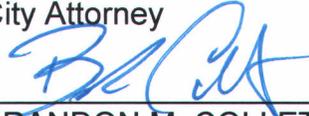
NOTED:

Friant Water Authority DATE

ATTEST
YVONNE SPENCE CMC
City Clerk

By: _____
DATE

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney



BRANDON M. COLLET 1/12/15 DATE
Deputy City Attorney

"EXHIBIT A"

CITY OF FRESNO RAW WATER PROJECT

VICINITY MAP

FRESNO COUNTY
FRIANT KERN CANAL

MILEPOST 7.58

LND-08-35



"EXHIBIT B"

CITY OF FRESNO RAW WATER PROJECT

PROJECT SITE MAP

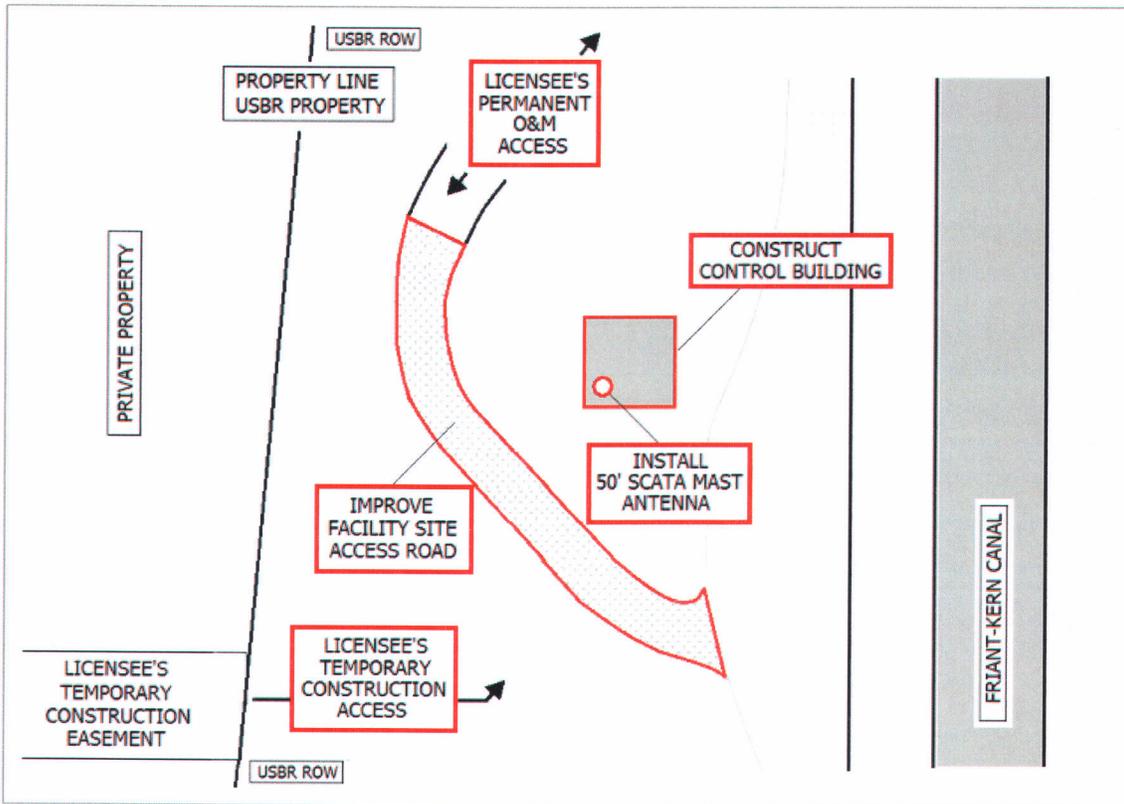
 = LICENSED ACTIONS

FRESNO COUNTY

MILEPOST 7.58

FRIANT KERN CANAL

LND-08-35



NOTE: LICENSEE'S PERMANENT O&M ACCESS ENTRY POINT IS AUBERRY ROAD
APPROX 2 MILES FROM PROJECT SITE

"EXHIBIT C"

CITY OF FRESNO
RAW WATER PROJECT

FRESNO COUNTY
FRIANT KERN CANAL

MILEPOST 7.58 LND-08-35

NEPA
DOCUMENT