

LICENSE AGREEMENT (FACILITY DESTRUCTION)

This License Agreement ("Agreement"), dated for purposes of identification only as of _____, is entered by and between **EASTERN MUNICIPAL WATER DISTRICT**, a public agency organized and existing under and by virtue of the Municipal Water District Law of 1911 ("Licensor") and **CITY OF TEMECULA** ("Licensee").

RECITALS

The following recitals are a substantive part of this Agreement:

- A. Licensor is the owner of certain facilities shown in SD 1755 drawing, attached hereto and incorporated herein, located in the City of Temecula, State of California (the "Facilities"); and
- B. Licensee's project, located near APN 922-053-047 in the City of Temecula (the "Project") requires removal of the Facilities; and
- C. Licensor has determined that the Facilities are no longer useful and must be destroyed in order for Licensee to proceed with its Project; and
- D. Licensee desires to destroy the Facilities pursuant to District, state and local guidelines ("Permitted Use").
- E. Licensor desires to accommodate Licensee's desire to commence such Permitted Use by granting a license as provided herein.

NOW, THEREFORE, WITHOUT ANY DEMAND FOR MONETARY OR OTHER CONSIDERATION LICENSOR AND LICENSEE AGREE AS FOLLOWS:

1. Right to Demolish Facilities. Licensor hereby grants to Licensee, its agents, contractors, employees, representatives, consultants, successors and assigns a non-exclusive license demolish facilities described herein.

2. Term. The Agreement shall begin upon execution by Licensee and shall terminate six months from that date.

3. Facility Destruction. Prior to construction, Licensee shall prepare plans, specifications and project schedule that includes Licensor's Facilities. Licensor shall review and

approve such Licensee plans, specifications, and schedules which review and approval shall not be unreasonably withheld. Such plans and specification shall, at a minimum, include the means and methods of Facility abandonment.

Licensor staff shall inspect Licensee's activities in abandoning Licensor Facilities. Upon the completion of the destruction of the Facilities, Licensee shall promptly provide Licensor with notice and evidence of such Facility destruction.

4. Non-exclusive Agreement. This Agreement is a non-exclusive Agreement, and Licensor reserves the right to allow the Property to be used by other parties.

5. Liens, Construction Activity and Disposal. Licensee shall keep Licensor free from any liens or encumbrances which might arise out of conducting the Permitted Use. Licensee must promptly pay when due all costs and charges associated with its exercise of the rights granted in this Agreement and must take all steps necessary to avoid the filing of any mechanics liens against Licensor as a result of the conducting the Permitted Use. In the event any such lien is filed against Licensor, Licensee must cause the same to immediately paid, discharged, released and satisfied and/or bonded of record. Time is of the essence with respect to this obligation. The obligations as set forth in this section shall survive termination of this Agreement.

Licensee shall dispose of facilities appropriately in accordance with local and state rules and ordinances. Licensor makes no guarantee that the subject facilities are free from hazardous materials

6. Indemnification. To the fullest extent permitted by law, Licensee agrees to indemnify, immediately defend and hold harmless Licensor from and against any and all claims, losses, damages, defense costs, or liabilities, of any kind or nature (collectively referred to hereinafter as "Claims"), caused by, arising out of, or in any way related to the this Agreement, except for those Claims which arise out of the sole negligence or willful misconduct of Licensor. The obligations set forth in this indemnification provision (i) shall be in effect without regard to whether or not Licensee, Licensor, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall survive the termination of this Agreement.

7. Maintenance of Licensor Property. N/A

8. Governing Law. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the City and County of Riverside.

9. Interpretation. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

10. Amendments. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Licensee and Licensor.

11. Authority to Enter Agreement. Each of the persons executing this Agreement on behalf of themselves or a party hereto warrant that: (i) such party is duly organized and existing, (ii) the signer is duly authorized to execute and deliver the Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound, and (v) there is no litigation or legal proceeding that would prevent said party from entering into this Agreement.

12. Notices, Demands and Communications Between the Parties. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one Party to another (collectively, "Notices") may be personally delivered, or deposited with the United States Postal Service for mailing, postage prepaid, to the address of the other party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

If to Licensor: City of Temecula
 41000 Main Street
 Temecula, CA 92590
 Attention: City Manager

If to Licensee: Eastern Municipal Water District
 2270 Trumble Rd.
 Perris, CA 92572
 Attention: Real Property Manager

13. Attorneys' Fees. In the event of a dispute between the Parties with respect to the terms or conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

14. Ambiguity. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both Parties had in fact drafted this Agreement.

15. Counterparts. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

16. Assignment. This Agreement shall not be assigned by either party without a written agreement executed by Licensee and Licensor.

17. Severability. In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid illegal or unenforceable.

18. Successors/Assigns. This Agreement shall be binding upon Licensor and its successors and assigns.

19. No Third Party Rights. The Parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established herein.

20. Integration. This Agreement constitutes the entire agreement between Licensor and Licensee relating to this Agreement. Any prior Agreements, agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

21. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matter set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

Dated: _____

"LICENSEE"

CITY OF TEMECULA

By: _____
Matt Rahn, Mayor

CITY OF TEMECULA

ATTEST:

By: _____
Randi Johl, City Clerk

CITY OF TEMECULA

APPROVED AS TO FORM:

By: _____
Peter M. Thorson, City Attorney

"LICENSOR"

Dated: _____

EASTERN MUNICIPAL WATER DISTRICT,
a public agency organized and existing under
and by virtue of the Municipal District Law of 1911

By: _____
Shaun Stone
Sr. Director of Engineering

