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1                   **EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1**

2                   **LICENSE FOR USE OF DISTRICT FACILITIES FOR CONVEYANCE OF**  
3                   **GROUNDWATER FROM CONSTRUCTION DEWATERING**

4                   THIS LICENSE is made between the EL PASO COUNTY WATER IMPROVEMENT  
5                   DISTRICT NO. 1, a political subdivision of the State of Texas organized and existing  
6                   pursuant to Article XVI, Section 59 of the Texas Constitution (“District”) and  
7                   \_\_\_\_\_ (“Licensee”), hereinafter collectively called the “parties”.

8                   WHEREAS the District owns, operates and maintains a series of irrigation canals, lateral  
9                   canals, and drainage canals in El Paso County, Texas, that constitute part of the Rio  
10                  Grande Reclamation Project; and

11                 WHEREAS Licensee, at its sole cost and expense, desires to construct, operate and  
12                 maintain installations that will enable it to discharge and convey groundwater into one or  
13                 more of the District’s drainage canals or other facilities, and to obtain the District’s  
14                 permission for such discharge and to convey such groundwater through the District’s  
15                 drainage canal or other facilities.

16                 NOW, THEREFORE, the parties agrees as follows:

17                 **1. Definitions**

18                 **Groundwater:** As used in this License, the term “groundwater” means all waters that  
19                 enter any of the drainage canal or other facilities operated and maintained by the District

20                 **District’s Facilities:** as used in this License, the term “District’s Facilities” mean the  
21                 drainage canals, irrigation canals, lateral canals, roads, right-of-ways, easements, or other  
22                 land or facilities owned or controlled by the District

23                 **2. Purpose of License**

24                 This License is for the limited use of the District’s Facilities by the Licensee for the  
25                 purposes of discharging and conveying groundwater produced during non-agricultural  
26                 dewatering activities necessary for construction of pipeline, sewer lines, buildings, or  
27                 other facilities not owned by the District.

1 **3. Approval of United States Environmental Protection Agency (EPA) and the**  
2 **Texas Commission for Environmental Quality (TCEQ), U.S. Army Corps of**  
3 **Engineers (USACE)**

4 The Licensee shall at all times when groundwater is being discharged into the District's  
5 Facilities pursuant to this License have all permits and necessary permissions,  
6 authorizations, or licenses required by the EPA, TCEQ, USACE, or others. A copy of all  
7 correspondence between the Licensee and the EPA, TCEQ, USACE or any other entity  
8 or governmental agency regarding the construction activities associated with the  
9 groundwater produced by dewater, the groundwater being discharged into the District's  
10 Facilities, and any pollution, contamination, waste, or any impairment to water, air, or  
11 soil quality shall be provided to the District in writing immediately (by hand delivery or  
12 facsimile and then followed by a notice as provide herein) upon the Licensee receiving  
13 such information.

14 **4. Licensee's Structures and Facilities**

15 Any structures and facilities now existing or hereafter to be erected by Licensee in  
16 furtherance of the purposes of this License shall be erected so as never to obstruct in any  
17 manner the flow of water in or into the canals, laterals and drain ditches operated and  
18 maintained by the District, and so as not to interfere in any manner whatsoever with the  
19 construction, operation, or maintenance of any part of the Rio Grande Reclamation  
20 Project or the District's Facilities. All construction or facility modification plans shall be  
21 submitted to the District 30 calendar days in advance of any construction and must  
22 receive written approval by the District prior to the commencement of any construction.

23 **5. Water Quality of Groundwater Discharged into District's Facilities**

24 a. The quality of the groundwaters being discharged into the District Facilities, shall, at  
25 Licensee's expense, be tested monthly for total dissolved solids (TDS), with the analysis  
26 being conducted according to the latest methodologies approved by the United States  
27 Environmental Protection Agency and reported by a certified laboratory satisfactory to  
28 the District. Prior to any discharge an initial TDS level report is required. The results of  
29 monthly water quality analyses and discharge volumes shall be reported by the 15th of  
30 each month following the month for which the data was collected in writing to the  
31 District.

32 b. In addition to the tests required by above, the District may, at any time, conduct such  
33 additional water quality tests as the District may desire; provided that in order for the  
34 District to exercise any of the rights afforded it by this License, such tests shall be

1 performed according to reasonable technical standards. The fact that such test is  
2 conducted according to standards specified in the latest edition of AWWA Standard  
3 Methods or other methodologies approved by the United States Environmental Protection  
4 Agency or its successor shall be conclusive proof that such test was performed according  
5 to reasonable technical standards. Regardless of the number of tests conducted pursuant  
6 of this License during any month, the test revealing the highest level of TDS during the  
7 month shall be controlling for all purposes under this License. If no such test is  
8 conducted during any month in which any groundwaters are discharged into the drain  
9 ditches operated and maintained by the District, it shall be conclusively presumed for all  
10 purposes under this License, if a test had been conducted, it would have revealed TDS  
11 levels greater than 2000 PPM.

#### 12 **6. Fee for Reporting to Licensee Incorrect Monthly Volume or TDS Levels**

13 If the District determined that the Licensee has reported to the District a smaller quantity  
14 of groundwater than was actually diverted into the District's Facilities by Licensee, then  
15 the Licensee shall pay the District an amount equal \$200 per acre-foot for each acre-foot  
16 of water diverted into the District's Facilities for the month in which such report  
17 occurred.

#### 18 **7. Volumetric Measurement of Groundwater**

19 The volume of groundwaters discharged into the drain ditches shall be recorded by the  
20 Licensee on a daily basis using an impeller flow meter with an accuracy of  $\pm 5\%$  of the  
21 daily flow volume. By the 7<sup>th</sup> day of each month, the Licensee shall provide the District  
22 with the recorded daily flow volume and monthly total for the previous. If the Licensee  
23 does not provided the District with such information by the 15<sup>th</sup> day of each month, the  
24 District shall make a determination of the quantity of groundwaters discharged by the  
25 Licensee into the District Facilities during such month and such determination shall be  
26 binding on Licensee.

#### 27 **8. Construction by the Licensee with District Facilities**

28 Construction by the Licensee shall be accomplished at such time or times, and in such a  
29 manner as will not interfere with the use or maintenance of the District's facilities, as  
30 determined by the General Manager of the District or his authorized representative.  
31 Licensee shall notify the General Manager of the District or his authorized representative  
32 of any such proposed construction at least 30 calendar days prior to commencement of  
33 construction. Construction and maintenance work performed by Licensee under this

1 License shall not interfere in any manner whatsoever with the construction, operation, or  
2 maintenance of any part of the District's activities.

3 **9. Licensee's Failure to Comply with Terms of this License**

4 a. If Licensee fails to comply with any terms of this License within ten (10) days after  
5 receipt of written notice to comply with such terms (or within such shorter time as the  
6 District may direct in cases the District deems to be an emergency), Licensee agrees,  
7 within forty-five (45) days of receipt of billing, to pay for the cost of maintenance or  
8 other actions undertaken by the District should the District deem it necessary or advisable  
9 to complete maintenance or take any other action that is Licensee's responsibility  
10 pursuant to this License. It is expressly understood that the District's prerogatives under  
11 this License are in addition to any other remedies that the District may have in law or  
12 equity or pursuant to another provision of this License and that the District's decision to  
13 perform some responsibility of Licensee shall not constitute an election of remedies or a  
14 waiver of any or all additional remedies to which the District may be entitled.

15 b. Licensee agrees that in the case of its failure to satisfy all requirements under this  
16 License, it shall, within forty-five (45) days after written notification from the General  
17 Manager of the District or his authorized representative, at its costs, remove all structures  
18 constructed under this License and return the District's facilities, including the canals,  
19 laterals or drain ditches, to as near their original condition prior to the execution of this  
20 License as circumstances then existing permit, normal wear and tear excepted. If  
21 Licensee does not remove all of its structures and facilities or does not return the  
22 District's facilities, including the canals, laterals, or drain ditches, to as near their original  
23 condition prior to the execution of this License as circumstances then existing permit,  
24 within forty-five (45) days after written notification to do so, the District shall be  
25 authorized to perform such work. If the District elects this option, Licensee agrees,  
26 within fifteen (15) days of receipt of billing, to pay for the cost of such removal and for  
27 all other costs reasonably incurred by the District as a result of Licensee's breach, and the  
28 District may retain possession of such structures (and any other property of Licensee then  
29 in the District's possession) until the District's bill is paid in full.

30 **10. Payment by Licensee to District**

31 In addition to the non-refundable application fee of \$1,000, the Licensee shall pay to the  
32 District a minimum of seven (7) calendar days in advance of any discharge under this  
33 License a fee for the use of the District's Facilities equal to \$150 per acre-foot of  
34 groundwater estimated by the License that will be discharged into the District's Facilities  
35 during term of the agreement.

1 **11. Map and Estimated Volume of Groundwater Production**

2 Prior to execution of this License, Licensee shall furnish to the District a map of  
3 sufficient detail as determined by the District showing the location of the proposed  
4 discharge sites and specifications describing the design capacity and number of pumps to  
5 be used. Licensee shall provide the District prior to executing this agreement an  
6 estimated of the volume of groundwater to be discharged under this License. Such  
7 estimate of the volume of groundwater shall be approved in writing by the District's  
8 Engineer prior to this agreement being executed.

9 **12. Stormwater, Effluent, Waste, and Pollution**

10 Licensee shall not divert storm water, effluent, waste, or any other water or other  
11 substance into any of the District's facilities at any time, nor shall Licensee discharge any  
12 waste or conduct any activity that causes, continues to cause or will cause pollution of  
13 any water of the state in violation of Chapter 26 of the Texas Water Code or any other  
14 applicable state or federal law. Licensee shall defend and hold harmless the District, its  
15 Board of Directors, General Manager, employees, engineers, consultants, insurers, and  
16 agents from any claims, fees, fines or penalties arising out of breach of any condition of  
17 this License.

18 **13. Term and Termination**

19 This License shall terminate at midnight 180 day after the date of this License is executed  
20 on behalf of the District. The District reserves the right to terminate this License  
21 immediately if at any time, in the opinion of the General Manager of the District,  
22 Licensee's use of the District's facilities has adversely affected, or may adversely affect,  
23 the District. The District reserves the right to terminate this License at any time if it  
24 deems Licensee to be in breach of any of the provisions hereof.

25 **14. Rules, Laws, and Regulations**

26 Licensee represents, warrants and agrees that it will conduct its activities on the  
27 Properties in compliance with all applicable State and Federal environmental laws, rules  
28 and regulations, and shall comply with all municipal, county, state and Federal laws,  
29 rules, and regulations applicable to its construction and operations under this License.

30 **15. District Design and Survey Standards**

31 All facilities constructed by the Licensee pursuant to this License shall meet the District's  
32 current Design and Survey Standards as contained in the District's License Manual.

1 **16. Cultural Values**

2 Should evidence of historical, archeological, or paleontological sites be discovered in the  
3 course of construction or use of the interests subject to this License, the Licensee shall  
4 immediately suspend construction or operations and advise the District. Licensee  
5 acknowledges the existence of an agreement between the District and the State of Texas  
6 and/or the State Historical Conservation Officer for the State of Texas and accepts this  
7 License subject to all provisions of such agreement.

8 **17. Concealed Conditions or Obstacles**

9 Licensee accepts the interests subject to the License in their existing condition. The  
10 District shall not be responsible for concealed conditions, defects or obstacles  
11 encountered by Licensee, and the District makes no warranties or representations related  
12 to the sub-surface conditions which may be encountered by Licensee.

13 **18. Interference Prohibited**

14 Notwithstanding anything to the contrary herein, Licensee's activities shall, at all times,  
15 be conducted so as not to interfere with the operation, maintenance, or administration by  
16 the District of its water improvement District or its facilities. Any repairs, maintenance  
17 or expense to the District as a result of Licensee's activities after notice and failure of  
18 Licensee to respond promptly shall be reimbursed to the District by the Licensee.

19 **19. Use Limitations and No Rights to Water**

20 Use of the interests subject to this License by Licensee is limited to the purposes and  
21 premises herein specified, does not grant the Licensee to any rights to water or any right  
22 to use the groundwater discharged by the Licensee into the District's Facilities.

23 **20. Ingress and Egress on District's Facilities**

24 During the term of this License allows Licensee to ingress or egress to the portion of the  
25 District's Facilities as shown on the map in Appendix A attached and made a part of this  
26 License.

27 **21. Insurance**

28 Unless the licensee is a government entity, as determined by the District, the Licensee  
29 shall at all times during the term of this License, maintain in force, at the Licensee's  
30 expense, a commercial general liability insurance policy adequate to protect District  
31 against liability for damage claims through use of or arising out of accidents occurring in  
32 and around the Easement, in minimum coverage amounts acceptable to District. Such



1 insurance policy shall name District as an additional insured and contain a provision or  
2 endorsement that the coverage afforded will not be canceled, materially changed or  
3 renewal refused until at least 30 days' prior written notice has been given to District.  
4 Licensee shall provide to District, at the time this License is presented for approval by  
5 District's governing body, a certificate evidencing such insurance coverage. Licensee  
6 shall ensure that District is furnished evidence, satisfactory to District, of continuation of  
7 such insurance each year during the term of this License. Licensee agrees that the policy  
8 limits of any policy or policies provided under this paragraph will first be used to satisfy  
9 any claim or judgment against District. Licensee further agrees to waive any rights it has  
10 under any such policy or policies for indemnification until such judgment or claim is paid  
11 on behalf of District.

## 12 **22. Indemnification and Hold Harmless**

13 To the maximum extent allowable by law, the Licensee agrees to indemnify and hold the  
14 District and its officers, directors, the District General Manager, the District Engineer,  
15 and the District's employees, agents, attorneys, and consultants harmless from any claims  
16 of every nature, including without limitation all claims for damages from personal injury,  
17 property damage, and environmental damage pursuant to this License.

## 18 **23. No Liability for Damage to Licensee's Facilities**

19 The District shall have no liability to the Licensee for any damage to the Licensee caused  
20 by the operation, maintenance, improvement, relocation, or removal of Licensee's  
21 facilities located on the District's Facilities. Licensee will save the District and its  
22 officers, directors, the District's General Manager, the District's Engineer, and the  
23 District's employees, agents, attorneys, and consultants harmless from any claim,  
24 damage, or demand by any third party resulting from such damage to Licensee's  
25 facilities.

## 26 **24. Licensee Shall Maintain Licensee's Facilities**

27 The Licensee shall be responsible for any and all maintenance associated with any  
28 installation by Licensee. Such maintenance shall include, but not be limited to: (a) repair  
29 and upkeep of the installation; (b) the removal of deposited sediment, trash, and other  
30 debris from within and adjacent to the structure(s); (c) control of vectors and other pests  
31 associated with the structure(s); and (d) repair of damages to the affected facilities of the  
32 District as determined by the District's General Manager or the District's Engineer. Such  
33 maintenance shall be conducted by the Licensee as needed or upon request by the  
34 District. Such maintenance shall not interfere in any manner whatsoever with the

1 construction, operation, maintenance of any part of the District's facilities or the Rio  
2 Grande Reclamation Project. Any violation by Licensee of its obligation to maintain as  
3 set forth in the section shall constitute a default in this License by Licensee and shall  
4 entitle the District to evoke any and all remedies provided in the License for default.

5 **25. Damage to District's Facilities**

6 In addition to all other remedies provided hereunder to the District, Licensee specially  
7 covenants to repair or reimburse the District for the costs of repairing and any other  
8 damages to the District's Facilities that may result directly or indirectly from Licensee's  
9 maintenance, operation, and or use of Licensee's facilities, whether or not such repairs  
10 and damages are caused by negligence, third party act, omission, or Act of God.

11 **26. No Warranty of Title**

12 The District makes no warranty of title or legal authority to make this License. The  
13 District expressly disclaims any warranty of title of the interests subject to this License.  
14 Licensee acknowledges that this License is subject to all easements, licenses, and other  
15 permitted and unknown uses of any nature, which exist on the date of the License.

16 **27. Remedies for Default**

17 In the event of any default by Licensee in the performance of any terms or conditions  
18 hereof which continues seven (7) calendar days after notice from District of such default,  
19 the District may accelerate all remaining unpaid payments provided herein and demand  
20 immediate payment thereof, terminate this License without further notice, and/or invoke  
21 any other remedy provided by law or equity including without limitation injunctive relief  
22 and damages without refund of any consideration or any part thereof previously paid to  
23 the District by Licensee. Also, in the event of any default, and in addition to any other  
24 remedy the District may have, the District should be entitled to recover from Licensee  
25 interest on all amounts due, accrued at a rate of 10% per year, reasonable attorney's fees  
26 and court cost.

27 **28. Use of Facilities**

28 The District retains, reserves, and shall continue to enjoy the use of its surface, sub-  
29 surface and aerial portions of the District's Facilities for any and all purposes.

1 **29. Notices**

2 All notices, requests, demands, and other communications shall be in writing and shall be  
3 deemed given if personally delivered or mailed, certified mail, return receipt requested,  
4 or sent by overnight carrier to the following addresses:

5 If to Licensee, to:

6  
7  
8  
9  
10  
11  
12

13 If, to: General Manager

14 El Paso County Water Improvement District No. 1  
15 294 Candelaria  
16 El Paso, Texas 79907-5599  
17 Phone: 915/859-4186  
18 Fax: 915/858-4183

19 Any notice given in accordance with this paragraph shall be deemed received upon  
20 receipt if by personal delivery, two (2) days after deposit in the U.S. mail. District and  
21 Licensee shall promptly notify other party of any changes in address, telephone number  
22 or facsimile number.

23 **30. Entire Agreement**

24 This License contains the entire agreement between the parties relating to its subject  
25 matter. Any oral representation and previous negotiations concerning this License are  
26 merged herein. Any subsequent amendment or modification must be in writing and  
27 agreed to by both Parties.

28 **31. Assignment of License**

29 This License is not assignable.

30 **32. Texas Law to Apply**

31 This License is to be construed under Texas Law, and all obligations of the parties  
32 created by this License are performable in El Paso County, Texas. Any suit brought

1 hereon by either party shall be filed in El Paso County, Texas, in a court of competent  
2 jurisdiction.

3 **33. Severability**

4 If any one or more of the provisions contained in this License are for any reason held to  
5 be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or  
6 unenforceability will not affect any other provision of the License, which will be  
7 construed as if it had not included the invalid, illegal or unenforceable provision,  
8 provided such provision or provisions are not essential to the substance of this License, in  
9 which latter case this License shall be deemed null and void, and there shall be no refund  
10 of any consideration paid by Licensee to the District hereunder.

11 **34. Rights and Remedies Cumulative**

12 The rights and remedies provided by this License are cumulative, and either party's using  
13 any right or remedy will not preclude or waive its right to use any other remedy. The  
14 rights and remedies are given in addition to any other rights the parties may have by law,  
15 statute, ordinance, or otherwise.

16 **35. Attorney's Fees**

17 If, as a result of either part's breaching this License, the other party employs an attorney  
18 or attorneys to enforce its rights under this License, then the party adjudged to be in  
19 default will pay the other party the reasonable Attorney's fees and other associated costs  
20 incurred to enforce the License.

21 **36. Titles**

22 The titles of the Articles, Paragraphs, and Sections of this License are intended for the  
23 convenience of the parties and shall have no effect and shall neither limit nor amplify the  
24 provision of the License itself.

25 **37. Application to Use District Real Property**

26 This License is granted, in part, based in the reliance on the information supplied and the  
27 interpretation made by the Licensee to the District in the Licensee's "Application to Use  
28 District Property" and that such information was true and correct. Should any part of  
29 such information be determined by the District to be incorrect or wrong, this License may  
30 be re-evaluated by the District. If this License, based on the correct information, is found  
31 by the District to be detrimental to the District interests, then the licensee may be

1 determined by the District to be in default and invoke the provisions of Section 9 of this  
2 License.

3 IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their  
4 respective seals on this License, which has been executed in duplicate counterparts, each  
5 of which has the force and effect of the original. This License is to be effective  
6 \_\_\_\_\_, 20\_\_.

7 EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

8  
9

10 By: \_\_\_\_\_  
11 JOHNNY STUBBS  
12 President, Board of Directors

13  
14  
15  
16  
17

18 LICENSEE

19

20 By: \_\_\_\_\_  
21 \_\_\_\_\_

22

23 Title: \_\_\_\_\_

24



## EL PASO COUNTY WATER IMPROVEMENT DISTRICT No. 1

P.O. Box 749 | 13247 Alameda Ave. Clint, Texas 79836-0749

(915) 872-4000 | Fax (915) 851-0091 | [www.epcwid1.org](http://www.epcwid1.org)

### **APPLICATION FOR LIMITED RIGHT TO USE DISTRICT REAL PROPERTY, REVIEW SUBDIVISION PLAT, OR OTHER REQUESTS**

(Subject to applicable law and approval by District Board of Directors)

Name of Applicant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

Are You a District Taxpayer: \_\_\_\_\_ Account \_\_\_\_\_

Do You Have Powers of Eminent Domain: \_\_\_\_\_ If Yes, Provide Authority: \_\_\_\_\_

Proposed Use of District Real Property or Other Request (Attach Plans) \_\_\_\_\_

Location of Property: (Survey Plat and Description Required) \_\_\_\_\_

Nearest Tract and Block No. \_\_\_\_\_

I agree to comply with all laws, rules, regulations, policies, guidelines, and procedures concerning this application and any license or right that may be granted. A nonrefundable administrative fee of \$1,000 is required for the processing of applications to use District real property; review subdivision plans, engineering evaluations, and other requests. Additional fees for legal review and other work may be required for applications to use of District real property. I further understand that no construction may begin without final approval, in writing, by the District.

\_\_\_\_\_  
Signature of Applicant or Authorized Agent

\_\_\_\_\_  
Printed Name

Date \_\_\_\_\_

#### **FOR DISTRICT USE ONLY:**

Date Application Received: \_\_\_\_\_ Application No. \_\_\_\_\_

Date Application Fee Received: \_\_\_\_\_ Amount: \_\_\_\_\_ Check No. \_\_\_\_\_

Date Survey Received: \_\_\_\_\_ Date Plans Received: \_\_\_\_\_