

Recording Requested by
and Return to:
Reed Schenke
RMA Director
Attn: Craig Anderson

INDEMNIFICATION AGREEMENT
In Connection with
Application for Encroachment Permit

THIS INDEMNIFICATION AGREEMENT (“AGREEMENT”) is entered into this _____ day of _____, 20____, by and between SE LAND, LLC (“APPLICANT”) with its principal place of business at P.O. Box 964, Visalia, CA, 93279 and the COUNTY of Tulare (“COUNTY”).

WHEREAS, APPLICANT has submitted an application for an encroachment permit attached as EXHIBIT A, to COUNTY for a permit granting APPLICANT an encroachment for the construction of approximately one mile of 36-inch diameter Polyvinyl Chloride Irrigation Pipe with Turnout Outlet (“PROJECT”). APPLICANT intends to construct said PROJECT within the COUNTY rights-of-way of Road 88 between Avenue 56 and Avenue 64 shown in EXHIBIT “A”; and

WHEREAS, APPLICANT will make certain covenants to COUNTY in connection with the proposed PROJECT and whereby APPLICANT will indemnify COUNTY for damages or claims related to spill, leaks or other problems associated with the proposed PROJECT.

NOW, THEREFORE, AND IN CONSIDERATION of the mutual covenants contained herein, the parties hereto agree as follows:

1. Indemnification.

- (a) APPLICANT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees or assigns from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with this AGREEMENT or permit including but not limited to construction of the PROJECT, actual, alleged or threatened spill, leak or other release of waste water. This indemnification obligation shall continue beyond the term of this AGREEMENT or permit as to any acts or omissions of APPLICANT occurring during the term of this AGREEMENT or any extension of this AGREEMENT.
- (b) APPLICANT shall indemnify, defend and hold harmless the COUNTY from and against any claims, actions, or proceedings against the COUNTY to attach, set aside, void, or annul any findings, entitlements, certification of California

TULARE COUNTY AGREEMENT NO. _____

Environmental Quality Act (“CEQA”) or other environmental review, and/or approvals by the COUNTY given in regard to the PROJECT described or identified in this Application, AGREEMENT or permit and/or any other related proceedings, or to impose personal liability against such COUNTY officials, agencies, departments, commissions, agents, officers, or employees resulting from their official involvement in any proceedings, including any claims and actions for attorneys’ fees, private attorney general fees and/or costs awarded to any party and against the COUNTY.

2. Registration of Project Location. Upon completion of the PROJECT and prior to the acceptance of work in connection with the Permit Application, APPLICANT will register the location of the PROJECT with USA North 811 or an equivalent underground service locating organization, and shall renew annually to continue to provide for underground service locating. APPLICANT shall provide proof of registration set forth in Paragraph 15. This obligation runs so long as the PROJECT exists passes to any future owner of the PROJECT.
3. Plans. A set of engineered plans detailing the PROJECT construction shall be submitted to and reviewed by the COUNTY. Construction shall be according to the approved set of plans and shall not deviate from said plans. Design and construction standards shall be substantially similar to irrigation PROJECT installations or engineered equivalents.
4. As-builts. Upon completion of construction, and prior to the PROJECT being placed in any service, APPLICANT shall provide COUNTY with an as-built plan set which reflects the location of the PROJECT, its depth, diameter and the location within COUNTY right-of-way, prepared by and stamped by a Registered Civil Engineer in good standing in the State of California. APPLICANT shall provide COUNTY with any supplemental surveys to reflect any subsequent corrections and/or changes to the PROJECT.
5. Abandonment. APPLICANT shall provide the COUNTY thirty (30) days written notice set forth in Paragraph 9 below prior to abandoning PROJECT. PROJECT abandonment shall be capped and filled with flowable fill consisting of a controlled low-strength material consisting of fluid mixture of cement, fly ash, aggregate, water and with admixtures as necessary to provide workable properties to the satisfaction of the COUNTY.
6. Effectiveness: Term and Termination. The effectiveness of this AGREEMENT is conditioned on the issuance of an encroachment permit pursuant to the Permit Application. The term of this AGREEMENT shall be the same as the term of the Project Permit Application and any extensions thereof. This indemnification obligation will continue beyond the term of this AGREEMENT or the permit as to any acts or omissions occurring during the term of this AGREEMENT or permit or any extensions of this AGREEMENT or permit.
7. Amendment. This AGREEMENT shall not be modified or amended except by means of a writing signed by each of the parties to this AGREEMENT.

8. Assignment. Subject to Tulare County Ordinance 3-07-1270, APPLICANT will not assign or transfer their rights or obligations under this AGREEMENT unless the COUNTY has given its prior written consent; such consent will not be unreasonably withheld.

9. Notices.

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone No.: 559-624-7000
Fax No.: 559-730-2653

APPLICANT: SE Land, LLC
P.O. Box 964
Visalia, CA 93279
Phone No.: 559-786-1996
Email: steve@etcheagarayfarms.com

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

10. Power to Grant. The Parties acknowledge that the COUNTY may authorize an encroachment permit under Streets and Highway Code § 1460 et seq. and Tulare County Ordinance Code 3-07-1160 et seq. The Parties also acknowledge that the encroachment permit is not a lease and that under Streets and Highways Code § 1463, the permit may be revoked on five (5) days notice.

11. Insurance. Prior to approval of this AGREEMENT by COUNTY, APPLICANT shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in EXHIBIT B attached. Insurance policies shall not be used to limit APPLICANT liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

12. Repairs. APPLICANT will make all repairs on the project as soon as is possible. In the event APPLICANT has not commenced a repair referred to in a written notice from COUNTY to APPLICANT within thirty (30) days after date of notice, COUNTY will have the right to repair or contract to repair and to be reimbursed by

APPLICANT. The full amount of the reimbursement is to be paid within thirty (30) days after COUNTY's delivery to APPLICANT or a written statement or bill evidencing the cost of the repair.

13. Damages. APPLICANT is solely responsible for any damages to the PROJECT and any subsequent repairs to the PROJECT and the COUNTY's facilities including, but not limited to, road shoulder, and pavement in the COUNTY right of way should any excavation, construction, or road work, either by COUNTY or any entities permitted by the COUNTY to work in COUNTY right of way, damage the PROJECT.
14. Lawful Permit. The encroachment permit may become invalid if APPLICANT has not obtained all necessary permits, if any permits become invalid, or if APPLICANT fails to comply with the conditions of any permit or this AGREEMENT.
15. Encroachment Fee and Registration. APPLICANT agrees to pay to the COUNTY an annual encroachment fee not to exceed six hundred dollars (\$600) dollars on a reimbursement basis for actual expenditures incurred for AGREEMENT preparation and Permit Application processing. APPLICANT shall submit payment to the COUNTY within 30 days of the date of COUNTY's invoice for said payment, and shall provide proof of registration with USA North 811 or an equivalent underground service locating organization with said payment.
16. Exhibits and Recitals. The Recitals and the Exhibits to this AGREEMENT are fully incorporated into and are integral parts of this AGREEMENT.
17. Conflict with Laws. This AGREEMENT is subject to all applicable laws and regulations. If any provision of this AGREEMENT is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the AGREEMENT to either party is lost, the AGREEMENT may be terminated at the option of the affected party. In all other cases the remainder of the AGREEMENT shall continue in full force and effect.
18. Compliance with Law. APPLICANT shall provide services in accordance with applicable Federal, State and local laws, regulations and directives.
19. Governing Law. The construction and interpretation of this AGREEMENT shall be governed by and construed according to the laws of the State of California.
20. Counterparts. This AGREEMENT may be executed and delivered in multiple counterparts, all of which, when executed and delivered, shall have the full force and effect of an original.
21. Bond. APPLICANT will file a bond that guarantees the full performance of the work authorized by the permit. The bond must be in a form approved by the COUNTY. The amount of the bond will be based on estimated costs to complete the work and repair the highway.

22. Maintenance. APPLICANT will be responsible for all maintenance, monitoring, repair and up-keep of the PROJECT insuring that it is safe and leak-free.
23. Property Taxes. APPLICANT acknowledges and understands that this AGREEMENT may create a possessory interest subject to property taxation. APPLICANT will pay any property taxes levied upon that interest before they become delinquent.
24. Effect of Annexation. If the land on which the PROJECT is to be constructed is annexed to a city, the COUNTY may assign to the annexing city all of its rights and responsibilities under this AGREEMENT. The city council or its designee shall be deemed to have all of the rights and responsibilities conferred upon the COUNTY by this AGREEMENT.
25. Renewal. This AGREEMENT shall be renewable at the end of twenty-five (25) years from the date of the AGREEMENT unless either party gives written notice of its intention not to renew before expiration of the twenty-five (25) years. COUNTY shall notify APPLICANT of any changes in the terms of this AGREEMENT at least thirty (30) days prior to the notice period for renewal or termination.
26. Recordation. Upon execution of this AGREEMENT by the COUNTY and APPLICANT, this AGREEMENT shall be recorded in the Office of the Tulare County Recorder. From and after the date of recordation, the terms and conditions of this AGREEMENT shall be binding upon the heirs, executors, administrators, grantees, successors and assigns of APPLICANT as covenants running with the land.

IN WITNESS WHEREOF, the undersigned have executed this AGREEMENT as of the date set forth above.

[remainder of page intentionally blank]

COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY

By: _____
Chairman Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

SE Land, LLC

By: San. Etcheberry

Title: Member

Approved as to form
County Counsel

By: [Signature] 12/30/11
Deputy

20192012