

## FACILITIES ENCROACHMENT AGREEMENT

THIS AGREEMENT is made effective as of July 7, 2020 by and between JAMES IRRIGATION DISTRICT, a California Irrigation District, hereinafter referred to as "JAMES", and the COUNTY OF FRESNO, hereinafter referred to as "COUNTY" with respect to the following facts:

WHEREAS, JAMES owns certain real property, commonly referred to as the James Main Canal, for the purpose of conveying and delivering irrigation water;

WHEREAS, the COUNTY seeks to replace bridge structures crossing the James Bypass along Manning Avenue and the work to replace the bridge structures will temporarily encroach upon the property owned by JAMES for the James Main Canal;

WHEREAS, the COUNTY also has an existing bridge structure crossing the James Main Canal that will not be replaced at this time but currently encroaches upon the property owned by JAMES for the James Main Canal;

WHEREAS, JAMES and COUNTY desire by this Agreement to establish conditions under which the COUNTY will permit the temporary encroachment for the construction of the bridge structure crossing the James Bypass and operate and maintain the existing bridge structure encroachment crossing the James Main Canal.

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

1. Permitted Facilities. The facilities permitted to encroach upon the James Main Canal under this Agreement shall only include the roadway, bridge structures and associated structures and appurtenances approved by JAMES under this Agreement, hereinafter referred to as "Permitted Facilities". The Permitted Facilities shall be located within the boundaries shown on the attached Exhibit A ("Permit Boundaries"). No structures other than the Permitted Facilities, either within or outside of the Permit Boundaries, are authorized or permitted under this Agreement to encroach upon the James Main Canal.
2. Term. This Agreement shall continue in effect for the duration of the existence of any portion of the Permitted Facilities and shall terminate only upon the complete removal of the Permitted Facilities and restoration of the underlying property to original conditions.
3. No Grant of Rights. The Parties acknowledge that this Agreement only governs the operation and maintenance of the Permitted Facilities, and does not grant any rights in the underlying real property, or affect the rights of any third party to such property. The COUNTY warrants to JAMES that it possesses the right in the underlying real property to construct, operate, and maintain the Permitted Facilities.

4. Encroachment Conditions. The COUNTY shall operate and maintain the Permitted Facilities at all times in accordance with the following terms and conditions:

a. **Paramount Right.** The ability of the COUNTY to operate and maintain the Permitted Facilities shall be subject to the paramount right of JAMES to the full and beneficial use and enjoyment by JAMES of the James Main Canal for all purposes of JAMES.

b. **Water Flow.** The COUNTY understands and acknowledges that the James Main Canal is used for the majority of the year and may be used year-round. The COUNTY shall not interfere with the flow of water at any time. If the COUNTY requires site conditions that require changes in water flows, water levels, or dewatered conditions, the COUNTY shall be responsible for making a request for the required conditions in a timely manner. JAMES is not obligated to accommodate any such requests from the COUNTY nor shall JAMES incur any liability whatsoever when accommodating or declining to accommodate such requests.

c. **Construction.** The COUNTY shall not perform any major repair or replacement of the existing bridge structure crossing the James Main Canal without first submitting construction drawings for review by JAMES and obtaining written authorization from JAMES. Any subsequent revisions to the construction drawings or to the design of the structure shall be approved in writing by JAMES. Nothing herein shall obligate JAMES to review the construction drawings for quality, design, compliance with applicable law or any other matters, and JAMES shall have no liability or responsibility whatsoever in connection with the review of the construction drawings, including but not limited to any omissions or errors contained therein.

d. **Erosion.** The COUNTY shall be responsible for repairing erosion which occurs at or within the Permitted Facilities. The COUNTY shall also be responsible for repairing erosion adjacent to the Permitted Facilities if the erosion is caused by the Permitted Facilities. All repairs shall include revetment or other protective measures to prevent future erosion and shall be approved in advance by JAMES.

e. **Inspection.** The COUNTY shall inspect the Permitted Facilities at reasonable intervals. All inspections shall include but not be limited to inspecting for scour at bridge pilings or abutments and erosion adjacent to or caused by the Permitted Facilities. The COUNTY shall report any hazardous conditions to JAMES and shall make all inspection reports available to JAMES upon request.

f. **Reserved Rights.** JAMES reserves unto itself and for its landowners the right to use the property situated within the Permit Boundaries for any purpose whatsoever, and to grant to others easements and other rights in and to all or any portion thereof, provided that such uses and rights do not and will not materially interfere with the Permitted Facilities or the exercise of COUNTY's rights under this Agreement.

5. Temporary Construction Permit. In order to facilitate construction of the Permitted Facilities within the Permit Boundaries, the COUNTY shall be granted a Temporary Construction Permit for the duration of construction with the rights and obligations as set forth below:

a. Access. Permission is hereby granted to the COUNTY or its authorized agent to enter upon JAMES land where necessary within that certain area totaling 0.67 acres and shown on the attached Exhibit B (“Temporary Construction Boundaries”), attached hereto and made part hereof, for the purpose of constructing the Permitted Facilities, and for no other purpose.

b. Surrender. The COUNTY will leave the area within the Temporary Construction Boundaries in a reasonably neat and clean condition upon completion of Construction of the Permitted Facilities.

c. Term. The term of this Temporary Construction permit shall commence upon execution by JAMES and shall terminate five years thereafter.

d. Fee. The COUNTY shall pay JAMES a sum of \$500.00 for the Temporary Construction Permit.

5. Specific Performance. Each party agrees that the other party will not have an adequate remedy at law if this Agreement is not performed in accordance with its terms, and that any damages available at law for breach of this Agreement would not be an adequate remedy. Therefore, each party’s obligations under this Agreement are enforceable by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith. These remedies and all other remedies provided for in this Agreement are cumulative and not exclusive and are in addition to any other remedies that such party may have under this Agreement. Provided, that the party claiming a breach has occurred shall provide the other party with notice and a reasonable opportunity to cure the alleged breach before the initiation of any proceedings seeking specific performance or any other remedy for an alleged breach.

6. Indemnification. The COUNTY and its successors and assigns shall indemnify and defend JAMES, and its officers, directors, employees, agents, successors and assigns from and against all claims (including challenging the propriety of this Agreement), losses and other expenses (including without limitation reasonable attorneys' fees and court costs) (collectively, "Damages") resulting from any acts or omissions by the COUNTY or its officers, directors, employees, agents or contractors in carrying out of rights under this Agreement, except to the extent such Damages result from the negligent, unlawful or wrongful acts of JAMES or its officers, directors, employees, agents or contractors.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto. No rights or duties under this Agreement may be assigned or delegated by a party without the express written consent of the other party.

8. No Agency or Partnership. Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any other association between or among any of the parties. No part of this Agreement shall be construed as creating any rights in the general public, nor shall any part be deemed to be a gift or dedication for public use of any portion of the properties described in this Agreement.

9. Severability. If any term, covenant, condition or restriction of this Agreement is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of the remaining terms, covenants, conditions and restrictions contained in this Agreement.

10. Governing Law. This Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes to be proper only in the County of Fresno, State of California.

11. Construction and Interpretation. This Agreement has been arrived at through negotiation and each of the parties has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting parties shall not apply in the construction or interpretation of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements and understandings, written or oral.

13. Administrative Fee. The COUNTY shall pay JAMES the sum of \$1,000.00 upon execution of this Agreement as a fee for the preparation of this Agreement.

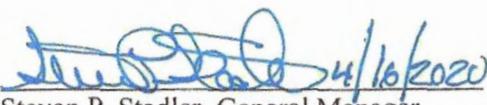
14. Waiver of Breach. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

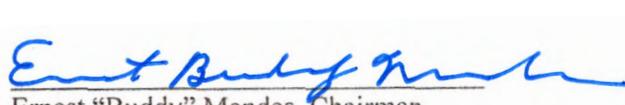
15. Attorney's Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

JAMES IRRIGATION DISTRICT

COUNTY OF FRESNO

By  4/16/2020  
Steven P. Stadler, General Manager

By   
Ernest "Buddy" Mendes, Chairman  
County of Fresno Board of Supervisors

ATTEST:

Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By   
Deputy

For Accounting Use Only:

Fund/Org/Subclass: 0010/4510/11000

Temporary Construction Permit:  
Account/Program: 8110/91276

Encroachment Fees:  
Account/Memo: 7260/107

T. 15 S., R. 17 E., M.D.B. & M.



**BASIS OF BEARINGS:**

THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 15 SOUTH, RANGE 16 EAST, M.D.B. & M., BEARS N88°33'07"E PER 2014 COUNTY OF FRESNO PRELIMINARY SURVEY OF MANNING AVENUE FROM PLACER AVENUE TO 1.38 MILES WEST OF LASSEN AVENUE (FEDERAL OVERLAY PROJECT).

**LEGEND**

- SECTION LINE
- - - - - EXISTING RIGHT OF WAY LINE
- TEMPORARY CONSTRUCTION PERMIT
- PERMIT BOUNDARY

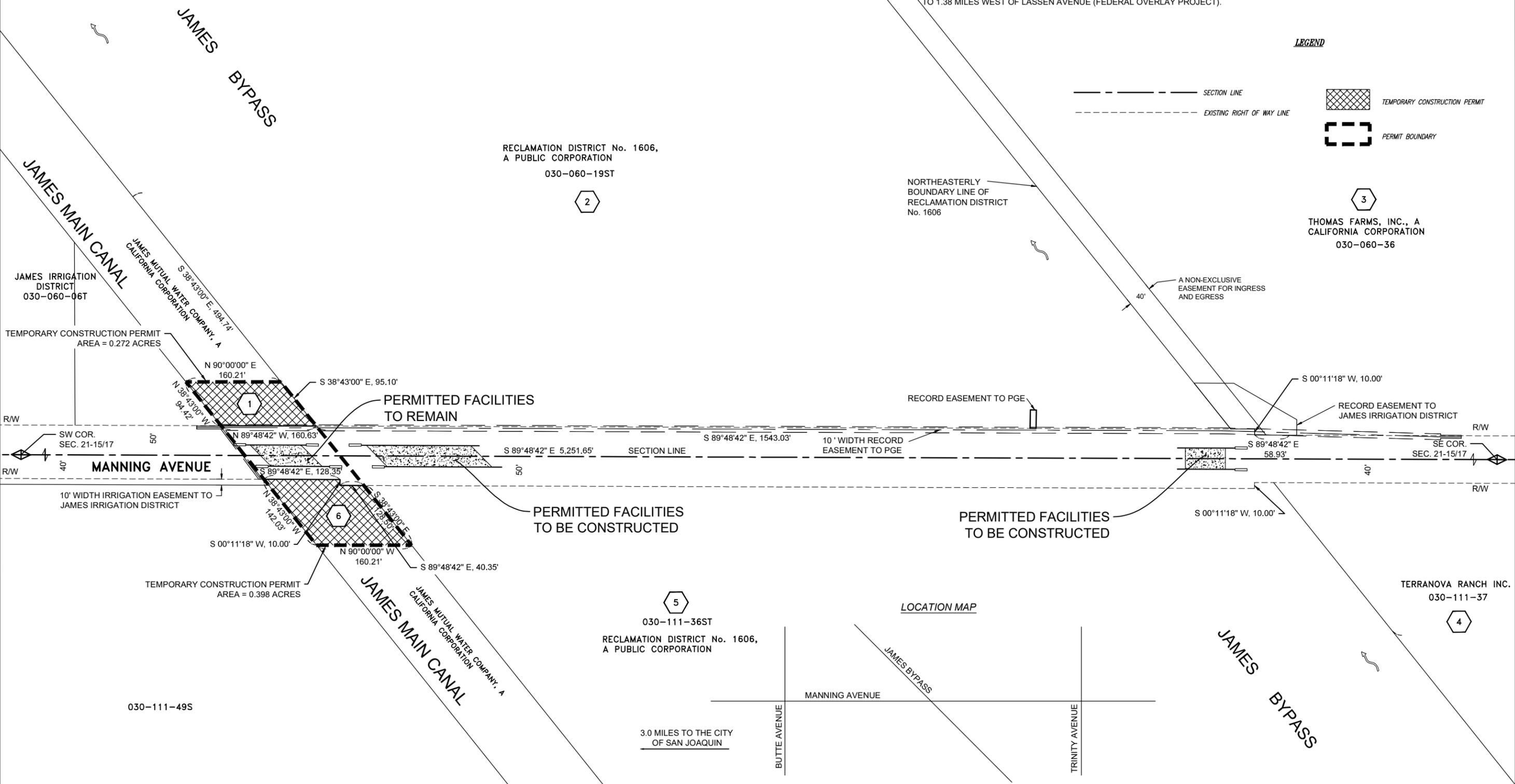
RECLAMATION DISTRICT No. 1606,  
A PUBLIC CORPORATION  
030-060-19ST



NORTHEASTERLY  
BOUNDARY LINE OF  
RECLAMATION DISTRICT  
No. 1606



THOMAS FARMS, INC., A  
CALIFORNIA CORPORATION  
030-060-36



**LOCATION MAP**

030-111-36ST  
RECLAMATION DISTRICT No. 1606,  
A PUBLIC CORPORATION

3.0 MILES TO THE CITY  
OF SAN JOAQUIN

TERRANOVA RANCH INC.  
030-111-37



030-111-49S

DESIGNED:	DATE
GM	02/18
DRAWN:	TT
	04/20
CHECKED:	

SCALE IN FEET
( IN FEET )

PROJECT
JAMES BYPASS MANNING AVENUE BRIDGES
ROAD NO.
BRIDGE NO.



DEPARTMENT OF PUBLIC WORKS AND PLANNING
JAMES IRRIGATION DISTRICT - TCP
SHEET NO. 01
TOTAL: 01

FOR R/W DATA AND ACCURATE ACCESS DETERMINATION SEE R/W RECORDS AT PUBLIC WORKS