

SAN BERNARDINO COUNTY

LICENSE AGREEMENT

LICENSEE: San Bernardino County
c/o Department of Public Works- Transportation Department
825 E. Third Street
San Bernardino, CA 92415-0835

DISTRICT: County Service Area 70, Zone D-1
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

PREMISES: Lot G, approximately 0.33 acres of County Service Area 70, Zone D-1,
further described as: Northeast of State Highway 173, and Torrey Road in
the Lake Arrowhead area of San Bernardino County, a portion of Assessor
Parcel No. 0330-011-46-0000

TERM OF LICENSE: Ten (10) years with one (1) Ten-year option to renew

COMMENCEMENT DATE OF LICENSE: September 1, 2026

CONTRACT NO.

REV. 11/28/2012

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EXHIBIT "1" Premises

LICENSE AGREEMENT

This License agreement is made and entered into by and between County Service Area 70, Zone D-1, a body politic and corporate, hereinafter designated as "DISTRICT" and San Bernardino County, acting on behalf of its Department of Public Works-Transportation Division, hereinafter called "LICENSEE".

WITNESSETH

WHEREAS, the DISTRICT owns the entire real property known as Assessor Parcel No. 0330-011-46-0000, which comprises Lots A through L, Located in the Papoose Lake area of Lake Arrowhead, CA ("District-owned Property"); and,

WHEREAS, the LICENSEE desires to store and stockpile road materials, including but not limited to earth, cinders, and grindings, between road maintenance activities; and,

WHEREAS, DISTRICT and LICENSEE now desire to enter into a License agreement for the use of the Premises, terminating and replacing the current License agreement No. 17-461.

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree to the following:

COVENANTS AND AGREEMENTS:

1. **USE:** The DISTRICT grants a non-exclusive License for the Premises, including reasonable ingress and egress through the DISTRICT-owned Property, to LICENSEE for the purpose of storing and stockpiling road materials, including but not limited to, earth, cinders and grindings, between County's road maintenance activities (Collectively, the "LICENSEE's Materials").

This License and the rights herein granted to LICENSEE shall be subject to the paramount legal duties and obligations of DISTRICT including, but not limited to, the DISTRICT's rights to cross over and/or use the Premises without liability for any damages to LICENSEE's Materials.

2. **TERM:** The term of said License shall be Ten (10) years duration commencing on September 1, 2026 and ending on August 31, 2036 ("initial term").

3. **OPTION TO EXTEND TERM:** COUNTY gives LICENSEE the option to extend the term of the license on the same provisions and conditions, Three (3) Five (5) year periods ("extended terms") following expiration of the initial term, provided that at the time of exercise of the applicable option, LICENSEE is not in default with respect to any of the terms, covenants or conditions to be observed or performed by LICENSEE hereunder. Said options shall be deemed to automatically renew unless either party terminates the agreement pursuant to **Paragraph 22, TERMINATION**.

4. **FEES:** No fee is payable by LICENSEE to DISTRICT for use of the Premises for the storage and stockpiling of LICENSEE's Materials at the Premises.

5. **RESERVED.**

6. **RESERVED.**

7. **ACCEPTANCE OF PREMISES:** Upon the acceptance of the use of the Premises by LICENSEE, the same shall conclusively be deemed to be fit and proper for the purposes for which the same is hereby licensed. The Premises have not been inspected by a Certified Access Specialist. The parties hereby acknowledge and agree that no utilities are provided by DISTRICT to the Premises.

8. **ASSIGNMENT:** This License shall not be assigned without the express written approval of the DISTRICT.

9. **DISTRICT'S ACCESS TO PREMISES:**

A. DISTRICT, or a duly authorized representative of the DISTRICT, reserves the right to enter upon the Premises at any reasonable time and with reasonable prior written notice for the purpose of inspecting the Premises for conformance to License provisions and for carrying out any routine and emergency maintenance or construction repair work on the Premises that DISTRICT may deem reasonably necessary to carry out the functions and purposes of the DISTRICT nor shall said DISTRICT be liable for damages to LICENSEE's Materials as a result thereof except to the extent caused by DISTRICT's negligence or intentional misconduct.

B. If DISTRICT requires use of the Premises, DISTRICT's activities shall take precedence at all times, and when any work or activity on the Premises must be performed to carry out the functions and purposes of the DISTRICT, LICENSEE must allow same to be done with minimal interference. DISTRICT shall give LICENSEE reasonable written notice of impending activities at the Premises whenever possible.

10. **MAINTENANCE/REPAIRS:**

A. The DISTRICT's maintenance roads serving the District-owned Property will be available for normal and routine ingress and egress to the Premises and the LICENSEE's Materials. Any damage to the Premises caused by LICENSEE shall be the responsibility of LICENSEE. If LICENSEE's Materials become a hazard to the Premises or the District-owned Property, the LICENSEE will be required to eliminate the hazard. LICENSEE will maintain the Premises to confine LICENSEE's Materials to the Premises and to control runoff and erosion from the Premises to the extent caused by LICENSEE's Materials.

B. In the event of a hazard at the Premises or damage to the Premises caused by LICENSEE, LICENSEE shall have ten (10) days from written notice from DISTRICT to LICENSEE to eliminate the hazard or repair the Premises, except that LICENSEE shall perform its obligations immediately if the nature of the hazard or repair creates an emergency that imminently threatens life or substantial damage or destruction of the Premises. If LICENSEE does not perform its obligations within the time limitations in this paragraph, DISTRICT can perform the obligations and has the right to be reimbursed for the sum it reasonably expends (including reasonable charges for DISTRICT's equipment and personnel) in the performance of LICENSEE's obligations.

11. **RELOCATION:**

A. When LICENSEE's Materials require relocation to other portions of the District-owned Property or protection at the Premises because of DISTRICT's work at the Premises, the relocation or protective measures shall be performed by the LICENSEE at its expense and whenever possible in advance of DISTRICT's work.

B. The DISTRICT has fee title to Premises upon which the LICENSEE's Materials are located. The DISTRICT reserves the right to allow other uses on any other portion of District-owned Property. Any additional uses on other portions of District-owned Property may require LICENSEE's relocation to other portions of District-owned Property or protection of LICENSEE's Material at the Premises.

12. **HAZARDOUS MATERIALS:**

A. Definition. For purposes of this agreement, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California

Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. In connection with the License of the Premises by LICENSEE, (a) LICENSEE agrees and acknowledges that it has had an opportunity to investigate the Right-of-Way, Premises and their environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc. delivered by DISTRICT to LICENSEE preceding execution of this license are delivered to LICENSEE as an accommodation and not with the intent that such items be relied upon by LICENSEE, except to the extent that LICENSEE has independently confirmed the validity of such items; and (c) LICENSEE's decision to enter into this license is based upon the investigation, study and analysis of the Right-of-Way, Premises and their environs made by LICENSEE or its agents and/or independent contractors, and not upon oral or written statements or representations of DISTRICT. It is expressly understood by LICENSEE and DISTRICT that all statements and representations made by DISTRICT which are not included in this agreement (a) are intended by DISTRICT to be made as an accommodation to LICENSEE in DISTRICT's investigation and not in lieu of LICENSEE's investigation; and (b) are not to be relied and acted upon by LICENSEE.

C. LICENSEE shall not permit, authorize, or suffer at any time during the term of this License the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Right-of-Way and/or Premises of any hazardous substance, or the transportation to or from the Right-of-Way and/or Premises of any hazardous substance except as set forth in Exhibit "1".

13. **IMPROVEMENTS:** No improvements are being constructed by LICENSEE at the Premises as of the commencement of the term of this License. In the event LICENSEE desires to construct improvements at the Premises, LICENSEE shall obtain DISTRICT's prior written consent, which consent shall be granted or denied in DISTRICT's sole discretion.

14. **DEFAULT AND RIGHT TO TERMINATE:**

A. Except as provided in Paragraph 10.B of this License, if either party should fail to perform, keep or observe any of the terms, conditions or covenants as set forth in this License, the non-defaulting party shall give the defaulting party written notice to correct such condition or cure such default.

(1) This License will not be terminated if within thirty (30) days after receipt of such written notice, the defaulting party shall cure the condition or default.

(2) If such condition or default should continue for thirty (30) days after receipt of written notice of default, the non-defaulting party may at its option elect to terminate this License. Such election to terminate shall not be construed as a waiver of any claim the non-defaulting party may have against the defaulting party, consistent with such termination.

(3) If, however, the defaulting party shall have commenced the elimination of such default within thirty (30) days after receipt of such notice and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.

B. Reserved.

C. Upon any termination of this License, LICENSEE covenants and agrees to surrender the Premises on or before the effective termination date in a clean and tidy condition with all LICENSEE's Materials removed and any damage caused by LICENSEE repaired. If LICENSEE continues to use the Premises after any termination of this License without DISTRICT's express or implied consent, LICENSEE's use is unauthorized and LICENSEE shall be subject to removal, forcibly or otherwise, at any time thereafter, with or without process of law. In the event of the failure of LICENSEE to remove LICENSEE's Materials, if any, belonging to LICENSEE from the Premises on or before the effective termination date of this License and such failure continues for more than thirty (30) days after written notice from DISTRICT to LICENSEE, DISTRICT may remove such LICENSEE's Materials and place the same in storage at the expense of LICENSEE and without liability to DISTRICT for loss thereof unless caused by the negligence or intentional misconduct of DISTRICT. LICENSEE agrees to pay DISTRICT on demand all expenses incurred in such removal, including court costs and attorneys' fee and storage charges.

D. The receipt by the DISTRICT of any fees or of any other sum of money paid by LICENSEE after any default, the termination of this License for any reason permitted by this License, or after the giving by either party of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the term of this License, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by each party to the other party prior to the receipt of any such sum of money or other consideration, unless so agreed to be in writing and signed by the parties. Any act of the DISTRICT or its agent or employees during the term of this License shall not be deemed to be an acceptance or a surrender of said Premises, except pursuant to in writing signed by the DISTRICT agreeing to accept such surrender.

15. **HOLDING OVER:** If the LICENSEE continues in possession of the Premises after the expiration of the term or after any termination of this License prior to the expiration of the term, and if said occupancy is with the consent of the DISTRICT, then LICENSEE shall be deemed to be holding the Premises on a month-to-month basis subject to all the provisions of this License, and the annual fee payable during such period of holding over shall be the same as the annual fee most recently payable prior to the date such holding over was commenced.

16. **LICENSES AND CERTIFICATIONS:** LICENSEE agrees that it will acquire and maintain those certifications, licenses, approvals and permits required by any Federal, State or local jurisdiction or authority for carrying out the purpose of this License. Failure to comply with this provision will constitute a default and right to terminate by DISTRICT under **Paragraph 14, DEFAULT AND RIGHT TO TERMINATE**, of this license.

17. **INDEMNIFICATION:** The LICENSEE agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The LICENSEE's indemnification obligation applies to the DISTRICT's "active" as well as "passive" negligence but does not apply to the DISTRICT's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

18. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:** DISTRICT and LICENSEE are each respectively self-insured public entities for purposes of general liability, automobile liability, and workers' compensation. DISTRICT and LICENSEE each warrant that through their respective programs of self-insurance, each has adequate general liability, automotive liability, and Workers' Compensation to provide coverage for liabilities arising out of their respective obligations under this agreement.

19. **RESERVED.**

20. **BUILDING AND SAFETY REQUIREMENTS:** All activities under this License must conform to all applicable rules, regulations, laws, ordinances, codes, statutes or orders of any governmental authority, Federal, State or local lawfully exercising authority over LICENSEE's operations. In the event that the LICENSEE's use of the Premises conflicts in any way, or is in violation of any of said rules, regulations, ordinances, statutes or orders, the LICENSEE shall remove or modify the installation to conform with the applicable regulations within thirty (30) days of receipt of written notice to do so from the DISTRICT. DISTRICT's determination of conflicting use shall be conclusive.

21. **GENERAL COVENANTS AND AGREEMENTS:**

A. At any time during the term of this License, the DISTRICT may revise, modify, or add provisions to the License as may be reasonably required to carry out the functions and purposes of the DISTRICT so long as any revisions, modification or additions do not substantially interfere with LICENSEE's use of the Premises.

B. The parties will provide to each other a 24-hour contact employee for notification purposes for administration of this License.

C. Uses granted to LICENSEE under this License are valid only to the extent of the DISTRICT's existing rights and may be subject to other existing easements and encumbrances. Rights granted to the LICENSEE are non-exclusive.

D. Activities under this License are subject to any reasonable instructions of DISTRICT representatives for the purposes of carrying out the functions and purposes of the DISTRICT and for compliance with the terms of this License.

E. If the LICENSEE should refuse or neglect to comply with the provisions of the License, or the reasonable orders of the DISTRICT to carry out the functions and purposes of the DISTRICT, such refusal or neglect to comply shall constitute a default and right to terminate by DISTRICT under **Paragraph 14, DEFAULT AND RIGHT TO TERMINATE**, of this License. All the terms, covenants and conditions set forth herein are to be strictly complied with by the LICENSEE. Any failure to comply therewith shall constitute a default and right to terminate by DISTRICT under **Paragraph 14, DEFAULT AND RIGHT TO TERMINATE**, of this License.

This License is valid only to the extent to DISTRICT's jurisdiction. Permits required by other interested agencies shall be the responsibility of the LICENSEE. **NOTHING CONTAINED IN THIS LICENSE SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE DISTRICT.**

22. **TERMINATION:** Either party may terminate this License at any time by giving the other party written notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. LICENSEE shall perform all necessary removals or relocation within said ninety (90) days.

23. **INCORPORATION OF PRIOR AGREEMENT:** This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.
24. **WAIVERS:** No waiver by either party of any provisions of this License shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.
25. **AMENDMENTS:** No provision of this License may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest, expressing by its terms an intention to modify this License.
26. **SUCCESSORS:** This License shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.
27. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
28. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold such consent or approval.
29. **EXHIBITS:** All exhibits referred to are attached to this License and incorporated by reference.
30. **LAW:** This License shall be construed and interpreted in accordance with the laws of the State of California.
31. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this License shall have no effect on its interpretation.
32. **SEVERANCE:** If any provision of this License is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this License, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the License is not frustrated. It is the intention of the parties hereto that if any provision of this License is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
33. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) DISTRICT business days from the time of mailing if mailed as provided in this paragraph.

DISTRICT's address: County Service Area 70, Zone D-1
222 W. Hospitality Lane, Second Floor

San Bernardino, CA 92415

With a copy to:

San Bernardino County
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

LICENSEE's address:

San Bernardino County
Department of Public Works- Transportation Division
825 E. Third Street
San Bernardino, CA 92415-0835

34. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this License, will survive the termination of this License.

35. **RESERVED.**

36. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto.

37. **RESERVED.**

38. **INTERPRETATIONS:** As this agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

39. **ELECTRONIC COUNTERPARTS:** This License may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same License. The parties shall be entitled to sign and transmit an electronic signature of this License (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed License upon request.

40. **AUTHORIZED SIGNATORS:** Both parties to this License represent that the signators executing this document are fully authorized to enter into this agreement.

END OF CONTRACT.

County Service Area 70, Zone D-1

San Bernardino County- Department of Public
Works-Transportation

Dawn Rowe, Chair

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

By _____
Deputy

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

►

John Tubbs II, Deputy County Counsel

►

Date _____

►

John Gomez, Real Property Manager, RESD

Date _____

Date _____

Date _____

EXHIBIT 1
Premises

