

## RIGHT OF ENTRY PERMIT

Agency: Department of Parks and Recreation

Project: Intake Well Condition Assessment at Marina State Beach

This Right of Entry Permit (Permit) is made and entered into this 1st day of October 2024, between the State of California, acting by and through its Department of Parks and Recreation, hereinafter called State, and Marina Coast Water District, hereinafter called Permittee; State and Permittee may hereinafter be referred to as a Party, or collectively the Parties.

### RECITALS

- **Whereas**, the State owns, operates and maintains the State Park known as Marina State Beach, in the County of Monterey, State of California; and
- **Whereas**, Permittee has applied to State for permission to access Marina State Beach for purposes of carrying out Permittee's Intake Well Condition Assessment project (the Project); and
- **Whereas**, the State desires to accommodate Permittee's application for permission to enter Marina State Beach for purposes of the Project, as provided herein-

### TERMS AND CONDITIONS

**Now therefore**, the State by this Permit hereby grants to the Permittee permission to enter upon State's property, conditioned upon the agreement of the Parties that this Permit does not create or vest in Permittee any interest in the real property herein described or depicted, that the Permit is revocable and non-transferable, and that the Permit is further subject to the following terms and conditions:

1. **Project Description:** By this Permit, the State hereby grants to the Permittee permission to enter onto those lands depicted and/or described on **Exhibit A** (the Property), attached hereto and herein incorporated by this reference, solely for the purpose of locating the existing well structure, expose the top, and conduct a down hole well inspection.
2. **Permit Subject to Laws and Regulatory Agency Permits:** This Permit is expressly conditioned upon Permittee's obtaining any and all regulatory permits or approvals required by the relevant regulatory agencies for the Project and Permittee's use of the Property, and upon Permittee's compliance with all applicable municipal, state and federal laws, rules and regulations, including all State Park regulations. Permittee shall, at Permittee's sole cost and expense, comply with the Project Description.

Prior to commencement of any work, Permittee shall obtain all such legally required permits or approvals and submit to the State full and complete copies of all permits and approvals, including documentation related to or referenced in such permits and approvals, along with the corresponding agency contact and telephone numbers, and related California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documentation as applicable.

3. **Term of Permit:** This Permit shall only be for the period beginning on **10/1/2024**, and ending on **10/1/2025**, or as may be reasonably extended by written mutual agreement of the Parties.
4. **Consideration:** All fees are waived for this application.
5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, licenses, encumbrances and claims which may affect the Property.
6. **Waiver of Claims and Indemnity:** Permittee waives all claims against State, its officers, agents and/or employees, for loss, injury, death or damage caused by, arising out of, or in any way connected with the condition or use of the Property, the issuance, exercise, use or implementation of this Permit, and/or the rights herein granted. Permittee further agrees to protect, save, hold harmless, indemnify and defend State, its officers, agents and/or employees from any and all loss, damage, claims, demands, costs and liability which may be suffered or incurred by State, its officers, agents and/or employees from any cause whatsoever, arising out of, or in any way connected with this Permit, exercise by Permittee of the rights herein granted, Permittee's use of the Property and/or the Project for which this Permit is granted, except those arising out of the sole active negligence or willful misconduct of State. Permittee will further cause such indemnification

and waiver of claims in favor of State to be inserted in each contract that Permittee executes for the provision of services in connection with the Project for which this Permit is granted.

7. **Contractors:** Permittee shall incorporate the terms, conditions and requirements contained herein when contracting out all or any portion of the work permitted hereunder. Permittee shall be responsible for ensuring contractor/subcontractor compliance with the terms and conditions contained herein. Failure of Permittee's contractors to abide by State's terms and conditions shall constitute default by Permittee (see DEFAULT paragraph below) allowing State to terminate this Permit and seek all legal remedies.
8. **Insurance Requirements:** As a condition of this Permit and in connection with Permittee's indemnification and waiver of claims contained herein, Permittee shall maintain, and cause its contractors to maintain, a policy or policies of insurance as follows:

**General Provisions Applying to All Policies**

- A. **Coverage Term** – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.
- B. **Policy Cancellation or Termination & Notice of Non-Renewal** – Contractor is responsible to notify the State within five business days before the effective date of any cancellation, non-renewal, or material change that affects required insurance coverage. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- C. **Deductible** – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.
- D. **Primary Clause** – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- E. **Insurance Carrier Required Rating** – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- F. **Endorsements** – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- G. **Inadequate Insurance** – Inadequate or lack of insurance does not negate the contractor obligations under the contract.
- H. **Satisfying an SIR** - All insurance required by this contract must allow the State to pay and/or act as the contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the contractor's agent in satisfying any SIR is at the State's discretion.
- I. **Available Coverages/Limits** - All coverage and limits available to the contractor shall also be available and applicable to the State.
- J. **Subcontractors** - In the case of Contractor utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor and insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of Contractor.

**COMMERCIAL GENERAL LIABILITY:**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, and liability assumed under an insured contract. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000. **The State of California, its officers, agents, and employees are to be covered as additional insureds with respect to liability arising out of work or operations.**

**AUTOMOBILE LIABILITY INSURANCE:**

Automobile Liability Insurance covering all owned, non-owned, and hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. **The State of California, its officers, agents, and employees are to be covered as additional insureds with respect to liability arising out of work or operations.**

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY:**

Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the State of California.**

9. **Reservation of Rights:** State reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.

10. **Access Limits and Conditions:** Access to the Property shall be limited to the access designated by State.

**CONDITIONS:**

**Prior to any excavation or digging, contact State Park Senior Environmental Scientist Amy Palkovic to assist in location of well site.**

**State Park Senior Environmental Scientist will be notified in advance of any equipment access to schedule a biological monitor if deemed to be necessary.**

**Equipment access to the site shall be limited to a straight, direct path of travel from the parking lot to and from the well site.**

**State Parks may provide a biological monitor while equipment is operating on site at their discretion. Excavation and the filling in of excavations should not disturb native vegetation.**

11. **Notice of Work:** Any required notices to State shall be sent to the State authorities in charge of Marina State Beach State Park named below. At least forty-eight (48) hours prior to any entry upon the Property for any of the purposes hereinabove set forth, Permittee shall provide the State contact[s] named below with written notice of Permittee's intent to enter the Property. Permittee shall also notify the State contact[s] listed below in writing at least forty-eight (48) hours prior to any change in the Project schedule or cessation or completion of work. Should State personnel need to contact Permittee, State shall notify Permittee's contact person listed below:

**STATE:**

Contact: Brent C. Marshall, District Superintendent  
District: Monterey District  
Address: 2211 Garden Road  
Monterey, CA 93940  
Telephone: 831-649-2836

**PERMITTEE'S CONTACT:**

Contact: Garrett Haertel, District Engineer  
Marina Coast Water District  
Address:  
920 2nd Avenue, Suite A, Marina  
Telephone: 831-384-6131

12. **Limits of Work:** In no event shall this Permit authorize work in excess or contrary to the terms and conditions of any regulatory agency permit or approval. Under no circumstances, whether or not authorized by any regulatory agency, other permit or any person or entity other than State, shall work exceed that which is authorized by this Permit.

13. **Public Safety:** Permittee shall erect orange plastic temporary construction fencing and appropriate signage prior to commencement of work to prevent public access to the construction zone. Permittee shall remove such fencing within two (2) days after the completion of work. Permittee shall take, and shall cause its contractors or subcontractors to take, any and all necessary and reasonable steps to protect the public from harm in connection with the Project or implementation of this Permit.

14. **Compliance with Project Requirements, Monitoring and Mitigation Measures (if applicable):** Resource monitoring identified by Senior Environmental Scientist shall be completed in accordance with and to the satisfaction of the District Superintendent or designee. SEE CONDITIONS ABOVE.

Permittee's activities conducted under this Permit shall comply with all State and Federal environmental laws, including, but not limited to, the Endangered Species Act, CEQA, and Section 5024 of the Public Resources Code.

Any of Permittee's archaeological consultants working within the boundaries of the Property shall submit a DPR 412A permit application to the District cultural resource specialist for approval prior to commencing any archaeological or cultural investigations of the Property.

Permittee shall immediately advise State's contact person if any new site conditions are found during the course of permitted work. State will advise Permittee if any new historical resources (including archaeological sites), special status species, threatened/endangered species protocols,

or other resource issues are identified within the Project site. Permittee shall abide by District Superintendent or designee's instructions to protect the resource(s) during the permitted work or risk revocation of the Permit.

Permittee shall make all excavation activities on the Property available to the State archaeologist for observation and monitoring. During excavation, the State archaeological monitor may observe and report to the State on all excavation activities. State archaeological monitor shall be empowered to stop any construction activities as necessary to protect significant cultural resources from being disturbed.

In the event that previously unknown cultural resources, including, but not limited to, dark soil containing shell, bone, flaked stone, groundstone, or deposits of historic trash are encountered during Project construction by anyone, work will be suspended at that specific location, and the Permittee's work will be redirected to other tasks, until a State archaeologist or professionally qualified designee has evaluated the find and implemented appropriate treatment measures and disposition of artifacts, as appropriate, in compliance with all applicable laws and department resource directives.

If human remains are discovered during the Project, work will be immediately suspended at that specific location and the District Superintendent or designee shall be notified by Permittee. The specific protocol, guidelines and channels of communication outlined by the California Native American Heritage Commission (NAHC), and/or contained in Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.9 et seq., will be followed. Those statutes will guide the potential Native American involvement in the event of discovery of human remains.

If resource monitoring is required to be performed by State staff, the Permittee shall provide a written work schedule to the State at least 48 hours in advance of the work. Permittee shall provide reasonable advance notice of and invite the District Superintendent or designee to any preconstruction meetings with the prime contractor or subcontractors.

15. **Restoration of Property:** Permittee shall complete the restoration, repair, and revegetation of the Property in consultation with, and to the satisfaction of, the State Environmental Scientist within one (1) year after completion of the Project or the expiration or termination of this Permit, whichever comes first. This obligation shall survive the expiration or termination of this Permit.  
OPTIONAL: INSERT ANY CONDITIONS HERE
16. **Performance Bond:** If required by State in order to ensure that Permittee performs and completes its obligations in accordance with the terms of the Permit, Permittee shall obtain a Performance Bond in the amount of from a surety duly licensed in the State of California. Permittee shall provide State with a copy of such insurance bond.
17. **Right to Halt Work:** The State reserves the right to halt work and demand mitigation measures at any time, with or without prior notice to Permittee, in the event the State determines that any provision contained herein has been violated, or in the event that cessation of work is necessary to prevent, avoid, mitigate or remediate any threat to the health and safety of the public or state park personnel, or to the natural or cultural resources of the state park.
18. **Use Restrictions:** The use of the Property by Permittee, including its guests, invitees, employees, contractors and agents, shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance in writing by State. No person shall use or occupy the Property overnight.

Activities on the Property shall be conducted only in a manner which will not interfere with the orderly operation of the state park. Permittee shall not engage in any disorderly conduct and shall not maintain, possess, store or allow any contraband on the Property. Contraband includes, but is not limited to: any illegal alcoholic beverages, drugs, firearms, explosives and weapons.

Roads and trails where motorized vehicles are normally prohibited may be used for vehicle access by Permittee, its employees, agents or contractors for patrol, maintenance or repair purposes only, and only to the extent specified by State, and shall be otherwise subject to all other conditions and/or restrictions of this Permit and any applicable laws, state park regulations and state park policies.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as set forth in this Permit, without the prior written consent of the State.

19. **State's Right to Enter:** At all times during the term of this Permit and any extension thereof, there shall be and is hereby expressly reserved to State and to any of its agencies, contractors, agents, employees, representatives, invitees or licensees, the right at any and all times, and any and all

places, to temporarily enter upon said Property to survey, inspect, or perform any other lawful State purposes.

Permittee shall not interfere with State's right to enter.

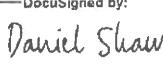
- 20. Protection of Property:** Permittee shall protect the Property, including all improvements and all natural and cultural features thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:
- (a) Permittee shall not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.
  - (b) Permittee shall not commit or create, or suffer to be committed or created, any waste, hazardous condition or nuisance in, on, under, above or adjacent to the Property.
  - (c) Permittee shall not cut, prune or remove any vegetation upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
  - (d) Permittee shall not disturb, move or remove any rocks or boulders upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
  - (e) Permittee shall not grade or regrade, or alter in any way, the ground surface of the Property, except as herein permitted, or subsequently approved in writing by the District Superintendent.
  - (f) Permittee shall not bait, poison, trap, hunt, pursue, catch, kill or engage in any other activity which results in the taking, maiming or injury of wildlife upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
  - (g) Permittee shall not use, create, store, possess or dispose of hazardous substances (as defined in the California Hazardous Substances Act) on the Property except as herein permitted, or subsequently approved in writing by the District Superintendent.
  - (h) Permittee shall exercise due diligence to protect the Property against damage or destruction by fire, vandalism and any other causes.
- 21. Default:** In the event of a default or breach by Permittee of any of the terms or conditions set forth in this Permit which Permittee has failed to cure within thirty (30) days of receipt of written notice of the event of default or breach, State may at any time thereafter, without limiting State in the exercise of any right of remedy at law or in equity which State may have by reason of such default or breach:
- (a) Maintain this Permit in full force and effect and recover the consideration, if any, and other monetary charges as they become due, without terminating Permittee's right to use of the Property, regardless of whether Permittee has abandoned the Property; or
  - (b) Immediately terminate this Permit upon giving written notice to Permittee, whereupon Permittee shall immediately surrender possession of the Property to State and remove all of Permittee's equipment and other personal property from the Property. In such event, State shall be entitled to recover from Permittee all damages incurred or suffered by State by reason of Permittee's default, including, but not limited to, the following:
    - (i) any amount necessary to compensate State for all the detriment proximately caused by Permittee's failure to perform its obligations under this Permit, including, but not limited to, compensation for the cost of restoration, repair and revegetation of the Property, which shall be done at State's sole discretion and compensation for the detriment which in the ordinary course of events would be likely to result from the default; plus
    - (ii) at State's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.
- 22. State's Right to Cure Permittee's Default:** At any time after Permittee is in default or in material breach of this Permit and Permittee has failed to cure the default or breach as set forth above, State may, but shall not be required to, cure such default or breach at Permittee's cost. If State at any time, by reason of such default or breach, pays any sum or does any act that requires the

payment of any sum, the sum paid by State shall be due immediately from Permittee to State at the time the sum is paid. The sum due from Permittee to State shall bear the maximum interest allowed by California law from the date the sum was paid by State until the date on which Permittee reimburses State.

- 23. **Revocation of Permit:** The State shall have the absolute right to revoke this Permit for any reason upon ten (10) days written notice to Permittee. Written notice to Permittee may be accomplished by electronic or facsimile transmission, and the notice period set forth in this paragraph shall begin on the date of the electronic or facsimile transmission, or, if sent by mail, on the date of delivery. If Permittee is in breach of the Permit or owes money to the State pursuant to this Permit, any prepaid monies paid by Permittee to State shall be held and applied by the State as an offset toward damages and/or amounts owed. Nothing stated herein shall limit the State's exercise of its legal and equitable remedies.
- 24. **Recovery of Legal Fees:** In any action brought to enforce or interpret any provisions of this Permit or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Property, or to protect any rights given to the State against Permittee, and in any actions or proceedings under Title 11 of the United States Code, if the State shall prevail in such action on trial or appeal, the Permittee shall pay to the State such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.
- 25. **Voluntary Execution and Independence of Counsel:** By their respective signatures below, each Party hereto affirms that they have read and understood this Permit and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Permit.
- 26. **Reliance on Investigations:** Permittee declares that it has made such investigation of the facts pertaining to this Permit, the Property and all the matters pertaining thereto as it deems necessary, and on that basis accepts the terms and conditions contained in this Permit. Permittee acknowledges that State has made, and makes, no representations or warranties as to the condition of the Property, and Permittee expressly agrees to accept the Property in its as-is condition for use as herein permitted.
- 27. **Entire Agreement:** The Parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the Parties, and that the terms of this agreement are contractual and not a mere recital.
- 28. **Warranty of Authority:** The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.
- 29. **Assignment:** This Permit shall not be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntarily or involuntarily or by operation of law, nor shall Permittee let, sublet or grant any license or permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State.
- 30. **Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

**STATE OF CALIFORNIA**  
Department of Parks and Recreation

**MARINA COAST WATER DISTRICT**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: Daniel Shaw  
 Title: District Superintendent

  
 By: MCWD \_\_\_\_\_  
 Name: Garrett Haertel  
 Title: District Engineer  
 Address: 920 2<sup>nd</sup> Avenue Suite A  
 Phone: 831-384-6131