

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # *B-7

Urgent

Routine

AGENDA DATE May 22, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Director of Parks and Recreation to Sign and Record an Encroachment Agreement with South San Joaquin Irrigation District for the Placement of an Office Building at Woodward Reservoir Regional Park

STAFF RECOMMENDATIONS:

Authorize the Director of Parks and Recreation to sign and record an Encroachment Agreement with South San Joaquin Irrigation District for the placement of an office building at Woodward Reservoir Regional Park.

FISCAL IMPACT:

There is no cost to record the Encroachment Agreement between Stanislaus County and South San Joaquin Irrigation District. The purchase of the modular office building was funded through the use of Public Facilities Fees at an estimated cost of \$57,000. Operational costs associated with the modular office building will be contained within the Parks and Recreation administrative budget.

BOARD ACTION AS FOLLOWS:

No. 2012-242

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of Parks and Recreation to Sign and Record an Encroachment Agreement with South San Joaquin Irrigation District for the Placement of an Office Building at Woodward Reservoir Regional Park

DISCUSSION:

On January 25, 2011, the Board of Supervisors approved the purchase of a modular office building for Woodward Reservoir Regional Park at an estimated cost of \$57,000. The proposed location is next to the existing maintenance yard. This property (Woodward Reservoir) is owned by the South San Joaquin Irrigation District (SSJID) and is leased by Stanislaus County for recreational purposes. In working with SSJID on the location, it was recommended that the Department of Parks and Recreation (Department) enter into an Encroachment Agreement (Attachment 1). SSJID has provided the agreement and the agreement has been reviewed and approved by County Counsel.

The modular office building will provide the Department with a location to conduct administrative functions in the field such as: view departmental communications, conduct personal interviews, review and process time cards, reconcile receipts and cash, hold meetings and take a break out of the heat.

POLICY ISSUE:

Approval of this agenda item to sign and record the Encroachment Agreement is consistent with the Board's priorities of A Strong Local Economy, A Well Planned Infrastructure System and the Efficient Delivery of Public Services by promoting a safe environment and well-cared for regional recreational facilities.

STAFFING IMPACTS:

There is no staffing impact associated with this agenda item.

CONTACT PERSON:

Sonya K. Harrigfeld, Director of Parks and Recreation, Telephone: 209-525-6770



Stanislaus, County Recorder
 Lee Lundrigan Co Recorder Office
DOC- 2012-0050987-00
 Friday, JUN 08, 2012 12:52:05
 Ttl Pd \$0.00 Rcpt # 0003223197
 OLD/R2/1-10

RECORDING REQUESTED BY AND
 AFTER RECORDING RETURN TO:

SOUTH SAN JOAQUIN IRRIGATION DISTRICT
 P.O. Box 747
 Ripon, CA 95366

ENCROACHMENT AGREEMENT

ENCROACHMENT AGREEMENT executed this 4th day of June 2012, by and between SOUTH SAN JOAQUIN IRRIGATION DISTRICT, a State Agency organized and existing under the Irrigation District Law of the State of California, hereinafter referred to as "DISTRICT", and COUNTY OF STANISLAUS hereinafter referred to as "OWNER" sets forth agreements as follows:

WITNESSETH:

WHEREAS, DISTRICT occupies easements and fee-owned lands for its irrigation and drainage facilities, and

WHEREAS, OWNER'S property described in the attached Exhibit "A" (the "Subject Property") is subject to all or a portion of said Woodward Lake Dam, and

WHEREAS, OWNER has title to the Subject Property (APN 002-009-024-000) located in a portion of Section 22, Township 1 South, Range 10 East, Mount Diablo Base and Meridian and wishes to encroach upon the easement area with modular office building.

WHEREAS, DISTRICT is willing to permit said encroachments provided the owner indemnify and hold the DISTRICT harmless as herein below specified and provided OWNER'S improvements are located, installed, operated, and maintained and plans thereof are approved as

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

SOUTH SAN JOAQUIN IRRIGATION DISTRICT
P.O. Box 747
Ripon, CA 95366

ENCROACHMENT AGREEMENT

ENCROACHMENT AGREEMENT executed this 6th day of JUNE 2012, by and between SOUTH SAN JOAQUIN IRRIGATION DISTRICT, a State Agency organized and existing under the Irrigation District Law of the State of California, hereinafter referred to as "DISTRICT", and COUNTY OF STANISLAUS hereinafter referred to as "OWNER" sets forth agreements as follows:

WITNESSETH:

WHEREAS, DISTRICT occupies easements and fee-owned lands for its irrigation and drainage facilities, and

WHEREAS, OWNER'S property described in the attached **Exhibit "A"** (the "Subject Property") is subject to all or a portion of said Woodward Lake Dam, and

WHEREAS, OWNER has title to the Subject Property (APN 002-009-024-000) located in a portion of Section 22, Township 1 South, Range 10 East, Mount Diablo Base and Meridian and wishes to encroach upon the easement area with modular office building.

WHEREAS, DISTRICT is willing to permit said encroachments provided the owner indemnify and hold the DISTRICT harmless as herein below specified and provided OWNER'S improvements are located, installed, operated, and maintained and plans thereof are approved as

hereinafter specified. NOW, THEREFORE, it is agreed as follows:

1. Nature of Right Conferred. DISTRICT intends hereby to assent only to (a) an encroachment upon an easement or easements held by DISTRICT or (b) to confer a license to OWNER to encroach upon DISTRICT fee-owned lands, all subject to the terms hereof. Nothing in this Agreement constitutes a grant or other disposition of any land or interest in land which is owned or otherwise occupied by the DISTRICT. The OWNER acknowledges that the lands upon which the facilities of the DISTRICT are located may not be owned by the DISTRICT, and further acknowledges that the consent contained in this Agreement relates only to the rights of the DISTRICT by virtue of an easement or easements upon Subject Property or upon land owned in fee by DISTRICT. It is understood that nothing in this Agreement shall be considered as a representation by the DISTRICT of the authority to grant any interest in land over, across, or under any property owned or controlled by any person other than the DISTRICT and OWNER shall obtain any further grants or consents from all others owning interests in the underlying easement land. It is further agreed that any right granted to the OWNER hereunder shall be inferior and subordinate to the rights of the DISTRICT. Except as herein expressly permitted, the OWNER shall not place or permit to be placed on, in, across, or through said easement or right-of-way any building, structure, explosive, well, guy wire, or any other obstruction, nor do or permit to be done, anything which may interfere with the full and exclusive enjoyment by the DISTRICT of the easement or right-of-way owned by it. The OWNER shall not authorize or permit encroachment by others or utilize the easement or right-of-way area in any manner which may endanger, interfere, or make more expensive the proper use and operation of any works or property of the DISTRICT without first obtaining the written consent of the DISTRICT.

2. Assignments and Sublicenses. OWNER may not, without the prior written consent of the DISTRICT, assign or otherwise transfer any right created by this Agreement. OWNER shall not authorize or permit others to utilize any facilities, structures, easements or right-of-way area which are the subject matter of this Agreement in any way not expressly authorized by this Agreement.

3. Indemnity and Release As a major inducement and consideration for the license and permission herein, OWNER shall (i) indemnify and hold harmless and (ii) release the DISTRICT, its officers, agents and employees, against and from any and all loss, damage, claims, demands, actions, causes of action, penalties, costs and expenses of whatsoever nature, including court costs and attorney's fees, which may result from injury to or death of any persons whomsoever including, but not by way of limitation, officers, agents and employees of the DISTRICT, or others, against and from damages to or loss or destruction of property whatsoever including, but not by way of limitation, damage to the levees, canals, appurtenant facilities, equipment or other property of the DISTRICT in its care or custody, when such injury, death, loss, destruction or damage to arises because of:
 - (a) The installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the permitted OWNER facilities or any part thereof; or

 - (b) The prosecution of any work contemplated by this Agreement or the presence, operation or use of the permitted owner facilities. This indemnity shall not extend to claims for damages arising out of the death of, or personal injury to, employees of the DISTRICT to the extent that they are within the coverage of the Worker's

Compensation Insurance carried by the DISTRICT.

The foregoing release and indemnity shall be effective notwithstanding any assertion that the DISTRICT or others indemnified and released were themselves negligent and that such negligence was a contributing cause of the damage or loss claimed.

4. Corrective Actions. OWNER further agrees that the facilities of the DISTRICT to which this encroachment applies will be left, following the encroachment, in as good or better condition than they were before this Agreement was entered into. In the event the manager of the DISTRICT, in his sole discretion, determines that the facilities are not left in as good or better condition than before this Agreement was entered into, OWNER agrees to take such corrective action as the Manager directs, at the sole expense of OWNER and at no expense to the DISTRICT. OWNER agrees in the event that it fails to make corrections requested by the Manager of the DISTRICT, that the DISTRICT may make such corrections at OWNER'S expense, and the OWNER agrees to pay the cost of such corrections in full upon demand by the DISTRICT.

5. Plans and Specifications: Construction.
 - (a) All encroachments and structures constructed under this Agreement shall be erected in accordance with plans and specifications and upon locations approved in advance by the DISTRICT as herein provided and shall be erected in such a manner as not to obstruct in any manner the flow of water in the canals, laterals or drain ditches of the DISTRICT or to make more expensive or to interfere in any manner whatsoever with the construction, operation and maintenance of any part of the impacted irrigation and/or drainage works by the DISTRICT.

(b) OWNER'S construction activities shall incorporate requirements noted on plans approved by the DISTRICT. Further, final construction, including appurtenances and the layout and construction of same, shall be in accordance with plans approved in advance by the DISTRICT and shall not be changed or altered without the express written consent of the DISTRICT.

(c) The OWNER shall call the DISTRICT Engineer at 249-4600 a minimum 48 hours prior to planned construction and shall coordinate all construction activities with the DISTRICT'S Water Superintendent. Further, routine inspections by DISTRICT of construction activities such as trenching, backfilling, compaction, concreting, etc., are required.

(d) When repairing, maintaining, constructing, and reconstructing OWNER encroachments, OWNER and/or his contractors shall comply with all applicable requirements of the Clean Air Act, as amended (U.S.C. 1857, et seq., as amended by Public law 91-604), the Federal Water Pollution control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, and all federal, state, and local laws, regulations and guidelines issued thereunder. Further, when and if necessary prior to performing said operations OWNER and/or his contractors shall comply with applicable requirements of OSHA, CAL-OSHA, State of California Department of Industrial Safety and Health Orders, Cal-Trans, and California Health and Welfare laws, regulations and guidelines issued thereunder. Without any limitations by the foregoing, OWNER shall obey all other laws, rules and regulations in effect which are enacted by any federal, state or local agency having jurisdiction.

6. Ordinary Maintenance, Repair or Replacement.

(a) Where necessary, and to the extent required to perform ordinary operation, maintenance, and reconstruction functions, the DISTRICT may request, upon 2 (two) weeks notice, the removal or relocation of portions of OWNER'S encroachments and OWNER shall perform the required work at no cost to the DISTRICT. For emergency purposes OWNER will be required to remove encroachments immediately upon request by the DISTRICT. Further, the repair and replacement of OWNER encroachments following DISTRICT maintenance and reconstruction efforts shall be performed by OWNER and at the expense of OWNER.

(b) OWNER further acknowledges that the existing DISTRICT pipeline over which the OWNER plans to encroach upon does not presently leak and hereby agrees to pay all cost of repairs or replacement of said pipeline should it be determined by the DISTRICT Manager or his staff that the subject encroachment has caused leakage or damage to the DISTRICT pipeline.

(c) As further consideration for this Agreement, OWNER, his heirs, and the successors and assigns of the Subject Property shall, upon request by DISTRICT provide sufficient and clear access for DISTRICT personnel and the passage of standard bobcat excavator equipment for ingress to and egress from the DISTRICT easement from the dedicated street adjacent the Subject Property.

7. Legal Action. In the event either party commences a legal action to enforce any of the terms and conditions of this Agreement, the prevailing party in said action shall be entitled to recover reasonable attorney's fees and costs incurred.

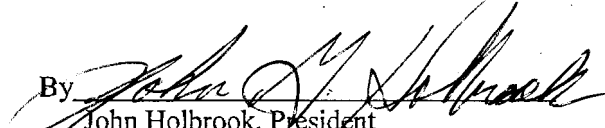
8. Conditions Precedent. OWNER acknowledges that all of the foregoing constitute

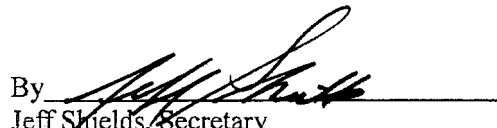
conditions precedent to the DISTRICT granting the Agreement herein requested and understands that the Agreement would not have been granted in the absence of said conditions.

THIS AGREEMENT shall be a covenant running with the Subject Property and shall be binding upon both DISTRICT and OWNER, their successors, heirs and assigns. Further, the DISTRICT reserves the right to terminate this Agreement upon 60 days notice to the OWNER.

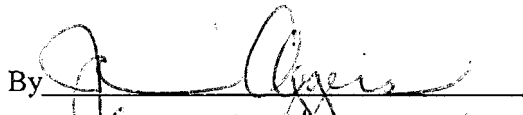
IN WITNESS WHEREOF, DISTRICT and OWNER have caused their names to be affixed.

SOUTH SAN JOAQUIN IRRIGATION DISTRICT
"DISTRICT"

By 
John Holbrook, President
Board of Directors

By 
Jeff Shields, Secretary
Board of Directors

COUNTY OF STANISLAUS
"OWNER(S)"

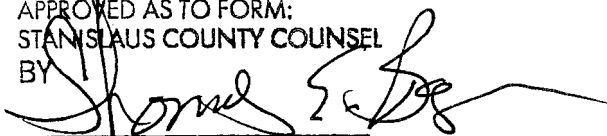
By  Jamilee Agers
for Senya K. [Signature]

Mailing Address: 3800 Cornucopia Way, #C, Modesto, CA 95358

Phone Number: 525-6750

SIGNATURES MUST BE NOTARIZED AND BE PER RECORDED DEED

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL
BY



DATE: May 22, 2012

EXHIBIT "A"

Legal Description

That certain real property, being a portion of the North ½ of Section 22, Township 1 South, Range 10 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, more particularly described as follows:

Beginning at the West ¼ corner of said Section 22; thence South 89 degrees 40'29" East, a distance of 30.01 feet to a point on the easterly right-of-way line of 28 Mile Road, said point being the TRUE POINT OF BEGINNING of this description; thence along said easterly right-of-way line North 01 degree 15'07" West, a distance of 6.06 feet; thence North 44 degrees 30'14" East; a distance of 35.82 feet to a point on the southerly right-of-way line of Dorsey Road, said point being 30.00 feet distance measured at right angles with the centerline of Dorsey Road; thence along said southerly right-of-way line and parallel with said centerline South 89 degrees 44'26" East, a distance of 3901.77 feet; thence leaving said southerly right-of-way South 01 degree 28'55" East, a distance of 36.23 feet to the northeast corner of Parcel "B" as shown in Book 35 of Parcel Maps at Page 63, Stanislaus County Records; thence along the northerly boundary of said Parcel "B" North 89 degrees 40'29" West, a distance of 3927.71 feet to the point of beginning. Containing 3.05 acres more or less.

ACKNOWLEDGMENT

State of California
County of STANISLAUS

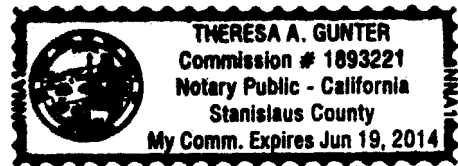
On MAY 30, 2012 before me, THERESA A. GUNTER, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared JAMILEE AGLERS
who proved to me on the basis of satisfactory evidence to be the pers on(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the pers on(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document
and could prevent fraudulent removal and reattachment of this form to another document.*

Description of Attached Document
Title or Type of Document: ENCROACHMENT AGREEMENT

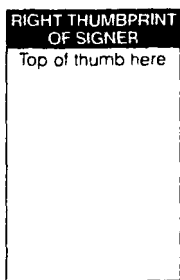
Document Date: 5/30/2012 Number of Pages: 8

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN JOAQUIN }

On JUNE 6, 2012 before me, BETTY L. GARCIA, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

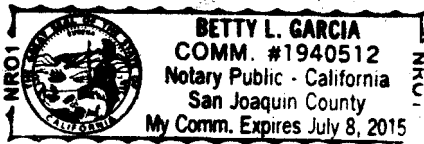
personally appeared JOHN HOLBROCK and
Name(s) of Signer(s)
JEFF SHIELDS

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ they executed the same in ~~his~~ ~~her~~ their authorized capacity(ies), and that by ~~his~~ ~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Betty L Garcia
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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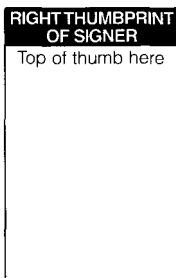
Document Date: 6-6-2012 Number of Pages: 8

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

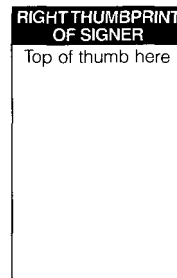
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
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- Trustee
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- Other: _____



Signer Is Representing: _____