

REPORT TO CITY COUNCIL

DATE: OCTOBER 26, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: JESSICA FORTE, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER

SUBJECT: REQUEST FOR APPROVAL OF THREE USE AND MAINTENANCE AGREEMENTS WITH THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT FOR DRY WEATHER DIVERSION CAPTURE PROJECTS

The Dry Weather Storm Drain to Sewer Diversion Project (Project) is nearing completion of design. Staff has been working with Los Angeles County Flood Control District (District) for several months to secure construction permits. In order to enter into these permits, the District requires Use and Maintenance Agreements (UMA) be secured and fully executed.

Staff reviewed the language of the UMA with the Public Works Subcommittee on Tuesday, October 11, 2022, and recommends the approval of all three agreements in order to continue the permit procurement in earnest.

It is worthwhile to note that securing District permits is the final element required by Los Angeles County in order to begin developing a Funding Agreement for the use of Prop 1, Round 1, funding for the construction of these Diversion Structures. The final permits are due to the County no later than December 2022.

There is no financial impact of the proposed recommendation to enter into these three UMAs. The proposed agreements have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully recommends the City Council approve the following Use and Maintenance Agreements with the Los Angeles County Flood Control District:

- 1) Use and Maintenance Agreement (PD 687 Line A, PD 687 Line H, and PD 736 Line J)
- 2) Use and Maintenance Agreement (PD 1583 Line D and PD1378 Line A)
- 3) Use and Maintenance Agreement (MTD 1694 Line A, MTD 1694 Line B, PD 1025 Line A, and PD 1641 Line D)

Attachments: Use and Maintenance Agreements

AGREEMENT No. _____
 PD 687 LINE A, PD 687 LINE H, &
 PD 736 LINE J
 PUBLIC ROAD RIGHT-OF-WAY
 AIN: 2054-018-062
 SUPRVISORY DISTRICT 3

USE AND MAINTENANCE AGREEMENT

This USE AND MAINTENANCE AGREEMENT (hereinafter referred to as AGREEMENT), is made and entered by and between the Los Angeles County Flood Control District, a body corporate and politic (hereinafter referred to as DISTRICT), and the City of Agoura Hills, a municipal corporation (hereinafter referred to as CITY). DISTRICT and CITY are collectively referred to as PARTIES.

RECITALS

WHEREAS, CITY proposes to construct the Dry Weather Diversion Capture Projects (hereinafter referred to as PROJECT); to treat and reuse incoming stormwater and urban runoff to enhance water quality and local water supplies;

WHEREAS, DISTRICT owns and operates the following storm drains and associated right of way (including District Easement AIN: 2054-018-062) at the following locations:

Index and Permit	Storm Drain	Cross Streets
Location 1	PD 687 Line A	Rainbow View Dr. and Lake Lindero Dr.
Location 2	PD 687 Line H	Hackers Lane and Lake Lindero Dr.
Location 3	PD 736 Line J	Thousand Oaks Blvd. and Lake Lindero Dr. (District easement AIN: 2054-018-062)

WHEREAS, the following portions of the PROJECT (hereinafter referred to as IMPROVEMENTS), depicted in Exhibit A, are proposed to be located within DISTRICT FACILITIES:

- Location 1 – Diversion structure, manhole, and diversion pipe Sta 5+62.27
- Location 2 – Diversion structure, manhole, and diversion pipe Sta 4+45.11
- Location 3 – Diversion Structure, manhole, and diversion pipe Sta 1+59.26

WHEREAS, the DISTRICT will issue permit number FCDP2022000063 (hereinafter referred to as PERMIT), upon execution of this AGREEMENT to the CITY for construction of the IMPROVEMENTS;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES agree as follows:

SECTION 1: Authorized Use

- 1.1. The CITY is authorized and permitted to use the DISTRICT FACILITIES for the construction, operation, maintenance, and repair of the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT and PERMIT. Any other use of the DISTRICT FACILITIES or any portion thereof by the CITY is expressly prohibited.
- 1.2. The CITY is authorized and permitted to take access through the DISTRICT FACILITIES and associated DISTRICT property in accordance with and as depicted in Exhibit B, for the purpose of construction and maintenance of the IMPROVEMENTS;
- 1.3. The CITY's use of the DISTRICT FACILITIES in connection with the PROJECT shall be nonexclusive and shall be subordinate to the uses of the DISTRICT FACILITIES by the DISTRICT, and the CITY's use of the DISTRICT FACILITIES shall at no time interfere with the DISTRICT's use of the DISTRICT FACILITIES or the DISTRICT's use of its adjacent property.
- 1.4. This AGREEMENT is valid only to the extent of the DISTRICT's jurisdiction. The CITY shall be responsible for obtaining authorization from other affected persons or agencies with property rights over the PROJECT area, and the consent of the underlying fee owner(s), as necessary.

SECTION 2: Construction and Implementation of PROJECT

- 2.1. The CITY understands and acknowledges that it is required to comply with the California Environmental Quality Act (hereinafter referred to as CEQA) prior to implementing the PROJECT and that the CITY shall be the lead agency with respect to any and all CEQA compliance related to the

PROJECT. In addition to its other indemnification obligations as specified below, the CITY hereby agrees to indemnify, defend, and hold harmless the DISTRICT and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to the PROJECT that may be asserted by a third party or public agency alleging violations of CEQA or the CEQA Guidelines.

- 2.2 The CITY is responsible for obtaining and complying with any permits or approvals required by agencies (federal, state and local) with regulatory jurisdiction over the construction and maintenance of the PROJECT and for all costs associated with obtaining and complying with the requirements and conditions of such permits or approvals including, by way of example, permit fees and compensatory mitigation expenses. The DISTRICT shall not be responsible for any costs associated with the construction of the PROJECT. In addition to its other indemnification obligations in Section 7 below, the CITY hereby agrees to indemnify, defend, and hold harmless the DISTRICT and their elected and appointed officers, employees, and agents from and against all claims and/or actions related to the PROJECT that may be asserted by a public agency or third-party alleging violations of federal, state, or local laws, rules or regulations.
- 2.3. Upon completion of the construction of the PROJECT, the CITY shall provide to the DISTRICT a complete set of the as-built plans for the PROJECT in an electronic format as specified by the DISTRICT. In addition, the CITY shall provide geographic information system (hereinafter referred to as GIS) shapefiles for all maps depicting the PROJECT.

SECTION 3: Operation and Maintenance of IMPROVEMENTS

- 3.1. The CITY shall prepare an operation and maintenance manual (hereinafter referred to as O&M MANUAL) describing the operation, maintenance, and inspection practices, all permits required by federal, state or local regulatory agencies, and procedures and standards for the PROJECT components located on property of the DISTRICT, including maintenance schedules, identification of any specialty maintenance service providers, equipment usage, and a maintenance log sheet.
 - 3.1.1. The CITY shall not commence any work authorized by this permit until it has submitted a draft of the O&M MANUAL to the DISTRICT and the DISTRICT has approved the draft.
 - 3.1.2. The DISTRICT shall provide the CITY with comments on the draft O&M MANUAL within a reasonable timeframe of submittal.

- 3.1.3. The CITY shall incorporate any and all reasonable comments submitted by the DISTRICT and shall deliver a final version of the O&M MANUAL to the DISTRICT prior to completion of work authorized by this permit. If the PARTIES cannot agree as to whether the DISTRICT's comments shall be incorporated, the PARTIES shall meet and confer in good faith to resolve such disagreement.
- 3.1.4. The work authorized by this permit shall not be deemed complete until the CITY has delivered the final version of the O&M MANUAL to the DISTRICT as described above.
- 3.2. Discharges from the PROJECT shall comply with the following:
- 3.2.1 The CITY shall not discharge any non-stormwater from the PROJECT to the DISTRICT FACILITIES or to any other storm drain owned or operated by the DISTRICT unless authorized by a permit to do so from the State Water Resources Control Board, the Los Angeles Regional Water Quality Control Board (Regional Board), or express written permission from the Executive Officer of the Regional Board. The CITY shall provide a copy of any such permit or express written permission to the DISTRICT prior to discharging any non-stormwater from the PROJECT to the DISTRICT FACILITIES or to any other storm drains owned or operated by the DISTRICT.
- 3.2.2 The DISTRICT shall establish notification and monitoring requirements for discharges from the PROJECT to the DISTRICT FACILITIES or to any other storm drains owned or operated by the DISTRICT and shall notify CITY of these requirements in writing not later than the date DISTRICT provides the CITY with comments on the draft O&M MANUAL and the CITY shall comply with the requirements described in the written notice from the DISTRICT.
- 3.2.3. The DISTRICT may periodically update or revise the notification and monitoring requirements described in subsection 3.2.2 as the DISTRICT deems necessary to address changes in its MS4 Permit or other regulatory requirements or its operational requirements. The DISTRICT shall provide written notice to the CITY of any updated or revised requirements and the CITY shall comply with the updated or revised requirements immediately upon receipt of the written notice from the DISTRICT.

- 3.3. The CITY shall, upon completion of construction, be responsible for the operation, maintenance, and repair of the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT and the provisions of the O&M MANUAL.
- 3.4. The DISTRICT shall not be responsible for any costs associated with the operation and maintenance of the IMPROVEMENTS, including but not limited to, any costs related to repairs and/or replacement of components and obtaining, complying with and renewing as necessary all permits and approvals required by federal, state or local regulatory agencies.
- 3.5. The CITY shall operate and maintain the IMPROVEMENTS in a safe, clean, and orderly condition, and in compliance with the O&M MANUAL and all applicable federal and state laws, rules and regulations, local ordinances (including the Los Angeles County Flood Control District Code) and applicable regulatory permits.
- 3.6. The CITY shall be responsible to inspect the IMPROVEMENTS and clear any obstructions, sediment, or debris that may interfere with the proper functioning of the DISTRICT FACILITIES, including upstream and downstream of all connections to the DISTRICT FACILITIES. The limits of the CITY's responsibility under this subsection shall be up to 100 feet for open channels and up to 50 feet for covered storm drains, from ends of connections in both directions as directed by the DISTRICT, at the DISTRICT's sole discretion. The CITY shall take appropriate measures to make sure sediment does not enter the DISTRICT FACILITIES from the PROJECT.
 - 3.6.1. CITY shall comply with the Los Angeles County Flood Control District's Policy Addressing Homeless Encampments within LACFCD Right of Way, attached hereto as Exhibit C, at CITY's cost, with respect to the portion of DISTRICT FACILITIES occupied by the IMPROVEMENTS and up to 100 feet upstream and downstream of the IMPROVEMENTS for open channels and up to 50 feet upstream and downstream of the IMPROVEMENTS for covered storm drains.
- 3.7. The CITY shall provide the DISTRICT with 24-hour contact information for person(s) responsible for the operation and maintenance activities related to the IMPROVEMENTS. The DISTRICT shall provide the CITY with 24-hour contact information for person(s) responsible for maintaining the DISTRICT FACILITIES.

- 3.8. The CITY shall coordinate and communicate with the DISTRICT in regard to operation, maintenance, and repair activities related to the IMPROVEMENTS.
- 3.8.1. The CITY shall notify the DISTRICT a minimum of thirty (30) days in advance of any major (non-routine) proposed maintenance activities related to the IMPROVEMENTS; provided, however, that in the event the CITY becomes aware of the need to perform any such maintenance activities less than thirty (30) days from the date it proposes to perform said activities, it shall notify the DISTRICT immediately upon determining to perform the activities.
- 3.8.2. The CITY shall notify the DISTRICT a minimum of forty-eight (48) hours in advance of accessing the DISTRICT FACILITIES to perform any routine maintenance activities related to the IMPROVEMENTS including trash removal, routine cleaning, and minor repairs.
- 3.8.3. The CITY shall provide the DISTRICT with an annual summary report of its operations and maintenance of the IMPROVEMENTS and status of all related regulatory permits. The contents of the summary report shall include at a minimum the following information:
- a. Name of PROJECT;
 - b. Location description;
 - c. Project contact information;
 - d. Description of the PROJECT and its function and direct impact to the DISTRICT FACILITIES and/or other DISTRICT right of way;
 - e. Summary of operations within the reporting year, from July 1st to June 30th of the following year, type of activities (i.e. routine, non-routine, and emergency), date and time of activities, and description of work performed;
 - f. Summary of major repairs completed, including but not limited to, type of repairs, location of repairs, pre- and post-repair photographs, date and time of repairs;
 - g. Summary of public inquiries and complaints related to the PROJECT and the CITY'S response;
 - h. Summary of volume captured or discharged from PROJECT;

- i. Status of any regulatory permits affecting the operation or maintenance of the IMPROVEMENTS;
- j. Status of any specialty contractor agreements required for ongoing maintenance and repairs of the IMPROVEMENTS;

3.8.4. The annual summary report shall be mailed to the following address by July 30th each year:

Attention: Senior Civil Engineer
Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Maintenance Division, Annex Building 2nd Floor
Staff Support Section
900 South Fremont Avenue
Alhambra, CA 91803-1331

- 3.9. The DISTRICT shall coordinate and communicate with the CITY regarding any maintenance activities by the DISTRICT related to the DISTRICT FACILITIES that may impact the IMPROVEMENTS.
- 3.10. If the CITY fails to perform any maintenance activities as provided for in this AGREEMENT in a timely manner, the DISTRICT reserves the right to remedy any such maintenance deficiency that the DISTRICT determines impairs the functioning of the DISTRICT FACILITIES or the DISTRICT's flood protection activities. However, prior to taking any action to remedy any such maintenance deficiency, the DISTRICT shall provide written notice to the CITY of the deficiency. If the CITY fails to correct the deficiency within thirty-five (35) days from the date of the notice or such longer period as the DISTRICT, in its sole discretion may agree to, the DISTRICT shall thereafter be entitled to correct the deficiency. Notwithstanding the foregoing, if the DISTRICT determines that immediate remedial action is required to prevent or mitigate a dangerous condition, the DISTRICT shall be entitled to implement the remedial action(s) after giving the CITY as much notice as the DISTRICT determines is feasible under the circumstances. If the DISTRICT takes any remedial action pursuant to this Section, it shall prepare and send to the CITY an invoice for all work undertaken by the DISTRICT to remedy any maintenance deficiency, and the CITY shall, within one hundred and twenty (120) days from the receipt of the invoice, reimburse the DISTRICT for all costs and expenses reasonably incurred by the DISTRICT to remedy said deficiency.

- 3.11. The CITY shall be responsible for all community relations related to the PROJECT, including responding to public inquiries, complaints, etc. The DISTRICT shall forward to the CITY any community relations, public inquiries, complaints, etc., related to the PROJECT.

SECTION 4: Term

- 4.1. The term of this AGREEMENT shall be for fifty (50) years (Initial Term), subject to the DISTRICT's right to terminate the CITY'S use as provided for in Section 5 in this AGREEMENT.
- 4.2. This AGREEMENT shall expire at the end of the Initial Term provided; however, the Chief Engineer of the DISTRICT or his designee may extend the term of this AGREEMENT, beyond the Initial Term, up to ten (10) years, subject to such terms and conditions as they deem appropriate, upon receipt of a written request from the CITY, no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

SECTION 5: Termination of AGREEMENT

- 5.1. The DISTRICT shall have the right to terminate this AGREEMENT by giving the CITY at least one hundred twenty (120) days prior written notice, under the following conditions:
 - 5.1.1. The DISTRICT proposes a project for flood control, water conservation and/or any other use or purpose authorized by the Los Angeles County Flood Control Act; and
 - 5.1.2. The DISTRICT determines, in good faith, that the IMPROVEMENTS or any portion thereof, would be substantially incompatible with the DISTRICT's proposed project; and
 - 5.1.3. The DISTRICT has notified the CITY of the basis for the DISTRICT'S determination that a substantial incompatibility will exist and has provided the CITY with a reasonable opportunity to propose modifications to the IMPROVEMENTS that will eliminate the incompatibility; and
 - 5.1.4. After consideration of any such modifications proposed by the CITY, the DISTRICT, in its sole but reasonable discretion, determines not to incorporate any such modifications or determines that, notwithstanding any such modifications, a substantially incompatibility would still exist; and

- 5.1.5 The DISTRICT has designs, funds, and constructs an alternative compliance mechanism for the downstream MS4 outfall.
- 5.2. The DISTRICT shall have the right to terminate this AGREEMENT in the event the CITY breaches any term or condition of this AGREEMENT and fails to cure such breach or breaches within a reasonable amount of time from the date the DISTRICT provides written notice of said breach or breaches to the CITY. Upon receipt of a written notice of breach, the CITY shall, within thirty (30) days of the date of the written notice, send the DISTRICT a written response describing the corrective measures that the CITY proposes to implement. The PARTIES shall thereafter promptly meet and confer, in good faith, to reach agreement on the corrective measures. The CITY shall not implement any corrective measure until it has been approved and agreed upon by the DISTRICT.
- 5.3. The DISTRICT shall have the right to terminate this AGREEMENT if construction of the PROJECT has not commenced within five (5) years from the date this AGREEMENT is fully executed or the PERMIT expires, whichever comes first.
- 5.4. The DISTRICT shall have the right to suspend this AGREEMENT in the DISTRICT's sole discretion, in the event the DISTRICT determines, in good faith, that it is necessary for the DISTRICT to enter and take exclusive possession of the DISTRICT FACILITIES or any portion thereof, in order to respond to an emergency as defined in Public Contract Code Section 1102.
- 5.5. The CITY shall have the right to terminate this AGREEMENT for any reason, by giving the DISTRICT at least sixty (60) days prior written notice, subject to the CITY's obligation to remove the IMPROVEMENTS described in Section 6, below.

SECTION 6: Removal of IMPROVEMENTS and Restoration of the DISTRICT FACILITIES

- 6.1. Upon termination of this AGREEMENT, the DISTRICT may, in its sole discretion, provide a written notice to the CITY that the removal of any portion of the IMPROVEMENTS within the District's Facilities, and the restoration of the DISTRICT FACILITIES to a condition similar to or better than that which existed on the effective date of this AGREEMENT (specifically sealing off all connections between PROJECT and DISTRICT FACILITIES), has become necessary. If termination is due to a breach of

contract or the willful negligence of the City, the City will bear the cost of these improvements. If termination is due to the desire of the County to install other facilities, the County shall bear these costs and take on responsibility for compliance with the downstream MS4 outfall. The timeline for the removal of the facilities will be agree to by all parties prior to removal or restoration.

6.2. Prior to commencing the removal of any IMPROVEMENTS within the DISTRICT FACILITIES, the CITY shall apply for and obtain a permit for the removal activities from the County of Los Angeles Public Works, Land Development Division, Permits and Subdivisions Section, and shall also apply for and obtain any and all other necessary local, state, and federal permits applicable to the removal of the IMPROVEMENTS.

Prior to commencing the self-performed removal of any IMPROVEMENTS within DISTRICT FACILITIES, the DISTRICT shall apply for and obtain an encroachment permit for the activities from the City of Agoura Hills Public Works, if the removal of the IMPROVEMENTS will require occupation of the street surface during construction activities.

6.3. If the CITY fails to comply with the DISTRICT's notice referred to in subsection 6.1, the DISTRICT may, in its sole discretion, remove any or all IMPROVEMENTS referenced in the DISTRICT's notice to the CITY.

6.4. If the DISTRICT removes any IMPROVEMENTS pursuant to subsection 6.1 and 6.3, the DISTRICT may submit a billing invoice to the CITY indicating the costs and expenses reasonably incurred by the DISTRICT in connection with the removal of the IMPROVEMENTS and the CITY shall reimburse the DISTRICT all such costs and expenses within one hundred and twenty (120) days of the CITY's receipt of a billing invoice from the DISTRICT.

SECTION 7: Miscellaneous Provisions

7.1. Damage to DISTRICT FACILITIES or PROJECT

7.1.1. If any components of the PROJECT are damaged by any negligent act or omission of the DISTRICT, the DISTRICT shall repair and replace those components within a reasonable time frame after discovery or notice thereof. The DISTRICT shall be responsible for all costs related to these repairs and/or replacements.

7.1.2. If any components of the DISTRICT FACILITIES are damaged by any negligent act or omission of the CITY (including its consultants and contractors), the CITY shall repair and replace those components within a reasonable time frame after discovery or notice

thereof. The CITY shall be responsible for all costs related to these repairs and/or replacements.

7.2. The DISTRICT shall not be responsible for the expense of any relocation, alteration, or modification of the PROJECT, or any portion thereof.

7.3. Indemnification, Release, and Insurance.

7.3.1. The CITY shall indemnify, defend, and hold harmless the DISTRICT, the County of Los Angeles, and their respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including without limitation, reasonable attorney fees and costs of litigation, arising out of or in any way connected to the construction, operation, maintenance, repair, modification, or removal of the PROJECT, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the DISTRICT, the County of Los Angeles, or their respective officers, employees or contractors.

7.3.2. The DISTRICT shall indemnify, defend, and hold harmless the CITY and its respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including without limitation, reasonable attorney fees and costs of litigation, arising out of or in any way connected to operation and maintenance of the DISTRICT FACILITIES exclusive of the IMPROVEMENTS, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the CITY or its respective officers, employees or contractors.

7.3.3. The CITY releases the DISTRICT and waives all rights to damages for any loss, costs, or expenses the CITY may sustain as a result of any damage to, or destruction of, the PROJECT, or any portion thereof, attributable to flood or stormwaters, or any other runoff tributary to the DISTRICT FACILITIES, except to the extent such damages are caused by the negligence or willful misconduct of the DISTRICT or its officers, employees or contractors.

7.3.4. Without limiting the CITY's indemnification of the DISTRICT, the CITY shall procure and/or maintain, in full force and effect during the term of this AGREEMENT, insurance policies or a program of self-insurance providing for the following coverage related to the IMPROVEMENTS:

- 7.3.4.1. Commercial general liability and property damage coverage with a combined single limit liability in the amount of not less than two million dollars (\$2,000,000) per occurrence.
 - 7.3.4.2. Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the DISTRICT and the CITY against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by, or any person retained by, the CITY in the course of carrying out the work or services contemplated in this AGREEMENT.
 - 7.3.4.3. Automobile Liability Insurance: the CITY shall procure such policy with coverage of not less than one million dollars (\$1,000,000) per accident.
 - 7.3.4.4. The County of Los Angeles and Los Angeles County Flood Control District, its governing board, officers, agents, contractors, and employees shall be named as Additional Insureds on all policies of liability insurance. The CITY shall furnish to the DISTRICT a Policy of Insurance evidencing the CITY'S insurance coverage no later than ten (10) working days after execution of the AGREEMENT. Upon renewal of said policy, the CITY shall furnish to the DISTRICT a Certificate evidencing the CITY's continued insurance coverage as required herein.
 - 7.3.4.5. Should the CITY elect to comply with this section through a program of self-insurance, CITY shall provide a Certificate of Self-Insurance to DISTRICT indicating limits of such self-insurance coverage that meet or exceed those stated herein.
- 7.4. Relationship of Parties. The Parties are and shall remain at all times as to each other wholly independent entities. No Party to this AGREEMENT shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this AGREEMENT. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.

- 7.5. Binding Effect. This AGREEMENT shall be binding upon, and shall be to the benefit of the respective successors, heirs, and assigns of each Party; provided, however, no Party may assign its respective rights or obligations under this AGREEMENT without prior written consent of the other Party.
- 7.6. Amendment. The terms and provisions of this AGREEMENT may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- 7.7. Waiver. Waiver by any Party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT.
- 7.8. Governing Law. This AGREEMENT is made under and will be governed by the laws of the State of California. In the event of litigation between the Parties, venue in the state trial court shall lie exclusively in the County of Los Angeles.
- 7.9. No Presumption in Drafting. All Parties have been represented by legal counsel in the preparation and negotiation of this AGREEMENT. Accordingly, this AGREEMENT shall be construed according to its fair language.
- 7.10. Severability. The provisions of this AGREEMENT are severable, and the invalidity, illegality or unenforceability of any provision of this AGREEMENT will not affect the validity or enforceability of any other provisions. If any provision of this AGREEMENT is found to be invalid, illegal, or unenforceable, the Parties shall endeavor to modify that clause in a manner which gives effect to the intent of the Parties in entering into this AGREEMENT.
- 7.11. Counterparts. This AGREEMENT may be executed in counterparts, which together shall constitute the same and entire Agreement.
- 7.12. Administration. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this AGREEMENT on behalf of such Party.
- 7.13. Notices

Any correspondence, communication, or contact concerning this AGREEMENT, and all notices that are to be given or that may be given by PARTIES shall be directed to the following:

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Planning Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4300
Fax: (626) 458-1526

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Maintenance Division, Annex Building Second Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4145
Fax No.: (626) 458-4165

City of Agoura Hills
Public Works Department
30001 Ladyface Court, Agoura Hills, CA 91301
Attention: Jessica Forte, PE
Public Works Director / City Engineer
Phone No.: 818.597.7300

The PARTIES shall promptly notify each other of any change of the contact information specified in this Section, including personnel changes.

IN WITNESS WHEREOF, DISTRICT and CITY have caused this AGREEMENT to be executed by their respective duly authorized officers, by DISTRICT on _____, 2022; by CITY on _____, 2022.

LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT,
A body corporate and politic

By _____
Chief Engineer

CITY OF AGOURA HILLS

By _____
Deborah Klein Lopez, Mayor

APPROVED AS TO FORM:

By _____
<name>, City Attorney

AGREEMENT No. _____
 PD 1583 Line D, PD 1378 Line A
 PUBLIC ROAD RIGHT-OF-WAY
 AIN: 2048-007-901, &
 PD 1025 Line A
 PUBLIC ROAD RIGHT-OF-WAY
 AIN: 2051-005-002
 SUPRVISORY DISTRICT 3

USE AND MAINTENANCE AGREEMENT

This USE AND MAINTENANCE AGREEMENT (hereinafter referred to as AGREEMENT), is made and entered by and between the Los Angeles County Flood Control District, a body corporate and politic (hereinafter referred to as DISTRICT), and the City of Agoura Hills, a municipal corporation (hereinafter referred to as CITY). DISTRICT and CITY are collectively referred to as PARTIES.

RECITALS

WHEREAS, CITY proposes to construct the Dry Weather Diversion Capture Projects (hereinafter referred to as PROJECT); to treat and reuse incoming stormwater and urban runoff to enhance water quality and local water supplies;

WHEREAS, DISTRICT owns and operates the following storm drains and associated right of way (including District Easement AIN: 2051-005-002 and AIN: 2048-007-901) at the following locations:

Index and Permit	Storm Drain	Cross Streets
Location 4	PD 1583 Line D	Oakpath Dr. and Buffwood Pl.
Location 5	PD 1378 Line A	Kanan Rd. and Thousand Oaks Blvd. (District easement AIN: 2051-005-002)
Location 6	PD 1025 Line A	Medea Valley Dr. (Chumash Park) (District easement AIN: 2048-007-901)

WHEREAS, the following portions of the PROJECT (hereinafter referred to as IMPROVEMENTS), depicted in Exhibit A, are proposed to be located within DISTRICT FACILITIES:

- Location 4 – Diversion structure, manhole, and diversion pipe Sta 11+19.45
- Location 5 – Diversion structure, manhole, and diversion pipe Sta 2+48.49
- Location 6 – Diversion Structure, manhole, and diversion pipe Sta 3+14.87

WHEREAS, the DISTRICT will issue permit number FCDP2022000067 (hereinafter referred to as PERMIT), upon execution of this AGREEMENT to the CITY for construction of the IMPROVEMENTS;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES agree as follows:

SECTION 1: Authorized Use

- 1.1. The CITY is authorized and permitted to use the DISTRICT FACILITIES for the construction, operation, maintenance, and repair of the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT and PERMIT. Any other use of the DISTRICT FACILITIES or any portion thereof by the CITY is expressly prohibited.
- 1.2. The CITY is authorized and permitted to take access through the DISTRICT FACILITIES and associated DISTRICT property in accordance with and as depicted in Exhibit B, for the purpose of construction and maintenance of the IMPROVEMENTS;
- 1.3. The CITY's use of the DISTRICT FACILITIES in connection with the PROJECT shall be nonexclusive and shall be subordinate to the uses of the DISTRICT FACILITIES by the DISTRICT, and the CITY's use of the DISTRICT FACILITIES shall at no time interfere with the DISTRICT's use of the DISTRICT FACILITIES or the DISTRICT's use of its adjacent property.
- 1.4. This AGREEMENT is valid only to the extent of the DISTRICT's jurisdiction. The CITY shall be responsible for obtaining authorization from other affected persons or agencies with property rights over the PROJECT area, and the consent of the underlying fee owner(s), as necessary.

SECTION 2: Construction and Implementation of PROJECT

- 2.1. The CITY understands and acknowledges that it is required to comply with the California Environmental Quality Act (hereinafter referred to as CEQA) prior to implementing the PROJECT and that the CITY shall be the lead agency with respect to any and all CEQA compliance related to the PROJECT. In addition to its other indemnification obligations as specified below, the CITY hereby agrees to indemnify, defend, and hold harmless the DISTRICT and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to the PROJECT that may be asserted by a third party or public agency alleging violations of CEQA or the CEQA Guidelines.
- 2.2. The CITY is responsible for obtaining and complying with any permits or approvals required by agencies (federal, state and local) with regulatory jurisdiction over the construction and maintenance of the PROJECT and for all costs associated with obtaining and complying with the requirements and conditions of such permits or approvals including, by way of example, permit fees and compensatory mitigation expenses. The DISTRICT shall not be responsible for any costs associated with the construction of the PROJECT. In addition to its other indemnification obligations in Section 7 below, the CITY hereby agrees to indemnify, defend, and hold harmless the DISTRICT and their elected and appointed officers, employees, and agents from and against all claims and/or actions related to the PROJECT that may be asserted by a public agency or third-party alleging violations of federal, state, or local laws, rules or regulations.
- 2.3. Upon completion of the construction of the PROJECT, the CITY shall provide to the DISTRICT a complete set of the as-built plans for the PROJECT in an electronic format as specified by the DISTRICT. In addition, the CITY shall provide geographic information system (hereinafter referred to as GIS) shapefiles for all maps depicting the PROJECT.

SECTION 3: Operation and Maintenance of IMPROVEMENTS

- 3.1. The CITY shall prepare an operation and maintenance manual (hereinafter referred to as O&M MANUAL) describing the operation, maintenance, and inspection practices, all permits required by federal, state or local regulatory agencies, and procedures and standards for the PROJECT components located on property of the DISTRICT, including maintenance schedules, identification of any specialty maintenance service providers, equipment usage, and a maintenance log sheet.

- 3.1.1. The CITY shall not commence any work authorized by this permit until it has submitted a draft of the O&M MANUAL to the DISTRICT and the DISTRICT has approved the draft.
 - 3.1.2. The DISTRICT shall provide the CITY with comments on the draft O&M MANUAL within a reasonable timeframe of submittal.
 - 3.1.3. The CITY shall incorporate any and all reasonable comments submitted by the DISTRICT and shall deliver a final version of the O&M MANUAL to the DISTRICT prior to completion of work authorized by this permit. If the PARTIES cannot agree as to whether the DISTRICT's comments shall be incorporated, the PARTIES shall meet and confer in good faith to resolve such disagreement.
 - 3.1.4. The work authorized by this permit shall not be deemed complete until the CITY has delivered the final version of the O&M MANUAL to the DISTRICT as described above.
- 3.2. Discharges from the PROJECT shall comply with the following:
- 3.2.1 The CITY shall not discharge any non-stormwater from the PROJECT to the DISTRICT FACILITIES or to any other storm drain owned or operated by the DISTRICT unless authorized by a permit to do so from the State Water Resources Control Board, the Los Angeles Regional Water Quality Control Board (Regional Board), or express written permission from the Executive Officer of the Regional Board. The CITY shall provide a copy of any such permit or express written permission to the DISTRICT prior to discharging any non-stormwater from the PROJECT to the DISTRICT FACILITIES or to any other storm drains owned or operated by the DISTRICT.
 - 3.2.2 The DISTRICT shall establish notification and monitoring requirements for discharges from the PROJECT to the DISTRICT FACILITIES or to any other storm drains owned or operated by the DISTRICT and shall notify CITY of these requirements in writing not later than the date DISTRICT provides the CITY with comments on the draft O&M MANUAL and the CITY shall comply with the requirements described in the written notice from the DISTRICT.
 - 3.2.3. The DISTRICT may periodically update or revise the notification and monitoring requirements described in subsection 3.2.2 as the DISTRICT deems necessary to address changes in its MS4 Permit or other regulatory requirements or its operational requirements.

The DISTRICT shall provide written notice to the CITY of any updated or revised requirements and the CITY shall comply with the updated or revised requirements immediately upon receipt of the written notice from the DISTRICT.

- 3.3. The CITY shall, upon completion of construction, be responsible for the operation, maintenance, and repair of the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT and the provisions of the O&M MANUAL.
- 3.4. The DISTRICT shall not be responsible for any costs associated with the operation and maintenance of the IMPROVEMENTS, including but not limited to, any costs related to repairs and/or replacement of components and obtaining, complying with and renewing as necessary all permits and approvals required by federal, state or local regulatory agencies.
- 3.5. The CITY shall operate and maintain the IMPROVEMENTS in a safe, clean, and orderly condition, and in compliance with the O&M MANUAL and all applicable federal and state laws, rules and regulations, local ordinances (including the Los Angeles County Flood Control District Code) and applicable regulatory permits.
- 3.6. The CITY shall be responsible to inspect the IMPROVEMENTS and clear any obstructions, sediment, or debris that may interfere with the proper functioning of the DISTRICT FACILITIES, including upstream and downstream of all connections to the DISTRICT FACILITIES. The limits of the CITY's responsibility under this subsection shall be up to 100 feet for open channels and up to 50 feet for covered storm drains, from ends of connections in both directions as directed by the DISTRICT, at the DISTRICT's sole discretion. The CITY shall take appropriate measures to make sure sediment does not enter the DISTRICT FACILITIES from the PROJECT.
 - 3.6.1. CITY shall comply with the Los Angeles County Flood Control District's Policy Addressing Homeless Encampments within LACFCD Right of Way, attached hereto as Exhibit C, at CITY's cost, with respect to the portion of DISTRICT FACILITIES occupied by the IMPROVEMENTS and up to 100 feet upstream and downstream of the IMPROVEMENTS for open channels and up to 50 feet upstream and downstream of the IMPROVEMENTS for covered storm drains.
- 3.7. The CITY shall provide the DISTRICT with 24-hour contact information for person(s) responsible for the operation and maintenance activities related

to the IMPROVEMENTS. The DISTRICT shall provide the CITY with 24-hour contact information for person(s) responsible for maintaining the DISTRICT FACILITIES.

3.8. The CITY shall coordinate and communicate with the DISTRICT in regard to operation, maintenance, and repair activities related to the IMPROVEMENTS.

3.8.1. The CITY shall notify the DISTRICT a minimum of thirty (30) days in advance of any major (non-routine) proposed maintenance activities related to the IMPROVEMENTS; provided, however, that in the event the CITY becomes aware of the need to perform any such maintenance activities less than thirty (30) days from the date it proposes to perform said activities, it shall notify the DISTRICT immediately upon determining to perform the activities.

3.8.2. The CITY shall notify the DISTRICT a minimum of forty-eight (48) hours in advance of accessing the DISTRICT FACILITIES to perform any routine maintenance activities related to the IMPROVEMENTS including trash removal, routine cleaning, and minor repairs.

3.8.3. The CITY shall provide the DISTRICT with an annual summary report of its operations and maintenance of the IMPROVEMENTS and status of all related regulatory permits. The contents of the summary report shall include at a minimum the following information:

- a. Name of PROJECT;
- b. Location description;
- c. Project contact information;
- d. Description of the PROJECT and its function and direct impact to the DISTRICT FACILITIES and/or other DISTRICT right of way;
- e. Summary of operations within the reporting year, from July 1st to June 30th of the following year, type of activities (i.e. routine, non-routine, and emergency), date and time of activities, and description of work performed;
- f. Summary of major repairs completed, including but not limited to, type of repairs, location of repairs, pre- and post-repair photographs, date and time of repairs;

- g. Summary of public inquiries and complaints related to the PROJECT and the CITY'S response;
- h. Summary of volume captured or discharged from PROJECT;
- i. Status of any regulatory permits affecting the operation or maintenance of the IMPROVEMENTS;
- j. Status of any specialty contractor agreements required for ongoing maintenance and repairs of the IMPROVEMENTS;

3.8.4. The annual summary report shall be mailed to the following address by July 30th each year:

Attention: Senior Civil Engineer
Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Maintenance Division, Annex Building 2nd Floor
Staff Support Section
900 South Fremont Avenue
Alhambra, CA 91803-1331

- 3.9. The DISTRICT shall coordinate and communicate with the CITY regarding any maintenance activities by the DISTRICT related to the DISTRICT FACILITIES that may impact the IMPROVEMENTS.
- 3.10. If the CITY fails to perform any maintenance activities as provided for in this AGREEMENT in a timely manner, the DISTRICT reserves the right to remedy any such maintenance deficiency that the DISTRICT determines impairs the functioning of the DISTRICT FACILITIES or the DISTRICT's flood protection activities. However, prior to taking any action to remedy any such maintenance deficiency, the DISTRICT shall provide written notice to the CITY of the deficiency. If the CITY fails to correct the deficiency within thirty-five (35) days from the date of the notice or such longer period as the DISTRICT, in its sole discretion may agree to, the DISTRICT shall thereafter be entitled to correct the deficiency. Notwithstanding the foregoing, if the DISTRICT determines that immediate remedial action is required to prevent or mitigate a dangerous condition, the DISTRICT shall be entitled to implement the remedial action(s) after giving the CITY as much notice as the DISTRICT determines is feasible under the circumstances. If the DISTRICT takes any remedial action pursuant to this Section, it shall prepare and send to the CITY an invoice for all work undertaken by the DISTRICT to remedy any maintenance deficiency, and the CITY shall, within one hundred and twenty (120) days from the receipt

of the invoice, reimburse the DISTRICT for all costs and expenses reasonably incurred by the DISTRICT to remedy said deficiency.

- 3.11. The CITY shall be responsible for all community relations related to the PROJECT, including responding to public inquiries, complaints, etc. The DISTRICT shall forward to the CITY any community relations, public inquiries, complaints, etc., related to the PROJECT.

SECTION 4: Term

- 4.1. The term of this AGREEMENT shall be for fifty (50) years (Initial Term), subject to the DISTRICT's right to terminate the CITY'S use as provided for in Section 5 in this AGREEMENT.
- 4.2. This AGREEMENT shall expire at the end of the Initial Term provided; however, the Chief Engineer of the DISTRICT or his designee may extend the term of this AGREEMENT, beyond the Initial Term, up to ten (10) years, subject to such terms and conditions as they deem appropriate, upon receipt of a written request from the CITY, no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

SECTION 5: Termination of AGREEMENT

- 5.1. The DISTRICT shall have the right to terminate this AGREEMENT by giving the CITY at least one hundred twenty (120) days prior written notice, under the following conditions:
 - 5.1.1. The DISTRICT proposes a project for flood control, water conservation and/or any other use or purpose authorized by the Los Angeles County Flood Control Act; and
 - 5.1.2. The DISTRICT determines, in good faith, that the IMPROVEMENTS or any portion thereof, would be substantially incompatible with the DISTRICT's proposed project; and
 - 5.1.3. The DISTRICT has notified the CITY of the basis for the DISTRICT'S determination that a substantial incompatibility will exist and has provided the CITY with a reasonable opportunity to propose modifications to the IMPROVEMENTS that will eliminate the incompatibility; and
 - 5.1.4. After consideration of any such modifications proposed by the CITY, the DISTRICT, in its sole but reasonable discretion, determines not

to incorporate any such modifications or determines that, notwithstanding any such modifications, a substantially incompatibility would still exist; and

- 5.1.5 The DISTRICT has designs, funds, and constructs an alternative compliance mechanism for the downstream MS4 outfall.
- 5.2. The DISTRICT shall have the right to terminate this AGREEMENT in the event the CITY breaches any term or condition of this AGREEMENT and fails to cure such breach or breaches within a reasonable amount of time from the date the DISTRICT provides written notice of said breach or breaches to the CITY. Upon receipt of a written notice of breach, the CITY shall, within thirty (30) days of the date of the written notice, send the DISTRICT a written response describing the corrective measures that the CITY proposes to implement. The PARTIES shall thereafter promptly meet and confer, in good faith, to reach agreement on the corrective measures. The CITY shall not implement any corrective measure until it has been approved and agreed upon by the DISTRICT.
- 5.3. The DISTRICT shall have the right to terminate this AGREEMENT if construction of the PROJECT has not commenced within five (5) years from the date this AGREEMENT is fully executed or the PERMIT expires, whichever comes first.
- 5.4. The DISTRICT shall have the right to suspend this AGREEMENT in the DISTRICT's sole discretion, in the event the DISTRICT determines, in good faith, that it is necessary for the DISTRICT to enter and take exclusive possession of the DISTRICT FACILITIES or any portion thereof, in order to respond to an emergency as defined in Public Contract Code Section 1102.
- 5.5. The CITY shall have the right to terminate this AGREEMENT for any reason, by giving the DISTRICT at least sixty (60) days prior written notice, subject to the CITY's obligation to remove the IMPROVEMENTS described in Section 6, below.

SECTION 6: Removal of IMPROVEMENTS and Restoration of the DISTRICT FACILITIES

- 6.1. Upon termination of this AGREEMENT, the DISTRICT may, in its sole discretion, provide a written notice to the CITY that the removal of any portion of the IMPROVEMENTS within the District's Facilities, and the restoration of the DISTRICT FACILITIES to a condition similar to or better

than that which existed on the effective date of this AGREEMENT (specifically sealing off all connections between PROJECT and DISTRICT FACILITIES), has become necessary. If termination is due to a breach of contract or the willful negligence of the City, the City will bear the cost of these improvements. If termination is due to the desire of the County to install other facilities, the County shall bear these costs and take on responsibility for compliance with the downstream MS4 outfall. The timeline for the removal of the facilities will be agreed to by all parties prior to removal or restoration.

6.2. Prior to commencing the removal of any IMPROVEMENTS within the DISTRICT FACILITIES, the CITY shall apply for and obtain a permit for the removal activities from the County of Los Angeles Public Works, Land Development Division, Permits and Subdivisions Section, and shall also apply for and obtain any and all other necessary local, state, and federal permits applicable to the removal of the IMPROVEMENTS.

Prior to commencing the self-performed removal of any IMPROVEMENTS within DISTRICT FACILITIES, the DISTRICT shall apply for and obtain an encroachment permit for the activities from the City of Agoura Hills Public Works, if the removal of the IMPROVEMENTS will require occupation of the street surface during construction activities.

6.3. If the CITY fails to comply with the DISTRICT's notice referred to in subsection 6.1, the DISTRICT may, in its sole discretion, remove any or all IMPROVEMENTS referenced in the DISTRICT's notice to the CITY.

6.4. If the DISTRICT removes any IMPROVEMENTS pursuant to subsection 6.1 and 6.3, the DISTRICT may submit a billing invoice to the CITY indicating the costs and expenses reasonably incurred by the DISTRICT in connection with the removal of the IMPROVEMENTS and the CITY shall reimburse the DISTRICT all such costs and expenses within one hundred and twenty (120) days of the CITY's receipt of a billing invoice from the DISTRICT.

SECTION 7: Miscellaneous Provisions

7.1. Damage to DISTRICT FACILITIES or PROJECT

7.1.1. If any components of the PROJECT are damaged by any negligent act or omission of the DISTRICT, the DISTRICT shall repair and replace those components within a reasonable time frame after discovery or notice thereof. The DISTRICT shall be responsible for all costs related to these repairs and/or replacements.

- 7.1.2. If any components of the DISTRICT FACILITIES are damaged by any negligent act or omission of the CITY (including its consultants and contractors), the CITY shall repair and replace those components within a reasonable time frame after discovery or notice thereof. The CITY shall be responsible for all costs related to these repairs and/or replacements.
- 7.2. The DISTRICT shall not be responsible for the expense of any relocation, alteration, or modification of the PROJECT, or any portion thereof.
- 7.3. Indemnification, Release, and Insurance.
- 7.3.1. The CITY shall indemnify, defend, and hold harmless the DISTRICT, the County of Los Angeles, and their respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including without limitation, reasonable attorney fees and costs of litigation, arising out of or in any way connected to the construction, operation, maintenance, repair, modification, or removal of the PROJECT, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the DISTRICT, the County of Los Angeles, or their respective officers, employees or contractors.
- 7.3.2. The DISTRICT shall indemnify, defend, and hold harmless the CITY and its respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including without limitation, reasonable attorney fees and costs of litigation, arising out of or in any way connected to operation and maintenance of the DISTRICT FACILITIES exclusive of the IMPROVEMENTS, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the CITY or its respective officers, employees or contractors.
- 7.3.3. The CITY releases the DISTRICT and waives all rights to damages for any loss, costs, or expenses the CITY may sustain as a result of any damage to, or destruction of, the PROJECT, or any portion thereof, attributable to flood or stormwaters, or any other runoff tributary to the DISTRICT FACILITIES, except to the extent such damages are caused by the negligence or willful misconduct of the DISTRICT or its officers, employees or contractors.
- 7.3.4. Without limiting the CITY's indemnification of the DISTRICT, the CITY shall procure and/or maintain, in full force and effect during the term of this AGREEMENT, insurance policies or a program of self-

insurance providing for the following coverage related to the IMPROVEMENTS:

- 7.3.4.1. Commercial general liability and property damage coverage with a combined single limit liability in the amount of not less than two million dollars (\$2,000,000) per occurrence.
 - 7.3.4.2. Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the DISTRICT and the CITY against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by, or any person retained by, the CITY in the course of carrying out the work or services contemplated in this AGREEMENT.
 - 7.3.4.3. Automobile Liability Insurance: the CITY shall procure such policy with coverage of not less than one million dollars (\$1,000,000) per accident.
 - 7.3.4.4. The County of Los Angeles and Los Angeles County Flood Control District, its governing board, officers, agents, contractors, and employees shall be named as Additional Insureds on all policies of liability insurance. The CITY shall furnish to the DISTRICT a Policy of Insurance evidencing the CITY'S insurance coverage no later than ten (10) working days after execution of the AGREEMENT. Upon renewal of said policy, the CITY shall furnish to the DISTRICT a Certificate evidencing the CITY's continued insurance coverage as required herein.
 - 7.3.4.5. Should the CITY elect to comply with this section through a program of self-insurance, CITY shall provide a Certificate of Self-Insurance to DISTRICT indicating limits of such self-insurance coverage that meet or exceed those stated herein.
- 7.4. Relationship of Parties. The Parties are and shall remain at all times as to each other wholly independent entities. No Party to this AGREEMENT shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this AGREEMENT. No

employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.

- 7.5. Binding Effect. This AGREEMENT shall be binding upon, and shall be to the benefit of the respective successors, heirs, and assigns of each Party; provided, however, no Party may assign its respective rights or obligations under this AGREEMENT without prior written consent of the other Party.
- 7.6. Amendment. The terms and provisions of this AGREEMENT may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- 7.7. Waiver. Waiver by any Party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT.
- 7.8. Governing Law. This AGREEMENT is made under and will be governed by the laws of the State of California. In the event of litigation between the Parties, venue in the state trial court shall lie exclusively in the County of Los Angeles.
- 7.9. No Presumption in Drafting. All Parties have been represented by legal counsel in the preparation and negotiation of this AGREEMENT. Accordingly, this AGREEMENT shall be construed according to its fair language.
- 7.10. Severability. The provisions of this AGREEMENT are severable, and the invalidity, illegality or unenforceability of any provision of this AGREEMENT will not affect the validity or enforceability of any other provisions. If any provision of this AGREEMENT is found to be invalid, illegal, or unenforceable, the Parties shall endeavor to modify that clause in a manner which gives effect to the intent of the Parties in entering into this AGREEMENT.
- 7.11. Counterparts. This AGREEMENT may be executed in counterparts, which together shall constitute the same and entire Agreement.
- 7.12. Administration. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this AGREEMENT on behalf of such Party.

7.13. Notices

Any correspondence, communication, or contact concerning this AGREEMENT, and all notices that are to be given or that may be given by PARTIES shall be directed to the following:

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Planning Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4300
Fax: (626) 458-1526

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Maintenance Division, Annex Building Second Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4145
Fax No.: (626) 458-4165

City of Agoura Hills
Public Works Department
30001 Ladyface Court, Agoura Hills, CA 91301
Attention: Jessica Forte, PE
Public Works Director / City Engineer
Phone No.: 818.597.7300

The PARTIES shall promptly notify each other of any change of the contact information specified in this Section, including personnel changes.

IN WITNESS WHEREOF, DISTRICT and CITY have caused this AGREEMENT to be executed by their respective duly authorized officers, by DISTRICT on _____, 2022; by CITY on _____, 2022.

LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT,
A body corporate and politic

By _____
Chief Engineer

CITY OF AGOURA HILLS

By _____
Deborah Klein Lopez, Mayor

APPROVED AS TO FORM:

By _____
<name>, City Attorney

AGREEMENT No. _____
 MTD 1694 Line A, MTD 1694 Line B
 PUBLIC ROAD RIGHT-OF-WAY
 AIN: 2048-011-076,
 PD 1025 Line A
 PUBLIC ROAD RIGHT-OF-WAY
 AIN: 2064-014-900, & PD 1641 Line D
 SUPRVISORY DISTRICT 3

USE AND MAINTENANCE AGREEMENT

This USE AND MAINTENANCE AGREEMENT (hereinafter referred to as AGREEMENT), is made and entered by and between the Los Angeles County Flood Control District, a body corporate and politic (hereinafter referred to as DISTRICT), and the City of Agoura Hills, a municipal corporation (hereinafter referred to as CITY). DISTRICT and CITY are collectively referred to as PARTIES.

RECITALS

WHEREAS, CITY proposes to construct the Dry Weather Diversion Capture Projects (hereinafter referred to as PROJECT); to treat and reuse incoming stormwater and urban runoff to enhance water quality and local water supplies;

WHEREAS, DISTRICT owns and operates the following storm drains and associated right of way (including District Easement AIN: 2048-011-076 and AIN: 2064-014-900) at the following locations:

Index and Permit	Storm Drain	Cross Streets
Location 7	MTD 1694 Line A	Canwood West
Location 8	MTD 1694 Line B	Canwood East (District easement AIN: 2048-011-076)
Location 9	PD 1025 Line A	Liberty Canyon and Agoura Rd. (District easement AIN: 2064-014-900)

Location 10	PD 1641 Line D	Country Glen Rd. and Liberty Canyon Rd.
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WHEREAS, the following portions of the PROJECT (hereinafter referred to as IMPROVEMENTS), depicted in Exhibit A, are proposed to be located within DISTRICT FACILITIES:

- Location 7 – Diversion structure, manhole, and diversion pipe Sta 11+63.80
- Location 8 – Diversion structure, manhole, and diversion pipe Sta 10+34.91
- Location 9 – Diversion Structure, manhole, and diversion pipe Sta 10+05.24
- Location 10 – Diversion Structure, manhole, and diversion pipe Sta 0+93.94

WHEREAS, the DISTRICT will issue permit number FCDP2022000085 (hereinafter referred to as PERMIT), upon execution of this AGREEMENT to the CITY for construction of the IMPROVEMENTS;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES agree as follows:

SECTION 1: Authorized Use

- 1.1. The CITY is authorized and permitted to use the DISTRICT FACILITIES for the construction, operation, maintenance, and repair of the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT and PERMIT. Any other use of the DISTRICT FACILITIES or any portion thereof by the CITY is expressly prohibited.
- 1.2. The CITY is authorized and permitted to take access through the DISTRICT FACILITIES and associated DISTRICT property in accordance with and as depicted in Exhibit B, for the purpose of construction and maintenance of the IMPROVEMENTS;
- 1.3. The CITY's use of the DISTRICT FACILITIES in connection with the PROJECT shall be nonexclusive and shall be subordinate to the uses of the DISTRICT FACILITIES by the DISTRICT, and the CITY's use of the DISTRICT FACILITIES shall at no time interfere with the DISTRICT's use of the DISTRICT FACILITIES or the DISTRICT's use of its adjacent property.

- 1.4. This AGREEMENT is valid only to the extent of the DISTRICT's jurisdiction. The CITY shall be responsible for obtaining authorization from other affected persons or agencies with property rights over the PROJECT area, and the consent of the underlying fee owner(s), as necessary.

SECTION 2: Construction and Implementation of PROJECT

- 2.1. The CITY understands and acknowledges that it is required to comply with the California Environmental Quality Act (hereinafter referred to as CEQA) prior to implementing the PROJECT and that the CITY shall be the lead agency with respect to any and all CEQA compliance related to the PROJECT. In addition to its other indemnification obligations as specified below, the CITY hereby agrees to indemnify, defend, and hold harmless the DISTRICT and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to the PROJECT that may be asserted by a third party or public agency alleging violations of CEQA or the CEQA Guidelines.
- 2.2. The CITY is responsible for obtaining and complying with any permits or approvals required by agencies (federal, state and local) with regulatory jurisdiction over the construction and maintenance of the PROJECT and for all costs associated with obtaining and complying with the requirements and conditions of such permits or approvals including, by way of example, permit fees and compensatory mitigation expenses. The DISTRICT shall not be responsible for any costs associated with the construction of the PROJECT. In addition to its other indemnification obligations in Section 7 below, the CITY hereby agrees to indemnify, defend, and hold harmless the DISTRICT and their elected and appointed officers, employees, and agents from and against all claims and/or actions related to the PROJECT that may be asserted by a public agency or third-party alleging violations of federal, state, or local laws, rules or regulations.
- 2.3. Upon completion of the construction of the PROJECT, the CITY shall provide to the DISTRICT a complete set of the as-built plans for the PROJECT in an electronic format as specified by the DISTRICT. In addition, the CITY shall provide geographic information system (hereinafter referred to as GIS) shapefiles for all maps depicting the PROJECT.

SECTION 3: Operation and Maintenance of IMPROVEMENTS

- 3.1. The CITY shall prepare an operation and maintenance manual (hereinafter referred to as O&M MANUAL) describing the operation, maintenance, and

inspection practices, all permits required by federal, state or local regulatory agencies, and procedures and standards for the PROJECT components located on property of the DISTRICT, including maintenance schedules, identification of any specialty maintenance service providers, equipment usage, and a maintenance log sheet.

- 3.1.1. The CITY shall not commence any work authorized by this permit until it has submitted a draft of the O&M MANUAL to the DISTRICT and the DISTRICT has approved the draft.
 - 3.1.2. The DISTRICT shall provide the CITY with comments on the draft O&M MANUAL within a reasonable timeframe of submittal.
 - 3.1.3. The CITY shall incorporate any and all reasonable comments submitted by the DISTRICT and shall deliver a final version of the O&M MANUAL to the DISTRICT prior to completion of work authorized by this permit. If the PARTIES cannot agree as to whether the DISTRICT's comments shall be incorporated, the PARTIES shall meet and confer in good faith to resolve such disagreement.
 - 3.1.4. The work authorized by this permit shall not be deemed complete until the CITY has delivered the final version of the O&M MANUAL to the DISTRICT as described above.
- 3.2. Discharges from the PROJECT shall comply with the following:
- 3.2.1 The CITY shall not discharge any non-stormwater from the PROJECT to the DISTRICT FACILITIES or to any other storm drain owned or operated by the DISTRICT unless authorized by a permit to do so from the State Water Resources Control Board, the Los Angeles Regional Water Quality Control Board (Regional Board), or express written permission from the Executive Officer of the Regional Board. The CITY shall provide a copy of any such permit or express written permission to the DISTRICT prior to discharging any non-stormwater from the PROJECT to the DISTRICT FACILITIES or to any other storm drains owned or operated by the DISTRICT.
 - 3.2.2 The DISTRICT shall establish notification and monitoring requirements for discharges from the PROJECT to the DISTRICT FACILITIES or to any other storm drains owned or operated by the DISTRICT and shall notify CITY of these requirements in writing not later than the date DISTRICT provides the CITY with comments on

the draft O&M MANUAL and the CITY shall comply with the requirements described in the written notice from the DISTRICT.

- 3.2.3. The DISTRICT may periodically update or revise the notification and monitoring requirements described in subsection 3.2.2 as the DISTRICT deems necessary to address changes in its MS4 Permit or other regulatory requirements or its operational requirements. The DISTRICT shall provide written notice to the CITY of any updated or revised requirements and the CITY shall comply with the updated or revised requirements immediately upon receipt of the written notice from the DISTRICT.
- 3.3. The CITY shall, upon completion of construction, be responsible for the operation, maintenance, and repair of the IMPROVEMENTS in accordance with the terms and conditions of this AGREEMENT and the provisions of the O&M MANUAL.
- 3.4. The DISTRICT shall not be responsible for any costs associated with the operation and maintenance of the IMPROVEMENTS, including but not limited to, any costs related to repairs and/or replacement of components and obtaining, complying with and renewing as necessary all permits and approvals required by federal, state or local regulatory agencies.
- 3.5. The CITY shall operate and maintain the IMPROVEMENTS in a safe, clean, and orderly condition, and in compliance with the O&M MANUAL and all applicable federal and state laws, rules and regulations, local ordinances (including the Los Angeles County Flood Control District Code) and applicable regulatory permits.
- 3.6. The CITY shall be responsible to inspect the IMPROVEMENTS and clear any obstructions, sediment, or debris that may interfere with the proper functioning of the DISTRICT FACILITIES, including upstream and downstream of all connections to the DISTRICT FACILITIES. The limits of the CITY's responsibility under this subsection shall be up to 100 feet for open channels and up to 50 feet for covered storm drains, from ends of connections in both directions as directed by the DISTRICT, at the DISTRICT's sole discretion. The CITY shall take appropriate measures to make sure sediment does not enter the DISTRICT FACILITIES from the PROJECT.
 - 3.6.1. CITY shall comply with the Los Angeles County Flood Control District's Policy Addressing Homeless Encampments within LACFCD Right of Way, attached hereto as Exhibit C, at CITY's cost,

with respect to the portion of DISTRICT FACILITIES occupied by the IMPROVEMENTS and up to 100 feet upstream and downstream of the IMPROVEMENTS for open channels and up to 50 feet upstream and downstream of the IMPROVEMENTS for covered storm drains.

- 3.7. The CITY shall provide the DISTRICT with 24-hour contact information for person(s) responsible for the operation and maintenance activities related to the IMPROVEMENTS. The DISTRICT shall provide the CITY with 24-hour contact information for person(s) responsible for maintaining the DISTRICT FACILITIES.
- 3.8. The CITY shall coordinate and communicate with the DISTRICT in regard to operation, maintenance, and repair activities related to the IMPROVEMENTS.
 - 3.8.1. The CITY shall notify the DISTRICT a minimum of thirty (30) days in advance of any major (non-routine) proposed maintenance activities related to the IMPROVEMENTS; provided, however, that in the event the CITY becomes aware of the need to perform any such maintenance activities less than thirty (30) days from the date it proposes to perform said activities, it shall notify the DISTRICT immediately upon determining to perform the activities.
 - 3.8.2. The CITY shall notify the DISTRICT a minimum of forty-eight (48) hours in advance of accessing the DISTRICT FACILITIES to perform any routine maintenance activities related to the IMPROVEMENTS including trash removal, routine cleaning, and minor repairs.
 - 3.8.3. The CITY shall provide the DISTRICT with an annual summary report of its operations and maintenance of the IMPROVEMENTS and status of all related regulatory permits. The contents of the summary report shall include at a minimum the following information:
 - a. Name of PROJECT;
 - b. Location description;
 - c. Project contact information;
 - d. Description of the PROJECT and its function and direct impact to the DISTRICT FACILITIES and/or other DISTRICT right of way;

- e. Summary of operations within the reporting year, from July 1st to June 30th of the following year, type of activities (i.e. routine, non-routine, and emergency), date and time of activities, and description of work performed;
- f. Summary of major repairs completed, including but not limited to, type of repairs, location of repairs, pre- and post-repair photographs, date and time of repairs;
- g. Summary of public inquiries and complaints related to the PROJECT and the CITY'S response;
- h. Summary of volume captured or discharged from PROJECT;
- i. Status of any regulatory permits affecting the operation or maintenance of the IMPROVEMENTS;
- j. Status of any specialty contractor agreements required for ongoing maintenance and repairs of the IMPROVEMENTS;

3.8.4. The annual summary report shall be mailed to the following address by July 30th each year:

Attention: Senior Civil Engineer
Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Maintenance Division, Annex Building 2nd Floor
Staff Support Section
900 South Fremont Avenue
Alhambra, CA 91803-1331

- 3.9. The DISTRICT shall coordinate and communicate with the CITY regarding any maintenance activities by the DISTRICT related to the DISTRICT FACILITIES that may impact the IMPROVEMENTS.
- 3.10. If the CITY fails to perform any maintenance activities as provided for in this AGREEMENT in a timely manner, the DISTRICT reserves the right to remedy any such maintenance deficiency that the DISTRICT determines impairs the functioning of the DISTRICT FACILITIES or the DISTRICT's flood protection activities. However, prior to taking any action to remedy any such maintenance deficiency, the DISTRICT shall provide written notice to the CITY of the deficiency. If the CITY fails to correct the deficiency within thirty-five (35) days from the date of the notice or such longer period as the DISTRICT, in its sole discretion may agree to, the DISTRICT shall thereafter be entitled to correct the deficiency. Notwithstanding the foregoing, if the DISTRICT determines that immediate remedial action is

required to prevent or mitigate a dangerous condition, the DISTRICT shall be entitled to implement the remedial action(s) after giving the CITY as much notice as the DISTRICT determines is feasible under the circumstances. If the DISTRICT takes any remedial action pursuant to this Section, it shall prepare and send to the CITY an invoice for all work undertaken by the DISTRICT to remedy any maintenance deficiency, and the CITY shall, within one hundred and twenty (120) days from the receipt of the invoice, reimburse the DISTRICT for all costs and expenses reasonably incurred by the DISTRICT to remedy said deficiency.

- 3.11. The CITY shall be responsible for all community relations related to the PROJECT, including responding to public inquiries, complaints, etc. The DISTRICT shall forward to the CITY any community relations, public inquiries, complaints, etc., related to the PROJECT.

SECTION 4: Term

- 4.1. The term of this AGREEMENT shall be for fifty (50) years (Initial Term), subject to the DISTRICT's right to terminate the CITY'S use as provided for in Section 5 in this AGREEMENT.
- 4.2. This AGREEMENT shall expire at the end of the Initial Term provided; however, the Chief Engineer of the DISTRICT or his designee may extend the term of this AGREEMENT, beyond the Initial Term, up to ten (10) years, subject to such terms and conditions as they deem appropriate, upon receipt of a written request from the CITY, no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

SECTION 5: Termination of AGREEMENT

- 5.1. The DISTRICT shall have the right to terminate this AGREEMENT by giving the CITY at least one hundred twenty (120) days prior written notice, under the following conditions:
 - 5.1.1. The DISTRICT proposes a project for flood control, water conservation and/or any other use or purpose authorized by the Los Angeles County Flood Control Act; and
 - 5.1.2. The DISTRICT determines, in good faith, that the IMPROVEMENTS or any portion thereof, would be substantially incompatible with the DISTRICT's proposed project; and

- 5.1.3. The DISTRICT has notified the CITY of the basis for the DISTRICT'S determination that a substantial incompatibility will exist and has provided the CITY with a reasonable opportunity to propose modifications to the IMPROVEMENTS that will eliminate the incompatibility; and
 - 5.1.4. After consideration of any such modifications proposed by the CITY, the DISTRICT, in its sole but reasonable discretion, determines not to incorporate any such modifications or determines that, notwithstanding any such modifications, a substantially incompatibility would still exist; and
 - 5.1.5 The DISTRICT has designs, funds, and constructs an alternative compliance mechanism for the downstream MS4 outfall.
- 5.2. The DISTRICT shall have the right to terminate this AGREEMENT in the event the CITY breaches any term or condition of this AGREEMENT and fails to cure such breach or breaches within a reasonable amount of time from the date the DISTRICT provides written notice of said breach or breaches to the CITY. Upon receipt of a written notice of breach, the CITY shall, within thirty (30) days of the date of the written notice, send the DISTRICT a written response describing the corrective measures that the CITY proposes to implement. The PARTIES shall thereafter promptly meet and confer, in good faith, to reach agreement on the corrective measures. The CITY shall not implement any corrective measure until it has been approved and agreed upon by the DISTRICT.
- 5.3. The DISTRICT shall have the right to terminate this AGREEMENT if construction of the PROJECT has not commenced within five (5) years from the date this AGREEMENT is fully executed or the PERMIT expires, whichever comes first.
- 5.4. The DISTRICT shall have the right to suspend this AGREEMENT in the DISTRICT'S sole discretion, in the event the DISTRICT determines, in good faith, that it is necessary for the DISTRICT to enter and take exclusive possession of the DISTRICT FACILITIES or any portion thereof, in order to respond to an emergency as defined in Public Contract Code Section 1102.
- 5.5. The CITY shall have the right to terminate this AGREEMENT for any reason, by giving the DISTRICT at least sixty (60) days prior written notice, subject to the CITY'S obligation to remove the IMPROVEMENTS described in Section 6, below.

SECTION 6: Removal of IMPROVEMENTS and Restoration of the DISTRICT FACILITIES

- 6.1. Upon termination of this AGREEMENT, the DISTRICT may, in its sole discretion, provide a written notice to the CITY that the removal of any portion of the IMPROVEMENTS within the District's Facilities, and the restoration of the DISTRICT FACILITIES to a condition similar to or better than that which existed on the effective date of this AGREEMENT (specifically sealing off all connections between PROJECT and DISTRICT FACILITIES), has become necessary. If termination is due to a breach of contract or the willful negligence of the City, the City will bear the cost of these improvements. If termination is due to the desire of the County to install other facilities, the County shall bear these costs and take on responsibility for compliance with the downstream MS4 outfall. The timeline for the removal of the facilities will be agreed to by all parties prior to removal or restoration.
- 6.2. Prior to commencing the removal of any IMPROVEMENTS within the DISTRICT FACILITIES, the CITY shall apply for and obtain a permit for the removal activities from the County of Los Angeles Public Works, Land Development Division, Permits and Subdivisions Section, and shall also apply for and obtain any and all other necessary local, state, and federal permits applicable to the removal of the IMPROVEMENTS.
- ##** Prior to commencing the self-performed removal of any IMPROVEMENTS within DISTRICT FACILITIES, the DISTRICT shall apply for and obtain an encroachment permit for the activities from the City of Agoura Hills Public Works, if the removal of the IMPROVEMENTS will require occupation of the street surface during construction activities.
- 6.3. If the CITY fails to comply with the DISTRICT's notice referred to in subsection 6.1, the DISTRICT may, in its sole discretion, remove any or all IMPROVEMENTS referenced in the DISTRICT's notice to the CITY.
- 6.4. If the DISTRICT removes any IMPROVEMENTS pursuant to subsection 6.1 and 6.3, the DISTRICT may submit a billing invoice to the CITY indicating the costs and expenses reasonably incurred by the DISTRICT in connection with the removal of the IMPROVEMENTS and the CITY shall reimburse the DISTRICT all such costs and expenses within one hundred and twenty (120) days of the CITY's receipt of a billing invoice from the DISTRICT.

SECTION 7: Miscellaneous Provisions

- 7.1. Damage to DISTRICT FACILITIES or PROJECT
 - 7.1.1. If any components of the PROJECT are damaged by any negligent act or omission of the DISTRICT, the DISTRICT shall repair and replace those components within a reasonable time frame after discovery or notice thereof. The DISTRICT shall be responsible for all costs related to these repairs and/or replacements.
 - 7.1.2. If any components of the DISTRICT FACILITIES are damaged by any negligent act or omission of the CITY (including its consultants and contractors), the CITY shall repair and replace those components within a reasonable time frame after discovery or notice thereof. The CITY shall be responsible for all costs related to these repairs and/or replacements.
- 7.2. The DISTRICT shall not be responsible for the expense of any relocation, alteration, or modification of the PROJECT, or any portion thereof.
- 7.3. Indemnification, Release, and Insurance.
 - 7.3.1. The CITY shall indemnify, defend, and hold harmless the DISTRICT, the County of Los Angeles, and their respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including without limitation, reasonable attorney fees and costs of litigation, arising out of or in any way connected to the construction, operation, maintenance, repair, modification, or removal of the PROJECT, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the DISTRICT, the County of Los Angeles, or their respective officers, employees or contractors.
 - 7.3.2. The DISTRICT shall indemnify, defend, and hold harmless the CITY and its respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including without limitation, reasonable attorney fees and costs of litigation, arising out of or in any way connected to operation and maintenance of the DISTRICT FACILITIES exclusive of the IMPROVEMENTS, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the CITY or its respective officers, employees or contractors.
 - 7.3.3. The CITY releases the DISTRICT and waives all rights to damages for any loss, costs, or expenses the CITY may sustain as a result of any damage to, or destruction of, the PROJECT, or any portion thereof, attributable to flood or stormwaters, or any other runoff

tributary to the DISTRICT FACILITIES, except to the extent such damages are caused by the negligence or willful misconduct of the DISTRICT or its officers, employees or contractors.

7.3.4. Without limiting the CITY's indemnification of the DISTRICT, the CITY shall procure and/or maintain, in full force and effect during the term of this AGREEMENT, insurance policies or a program of self-insurance providing for the following coverage related to the IMPROVEMENTS:

7.3.4.1. Commercial general liability and property damage coverage with a combined single limit liability in the amount of not less than two million dollars (\$2,000,000) per occurrence.

7.3.4.2. Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the DISTRICT and the CITY against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by, or any person retained by, the CITY in the course of carrying out the work or services contemplated in this AGREEMENT.

7.3.4.3. Automobile Liability Insurance: the CITY shall procure such policy with coverage of not less than one million dollars (\$1,000,000) per accident.

7.3.4.4. The County of Los Angeles and Los Angeles County Flood Control District, its governing board, officers, agents, contractors, and employees shall be named as Additional Insureds on all policies of liability insurance. The CITY shall furnish to the DISTRICT a Policy of Insurance evidencing the CITY'S insurance coverage no later than ten (10) working days after execution of the AGREEMENT. Upon renewal of said policy, the CITY shall furnish to the DISTRICT a Certificate evidencing the CITY's continued insurance coverage as required herein.

7.3.4.5. Should the CITY elect to comply with this section through a program of self-insurance, CITY shall provide a Certificate of Self-Insurance to DISTRICT indicating limits of such self-

insurance coverage that meet or exceed those stated herein.

- 7.4. Relationship of Parties. The Parties are and shall remain at all times as to each other wholly independent entities. No Party to this AGREEMENT shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this AGREEMENT. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.
- 7.5. Binding Effect. This AGREEMENT shall be binding upon, and shall be to the benefit of the respective successors, heirs, and assigns of each Party; provided, however, no Party may assign its respective rights or obligations under this AGREEMENT without prior written consent of the other Party.
- 7.6. Amendment. The terms and provisions of this AGREEMENT may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- 7.7. Waiver. Waiver by any Party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT.
- 7.8. Governing Law. This AGREEMENT is made under and will be governed by the laws of the State of California. In the event of litigation between the Parties, venue in the state trial court shall lie exclusively in the County of Los Angeles.
- 7.9. No Presumption in Drafting. All Parties have been represented by legal counsel in the preparation and negotiation of this AGREEMENT. Accordingly, this AGREEMENT shall be construed according to its fair language.
- 7.10. Severability. The provisions of this AGREEMENT are severable, and the invalidity, illegality or unenforceability of any provision of this AGREEMENT will not affect the validity or enforceability of any other provisions. If any provision of this AGREEMENT is found to be invalid, illegal, or unenforceable, the Parties shall endeavor to modify that clause in a manner which gives effect to the intent of the Parties in entering into this AGREEMENT.

- 7.11. Counterparts. This AGREEMENT may be executed in counterparts, which together shall constitute the same and entire Agreement.
- 7.12. Administration. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this AGREEMENT on behalf of such Party.
- 7.13. Notices

Any correspondence, communication, or contact concerning this AGREEMENT, and all notices that are to be given or that may be given by PARTIES shall be directed to the following:

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Planning Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4300
Fax: (626) 458-1526

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Maintenance Division, Annex Building Second Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4145
Fax No.: (626) 458-4165

City of Agoura Hills
Public Works Department
30001 Ladyface Court, Agoura Hills, CA 91301
Attention: Jessica Forte, PE
Public Works Director / City Engineer
Phone No.: 818.597.7300

The PARTIES shall promptly notify each other of any change of the contact information specified in this Section, including personnel changes.

IN WITNESS WHEREOF, DISTRICT and CITY have caused this AGREEMENT to be executed by their respective duly authorized officers, by DISTRICT on _____, 2022; by CITY on _____, 2022.

LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT,
A body corporate and politic

By _____
Chief Engineer

CITY OF AGOURA HILLS

By _____
Deborah Klein Lopez, Mayor

APPROVED AS TO FORM:

By _____
<name>, City Attorney