

Attachment H

Parking License – FCD, LLC (Honda Center)
Santa Ana River Parcel E01-1357

LICENSE AGREEMENT

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**License**”) is made _____, 2024, (“**Effective Date**”) and will commence on the Commencement Date described in Section 1 by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as “**DISTRICT**” and FCD, LLC, a California limited liability company, hereinafter referred to as “**LICENSEE.**” DISTRICT and LICENSEE may individually be referred to as “**Party,**” or jointly as “**Parties.**”

DISTRICT and LICENSEE agree as follows:

1. DEFINITIONS (LA2.1 S)

The following words in this License have the significance attached to them in this section, unless otherwise apparent from context:

“**2019 License**” shall mean the License between the parties dated March 29, 2019, which shall expire when this License commences.

“**Act**” means the OC Flood Control Act, as set forth in the California uncodified Water Code, Act 5682, Section 2, also referred to as Water Code App. Sections 36-1 et seq. or any amendments related thereto after or during the Term of this License.

“**CEO/Office of Risk Management**” means the Risk Manager, County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to LICENSEE, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**Channel**” means the Santa Ana River Channel (DISTRICT Facility No. E01)

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to LICENSEE, such other entity as shall be designated by the County Executive Officer.

“**County**” means the County of Orange, a political subdivision of the state of California.

“**CPP**” means a permit(s) in the process of issuance by County or DISTRICT under the County of Orange, County Property Permit process or equivalent, the method to comply with California Public Contract Code Section 22000 et seq., for the permitted action or improvements to be authorized by the County and/or DISTRICT.

“**Commencement Date**” This License will commence upon recordation of the Quitclaim Deeds as defined hereinbelow LICENSEE shall provide DISTRICT notice of commencement within 3 days of commencement.

“**Director**” means Orange County’s Director of OC Public Works, or designee.

“**License Area**” means an unimproved DISTRICT owned lot, a portion of Parcel No. E01-1357 and all of 1306.9, with a surface area of approximately two acres, located in the City of Anaheim, County of Orange, State of California, as depicted in Exhibit A, attached hereto and by this reference made a part hereof.

“**Property**” means that underlying fee interest in the property encompassed within the License Area held by DISTRICT, and shall refer to all subsurface and aerial rights, and those surface rights not prejudicial to this License, which DISTRICT retains.

2. TERM (AMLC-3.2 N)

This term of this License shall commence on the Commencement Date after the Parties acknowledge termination of the prior 2019 Parking License but only after the Parties have completed the proposed property exchange (“Property Exchange”) including recordation of the Quitclaim Deeds, as a condition precedent. This License shall run for twenty (20) years after the Commencement Date unless sooner terminated as provided herein.

3. TERMINATION (LB3.1 N)

This License may be revoked by DISTRICT if LICENSEE is in default of any of the terms of this License pertaining to the License Area and LICENSEE fails to cure such default within ten (10) days of receipt of written notice from the Director. This License shall be revocable by either Party at any time in accordance with the terms herein; however, as a courtesy the terminating Party will attempt to give thirty (30) days written notice to the other Party prior to the termination date.

Prior to the expiration or sooner termination of this License, LICENSEE agrees at its expense to restore the License Area to Director’s satisfaction and in accordance with Sections 30 (Condition of License Area Upon Termination) and 37 (LICENSEE Quitclaim Upon Termination). Said restoration shall include, but not be limited to the removal of all Licensee’s Equipment and Material, receptacles, trash and debris.

In the event LICENSEE fails to perform its obligations under this Section, in addition to any other rights or remedies available to DISTRICT, Director, at Director’s option after seven (7) days written notice to LICENSEE, may cause the removal and storage of any of Licensee’s Equipment and Material, trash or debris from the License Area, and the cost thereof, including but not limited to the cost of labor, materials, and equipment, and a fifteen percent (15%) administration fee of such costs, shall be paid by LICENSEE within ten (10) days following a receipt of an statement of said costs from Director.

4. LICENSE AREA (LA3.1 N)

The License Area shall be the real property as defined in Section 1 (Definitions)

5. USE (LB1.1 N)

LICENSEE is permitted to utilize the surface of the License Area in accordance with terms herein. LICENSEE acknowledges that LICENSEE has conducted a complete and adequate investigation

of the License Area and accepts the License Area in its "as is" condition, as stated in Section 11 (As-Is/Where-Is Condition) below.

LICENSEE's use of the License Area shall be non-exclusive and limited to the operation of a commercial parking lot without a structure, right to ingress, egress and maneuver vehicular and pedestrian traffic and the ability to keep and maintain related commercial parking fixtures, equipment and implements (collectively "**Licensee's Equipment and Material**"), and for use as a temporary construction area, for a period of up to two years during the construction of River Road and the City Storm Drain as defined in the Agreement dated / /2024_ between the Parties ("**Agreement**"). All Licensee's Equipment and Material placed, stored or parked within the License Area by or on behalf of LICENSEE shall be the property of LICENSEE and must be kept free and clear all liens, claims, or liability for labor or material throughout the term of this License.

If LICENSEE wishes to use the License Area for any other purpose then listed above, or to perform grading or otherwise alter the surface of the land, then LICENSEE must secure prior written approval of such activity from the Director, which may require obtaining a permit through CPP with payment of normal fees and additional insurance coverage.

Other than the City Storm Drain and the construction of the Additional Improvements ad described in the Agreement, this License expressly prohibits construction or placement of improvements, structures or storage tanks on the License Area, the removal, or alteration of any of DISTRICT existing fencing in, on, or about the License Area and use of Hazardous Materials, as hereinafter defined and set forth in Section 15 (Hazardous Materials).

LICENSEE shall not use or permit others to use the License Area or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance or waste to be created or maintained thereon.

LICENSEE understands and acknowledges that the License Area lies adjacent to the Channel and that DISTRICT utilizes the easterly most portions of the License Area to access this Channel for flood control purposes as stated in the Act. LICENSEE agrees the primary purpose of the License Area and Property is for flood control purposes. LICENSEE acknowledges DISTRICT has all rights necessary to assure proper maintenance and operation of the Channel and related flood control facilities including any actions which the Director deems necessary or desirable to maintain, repair, improve, modify or reconstruct said facilities or to conduct such operations which shall be exercised by the Director at the Director's sole discretion. LICENSEE agrees to conduct all activities within the License Area in such a manner that will allow for unobstructed flood control operations and maintenance of the Channel.

Nothing contained in this License or in any document related hereto shall be construed to (a) imply the conveyance to LICENSEE of rights in the License Area, which exceed those owned by DISTRICT; or (b) imply the conveyance of a property interest, easement or any permanent or exclusive rights in the License Area.

6. FEES AND PAYMENT PROCEDURES (PML7.1 N)

Commencing on the Commencement Date, as described in paragraph 1, LICENSEE agrees to pay DISTRICT the sum of One Hundred and Sixteen Thousand Dollars (\$116,000) as the annual fee (“**Annual Use Fee**”) for the use of the License Area. The first Annual Use Fee payment shall be due and payable on or before the Commencement Date. Subsequent Annual Use Fee payments shall be due and payable without prior notice or demand on or before each anniversary of the Commencement Date. LICENSEE agrees that, effective on each anniversary of the Commencement Date the Annual Use Fee shall be increased by three percent (3%) of the preceding years’ Annual Use Fee, with each adjusted use fee rate being rounded to the next highest dollar. In the event the obligation to pay the Annual Use Fee terminates on some date other than on an anniversary of the Commencement Date, the Annual Use Fee shall be prorated based on a 360-day year to reflect the actual period of use. Any overpayment issued by the LICENSEE to which the District is not entitled shall be refunded to the LICENSEE.

All Annual Use Fees and other payments due under this License shall be delivered to the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4005, Santa Ana, California 92702-4005 (or may be delivered to 400 W. Civic Center Drive, Room 512.01, Santa Ana 92701-4063). The designated place of payment may be changed at any time by the Chief Real Estate Officer upon ten (10) days’ written notice to LICENSEE. Use Fees and other payments made by check are to be made payable to Orange County Flood Control District. LICENSEE assumes all risk of loss if payments are made by mail.

All sums due under this License shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by LICENSEE or receipt by DISTRICT of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction and DISTRICT shall accept such check or payment without prejudice to DISTRICT’s right to recover the balance of said payment or pursue any other remedy in this License.

7. CHARGE FOR LATE PAYMENT

LICENSEE hereby acknowledges that the late payment of an Annual Use Fee or any other sums due hereunder will cause DISTRICT to incur costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc. LICENSEE and DISTRICT hereby agree that such late charges represent a fair and reasonable estimate of the costs that DISTRICT will incur by reason of LICENSEE’s late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by DISTRICT shall in no event constitute a waiver of LICENSEE’s Default (as defined in Section 32 (EVENTS OF DEFAULT AND REMEDIES)) with respect to such overdue payment or prevent DISTRICT from exercising any of the other rights and remedies granted hereunder.

Accordingly, if any payment of Annual Use Fees or if any other sum due DISTRICT under this License is not received by DISTRICT within five (5) days after the due date, a late charge of One Hundred Dollars (\$100) shall be added to the payment, and the total sum shall become immediately

due and payable to DISTRICT. An additional charge of one hundred dollars (\$100) shall accrue monthly for each additional month that said payment remains unpaid.

8. MAINTENANCE OF LICENSE AREA

LICENSEE shall, at no cost to DISTRICT, keep and maintain the License Area in good and safe condition, and at all times conduct its operations in a safe and responsible manner. LICENSEE further agrees to keep the License Area free and clear of rubbish, litter, graffiti and waste. LICENSEE shall at no cost to DISTRICT keep and maintain all of LICENSEE’s improvements, equipment, and materials made or placed within the License Area (“Licensee’s Equipment and Materials). LICENSEE shall designate in writing to Director, a representative who shall be responsible for the day-to-day operation and level of maintenance and general order of the License Area. LICENSEE shall promptly, at its sole cost and expense, repair or replace any portion of the License Area, facilities, equipment, fencing, gates, signs, posts, or improvements on the Property located under, over, within or adjacent to the License Area that are disturbed, damaged, vandalized or destroyed as a result of the exercise of LICENSEE’s rights hereunder. Such repair or restoration shall be to approximately the same quality of material, workmanship and condition as existed prior to such damage or destruction.

DISTRICT shall have no obligation to maintain or make any repairs or replacements to any area in, on over under or about the License Area. If LICENSEE fails to maintain or make repairs or replacements as required herein, Director may notify LICENSEE in writing of said failure. Should LICENSEE fail to correct the situation within twenty (20) days, or other such reasonable time thereafter as established by Director, Director may have the necessary correction made and the cost thereof, including but not limited to the cost of labor, materials, and equipment and a fifteen percent (15%) administration fee of such costs, shall be paid by LICENSEE within ten (10) days of receipt of a statement of said cost from Director. Director may choose, at Director’s option, other remedies available herein, or by law.

9. CONSTRUCTION AND/OR ALTERATION BY LICENSEE

No structures, improvements, or facilities, including fencing shall be constructed, erected, altered, or placed upon the License Area, nor any stockpiling, additional trees or shrubbery are allowed, without prior written consent of Director through the CPP process with payment of normal processing fees therefor. LICENSEE shall provide evidence of adequate insurance, prior to commencement of any work in, on, over, under, across or about the License Area; and upon completion of any such work; LICENSEE shall immediately notify Director in writing of such completion.

Director’s approval of LICENSEE’s plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. DISTRICT is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of LICENSEE’s construction and/or maintenance plans. Director will rely on the professional expertise of the Engineer of Record when approving LICENSEE’s construction and/or maintenance plans.

Should LICENSEE’s exercise of this License require use of any specialized vehicles or equipment,

including but not limited to cranes or require disturbance of the surface; LICENSEE agrees to notify Director in writing, sixty (60) days in advance of such activities and obtain Director's written approval through the CPP process with payment of normal processing fees therefor, prior to commencement of any such activities.

10. RESERVATIONS

DISTRICT reserves for itself and its successors and assigns, such surface, subsurface and aerial rights in the License Area as will not unreasonably interfere with LICENSEE and the exercise of this License. DISTRICT further reserves all rights necessary to assure proper maintenance and operation of the Channel and to take any steps, which the Director deems necessary or desirable to maintain, repair, improve, modify or reconstruct said Channel or to conduct any flood control operations. The rights reserved to DISTRICT in this Section, or any other Section of this License shall be exercised by the Director at the Director's sole discretion. Neither DISTRICT or the County, nor any agent, employee, contractor, operator or any other person or entity acting for or on their behalf shall incur any liability, including, but not limited to, loss of business, damage, or impaired utility of the License Area for any action undertaken in the maintenance, repair, operation, improvement, modification or reconstruction of the Channel, including but not limited to the levee, levee wall, slope or access way. LICENSEE agrees that should any action undertaken in the maintenance, repair, operation, improvement, modification or reconstruction of the Channel, including the levee and access way require relocation of any Licensee's Equipment and Materials or suspension of LICENSEE's use of the License Area to be specified in DISTRICT's notice, either on a temporary or permanent basis, LICENSEE shall incur all costs and expenses associated therewith.

Except in an emergency situation, Director agrees to provide LICENSEE with a minimum of sixty (60) days' written notice prior to the commencement of any maintenance, repair, operation, improvement, modification or reconstruction of said Channel that may require the removal of Licensee's Equipment and Materials. In the event LICENSEE fails to perform its obligations to commence and diligently pursue completion of the required work within the License Area, in addition to any other rights or remedies available to DISTRICT, the Director, at the Director's option after thirty (30) days' written notice to LICENSEE, may cause the removal of any such work to be performed, and the cost thereof, including but not limited to the cost of labor (with overhead and burden rates), materials, and equipment, and a fifteen percent (15%) administration fee of such costs, shall be paid by LICENSEE within fifteen (15) days following a receipt of a statement of said costs from the Director.

In the event DISTRICT exercises its reserved rights to utilize the License Area/ Property and that use results in the disturbance of the License Area or Licensee's Equipment and Materials, DISTRICT's only responsibility shall be to backfill with compacted earth to the grade of the surrounding property following completion of DISTRICT's activity; and, to notify the LICENSEE fifteen (15) days prior to the disturbance, except in an emergency when prior notice shall not be required.

11. AS-IS/WHERE-IS CONDITION (LG13 N)

The License Area is accepted as is and where is by LICENSEE subject to any and all existing easements, encumbrances and physical characteristics. LICENSEE acknowledges that except as specifically herein provided, neither DISTRICT, County nor any of their respective employees, agents, or representatives have made any representations, warranties or agreements to or with LICENSEE on behalf of DISTRICT as to any matters concerning the License Area, access to the License Area, the present use thereof, or the suitability of LICENSEE's intended use of the License Area.

- A. Without limiting DISTRICT's rights with respect to the License Area, DISTRICT reserves the rights noted in Section 10 (Reservations) above, and in addition, the right to install, lay, construct, maintain, repair, and operate such drains, storm water sewers, pipelines, manholes, and connections; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the License Area or any part thereof, and to enter the License Area for any and all such purposes.
- B. DISTRICT also reserves the right to grant franchises, easements, rights of way, licenses and permits in, over, upon, through, across, under, and along any and all portions of the License Area. No right reserved by DISTRICT in this Section shall be so exercised as to interfere unreasonably with LICENSEE's use hereunder.

12. UTILITIES (LD1.2 S)

LICENSEE currently has utilities within the License Area to provide lighting and operation of Licensee's Equipment and Materials. LICENSEE shall be responsible for the maintenance and repair of all existing utilities upon the License Area and shall pay, prior to the delinquency date, all charges for utilities supplied to the License Area.

13. INSURANCE (AML10.1 S)

LICENSEE agrees to purchase all required insurance at LICENSEE's expense and to deposit with the DISTRICT certificates of insurance, including all endorsements required herein, necessary to satisfy the DISTRICT that the insurance provisions of this License have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the DISTRICT during the entire term of this License.

LICENSEE agrees that LICENSEE shall not operate on the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Chief Real Estate Officer. In no cases shall assurances by LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. LICENSEE also agrees that upon cancellation, termination, or expiration of LICENSEE's insurance, DISTRICT may take whatever steps are necessary to interrupt any operation from or on the License Area until such time as the Chief Real Estate Officer

reinstates the License.

If LICENSEE fails to provide the Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the License, DISTRICT and LICENSEE agree that this shall constitute a material breach of the License. Whether or not a notice of default has or has not been sent to LICENSEE, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the License Area, and to prevent any persons, including, but not limited to, members of the general public, and LICENSEE's employees and agents, from entering the License Area until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. LICENSEE further agrees to hold DISTRICT harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the DISTRICT's action.

LICENSEE may occupy the License Area only upon providing to DISTRICT the required insurance stated herein and maintain such insurance for the entire term of this LICENSE. DISTRICT reserves the right to terminate this LICENSE at any time LICENSEE's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. LICENSEE shall pay DISTRICT a fee of \$750.00 for processing the reinstatement of the LICENSE. LICENSEE shall provide to County immediate notice of said insurance cancellation or termination while working diligently to reinstate or otherwise obtain the required insurance coverage.

All contractors performing work on behalf of LICENSEE pursuant to this License shall obtain insurance subject to the same terms and conditions as set forth herein for LICENSEE. LICENSEE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the DISTRICT from the LICENSEE under this License. It is the obligation of the LICENSEE to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the License Area. Such proof of insurance must be maintained by LICENSEE through the entirety of this License and be available for inspection by a DISTRICT representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by CEO/Office of Risk Management, upon review of LICENSEE's current audited financial report. If LICENSEE's SIR is approved, LICENSEE, in addition to, and without limitation of, any other indemnity provision(s) in this License, agrees to all of the following:

- A. In addition to the duty to indemnify and hold the DISTRICT and County harmless against any and all liability, claim, demand or suit resulting from LICENSEE's, its agents, employee's or subcontractor's performance of this Agreement, LICENSEE shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- B. LICENSEE's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

- C. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the LICENSEE’s SIR provision shall be interpreted as though the LICENSEE was an insurer and the County was the insured.

If the LICENSEE fails to maintain insurance acceptable to the DISTRICT for the full term of this License, the DISTRICT may terminate this License.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the LICENSEE shall provide the minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an “All Risk” or “Special Causes of Loss” basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12-month limit.	100% of the Replacement Cost Value and no coinsurance provision

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***Orange County Flood Control District and the County of Orange, and their respective elected and appointed officials, officers, employees, agents*** as Additional Insureds. Blanket coverage may also be provided which will state- ***As Required By Written Agreement***.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the LICENSEE's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***Orange County Flood Control District and the County of Orange, and their respective elected and appointed officials, officers, employees, agents***. Blanket coverage may also be provided which will state- ***As Required By Written Agreement***.

All insurance policies required by this license shall waive all rights of subrogation against the Orange County Flood Control District and the County of Orange, and their respective elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the DISTRICT and County as respects the DISTRICT's financial interest when applicable.

LICENSEE shall notify DISTRICT in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to DISTRICT. Failure to provide written notice of cancellation may constitute a material breach of the LICENSE, upon which the DISTRICT may suspend or terminate this LICENSE.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to DISTRICT address provided in the Section 17 (Notices) below or to an address provided by the Director. LICENSEE has ten (10) business days to provide adequate evidence of insurance, or this License may be cancelled.

DISTRICT expressly retains the right to require LICENSEE to increase or decrease insurance of any of the above insurance types throughout the term of this License. Any increase or decrease in insurance will be as deemed by the CEO/Office of Risk Management as appropriate to adequately protect DISTRICT.

DISTRICT shall notify LICENSEE in writing of changes in the insurance requirements. If LICENSEE does not deposit copies of acceptable certificates of insurance and endorsements with DISTRICT incorporating such changes within thirty (30) days of receipt of such notice, this License may be in breach without further notice to LICENSEE, and DISTRICT shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit LICENSEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this License, nor in any way to reduce the policy coverage and limits available from the insurer.

14. HOLD HARMLESS

LICENSEE acknowledges the License Area is adjacent to the Channel and may be subject to all hazards associated with flood conditions. LICENSEE agrees to assume all risks, financial or otherwise, associated therewith.

LICENSEE hereby releases and waives all claims and recourse against DISTRICT and County including the right of contribution for loss of or damage to property, or injury to or death of any person arising from, growing out of or in any way connected with or related to this License, including any damage to or interruption of use of any of Licensee's Equipment and Materials in, on, over or about the License Area, caused by erosion, flood, or flood overflow conditions of the License Area, or caused by the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Channel, or caused by DISTRICT's flood control operations, except claims arising from the concurrent active or sole negligence, of DISTRICT and/or County, their officers, agents, employees and contractors.

LICENSEE hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and County, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for damage to or loss of property, or injury to or death of any persons, arising out of the maintenance, use of, or operations or activities conducted in, on, or over the License Area, and/or the exercise of the rights under this License by LICENSEE, its agents, officers, employees, invitees or LICENSEE's permittees, except for liability arising out of the concurrent active or sole negligence, gross negligence, or willful misconduct of DISTRICT, and/or County, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT and/or County is/are named as co-defendant(s) in a lawsuit, LICENSEE shall notify Director of such fact and shall represent DISTRICT/County in such legal action unless DISTRICT/County undertake(s) to represent itself/themselves as co-defendant(s) in such legal action, in which event, LICENSEE shall pay to DISTRICT/County its/their litigation costs, expenses, and attorney fees. If judgment is entered against

DISTRICT/County and LICENSEE by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT/County and LICENSEE, DISTRICT and LICENSEE agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

LICENSEE acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

LICENSEE, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this Section.

15. HAZARDOUS MATERIALS (PMF9.1 N)

A. Definition of Hazardous Materials

For purposes of this License, the term “**Hazardous Material(s)**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, County, the State of California, or the United States government.

B. Use of Hazardous Materials

LICENSEE or LICENSEE’s employees, representatives, member agencies, agents, contractors, operators, invitees, and any person authorized by LICENSEE to conduct activities on the License Area (individually and collectively “**LICENSEE Parties**”) shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the License Area (which for purposes of this clause shall include the subsurface soil and ground water).

C. LICENSEE Obligations

If the presence of any Hazardous Materials on, under or about the License Area caused or permitted by LICENSEE or LICENSEE Parties results in (i) injury to any person, (ii) injury to or contamination of the License Area or the Property (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, LICENSEE, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the License Area, Property and/or other property to the condition existing prior to the introduction of such Hazardous Materials in, on, or about the License Area and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of DISTRICT under this License, LICENSEE shall pay the cost of any cleanup and/or remedial work performed on, under, or about the License Area as required by this License or by applicable laws in connection with the removal, transport, disposal,

neutralization or other treatment of such Hazardous Materials caused or permitted by LICENSEE or LICENSEE Parties. Notwithstanding the foregoing, LICENSEE shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the License Area caused or permitted by LICENSEE or LICENSEE Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of Director. All work performed or caused to be performed by LICENSEE as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits, and other requirements for such work approved by Director.

D. Indemnification for Hazardous Materials

To the fullest extent permitted by law, LICENSEE hereby agrees to indemnify, hold harmless, protect and defend [with attorney(s) approved in writing by DISTRICT] DISTRICT and County, their elected officials, officers, employees, agents, and independent contractors and the License Area, from and against any and all liabilities, losses, damages (including, but not limited to, damages for the loss or restriction of use of rentable or usable space or any amenity of the License Area or damages arising from any adverse impact on marketing and diminution in the value of the License Area), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorney fees, disbursements and court costs and all other professional or consultant expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the License Area by LICENSEE or LICENSEE Parties. The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the License Area and/or other real property and the preparation of any closure or other required plans.

16. BEST MANAGEMENT PRACTICES (PMF9.3 S)

LICENSEE and all LICENSEE Parties shall conduct operations under this License so as to assure that pollutants do not enter the municipal stormwater drainage system (“**Stormwater Drainage System**”) which is comprised of, but not limited to curbs, gutters, catch basins, manmade storm drains, and channels and to ensure that pollutants do not directly impact receiving waters including, but not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays, and the Pacific Ocean.

The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits (“**Stormwater Permits**”) to the County of Orange, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as “**County Parties**”) which regulate the discharge of urban runoff from areas within the County of Orange, including the License Areas and Access Area under this License. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

To assure compliance with the Stormwater Permits and to provide guidance for the public and businesses to comply with water quality ordinances, the County of Orange implements a stormwater quality management plan termed the Drainage Area Management Plan including a Local Implementation Plan that contains Best Management Practices (“BMPs”) that LICENSEE must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. The BMPs (presented as “BMP Fact Sheets”) contain pollution prevention and source control techniques to eliminate non-storm water discharges and minimize the impact of pollutants on stormwater runoff.

BMP Fact Sheets that apply to uses authorized under this License are attached hereto as **Attachment I**. These BMP Fact Sheets may be modified by the County of Orange during the term of the License, to comply with Stormwater Permit requirements; and the Director shall provide LICENSEE with any such modified BMP Fact Sheets. LICENSEE, all LICENSEE Parties and all persons authorized by LICENSEE to conduct activities on the License Area shall, throughout the term of this License, conduct all operations and activities on the License Area in accordance with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, including but not limited to the requirements of the industrial Stormwater Permits covering LICENSEE’s operations, as they exist as of the Effective Date of this License or as the Stormwater Permits may be modified. LICENSEE agrees to maintain current copies of the BMP Fact Sheets on the License Area throughout the term of this License. The BMPs applicable to uses authorized under this License must be performed as described within all applicable BMP Fact Sheets.

Failure to implement BMPs in accordance with BMP Fact Sheets may result in a violation of water quality ordinances and termination of License.

LICENSEE may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Director for review and approval prior to implementation. Director may enter the License Area and/or review LICENSEE’s records at any time to assure that activities conducted on the License Area comply with the requirements of this Section. LICENSEE may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this Section.

17. NOTICES (LE1.1 S)

All notices, documents, correspondence and communications concerning this License shall be addressed as set forth herein, or as the Parties may hereafter designate by written notice and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered forty-eight (48) hours after mailing. Either Party may change the address for notices by giving the other Party at least ten (10) calendar days’ prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or by Federal Express or similar courier service and so given shall be deemed to have been given upon receipt.

To DISTRICT:

Orange County Flood Control District
c/o CEO/Real Estate
RE: Honda Center Parking License
P.O. Box 4048
Santa Ana, CA 92702-4048

To LICENSEE:

FCD, LLC
2101 East Coast Highway, Third Floor
Corona Del Mar, California 92625
Attn: Michael Schulman
Telephone No. (949) 760-4301
Email: mschulman@hsventures.com

18. RECORDING PROHIBITED

This License may not be recorded unless otherwise approved by the Director.

19. COMPLIANCE WITH REGULATORY AUTHORITIES (PMES6.2S)

LICENSEE agrees that no structure, installation or portion thereof shall be erected, placed across, operated, or maintained within the License Area, nor shall any business or operations be conducted or carried therein or therefrom, in violation of the terms of this License, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency, including, but not limited to, the FAA (Federal Aviation Administration), having jurisdiction in, on, over or about the License Area.

LICENSEE shall, at LICENSEE's sole cost and expense, promptly and at all times, obtain, observe, comply with and carry out and maintain at all times during the term of this License, any and all present and future orders, regulations, directions, rules, laws, ordinances, permits, certificates, approvals and/or licenses which may be required by any federal, state, county, city or other governmental agency, department or bureaucracy having jurisdiction over LICENSEE, LICENSEE's operations in connection with the License Area, or which arise from the exercise of this License.

No permit, approval or consent given hereunder by DISTRICT shall affect or limit LICENSEE's obligations hereunder nor shall any such approvals or consents given by DISTRICT, be deemed approval as to compliance or conformance with applicable, governmental codes, laws, ordinances, rules, or regulations.

20. ORGANIZATION (LG4 S)

The various headings and numbers herein, the grouping of provisions of this License into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

21. AMENDMENTS (LG5 N)

This License sets forth all of the agreements and understandings of the Parties, any modification must be written and properly executed by both Parties. LICENSEE shall be responsible for all costs to prepare and finalize any amendment to the License or other such document which may be initiated at LICENSEE's request. LICENSEE shall pay DISTRICT within ten (10) days' of receipt of an invoice for DISTRICT's cost to prepare any such documents.

22. LABOR CODE COMPLIANCE (AMLC 14.1 S)

LICENSEE acknowledges and agrees that all improvements or modifications required to be performed as a condition precedent to the commencement of the term of this License or any such future improvements or modifications performed by LICENSEE at the request of DISTRICT shall be governed by, and performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, et seq.). These provisions are applicable to improvements or modifications costing more than \$1,000.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Orange County Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this License for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications from the Director of the State Department of Industrial Relations. Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations.

LICENSEE hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all improvements or modifications to be completed for DISTRICT within the License Area, and LICENSEE herein agrees that LICENSEE shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where the improvements or modifications are performed.

Prior to commencement of any improvements or modifications, LICENSEE shall provide Director with the applicable certified payroll records for all workers that will be assigned to the improvements or modifications. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker. LICENSEE shall provide, Director bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

If LICENSEE neglects, fails, or refuses to make such records available to Director for review, such occurrence shall constitute an event of default of this License and DISTRICT may, notwithstanding any other termination provisions contained herein, terminate this License.

23. RIGHT TO WORK AND MINIMUM WAGE LAWS (AMLC14.2 S)

In accordance with the United States Immigration Reform and Control Act of 1986, LICENSEE shall require its employees that directly or indirectly service or conduct activities on the License Area pursuant to the terms and conditions of this License, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. LICENSEE shall also require and verify that its contractors or any other persons servicing or conducting construction activities on the License Area pursuant to the terms and conditions of this License, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, LICENSEE shall pay no less than the greater of the

Federal or California Minimum Wage to all its employees that directly or indirectly service the License Area, in any manner whatsoever. LICENSEE shall require and verify that all its contractors or other persons servicing the License Area on behalf of the LICENSEE also pay their employees no less than the greater of the Federal or California Minimum Wage.

LICENSEE shall comply, and verify that its contractors comply, with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the License Area or terms and conditions of this License.

Notwithstanding the minimum wage requirements provided for in this clause, LICENSEE, where applicable, shall comply with the prevailing wage and related requirements pursuant to the provisions of Section 1773 of the Labor Code of the State of California.

24. INSPECTION (LG7 S)

DISTRICT, the Director or an authorized representative shall have the right at all reasonable times to inspect the License Area to determine LICENSEE's compliance with the provisions of this License.

25. TAXES AND ASSESSMENTS (LG9 S)

Should this License create a possessory interest which is subject to the payment of taxes levied on such interest, it is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable in connection with this License or other property used in connection with this License, shall be the full responsibility of LICENSEE, and LICENSEE shall cause said taxes and assessments to be paid promptly.

26. PARTIAL INVALIDITY (LG10 S)

If any term, covenant, condition, or provision of this License is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

27. WAIVER OF RIGHTS (LG11 S)

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants, or conditions of this License shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Agreement thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Agreement. Any waiver, in order to be effective, must be signed by the Party who's right or remedy is being waived.

28. ATTORNEY FEES (PMGE28.1 N)

In the event of a dispute between DISTRICT and LICENSEE concerning claims arising out of this License, or in any action or proceeding brought to enforce or interpret any provision of this License or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees.

29. CONDITION OF LICENSE AREA UPON TERMINATION (LG14 S)

Except as otherwise agreed to herein, upon the expiration or termination of this License, LICENSEE shall, at its sole cost and expense, redeliver possession of said License Area to DISTRICT in substantially the same condition that existed immediately prior to LICENSEE's entry thereon, reasonable wear and tear, flood, earthquakes, and any act of war, excepted. LICENSEE's return of possession to DISTRICT shall be to the Director's satisfaction and include removal of the Licensee's Equipment and Materials, unless otherwise agreed in writing by the Director.

LICENSEE shall obtain a CPP permit for the License Area work required under this Section and agrees to be fully responsible for all associated time and material costs, expenses and liability. In the event LICENSEE fails to perform its obligations under this Section, in addition to other rights or remedies available to DISTRICT, the Director, upon fifteen (15) days written notice to LICENSEE, at Director's option may cause said work to be performed and completed, and LICENSEE shall pay all the costs thereof, including but not limited to, the cost of labor (with overhead and burden rates), materials, and equipment, plus an administrative fee of fifteen percent (15%) of such costs, payable to DISTRICT. LICENSEE shall pay DISTRICT upon receipt of an invoice and substantiation for such costs, within ten (10) days of receipt.

30. ASSIGNMENT PROHIBITED (LG17 S)

LICENSEE understands that this License is not an interest in real property nor is it an assignable right. Any attempt to assign or otherwise transfer this License by LICENSEE, voluntarily or by operation of law, shall automatically terminate this License.

31. EVENTS OF DEFAULT AND REMEDIES (LG16.2 N)

- A. Events of Default. The occurrence of any one or more of the following events shall constitute a default hereunder by LICENSEE:
1. The failure by LICENSEE to make any payment of an Annual Use Fee or any other sum payable hereunder by LICENSEE, as and when due, where such failure shall continue for a period of thirty (30) days after written notice thereof from the Director to LICENSEE; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161, *et seq.*
 2. The failure or inability by LICENSEE to observe or perform any of the provisions of this License to be observed or performed by LICENSEE, other than specified above, where such failure shall continue for a period of thirty (30) days after written notice thereof from the Director to LICENSEE; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et seq.*; provided, further, that if the nature of such failure is such that it can be cured by LICENSEE but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then LICENSEE shall not be deemed to be in default if

LICENSEE shall commence such cure within said thirty (30) days, and thereafter diligently prosecutes such cure to completion.

3. In case of or in anticipation of bankruptcy, insolvency or financial difficulties:

- a. LICENSEE shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts or shall make a general assignment for the benefit of creditors.
- b. A case is commenced by or against LICENSEE under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against LICENSEE, the same is not dismissed within sixty (60) days.
- c. The appointment of a trustee or receiver to take possession of substantially all of LICENSEE's assets located at the License Area or of LICENSEE's interest in this License, where such seizure is not discharged within thirty (30) days; or
- d. LICENSEE's convening of a meeting of its creditors or any class thereof for the purpose of affecting a moratorium, or composition of its debts. In the event of any such default, neither this License nor any interests of LICENSEE in and to the License Area shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the DISTRICT hereunder or by law; provided, it shall be lawful for the DISTRICT to declare the term hereof ended and to re-enter the License Area and take possession thereof and remove all persons there from, and LICENSEE and its creditors (other than DISTRICT) shall have no further claim thereon or hereunder.

B. Remedies. In the event of any default by LICENSEE (after its receipt of written notice and the expiration of applicable grace and cure periods, if any), then, in addition to any other remedies available to DISTRICT at law or in equity, the following remedies may be exercised:

1. The Director may terminate this License and all rights of LICENSEE hereunder by giving written notice of such termination to LICENSEE. In the event that the Director shall so elect to terminate this License, then DISTRICT may recover from LICENSEE:
 - a. The worth at the time of termination of the unpaid rent and other charges, which had been earned as of the date of the termination hereof;

- b. The worth at the time of termination of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that LICENSEE proves could have been reasonably avoided;
- c. The worth at the time of termination of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that LICENSEE proves could be reasonably avoided;
- d. Any other amount necessary to compensate DISTRICT for all the detriment proximately caused by LICENSEE's failure to perform its obligations under this License or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the License Area, expense of re-letting, including necessary repair, renovation and alteration of the License Area, reasonable attorney fees, expert witness costs, and any other reasonable costs; and
- e. Any other amount that DISTRICT may by law hereafter be permitted to recover from LICENSEE to compensate DISTRICT for the detriment caused by LICENSEE's default.

The term "rent" as used herein shall be deemed to be and to mean the Annual Use Fee and all other sums required to be paid by LICENSEE pursuant to the terms of this License. All such sums, other than the Annual Use Fee, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in subparagraphs A.1 and A.2 above, the "worth at the time of termination" shall be computed by allowing interest at the maximum rate permitted by law. As used in subparagraph A.3 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of ten percent (10%) per annum.

- 2. Continue this License in effect without terminating LICENSEE's right to possession even though LICENSEE has breached this License and abandoned the License Area and to enforce all of DISTRICT's rights and remedies under this License, at law or in equity, including the right to recover the rent as it becomes due under this License; provided, however, that the Director may at any time thereafter elect to terminate this License

for such previous breach by notifying LICENSEE in writing that LICENSEE's right to possession of the License Area has been terminated.

Nothing in this Section shall be deemed to affect LICENSEE's indemnity of DISTRICT liability or liabilities based upon occurrences prior to the termination of this License for personal injuries or property damage under the indemnification clause or clauses contained in this License.

No delay or omission of DISTRICT or the Director to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by LICENSEE hereunder. The acceptance of DISTRICT of rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by LICENSEE of any provision thereof, other than the failure of LICENSEE to pay the particular rent or sum accepted, regardless of DISTRICT's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) a waiver of DISTRICT's right to exercise any remedy available to DISTRICT by virtue of such breach or default. No act or thing done by DISTRICT or DISTRICT's agents during the term of this License shall be deemed an acceptance of a surrender of the License Area, and no agreement to accept a surrender shall be valid unless in writing and signed by DISTRICT.

Unless otherwise provided in this License, any installment or rent due under this License or any other sums not paid to DISTRICT when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

All covenants and agreements to be performed by LICENSEE under any of the terms of this License shall be performed by LICENSEE at LICENSEE's sole cost and expenses and without any abatement of rent. If LICENSEE shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by LICENSEE, then in addition to any other remedies provided herein, DISTRICT may, but shall not be obligated to do so, and without waiving or releasing LICENSEE from any obligations of LICENSEE, make any such payment or perform any such act on LICENSEE's part to be made or performed as provided in this License or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by DISTRICT on LICENSEE's behalf shall not give rise to any responsibility of DISTRICT to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by DISTRICT in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by DISTRICT shall be deemed to be additional rent hereunder and shall be paid by LICENSEE with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this License.

32. NO RELOCATION ASSISTANCE (LG32.1 S)

This License shall not create any right in LICENSEE or any of the LICENSEE Parties to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*) or similar Laws upon or after the expiration or sooner termination of this License.

33. GOVERNING LAW AND VENUE (LG28.3 S)

This License has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this License, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

34. NON-DISCRIMINATION (LG8.3 S)

LICENSEE agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, disability, or national origin in employment practices and in the activities conducted pursuant to this License.

35. PUBLIC RECORDS (LG25.2 S)

Any and all written information submitted to and/or obtained by DISTRICT from LICENSEE or any other person or entity having to do with or related to this License and/or the License Area, either pursuant to this License or otherwise, at the option of DISTRICT, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, *et seq.*) as now in force or hereafter amended, or any in substitution thereof, or otherwise made available to the public and LICENSEE hereby waives, for itself, its agents, employees, sublessees, and any person claiming by, through or under LICENSEE, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold DISTRICT and County harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by LICENSEE or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

36. LICENSEE QUITCLAIM UPON TERMINATION

Upon termination of this License for any reason, including default by LICENSEE, LICENSEE shall within thirty (30) days of receipt of a written demand, deliver to the Director a quitclaim deed or other instrument, executed by LICENSEE with notarized signature, quitclaiming any right, title, and interest of LICENSEE in the License Area. Should LICENSEE fail or refuse to deliver the required deed or termination agreement to the Director, the Director may prepare and record a notice reciting the failure of LICENSEE to execute, acknowledge, and deliver such instrument and said notice shall be conclusive evidence of the termination of this License and of all rights of LICENSEE or those claiming under LICENSEE in and to the License Area.

37. SURVIVAL OF TERMS

The terms, covenants, and conditions in Section 8 (Maintenance of License Area); Section 14 (Hold Harmless); Section 15 (Hazardous Materials); Section 16 (Best Management Practices); Section 19 (Compliance with Regulatory Authorities); and Section 36 (LICENSEE Quitclaim upon Termination), shall survive the expiration or sooner termination of this License.

38. AUTHORITY (PMES20.1S)

The Parties to this License represent and warrant that this License has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed this License the day and year first above written.

Approved as to Form
Office of the County Counsel
Orange County, California

DISTRICT
ORANGE COUNTY FLOOD CONTROL
DISTRICT, a body corporate and politic

By: Michael A. Haubert
Deputy

By: _____
Chairman of the Board of Supervisors
County of Orange, California

Date: 1/12/24

Signed and certified that a copy of this agreement
has been delivered to the
Chairman of the Board per G.C. Sec. 25103, Reso
79-1535

ATTEST:

Robin Stieler, Clerk of the Board
Orange County Flood Control District
County of Orange, California

LICENSEE's signature on following page.

Attachment H

Parking License – FCD, LLC (Honda Center)
Santa Ana River Parcel E01-1357

LICENSEE

FCD, LLC,

a California limited liability company

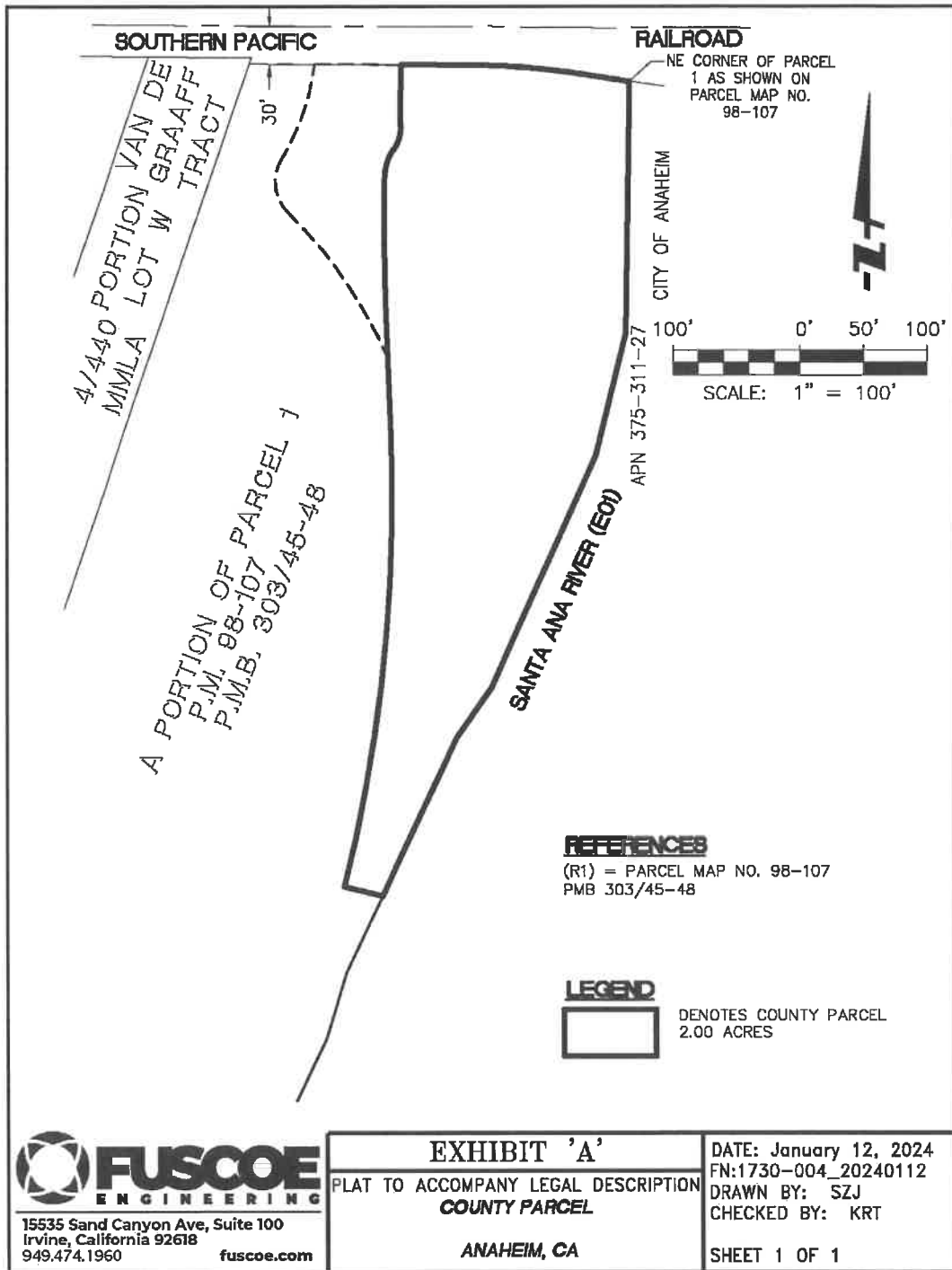
By:



William Foltz

Chief Executive Officer

EXHIBIT A
DEPICTION OF THE LICENSE AREA



M:\MAPPING\1730\004\LEGALS\OCFCD-2022\1730-004-OCFCD-EXCP_20240112.DWG (01-12-24)

**ATTACHMENT 1
BMP FACT SHEETS**

IC15. PARKING AND STORAGE AREA MAINTENANCE

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner¹. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	x
Metals	x
Bacteria	x
Oil & Grease	x
Organics & Toxicants	x
Pesticides	x
Oxygen Demanding	x

MINIMUM BEST MANAGEMENT PRACTICES
Pollution Prevention/Good Housekeeping

- Conduct regular cleaning.
- Properly collect and dispose of wash water.
- Keep the parking and storage areas clean and orderly.
- Use absorbent materials and properly dispose of them when cleaning heavy oily deposits.
- When conducting surface repair work cover materials and clean paintbrushes and tools appropriately.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. **Conduct regular cleaning.**
 - Sweeping or vacuuming the parking facility is encouraged over other methods.
 - Sweep all parking lots at least once before the onset of the wet season.
 - Establish frequency of sweeping based on usage and field observations of waste accumulation.
2. **Properly collect and dispose of wash water.**
 - Block the storm drain or contain runoff.
 - Wash water should be collected and pumped to the sanitary sewer or discharged to a pervious surface, do not allow wash water to enter storm drains. Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer.
 - Dispose of parking lot sweeping debris and dirt at a landfill.
3. **Consider use of source treatment BMPs to treat runoff.**
 - Allow sheet runoff to flow into biofilters (vegetated strip and swale) and/or infiltration devices.
 - Utilize sand filters or oleophilic collectors for oily waste in low quantities.

¹ EPA "Preliminary Data Summary of Urban Stormwater Best Management Practices"

4. **Keep the parking and storage areas clean and orderly.**
 - Clean out and cover litter receptacles frequently to prevent spillage.
 - Remove debris in a timely fashion.

OPTIONAL:

 - Post "No Littering" signs.
5. **When cleaning heavy oily deposits:**
 - If possible, clean oily spots with absorbent materials.
 - Do not allow discharges to the storm drain.
 - Appropriately dispose of spilled materials and absorbents.
6. **When conducting surface repair work:**
 - Pre-heat, transfer or load hot bituminous material away from storm drain inlets.
 - Conduct surface repair work during dry weather to prevent contamination from contacting stormwater runoff.
 - Cover and seal nearby storm drain inlets (with waterproof material or mesh) and manholes before applying seal coat, slurry seal, etc. Leave covers in place until job is complete and clean any debris for proper disposal.
 - To avoid runoff, use only as much water as necessary for dust control.
 - Use drip pans or absorbent material to catch drips from paving equipment that is not in use. Dispose of collected material and absorbents properly.
7. **Conduct inspections on a regular basis.**
 - Designate personnel to conduct inspections of the parking facilities and stormwater conveyance systems associated with them.
 - Inspect cleaning equipment/sweepers for leaks on a regular basis.
8. **Keep accurate maintenance logs to evaluate materials removed/stored and improvements made.**
9. **Arrange rooftop drains to prevent drainage directly onto paved surfaces.**

Training

1. **Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.**
2. **Train employees on proper spill containment and cleanup.**
 - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
 - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
 - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. **Provide regular training to field employees and/or contractors regarding cleaning of paved areas and proper operation of equipment.**
4. **Establish a regular training schedule, train all new employees, and conduct annual refresher training.**
5. **Use a training log or similar method to document training.**

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean"

References

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California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser & McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

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Model Urban Runoff Program: A How-To Guide for Developing Urban Runoff Programs for Small Municipalities. Prepared by City of Monterey, City of Santa Cruz, California Coastal Commission, Monterey Bay National Marine Sanctuary, Association of Monterey Bay Area Governments, Woodward-Clyde, Central Coast Regional Water Quality Control Board. July 1998 (Revised February 2002 by the California Coastal Commission).

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For additional information contact:

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