RECORDED AT THE REQUEST OF AND WHEN RECORDED MAIL TO:

East Orange County Water District
Attn: General Manager
185 N. McPherson Rd.
Orange, CA 92869

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

Assessor's Parcel Number: 104-290-26
Location: Incorporated City of Tustin
Facility Name: Peters Canyon
Facility Parcel No.:

DOCUMENTARY TRANSFER TAX $ _____

__ Computed on the consideration or value of property conveyed
__ Exempt per Revenue & Taxation Code Section 11922
__ Exempt from Recording Fees per Govt. Code Section 27383

EASEMENT DEED AND AGREEMENT

This EASEMENT DEED AND AGREEMENT is made _____, 2021 by and between:

COUNTY OF ORANGE,
a political subdivision of the State of California,
hereinafter referred to as "**COUNTY**,"

and

East Orange County Water District, a county water district, hereinafter referred to as "**GRANTEE**," its, successor and assigns,

COUNTY and GRANTEE may sometimes hereinafter be individually referred to as **"Party"** or jointly as **"Parties".**

RECITALS

A. WHEREAS, GRANTEE, directly or by way of its predecessors the Orange County Sanitation District ("OCSD"), has used an existing roadway over the COUNTY's property located at Bent Tree Road (1) to construct, operate, maintain, and repair a sewer pipeline in the roadway; and (2) to access other portions of that sewer pipeline located on adjacent properties **("GRANTEE Sewer Pipelines**") since the COUNTY turned such sewer system over to OCSD in 1968;

B. WHEREAS, the COUNTY roadway provides both vehicular access to GRANTEE's Sewer Pipelines on adjacent properties and right-of-way for existing sewer pipeline; and

C. GRANTEE now desires to secure and document its easement with the COUNTY for the continued construction, maintenance, repair, and replacement of, and vehicular access to, GRANTEE's Sewer Pipelines both on and adjacent to the Easement Area.

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of the above and for good and valuable consideration receipt of which is hereby acknowledged, the COUNTY does hereby grant to GRANTEE a non-exclusive easement ("Easement") for (1) the construction, operation, maintenance, repair, removal, replacement, or reconstruction of sanitary sewer pipelines ("**Grantee's Pipelines**") and (2) to provide vehicular access to GRANTEE's Pipeline in, on, over, upon and across that certain real property described in "**Exhibit A**," and illustrated in "**Exhibit B,**" (hereinafter referred to as "**Easement Area**") which exhibits are attached hereto and made a part hereof. COUNTY and GRANTEE may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**".

GRANTEE'S rights with respect to vehicular access shall include the use of surface improvements including roadways, gates and landscaping ("**Facilities**") and shall include reasonable access to the Easement Area for the purpose of exercising the rights herein granted. GRANTEE's rights granted herein may be exercised, at GRANTEE's direction, by its officials, officers, employees, agents, contractors, and subcontractors, as necessary to accomplish the tasks permitted herein.

It is understood and agreed by the Parties hereto and their successors and assigns that the easement and right of way herein granted in this easement deed ("**Easement Deed**") shall be subject to the following terms, conditions, and reservations:

1. INCORPORATION OF THE RECITALS

The above-referenced Recitals are by this reference incorporated herein.

2. CONSTRUCTION AND MAINTENANCE (PMES2.1S)

GRANTEE shall coordinate any necessary construction or maintenance in the Easement Area with the other easement holders, and have all construction and/or maintenance plans approved in writing by the Director of OC Parks, or designee, (hereinafter referred to as "Director") prior to commencement of any work in, on or about the Easement Area; and upon completion of any such work, GRANTEE shall immediately notify Director in writing of such completion.

Director's approval of GRANTEE's construction and/or maintenance 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. COUNTY is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of GRANTEE's construction and/or maintenance plans. Director will rely on the professional expertise of the Engineer of Record when approving GRANTEE's construction and/or maintenance plans.

GRANTEE shall have no responsibility for the maintenance of the roadway, provided GRANTEE's use remains de minimis and limited to use for only periodic sewer maintenance no more than four times per year, plus that needed for completing occasional repairs and/or replacements. Nothing in the foregoing limitation, however, shall relieve GRANTEE from the obligation to repair the roadway for damages, beyond normal wear and tear, caused by its construction or repair operations.

Should it be necessary for GRANTEE to conduct any construction, replacement, reconstruction, repair, maintenance, or excavation activities or otherwise disturb the surface of the Easement Area, GRANTEE agrees to notify Director in writing sixty (60) days in advance of such planned activities, obtain Director's written approval of all plans and obtain a County Property Permit for construction, from COUNTY with payment of normal processing fees therefor and shall provide evidence of adequate insurance coverage prior to the commencement of any such activities. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation or in conducting routine maintenance activities which do

not involve disturbance of the surface area. For emergency situations, GRANTEE shall not be required to provide 60 days notice, but shall provide notice as soon as possible, no later than the end of the next business day. GRANTEE further agrees that any excavation shall be made in such a manner as will cause the least injury to the surface of the ground and any improvements and/or landscaping around such excavation, and that the earth so removed shall be replaced and the surface of the ground and any improvements and/or landscaping around such excavation, damaged shall be promptly restored by GRANTEE at its expense to the same condition as existed prior to excavation, to Director's satisfaction.

3. ABANDONMENT (PMES3.1S)

GRANTEE agrees that in the event GRANTEE abandons its sanitary sewer facilities in and adjacent to the Easement Area (i.e., GRANTEE's Pipeline) for a continuous period of more than three (3) years without written notice from GRANTEE to COUNTY of the circumstances affecting such suspension and of GRANTEE'S intention to resume usage of the said sanitary sewer facilities, GRANTEE shall, at Director's request and at no cost to COUNTY, abandon its use of this Easement. In conjunction with such abandonment, GRANTEE shall take all reasonable steps to abandon any pipeline in-place, or have them removed, whichever is required by Director, and restore the Easement Area to the condition that it existed before the granting of this Easement Deed, to the Director's satisfaction.

GRANTEE shall also execute and deliver to Director, within ninety (90) days of such abandonment, for recordation in the Official Records of Orange County, California, a Quitclaim Deed sufficient to remove the encumbrance of this Easement Deed from title.

4. ACCESS (N)

To the extent areas of the Easement Area are behind gates, GRANTEE shall use a lock on the gates that access the Easement Area which shall be utilized in a fashion (e.g. daisy-chained) that does not preclude access to other easement holders. Grantee shall insure that the gates remain locked at all times except upon GRANTEE's entrance to or exit from the Easement Area. GRANTEE shall not allow members of the public to access such areas of the Easement Area. GRANTEE shall not park any vehicle(s) within the Easement Area, except as intermittently necessary for the maintenance, repair, or other authorized activities relative to its sanitary sewer facilities and shall restrict vehicular speed to ten (10) miles per hour within the Easement Area. These restrictions shall not apply within those areas of the Easements located on Bent Tree Road or Shady Canyon Road, though GRANTEE shall not unreasonably block the flow of traffic on either of these roads.

5. COMPLIANCE WITH REGULATORY AUTHORITIES (PMES6.1S)

GRANTEE shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits, and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area, which arise from GRANTEE'S use of or performance of any activities permitted to be conducted in, on, over, or across the Easement Area.

In addition, GRANTEE shall ensure that all construction in the Easement Area is performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits applicable to the construction, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the waters of the state.

No approvals or consents given hereunder by COUNTY, as a Party to this Easement Deed, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

6. HOLD HARMLESS (PMES7.1S)

GRANTEE hereby releases and waives all claims and recourse against COUNTY its successors and assigns, 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 GRANTEE's use of the Easement Area as described in this Easement Deed, except claims arising from the concurrent active or sole negligence of COUNTY, its officers, agents, employees and contractors.

GRANTEE hereby agrees to indemnify, defend (with counsel approved by COUNTY), and hold harmless, COUNTY, its elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of GRANTEE's use of, operations, or activities conducted in, on or over the Easement Area, and/or the exercise of the rights under this Easement Deed by GRANTEE, its agents, officers, employees, invitees or licensees, except for liability arising out of the concurrent active or sole negligence of COUNTY, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If COUNTY is named as co-defendant in a lawsuit related to GRANTEE's use of this Easement, GRANTEE shall notify COUNTY of such fact and shall represent COUNTY in such legal action unless COUNTY undertakes to represent itself as co-defendant in such legal action, in which event, GRANTEE shall pay to COUNTY its litigation costs, expenses, and attorneys' fees. . If judgment is entered against COUNTY and GRANTEE by a court of competent jurisdiction because of the concurrent active negligence of COUNTY and GRANTEE, COUNTY and GRANTEE agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. For purposes of this Section, GRANTEE's use shall include any use by its officials, officers, employees, agents, contractors or subcontractors performing work for GRANTEE on or near the Easement Area.

GRANTEE 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.*

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

7. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES8.1S)

GRANTEE shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, or used in or about the Easement Area, with the exception of sewage or chemicals and/or other such products if reasonably necessary for the cleaning, maintenance, repair, construction, or reconstruction of the sanitary sewer line. If GRANTEE breaches the obligations stated herein, or if contamination of the Easement Area by Hazardous Material otherwise occurs for which GRANTEE is legally liable to COUNTY for damage resulting therefrom, then GRANTEE shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, and its elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Easement Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) which arise during or after GRANTEE'S use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material being present in the soil or ground water under the Easement Area. GRANTEE shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the

Easement Area to its condition prior to the introduction of such Hazardous Material by GRANTEE, provided GRANTEE shall first have obtained Director's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material, or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, COUNTY acting in its governmental capacity, the State of California, or the United States government

8. RESERVATIONS (PMES9.1S)

COUNTY hereby reserves for itself and its successors and assigns, such surface, subsurface and aerial rights in the Easement Area as will not unreasonably interfere with or prohibit the use by GRANTEE of the rights and easement herein granted.

9. CONVEYANCE SUBJECT TO EXISTING INTERESTS (PMES10.1S)

This Easement Deed is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Easement Area, and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to GRANTEE of rights in the Easement Area which exceed those owned by COUNTY, or any representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or COUNTY'S interest therein.

10. TAXES AND ASSESSMENTS (PMES11.2S)

This Easement Deed may 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 upon the Easement Area or upon fixtures, equipment, or other property installed, constructed or used by GRANTEE thereon in connection with this Easement Deed, shall be the full responsibility of GRANTEE, and GRANTEE shall cause said taxes and assessments to be paid promptly when due.

11. NOTICES (PMES12.1S)

All notices, documents, correspondence and communications concerning this Easement Deed shall be addressed as set forth in this Section, 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 twenty-four (24) hours after mailing. Each 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 facsimile and so given shall be deemed to have been given upon receipt if provided by personal delivery; or if by facsimile on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To COUNTY:

County of Orange
c/o CEO/Real Estate
RE: Peter's Canyon 104-290-19
P.O. Box 4048
Santa Ana, CA 92702-4048

To GRANTEE:

East Orange County Water District
c/o General Manager
185 N. McPherson
Orange, CA 92869

12. VENUE (PMES13.1S)

The Parties hereto agree that this Easement Deed has been negotiated and executed in the state of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Easement Deed, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

13. WAIVER OF RIGHTS (PMES14.1S)

The failure of COUNTY to insist upon strict performance of any of the terms, covenants, or conditions of this Easement Deed shall not be deemed a waiver of any right or remedy that COUNTY 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 Easement Deed thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Easement Deed.

14. SEVERABILITY (PMES15.1S)

If any term, covenant, condition, or provision of this Easement Deed 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.

15. ATTORNEY FEES (PMES16.1S)

In any action or proceeding brought to enforce or interpret any provision of this Easement Deed, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

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16. SUCCESSORS AND ASSIGNS (PMES18.1S)

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

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

By: Michael A. Haubert
Digitally signed by Michael A. Haubert
DN: cn=Michael A. Haubert, o=County of Orange, ou=County Counsel, email=michael.haubert@coco.ocgov.com, c=US
Date: 2021.01.05 09:22:31 -08'00'
Deputy

Date: 1/5/2021

COUNTY

COUNTY OF ORANGE

By: _____
Name:
Title:
Pursuant to Section 1-4-225 of the Codified Ordinances of the County of Orange

GRANTEE

EAST ORANGE COUNTY WATER DISTRICT

By: _____
David Youngblood, General Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20 ____ before me, _____, personally
(insert name/title of the officer)

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

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

WITNESS my hand and official seal.

(Seal) Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20 ____ before me, _____, personally
(insert name/title of the officer)

appeared _____,

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)