

## AGREEMENT

This AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, 2020 (“**Effective Date**”) by and between ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, (“**DISTRICT**”) and the CITY OF LAGUNA BEACH (“**CITY**”), a municipal corporation. DISTRICT and CITY may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

### RECITALS

- A. On May 15, 2019, the CITY, as the lead agency of the Laguna Canyon Channel Facility I02 Improvements project under the California Environmental Quality Act (CEQA), adopted the Final Mitigated Negative Declaration (SCH 2019039031) and approved its related Coastal Development Permit 19-3489 with updated aesthetic improvements on December 4, 2019. This project includes demolition and reconstruction of a DISTRICT Laguna Canyon Channel Facility I02 (Channel) transition structure at Beach Street within the same footprint and replacement of existing County Fencing (defined below) with installation of CITY Fencing (defined below) from Channel sta 10+20.30 to sta 10+93.30. DISTRICT reviewed and found said work acceptable under County Property Permit No. 2018-00602 and related rider permits, provided the Parties enter into this Agreement to establish each Party’s respective post-construction operation and maintenance responsibilities.
- B. On October 23, 2017, the CITY, as the lead agency of the Laguna Beach Village Entrance Project under CEQA, adopted Mitigated Negative Declaration (SCH 2017101049). which project consists of: replacement of a vehicle bridge, refurbishment of a pedestrian bridge, construction of a new bridge crossing, widening of a sidewalk over the Channel at Forest Avenue, replacement of and existing segment of County fencing (defined below) with installation of CITY Fencing (defined below) to include locking gates, plantings, installation of nine water quality basins with entry points into the Channel. DISTRICT reviewed and found said work acceptable under County Property Permit No. 2018-00211 and related rider permits, provided the Parties entered into this Agreement to establish CITY’s continual maintenance and ongoing operation of the aforementioned CITY installations and improvements.
- C. This Agreement shall set forth the Parties understanding with respect to their respective, joint use of certain Channel parcels illustrated on “**Exhibit A,**” attached hereto and by this reference made a part hereof (“**Subject Property**”), to ensure CITY’s use will not impede flood control operations, DISTRICT’s exercise of the Orange County Flood Control Act, California uncodified Water Code Act 5682, section 2, and its property interest therein.
- D. The Agreement further reflects the Parties’ shared objective that their respective work within the Subject Property will not unreasonably interfere with each other’s exercise of their respective rights and that each will endeavor to minimize the need in the future to impact the other’s facilities. Therefore, the Parties intend this Agreement to enable them to work collaboratively toward mitigating such impacts and to establish a mechanism by which they may cost-share and reimburse each other for related costs incurred in accordance with the terms herein.
- E. The Parties acknowledge the parcels that make up the Subject Area are among the locations covered

in that report of the Laguna Canyon Flood Mitigation Task Force entitled “City of Laguna Beach Laguna Canyon Flood Mitigation Task Force Report dated November 10, 2011.” The Parties further acknowledge the Subject Area lies upon land for which the CITY is recognized by the Federal Emergency Management Agency to be the Floodplain Administrator.

- F. The Parties acknowledge that this Agreement and its terms shall not be construed as a waiver of any right or remedy DISTRICT may have at the time entered, including but not limited to, any right or remedy concerning CITY use of the Subject Area found to undermine the structural integrity of the Channel. Nothing contained herein shall be construed to imply any representation or warranty, either express or implied, of DISTRICT relating to the nature or condition of the easement area.

**NOW, THEREFORE, DISTRICT and CITY agree:**

The above Recitals are fully incorporated herein by this reference as though set forth in full.

**1. DEFINITIONS (LA2.1 S)**

For the purposes of this Agreement, the following words are defined as follows, unless otherwise apparent from context:

- a. **“Channel”** means DISTRICT’s Laguna Canyon Channel (I02) flood control facility that parallels Laguna Canyon Road, State Route-133
- b. **“CITY Project”** shall mean collectively:
  - i. the City’s Laguna Canyon Channel Facility I02 Improvements project, reviewed and found acceptable under County Property Permit No. 2018-00602 and related rider permits, which consists of demolition and reconstruction of a Channel transition structure at Beach Street within the same footprint, and replacement of existing County Fencing (defined below) with installation of CITY Fencing (defined below) from Channel sta 10+20.30 to sta 10+93.30; and,
  - ii. the City’s Laguna Beach Village Entrance project, reviewed and found acceptable under County Property Permit No. 2018-00211 and related rider permits, which project consists of: replacement of a vehicle bridge, refurbishment of a pedestrian bridge, construction of a new bridge crossing, widening of a sidewalk over the Channel at Forest Avenue, replacement of existing fencing including locking gates, plantings, installation of nine water quality basins with entry points into the Channel.
- c. **“CITY Fencing”** means CITY-owned fencing installed for the CITY Project in accordance with the Permits (defined below) which have been found to not interfere with the use of the property for the purposes of the DISTRICT, provided that the CITY assumes all operation and maintenance responsibilities therefor in accordance with the terms herein.
- d. **“County”** means the County of Orange, a political subdivision of the state of California.

- e. **“County Fencing”** means the DISTRICT or County installed fencing posts and gates within the Subject Property that meets specifications set forth in County’s OC Public Works Department Standard Plans or as otherwise adopted pursuant the County of Orange, Codified Ordinances Sections 6-2-12 and 6-2-13.
- f. **“Director”** means Orange County’s Director of OC Public Works, or any successor agency thereto, or Director’s designee.
- g. **“Installation”** means those CITY-owned and/or CITY-maintained (as defined hereinbelow) facilities, equipment or improvements within the Subject Area: including but not limited to, bridges, footings, rails, fencing, posts, gates, CITY Fencing, plantings, landscaping, root barriers, irrigation, water quality basin entry points into the Channel, utility lines, and parking lot facilities.
- h. **“Permits”** shall collectively mean those County Property Permits referenced herein, e.g. 2018-00602 and 2018-00211 and their respective riders, extensions or amendments.

## **2. TERM**

The initial term of this Agreement shall be for ten (10) years, commencing on the Effective Date, unless terminated as provided herein. This Agreement will automatically renew for an additional one (1) year term upon the same covenants, terms and conditions unless either Party notifies the other in writing of its intention to terminate this Agreement at least one hundred eighty (180) days prior to the expiration of the initial 10-year term. If one hundred eighty (180) days prior to the end of the one-year extended term, neither Party has given the other notification of its intention to terminate, this Agreement shall continue in full force and effect upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either Party by giving the other Party written notice of its intention to so terminate at least one hundred eighty (180) days prior to the end of any such annual term.

## **3. DEFAULT AND TERMINATION**

In the event of CITY’s breach of its obligations herein, DISTRICT shall provide written notification to the CITY of such breach and CITY shall have twenty (20) days after receipt of written notification to begin work to cure said breach. If CITY fails to cure such breach within that 20-day period or if DISTRICT and CITY do not otherwise resolve the matter, DISTRICT may, at its sole discretion, take any of the following actions or combination thereof:

- a. Waive CITY’s breach of the Agreement
- b. Terminate this Agreement
- c. Remedy CITY’s breach and charge CITY the cost of that remedial action as set forth herein
- d. Take legal action, in law or in equity, to remedy any default, to recover damages for any breach of this Agreement; to compel specific performance of this Agreement; or to obtain injunctive relief, a declaratory judgment or any other equitable remedy consistent with the purposes of this Agreement.

**4. CITY USE**

CITY agrees to refrain from using the Subject Area for any other purpose than that set forth in the Permits and this Agreement, to refrain from engaging in all activities that would interfere with the use of the Subject Area for the purposes set forth in the Permits, and to prohibit third parties from engaging in all such activities within any part of the Subject Area, including third party collocation. CITY further agrees not to create, or permit to be created, any public or private nuisance with the Subject Area. In addition, CITY agrees to comply with all government laws and regulations in connection with CITY's use of the Subject Area and agrees that CITY's use of the Subject Area shall be subject to all terms, conditions set forth in this Agreement, in addition to any other agreements between the CITY, County and DISTRICT regarding use of the Subject Area.

CITY acknowledges that the Subject Area encompasses a portion of DISTRICT's Channel. CITY further acknowledges that the primary statutory purpose of the Subject Area is for flood control purposes. CITY promises and covenants to refrain from conducting, or permitting to be conducted, all activities within the Subject Area, of any sort, that might have the potential to, or would, interfere with the DISTRICT's flood control operations and maintenance activities relating to, bordering or within the Channel.

CITY shall be required, at CITY's sole cost and expense, to obtain and maintain at all times during the term of this Agreement, all permits, certificates, approvals and/or licenses for the CITY Project or Installations which may be required by any federal, state, county, or other governmental agency, department or bureaucracy having jurisdiction over CITY, or CITY's operations in connection with the Subject Area as set forth in this Agreement and the Permits. No permit, approval or consent given hereunder by DISTRICT shall affect or limit CITY'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.

**5. DISTRICT USE**

DISTRICT reserves for itself and its successors and assigns those rights necessary for the proper maintenance and operation of the Channel, and to permit any steps to be taken which the Director deems necessary or desirable to maintain, repair, improve, modify or reconstruct said facilities or such operations. The rights reserved to DISTRICT in this section, or any other section of this Agreement, shall be exercised by the Director, at the Director's sole discretion. Neither DISTRICT nor any agent, employee, contractor, operator or any other person or entity acting for or on behalf of DISTRICT shall incur any liability, including, but not limited to, loss of business, damage, destruction or relocation costs of CITY's Project, Installations or impaired utility of the Subject Area for any action undertaken in the maintenance, repair, operation, improvement, modification or reconstruction of said flood control facilities. CITY agrees that should any action undertaken in the maintenance, repair, operation, improvement, modification or reconstruction of said Channel flood control facilities require the relocation, removal and/or replacement of CITY's Installations either on a temporary or permanent basis, CITY shall incur all costs and expenses associated therewith. Except in an emergency situation, Director agrees to provide CITY with a minimum of one hundred eighty (180) days' written notice prior to the commencement of any maintenance, repair, operation, improvement, modification or reconstruction of said Channel flood control facilities that may require the relocation or removal of any of CITY's Installations.

**6. CITY ACTIVITIES**

CITY's activities within the Subject Area, including construction, the installation of any systems, facilities or equipment, and/or maintenance and plans for all such activities, are subject to approval in writing by the Director through Orange County Public Works' Property Permit department, which approval shall not unreasonably be withheld provided that such activities do not have the potential to, or would, interfere with the DISTRICT's flood control operations and maintenance activities relating to, bordering or within the Channel. CITY shall render all normal processing fees therefor, prior to commencement of any work in, on, over, under, across or about the Subject Area; and upon completion of any such work, CITY shall immediately notify Director in writing of such completion.

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

Should it be necessary for CITY to conduct any construction, inspection or maintenance activities requiring the disturbance of the surface of the Subject Area or requiring the use of any specialized vehicles or equipment, including but not limited to cranes, within, over, under or about the Subject Area subsequent to the completion of CITY Project, CITY agrees to notify Director in writing no fewer than sixty (60) days in advance of such planned activities, and obtain Director's written approval of all plans by obtaining a permit through CPP with payment of normal processing fees therefor, prior to 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 that do not involve use of DISTRICT property outside of the Subject Area. However, CITY shall notify Director within ten (10) days following commencement of any emergency repair work, and if so requested by Director, CITY shall secure a permit through CPP for the purpose of documenting the emergency work.

**7. MAINTENANCE/OPERATIONS**

CITY shall, at no cost to DISTRICT, keep and maintain the Subject Area (other than the Channel and District-owned facilities) and all CITY Installations of any kind in good and safe condition and in substantial repair, and shall at all times conduct all operations thereon in a safe and responsible manner. It shall be CITY's responsibility to take all necessary actions to maintain the Subject Area in such condition to not interfere with the operation and flood control purposes of DISTRICT's Channel. CITY, at no cost to District, shall perform all Installation operation and maintenance responsibilities, which shall include but is not limited to:

- a. Maintaining plantings and landscaping at a minimum of 18" from the Channel for a visual observation space at the top of the Channel, as set forth in the Permits;
- b. Maintain all trees within 10' of the Channel wall, with root pruning and root barriers on the portion of root adjacent to the Channel as required by the Permits;
- c. Perform its operation within the Subject Area in ways to reduce leaf litter and debris from

entering the Channel and to address other related, water quality issues when notified in writing by the Director of a matter to address;

- d. Performing graffiti clean-up on Installations and property made accessible via those Installations;
- e. Maintain secure bridges, railing, fencing, parking stops and gates to prevent Channel entry by the public; and,
- f. Accommodate drainage, run-off from adjacent parcels, hills, road to the Channel.

Except for flood control operations and maintenance of the Channel and DISTRICT-owned facilities, DISTRICT shall have no obligation to maintain or make any repairs or replacements to any area in, on over under or about the Subject Area. In the event CITY fails to maintain, make repairs, remove and/ or replace Installations, which affect DISTRICT's ability to maintain the Channel or provide flood control, Director may notify the CITY of the needed correction(s). Unless otherwise agreed upon in writing, within five (5) days of receipt, CITY shall correct the identified deficiencies or provided the Director evidence of CITY's having commenced the necessary corrective measure(s). Should, in the Director's sole discretion, the CITY fail to correct the situation within a reasonable time, Director may notify the CITY and the DISTRICT will undertake and complete the necessary work. In such a case, the CITY shall remain fully responsible and liable for the repair, replacement and corrective measures; and, shall pay DISTRICT within ten (10) days of receipt of an invoice to reimburse DISTRICT's associated cost, including but not limited to, the cost of labor (overtime, overhead and burden), materials, and equipment, with a fifteen percent (15%) administration fee, and any collections costs. CITY agrees to indemnify, hold harmless, protect and defend DISTRICT and County pursuant to the terms in Section 10, from claims arising from DISTRICT performing any of CITY's obligations under this AGREEMENT. DISTRICT's election to self-perform corrective work under this provision shall not bar DISTRICT from availing itself of other remedies available under law, equity or contract, including other remedies made available by this Agreement.

CITY shall also promptly, at its sole cost and expense, repair or replace to their condition prior to damage or destruction, any facilities, equipment or improvements on DISTRICT'S property located under, over, within or adjacent to the Subject Area that are damaged or destroyed by CITY directed, conducted or sponsored activities under this Agreement. If CITY fails to perform any such repair or restoration within thirty (30) days following written notice from Director to CITY, or as such repair or restoration period may be extended in writing by Director, DISTRICT may make the necessary repair or restoration 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 CITY within ten (10) days of invoice by the DISTRICT. DISTRICT's election to self-perform corrective work under this provision shall not bar DISTRICT from availing itself of other remedies available under law, equity or contract, including other remedies made available by this Agreement.

The Parties agree to cooperate in the maintenance and operation of their respective facilities within the Subject Area by coordinating such activities. CITY shall designate in writing a representative ("**Site Representative**") to Director. The Site Representative shall be responsible for the day-to-day operation and level of maintenance and general order of the Subject Area and any of CITY's Installations thereon. The Site Representative shall contact OC Public Works'/Operations & Maintenance by calling 714-955-

0200 for any CITY activities that may affect DISTRICT's use of the Subject Area at least 72 hours in advance or as otherwise mutually agreed upon in writing. Likewise, DISTRICT shall contact CITY's Site Representative for any DISTRICT activities that may affect CITY's use of the Subject Area at least 72 hours in advance or as otherwise mutually agreed upon in writing.

## **8. DISPOSITION OF INSTALLATIONS**

No later than the expiration or termination of this Agreement, CITY shall at CITY's sole cost and expense, and to Director's satisfaction, remove and/or abandon in place in compliance with state and federal law all Installations located within the Subject Area and replace the County Fencing along the Channel with a fence that meets specifications as then set forth in County's OC Public Works Department Standard Plans or as otherwise adopted pursuant the County of Orange, Codified Ordinances Sections 6-2-12 and 6-2-13. In the event CITY fails to perform its obligations under this section, in addition to all other rights or remedies available to DISTRICT, Director, at Director's option after providing fifteen (15) days written notice to CITY, may cause the removal of any of CITY's Installations from the Subject Area, and invoice to the CITY 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. CITY shall pay said invoiced costs within thirty (30) days of its receipt.

## **9. RELOCATION OF CITY INSTALLATIONS**

CITY agrees that in the event Director determines that a CITY Installation, including any trees, will interfere with the operation, maintenance, replacement, or improvement of DISTRICT'S Channel, flood control facilities or property CITY shall, within ninety (90) days of receipt of written notice from Director, and at CITY's sole cost and expense arrange for the removal of the Installation from the Subject Area and any reinstallation within the Subject Area, if applicable and appropriate. If, in the Director's opinion, any such interference can be cured by CITY relocating or rearranging and such relocation or rearrangement would not interfere in any way with the DISTRICT's ability to fully implement the DISTRICT's duties and responsibilities pursuant to the Orange County Flood Control Act or otherwise become a material imposition on DISTRICT, DISTRICT agrees to amend this Agreement to apply to the substitute Subject Area. The costs and expenses of removal and, if applicable, relocation of CITY's Installations shall be for borne by CITY.

## **10. HOLD HARMLESS**

CITY acknowledges the Subject Area is over, upon and about the Channel and may be subject to all hazards associated with flood conditions. CITY agrees to assume all risks, financial or otherwise, associated with CITY's decisions to engage in activities over, on and about the Subject Area caused by or associated with DISTRICT's flood control operations and the Channel.

CITY 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 Agreement, including any damage to or interruption of use of any of CITY's equipment or facilities placed in, on, or about the Subject Area, caused by erosion, flood, or flood overflow conditions of the Channel, 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.

CITY agrees to indemnify, defend with counsel reasonably approved in writing by DISTRICT's Board of Supervisors, and hold harmless DISTRICT and the COUNTY and their elected and appointed officials, employees, and agents ("DISTRICT/COUNTY INDEMNITEES") and their property from all loss, injury, liability, damages, claims, costs and expenses, whether incurred by or made against DISTRICT, COUNTY or any of the DISTRICT/COUNTY INDEMNITEES (including attorney's fees and court costs) in connection with (i) breach of this AGREEMENT by the CITY or its elected and appointed officials, employees, representatives, member agencies, agents, contractors, operators, invitees, or any person authorized by CITY to conduct activities on the Subject Area (individually and collectively "CITY INDEMNITEES"); (ii) the willful misconduct or negligent acts or omissions of CITY, CITY INDEMNITEES or any of them relating to or connected with and/or implementation of the CITY Project; and (iii) the accuracy of any materials, methodology and/or other documentation provided by CITY to DISTRICT, DISTRICT/COUNTY INDEMNITEES or any of them in furtherance of the implementation of the CITY Project or in performance of this AGREEMENT; provided, however, that (a) DISTRICT timely provides notice to the CITY upon becoming aware of any fact, condition or event which may reasonably give rise to CITY's obligation to defend and indemnify DISTRICT under this section and, (b) nothing in this subparagraph shall operate to relieve DISTRICT or any DISTRICT/COUNTY INDEMNITEES from responsibility for, or to require their indemnification with respect to, any loss, injury, liability, damages, claims, costs or expenses to the extent determined by a court of competent jurisdiction to have been proximately caused by the willful misconduct or negligent acts or omissions of DISTRICT, the DISTRICT/COUNTY INDEMNITEES, any party acting on their behalf or under their direction.

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

The Parties agree that this Agreement shall constitute a separate agreement from any approval via the Permits or other third parties, and if the CITY Project is invalidated, in part or in whole, rendered null or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section (Hold Harmless), which shall survive such invalidation, nullification or setting aside.

## 11. HAZARDOUS MATERIALS

### A. Definition of Hazardous Materials

For purposes of this Agreement, 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

CITY or CITY INDEMNITEES 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 Subject Area (which for purposes of this clause shall include the subsurface soil and ground water).



C. CITY Obligations

If the presence of any Hazardous Materials on, under or about the Subject Area caused or permitted by CITY or CITY Parties results in (i) injury to any person, (ii) injury to or contamination of the Subject Area (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, CITY, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Subject Area and/or other property to the condition existing prior to the introduction of such Hazardous Materials in, on, or about the Subject Area and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of DISTRICT under this Agreement, CITY shall pay the cost of any cleanup or remedial work performed on, under, or about the Subject Area as required by this Agreement or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by CITY or CITY Parties. Notwithstanding the foregoing, CITY shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Subject Area caused or permitted by CITY or CITY 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 CITY 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.

## 12. BEST MANAGEMENT PRACTICES

CITY and all CITY Parties shall conduct operations under this Agreement so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“**Stormwater Drainage System**”), and to ensure that pollutants do not directly impact “**Receiving Waters**” (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (NPDES) permits (“**Stormwater Permits**”) to the County of Orange, and to the 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 Subject Area. 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 water quality ordinances, the County Parties have developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (“**BMPs**”) that parties using properties within Orange County must abide. 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. These BMPs are found within the County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “**BMP**”).

**Fact Sheets**”) and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

CITY and all CITY Parties shall, throughout the term of this Agreement, comply with the BMP Fact Sheets, as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Agreement commences or as the Stormwater Permits may be modified. CITY agrees to maintain current copies of the BMP Fact Sheets in a location readily accessible to any or all CITY Parties throughout the term of this Agreement.

CITY 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 access the Subject Area and/or review CITY’s records at any time to assure that activities conducted within the Subject Area comply with the requirements of this section. CITY may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

**13. NOTICES**

All notices, documents, correspondence and communications concerning this Agreement 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 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  
OC Public Works  
RE: Laguna Canyon Channel (I02) Agreement  
P.O. Box 4048  
Santa Ana, CA 92702-4048

To CITY:

City of Laguna Beach  
Public Works Department  
RE: Laguna Canyon Channel (I02) Agreement  
505 Forest Avenue  
Laguna Beach, CA 92651

**14. AUTHORITY**

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

**15. LABOR CODE COMPLIANCE**

CITY acknowledges and agrees that all improvements or modifications required to be performed as a condition precedent to the commencement of the term of this Agreement or any such future improvements or modifications performed by CITY 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 Agreement 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.

CITY 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 Subject Area, and CITY herein agrees that CITY 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, CITY 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. CITY 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 CITY neglects, fails, or refuses to provide said payroll records to Director, such occurrence shall constitute an event of default of this Agreement and DISTRICT, notwithstanding any other termination provisions contained herein, may terminate this Agreement.

## **16. RIGHT TO WORK AND MINIMUM WAGE LAWS**

In accordance with the United States Immigration Reform and Control Act of 1986, CITY shall require its employees that directly or indirectly service or conduct activities on the Subject Area pursuant to the terms and conditions of this Agreement, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. CITY shall also require and verify that its contractors or any other persons servicing or conducting construction activities on the Subject Area pursuant to the terms and conditions of this Agreement, 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, CITY shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Subject Area, in any manner whatsoever. CITY shall require and verify that all its contractors or other persons servicing the Subject Area on behalf of the CITY also pay their employees no less than the greater of the Federal or California Minimum Wage.

CITY 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 Subject Area or terms and conditions of this Agreement.

Notwithstanding the minimum wage requirements provided for in this section, CITY where applicable, shall comply with the prevailing wage and related requirements, as provided for in Section 6 (Labor Code Compliance) of this Agreement.

**17. PARTIAL INVALIDITY AND SURVIVAL**

If any term, covenant, condition, or provision of this Agreement 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.

**18. WAIVER OF RIGHTS**

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement 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 whose right or remedy is being waived.

**19. ATTORNEY FEES**

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

**20. COST SHARING**

CITY and Director may mutually agree in writing to collaborate on activities within the Subject Area, in order to fulfil their respective obligations as contemplated herein or perform their operations jointly, by sharing related costs and paying or reimbursing the other accordingly. Notwithstanding the above, the mere act of cost sharing shall not result or be construed to have had a Party assume the other's responsibility or changed its liability from that set forth herein. Written cost-sharing documents between the CITY and the Director as contemplated within this Section shall not amend this Agreement or that certain "Deed of Easement" recorded on March 20, 1952 in Book 2304, Page 197 in the Official Records of Orange County attached as "**Exhibit B**" that encumbers portions of the Subject Area.

With regard to the CITY's proposed replacement of a segment of County Fencing with CITY Fencing as part of the Village Entrance Project or CITY Project, the Parties agree as the DISTRICT would have otherwise needed to replace said fencing, the DISTRICT shall make a one-time contribution of approximately \$45,000 (\$20 per foot) towards the cost of 2,262 linear feet of this new CITY fencing. The exact contribution shall be calculated by measuring the newly installed CITY fencing once it has been installed in accordance with the related Permits. The DISTRICT shall pay the CITY within thirty (30) days of receipt of an invoice from the CITY for this one-time contribution in accordance with Section 21 below.

If DISTRICT's Channel work, or other flood control operations executed per the DISTRICT's property rights or interest, require replacement of a segment of CITY Fencing, the CITY shall pay within thirty

(30) days of receipt of an invoice in accordance with Section 21 below in order to reimburse the DISTRICT for costs incurred to replace said CITY Fencing segment in kind.

**21. PAYMENT TERMS**

Invoices, reconciliations and the final statement to DISTRICT shall include the following, as applicable, for CITY or DISTRICT to receive payment for allowable costs in accordance with the terms herein:

- a. Agreement Number MA# 080-20010251
- b. Itemization of expenditures; specifying the percent and amount to be reimbursed with supporting documentation
- c. Adequate detail describing all work completed
- d. Signature by an authorized agent certifying the accuracy of the included information

//

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

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

By: [Signature]  
Deputy

Date: 6/9/20

DISTRICT

Orange County Flood Control District,  
a body corporate and politic

By: \_\_\_\_\_  
Chairwoman of the Board of Supervisors  
Orange County, California

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

ATTEST:

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

Approved

By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY

City of Laguna Beach,  
a municipal corporation

By: \_\_\_\_\_

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

DISTRICT

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

Orange County Flood Control District,  
a body corporate and politic

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Chairwoman of the Board of Supervisors  
Orange County, California

Date: \_\_\_\_\_

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

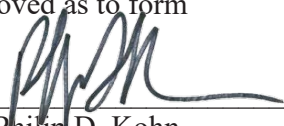
ATTEST:

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

CITY

Approved as to form

City of Laguna Beach,  
a municipal corporation

By:  \_\_\_\_\_  
Philip D. Kohn  
City Attorney

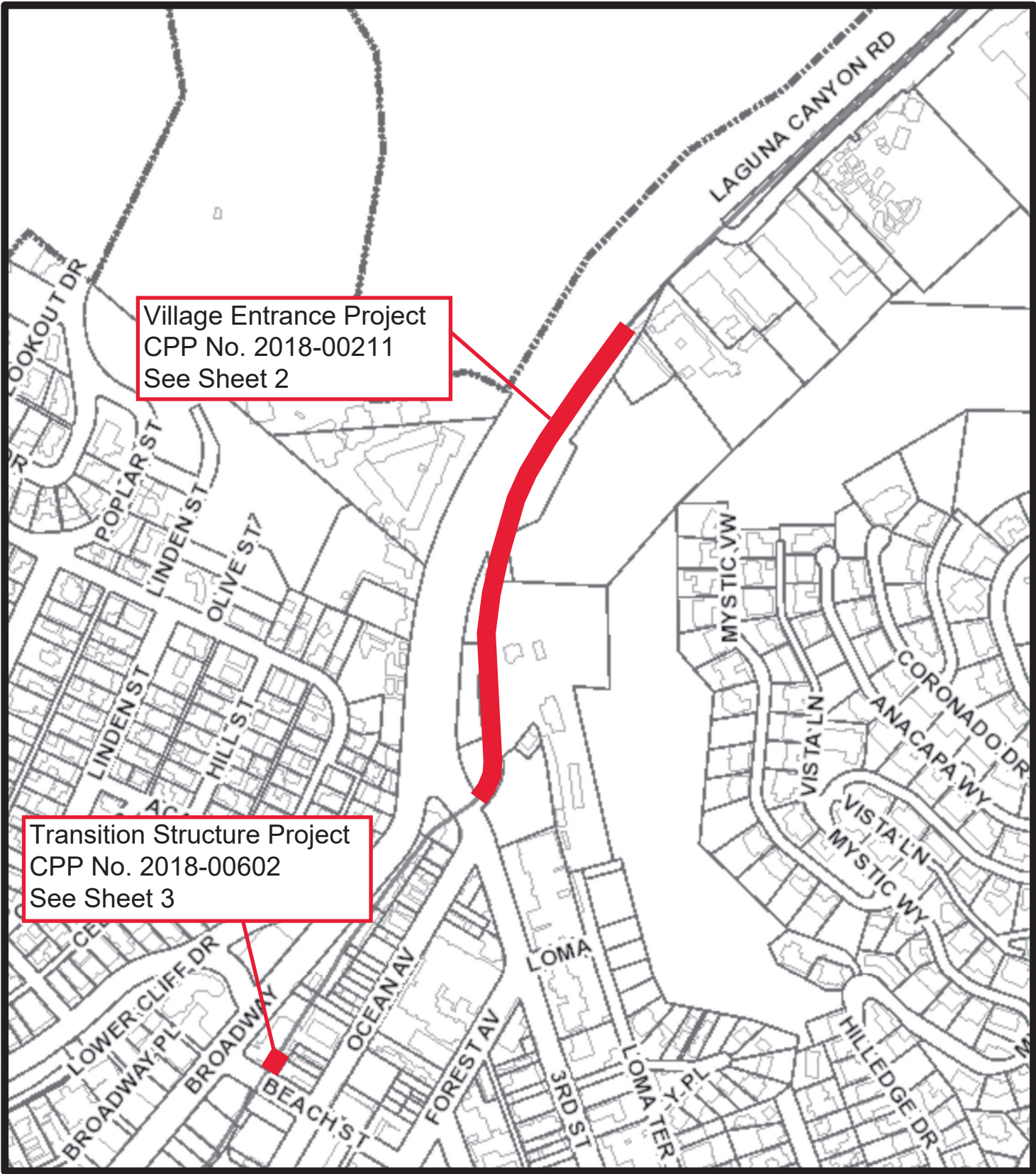
By: \_\_\_\_\_  
Shohreh Dupuis  
Assistant City Manager

ATTEST:

By: \_\_\_\_\_  
Lisette Chel-Walker  
City Clerk

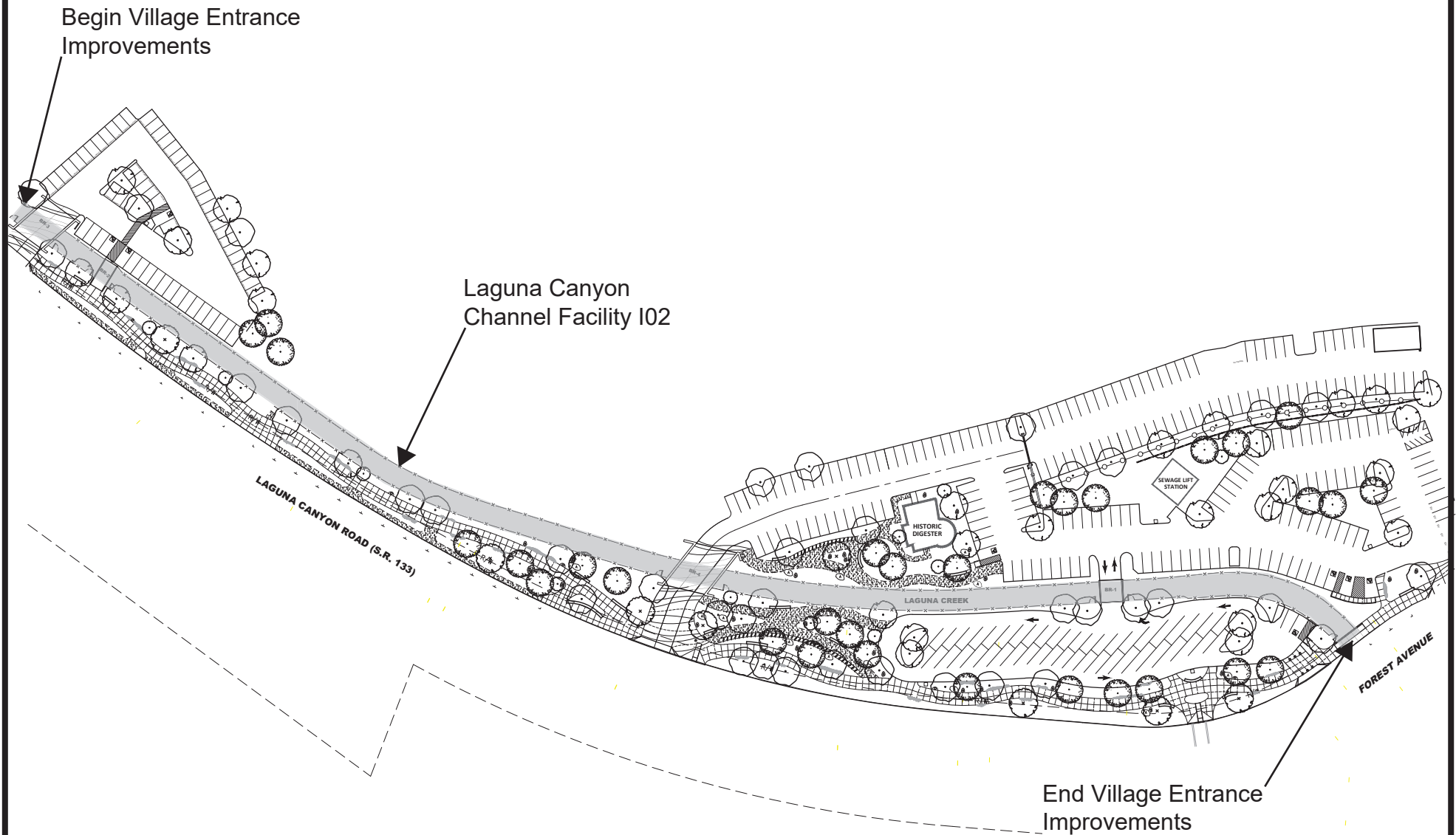
# Exhibit A

## Subject Property Map



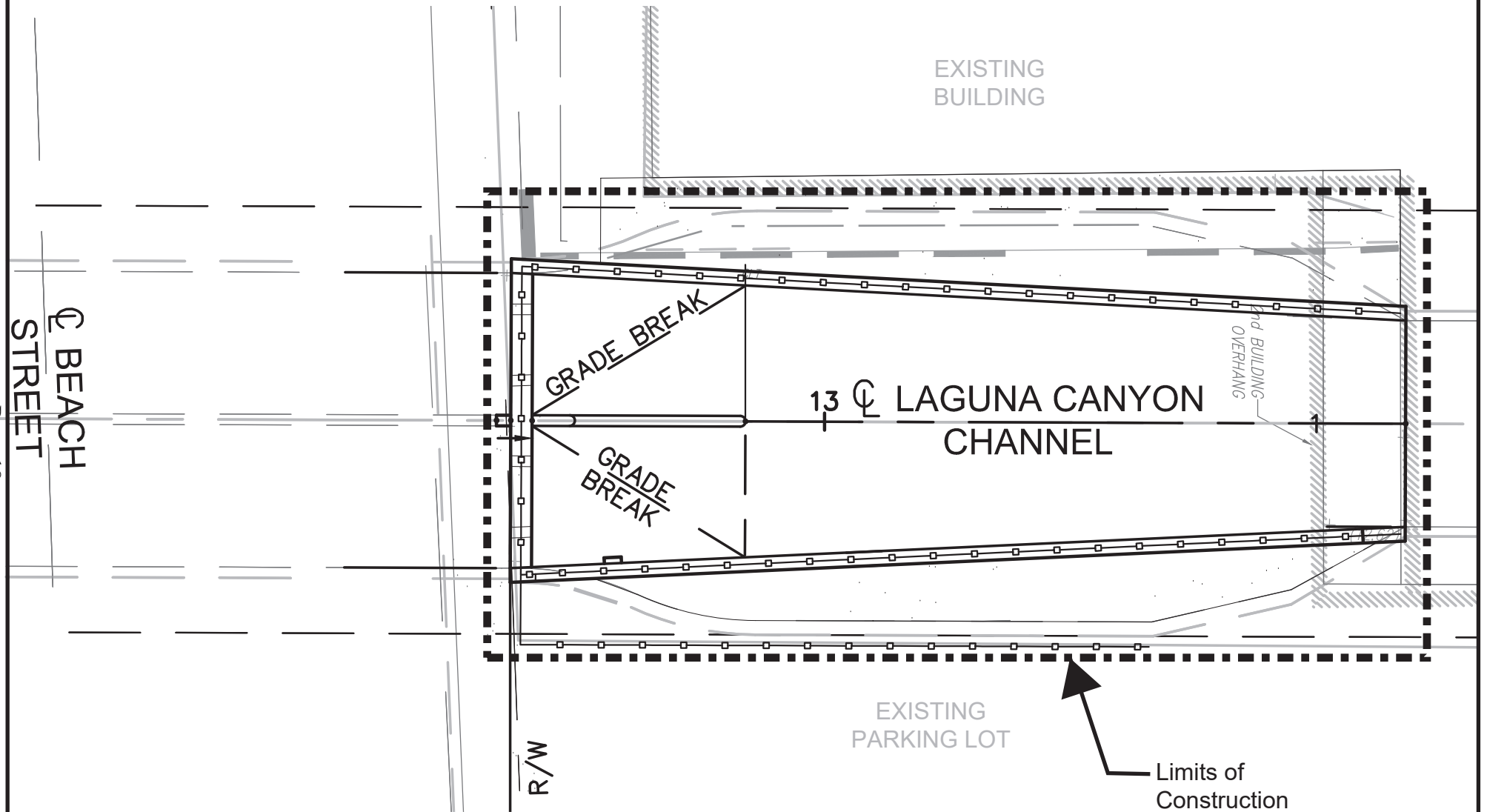


# EXHIBIT A



## Laguna Beach Village Entrance Improvements

# EXHIBIT A



## Laguna Beach Beach Street Transition Structure

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14123

FILED

1 RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA, ACTING AS GOVERNING BOARD  
 2 COUNTY, CALIFORNIA, ACTING AS GOVERNING BOARD  
 3 ORANGE COUNTY FLOOD CONTROL DISTRICT  
 4 MARCH 11, 1952

B. J. SMITH  
 COUNTY CLERK  
 By *M. L. ...* Deputy

On motion of Supervisor Kaiser, duly seconded and carried, the following Resolution was adopted:

BE IT RESOLVED that Deed of Easement dated February 6, 1952, from the City of Laguna Beach, Grantor, to the Orange County Flood Control District, Orange County, California, for a strip of land twenty-five feet in width, lying twelve and one-half feet on either side of the following described center line, required for Laguna Canyon Storm Drain, a Flood Control purpose, be and the same is hereby accepted and ordered recorded;

Beginning at a point in the northeasterly right-of-way line of Forest Avenue (formerly Third Street) said point being distant thereon northwesterly 16.37 feet from the most southerly corner of that parcel of land described in a grant deed from Therese J. Rider and G. W. Gurtner to the City of Laguna Beach, dated August 14, 1940 and recorded in Book 1074 at Page 179, of Official Records of Orange County, California, and running thence north 51° 36' 15" east 0.23 feet to the beginning of a tangent curve concave to the west having a radius of 125 feet; thence northeasterly along said curve through a central angle of 56° 01' 15", 122.22 feet to the beginning of a line tangent to said curve; thence north 4° 25' 00" west along said tangent line 183.17 feet to the beginning of a tangent curve concave to the east having a radius of 1800 feet; thence northerly along said curve through a central angle of 1° 00' 00", 31.42 feet to the beginning of a tangent curve concave to the east having a radius of 900 feet; thence northerly along said curve through a central angle of 18° 40' 00", 293.22 feet to the beginning of a tangent curve concave to the east having a radius of 1800 feet; thence northerly along said curve through a central angle of 1° 00' 00", 31.42 feet to the beginning of a line tangent to said curve; thence north 15° 16' 00" east along said tangent line 27.77 feet more or less to a point in the northwesterly line of that parcel of land conveyed to Loren Holmwood by deed recorded November 16, 1951, in Book 2254, at page 90, of Official Records of Orange County, California, said point being distant northeasterly thereon 42.5 feet more or less from the most westerly corner of the last above described

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BOOK 2304 PAGE 196

1 parcel; the side lines of said strip of land being lengthened and/  
2 or shortened to terminate in the northwesterly line of said parcel  
3 conveyed to Loren Holmwood and in the northeasterly right-of-way  
4 line of said Forest Avenue.

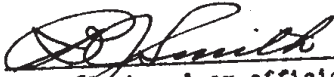
SUBJECT to easements and rights of way of record.

5 AYES: SUPERVISORS HEINZ KAISER, C. M. FEATHERLY, RALPH J. MCFADDEN,  
6 WILLARD SMITH AND WILLIS H. WARNER  
7 NOES: SUPERVISORS NONE  
8 ABSENT: SUPERVISORS NONE

9 STATE OF CALIFORNIA  
10 COUNTY OF ORANGE ss

11 I, B. J. SMITH, County Clerk and ex-officio Clerk of the Board  
12 of Supervisors of Orange County Flood Control District of Orange  
13 County, California, hereby certify that the above and foregoing  
14 Resolution was duly and regularly adopted by the said Board at a  
15 regular meeting thereof held on the 11th day of March, 1952, and  
16 passed by a unanimous vote of said Board.

17 IN WITNESS WHEREOF, I have hereunto set my hand and seal this  
18 11th day of March, 1952.

  
19 County Clerk and ex-officio Clerk of  
20 the Board of Supervisors of Orange  
21 County Flood Control District of  
22 Orange County, California.

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DEED OF EASEMENT.

For a good and valuable consideration, receipt of which is hereby acknowledged, the CITY OF LAGUNA BEACH, a municipal corporation, does hereby grant to the ORANGE COUNTY FLOOD CONTROL DISTRICT, a public corporation, a perpetual easement for flood control purposes, and the right to construct, reconstruct, operate, and maintain a reinforced concrete vertical training wall channel and/or dikes, protection fences, conduits, and appurtenant structures as set forth in the plans of the said Orange County Flood Control District entitled "Orange County Flood Control District, Orange County, California, Plans for the Construction of Laguna Canyon Storm Drain Cooperative Project by Orange County Flood Control District and City of Laguna Beach," dated November, 1951, and approved by the City Council of the City of Laguna Beach, at a regular meeting thereof on December 19, 1951, which plans are hereby incorporated into and made a part of this instrument, through, over, across and upon all that real property located in the City of Laguna Beach, County of Orange, State of California, more particularly described as follows:

A strip of land twenty-five feet in width, lying twelve and one-half feet on either side of the following described center line:

Beginning at a point in the northeasterly right-of-way line of Forest Avenue (formerly Third Street) said point being distant thereon northwesterly 16.37 feet from the most southerly corner of that parcel of land described in a grant deed from Therese J. Rider and G. W. Gurtner to the City of Laguna Beach, dated August 14, 1940 and recorded in Book 1074 at Page 179, of Official Records of Orange County, California, and running thence north 51° 36' 15" east 0.28 feet to the beginning of a tangent curve concave to the west having a radius of 125 feet; thence northeasterly along said curve through a central angle of 58° 01' 15", 122.22 feet to the beginning of a line tangent to said curve; thence north 4° 25' 00" west along said tangent line 188.17 feet to the beginning of a tangent curve concave to the east having a radius of 1800 feet; thence northerly along said curve through a central angle of 1° 00' 00", 31.42 feet to the beginning of a tangent curve

*Handwritten notes:*  
 Checked Date 2-18-57  
 David Kelly  
 No. R/W map as of 12/11/56  
 not of 4/25/57 See I-4

*Accepted*  
 K m w  
 & S

JACK J. RIMEL  
 City Attorney of Laguna Beach,  
 California

checked by  
 BCS  
 [Signature]

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BOOK 2304 PAGE 198

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concave to the east having a radius of 900 feet; thence northerly along said curve through a central angle of 18° 40' 00", 293.22 feet to the beginning of a tangent curve concave to the east having a radius of 1800 feet; thence northerly along said curve through a central angle of 1° 00' 00", 31.42 feet to the beginning of a line tangent to said curve; thence north 15° 16' 00" east along said tangent line 27.77 feet more or less to a point in the northwesterly line of that parcel of land conveyed to Loren Holmwood by deed recorded November 16, 1951, in Book 2254, at page 90, of Official Records of Orange County, California, said point being distant northeasterly thereon 42.5 feet more or less from the most westerly corner of the last above described parcel; the side lines of said strip of land being lengthened and/or shortened to terminate in the northwesterly line of said parcel conveyed to Loren Holmwood and in the northeasterly right-of-way line of said Forest Avenue.

SUBJECT to easements and rights of way of record.

GRANTOR herein reserves the right to the full use of the land herein- above described for any purpose not inconsistent with the rights herein granted.

GRANTOR also grants to the Grantee the rights of ingress and egress over its adjoining properties to said rights of way herein granted for the purpose of carrying out the intent of said grant and the proper maintenance of the works erected thereon in the future, provided, however, that such rights shall be exercised in such a manner as not to interfere with the works of the Grantor on its adjoining properties.

IN WITNESS WHEREOF, the City of Laguna Beach, a municipal corporation of the Sixth Class has caused this instrument to be executed by its Mayor and City Clerk thereunto duly authorized by resolution of its City Council this 6th day of February, 1952.



CITY OF LAGUNA BEACH, a municipal corporation,

By [Signature] Mayor.

Attest: [Signature]  
City Clerk.

JACK J. RIMEL  
City Attorney of Laguna Beach,  
California

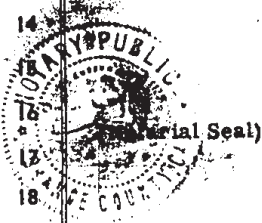
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STATE OF CALIFORNIA )  
County of Orange ) ss

On this 6<sup>th</sup> day of February 1952, before me, the undersigned, a Notary Public in and for said County and State, personally appeared J. Frank Wharton, known to me to be the Mayor, and Ed H. Beaver, known to me to be the City Clerk of the Municipal corporation that executed the within instrument and known to me to be the persons who subscribed the within instrument on behalf of said municipal corporation therein named and acknowledged to me that said municipal corporation executed the same.

WITNESS my hand and official seal the day and year in this certificate first above written.



Ray P. Fisher  
Notary Public in and for said  
County and State.  
My Commission Expires April 3, 1953

RECORDED AT REQUEST OF  
Orange County Flood Control Dist  
BOOK 2304 PAGE 195  
MAR 20 1952  
AT... MIN. PAST 1:16 PM  
OFFICIAL RECORDS OF  
ORANGE COUNTY, CALIFORNIA  
Ray M. Harland  
70/18 COUNTY RECORDER

JACK J. RIMEL  
City Attorney of Laguna Beach,  
California

3.

14128 Recorded and Compared. Ray McFarland, County Recorder. By Deputy Jesse Hutchinson.