

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**License**”) is made _____, 20____, (“**Effective Date**”) by and between the Orange County Flood Control District, body corporate and politic (“**DISTRICT**”) and the City of San Juan Capistrano, a municipal corporation (“**LICENSEE**”). DISTRICT and LICENSEE are sometimes referred to herein individually as the “**Party**” or collectively as the “**Parties.**”

RECITALS

- A. DISTRICT owns that certain parcel located in the northeast quadrant of Alipaz Street and Del Obispo Street, in the city of San Juan Capistrano (“**Alipaz Parcel**”), which parcel lies adjacent to the Trabuco Creek Channel (“**Channel**”).
- B. As of the Effective Date of this License, the segment of the Channel abutting the Alipaz Parcel has yet to be built to 100-year flood control conditions (“**ultimate condition**”) and will undergo reconstruction at sometime in the future. It is anticipated that at the time of reconstruction, the Alipaz Parcel will be needed for the widening of the Channel and/or for construction staging purposes.
- C. LICENSEE acknowledges that DISTRICT’S pending use of the Alipaz parcel in conjunction with the reconstruction of the Channel as part of DISTRICT’S flood control system, is a higher public use and purpose than any other use contemplated by any other party.
- D. LICENSEE desires a license to utilize the Alipaz Parcel for a bio-swale needed to comply with regulatory requirements for LICENSEE’S Del Obispo Bridge Widening Project in the vicinity of the Channel.
- E. LICENSEE acknowledge that (i) any rights granted for LICENSEE’S use of the Alipaz Parcel shall be on a temporary basis and a may be revoked by DISTRICT at DISTRICT’S sole and absolute discretion; and (ii) if required, it shall be LICENSEE’S sole responsibility to disclose to any regulatory authority having jurisdiction over the proposed bio-swale, with the temporary nature of any rights granted under this License.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements set forth below, DISTRICT and LICENSEE agree as follows:

1. **RECITALS**

The Recitals set forth above are herein included and by this reference made a part hereof.

2. **DEFINITIONS (PML2.1 S)**

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

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

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

3. LICENSE AREA (PML4.1S)

DISTRICT grants to LICENSEE the non-exclusive right to use that portion of the Alipaz Parcel identified as the “**License Area**” on **Exhibit A**, attached hereto and made a part hereof (hereinafter referred to as the “**License Area**”).

4. USE (PML5.1 N)

LICENSEE'S use of the License Area is non-exclusive and shall be limited to the installation and maintenance of a vegetated bio-swale to be located approximately at the site depicted on Exhibit A. LICENSEE is permitted to keep and maintain irrigation lines, pipelines, drains, backflow preventer, meters, valves, filtration devices or other equipment necessary for the vegetated bio-swale (“**Facilities**”).

LICENSEE agrees not to use the License Area for any other purpose nor to engage in or permit any other activity on, within or from the License Area. LICENSEE further agrees to conduct all operations in the License Area in a safe manner and in compliance with all governmental laws and regulations and agrees that Licensee shall not to conduct or permit to be conducted any public or private nuisance in, on, or from the License Area, nor to commit or permit to be committed waste on the License Area.

LICENSEE acknowledges that the primary purpose of the License Area is for flood control purposes and LICENSEE agrees that DISTRICT shall not, for any reason, be liable for any loss resulting from any interruption in LICENSEE’S use of the License Area, including, but not limited to any interruption, restricted, or prevented use of the License Area due to DISTRICT use of, or operations conducted in, on, or about the License Area. Except in an emergency, Director shall endeavor to provide LICENSEE reasonable advance notice of planned activities which may restrict LICENSEE’S use of the License Area.

5. TERM (PML3.1 N)

This License shall commence on the Effective Date and shall continue in effect for ten (10) years thereafter, unless sooner terminated as provided in Section 7 (Termination) of this License.

6. OPTION TO EXTEND TERM

Provided LICENSEE is not in material default of any term, covenant, condition, restriction or reservation of this License, LICENSEE shall have the option to extend the term of this License under the same terms and conditions for two consecutive five (5) year periods following the expiration of the License term specified in Section 5 (Term), by providing Director with written notice of each election to extend, a minimum of sixty (60) days prior to the expiration of the term then in effect.

7. **TERMINATION** (PML3.2 N)

This License may be terminated by DISTRICT, for any reason upon one hundred eighty (180) days' prior written notice to the LICENSEE.

8. **LICENSE AREA MODIFICATION**

LICENSEE acknowledges that in lieu of terminating this License, Director may, at the Director's sole and absolute discretion reduce or modify the License Area as may be required for the re-construction of the Channel to an ultimate condition or for construction staging purposes by providing LICENSEE with one hundred eighty (180) days' advanced written notice ("**Modification Notice**").

A. **Modification due to Channel Ultimate Condition**

In the event the License Area is to be modified for re-construction of the Channel to an ultimate condition, LICENSEE shall have the option of (i) reconfiguring LICENSEE'S Facilities to fit within the modified License Area, at LICENSEE'S sole cost and expense, with such reconfiguration to be completed within the 180 day notice period and in accordance with the provisions of Section 12.B.

(Construction/Maintenance), or (ii) terminating this License and removing all LICENSEE'S Facilities within the 180 day notice period. Within sixty (60) days of LICENSEE'S receipt of a Modification Notice for Channel re-construction, LICENSEE shall send written notice to Director specifying which of the two options LICENSEE has chosen from this Section 8.A.

B. **Modification for Construction Staging Purposes.**

In the event the License Area is to be modified for construction staging purposes, LICENSEE may (i) offer DISTRICT a suitable alternate site for construction staging purposes, satisfactory to Director, in which case the License Area would remain unchanged, or (ii) reconfigure LICENSEE'S Facilities to fit within the modified License Area at LICENSEE'S sole cost and expense and in accordance with the provisions of Section 12.B. (Construction/Maintenance), with such reconfiguration to be completed within the 180 day notice period, or (iii) terminate this License and remove all LICENSEE'S Facilities within the 180 day notice period. Within sixty (60) days of LICENSEE'S receipt of a Modification Notice due to staging, LICENSEE shall send written notice to Director specifying which of the three options LICENSEE has chosen from this Section 8.B.

C. **Revision of License Area Description**

In the event the attached Exhibit A is subsequently determined to inaccurately depict the License Area, LICENSEE shall, at no cost to DISTRICT, cause the illustration of the License Area to be revised, and upon written approval of both Parties of the revised depiction of the License Area, this LICENSE shall be amended with the revised depiction of the License Area attached thereto as "Revised Exhibit A." The

Parties agree that the amendment of Exhibit A shall not affect, alter, or change any of the terms, conditions or reservations of this License. LICENSEE shall, at no cost to DISTRICT, retract in whole or in part, any and all outstanding regulatory permits, including but not limited permits issued by the California Regional Water Quality Control Board, to accurately reflect LICENSEE'S Facilities or absence thereof, and provide DISTRICT acknowledgement of said retraction, to the Director's satisfaction, upon written request of Director.

9. No Relocation Obligation

A. Relocation.

LICENSEE agrees that DISTRICT shall not under any circumstance be obligated to provide or locate for LICENSEE a replacement site for LICENSEE'S Facilities or operations in the event this License is terminated or the License Area is reduced or otherwise modified as provided in this License.

B. Water Quality Feature Obligations

LICENSEE acknowledges that DISTRICT has no duty whatsoever with respect to any regulatory water quality obligation that LICENSEE'S Facilities may satisfy, and any noticing, clearances, or approvals that may be required by any regulatory authority, including but not limited to the California Regional Water Quality Control Board with respect to the provisional nature of this License, or any removal or modification or relocation of LICENSEE'S Facilities shall be LICENSEE'S sole responsibility.

10. INSURANCE (PML10.2 N)

LICENSEE agrees, at its sole expense, to obtain insurance as required below, and to deposit with Director prior to the use of the License Area, Certificates of Insurance, including all endorsements required herein, necessary to satisfy Director that the insurance provisions of this License have been complied with, and to keep such insurance and the certificates and endorsements therefor on deposit with Director during the entire term of this License. In addition, any employees, contractors, operators, or agents performing work on behalf of LICENSEE pursuant to this License, shall be covered under LICENSEE'S insurance or shall obtain insurance subject to the same terms and conditions as set forth herein for LICENSEE. All insurance policies required by this License shall declare any deductible or self-insured retention (SIR) which shall specifically be approved by the County Executive Office/Office of Risk Management. LICENSEE shall be responsible for reimbursement of any deductible to the insurer.

Any deductibles or self-insured retentions (SIR) shall be clearly stated on the certificate of insurance and shall specifically be approved by the DISTRICT'S County Executive Office (CEO)/Office of Risk Management. LICENSEE shall be responsible for reimbursement of any deductible to the insurer.

The policy or policies of insurance must be issued by an insurer licensed to do business in

the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject 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 with broad form property damage, contractual liability and products liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Notwithstanding anything to the contrary contained herein, LICENSEE shall have the right to self-insure for the requirements set forth herein, provided that LICENSEE shall provide written documentation satisfactory to County's CEO/Office of Risk Management evidencing such self-insurance

Except as noted, each insurance policy required by this License shall include the following provisions and/or endorsements:

- A. Cancellation: "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 days' written notice has been given to the County of Orange, OCPW/Real Estate Services, P. O. Box 4048, Santa Ana, California 92702-4048." If an endorsement with such cancellation provision cannot be provided, the pre-printed ACORD certificate must be edited as follows to provide for an unconditional 30-day notice of cancellation:

"SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS' WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON

THE COMPANY, ITS AGENT OR REPRESENTATIVE".

- B. Additional Insured: "Orange County Flood Control District and the County of Orange are added as insured as respects operations of the named insured at or from the PREMISES occupied and used by the named insured pursuant to that certain License issued by the Orange County Flood Control District." An additional insured endorsement evidencing that Orange County Flood Control District and County of Orange are additional insureds shall accompany the Certificate of Insurance. (Additional Insured Endorsement not required for Property, Worker's Compensation and Employers' Liability.)
- C. Primary Insurance: "It is agreed that any insurance maintained by the Orange County Flood Control District and County of Orange will apply in excess of, and not contribute with, insurance provided by this policy." An endorsement evidencing that the LICENSEE'S insurance is primary and non-contributing shall accompany the Commercial General Liability Certificates of Insurance. (Primary Insurance Endorsement only required for Commercial General Liability.)
- D. Waiver of Subrogation: "All rights of subrogation are hereby waived against the Orange County Flood Control District and County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers and employees, when acting within the scope of their appointment or employment." A waiver of subrogation endorsement with such language shall accompany the Certificate of Insurance.

THIS LICENSE SHALL AUTOMATICALLY TERMINATE AT THE SAME TIME LICENSEE'S INSURANCE COVERAGE IS TERMINATED. IF WITHIN 10 DAYS AFTER TERMINATION UNDER THIS CLAUSE, LICENSEE OBTAINS AND PROVIDES EVIDENCE OF THE REQUIRED INSURANCE COVERAGE ACCEPTABLE TO DIRECTOR, THIS LICENSE MAY BE REINSTATED, AT THE SOLE DISCRETION OF DIRECTOR. IF REINSTATED, LICENSEE SHALL PAY \$200 TO COVER THE PROCESSING COSTS INCURRED BY DISTRICT.

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 or official binder being in the possession of Director. In no cases shall assurances by LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. LICENSEE also agrees that upon cancellation, termination, or expiration of LICENSEE'S insurance, that DISTRICT may take whatever steps are necessary to interrupt any operation from or on the PREMISES until such time as the License is reinstated by the Director.

LICENSEE further agrees to hold DISTRICT harmless for any damages resulting from such interruption of business including but not limited to damages resulting from any loss of income or business resulting from DISTRICT'S action.

DIRECTOR 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 deemed by County of Orange Risk Manager as appropriate to adequately protect DISTRICT.

DIRECTOR 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 Director incorporating such changes within thirty days of receipt of such notice, this License Agreement 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 and hold harmless provisions and requirements.

LICENSEE liability is limited to the availability of the insurance in the marketplace at the time the License is executed by DISTRICT.

11. 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, agents, contractors, operators, or invitees (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 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 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 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, 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 Director] 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.

12. OPERATIONS, MAINTENANCE & REPAIRS

A. Operations (PMES6.2N)

LICENSEE 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 the California Regional Water Quality Control Board and other environmental regulatory authorities, with jurisdiction in, on, over and about the License Area, which arise from LICENSEE'S use of or performance of any activities permitted to be conducted in, on , over, or across the License Area.

LICENSEE shall, at no cost to DISTRICT, maintain the License Area in a safe, clean, wholesome, and sanitary condition, free and clear of rubbish and litter and all Facilities constructed, used or placed upon the License Area by or on behalf of LICENSEE pursuant to this License Agreement shall be operated and maintained in a safe condition.

No approvals or consents given hereunder by DISTRICT, as a party to this License

Agreement, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

B. Construction/Maintenance (PMES2.2N)

LICENSEE shall have all construction and/or maintenance plans approved in writing by Director prior to commencement of any work in, on 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 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 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.

LICENSEE shall perform all construction and/or maintenance in such a manner that will allow for unobstructed flood control operations and maintenance of the Channel by DISTRICT.

Should it be necessary for LICENSEE to conduct any construction or excavation activities or otherwise disturb the surface of the License Area subsequent to the completion of the initial installation of LICENSEE'S Facilities, LICENSEE 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 permit for construction from the County of Orange ("**County**") with payment of normal processing fees 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 which do not involve disturbance of the surface area.

Except in areas in which such activities require regulatory agency approval, or are otherwise designated as environmentally sensitive, LICENSEE shall have the right to cut such roots as may endanger or interfere with LICENSEE'S Facilities provided, however, 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 LICENSEE at its expense to the same condition as existed prior to excavation, to Director's satisfaction.

C. Deferred Maintenance or Repairs.

If LICENSEE fails to maintain or make repairs as required herein, Director may notify LICENSEE in writing of such failure. Should LICENSEE fail to make the

necessary maintenance, repairs or replacements within five (5) days of the date of such notice, Director may have the necessary correction made, and the cost thereof, including but not limited to the cost of labor, materials, and equipment and an administration fee equal to fifteen percent (15) of the sum of such items, shall be paid by LICENSEE within ten (10) days of receipt of a statement of said cost from Director, provided, however, if the nature of the required maintenance, or repair is such that it cannot be completed within the five-day period, Director may make the necessary correction or cause it to be made only if LICENSEE fails to commence the correction within the five-day period and diligently complete the correction within a reasonable period of time not to exceed sixty (60) days. Director may, at Director's option, choose other remedies available herein, or by law.

13. **BEST MANAGEMENT PRACTICES (PML 11.2 N)**

LICENSEE and all of LICENSEE Parties shall conduct operations under this License 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 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 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 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. These BMPs are found within the DISTRICT'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.

These BMP Fact Sheets may be modified during the term of the License; and Director shall provide LICENSEE with any such modified BMP Fact Sheets. LICENSEE and LICENSEE Parties and all persons authorized by LICENSEE to conduct activities on the License Area shall, throughout the term of this License, comply with all applicable 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 License commences or as the Stormwater Permits may be modified. LICENSEE agrees to maintain current copies of all 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 the BMP Fact Sheets.

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 and all water quality permits, including but not limited to the Water Quality Certification. LICENSEE may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

14. LIMITATION OF THE LICENSE (PML13.1 S)

This License and the rights and privileges granted LICENSEE in and to the License Area are subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the License Area.

Nothing contained in this License or in any document related hereto shall be construed to imply the conveyance to LICENSEE of rights in the License Area which exceed those owned by DISTRICT.

15. NOTICES (PML14.1 N)

All communications, notices and/or demands of any kind which either party may be required or desire to give to or serve upon the other party shall be made in writing and delivered by personal service, Federal Express or similar courier service, U.S. mail, postage prepaid, or sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below:

To DISTRICT:

County of Orange
OC Public Works/Real Estate Services
P. O. Box 4048
Santa Ana, CA 92702-4048
Re: L02-102 Trabuco Creek License

To LICENSEE:

City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

16. 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.

17. GENERAL CONDITIONS

This License includes the General Conditions attached hereto and by this reference made a part hereof. In the event of any conflict between the provisions of this License and the provisions in the General Conditions, the provision of this License shall control.

18. COUNTERPARTS

This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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Signature Pages Follow

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L02-102 Trabuco Creek Channel

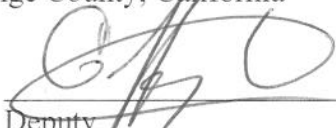
IN WITNESS WHEREOF, the Parties have executed this License the day and year first above written.

DISTRICT

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

By: _____
Chair, Board of Supervisor
Orange County, California

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

By: 
Deputy _____

Date: 9/5/2012

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

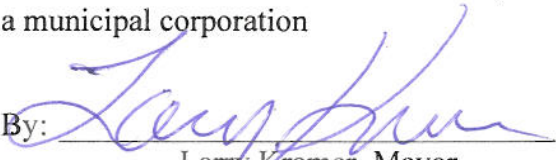
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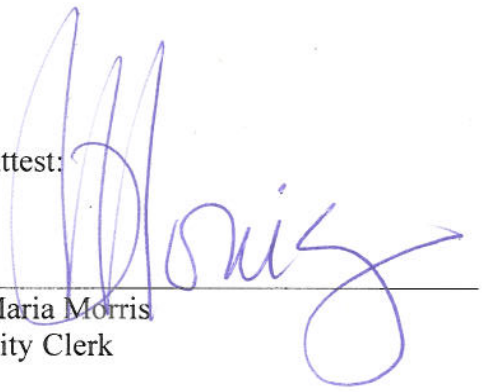
Susan Novak
Clerk of the Board of Supervisors
Orange County Flood Control District
Orange County, California

LICENSEE SIGNATURE ON FOLLOWING PAGE

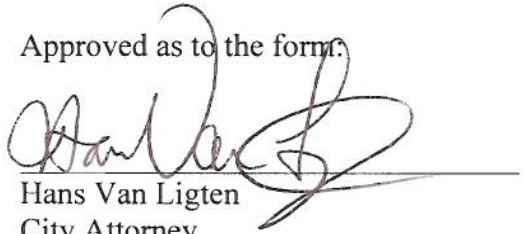
LICENSEE

CITY OF SAN JUAN CAPISTRANO,
a municipal corporation

By: 
Larry Kramer, Mayor

Attest: 

Maria Morris
City Clerk

Approved as to the form:


Hans Van Ligten
City Attorney

GENERAL CONDITIONS - LICENSE

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GENERAL CONDITIONS - LICENSE (LG17 S)**1. DEFINITION OF "DISTRICT" (LG1 S)**

The term "DISTRICT" shall mean the Orange County Flood Control District. Actions to be taken by the DISTRICT under this License shall be taken by the Board of Supervisors of the political body which executed this License or its authorized representatives specifically authorized to take such actions under this License.

2. SIGNS (LG2 N)

LICENSEE agrees not to construct, maintain, or allow any sign upon License Area except as approved by Director. Unapproved signs, banners, flags, etc., may be removed by Director at LICENSEE'S sole cost and expense.

3. PERMITS AND LICENSES (LG3 S)

LICENSEE shall be required to obtain any and all permits and/or licenses which may be required in connection with the operation of the License Area as set out herein. No permit, approval or consent given hereunder by DISTRICT in its governmental capacity, shall affect or limit LICENSEE'S obligations hereunder nor shall any approvals or consents given by DISTRICT, as a party to this License, be deemed approval as to compliance or conformance with applicable, governmental codes, laws, ordinances, rules, or regulations.

4. LICENSE 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.

5. AMENDMENTS (LG5 S)

This License sets forth all of the agreements and understandings of the Parties and any modification must be written and properly executed by both Parties.

6. UNLAWFUL USE (LG6 S)

LICENSEE agrees no improvements shall be erected, placed upon, operated, nor maintained on the License Area, nor any business conducted or carried on 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 having jurisdiction.

7. INSPECTION (LG7 S)

DISTRICT or its authorized representative shall have the right at all reasonable times to inspect the operation to determine if the provisions of this License are being complied with.

8. HOLD HARMLESS (LG8 S)

LICENSEE acknowledges that the License Area lies in, on, or adjacent to a flood control channel and may be subject to all hazards associated with flood conditions and LICENSEE agrees to assume all risks, financial or otherwise associated therewith, including, but not limited to any interruption in or restricted use of the License Area, whether temporary or permanent due to DISTRICT'S use of, or operations conducted in, on, or about the License Area.

L02-102 Trabuco Creek Channel

LICENSEE hereby releases and waives all claims and recourse against DISTRICT, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this License, except claims arising from the concurrent active or sole negligence of DISTRICT, its officers, agents, employees and contractors. LICENSEE hereby agrees to indemnify, defend (with counsel approved in writing by Director), and hold harmless, DISTRICT, 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 the operation or maintenance of the property described herein, and/or LICENSEE'S or LICENSEE Parties' exercise of the rights under this License, except for liability arising out of the concurrent active or sole negligence of DISTRICT, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT is named as co-defendant in a lawsuit, LICENSEE shall notify DISTRICT of such fact and shall represent DISTRICT in such legal action unless DISTRICT undertakes to represent itself as co-defendant in such legal action, in which event, LICENSEE shall pay to DISTRICT its litigation costs, expenses, and attorney's fees. If judgment is entered against DISTRICT and LICENSEE by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor.

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

9. TAXES AND ASSESSMENTS (LG9 S)

Although not anticipated, 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 upon fixtures, equipment, 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.

10. 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.

11. 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 License thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the License. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

12. COSTS OF SUSTAINING AN ACTION (LG12 S)

In the event of a dispute between DISTRICT and LICENSEE concerning claims arising out of this License, the prevailing Party in such dispute shall be entitled to recover from the other costs of such dispute, including reasonable attorney fees, as may be fixed by the Court, or arbitrator.

13. RESERVATIONS TO DISTRICT (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 nor any of its employees, agents, or representatives has 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. Without limiting DISTRICT'S rights with respect to the License Area, DISTRICT reserves the right to install, lay, construct, maintain, repair, and operate such retarding basin, flood control facility, sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; 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. DISTRICT also reserves the right to grant franchises, easements, rights of way, 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 clause shall be so exercised as to interfere unreasonably with LICENSEE'S use hereunder.

DISTRICT agrees that rights granted to third parties by reason of this Clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. DISTRICT further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the License Area by LICENSEE, any use fee (if a use fee is required pursuant to this License) shall be reduced in proportion to the interference with LICENSEE'S use of the License Area.

14. CONDITION OF LICENSE AREA UPON TERMINATION (LG14 N)

Except as otherwise agreed to herein, upon termination of this License, LICENSEE shall remove all Facilities and redeliver possession of said License Area to DISTRICT free from liens and other encumbrances in substantially the same condition that existed immediately prior to LICENSEE'S entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted.

15. DISPOSITION OF ABANDONED PERSONAL PROPERTY (LG15 N)

If LICENSEE abandons the License Area or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to LICENSEE and left on the License Area 15 days after such event shall be deemed to have been transferred to DISTRICT. DISTRICT shall have the right to remove and to dispose of such property at LICENSEE'S sole cost and expense, without liability therefor to LICENSEE or to any person claiming under LICENSEE, and shall have no need to account therefor.

16. TIME (LG16 S)

Time is of the essence of this License.

17. 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.



COUNTY OF ORANGE
OC PUBLIC WORKS
 RIGHT - OF - WAY ENGINEERING

ID # 2010 - 065

SCALE : 1" = 100'

BIO-SWALE
LICENSE AREA

PROJECT : TRABUCO CREEK CH. - DEL OBISPO ST. WIDENING