

AGREEMENT No. 003424
PROJECT 1201, LINE A
FIGUEROA STREET – NORTH OF
SEPULVEDA BOULEVARD
THOMAS GUIDE NO. 794-B2
SECOND DISTRICT

USE AND MAINTENANCE AGREEMENT

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

RECITALS

WHEREAS, DISTRICT owns and operates a flood protection facility, Project 1201, Line A (herein referred to as STORM DRAIN), a double 10 foot-9 inch wide by 6 foot-7 inch high reinforced concrete box, located near the intersection of Figueroa Street and Sepulveda Boulevard in the City of Carson; and

WHEREAS, CARSON desires to implement the Carson Stormwater and Runoff Capture Project at Carriage Crest Park (hereinafter referred to as PROJECT); for the purpose of improving urban runoff water quality and stormwater capture, the PROJECT will divert dry weather and stormwater flows from the STORM DRAIN into the nearby Los Angeles County Sanitation Districts' treatment plant; and

WHEREAS, a portion of the PROJECT, consisting of the drop inlet (hereinafter referred to as DIVERSION), is to be located within the STORM DRAIN, as shown on Exhibit A; and

WHEREAS, the construction of the PROJECT is estimated to be completed in or about December 2019; and

WHEREAS, the County of Los Angeles and the City of Carson have entered a separate Memorandum of Understanding concerning the financing of certain planning, engineering, design, and construction costs associated with the PROJECT and described in said Memorandum of Understanding; and

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

SECTION 1: Authorized Use

- 1.1. CARSON is authorized and permitted to use the STORM DRAIN between Stations 4+34 and 6+34, for the construction, operation, maintenance, and repair of DIVERSION in accordance with the terms and conditions of this AGREEMENT and of the permit obtained from DISTRICT as described below. CARSON is authorized and permitted to take access to and from the DIVERSION via the STORM DRAIN and access ramp to the STORM DRAIN located immediately south of Sepulveda Boulevard. Any other use of the STORM DRAIN or any portion thereof by CARSON is expressly prohibited.
- 1.2. CARSON's use of the STORM DRAIN in connection with the PROJECT shall be nonexclusive and shall be subordinate to the uses of the STORM DRAIN by DISTRICT, and CARSON's use of the STORM DRAIN shall at no time interfere with DISTRICT's use of the STORM DRAIN or DISTRICT's use of its adjacent property and/or improvements.
- 1.3. This AGREEMENT is valid only to the extent of DISTRICT's jurisdiction. CARSON shall be responsible for the acquisition of permits required by other affected agencies or agencies with regulatory jurisdiction over the PROJECT, and the consent of any underlying fee owners, as applicable, hereinafter collectively referred to as THIRD-PARTY APPROVALS. CARSON shall be responsible for all costs associated with obtaining and complying with the requirements and conditions of all THIRD-PARTY APPROVALS, including, by way of example, permit fees and compensatory mitigation expenses. CARSON shall provide DISTRICT copies of all THIRD-PARTY APPROVALS.

SECTION 2: Construction and implementation of DIVERSION

- 2.1 CARSON understands and acknowledges that it is required to comply with the California Environmental Quality Act (CEQA) prior to implementing the PROJECT (including the DIVERSION) and that CARSON shall be the lead agency with respect to any and all CEQA compliance related to the PROJECT. In addition to its other indemnification obligations as specified below, CARSON hereby agrees to indemnify, defend, and hold harmless the DISTRICT and the County of Los Angeles and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to the PROJECT and/or the DIVERSION that may be asserted by a third party or public agency alleging violations of CEQA or the CEQA Guidelines.
- 2.2. Prior to commencing any construction activity on the DIVERSION, CARSON shall apply for and obtain a permit from the DISTRICT. The

permit application and fee shall be submitted to the County of Los Angeles Department of Public Works, Land Development Division, Permits and Subdivisions Section.

- 2.3. Upon completion of the construction of the DIVERSION, CARSON shall provide to the DISTRICT a complete set of the as-built plans for the PROJECT in an electronic format. In addition, CARSON shall provide shape files for all maps depicting the PROJECT.

SECTION 3: Operation and Maintenance of DIVERSION

- 3.1. CARSON shall, upon completion of construction, be responsible for the operation, maintenance, and repair of the DIVERSION in accordance with the terms and conditions of this AGREEMENT and of the permit obtained from the DISTRICT. The operation and maintenance of the DIVERSION shall include, but not be limited to, the following activities:
 - 3.1.1. CARSON shall prepare a maintenance manual (hereinafter referred to as M-MANUAL), describing the operation, maintenance and inspection practices, required regulatory permits, procedures and standards for the DIVERSION including maintenance schedules, identification of any specialty maintenance service providers, equipment usage, and a maintenance log sheet.
 - 3.1.1.1. CARSON shall submit a draft version of the M-MANUAL, to the DISTRICT not later than September 15, 2019, or such later date as may be mutually agreed to by the PARTIES in writing.
 - 3.1.1.2. The DISTRICT shall provide CARSON with comments on the draft M-MANUAL within forty-five (45) days of submittal.
 - 3.1.1.3. CARSON shall incorporate any and all reasonable comments submitted by the DISTRICT and shall deliver a final version of the M-MANUAL to the DISTRICT within forty-five (45) days after receipt of the DISTRICT's comments. If the PARTIES cannot agree as to whether DISTRICT's comments shall be incorporated, the PARTIES shall meet and confer in good faith to resolve such disagreement.
 - 3.1.2. DISTRICT shall not be responsible for costs associated with the operation and maintenance of the DIVERSION, including but not limited to necessary repairs and/or replacement of DIVERSION

components and obtaining, complying with and renewing as necessary all required regulatory permits. CARSON and the County of Los Angeles have entered into a separate Memorandum of Understanding setting forth their respective responsibilities for costs associated with the operation and maintenance of the DIVERSION, including but not limited to, necessary repairs and/or replacement of DIVERSION components and obtaining, complying with and renewing as necessary all required regulatory permits.

- 3.1.3. CARSON shall operate and maintain the DIVERSION in a safe, clean, and orderly condition, and in compliance with the M-MANUAL and all applicable Federal and State laws, local ordinances (including the Los Angeles County Flood Control District Code) and applicable regulatory permits.
- 3.1.4. CARSON shall be responsible to inspect the diversion and clear any obstructions that may interfere with the proper functioning of the DIVERSION and the STORM DRAIN, as described in the M-Manual.
- 3.1.5. CARSON shall provide the DISTRICT with 24-hour contact information for person(s) responsible for the operation and maintenance activities related to the DIVERSION. DISTRICT shall provide CARSON with 24-hour contact information for person(s) responsible for maintaining the STORM DRAIN.
- 3.1.6. CARSON shall coordinate and communicate with the DISTRICT in regard to operation, maintenance, and repair activities related to the DIVERSION.
 - 3.1.6.1. CARSON shall notify the DISTRICT a minimum of thirty (30) days in advance of any major (nonroutine) proposed maintenance activities related to the DIVERSION except for trash removal, routine cleaning, and minor repairs within the DIVERSION; provided, however, that in the event CARSON becomes aware of the need to perform any such maintenance activities less than 30 days from the date it proposes to perform said activities, it shall notify the DISTRICT immediately upon determining to perform the activities.
 - 3.1.6.2. CARSON shall notify the DISTRICT a minimum of forty-eight (48) hours in advance of any routine maintenance activities related to the DIVERSION including trash removal, routine cleaning, and minor repairs within the DIVERSION.

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

- a. Name of Project;
- b. Location description of Project;
- c. Project contact information;
- d. Description of the Project and its function and direct impact to the STORM DRAIN;
- e. Summary of operations within the reporting year, from July 1st to June 30th of the following year, type of activities (i.e. routine, nonroutine, and emergency), date and time of activities, and description of work performed;
- f. Summary of major repairs completed, including but not limited to, type of repairs, location of repairs, pre- and postrepair photographs, date and time of repairs;
- g. Summary of public inquiries and complaints related to the PROJECT and CARSON's response;
- h. Summary of volume captured or discharged from PROJECT;
- i. Status of any regulatory permits affecting the operation or maintenance of the DIVERSION;
- j. Status of any specialty contractor agreements required for ongoing maintenance and repairs of the DIVERSION;

3.1.6.4. This survey and status report shall be mailed to:

Attention: Area Engineer
Los Angeles County Flood Control District
Department of Public Works,
Stormwater Maintenance Division
5525 East Imperial Hwy.
South Gate, CA 90280

3.1.7. DISTRICT shall coordinate and communicate maintenance activities related to the STORM DRAIN with CARSON.

- 3.1.8. If CARSON fails to perform any maintenance activities as provided for in this AGREEMENT in a timely manner, the DISTRICT reserves the right to remedy any such maintenance deficiency that the DISTRICT determines impairs the DISTRICT's flood protection activities. However, prior to taking any action to remedy any such maintenance deficiency, the DISTRICT shall first notify CARSON of the deficiency and allow a reasonable time for CARSON to correct it. If CARSON fails to correct the deficiency within a reasonable time, the DISTRICT shall thereafter be entitled to correct the deficiency. Notwithstanding the foregoing, if the DISTRICT determines that immediate remedial action is required to prevent or mitigate a dangerous condition, DISTRICT shall be entitled to implement the remedial action(s) without prior notice to CARSON. The DISTRICT shall prepare and send to CARSON an invoice for all work undertaken by the DISTRICT to remedy any maintenance deficiency, and CARSON shall within thirty (30) days from the receipt of the invoice reimburse the DISTRICT for all costs and expenses incurred by the DISTRICT to remedy said deficiency. Should CARSON dispute that any remedial action by the DISTRICT was occasioned by CARSON's failure to perform any maintenance activities provided for in this AGREEMENT, CARSON shall promptly notify the DISTRICT and the PARTIES shall meet and confer in good faith within such thirty (30) day period allowed for payment.
- 3.1.9. CARSON shall be responsible for all community relations related to the PROJECT (including the DIVERSION), including responding to public inquiries, complaints, etc. DISTRICT shall forward to CARSON any community relations, public inquiries, complaints, etc., related to the PROJECT or DIVERSION.
- 3.1.10. CARSON shall not discharge any nonstormwater from the PROJECT to the STORM DRAIN or to any other storm drains owned or operated by the DISTRICT.

SECTION 4: Termination of AGREEMENT

- 4.1. The DISTRICT shall have the right to terminate this AGREEMENT by giving CARSON at least one hundred twenty (120) days prior written notice, under the following conditions:
- 4.1.1. The DISTRICT proposes a project for flood control, water conservation and/or any other use or purpose authorized by the Los Angeles County Flood Control Act; and

- 4.1.2. The DISTRICT determines, in good faith, that the DIVERSION or any portion thereof, would be substantially incompatible with the DISTRICT's proposed project; and
- 4.1.3. The DISTRICT has notified CARSON of the basis for the DISTRICT'S determination that a substantial incompatibility will exist and has provided CARSON with a reasonable opportunity to propose modifications to the DIVERSION that will eliminate the incompatibility; and
- 4.1.4. After consideration of any such modifications proposed by CARSON, the DISTRICT, in its sole but reasonable discretion, determines not to incorporate any such modifications or determines that, notwithstanding any such modifications, the DIVERSION will still be substantially incompatible with the DISTRICT's proposed project.
- 4.2. The DISTRICT shall have the right to terminate this AGREEMENT in the event CARSON breaches any term or condition of this AGREEMENT and fails to cure such breach or breaches within a reasonable amount of time from the date the DISTRICT provides written notice of said breach or breaches to CARSON.
- 4.3. The DISTRICT shall have the right to terminate this AGREEMENT if construction of the DIVERSION has not been completed within five (5) years from the date this AGREEMENT is fully executed.
- 4.4. The DISTRICT shall have the right to suspend or terminate this AGREEMENT in the DISTRICT's sole discretion, in the event the DISTRICT determines, in good faith, that it is necessary for the DISTRICT to enter and take exclusive possession of the DIVERSION or any portion thereof in order to respond to an emergency as defined in Public Contract Code Section 1102.
- 4.5. CARSON shall have the right to terminate this AGREEMENT for any reason, by giving the DISTRICT at least sixty (60) days prior written notice.

SECTION 5: Removal of Improvements and Restoration of the STORM DRAIN

- 5.1. Upon termination of this AGREEMENT, the DISTRICT may, in its sole discretion, provide a written notice to CARSON to remove all or any improvements constructed or installed by or on behalf of CARSON in connection with the DIVERSION, and to restore the STORM DRAIN to a condition similar to or better than that which existed on the effective date of this AGREEMENT (including sealing off the diversion inlet). If the DISTRICT provides such notice, CARSON shall comply with said notice

within a reasonable time, but in no event exceeding one hundred eighty (180) days from the date of the notice or such longer period as may be mutually agreed to by the PARTIES. If CARSON cannot remove all improvements within one hundred eighty days (180) for reasons outside its control, it shall give prompt notice to DISTRICT when it learns it cannot meet this deadline, and the PARTIES will meet and confer in good faith concerning the obstacles to meeting the deadline and concerning a proposed mutually agreeable timeline for removal.

- 5.2. Prior to commencing the removal of any improvements, CARSON shall apply for and obtain a permit for the removal activities from the County of Los Angeles Department of Public Works, Land Development Division, Permits and Subdivisions Section and shall also apply for and obtain any and all other necessary local, State, and Federal permits applicable to the removal of the improvements.
- 5.3. If CARSON fails to comply with the DISTRICT's notice referred to in subsection 6.1, the DISTRICT may, in its sole discretion, remove any or all improvements referenced in the DISTRICT's notice to CARSON.
- 5.4. If the DISTRICT removes any improvements pursuant to subsection 6.3, the DISTRICT shall submit a billing invoice to CARSON indicating the costs and expenses reasonably incurred by the DISTRICT in connection with the removal of the improvements and CARSON shall reimburse the DISTRICT all such costs and expenses within thirty (30) days of CARSON's receipt of a billing invoice from the DISTRICT.

SECTION 6: Miscellaneous Provisions

6.1. Damage to STORM DRAIN or DIVERSION

- 6.1.1. If any components of the DIVERSION are damaged by any negligent act or omission of the DISTRICT, the DISTRICT shall repair and replace those components within a reasonable time frame after discovery or notice thereof. The DISTRICT shall be responsible for all costs related to these repairs and/or replacements.
- 6.1.2. If any components of the STORM DRAIN are damaged by any negligent act or omission of CARSON, CARSON shall repair and replace those components within a reasonable time frame after discovery or notice thereof. CARSON shall be responsible for all costs related to these repairs and/or replacements.
- 6.1.3. As owner of the STORM DRAIN, DISTRICT shall continue to be responsible for operation, maintenance, monitoring, upkeep and

improvements of the STORM DRAIN, and nothing in this AGREEMENT alters DISTRICT's ownership status concerning the STORM DRAIN. CARSON shall not become responsible for costs associated with the regular operation and maintenance of the STORM DRAIN, including but not limited to necessary repairs and/or replacement of STORM DRAIN components and obtaining, complying with and renewing as necessary all required regulatory permits for the STORM DRAIN.

- 6.2. The DISTRICT shall not be responsible for the expense of any relocation, alteration, or modification of the PROJECT, the DIVERSION or any portion thereof requested by CARSON.
- 6.3. Indemnification and release.
 - 6.3.1. CARSON shall indemnify, defend, and hold harmless the DISTRICT, the County of Los Angeles, and their respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including, without limitation, attorney fees and costs of litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, arising out of or in any way connected to the construction, operation, maintenance, repair, modification, or removal of the PROJECT, the DIVERSION, or any portion thereof, except to the extent caused by the negligence or willful misconduct of the DISTRICT, the County of Los Angeles, or their respective officers, employees or contractors.
 - 6.3.2. DISTRICT shall indemnify, defend, and hold harmless the CARSON and its respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including, without limitation, attorney fees and costs of litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, arising out of or in any way connected to operation and maintenance of the STORM DRAIN, exclusive of the DIVERSION, or any portion thereof, except to the extent caused by the negligence or willful misconduct of CARSON or its respective officers, employees or contractors.
 - 6.3.3. CARSON releases the DISTRICT and waives all rights to damages for any loss, costs, or expenses CARSON may sustain as a result of any damage to, or destruction of, the PROJECT, the DIVERSION, or any portion thereof, attributable to flood or stormwaters, or any other runoff tributary to the STORM DRAIN, except to the extent such

damages are caused by the negligence or willful misconduct of the DISTRICT or its officers, employees or contractors.

- 6.4. Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this Agreement.
- 6.5. Good Faith. Each Party shall use reasonable efforts and work in good faith for the expeditious completion of the purposes and goals of this Agreement and the satisfactory performance of its terms.
- 6.6. Voluntary. This Agreement is voluntarily entered into to attain the purposes set forth in this this Agreement.
- 6.7. Relationship of Parties. The Parties are and shall remain at all times as to each other wholly independent entities. No Party to this Agreement shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this Agreement. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.
- 6.8. Binding Effect. This Agreement shall be binding upon, and shall be to the benefit of the respective successors, heirs, and assigns of each Party; provided, however, no Party may assign its respective rights or obligations under this Agreement without prior written consent of the other Parties.
- 6.9. Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- 6.10. Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement.
- 6.11. Governing Law. This Agreement is made under and will be governed by the laws of the State of California. In the event of litigation between the Parties, venue in the state trial court shall lie exclusively in the County of Los Angeles.
- 6.12. No Presumption in Drafting. All Parties have been represented by legal counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language.

- 6.13. Severability. The provisions of this Agreement are severable, and the invalidity, illegality or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provisions. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the Parties shall endeavor to modify that clause in a manner which gives effect to the intent of the Parties in entering into this Agreement.
- 6.14. Counterparts. This Agreement may be executed in counterparts, which together shall constitute the same and entire Agreement.
- 6.15. Notices. Any notices, bills, invoices, or reports relating to this Agreement, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the address set forth below. Parties shall promptly notify each other of any change of contact information, including personnel changes. Written notice shall include notice delivered via e-mail and U.S. Mail. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by e-mail; or (b) on the third (3) business day following mailing by registered or certified mail (return receipt requested) to the address set forth below.
- 6.16. Administration. For purposes of this Agreement, the Parties hereby designate as their respective Party Representatives the persons named below. The designated Party Representatives, or their respective designees, shall administer the terms and conditions of the Agreement on behalf of their respective Party. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this Agreement on behalf of such Party.
- 6.17. Notices

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

Los Angeles County Flood Control District
Department of Public Works
Stormwater Planning Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Daniel J. Lafferty
Phone No.: (626) 458-4300
Fax: (626) 457-1526

City of Carson
Department of Public Works
701 East Carson Street
Carson, CA 90745
Attention: Dr. Maria Williams-Slaughter
Phone No.: (310) 952-1700 ext. 1754
mslaughter@carson.ca.us

[illegible]

IN WITNESS WHEREOF, DISTRICT and CARSON have caused this AGREEMENT to be executed by their respective duly authorized officers, by DISTRICT on _____, 2018; by CARSON on _____, 2018.

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

By _____
Chief Engineer

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By Mary Wickham by mw
Deputy

CITY OF CARSON

By _____
City Mayor

APPROVED AS TO FORM:

By _____
City Attorney