

<p>RECORDED AT THE REQUEST OF AND WHEN RECORDED MAIL TO:</p> <p>Orange County Sanitation District Clerk of the Board 18480 Bandilier Circle Fountain Valley, CA 92708</p> <p>WITH A COPY TO:</p> <p>County of Orange c/o CEO/ Real Estate Attn: Chief Real Estate Officer County Administration North 400 W. Civic Center Drive, Fifth Floor Santa Ana, CA 92701</p> <p>Recording Fee Exempt per Government Code 6103</p>	<p>THIS SPACE FOR RECORDER'S USE ONLY</p>
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HA55B-150
Lower Newport Bay, OC SAN Pipeline

UTILITY PERMIT AGREEMENT

This UTILITY PERMIT AGREEMENT (“*Agreement*”) is entered on _____, 2024 (“*Agreement Date*”), by and between COUNTY OF ORANGE, a political subdivision of the State of California, (“*County*”) and ORANGE COUNTY SANITATION DISTRICT, a special DISTRICT, established by the California State Legislature (“*OC SAN*”). The County and OC SAN may be referred to herein individually as “*Party*” and collectively as “*Parties.*”

RECITALS

- A. As of the Effective Date, the State of California granted to County all that portion of tidelands and submerged lands bordering upon and under Newport Bay in the County of Orange, which are outside of the corporate limits of the City of Newport Beach, a municipal corporation.
- B. The Permit Area, as defined in Section 1 below, is tidelands and submerged land granted in trust to the County by legislative act (Chapter 526, Statutes of 1919 as amended by Chapter 415 of the Statutes of 1975) (“*Tidelands Grant*”). The Tidelands are depicted in **Exhibit A (Tideland Map)**, which is attached hereto and by reference made a part hereof.

- C. The County agrees to provide a permit for OC SAN to perform work and maintain an underground high-pressure pipeline as set forth in this Agreement.
- D. OC SAN shall apply and must secure any applicable permit for the uses included in this Agreement as set forth herein, which may include but is not limited to architectural drawings, insurance and furnish evidence that assures County that sufficient monies will be available to complete the proposed construction.
- E. As the Tidelands Grant precludes the County from conveying utility easements within the Tidelands, the County and OC SAN desire to enter into this Agreement to memorialize OC SAN's rights within the Permit Area to access, inspect, operate, repair, maintain, replace, remove, relocate, alter, and use OC SAN Facilities (defined below).

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted, the Parties agree as follows:

1. **PERMIT.** County hereby grants to OC SAN a Permit ("*Permit*") (a) in, on, under, and through those portions underneath Lower Newport Bay at Pacific Coast Highway overpass to a depth of Two Hundred (200) feet, as shown in **Exhibit B (Cross Section Depiction)**, which exhibit is attached hereto and by reference made a part hereof and depicted in **Exhibit C ("*Permit Area*")** which exhibit is attached hereto and by reference made a part hereof; (b) to access, inspect, operate, repair, maintain, replace, remove, add, relocate, alter, and use pipelines together with braces, connections, fastenings, communication cables, meters, manholes, valves, and other appurtenances and fixtures in connection therewith or appurtenant thereto ("*OC SAN Facilities*"); and (c) with ingress and egress to OC SAN Facilities at such places and in such manner as may be reasonably necessary for the purposes described herein. OC SAN's use of the Permit Area shall be limited to replacing the existing force mains crossing the Newport Bay in Newport Beach, California. The force mains consist of two 24-inch diameter pipelines which cross under Pacific Coast Highway (PCH) to the southwest and then west under the Newport Bay Channel (Channel). The existing force mains will be abandoned in place and replaced with new 24-inch diameter pipelines inside a 72-inch diameter casing.

OC SAN agrees not to use the Permit Area for any other purpose nor to engage in or permit any other activity within or from the Permit Area. OC SAN further agrees not to conduct or permit to be conducted any public or private nuisance in, on, or from the Permit Area, not to commit or permit to be committed waste on the Permit Area, and to comply with all governmental laws and regulations in connection with its use of the Permit Area.

1.1. The Permit shall carry with it the right to mark the location of the Permit Area by suitable markers at locations which shall not interfere with County's reasonable use of the Permit Area.

1.2. County reserves the right to full use and enjoyment of the Permit Area, except for the

purposes described above and herein granted to OC SAN, provided that County's use and enjoyment shall not materially hinder, conflict, or interfere with the exercise of OC SAN's rights hereunder, unless otherwise approved by OC SAN.

1.3 OC SAN shall be responsible for the maintenance, detection and notification of any defects or problems, including but not limited to leaks, breaks, obstructions and structural failures of the force sewer main and associated infrastructure. OC SAN shall repair any damage and perform associated clean up as required by applicable local, state and federal rules and regulations governing the Permit Area.

2. **TERM**. The term of the Permit and this Agreement shall be fifty (50) years commencing on the Agreement Date ("***Term***"). The Term may be extended upon an express written and recorded amendment by the Parties.

3. **OWNERSHIP AND MAINTENANCE**. OC SAN Facilities shall at all times remain the property of OC SAN notwithstanding OC SAN Facilities may be annexed or affixed to the freehold and shall at any time and from time to time be removable, in whole or in part, pursuant to repair or maintenance operations of OC SAN Facilities as deemed necessary by OC SAN in its sole discretion. OC SAN Facilities shall be operated and maintained by OC SAN according to OC SAN standards at no cost to County.

4. **PERMIT FEE (SRLic-1.8 S)**

OC SAN agrees to pay a one-time administrative cost in connection with the processing of this Agreement in the amount of Five Thousand dollars (\$5,000.00) upon execution of this Agreement by County.

5. **REMOVAL/ABANDON IN PLACE**. If (a) OC SAN Facilities is ordered to be discontinued by any governmental authority or court of competent jurisdiction, or (b) the use of OC SAN Facilities is suspended for a period of more than one year without written notice from the OC SAN to County of (i) the circumstances affecting such suspension and (ii) OC SAN's intention to resume usage of OC SAN Facilities within a one (1) year period, then OC SAN, at written request of the County's Chief Real Estate Officer or designee (hereinafter referred to as "***CREO***"), and at no cost to County, shall, within one (1) year of such notice, (x) re-commence operations of the respective OC SAN Facilities or (y) commence either the removal or abandonment in place, at OC SAN's sole discretion, of the discontinued/suspended OC SAN Facilities. The OC SAN shall provide written notice of its election to the CREO within said one (1) year period; failure to timely respond shall be deemed OC SAN's election to abandon said OC SAN Facilities. Should OC SAN elect to remove/abandon in place, OC SAN shall use good faith, best efforts to complete the removal or abandonment within one (1) year of the end of said one (1) year period. Notwithstanding anything else herein to the contrary, if OC SAN elects removal, OC SAN, at no cost to County, shall restore the disturbed surface of the affected Permit Area, to the extent provided in Section 1, within the time periods set forth herein. Should OC SAN elect to abandon in place, OC SAN take all reasonable steps to ensure OC SAN Facilities are secured and kept in a condition that shall not result in any interference of County's use of the area or result in any damage, including but not limited to unreasonable environmental

contamination as set forth by law or any regulation set forth by any governmental agency with applicable jurisdiction. If at any time OC SAN Facilities are deemed unsafe or otherwise ordered to be removed by a court of competent jurisdiction or removal is the most feasible means to comply with a court order or any regulatory agency's directions, then OC SAN shall comply with, and be financially responsible for, complying with such orders or directions. All terms of this Permit related to OC SAN's requirements to indemnify and hold County harmless shall survive termination of this Permit as it relates to the abandonment or removal of OC SAN's Facilities. Upon request by County, OC SAN shall also execute and record in the Official Records of Orange County, California, a quitclaim agreement sufficient to remove the encumbrance of this Agreement from title to the Permit Area.

6. **REVISION OF PERMIT AREA.** In the event the attached **Exhibit C** is subsequently determined by the Parties to inaccurately describe the location of OC SAN Facilities, the Parties agree that an **Amended Exhibit C** approved in writing by the Parties will be immediately prepared and recorded by OC SAN, which will replace and supersede **Exhibit C**. **Amended Exhibit C** will not affect, alter, or change the Permit. Furthermore, the Permit will be deemed to be amended and will relate back and be in place as of the initial date of this Permit prior to the amendment of **Exhibit C**.

7. **RELEASE OF LIABILITY.** OC SAN hereby releases and waives all claims and recourse against County whatsoever, including the right of contribution for loss or damage of persons or property, including, but not limited to, County, its officials, officers, agents, employees, and contractors arising from, growing out of, or in any way connected with or related to this Agreement and Permit, except claims or recourse arising from the willful misconduct or active or sole negligence of County, its elected or appointed officials, officers, agents, employees and contractors.

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

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

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

8. **MECHANICS LIENS OR STOP-NOTICES (SRLic-2.6 S)**

OC SAN shall at all times indemnify, defend with counsel approved in writing by County and save County harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with maintenance, construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Permit Area, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a lien or stop notice is imposed upon the Permit Area as a result of such construction,

repair, maintenance, alteration, or installation, OC SAN shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Division 4, Part 6, Title 2 of the Civil Code, which frees the Permit Area from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should OC SAN fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop notice, OC SAN shall be in default and this Agreement and Permit shall be subject to immediate termination by the County.

9. **INDEMNIFICATION**. OC SAN hereby agrees to indemnify, hold harmless, and defend with counsel approved by County, County, its elected or appointed officials, officers, agents, employees and contractors, against any and all third-party claims, losses, demands, damages, cost, expenses, maintenance, construction, repair, alteration or installation of structures or liability for injury to any persons or property, including, but not limited to, County, its officials, officers, agents, employees, and contractors arising out of the operation, removal, abandonment, or maintenance of OC SAN Facilities, and/or OC SAN's exercise of the rights under the Permit, except for liability arising out of the willful misconduct or active or sole negligence of County, its elected or appointed officials, officers, agents, employees and contractors), including the cost of defense of any lawsuit arising therefrom.

9.1. If County is named as co-defendant in a lawsuit, except for a lawsuit arising out of the County's willful misconduct or active or sole negligence, OC SAN shall notify County of such fact and shall represent County in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event, OC SAN shall pay to County its reasonable litigation costs, expenses, and attorney's fees. If judgment is entered against County and OC SAN by a court of competent jurisdiction because of the active negligence of County and OC SAN, County and OC SAN agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

10. **LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS**. The OC SAN shall not cause any "*Hazardous Material*" as hereinafter defined, or permit any Hazardous Material by an OC SAN employee, contractor, subcontractor, or agent, to be brought upon, kept, or used in or about the Permit Area without the County's written permission, except wastewater being transported via OC SAN Facilities in compliance with all applicable laws, rules, orders or ordinances. If OC SAN breaches the obligations stated herein, or if contamination of the Permit Area by Hazardous Material otherwise occurs for which OC SAN is legally liable to County for damage resulting therefrom, then OC SAN shall indemnify, defend with counsel approved by County, and hold County, and their elected or appointed officials, officers, employees, and agents harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Permit Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) caused by OC SAN's use of the Permit Area as a result of such contamination.

10.1. This indemnification includes, without limitation, costs incurred by County in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material

being present in the soil or ground water under the Permit Area. OC SAN shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Permit Area to its condition prior to the introduction of such Hazardous Material by OC SAN, provided OC SAN shall first have obtained County's written approval and the approval of any necessary governmental entities or agencies.

10.2. As used herein, the term "**Hazardous Material**" does not include material used for the standard operation, maintenance, repair, replacement, alteration, or relocation of OC SAN Facilities, but otherwise means any hazardous or toxic substance, material, or waste which is or shall become regulated by any governmental entity or agency, including without limitation, County acting in its governmental capacity, the State of California, or the United States government.

11. **EXCEPTIONS AND RESERVATIONS.** This Agreement is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Permit Area ("**Existing Encumbrances**"), and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

12. **PERMITS AND LICENSES**

OC SAN shall be required to obtain and maintain throughout the Term of this Agreement any and all permits and/or licenses, such as, but not limited to Coastal Development Permit, which may be required in connection with the operation of the Permit Area as set out herein. Any terms or conditions placed upon OC SAN shall be the sole responsibility of OC SAN. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit OC SAN's obligations hereunder, nor shall any approvals or consents given by County, as a Party to this Agreement, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

GENERAL PROVISIONS

13. **INCORPORATION OF RECITALS.** The Recitals set forth above are true and correct and are hereby incorporated by reference as though fully set forth herein.

14. **SEVERABILITY.** 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 to the fullest extent permitted by law, and the Parties shall negotiate in good faith to replace the unenforceable provision(s) in accordance with the original purpose and intent of this Agreement as set forth in the above Recitals.

15. **SUCCESSORS AND ASSIGNS.** The terms, conditions and provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns.

16. **ENTIRE AGREEMENT AND CONSTRUCTION.** This Agreement contains the entire agreement between the Parties with respect to the matters herein and there are no restrictions,

promises, warranties or undertakings other than those set forth or referred to herein. The Agreement will be construed and interpreted as drafted by both Parties.

17. **ATTORNEY'S FEES.** 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 attorneys' fees and costs. This Section shall survive the expiration or termination of this Agreement.

18. **AMENDMENTS.** Except as expressly set forth herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties. Any amendment or cancellation of this Agreement shall be recorded in the Official Records of the County of Orange.

19. **WAIVER OF RIGHTS.** The failure of the Parties 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 the Party 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.

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

21. **NOTICES.** All notices, documents, correspondence, and communications concerning this Agreement shall be addressed as set forth in this paragraph, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, duly registered or certified with postage prepaid. Any such mailing shall be deemed served or delivered 24 hours after mailing.

Notwithstanding the above, the Parties may also provide notices, documents, correspondence, or such other communications to the other Party by personal delivery, regular mail, or facsimile and, so given, shall be deemed to have been given upon receipt if provided by personal delivery or facsimile, or 48 hours after mailing if provided by regular mail.

OC SAN:

Orange County Sanitation District
Clerk of the Board
18480 Bandilier Circle
Fountain Valley, CA 92708

COUNTY:

County of Orange c/o CEO Real Estate
Attn: Chief Real Estate Officer
County Administration North
400 W. Civic Center Dr., Fifth Floor
Santa Ana, CA 92701

And

OC Parks
Attn: Director
13042 Old Myford Rd.
Irvine, CA 92602

22. **FURTHER COOPERATION**. The Parties agree to execute, acknowledge if appropriate, and deliver any and all documents and cooperate in performing any and all acts in any commercially reasonable manner as may be necessary to carry out the intent of this Agreement, as set forth in the Recitals, and to implement the terms and conditions of this Agreement.

23. **COUNTERPARTS**. This Agreement may be executed in counterparts, which, when taken together, shall constitute one agreement, binding upon the Parties.

24. **RECORDATION**. This Agreement shall be recorded with the Orange County Recorder's Office. Each Party agrees to provide such original and notarized signatures as are required for such recording.

25. **ATTACHMENTS TO UTILITY PERMIT AGREEMENT(SRLic-5.9S)**

This Agreement includes the following, which are attached hereto and made a part hereof:

I. EXHIBITS

- Exhibit A – Tideland Map
- Exhibit B – Cross Section Depiction
- Exhibit C – Depiction of Permit Area

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

APPROVED AS TO FORM:	<u>ORANGE COUNTY SANITATION DISTRICT</u>
OFFICE OF COUNTY COUNSEL ORANGE COUNTY, CALIFORNIA	By: _____ Ryan P. Gallagher Board Chairman
By: _____ Deputy	ATTEST: _____ Kelly A. Lore, MMC Clerk of the Board
RECOMMENDED FOR APPROVAL:	APPROVED AS TO FORM:
County Executive Office	
By: _____ Real Estate Manager	By: _____ Scott C. Smith, General Counsel
	<u>COUNTY</u> COUNTY OF ORANGE
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD PER GC § 25103, RESO. 79-1535	
Attest: _____ ROBIN STIELER Clerk of the Board of Supervisors of Orange County, California	_____ Chair of the Board of Supervisors Orange County, California

EXHIBIT A Tideland Map



EXHIBIT B Cross Section Depiction

LEGEND

	ARTIFICIAL FILL
	SAND
	CLAY
	GRAVEL
	WATER
	SILT STONE

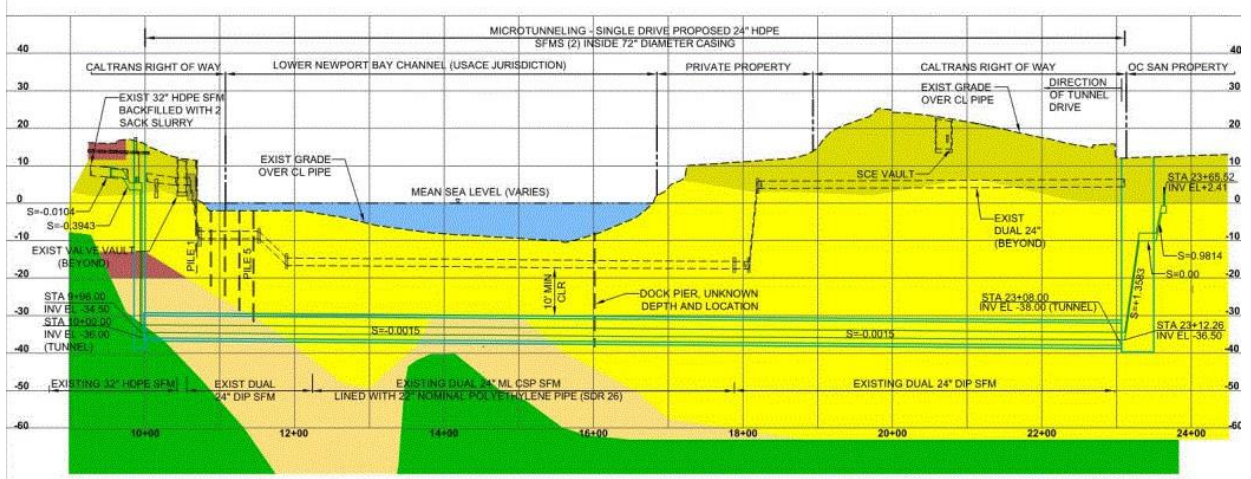


EXHIBIT C Depiction of Permit Area

