

ATTACHMENT A

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Attn: City Clerk's Office
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

WITH A COPY TO:

Attn: City Clerk
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

AND A COPY TO:

Attn: General Manager
Laguna Beach County Water District
306 3rd Street
Laguna Beach, CA 92651

EXEMPT FROM RECORDING FEES PER GOV. CODE SECTION 6103

Space above this line for Recorder's use only.

WATER WELL PERMIT AND ENCROACHMENT AGREEMENT (Water Well Permit Number _____)

This **WATER WELL PERMIT AND ENCROACHMENT AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2025, by and between the **CITY OF NEWPORT BEACH**, a California municipal corporation and charter city, organized and existing under and by virtue of its Charter and the Constitution, and the laws of the State of California ("Newport Beach"), the **CITY OF FOUNTAIN VALLEY**, a California municipal corporation, organized and existing under and by virtue of the laws of the State of California ("Fountain Valley"), and the **LAGUNA BEACH COUNTY WATER DISTRICT**, an incorporated County Water District and Special District under the California Water Code Section 30000 et. seq. ("LBCWD"). Fountain Valley, Newport Beach, and LBCWD are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as "Parties."

RECITALS

WHEREAS, LBCWD is the vested owner of property located at 17902 Bushard Street, in the City of Fountain Valley, California, as legally described in Exhibit "A," attached hereto and incorporated herein by reference ("Property"), and Newport Beach intends to become a joint property owner via a separate agreement and transaction;

WHEREAS, LBCWD and Newport Beach have entered into a separate standalone Memorandum of Understanding establishing a framework for collaboration on the use of the Property for a new water well facility that would supply groundwater from the Orange County Ground Water Basin ("Basin") to the LBCWD's and Newport Beach's water customers;

WHEREAS, Newport Beach desires to construct certain standard Improvements as further described in Section 2 of this Agreement ("Improvements") on the Property and within the Bushard Street and Talbert Avenue rights-of-way ("Rights-of-Way");

WHEREAS, the Property and Rights-of-Way are located within the jurisdictional boundary of Fountain Valley;

WHEREAS, the Basin is an unadjudicated groundwater basin that serves communities in north and central Orange County;

WHEREAS, California Government Code Section 53091(e) exempts facilities for production, generation, storage, treatment, or transmission of water from the zoning ordinances of any county or city;

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA") Guideline Section 15051(a), Newport Beach is designated the lead agency for CEQA purposes; and

WHEREAS, the parties hereto desire to enter into this Agreement providing for fulfillment of the conditions required by Fountain Valley to permit Newport Beach to construct, operate, and maintain Improvements associated with the Improvements.

NOW, THEREFORE, in consideration of the mutual promises, the parties hereto agree as follows:

1. Recitals. All parties acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.
2. Improvements. The approved Improvements shall include:
 - a. Two water wells, including all related appurtenances, to be constructed to approximate depths of 700 feet and 300 feet.
 - b. A 15-foot tall, 2,400-square-foot water well housing structure.
 - c. An 8-foot-tall concrete masonry block wall to be constructed along the property boundaries, which will include two 20-foot-wide sliding gates to provide access to the Property from Bushard Street.
 - d. Prior to the issuance of any construction permits, Newport Beach shall submit a report prepared by a licensed engineer, demonstrating that the proposed 18-inch reinforced concrete storm drain to connect the Property to the existing Fountain Valley storm drain infrastructure in the Talbert

Avenue right-of-way has adequate residual capacity to sustain flows under the City's 25-year design storm standards. The storm drain will connect from a catch basin on the Property, extending south within the Bushard Street right-of-way, to the existing Fountain Valley storm drains within the Talbert Avenue right-of-way. If the City Engineer determines that the existing storm drain system lacks the required capacity, Newport Beach shall, at its sole cost and expense, design and construct whatever Improvements the engineer deems necessary to accommodate the required flow.

- e. A 24-inch water main to connect the new water wells to the existing Newport Beach water main within Talbert Channel. The water mains shall extend from the Property south, within the Bushard Street right-of-way, then west within the Talbert Avenue right-of-way, connecting to the existing Newport Beach water main in Talbert Channel. The Improvements described in Sections 2(d) and 2(e) are collectively referred to herein as "Right-of-Way Improvements."
 - f. Other Property and Right-of-Way Improvements deemed necessary by Newport Beach to construct, operate, and maintain the water wells. This may include, but is not limited to, a concrete transformer pad, an emergency generator, landscaping, water treatment facilities, and parking and driveway Improvements.
- 3. Cooperative Work. Fountain Valley, Newport Beach, and LBCWD desire to work cooperatively together so that the Improvements can be completed in a manner that minimizes the cost to and impact on the public while allowing the Parties to accomplish their respective missions. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.
 - 4. Fountain Valley Municipal Code. This Agreement satisfies all requirements of Fountain Valley Municipal Code Section 14.16.040, which requires an agreement approved by the Fountain Valley City Council for the development of any well or facilities intended for the purpose of transporting or conveying water outside of the city.
 - 5. Newport Beach's Specific Obligations.
 - a. Newport Beach shall construct all Improvements on the Property and in the Rights-of-Way.
 - b. Newport Beach shall (and shall cause its agents and contractors to) comply with all applicable laws, regulations, and ordinances in connection with performing the work.
 - c. Newport Beach shall prepare and submit plans and specifications for the design and construction of the Improvements to Fountain Valley for review, comment, and to ensure the plans and specifications are in substantial conformance with all applicable laws, regulations, and ordinances.

- d. Newport Beach shall secure all necessary approvals (e.g. permits, encroachments, etc.) from the City of Fountain Valley to install and maintain the Improvements.
- e. Newport Beach shall ensure the Improvements are compliant with CEQA and shall take all necessary actions as required by CEQA.
- f. Newport Beach shall maintain all Improvements in accordance with generally prevailing standards of maintenance and pay all costs and expenses incurred in doing so. However, nothing herein shall be construed to require Newport Beach to maintain, replace, or repair any Fountain Valley owned pipeline, conduit, or cable located in or under said Permitted Improvements, except as otherwise provided herein.
- g. If Fountain Valley or other public facilities or Improvements are damaged by the installation or presence of Right-of-Way Improvements, Newport Beach shall be responsible for the cost of repairs and restoration of these public facilities or Right-of-Way Improvements to their condition at the time of entry into this Agreement.
- h. Newport Beach agrees to pay the following public benefit and mitigation fees to Fountain Valley:
 - (i) \$82,000 one-time payment for mitigation of potential lost revenue in permits, plan checks, and fees;
 - (ii) An annual public benefit payment of \$10,000 for loss of potential property tax revenue. This payment shall be automatically adjusted and compounded by the percentage change in the Consumer Price Index ("CPI");
 - (iii) \$45,000 one-time payment for encroachment into the rights-of-way to include the placement of the water main, storm drain, and all curb, gutter, and sidewalk Improvements.
 - (iv) \$100,000 one-time public benefit payment for use towards Fountain Valley's Public Safety use or projects, or towards future Fountain Valley water or well system improvements or rehabilitations.
- i. As a benefit to Fountain Valley, Newport Beach shall, at its sole cost, design and construct a pipeline stub out for a future System Interconnect adjacent to the groundwater production facility at the Bushard Street site. Newport Beach agrees to cooperatively work with Fountain Valley and allow a connection and water use of the future System Interconnect if requested by Fountain Valley. A System Interconnection would be designed and constructed by Fountain Valley, permitting Fountain Valley access to water produced by Newport Beach wells in the event of an emergency that disrupts Fountain Valley's water service. Newport Beach shall cooperate

with Fountain Valley relative to the design and construction of the System Interconnect and any related equipment necessary to Fountain Valley's use of the system in the event of an emergency. Water from the Newport Beach system will not be disinfected, and it will be Fountain Valley's responsibility to provide the appropriate level of disinfection for any water taken from the Newport Beach Groundwater Development Project. The Public Works Directors from Newport Beach and Fountain Valley shall adopt standard operating procedures that will control the use of the System Interconnect in case of an emergency.

- j. Newport Beach shall design and construct, at its sole cost, an 8-inch C900 water main that ties the 8-inch Asbestos Cement water main on La Amapola Circle to the 8-inch Asbestos Cement water main on Bushard Street with isolating gate valves at each end of the tie-in. Newport Beach shall dedicate an easement for the pipeline and shall cooperate with Fountain Valley relative to the design and construction of the water main extension. The new pipeline and connections improve Fountain Valley's water quality circulation and neighborhood redundancy. The estimated value of this improvement and easement is \$200,000.
- k. The payments described in Section 5(h) shall be made by Newport Beach to Fountain Valley as follows:
 - (i) The \$82,000 one-time payment for mitigation of potential lost revenue shall be paid within thirty (30) days of the Effective Date of this Agreement.
 - (ii) The annual public benefit payment of \$10,000 for loss of potential property tax revenue, as adjusted annually by CPI shall be due on the anniversary of the Effective Date, with the first payment due within thirty (30) days of the Effective Date of this Agreement.
 - (iii) The \$45,000 one-time payment for encroachment into the rights-of-way shall be paid prior to the issuance of any construction permit issued by Fountain Valley.
 - (iv) The \$100,000 one-time public benefit payment for use towards Fountain Valley's Public Safety use or projects, or towards future Fountain Valley water or well system improvements or rehabilitations shall be paid within thirty (30) days of the Effective Date of this Agreement.

6. Fountain Valley's Specific Obligations.

- a. Fountain Valley permits Newport Beach to construct, reconstruct, install, maintain, use, operate, repair, and replace said Right-of-Way Improvements and appurtenances incidental thereto, within a portion of Right-of-Way, , in a location that is in substantial conformance with the

plans and specifications on file with Fountain Valley. Fountain Valley permits Newport Beach to take all reasonable measures necessary or convenient in accomplishing the aforesaid activities.

- b. Fountain Valley shall issue all required permits to construct, reconstruct, install, maintain, use, operate, repair, and replace all Improvements that meet applicable building code requirements, the approval of which shall not be unreasonably withheld, conditioned, or delayed.
- c. Unless specified herein, Fountain Valley shall not charge an in-lieu, application, plan check, permit issuance, encroachment, inspection, impact, or any other fee for any work related to the construction, reconstruction, modification, alteration, installation, maintenance, use, operation, or repair of the Improvements.
- d. Fountain Valley shall not connect, modify, alter, or otherwise utilize any infrastructure connected to the Right-of-Way Improvements, except as provided below:
 - (i) Should Fountain Valley be required to exercise its primary rights associated with said Rights-of-Way, including but not limited to, the maintenance, removal, repair, renewal, replacement, or enlargement of existing or future public facilities or Improvements, Fountain Valley may modify or alter portions of permitted Improvements, as required, and in such event:
 - (ii) Fountain Valley shall notify Newport Beach at least 30 days in advance of its intention to accomplish such work, unless an emergency situation exists, in which case Newport Beach shall be notified as soon as possible, but no later than 72 hours after commencement of the emergency work.
 - (iii) Newport Beach, at its sole cost and expense, shall be responsible for arranging for any renewal, replacement, or restoration of permitted Right-of-Way Improvements to the conditions that existed immediately before Fountain Valley commenced work in the rights-of-way.
 - (iv) Fountain Valley agrees to bear all costs of work on City-owned facilities. Newport Beach agrees to bear all costs to remove, alter, and replace the permitted Right-of-way Improvements affected by such work.

7. LBCWD's Specific Obligations.

- a. LBCWD shall provide any required authorization required by Fountain Valley for issuance of permits for the Improvements.

- b. LBCWD shall provide required access to Newport Beach to construct, operate, and maintain the Improvements.
8. Term. This Agreement will be in full force and effect until the Parties mutually agree to terminate this Agreement in writing.
9. Notices. All notices or other communications required or permitted herein shall be in writing and will be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission to the following:
- To Newport Beach: City of Newport Beach
Attn: City Manager
100 Civic Center Drive
Newport Beach, CA 92660
Email: gleung@newportbeachca.gov
Phone: 949-644-3001
- To Fountain Valley: City of Fountain Valley
Attn: City Manager
10200 Slater Avenue
Fountain Valley, CA 92708
Email: maggie.le@fountainvalley.gov
Phone: 714-593-4402
- To LBCWD : Laguna Beach County Water District
Attn: General Manager
306 3rd Street
Laguna Beach, CA 92651
Email: kvandermaaten@lbcwd.org
Phone: 949-494-1041
10. Indemnification. Newport Beach and LBCWD shall defend, indemnify and hold harmless Fountain Valley, its City Council, Board of Directors, boards and commissions, officers and employees from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees (when outside attorneys are so utilized), regardless of the merit or outcome of any such claim or suit arising from or in any manner connected with the design, construction, maintenance, or continued existence of the Right-of-Way Improvements.
11. Insurance: Newport Beach and LBCWD shall maintain commercial liability insurance with coverage limits of no less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate. The City of Fountain Valley shall be named as an Additional Insured with respect to the construction and/or operations in Fountain Valley's public rights-of-way.

12. No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.
13. Standalone Agreements. This Agreement shall not be construed to nullify, override, modify, change, or otherwise alter any standalone agreement between any of the Parties. All other standalone agreements shall remain in effect and full force as dictated by those agreements.
14. Cessation of Operations. If the Improvements cease operations for a continuous period of twenty-four (24) months, the Parties agree to meet and confer in good faith to renegotiate this Agreement.
15. Ten-Year Evaluation. The Parties agree to meet and confer in good faith to evaluate the terms of this Agreement ten (10) years after the Effective Date. This evaluation shall include, but is not limited to, review of the impacts of the Improvements, including the annual in-lieu property tax payment, the Annual Mitigation Consideration methodology, insurance requirements, and the condition of any right-of-way Improvements. Any modification to this Agreement shall require mutual written consent of all Parties.
16. Force Majeure. Except for the payment of money, no Party will be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, acts of third parties, or any law, order, or requirement of any governmental agency or authority.
17. Governing Law. The laws of the State of California shall govern this Agreement and all matters relating to it, and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, California.
18. Waiver. A waiver by either party of any breach, of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.
19. Modification. Alteration, change, or modification of this Agreement will be in the form of a written amendment, which will be signed by all Parties.
20. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations and agreements between the Parties pertaining to the subject matter hereof.
21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22. Agreement Execution and Authorization. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity on whose behalf he or she is executing this Agreement.
23. Counterparts Deemed Original: This Agreement may be executed in one or more counterparts (including by e-mail, other electronic transmission, and/or facsimile), all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be one and the same original instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates written below.

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Grace K. Leung
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

ATTEST:

Date: 10/22/25

Date: _____

By: 
Aaron C. Harp
City Attorney

By: _____
Lena Shumway
City Clerk

CITY OF FOUNTAIN VALLEY,
a California municipal corporation

Date: _____

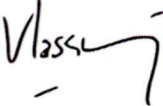
By: _____
Ted Bui
Mayor

APPROVED AS TO FORM:
ATTORNEYS FOR THE CITY

ATTEST:

Date: September 23, 2025

Date: _____

By: 
Vanessa Lassooy
Attorney for the City

By: _____
Rick Miller
City Clerk

LAGUNA BEACH COUNTY WATER DISTRICT,
a California Special District

Date: _____

By: _____
Keith Van Der Maaten
General Manager

APPROVED AS TO FORM:
GENERAL COUNSEL

ATTEST:

Date: _____

Date: _____

By: _____
General Counsel

By: _____

[END OF SIGNATURES]

ATTACHMENTS: Exhibit A — Legal Description

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property situated in the County of Orange, State of California, described as follows:

THAT PORTION OF PARCEL 2, IN THE CITY OF FOUNTAIN VALLEY, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 95, PAGES 41 TO 42 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OR SAID COUNTY, SHOWN AND DESCRIBED AS " NOT A PART' OF THE MAP OF TRACT 16434, IN THE CITY OF FOUNTAIN VALLEY, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 851, PAGES 22 TO 23, INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.