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This Encroachment Agreement (“Agreement”) is entered into on this 14th day of May, 2024, by and between the City of Concord, a municipal Corporation (“CITY”), and CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (“PERMITTEE”).

WHEREAS, a public right of way known as “Marsh Drive” is in the CITY jurisdiction; and

WHEREAS, a portion of Marsh Drive is comprised of a structure known as the “Marsh Drive Bridge” (“Bridge”), which traverses the waterway known as the Walnut Creek Channel (“Channel”); and

WHEREAS, PERMITTEE owns and operates the Channel upstream and downstream of the Bridge; and

WHEREAS, PERMITTEE has requested entry onto the Bridge to install and maintain a stream gauge and related equipment (“Equipment”) on the Bridge;

WHEREAS, the Equipment will be clamped to the Bridge rail, will not require physical modification to the Bridge or Bridge rail, can be moved to keep it over the low flow portion of the Channel, and can be removed easily for CITY Bridge maintenance operations; and

WHEREAS, CITY has determined that PERMITTE's installation and maintenance of the Equipment will not affect CITY's ability to access and maintain any CITY public facilities and is consistent with the purposes of the public right of way; and

WHEREAS, CITY has determined that, subject to the terms and conditions as set forth below and described within the Agreement, the CITY is authorized to enter into this Agreement, pursuant to Title 12, Chapter 12.15, Sections 12.15.010 *et seq.* (Street Encroachments) of the Concord Municipal Code, as amended from time to time (“Encroachment Ordinance”).

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties and the faithful performance of the terms and conditions of this Agreement, the parties agree as follows:

1. **Description of Real Property.** The real property affected by this Agreement (“Property”) is shown in Exhibit A, which is attached hereto and incorporated herein by reference.

2. Encroachment Affected. The encroachment affected by this Agreement is

1 PERMITTEE's use of the Bridge for the purpose described above and in the Encroachment Permit,
2 defined below (such use, the "Encroachment"). The location of the Bridge is shown in Exhibit B,
3 incorporated herein by reference.

4 **3. Encroachment Ordinance.** The CITY's Encroachment Ordinance is hereby incorporated
5 and made a part of this Agreement by reference. The above-described real property and the
6 Encroachment are subject to the terms and conditions of the Encroachment Ordinance. The
7 requirements of Section 12.15.130 (a) – (g) of the Encroachment Ordinance, in connection with the
8 requirement of a cash deposit or bond, is waived pursuant to subsection (h) of Section 12.15.130.
9 However, the obligation to provide Commercial General Liability insurance or self-insurance in the
10 amount of \$1,000,000.00 and name the CITY as an additional insured under said policy in a manner
11 determined acceptable by the City Attorney as required by Section 12.15.130(i) of the Encroachment
12 Ordinance ("Insurance") of the Concord Municipal Code remains in full force and effect.

13 **4. Permits.** Upon execution of this Agreement, CITY will issue an encroachment permit to
14 PERMITTEE, pursuant to the Encroachment Ordinance, provided that all appropriate approvals have
15 been given by CITY for the allowance of the Encroachment. An encroachment permit will be issued
16 after an Encroachment Permit Application is submitted for the work and this agreement is executed.

17 **5. Maintenance of Encroachment.** PERMITTEE shall be solely responsible for the
18 inspection, repair, and maintenance of the Equipment during the period the Encroachment remains in
19 the right of way area, and PERMITTEE shall comply with all applicable terms and conditions of the
20 Encroachment Permit. The City assumes no responsibility for loss or damage to the Equipment or
21 other property of PERMITTEE.

22 **6. Term of Agreement.** The term of this Agreement, and the Encroachment Permit issued
23 pursuant to this Agreement, shall commence on the date first set forth above, and may be terminated
24 by either party upon thirty (30) days written notice to the other party.

25 **7. Indemnification.** PERMITTEE agrees to and shall indemnify, defend, and hold harmless
26 CITY, its officers, officials, employees, agents and volunteers from and against any and all claims,
27 demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
28 litigation expenses) or suits for damages or injury arising from PERMITTEE's Encroachment or from

any activity, work, or thing done, permitted, or suffered by PERMITTEE in or about the Property, and shall further indemnify, defend, and hold harmless CITY against and from any and all claims or suits arising from any breach or default of any performance of any obligation of PERMITTEE hereunder, and against and from all costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this Agreement.

8. Failure to Comply. If PERMITTEE fails to comply with the requirements of this Agreement, CITY may terminate this Agreement and/or invoke CITY's rights under this Encroachment Agreement or under the City's Municipal Code, including but not limited to instituting proceedings to enforce this Agreement. If CITY elects to terminate this Agreement, CITY shall notify PERMITTEE in writing of the date of termination and the reasons for such action, and provide PERMITTEE an opportunity to cure, at least thirty (30) days prior to the termination date. However, if PERMITTEE corrects the deficiencies identified in CITY's notice of termination prior to the termination date, or if PERMITTEE commences such correction prior to the termination date and diligently prosecutes same to completion, then this Agreement shall remain in effect, notwithstanding CITY's earlier notice of termination under this Section 8.

9. Relocation or Removal of Encroachment. When any encroachment authorized hereunder is found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by CITY, such encroachment shall, upon written demand of the City Engineer, be relocated in such a way as to eliminate the conflict. Said relocation shall be at the sole expense of PERMITTEE.

10. Notice. All notices required herein shall be sent via First Class U.S. Mail with postage prepaid thereon to the parties as follows:

TO CITY:	City of Concord 1950 Parkside Drive, M/S 03 Concord, CA 94519-2578 Attn: City Engineer
TO PERMITTEE:	Contra Costa County Flood Control and Water Conservation District 40 Muir Rd., 2nd Floor Martinez, CA 94553 Attn: Jessica L. Dillingham,

1 Notices shall be deemed effectively served three days after being deposited in the United States Mail.

2 **11. Recordation.** This Agreement shall be recorded by the CITY with the Office of the
3 Contra Costa County Recorder upon execution by all parties hereto.

4 **12. Compliance with Laws.** The obligations contained herein are in addition to those
5 imposed by the CITY's Encroachment Ordinance, Concord Municipal Code Section 12.15.100(c).
6 PERMITEE shall comply with all applicable federal, State of California, and local laws, rules and
7 regulations, and shall obtain all applicable licenses required for PERMITEE's use of the Bridge or
8 any activity, work, or thing done, permitted, or suffered by PERMITEE in or about the Bridge.

9 **13. Successors and Assigns.** PERMITEE shall not assign or otherwise transfer its rights or
10 obligations under this Agreement without CITY's written permission.

11 **14. Choice of Law.** This Agreement shall be construed and interpreted in accordance with the
12 laws of the State of California, excluding any choice of laws rules which may direct the application of
13 the laws of another jurisdiction. In the event that suit shall be brought by either party, the parties
14 agree that venue of such action shall be held exclusively in a state court in the County of Contra
15 Costa, California.

16 **15. Entire Agreement.** This Agreement contains the entire agreement between the parties
17 hereto. No promise, representation, warranty or covenant not included in this Agreement has been or
18 is relied on by any party hereto. If any term of this Agreement conflicts with a term of the
19 Encroachment Permit issued under this Agreement, the term of this Agreement shall prevail over the
20 conflicting term of the Encroachment Permit.

1 **IN WITNESS WHEREOF**, the parties have executed this Agreement the date and year first written
2 above.

3 **CONTRA COSTA COUNTY FLOOD CONTROL AND**
4 **WATER CONSERVATION DISTRICT** |

5
6 By: _____
7 |Warren Lai, Chief Engineer |

8 **CITY OF CONCORD**, a municipal corporation

9
10 By: _____
11 |Valerie Barone, City Manager

12 **ATTEST:**

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14 By: _____
15 |Joelle Fockler, City Clerk

16 **APPROVED AS TO FORM:**

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Susanne Meyer Brown, City Attorney

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