

**AGREEMENT
(Option 2)**

This AGREEMENT is entered into by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as the LACFCD), and the CITY OF MANHATTAN BEACH, a municipal corporation (hereinafter referred to as CITY).

RECITALS

WHEREAS, State Water Resources Control Board has promulgated water-quality regulations, including a Statewide Trash Amendment, applicable to cities located in the Santa Monica Bay Watershed; and

WHEREAS, CITY desires to achieve compliance with the Statewide Trash Amendment by installing TRASH EXCLUDERS (as hereafter defined) within catch basins owned by the LACFCD, located within CITY streets; and

WHEREAS, CITY will administer the procurement and installation of said TRASH EXCLUDERS. Once installed, the purpose of this agreement is to ensure that the CITY maintains the TRASH EXCLUDERS installed on catch basins owned by the LACFCD;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the LACFCD and CITY hereto mutually agree as follows:

(1) DEFINITION:

TRASH EXCLUDER, as referred to in this AGREEMENT, shall mean any device, which partially blocks the opening or outlet of a catch basin to prevent trash from entering the storm drain system, including Automatic Retractable Screen devices (ARS) and Connector Pipe Screen devices (CPS).

(2) CITY AGREES AS FOLLOWS:

- a. CITY shall prepare a list of locations and other information for the TRASH EXCLUDERS that CITY proposes to install on LACFCD catch basins, in a form prescribed by the LACFCD. Once completed by the CITY, the list shall be attached hereto as Exhibit A, and be incorporated herein as if set forth in full.
- b. CITY shall apply for and obtain a permit from the LACFCD for the installation of the TRASH EXCLUDERS identified on Exhibit A.

- c. Upon completion of the installation of the TRASH EXCLUDERS in accordance with the terms and conditions of the permit from the LACFCD, CITY shall provide to the LACFCD an updated Exhibit A as necessary, to reflect any differences between the proposed and the as-built conditions. Once approved by the LACFCD, the updated Exhibit A shall replace and supersede the prior Exhibit A.

CITY shall inspect all catch basins fitted with TRASH EXCLUDERS. If, during an inspection, CITY discovers damage to any catch basin other than damage to the TRASH EXCLUDER, CITY shall report said damage to the LACFCD within 14 calendar days from the date of the inspection.

- d. CITY shall patrol areas in which any TRASH EXCLUDERS have been installed, during storm events, to verify that all TRASH EXCLUDERS are functioning properly and shall relieve any instances of plugging of any catch basin fitted with a TRASH EXCLUDER. CITY shall promptly repair or replace damaged TRASH EXCLUDERS. Requests for Service coming to the LACFCD to clean or service any catch basin identified on Exhibit A, during a storm event, will be forwarded to CITY for their prompt handling, action, and closure.
- e. CITY shall remove all trash and debris from each catch basin fitted with a TRASH EXCLUDER at least once each year. CITY shall stencil the appropriate month and year of cleanout on each catch basin.
- f. CITY shall be authorized to remove the existing manhole covers as required to access the inside of the catch basins fitted with TRASH EXCLUDERS and shall reinstall the manhole covers wherever the catch basins are left unattended. If screws or bolts are damaged while removing the manhole covers, CITY shall replace the screws or bolts. CITY shall thoroughly clean all debris from the manhole frame and cover before reinstallation of the cover.
- g. CITY shall indemnify, defend, and hold the LACFCD and the County of Los Angeles, and their agents, officers, and employees, harmless from and against any and all claims, demands, liability, damages or costs arising from the breach by CITY of any obligation under this Agreement, or from the installation, operation or maintenance of any TRASH EXCLUDER.
- h. Nothing in this AGREEMENT shall be construed as transferring liability or responsibility to the CITY for the LACFCD's obligations under the applicable NPDES Permit, or transferring liability or responsibility to the LACFCD for the CITY's obligations under the applicable NPDES Permit.
- i. CITY shall include the LACFCD within the protection of any indemnification clause contained in any ancillary contract relating to the maintenance of the TRASH EXCLUDERS.

(3) LACFCD AGREES AS FOLLOWS:

- a. CITY is authorized to operate and maintain the TRASH EXCLUDERS on LACFCD-owned catch basins identified in Exhibit A.
- b. The LACFCD shall pay CITY the amount of \$15.25 in 2012 dollars, adjusted annually according to the Consumer Price Index for all urban consumers in the Anaheim, Los Angeles, and Riverside areas, as published by the U.S. Government Bureau of Labor Statistics, per year, for each catch basin identified in Exhibit A. This amount represents the annual amount the LACFCD would otherwise have had to incur for removing trash and debris from the catch basins identified in Exhibit A, had CITY not installed TRASH EXCLUDERS in those catch basins.

(4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. The TRASH EXCLUDERS are the property of CITY. The LACFCD shall retain ownership of the catch basins, exclusive of the TRASH EXCLUDERS. City's agreement to maintain the TRASH EXCLUDERS in the catch basins does not include any obligations to maintain any portion of the LACFCD's storm drain system downstream of the catch basins.
- b. CITY may, from time to time, with the consent of the LACFCD, install additional TRASH EXCLUDERS on or remove existing TRASH EXCLUDERS from LACFCD-owned catch basins. Prior to installing any new TRASH EXCLUDER or removing any existing TRASH EXCLUDER, CITY shall apply for and obtain a permit from the LACFCD for the installation or removal. Upon completion of the installation or removal in accordance with the terms and conditions of the permit, CITY shall provide to the LACFCD an updated Exhibit A to reflect the additional or removed TRASH EXCLUDERS. Once approved by the LACFCD, the updated Exhibit A shall replace and supersede the prior Exhibit A.
- c. Termination
 - (i) CITY may request the LACFCD to perform the inspection and maintenance of the TRASH EXCLUDERS, or any of them, on CITY's behalf. If the LACFCD, in its sole discretion, determines to do so, the parties shall enter into a new agreement providing for said inspection and maintenance by the LACFCD, on CITY's behalf. Upon the execution of the new agreement by both CITY and the LACFCD, this AGREEMENT shall be deemed terminated.

- (ii) CITY may unilaterally terminate this AGREEMENT without cause, in CITY'S sole discretion, at any time, by giving a thirty (30)-day prior written notice to the LACFCD. In the event this AGREEMENT is terminated, pursuant to this Section, the LACFCD may, in its sole discretion, provide CITY with a written notice to remove the TRASH EXCLUDERS or any of them, and restore the affected catch basin(s) to a condition similar to that which existed prior to installation of the TRASH EXCLUDERS. If the LACFCD provides CITY with such a notice, CITY shall, prior to commencing any work on any LACFCD-owned catch basin, apply for and obtain a permit from the LACFCD for all work required to comply with the notice and complete all such work within ninety (90) days. If CITY fails to do so, the LACFCD may, in its sole discretion, complete said work at CITY'S expense.
 - (iii) If CITY fails to comply with any of the terms or conditions of this AGREEMENT, the LACFCD may, in its sole discretion, terminate this AGREEMENT and provide CITY with a written notice to remove the TRASH EXCLUDERS, or any of them, and restore the catch basin(s) to a condition similar to or better than that which existed prior to installation of the TRASH EXCLUDERS. If the LACFCD provides CITY with such a notice, CITY shall complete all work required to comply with the notice within ninety (90) days. If CITY fails to do so, the LACFCD may, in its sole discretion, complete said work at CITY'S expense.
 - (iv) If the LACFCD removes any TRASH EXCLUDER pursuant to Sections (4)c.(ii) or (4)c.(iii), the LACFCD shall submit a billing invoice to CITY indicating the costs and expenses incurred by the LACFCD in connection with the removal of the TRASH EXCLUDER, specifically including any work required to restore the affected catch basin to a condition similar to or better than that which existed prior to installation of the TRASH EXCLUDER, and CITY shall reimburse the LACFCD all such costs and expenses within thirty (30) days of the billing invoice.
- d. The LACFCD is not responsible for assisting CITY with any regulatory compliance activities related to the operation or maintenance of the TRASH EXCLUDERS including, for example, conducting monitoring, weighing of trash, and reporting amounts of trash collected from inside catch basins where TRASH EXCLUDERS have been installed.
- e. Requests for Service coming to the LACFCD to clean any catch basin identified in Exhibit A will be forwarded to CITY for their prompt handling, action, and closure.

- f. The LACFCD may remove any TRASH EXCLUDER, if the LACFCD determines, in its reasonable discretion, that removal of the TRASH EXCLUDER is necessary to prevent or mitigate flooding of any public or private property. LACFCD shall notify CITY of removal as soon as possible upon identification of a potential flooding issue and preferably before removal if feasible. CITY expressly releases the LACFCD from, and waives, all claims for any damages, loss, costs, or expenses resulting from the LACFCD'S removal of any TRASH EXCLUDER pursuant to this section. In such case, CITY may thereafter reinstall the TRASH EXCLUDER only after first consulting with the LACFCD with regards to the reasons for the removal. If CITY thereafter chooses to reinstall the TRASH EXCLUDER, it must do so at its sole expense.
- g. This AGREEMENT may be modified only by the mutual written consent of both parties.
- h. This AGREEMENT contains the complete and final understanding of the parties in connection with the subject matter herein and shall supersede any and all previous contemporaneous oral or written agreements between the parties regarding said subject matter.
- i. The provisions of this AGREEMENT shall be interpreted and enforced pursuant to the laws of the State of California.
- j. Execution of AGREEMENT
 - (i) This AGREEMENT may be executed simultaneously or in any number of counterparts, including both counterparts that are executed manually on paper and counterparts that are in the form of electronic records and are executed electronically, whether digital or encrypted, each of which shall be deemed an original and together shall constitute one and the same instrument.
 - (ii) The LACFCD and CITY hereby agree to regard facsimile/electronic representations of original signatures of authorized officers of each party, when appearing in appropriate places on this AGREEMENT and on any addenda or amendments thereto, delivered or sent via facsimile or electronic mail or other electronic means, as legally sufficient evidence that such original signatures have been affixed to this AGREEMENT and any amendments thereto such that the parties need not follow up facsimile/electronic transmissions of such documents with subsequent (non-facsimile/electronic) transmission of "original" versions of such documents.
 - (iii) Further, the LACFCD and CITY agree that an electronic signature of any party may be used to authenticate this AGREEMENT or any amendment thereto, and if used, will have the same force and effect as a manual signature; acknowledge that if an electronic signature

is used, the other party will rely on such signature as binding the party using such signature, and (iii) hereby waive any defenses to the enforcement of the terms of this agreement based on the foregoing forms of signature.

- k. Any correspondence, communication, or contact concerning this AGREEMENT, shall be directed to the following:

CITY OF MANHATTAN BEACH:

Attn: Tim Birthisel, P.E.
3621 Bell Avenue
Manhattan Beach, CA 90266
Telephone: (310) 802-5368

Los Angeles County Flood Control District
Los Angeles County Public Works
Stormwater Planning Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Attention: Assistant Deputy Director
Phone No.: (626) 458-4300
Fax: (626) 458-1526
For emergencies, contact 626-458-HELP (4337)

The parties hereto have caused this AGREEMENT to be duly executed by their respective duly authorized officers on the dates indicated below.

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

By _____

Date: _____
Chief Engineer

City of _____

By _____

Date: _____

APPROVED AS TO FORM:

By _____
City Attorney