

COMMON USE AGREEMENT

THIS COMMON USE AGREEMENT (“Agreement”) is made and entered into on _____, 2021, by and between **OAK FLAT WATER DISTRICT**, a California water district, (“Oak Flat”) and **WESTERN HILLS WATER DISTRICT**, a California water district; (“Western Hills”).

R E C I T A L S

WHEREAS, Western Hills is the operator of a turnout located at Milepost 42.90 of Reach 2A of the California Aqueduct (the “Turnout”);

WHEREAS, the construction, operation and maintenance of the Turnout is subject to that certain *Agreement Between the Department of Water Resources of the State of California, Kern County Water Agency, and Western Hills Water District for Construction, Operation, and Maintenance of the Western Hills Turnout* dated June 8, 2000, (“Turnout Agreement”);

WHEREAS, Oak Flat receives water from the State Water Project (“SWP”) pursuant to the terms and conditions of that certain *Contract Between the State of California Department of Water Resources and Oak Flat Water District for a Water Supply*, dated March 23, 1965 and delivers its SWP contract water to landowners within its boundaries;

WHEREAS, Stanislaus County A.P.N. 025-006-064, which consists of approximately 18 acres, is located within the boundaries of Oak Flat but is situated in a location which lacks infrastructure necessary for receiving the allocable share of SWP water directly from the California Aqueduct (the “Oak Flat Parcel”);

WHEREAS, Oak Flat is in the process of securing all necessary approvals from Western Hills, the Kern County Water Agency (“Agency”), and the Department of Water Resources (“DWR”) for Oak Flat’s use of the Turnout and construction of facilities necessary to deliver SWP water to the Oak Flat Parcel (the “Approval”), which Approvals include this Agreement; and,

WHEREAS, Oak Flat and Western Hills desire by this Agreement to establish the terms and conditions governing Oak Flat’s use of the Turnout and construction of facilities necessary to deliver SWP water to the Oak Flat Parcel.

NOW, THEREFORE, incorporating the foregoing recitals herein, Oak Flat and Western Hills mutually agree as follows:

1. **CONSENT TO USE AND CONSTRUCTION.** Western Hills consents to Oak Flat’s (i) use of the Turnout subject to the terms and conditions of the Approvals, and (ii)

construction, reconstruction, maintenance and use of facilities connecting Oak Flat's water distribution system to Western Hills' facilities as necessary to enable Oak Flat to deliver up to seventy (70) acre feet per year of SWP water to the Oak Flat Parcel (the "Connection"). The Turnout and the portions of Western Hills facilities and property affected by Oak Flat's activities authorized in this Agreement shall be referred to herein as the "Area of Common Use". The rights granted herein shall include such reasonable rights of ingress and egress as are necessary for Oak Flat to access the Area of Common Use.

2. **CONSTRUCTION.** Oak Flat shall construct and maintain the Connection in good operating condition at its sole cost and expense. All plans for the construction of the Connection within the Area of Common Use shall be reviewed and approved in writing by Western Hills prior to commencement of construction, such approval not to be unreasonably withheld, conditioned or delayed.

3. **TITLE.** Each party to this Agreement shall have and reserve all their rights, as they were prior to entering into this Agreement, for the purposes for which they acquired and have been put to use, without need for further permit or permission from the other party.

4. **NOTICE OF WORK.** Except with regard to emergency work or repair, Oak Flat shall provide Western Hills written notice of not less than forty-eight (48) hours in advance of any work that Oak Flat intends to perform within the Area of Common Use.

5. **NON-INTERFERENCE.** Oak Flat agrees it shall exercise its rights under this Agreement (i) in a manner that all times avoids interfering with Western Hills' use of and access to the Area of Common Use, and (ii) in a manner that will not interfere with any contract or regulatory or other approval or permit of Western Hills, including without limitation Western Hills' drinking water permit.

6. **ENFORCEABILITY.** The failure of any party to enforce against the other any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time.

7. **MERGER AND MODIFICATION.** This Agreement, together with the Approvals, sets forth the entire agreement between the parties with regard to the subject matter hereof and supersedes all other oral or written representations. This Agreement may be modified only through writing approved and signed by both parties hereto.

8. **TERM.** The term of this Agreement shall commence on the date hereinabove set forth and shall terminate upon Oak Flat giving notice to Western Hills of abandonment of its utilization of the Common Use Area for the purposes herein contemplated.

9. **TERMINATION.** Upon termination of this Agreement arising from Oak Flat's

abandonment of facilities, Oak Flat shall remove all its facilities from the Common Use Area and restore the Common Use Area as nearly as reasonably possible to the condition the Common Use Area would have been in absent this Agreement. Oak Flat shall assume all costs associated with the removal of its facilities and restoration of the premises.

10. INDEMNITY. Oak Flat agrees to defend, indemnify and hold harmless Western Hills, its respective officers, agents and employees and each of them, from any injury, damage, loss, liability, claim or cause of action, including, but not limited to, inverse condemnation, property damage, personal injury, or death (the “Losses”) to the extent caused by Oak Flat, its officers, agents, and employees in the exercise of Oak Flat’s rights under this Agreement. No right of indemnification provided for in this Section 10 shall be available to the extent the Losses are solely caused by Western Hills..

11. EXECUTION. This Agreement is effective upon execution. It is the product of negotiation and both parties hereto are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

12. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

WESTERN HILLS:	WESTERN HILLS WATER DISTRICT Ron Demmers 9521 Morton Davis Drive Patterson, CA 95363
OAK FLAT:	OAK FLAT WATER DISTRICT Attn: Anthea Hansen P. O. Box 1596 Patterson, CA 95363

13. GOVERNING LAW. The laws of the State of California shall govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Stanislaus County, California.

14. ASSIGNMENT. This Agreement shall not be assigned by either party without prior written consent of the other party.

15. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their heirs, administrators, executors, personal representative, successors and assigns.

16. **COUNTERPARTS.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

WESTERN HILLS WATER DISTRICT

OAK FLAT WATER DISTRICT

By: _____
Ron Demmers
Operations Manager

By _____
Anthea Hansen
General Manager