

REIMBURSEMENT AGREEMENT
(OC SAN MANHOLE ADJUSTMENT)

THIS UTILITY RELOCATION AGREEMENT (this "**Agreement**") is entered into the _____ day of _____, 20__, between **Orange County Sanitation District** ("**OC San**"), and **City of Anaheim** ("**City**").

RECITALS

A. City proposes improvements to Euclid Street from Broadway to 850 feet north of Lincoln Avenue and 44 feet south of Catalpa Drive to the 91 Freeway (the "**Project**"). The work to be performed generally consists of asphalt concrete pavement resurfacing and associated improvements within the existing right-of-way.

B. City has notified OC San that its surficial manhole structures (the "**Utilities**") located on Euclid Street within the Project area are in locational conflict with the Project and has requested that OC San adjust the Utilities to finished surface (the "**Adjustment Work**") as necessary to accommodate the Project.

C. Adjustment Work is a part of the overall work ("**Work**") that is to be performed under the Project

D. OC San has provided City with a copy of all OC San standard drawings ("Standards") outlining the Work to be performed, which have been approved by City and a copy of which Standards are attached hereto and made a part hereof as **Exhibit A**.

E. In order to avoid delay to the Project and minimize impacts to the environment, community and surrounding areas, City intends to perform the Adjustment Work in accordance with Exhibit A and seek reimbursement from OC San.

F. City and OC San desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Project by City.

AGREEMENT

For and in consideration of the foregoing recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and OC San agree as follows:

Section 1: **Recitals.** The Recitals above are deemed true and correct, are hereby incorporated in this Section as though fully set forth herein, and each Party to this Agreement acknowledges and agrees that they are bound by the same.

Section 2: **Elements of Agreement.** City and OC San will work cooperatively together so City's Project and OC San's Adjustment Work can be constructed in a manner that

minimizes the costs and impacts to all Parties and the public. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.

Section 3: CITY's Specific Obligations.

- A. City will be responsible for compliance with the California Environmental Quality Act ("CEQA") and all other permitting requirements
- B. City will undergo a Public Works bidding process and will enter into a construction contract to perform the Adjustment Work in accordance with the Standards provided by OC San.
- C. Upon determination of the successful bidder, City will submit relevant documentation to OC San for its files.
- D. For the duration of Project construction, City will:
 - a. Promptly inform OC San of any proposed changes to the construction contract as it relates to OC San facilities. Copies of proposed changes affecting OC San will be provided to OC San within five (5) working days of submission to City
 - b. Provide OC San staff with contractor schedules and updates within five (5) days of acceptance by City staff and;
 - c. Invite OC San staff to construction progress meetings.
 - d. Notify OC San 48 hours prior to the need for an inspection.
 - e. Ensure the City's construction contractor coordinate with OC San to retrieve the manhole frames and covers (provided by OC San) from the OC San Treatment Plant No. 2 in Huntington Beach.
- E. City will document and inform OC San of the date of the completion of the Adjustment Work. City will verify with OC San prior to issuance of progress payment to City's construction contractor that Adjustment Work was completed per OC San Standards.

Section 4: OC San's Specific Obligations.

- A. OC San will provide, at OC San's expense, new frames and covers to replace the existing frames and covers.

- B. OC San will provide, at OC San's expense, inspection services to assure compliance with the Standards. OC San will promptly notify City if any portion of the Adjustment Work appears not to conform to the Standards, and will work with the City to resolve all discrepancies.
- C. OC San will respond to City's request for an inspection within 48 hours. OC San will be responsible for Contractor's downtime due to failure to comply with this provision.
- D. OC San's obligation to reimburse City hereunder for the Adjustment Work shall not exceed a cumulative total of One Hundred Eighty Thousand Dollars and No/100 Cents (\$180,000.00) unless otherwise approved by OC San, or provided herein. If OC San's obligation to reimburse City for the Adjustment Work exceeds One Hundred Eighty Thousand Dollars and No/100 Cents (\$180,000.00), CITY shall not be responsible for bearing OC San's excess share. CITY agrees to notify OC San at the earliest opportunity if OC San's share is expected to exceed One Hundred Eighty Thousand Dollars and No/100 Cents (\$180,000.00) at any time during the project. If reimbursement over and above One Hundred Eighty Thousand Dollars and No/100 Cents (\$180,000.00) is requested by City, OC San staff will request approval from OC San's General Manager or Board of Directors, as appropriate, to increase the reimbursement amount.

Section 5: Timing of Reimbursement. For each progress payment, including the final progress payment, made by City to its contractor, City shall submit an invoice to OC San setting forth OC San's share of the payment, accompanied by a copy of any documentation processed with the progress payment or other documentation to substantiate the calculation of OC San's portion. OC San shall pay City within thirty (30) days of OC San's receipt of all required invoices and supporting documentation.

Section 6: This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.

Section 7: This Agreement (a) shall be binding upon and inure to the benefit of City and OC San and their respective legal representatives, successors and assigns; (b) may be modified or amended only by a writing signed by each party hereto; and (c) shall be governed by and construed in accordance with the laws of the State of California. Notwithstanding anything herein to the contrary, the OC San may not assign its rights and obligations under this Agreement without the prior written consent of City. City may assign its rights or obligations under this Agreement without the OC San's consent, but with notice to the OC San.

Section 8: Indemnity. Each Party hereby agrees to indemnify, defend, protect and hold harmless the other Party, and its elected and appointed officials, officers, employees,

representatives, volunteers, and agents from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, workers' compensation benefits, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses of any kind or nature, arising from any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of the indemnitor, or its officers, agents, or employees arising out of the performance of, or failure to perform, any provisions of this Agreement. Neither Party assumes liability for the acts or omissions of persons other than each Party's respective officers, agents, or employees. In the event judgment is entered against both Parties because of joint or concurrent negligence of both Parties, or their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. The respective obligations of the Parties pursuant to this Section shall survive expiration or earlier termination of this Agreement.

Section 9: Alteration of Terms. This Agreement fully expresses all understanding of the City and OC San with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by the Parties.

Section 10: Notices. Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

CITY: City of Anaheim
Attn: City Clerk
200 S. Anaheim Boulevard
Anaheim, CA 92805

With a courtesy copy to:
City of Anaheim
Attn: Director of Public Works
200 S. Anaheim Boulevard, Suite 276
Anaheim, CA 92805

OC SAN: Orange County Sanitation District
Attn: Clerk of the Board
10844 Ellis Avenue
Fountain Valley, CA 92708

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

Section 11: Term of Agreement. The Effective Date of this Agreement shall be the latter to occur of the following: (i) execution by the City or (ii) execution by OC San. The term of the Agreement shall continue in full force and effect until all obligations of the OC San to the City are completed in full accordance with the terms of this Agreement.

Section 12: Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, in such event the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of the invalidated or voided provision, covenant, and condition can be accomplished to the maximum extent legally permissible; provided, however, that in no event shall either party be required to agree to an amendment or modification of this Agreement that materially adversely impacts its rights or materially increases its obligations or risks as set forth herein.

Section 13: Waiver of Default or Breach. Waiver of any default by either party shall not be considered a waiver of any subsequent default. Waiver of any breach by either party of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach by either party shall not be considered a modification of the terms of this Agreement.

Section 14: No Third-Party Beneficiaries. Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the City and OC San, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

Section 15: Further Assurances. OC San and the City agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances and to perform any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

Section 16: Agreement Negotiated. The text of this Agreement is the product of negotiation among the parties and their counsel and is not to be construed as having been prepared by one party or the other.

Section 17: Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 18: Recitals. The Recitals above are hereby incorporated into this section as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

**ORANGE COUNTY SANITATION
DISTRICT**

By: _____

**James D. Herberg
General Manager**

ATTEST

By: _____

**Kelly A. Lore, MMC
Clerk of the Board**

CITY OF ANAHEIM, CALIFORNIA

By: _____

**James Vanderpool
City Manager**

ATTEST

By: _____

**Theresa Bass, CMC
City Clerk**

EXHIBIT A

The Standards