

**COOPERATIVE AGREEMENT
BETWEEN THE ORANGE COUNTY SANITATION DISTRICT AND THE CITY OF
FOUNTAIN VALLEY FOR INSTALLATION OF TRAFFIC SIGNAL**

This Agreement is made and entered into this 28th day of June 2023 by and between the Orange County Sanitation District, a county sanitation district (“OCSAN”), and the City of Fountain Valley, a municipal corporation (“City”). OCSAN and City are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, OCSAN is constructing a new headquarters complex along Ellis Avenue between Pacific Street and Bandelier Circle in the City of Fountain Valley; and

WHEREAS, a new traffic signal at the intersection of Ellis Avenue and Mt. Langley Street is necessary to improve vehicular access to the new headquarter complex; and

WHEREAS, the Parties agree that OCSAN will be responsible for the design and construction of the traffic signal project at its cost and City will accept ownership and maintenance of the same upon completion of construction subject to the terms and conditions included herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements hereinafter set forth herein, the Parties hereby agree as follows:

1. OCSAN shall:

Be responsible for the costs and execution of all design, construction, costs, and all acts necessary or required in order to complete the construction and delivery of a fully functional traffic signal at the intersection of Ellis Avenue and Mt. Langley Street including all fiber optic communication to traffic signal equipment and the Traffic Management Center.

a. Submit the design, plans, and specifications for the traffic signal work to City’s City Engineer for review and approval.

b. Ensure that the traffic signal construction is completed in compliance with City’s approved project plans and specifications.

c. Be designated lead agency for the traffic signal construction under the California Environmental Quality Act (“CEQA”).

2. City shall:

a. Cooperate with OCSAN and promptly and expeditiously review and provide approvals or comments regarding the design, plans, and specifications for the traffic signal to be included in bidding documents prepared for the traffic signal construction project, including project plans and specifications. The City shall further issue any permits at no cost to OCSAN or its construction contractor. OCSAN shall not commence the traffic signal construction work until the City has approved the plans and specifications for the work and issued the required permits therefor.

b. At all times, during the progress of construction of the traffic signal project, have access to the work site for the purpose of inspection thereof.

c. Promptly notify OCSAN in writing should City deem any remedial measures to be reasonably necessary prior to OCSAN's acceptance of any work on the traffic signal project.

d. Promptly notify OCSAN of City's acceptance/approval or rejection of the traffic signal construction work within thirty (30) WORKING days after receiving notice from OCSAN that the work is complete. The City shall accept and be deemed to accept/approve of the work if City fails to provide notice to OCSAN within thirty (30) WORKING days.

3. General obligations.

a. Risk Transfer. City and OCSAN, and each of their elected officials, officers, employees and agents, shall be named as additional insureds in all construction contracts in all commercial general and automobile liability insurance policies relating to the traffic signal construction project; and each shall be indemnified and be held harmless for any liability arising out of contractors' performance thereunder.

b. City Indemnity. Neither City, nor any officer, agent, representative or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by OCSAN, its officers, employees, agents, contractors, or subcontractors, under or in connection with any work, authority, or jurisdiction delegated to OCSAN under this Agreement. To the fullest extent permitted by law, OCSAN shall defend, indemnify and hold harmless City, including City's employees, agents, representatives, and officials, from any liabilities, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, costs or expenses of any kind whatsoever, whether actual, alleged, or threatened, without restriction or limitation, and incurred in relation to, as a consequence of, arising out of or in any way attributable actually, allegedly or impliedly, to the negligence, recklessness, or willful misconduct of OCSAN and its officers, employees, agents, contractors, or subcontractors, in the performance of this Agreement. All obligations under this provision are to be paid by OCSAN as they are incurred by City. OCSAN shall require in any agreement with a contractor for the project that the contractor defend, indemnify and hold harmless City, including City's officers, employees, agents, contractors, and subcontractors, as set forth in this provision.

c. OCSAN Indemnity. Neither OCSAN, nor any officer, agent, representative, or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by City, its officers, employees, agents, contractors, or subcontractors, under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement. To the fullest extent permitted by law, City shall defend, indemnify and hold harmless OCSAN, including OCSAN's employees, agents, representatives, and officials, from any liabilities, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, costs or expenses of any kind whatsoever, whether actual, alleged, or threatened, without restriction or limitation, and incurred in relation to, as a consequence of, arising out of or in any way attributable actually, allegedly or impliedly, to the negligence, recklessness, or willful misconduct of City and its officers, employees, agents, contractors, or subcontractors, in the performance of this Agreement. All obligations under this provision are to be paid by City as they are incurred by OCSAN.

d. Cooperation. In the event any claim or action is brought against OCSAN relating to the performance rendered under this Agreement, City shall render any reasonable assistance and cooperation which OCSAN might require.

e. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein. No representation or promise, whether verbal or written, that is not set forth herein, shall be binding or have any force or effect on either of the Parties.

f. Resolution of Disputes. In the event of any dispute concerning any aspect of this Agreement, the Parties' representatives shall work in good faith to resolve any such dispute to each Party's satisfaction prior to initiation of any court action provided, however, that nothing herein shall prevent either Party from utilizing all remedies at law or equity in the event such dispute cannot be resolved within thirty (30) days of a written request by one Party to meet and confer with the other to resolve such dispute, or such other period of time as agreed upon in writing.

g. Notices. Notices permitted or required to be provided pursuant to this Agreement shall be sent to the following addresses:

To OCSAN:

Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708
Attention: Kelly Lore, Clerk of the Board
E-mail: klore@ocsan.gov

To City:

City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 9270
Attention: Rick Miller, City Clerk Administrator
E-mail: Rick.Miller@fountainvalley.org

By notice to the other Party, either Party may change the address specified above. Service of notice or communication shall be complete, if personally served, when received at the designated address, or five (5) days after the deposit of said notice or communication in the United States mail, postage prepaid, whichever occurs first.

h. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

i. No Waiver. No waiver or failure to exercise any right, option, or privilege under the terms of this Agreement on any occasion shall be construed to be a waiver of any other right, option, or privilege on any other occasion.

j. No Third-Party Beneficiaries. This Agreement is entered into by and for OCSAN and City, and nothing herein is intended to establish rights or interests in individuals or entities not a party hereto.

k. Counterparts of Agreement. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile and electronic signatures will be permitted.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been duly executed by the respective parties hereto by their duly authorized officers as of the date hereinabove first written.

ORANGE COUNTY SANITATION DISTRICT

By: _____
Chad P. Wanke
Chair, Board of Directors

Date: June 28, 2023

APPROVED AS TO FORM:

ATTEST:

By: _____
Bradley R. Hogin
General Counsel

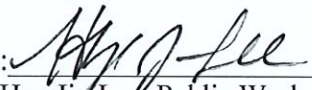
By: _____
Kelly Lore
Clerk of the Board

CITY OF FOUNTAIN VALLEY

By:  _____
Maggie Le, City Manager


Date: 5-4-2023

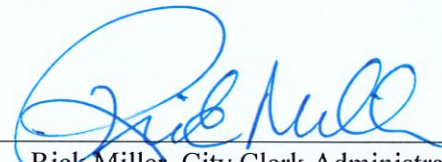
RECOMMENDED BY:

By:  _____
Hye Jin Lee, Public Works Director

APPROVED AS TO FORM:

ATTEST:

By:  _____
Colin Burns, City Attorney

By:  _____
Rick Miller, City Clerk Administrator