

**COOPERATIVE AGREEMENT
BETWEEN THE ORANGE COUNTY SANITATION DISTRICT AND THE CITY OF
CYPRESS FOR PAVEMENT REHABILITATION WORK**

This Agreement is made and entered into this ____ day of _____ 2021 by and between the Orange County Sanitation District, a county sanitation district (“OC SAN”), and the City of Cypress, a municipal corporation (“City”). OC SAN and City are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, segments of Orange Avenue require rehabilitation of the pavement condition; and

WHEREAS, OC SAN owns, operates, and maintains sewer mains within the City located beneath segments of Orange Ave.; and

WHEREAS, OC SAN has a sewer replacement project called the Orange-Western Sub-Trunk and Los Alamitos Trunk Sewer Rehabilitation, Project No. 3-64A & 3-64B (“Project”), a segment of which will take place on Orange Ave. and will include pavement rehabilitation work for those portions of Orange Ave. that are affected by the Project; and

WHEREAS, City desires to perform additional pavement rehabilitation work (“Pavement Rehabilitation”) on portions of Orange Avenue that are not affected by the Project, such work to include the application of a slurry seal to the entire width of Orange Avenue from Valley View Street to Holder Street, an area of approximately 158,000 square feet; and

WHEREAS, the Parties agree that the Contractor OC SAN selects to perform the Project shall also perform the Pavement Rehabilitation; and

WHEREAS, OC SAN agrees to contract and manage the Pavement Rehabilitation as part of the Project if City agrees to reimburse OC SAN for additional contract costs and four percent staff labor costs associated with the Pavement Rehabilitation 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. OC SAN shall:

a. Be and is hereby designated as the contracting and construction agent for the Parties to do and perform all acts necessary or required in order to complete the Pavement Rehabilitation and to execute and deliver all documents necessary or required in connection with the construction and completion of the Pavement Rehabilitation work on Orange Ave. from Valley View St. to Holder St.

b. Ensure that the Pavement Rehabilitation work is completed in compliance with City's approved project plans and specifications.

c. Prepare and present an invoice to City upon completion and OC SAN acceptance of the Pavement Rehabilitation work, which City shall pay in full within forty-five (45) days after City accepts/approves the Pavement Rehabilitation Work.

d. Be designated lead agency for the Project and Pavement Rehabilitation under the California Environmental Quality Act ("CEQA").

2. City shall:

a. Review and provide any approvals or comments regarding the plans and specifications for the Pavement Rehabilitation work to be included in bidding documents prepared for the Project, including Project plans and specifications. OC SAN shall not commence the Pavement Rehabilitation work until the City has approved the plans and specifications for the Pavement Rehabilitation work.

b. At all times, during the progress of construction of the Project, have access to the work site(s) for the purpose of inspection thereof.

c. Promptly notify OC SAN in writing should City deem any remedial measures to be reasonably necessary prior to OC SAN's acceptance of any work on the Project.

d. Promptly notify OC SAN of City's acceptance/approval or rejection of the Pavement Rehabilitation Work within thirty (30) days after receiving notice from OC SAN that the work is complete. City shall be deemed to accept/approve of the work if City fails to provide notice to OC SAN within thirty days.

e. Within forty-five (45) days of the City accepting/approving the Pavement Rehabilitation work as complete, and provided that the City receives an invoice for such work from OC SAN, reimburse OC SAN for the actual, final costs for all Pavement Rehabilitation work, including OC SAN staff time required to manage the work (collectively, "City Costs"). City Costs shall not exceed eighty-three thousand dollars (\$83,000) and shall not include, nor is City responsible for, any pavement rehabilitation or similar work that was included as part of the Project prior to the execution of this Agreement.

3. General obligations.

a. City and OC SAN, and each of their elected officials, officers, employees and agents, shall be named as additional insureds in all construction contract commercial general and automobile liability insurance policies relating to the Project.

b. 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 OC SAN, its officers, employees, agents, contractors, or subcontractors, under or in connection with any work, authority, or jurisdiction delegated to OC SAN under this Agreement. To the fullest extent permitted by law, OC SAN 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 OC SAN and its officers, employees, agents, contractors, or subcontractors, in the performance of this Agreement. All obligations under this provision are to be paid by OC SAN as they are incurred by City. OC SAN 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. Neither OC SAN, 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 OC SAN, including OC SAN'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 OC SAN.

d. This Agreement, together with any and all exhibits, each of which is hereby incorporated by reference, 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.

e. 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.

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

To OC SAN:

Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Attention: Kelly Lore, Clerk of the Board
Facsimile: (714) 962-0356

To City: City of Cypress
5275 Orange Avenue
Cypress, CA 90630
Attention: Alisha Farnell, City Clerk
Facsimile: (714) 229-6682

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 deposit of said notice or communication in the United States mail, postage prepaid, whichever occurs first.

h. The prevailing Party in any action brought for breach or to enforce any provision of this Agreement, shall be entitled to recover its reasonable attorney's fees, expert's costs, and all court costs.

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

i. Within forty-five (45) days after completion and acceptance of the work by OC SAN, OC SAN's Director of Engineering shall provide written notice to City of OC SAN's acceptance of the work and shall provide an estimated date that a final accounting of City Costs will be submitted. If outstanding charges (such as contractor's claims and liens) delay the final accounting, OC SAN shall so advise City and a final accounting shall be presented within ninety (90) days from the date of completion of the work.

j. City shall have the right to review all invoices, warrants and other related documents used in preparing the final accounting.

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.

[SIGNATURES ON FOLLOWING PAGE]

ORANGE COUNTY SANITATION DISTRICT

By: _____

David John Shawver
Chair, Board of Directors

Date: _____

APPROVED AS TO FORM:

ATTEST:

By: _____

Bradley R. Hogin
General Counsel

By: _____

Kelly Lore
Clerk of the Board

CITY OF CYPRESS

By: _____

Date: _____

APPROVED AS TO FORM:

ATTEST:

By: _____

Fred Galante City Attorney
City of CYPRESS

By: _____