

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into effective the 21st day of October, 2019, by and between the Orange County Employees Retirement System ("OCERS") and the Orange County Sanitation District ("District"), by and through the parties' respective governing bodies.

WHEREAS, OCERS is a multiple employer trust fund that provides retirement, disability and other benefits to the active, deferred and retired employees of the County of Orange, District and other participating employers, and their beneficiaries; and

WHEREAS, the Board of Retirement of OCERS has the sole, exclusive and plenary constitutional and statutory authority to administer the retirement system and invest the funds of the system for the benefit of its members and their beneficiaries; and

WHEREAS, as a participating employer in OCERS, District contributes to OCERS on an annual basis such contributions as OCERS determines are due and payable to OCERS from District, as an employer, to help fund the benefits referred to above; and

WHEREAS, District's annual contributions as determined by OCERS currently are calculated as a percentage of pensionable payroll that includes both a normal contribution rate ("Normal Cost") and a rate that reflects the amortization of an unfunded accrued actuarial liability attributable to District, pursuant to Government Code sections 31453 and 31453.5; and

WHEREAS, as of September 4, 2019, the total unfunded accrued actuarial liability attributable to the District ("UAAL") was \$8,116,226; and

WHEREAS, as of December 31, 2018, an additional unfunded accrued actuarial liability attributable to District on the books of OCERS totaled \$30,232,235 ("Deferred UAAL"), which amount has been deferred and is projected to be due and payable by the District in amortizing installments commencing July 2021; and

WHEREAS, the amortizing installments of District's Deferred UAAL in any future year may be more or less than the total unfunded accrued actuarial liability attributable to the District in such future year ("Actual UAAL"); and

WHEREAS, on or about September 4, 2019, the District contributed \$8,116,226 to OCERS in full satisfaction of its UAAL and accrued interest on the UAAL through the payment date ("UAAL Contribution") that is due and payable by District to OCERS as part of its total contribution for the period July 1, 2020 through and including June 30, 2021; and

WHEREAS, on or about November 1, 2019, the District plans to contribute \$29,883,774 towards the District's Deferred UAAL ("Deferred UAAL Contribution"); and

WHEREAS, on or about November 1, 2016, OCERS established a reserve account on its books and records (the "District Reserve Account") for the purpose of recording and accounting for Deferred UAAL contributions; and

WHEREAS, as of December 31, 2018, the balance in the District Reserve Account was \$0; and

WHEREAS, District and OCERS wish to enter into this MOU to set forth the terms and conditions under which OCERS shall recognize and apply District's UAAL Contribution and Deferred UAAL Contribution; and

WHEREAS, each of the governing bodies of OCERS and District has approved and accepted the terms and conditions of this MOU and has authorized its executive officer to execute this MOU on its behalf.

NOW THEREFORE OCERS and District agree as follows:

1. Crediting of UAAL Contribution. OCERS agrees to credit the UAAL Contribution toward District's UAAL as of December 31, 2018 plus accrued interest through the payment date. No portion of the UAAL Contribution shall be credited toward the Normal Cost portion of District's employer contribution for such period. OCERS shall further recognize the above credits in all financial statements and other reports prepared in accordance with generally accepted accounting principles and as required by the Government Accounting Standards Board. Upon being credited, these amounts shall be considered as "valuation assets" to be counted against the liabilities of District in calculating its share of future unfunded accrued actuarial liabilities.
2. Crediting of Deferred UAAL Contribution.
  - A. OCERS shall credit the Deferred UAAL Contribution to the District Reserve Account.
  - B. Commencing as of December 31, 2019 and annually thereafter until there is no remaining balance of funds in the District Reserve Account, OCERS shall transfer from the District Reserve Account into an account on OCERS' books and records that is used to record and account for cumulative employer contributions to OCERS for future retirement benefits of active and deferred members the amount necessary to satisfy the Actual UAAL attributed to District, as determined by OCERS pursuant to Government Code sections 31453 and 31453.5. The purpose of this transfer is to ensure that District's future annual employer contribution obligation to OCERS shall consist of either the Normal Cost portion only, or the Normal Cost and amortizing installments of only such amount of future Actual UAAL that exceeds the amount of funds remaining in the District Reserve Account.
  - C. None of the moneys in the District Reserve Account shall be considered "valuation assets" on OCERS' books and records, and shall not be counted in

calculating District's share of future Actual UAAL, but shall be held and transferred only as described in this Paragraph 2.B.

D. OCERS shall not credit any amount of the District Reserve Account to District's Normal Cost portion of its annual employer contribution at any time. District shall remain responsible for making its full Normal Cost contributions to OCERS as determined by OCERS from time to time.

3. Commingling of Funds. Upon crediting by OCERS, all amounts of the UAAL Contribution and the Deferred UAAL Contribution shall be commingled with all other funds and assets of the OCERS trust fund, to be administered, invested and disbursed within the sole, exclusive and plenary authority of the OCERS Board of Retirement, as provided by law. None of the UAAL Contribution or the Deferred UAAL Contribution shall remain property of District, nor shall any such funds be disbursed to or on behalf of District for any purpose other than the payment of benefits to OCERS' members and administrative and investment expenses of the retirement system.

4. Crediting of Interest. OCERS shall credit (or debit) interest to the District Reserve Account at the actual annual rate of return (or loss) experienced by the entire OCERS trust fund on a calendar year basis. Interest crediting (or debiting) for the calendar year shall occur on or before March 31 of each subsequent year, on the balance in the District Reserve Account as of December 31 of the immediately preceding year.

5. OCERS' Sole Right to Determine Contributions and Appropriations. Notwithstanding any provision in this MOU to the contrary, the parties acknowledge and agree that OCERS has the sole, exclusive and plenary authority to determine employer and employee contribution rates and appropriation amounts; that OCERS may change, amend or otherwise alter its practices and policies regarding the setting of contribution rates and amounts of appropriations to be made by its participating employers, including but not limited to District; and that District is obligated to make the contributions and appropriations required by OCERS, all as provided by law.

6. Additional Provisions.

A. This MOU shall be governed by and interpreted under the laws of the State of California applicable to contracts made and to be performed entirely within the State.

B. This MOU sets forth the entire agreement between OCERS and District with regard to the subject matter herein, and fully supersedes any and all prior agreements and understandings between them pertaining to the subject matter of this MOU. The parties agree that no change to or modification of this MOU shall be valid or binding unless it is in writing and signed by an authorized signatory for each of the parties.

C. The language of all parts in this MOU shall be construed as a whole, according to its fair meaning, and not strictly for or against either party. Should

any provision in this MOU be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected and the illegal or invalid part, term, or provision shall be deemed not to be part of this MOU, and all remaining provisions shall remain valid and enforceable. The parties further agree that in the event any provision of this MOU is held to be illegal or unenforceable, each will fully cooperate with the other to effectuate its purpose to conform the provision(s) to law.

D. This MOU is deemed to have been drafted jointly by the parties. Any uncertainty or ambiguity shall not be construed for or against any party, since both parties have participated in the negotiations and drafting of this MOU.

E. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, signatures delivered via electronic transmission shall have the same force, validity and effect as the originals thereof.

F. Should any dispute arise between the parties as to their respective rights and obligations under this MOU, the parties will make a good faith effort to resolve their differences informally and without resort to legal process. Should any such dispute remain unresolved after 90 days after one party notifies the other party in writing of the dispute (unless shortened or extended by mutual agreement of the parties), either party may commence legal action as provided by law to resolve the matter. In any such legal action, the prevailing party shall be entitled to an award of its reasonable attorneys fees and costs of suit.

7. Term. This agreement shall terminate and be of no further force or effect at such time as there is no remaining balance in the District Reserve Account.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

ORANGE COUNTY SANITATION  
DISTRICT

ORANGE COUNTY EMPLOYEES'  
RETIREMENT SYSTEM

By \_\_\_\_\_  
Authorized Signatory

By  \_\_\_\_\_  
Authorized Signatory

Name: \_\_\_\_\_

Name: STEVE DECANAY

Title: \_\_\_\_\_

Title: CEO

Dated: \_\_\_\_\_

Dated: October 22, 2019