

**AGREEMENT  
BETWEEN THE ORANGE COUNTY SANITATION DISTRICT AND THE  
CITY OF ANAHEIM FOR CONSTRUCTION OF WATER FACILITIES IN  
CONJUNCTION WITH THE STATE COLLEGE BOULEVARD SEWER  
PROJECT**

THIS AGREEMENT ("Agreement"), is made and entered into on this 22nd day of March, 2017, by and between the:

ORANGE COUNTY SANITATION DISTRICT,  
a County Sanitation District, hereinafter referred to as "OCSD";

AND

CITY OF ANAHEIM, California, a Municipal Corporation,  
hereinafter referred to as "City."

OCSD and City are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as "Parties."

**RECITALS**

**WHEREAS**, OCSD is a duly organized County Sanitation District existing pursuant to the County Sanitation District Act, California Health and Safety Code section 4700, et seq., providing for the ownership, operation, and maintenance of wastewater collection, treatment, and disposal facilities within Orange County, California; and

**WHEREAS**, City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California; and

**WHEREAS**, OCSD owns, operates and maintains a sewer main within the City located beneath a street called State College Boulevard between Orangewood Avenue to the south and the 91 Freeway to the north; and

**WHEREAS**, this sewer facility currently consists of one 33 to 42-inch diameter sewer which OCSD intends to upsize to a 54-inch diameter sewer known as "Project 2-72B"; and

**WHEREAS**, within the same portion of State College Boulevard, the City is similarly planning the (1) design and construction of approximately 800 linear feet of a 12-inch diameter water main to replace an existing 6-inch diameter water main between Lincoln Avenue to the south and Underhill Avenue to the north ("State College/Lincoln Avenue Water Project"); (2) design and construction of approximately 1900 linear feet of a 12-inch diameter water main to replace an existing 6-inch diameter water main between Underhill Avenue to the south and La Palma Avenue to the north ("State College/La Palma Avenue Water Project"); (3) design and replacement of approximately 400 linear feet of an existing 12-inch and 18-inch water main at

the intersection of State College Boulevard and Ball Road ("State College/Ball Road Water Project"); and (4) design and replacement of various water mains along the Project 2-72B alignment ("Miscellaneous OCSD Relocation Water Project"); and collectively, these projects shall be referred hereinafter as the "Water Projects" and are further described and depicted in Exhibit A which is attached hereto and incorporated herein by reference; and

**WHEREAS**, Project 2-72B and the Water Projects are in the same vicinity and scheduled to occur on or about a similar timeline, it is advantageous to both Parties for the construction of the facilities to occur simultaneously to minimize the impacts to the environment, the public, and the surrounding homeowners; and

**WHEREAS**, OCSD agrees to design, administer, and manage a construction contract for the construction of the the Water Projects and Project 2-72B (collectively "the Projects"); and

**WHEREAS**, the cost allocation for the Water Projects shall be as set forth herein below; and

**WHEREAS**, the Parties agree to enter into an Agreement for the work associated with the Water Projects in a manner and subject to the terms and conditions set forth below;

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the Parties hereto 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. OCSD and City will work cooperatively together so the Projects can be constructed in a manner that minimizes the costs and impacts to the public. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.

Section 3: OCSD's Specific Obligations.

- A. OCSD will be responsible for compliance with the California Environmental Quality Act ("CEQA") (Pub. Resources Code, Section 21000 et seq.). OCSD will be the Lead Agency for purposes of CEQA and, in such capacity, OCSD will conduct the applicable environmental review. OCSD will supply to City copies of the OCSD-approved environmental documents for City's files.
- B. OCSD will enter into and administer contracts for the design services needed for the Water Projects which includes contracting with the necessary engineering consulting services to accomplish the design

efforts. OCSD will issue an amendment to the consultant currently retained by OCSD to design Project 2-72B. This amendment will contain a scope of work that will ensure the Water Projects are designed and constructed as required by the City.

- C. OCSD will submit prepared plans and specifications for the design and construction of the Water Projects for review, comment, and written approval by City. If City does not approve the proposed plans and specifications, City will provide OCSD its basis for denial and OCSD shall require its hired consultant to correct the plans and specifications to City's reasonable satisfaction. The plans and specifications approved in writing by the City shall be referred hereinafter to as "Approved Plans and Specifications".
- D. OCSD shall be responsible for advertising, awarding, and administering a contract for the construction of the Water Projects, in conformance with all applicable laws governing construction of public works. OCSD will issue a public works bid package and enter into a construction contract in accordance with the Approved Plans and Specifications. The contract will also contain Project 2-72B so the Projects will be constructed under a single contract. The bid package will contain specific bid items that pertain to the Water Projects which will be used to determine the reimbursement amount City will pay to OCSD for the Water Projects.
- E. OCSD shall ensure the contractor for the Water Projects has the appropriate license from the California State License Board and ensure contractor complies with prevailing wage laws including, but not limited to, California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws").
- F. Upon award of the contract to the successful bidder, OCSD will submit such information to City for their files.
- G. For the duration of the construction of the Water Projects, OCSD will:
  - a. Provide City staff with contractor schedules and updates within ten (10) days of acceptance by OCSD staff.
  - b. Invite City staff to construction progress meetings.
- H. OCSD shall allow City to review, check, and inspect any part of the Water Projects at any time. OCSD shall provide City inspectors uninhibited access to the area of the Water Projects and an adequate on-site work space to perform such work. OCSD shall not accept any portion of the work associated with the Water Projects unless the work has been

inspected and approved in writing by the City. OCSD will document and inform City of the date of final acceptance, which is the date when the notice of completion is filed. OCSD shall furnish City with one set of record drawings for the completed Water Project and a copy of the filed notice of completion. No notice of completion shall be filed by OCSD until OCSD receives City's prior written concurrence to such filing.

- I. OCSD will obtain on behalf of City a one-year warranty on the work to be performed for the Water Projects from OCSD's construction contractor. This one-year warranty shall commence at the time the notice of completion is issued specifically for the Water Projects.
- J. OCSD, its agents and contractors shall keep the Water Projects free from any statutory or common law liens arising out of any work performed, materials furnished or obligations incurred by OCSD, its agents or contractors.
- K. OCSD shall obtain all necessary permits plan checks, and inspection for the Water Projects. Costs for the payment of the foregoing shall be allocated between the Parties in accordance with Section 5 of this Agreement.
- L. OCSD shall ensure that in all contracts or agreements OCSD enters into with any person(s) or firm(s) to perform work on the Water Projects, including without limitation construction contractors, design professionals, and consultants, shall contain indemnification and insurance provisions, in favor of OCSD and City, their respective officials, officers, and employees, that include requirements, limits, coverages, and terms and conditions in conformance with sound risk management principles for projects of this kind, nature, risk, and complexity. Further, OCSD shall ensure that such contracts or agreements provide for indemnity and insurance protection for City in amounts and form at least equal to the protection OCSD secures for itself.

Section 4: City's Specific Obligations.

- A. City will provide inspection services for the Water Projects as it deems necessary, or promptly upon request by OCSD as described in Section 4(b) to assure compliance with the Approved Plans and Specifications, including, but not limited to, shop drawing review and/or material inspection. City will promptly notify OCSD if any portion of the work appears not to conform to the Approved Plans and Specifications, and OCSD shall cause its contractor to correct such non-conforming work.

- B. City will respond to OCSD's request for an inspection within two (2) working days. City will be responsible for OCSD's contractor's downtime and/or delay due to failure to comply with this provision.
- C. OCSD shall promptly inform City of any proposed changes to the construction contract as it relates to the Water Projects . and obtain City's written approval prior to agreeing to a change order relating to the Water Projects. Copies of proposed changes affecting City will be provided to City within five (5) working days of submission to OCSD. City shall not be responsible for increased costs due to any change order related to the Water Projects without City's prior written approval. City's Public Utilities General Manager may approve or deny change order requests on behalf of the City. City's obligation to pay for change order costs shall only apply to segments where City is responsible for reimbursement per Section 5 of this Agreement.
- D. City shall return comments to OCSD on all shop drawing submittals, requests for information, and change order requests within ten (10) working days from receipt of submittals by City. City will be responsible for OCSD's contractor's downtime and/or delay due to failure to comply with this provision. This provision shall not apply to plan and specification review process.
- E. Prior to City's acceptance of Water Projects and OCSD filing a notice of completion, City shall review and provide written approval of the Water Projects. The City's written approval shall only be withheld for work not completed in accordance with the Approved Plans and Specifications. Upon City's written approval, City shall assume ownership and maintenance obligations for improvements within the Water Projects.

#### Section 5: Water Projects Reimbursement and Total Costs

The table below establishes the percent of the Water Projects that OCSD affects via Project 2-72B. The length and the percentage that OCSD affects is based on the current preliminary design assumptions. As design progresses to the preparation of the construction documents, the numbers in this table may change and if so will require an amendment to this Agreement in the event the City's reimbursement obligation is increased under Section 5.E. In the event there is no increase to City's obligation under Section 5.E., changes to the table below will not require an amendment to this Agreement. OCSD and City staff may agree in writing to changes to this table prior to construction advertisement. The final values shall be documented in writing.

| Water Project Names                            | Existing Pipe Size (in) | Future Pipe Size (in) | Length (lf) | Percentage Affected by OCSD 2-72B Project (%) |
|--|-------------------------|-----------------------|-------------|---|
| A. State College/La Palma Avenue Water Project | 6                       | 12                    | 1900        | 6   |
| B. State College/Lincoln Avenue Water Project  | 6                       | 12                    | 800         | 100   |
| C. State College/Ball Road Water Project       | 12 & 18                 | 12 & 18               | 400         | 5   |
| D. Miscellaneous OCSD Relocations              | Various                 | Various               | Various     | 100   |

A. OCSD shall be responsible to pay 6 % of the total costs of the design and construction of the State College/La Palma Avenue Water Project, whereas the City shall be responsible to pay 94% of this project's total costs. These percentages take into consideration and are inclusive of the pipe upsize cost difference.

B. OCSD shall be responsible to pay 100% of the total costs of the design and construction of the State College/Lincoln Avenue Water Project, whereas the City shall be responsible to pay 0% of this project's total costs. Notwithstanding the foregoing, the City shall be responsible for the difference in pipeline material costs between the City's minimum allowable pipe size of 8-inch diameter pipe to the desired 12-inch diameter pipe size for the State College/Lincoln Avenue Water Project. This difference in pipeline material cost will be calculated at \$20.00 per linear foot of installed pipeline.

C. OCSD shall be responsible to pay 5% of the total costs of the design and construction of the State College/Ball Road Water Project, whereas the City shall be responsible to pay 95% of this project's total costs.

D. OCSD shall be responsible to pay 100% of the total costs of the design and construction of the Miscellaneous OCSD Relocation Water Project that are required for Project 2-72B and not associated with a City planned capital improvement project, whereas the City shall be responsible to pay 0% of these costs.

E. City's obligation to reimburse OCSD hereunder for the design and construction of the Water Projects shall not exceed a cumulative total of One Million Three Hundred Thousand (\$1,300,000) unless otherwise approved by City Council by amendment of this Agreement. City has budgeted One Million Three Hundred Thousand (\$1,300,000) for the Water Projects, including but not limited to design costs, construction costs, reimbursements, fees, and administration costs. If City's obligation to reimburse OCSD for the Water Projects exceeds One Million Three Hundred Thousand (\$1,300,000), OCSD shall not be responsible for bearing City's excess share. OCSD agrees to notify City at the earliest opportunity if City's share is

expected to exceed One Million Three Hundred Thousand (\$1,300,000) anytime during the project. If reimbursement over and above One Million Three Hundred Thousand (\$1,300,000) is requested by OCSD, City staff will request approval from City Council to increase the maximum reimbursement amount.

Section 6: Timing of Reimbursement

For each progress payment made by OCSD to its consultant or contractor, OCSD shall submit an invoice to the City setting forth City's share of the payment, accompanied by all supporting documentation. The invoice shall be itemized for each Water Project in accordance with Section 5. City will review the progress payment request and provide OCSD with any comments within ten (10) working days. After the invoice is approved by the City, City shall pay OCSD within forty-five (45) days of City's receipt of invoices and supporting documentation. City shall pay invoices to OCSD based on progress payments until 100% of City's share is paid.

Section 7: Indemnification.

- A. OCSD will indemnify, defend and hold City, its officers, agents, employees, and consultants harmless from any and all actions, suits, claims, liability or expense for death, injury, loss, or damage to persons or property which may arise or is claimed to have arisen during or out of construction or the acceptance by City of City's water facilities, as a result of any work or action performed by or on behalf of OCSD, its officers, agents, employees or consultants, save and except in those instances where such expense, liability or claim is solely caused by any act, omission, or negligence of City, its officers, agents, employees or consultants.
- B. City will indemnify, defend and hold OCSD, its elected and appointed officials, officers, agents, employees, and consultants, harmless from any and all actions, suits, claims, liability or expense for death, injury, loss or damage to persons or property which may arise or is claimed to have arisen as a result of any act performed by City, its officers, agents, employees or consultants, with respect to the construction of City sewer facilities as a result of or in connection with the maintenance and operation of City's improvements, save and except in those instances where such expense, liability or claim is solely caused by any act, omission or negligence of OCSD, its officers, agents, employees or consultants. City will also indemnify, defend and hold OCSD, its elected and appointed officials, officers, agents, employees, and consultants, harmless from any and all actions, suits, claims, liability, cost or expense which may arise or is claimed to have arisen as a result of City's denial of any change order or part thereof.

Section 8: Term. This Agreement will be in full force and effect until the specified obligations of both Parties have been fulfilled. Notwithstanding the foregoing, either Party may



Section 15: Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations and agreements between the Parties pertaining to the subject matter hereof.

Section 16: Waiver. A waiver of a breach of the covenants, conditions, or obligations under this Agreement by either Party will not be construed as a waiver of any succeeding breach of the same or other covenants, conditions, or obligations of this Agreement.

Section 17: Modification. Alteration, change, or modification of this Agreement will be in the form of a written amendment, which will be signed by both Parties.

Section 18: Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will continue in full force and effect.

Section 19: Agreement Execution and Authorization. Each of the undersigned represents and warrants that they are duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity on whose behalf they are executing this Agreement.

[SIGNATURES ON THE NEXT PAGE]

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

ORANGE COUNTY SANITATION DISTRICT

APPROVED AS TO FORM:  
GENERAL COUNSEL

By: David John Shawver  
for Greg Seboorn,  
Chair, Board of Directors

ATTEST:

By: Bradley R. Hogin  
Bradley R. Hogin,  
Orange County Sanitation District

By: Kelly Lore  
Kelly Lore,  
Clerk of the Board, Board of Directors



CITY OF ANAHEIM

By: Dukku Lee  
Dukku Lee, Public Utilities General Manager

APPROVED AS TO FORM:

By: Daniel A. Ballin  
Daniel A. Ballin,  
Deputy City Attorney

ATTEST:

By: Linda Andal  
Linda Andal, City Clerk

## **EXHIBIT A WATER PROJECTS DESCRIPTION**

### **PROJECT 2-72B**

Project consists of one 33 to 42-inch diameter sewer, which OCSD intends to upsize to a 54-inch diameter sewer, in State College Blvd from Orangewood Ave to the south to 91-Freeway to the north, known as "Project 2-72B".

### **STATE COLLEGE/LINCOLN AVENUE WATER PROJECT**

Project consists of the design and construction of approximately 800 linear feet of 12-inch diameter zinc-coated ductile iron water pipeline along State College Blvd to replace an existing 6-inch diameter water main between Lincoln Avenue to the south and Underhill Avenue to the north. The new water main in this project is proposed to be upsized to 12-inch in order to improve the fire flow in this portion of Anaheim's water distribution system. Project to also include the replacement of existing system valves, fire hydrants, and services.

### **STATE COLLEGE/LA PALMA AVENUE WATER PROJECT**

Project consists of the design and construction of approximately 1900 linear feet of 12-inch diameter water main along State College Blvd to replace an existing 6-inch diameter water main between Underhill Avenue to the south and La Palma Avenue to the north. The new water main in this project is proposed to be upsized to 12-inch in order to improve the fire flow in this portion of Anaheim's water distribution system. Project to also include the replacement of existing system valves, fire hydrants, and services.

### **STATE COLLEGE/BALL ROAD AVENUE WATER PROJECT**

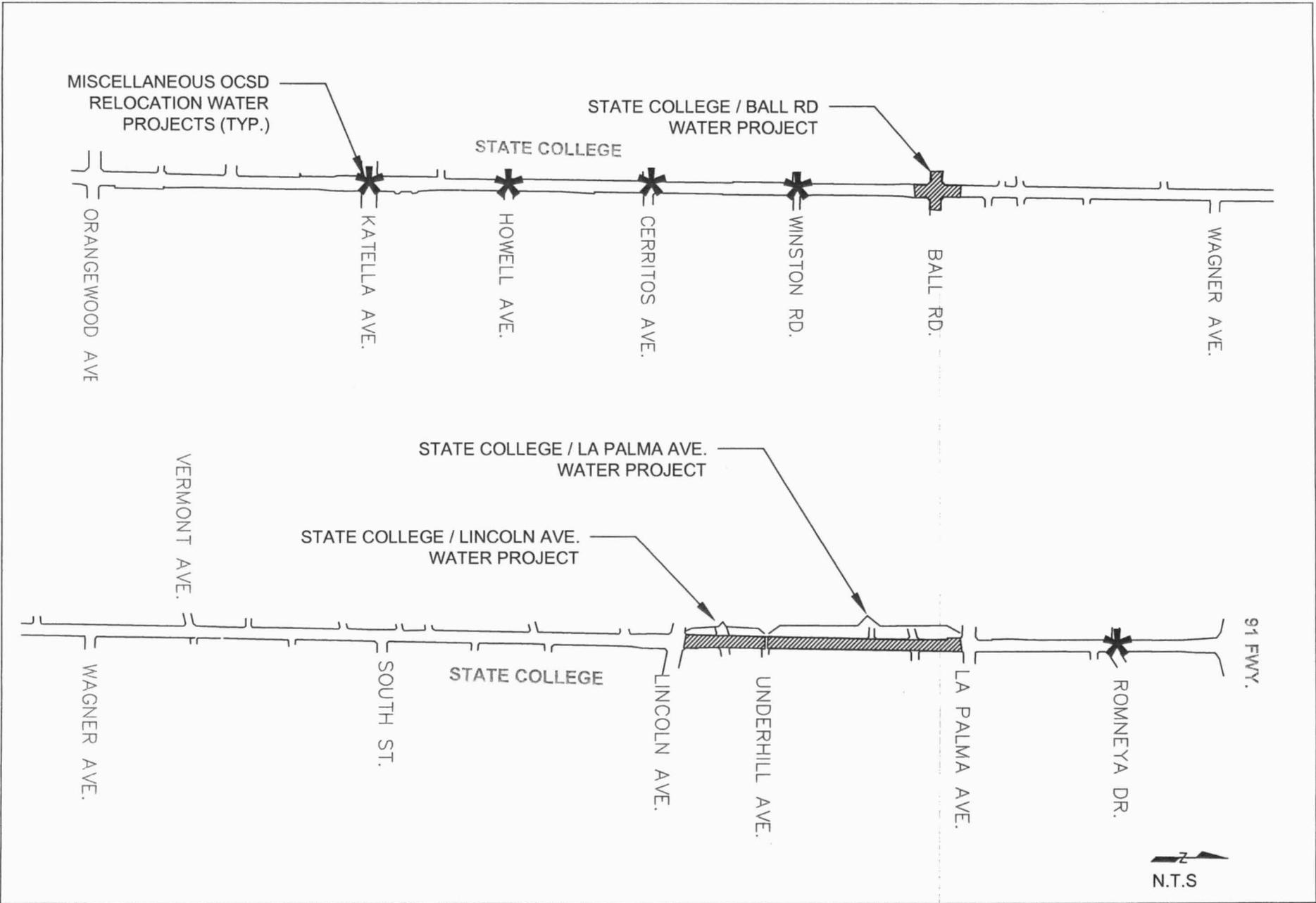
Project consists of the design and replacement of approximately 400 linear feet of existing 12-inch cast iron and 18-inch CCP water mains with zinc-coated ductile iron pipe at the intersection of State College Boulevard and Ball Road. This project will increase the reliability of Anaheim's water distribution in this area. Existing system valves will also be removed and replaced with resilient wedge valves located outside of the intersection.

### **MISCELLANEOUS OCSD RELOCATIONS WATER PROJECT**

Project consists of the design and replacement of various water mains as required for the installation of OCSD's Project 2-72B. Approximate locations and limits of work are depicted on the next page.

### **GENERAL NOTE**

The City of Anaheim's current design standards require that all water mains be 8-inch or larger. Therefore, existing 4-inch and 6-inch diameter water mains will not be allowed to be replaced in-kind but shall be upsized to 8-inch minimum. Cost sharing calculations as discussed in the Agreement shall be based on a minimum pipe size of 8-inch.



**ORANGE COUNTY SANITATION DISTRICT  
NEWHOPE-PLACENTIA  
TRUNK SEWER REPLACEMENT**

**EXHIBIT A  
WATER PROJECTS**