ORANGE COUNTY TRANSPORTATION AUTHORITY
UTILITY AGREEMENT

District	COUNTY	ROUTE	POST MILE	EA	PROJECT ID
12	Orange	I-405	9.3-24.2	12-OH1000	1200000180

FEDERAL AID NUMBER	OWNER'S PLAN NUMBER
N/A	N/A

FEDERAL PARTICIPATION
On the project ☒ YES ☐ NO On the Utilities ☐ YES ☒ NO

UTILITY AGREEMENT NO. UK201113 **DATE**

This Utility Agreement ("**Agreement**") is dated June 28, 2017 and is between the Orange County Transportation Authority ("**Authority**") and the Orange County Sanitation District ("**Sanitation District**"), which are sometimes referred to individually in this Agreement as a "**party**" or together as the "**parties**."

The Authority in cooperation with the California Department of Transportation ("**Caltrans**") is proposing to improve Interstate 405 between State Route 73 and Interstate 605 (the "**Project**"). The Authority and Caltrans have entered into *Cooperative Agreement No. 12-697* relating to the Project under which Caltrans will provide Project oversight, the Authority will perform construction, and upon completion of the Project, Caltrans will continue to own and maintain the Interstate 405.

The Sanitation District owns, operates, and maintains a regional sewerage system, including the sewerage facilities described in Exhibit A (the "**Facilities**"). The Facilities are within the limits of the Project. In order to accommodate the Project, the Facilities must be modified by way of relocation or extended encasement (each a "**Modification**"). Any Modification plan must be approved by the Sanitation District prior to construction, and any Modification construction must be inspected by the Sanitation District. During construction of a Modification, temporary diversion of flow within the Facilities may be necessary to provide for the safe operation of the Sanitation District's sewerage system.

The Authority and the Sanitation District intend by this Agreement to provide for the conditions under which the Authority may modify the Sanitation District's Facilities, and the Authority's payment to the Sanitation District of the Sanitation District's costs related to the Modification.

Authority and Sanitation District therefore agree as follows:

1. MODIFICATION WORK.

a. Facility Modification. In accordance with the Relocation Claim Letter attached as Exhibit A dated July 30, 2015, the Authority may modify the Sanitation District's Facilities as generally shown on the Authority's preliminary engineering plans for the improvement of Interstate 405, EA 12-OH1000, subject to the written approval by the Sanitation District's General Manager (or his designee)

("**General Manager**") of the final engineering plans and specifications (the "**Plans**").

b. Sanitation District's Approval of Plans. The Sanitation District's General Manager shall review the Plans, and will have sole discretion to and approve the Plans. It is anticipated by both parties that multiple reviews may be required for design approval. The Sanitation District shall make commercially reasonable efforts to review and provide any comments back to Authority within 30 days. The Sanitation District agrees not to unreasonably withhold its approval of Authority's design. Additionally, the Sanitation District agrees to provide a written notice requesting a review period extension in the event its review will extend beyond 30 calendar days.

c. Deviation from Plans. Any deviations from the Plans must be proposed by the Authority under a Revised Notice to Owner. The Authority shall not commence any Modification work that deviates from the Plans prior to the Sanitation District's approval of the Revised Notice to Owner, which approval is subject to the Sanitation District's General Manager's sole discretion. The Sanitation District will use commercially reasonable efforts to review and approve revisions to the Plans within four weeks after their delivery to the Sanitation District and written acknowledgment of receipt. If additional time is required, Sanitation District shall provide Authority with a written notice identifying the additional time requested.

d. Notification of Construction; Access. Authority shall advise the Sanitation District of the anticipated dates of construction of the Modification at least 30 days prior to the date of construction. The Sanitation District shall at all times have access to its Facilities, and the Authority and its contractor shall not restrict or obstruct the Sanitation District's access to the Facilities at any time.

e. Ownership and Maintenance. Upon completion of the Modification work by the Authority, and the Sanitation District's final inspection and approval of the Modification, the Sanitation District shall accept ownership and maintenance of the modified Facilities.

f. Property Rights Acquisition. Nothing in this Agreement is intended to waive or limit the Sanitation District's right to just compensation for all Project-related uses of the Sanitation District's real or personal property. The Authority shall acquire any necessary property rights from the Sanitation District in accordance with state and federal law prior to undertaking construction of the Modification.

2. SANITATION DISTRICT'S COSTS.

a. The Facilities are lawfully maintained in their present location and qualify for relocation or other Modification at Caltrans's expense under the provisions of Section 703 of the Streets and Highways Code.

b. The Authority assumes all costs associated with the Modification, including Sanitation District's costs of plan review, inspection, and flow diversion. The Sanitation District does not benefit from the Project and therefore will have no liability for any costs arising out of or relating to any Modification of the Facilities under or in connection with this Agreement.

c. The Sanitation District estimates that the cost of the Sanitation District's work under this Agreement will be $44,271.38 ("**Estimated Sanitation District Costs**").

3. SANITATION DISTRICT'S INSPECTIONS AND DIVERSIONS.

a. Sanitation District Inspection. The Sanitation District may inspect (and the Authority shall provide the Sanitation District with access to) any phase of the Modification work for the purpose of the Sanitation District's inspection to ensure that the work is in accordance with the specifications contained in the Plans and any related construction contract. The Sanitation District shall direct all questions regarding the Modification work to Authority's Resident Engineer for his or her evaluation and recommended disposition.

b. Diversions. Upon the Authority's request, the Sanitation District's engineers shall analyze potential sewer diversion impacts using the Sanitation District's hydraulic model. Upon request and the Sanitation District's approval following the diversion analysis described in the prior sentence, the Sanitation District's field crew staff shall implement and monitor the temporary diversion, and then remove the diversion.

c. Public Work. Inspections and field work described above in this Section 3 and performed by Sanitation District employees fall within the exception of Labor Code Section 1720(a)(1) and do not constitute a public work under Section 1720(a)(2) and are not subject to prevailing wages.

4. AUTHORITY'S PAYMENT FOR SANITATION DISTRICT COSTS.

a. The Authority shall construct the Modifications at no cost to the Sanitation District and shall pay Sanitation District for its Actual Costs (as defined in this section) of

(1) Administration of this Agreement (including planning, coordination, and communication with the Authority) and review and approval of the Plans (and any revisions to the Plans);

(2) Inspection of the Modification construction; and

(3) Analyzing, planning and implementing any sewer diversions necessitated by the Modification.

b. "**Actual Costs**" means the total fully-burdened salaries, wages, and equipment costs including overhead and administration.

c. It is understood and agreed that Authority will not pay for any betterment or increase in capacity of Sanitation District's facilities as part of this Agreement, and that any request by Sanitation District for changes in the Plans that involve any such betterment or increase in capacity shall, if Authority accepts such proposed changes, be paid for solely by Sanitation District.

d. The Sanitation District shall not use any out-of-state personnel (or personnel requiring lodging and meal "per diem" expenses) for its plan review, inspection, or diversion work under this Agreement.

e. All costs incurred by the Sanitation District as a result of the Authority's request of July 30, 2015 to review, study and/or prepare relocation plans and estimates for the Project may be billed pursuant to the terms and conditions of this Agreement.

f. Billing Procedure.

(1) Progress Bills. Not more frequently than once a month, but at least quarterly, Sanitation District will prepare and submit progress bills itemized for costs incurred not to exceed Sanitation District's recorded costs. The Sanitation District's itemized progress bill must be signed by an authorized official and prepared on the Sanitation District's letterhead, compiled on the basis of Actual Costs incurred and charged or allocated to the Modification in accordance with the policies of the Sanitation District that conform to the accounting principles generally accepted in the United States of America (GAAP) as applicable to governments.

(2) Progress Payments. The Authority shall pay the Sanitation District within 45 days after receipt of the Sanitation District's progress bills. Payment of progress bills not to exceed 125% of the Estimated Sanitation District Costs may be made under the terms of this Agreement. The Authority shall pay progress bills that exceed 125% of the Estimated Sanitation District Costs only upon receipt and approval by Authority of

documentation supporting the cost increase and after an amendment to this Agreement has been executed by the parties to this Agreement.

(3) Sanitation District shall submit a final bill to Authority within 365 days after the completion of the Sanitation District's acceptance of the Modification described in Section 1. If Authority has not received a final bill within 365 days after notification of completion of the Modification, and Authority has delivered to Sanitation District fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements for Sanitation District's facilities (if required), then Authority shall provide written notification to Sanitation District of its intent to close its file within 30 days. All remaining costs will be deemed to have been abandoned if not submitted to Authority for payment prior to such closure of the file. If Authority processes a final bill for payment first received from Sanitation District after closure of the file, payment of the late bill may be subject to allocation and/or approval by the Authority's Board of Directors.

(4) The final billing must be in the form of an itemized statement of the total costs charged to the Project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, Authority shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the Sanitation District and approval of that documentation by Authority. However, if the final bill exceeds the Sanitation District's estimated costs solely as the result of a revised Notice to Owner, then a copy of that revised Notice to Owner will suffice as documentation. In either case, payment of the amount over the Estimated Sanitation District's Cost may be subject to allocation and/or approval by the Authority Board of Directors.

g. If the Parties anticipate that the Sanitation District's costs will exceed 125% of the Estimated Sanitation District Costs, then the parties shall negotiate in good faith an amendment to this Agreement prior to the payment of the Sanitation District's final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section 1 of this Agreement shall have the prior concurrence of Authority and Sanitation District.

h. Sanitation District shall retain detailed billing records for a period of three years from the date of the final payment, and will make the records available for audit by Authority, State and/or Federal auditors. The Sanitation District currently complies with State law applicable to sanitation districts and generally accepted accounting principles, which are generally consistent with existing Federal regulations. Upon notice from the Authority, the Sanitation District shall comply

with any additional Federal regulations identified by the Authority as applicable to the Sanitation District's actions in connection with the Project under this agreement.

5. TERMINATION.

If Authority's Project is canceled or modified so as to eliminate the need for the Modification, then the Authority will notify the Sanitation District in writing and any party may terminate this Agreement at any time prior to the commencement of construction of the Modification by providing 30 days written notice to the other party. The Authority shall pay the Sanitation District for all costs incurred up to the date of termination. The billing procedures in Section 5 shall survive the termination of this Agreement.

6. INSURANCE.

The Authority shall incorporate within the contract documents for the Project a requirement for the contractor to obtain and keep in full force and effect throughout the life of the Project insurance naming the Sanitation District as an additional insured and in compliance with all insurance requirements in Exhibit B.

7. INDEMNITY.

a. The Authority shall be responsible for all costs, expenses, losses, fines, penalties, civil administrative liabilities, and liabilities relating to the construction of any Modification, and shall indemnify, defend, and hold harmless the Sanitation District, its directors, officers, agents, and employees, from all claims, demands, actions, costs (including attorneys fees), liabilities, losses, damages, including claims for personal injury (including death) or property damages, penalties, fines, administrative civil liabilities, and/or remediation costs arising from or in any way associated with the following:

(1) Construction of any Modification, including but not limited to trenching, backfill work above the pipe zone, and pavement work;

(2) Any overflows or spills of wastewater arising out of or relating to the construction of any Modification; and

(3) Any claims for sewer capacity by any former discharger to the Facilities that are impacted by any Modification.

b. This indemnity provision will survive the termination of this Agreement.

8. GENERAL PROVISIONS.

a. This Agreement contains the entire agreement between the parties concerning the Modification, except with respect to compensation for the Authority's use of any of the Sanitation District's property rights. Any amendment to this Agreement must be in a writing executed by both parties.

b. Each party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly.

c. A waiver of any breach of any provision of this Agreement or of any failure to comply with any requirement of this Agreement will not be deemed a waiver of any other provision or requirement of this Agreement, and no waiver will be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act will not be deemed an extension of time for performance of any other obligation or act.

d. Authority represents and warrants that no federal or California state funds will be used to pay Sanitation District under this Agreement. Sanitation District represents and warrants that it will not use federal or California state funds in order to perform any of its obligations under this Agreement. The Parties agree that they shall not seek or obtain payment or reimbursement from Caltrans for any work, cost, expense, fee, obligation or liability that arises under this Agreement.

e. This Agreement will be executed in duplicate originals, one of which will be retained by each party.

f. This Agreement will inure to the benefit of and will be binding upon the parties and their respective successors and assigns.

g. This Agreement will be governed and construed in accordance with California law.

h. Each party shall execute and deliver any instruments, and to perform any actions that may be necessary, or reasonably requested, in order to give full effect to this Agreement.

i. The Sanitation District hereby delegates to its General Manager the authority to approve any deviations from the Plans, in his sole and absolute discretion, as contemplated in section 1.c.

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j. All notices or other communication must be in writing and be personally served or delivered by United States mail, or nationally-recognized overnight carrier addressed as follows, with a courtesy copy by email:

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

Mr. Rob Thompson
Director of Engineering
Email: RThompson@ocsd.com
Tel: 714-593-7310

Authority:
Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Attn: Mr. Dennis Mak
Principal Contract Administrator
Email: DMak@octa.net
Tel: 714-560-5446

Any party may, by notice to the others, designate a different address for notices which will be substituted for that specified above. Any notice given as provided in this section will be deemed to have been received, if personally served, as of the date and time of service, or if deposited in the mail as provided above, forty-eight (48) hours after deposit in the mail.

Signatures on Following Page

UTILITY AGREEMENT NO.
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SIGNATURE PAGE

TO
UTILITY AGREEMENT NO.

UK201113

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below.

ORANGE COUNTY SANITATION DISTRICT

APPROVED

By: _____
Gregory C. Sebourn, PLS
Board Chair

Date: 6/28/2017

APPROVED AS TO FORM:
Lewis Brisbois Bisgaard & Smith, LLP

By: _____
Claire Hervey Collins
Special Counsel

ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity

APPROVED

By: _____
FOR: Jim Beil
Executive Director,
Capital Programs

Date: 6/22/17

APPROVED AS TO FORM:

By: _____
Rick Rayl
Special Counsel

Exhibit A
Relocation Claim Letter

BOARD OF DIRECTORS

Jeffrey Lalloway
Chairman

Lori Donchak
Vice Chair

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Director

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Director

Michael Hennessey
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Miguel Pulido
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Tim Shaw
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Todd Spitzer
Director

Michelle Steel
Director

Tom Tait
Director

Frank Ury
Director

Gregory T. Winterbottom
Director

Ryan Chamberlain
Ex-Officio Member

CHIEF EXECUTIVE OFFICE

Darrell Johnson
Chief Executive Officer

July 30, 2015

OCSD
10844 Ellis Avenue
Fountain Valley, CA 92708

Attention: Mr. Rudy Davila
Project Manager

Subject: **I-405 Improvement Project (EA –OH1000)**
Relocation Claim Letter/Utility Conflicts
Utility ID No. OCSD1113

Dear Mr. Davila:

The Orange County Transportation Authority (OCTA) in cooperation with Caltrans, proposes to improve the Interstate 405 (I-405) from I-605 to SR-73. The environmentally selected alternative includes reconfiguration of interchanges, intersections widening the freeway for general purpose lanes and re-striping various locations along the corridor. It is anticipated that the environmental approval will take place this summer while OCTA continues the process of advancing preliminary engineering for utilities.

Enclosed is one preliminary map covering OCSD conflict areas of the proposed I-405 Project.

Your Company's facilities are within the proposed project area and may be affected by planned construction. These plans are for your use in:

(1) Verifying your existing facilities as shown on the plans
(2) Completing your Conceptual Preliminary Relocation Plans
(3) Identifying related easement requirements
(4) Developing your claim of liability

This is a freeway and all rights of access will be restricted. If the OCTA is liable for any portion of your relocation costs, and if a consulting engineer will prepare any of your plans, a copy of the proposed agreement with your consultant must be furnished to this office as soon as possible. Employment of a consultant for a fee based on a percentage of the relocation cost is not acceptable. If desired, an example of a typical consultant agreement, along with the Certification of Consultant, will be furnished upon your request.

It is the intent of the project to replace property rights "in kind" to existing terms. If easements are required to relocate your facilities, please delineate your needs on the plans. This information is necessary as soon as possible so your replacement easements can be planned for by the OCTA along with other lands required for this project. You may submit your easement requirements ahead of your overall conceptual preliminary relocation plans.

Please submit the following information for review so a Preliminary Draft Utility Agreement can be prepared:

1. Two sets of your conceptual preliminary relocation plans with related easement requirements, if any, and any changes to the existing facilities as shown on the State's preliminary plans.
2. The date your existing facilities were installed.
3. Your occupancy rights for installation:

   A. Fee-owned land
   B. Easement (recorded)
   C. Easement (unrecorded)
   D. Prescriptive right
   E. Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA)
   F. Franchise
   G. State Permit
   H. County Permit
   I. City Permit
   J. Joint Pole Agreement
   K. Other (explain)

Please provide a copy of your documentation to support your occupancy rights claim for A, B, C, D, or E above,

4. An itemized estimate of cost for the preparation of your conceptual preliminary relocation design so a Design based utility agreement can be prepared.

5. Your work will be performed by:

   A. Own forces
   B. Continuing contractor
   C. Competitive bid contract

6. Your liability claim:

OCTA _____% OCSD _____%

The Project is currently scheduled for construction start in the summer of 2017.

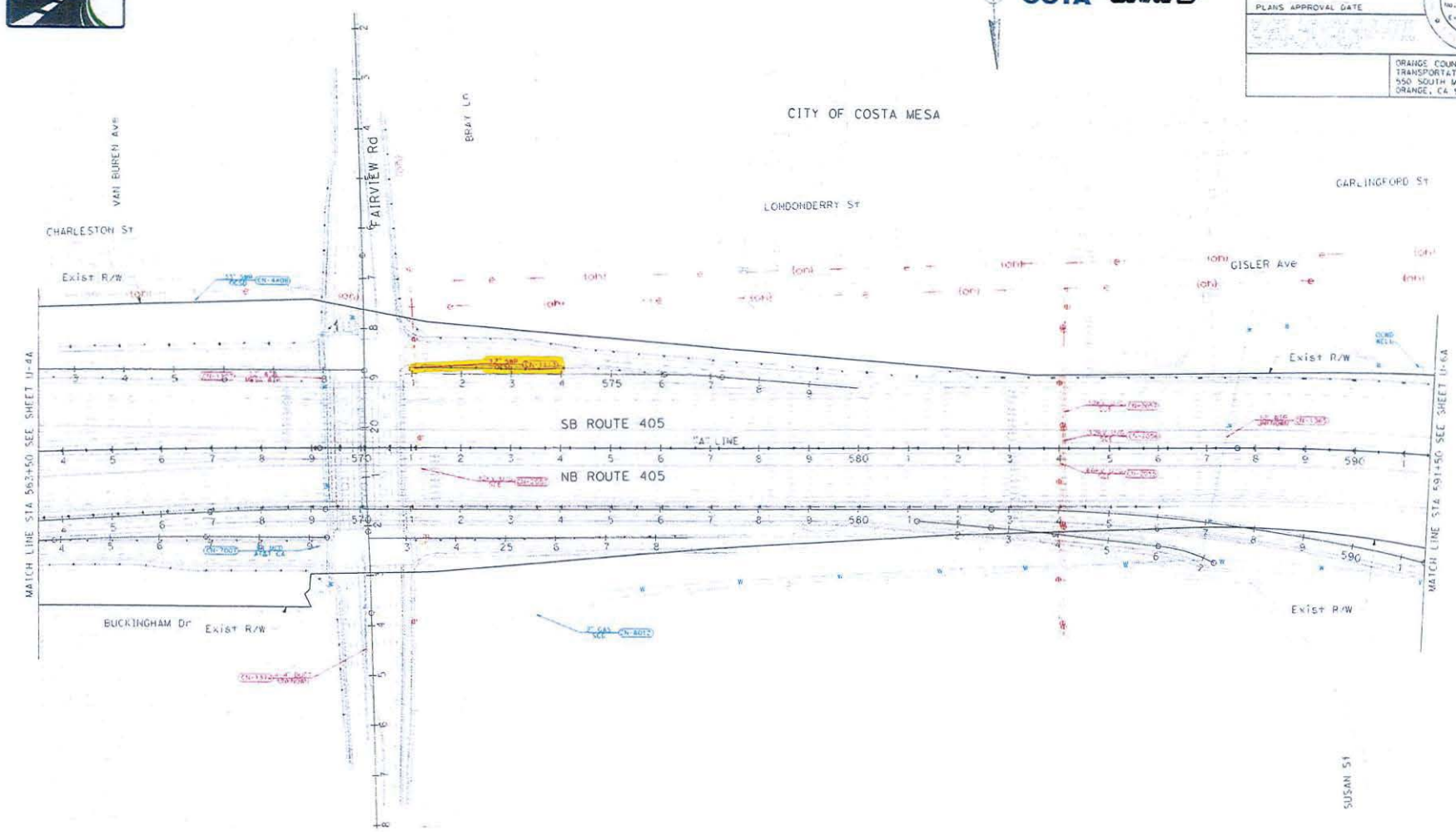
Please submit your information to me by no later than September 4, 2015. If you have any questions or require additional information, please feel free to contact me at (714) 560-5406

Your Cooperation is greatly appreciated

Sincerely,

M. Joseph Toolson
OCTA Project Manager

Enclosures: 1) Conflict Map



ORANGE COUNTY TRANSPORTATION AUTHORITY
550 SOUTH MAIN STREET
ORANGE, CA 92863

REGISTERED CIVIL ENGINEER DATE

PLANS APPROVAL DATE

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

UTILITY U-5A

SCALE: 1"=100'

Exhibit B
Insurance Provisions

EXHIBIT B

Insurance Requirements

1. The Authority shall be the lead agency under the California Environment Quality Act of 1970, California Public Resources Code § 21000 et seq. (CEQA), as amended, for the Project.

2. The Authority shall award a construction contract for the Project to a contractor appropriately registered and licensed to practice in the State of California, including with respect to performance and implementation of the work ("**Contractor**").

3. The Authority shall be responsible for the award and administration and performance of the contract, including supervising the implementation of the Project and the Contractor's performance in accordance with the requirements, provisions and restrictions of the contract. The Authority shall diligently proceed with the contract award and Project commencement promptly following the execution of this Agreement.

4. The Authority shall incorporate within the contract documents for the Project a requirement for the Contractor to obtain and keep in full force and effect throughout the life of the Project, for the mutual benefit of the Sanitation District and the Authority, a policy or policies of comprehensive, broad form, commercial general liability insurance written on ISO from CG 00 01, or a substitute form providing liability coverage at least as broad in the amount of $3,000,000 limit per occurrence with a $3,000,000 aggregate and automobile insurance against claims and liabilities for activities of the Contractor in the amount of$1,000,000 (combined single limit per occurrence).

(A) The policy or policies will name the Sanitation District and their respective elected and appointed officials, officers, agents and employees as additional insureds using ISO form CG 2010 or CG 2033, or a form at least as broad and shall, additionally, contain language providing for waiver of subrogation. The policy or policies will include a primary and non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the policies are primary and noncontributing with any insurance or self-insurance that may be carried by the Sanitation District or other third parties, and that said insurance may not be canceled or materially changed except upon thirty (30) days written notice to the Authority and the Sanitation District. The policy or policies shall include a Products and Completed Operations endorsement using ISO form GC 2027 (ed. 10/0l) or a form at least as broad.

(B) The Authority shall also require that workers' compensation benefits are secured by the Contractor as required by law, and provide an endorsement waiving all rights of subrogation against the Parties to this Agreement with regard to any workers' compensation claims, including any such claims against the Sanitation District.

(C) Prior to the issuance of the Notice to Proceed to the Contractor, the Authority shall provide the Sanitation District with policies and endorsements naming the

Sanitation District as an additional insured for the general liability and automobile liability policies described above.

(D) In addition, the Authority shall require its Contractor to obtain pollution liability insurance written on a claims-made or occurrence basis, that covers losses related to the release or the threatened release of pollutants into the environment arising out of or resulting from the Contractor's performance of the Project. The minimum limits of Pollution Liability shall be $2 million per occurrence/$2 million policy aggregate. When this coverage is provided under endorsement to the general liability policy, the $2 million per occurrence must be a sub-limit. The pollution liability policy shall also contain an Additional Insured endorsement and a primary and non-contributory endorsement naming the Parties to this Agreement.

(E) If the Contractor maintains higher limits than any minimums above, the Sanitation District will be entitled to coverage for the higher limits maintained by the Contractor.

5. The Authority shall require that any and all labor and materials bonds and performance bonds required to be supplied by the Contractor for the Project shall include the Sanitation District as a named obligee, and Authority shall not release any bonds unless and until the Authority has determined, and the Sanitation District has concurred in writing, that the Modification has been successfully completed without damage or impact to Sanitation District facilities or operations.