

RESOLUTION NO. OC SAN 21-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF ORANGE COUNTY SANITATION DISTRICT ADOPTING PROCEDURES FOR SETTLEMENT OF CLAIMS MADE AGAINST THE ORANGE COUNTY SANITATION DISTRICT SETTLEMENT OF CLAIMS MADE BY THE ORANGE COUNTY SANITATION DISTRICT; COLLECTION OF DELINQUENT ACCOUNTS OWING TO THE ORANGE COUNTY SANITATION DISTRICT; SETTLEMENT OF CIVIL OR ADMINISTRATIVE ENFORCEMENT ACTIONS; AND SETTLEMENT OF WORKERS' COMPENSATION ACTIONS, AND REPEALING RESOLUTION NO. OCSD 11-04

WHEREAS claims for damages alleging personal injuries, bodily injuries, including death, and damages to real and personal property, are periodically made against Orange County Sanitation District (OC San); and,

WHEREAS OC San presently has liability insurance in force with a significant self-insured retention, having previously been self-insured; and,

WHEREAS OC San has the need for the retention of claims administration services and legal counsel who shall be vested with certain limited authority to accomplish a favorable disposition of claims made against OC San; and,

WHEREAS claims for workers' compensation damages alleging personal injuries, including death, are periodically made against OC San; and,

WHEREAS OC San presently has major stop loss workers' compensation insurance in force; and,

WHEREAS OC San has retained a claims administration service firm and special legal counsel who shall be vested with certain limited authority to accomplish a favorable disposition of workers' compensation claims made against OC San as provided herein; and

WHEREAS cost efficiency relating to resolution of workers' compensation claims can be greatly improved by the adoption of certain policies relating to the resolution of said claims; and

WHEREAS Government Code Section 935.4 authorizes the Board of Directors to delegate by resolution the authority to an employee to settle pre-litigation claims

against OC San up to \$50,000; and

WHEREAS Government Code section 935.2 authorizes the Board of Directors to delegate by resolution the authority to a committee of at least three members to settle pre-litigation claims; and

WHEREAS Government Code Section 949 authorizes the Board of Directors to delegate authority to an employee or its attorney to settle lawsuits; and

WHEREAS OC San has occasion to seek recovery against persons or entities who have caused loss or damage to OC San, who have been assessed fines, charges, or special fees relating to their use of OC San facilities, or who have been the subject of civil or administrative enforcement proceedings for violation of OC San's Wastewater Discharge Regulations Ordinance; and

WHEREAS in the course of conducting the business affairs of OC San, certain accounts receivable or other obligations owing to OC San become delinquent, and in fact, uncollectible; and

WHEREAS cost efficiency relating to collection of delinquent accounts can be greatly improved by the adoption of certain policies relating to the collection of said accounts; and

WHEREAS the Board of Directors desires to update, amend, and reestablish procedures for the administration of claims against and by OC San.

NOW, THEREFORE, the Board of Directors of Orange County Sanitation District, DOES HEREBY DETERMINE, RESOLVE AND ORDER:

ARTICLE I
SETTLEMENT OF LIABILITY CLAIMS MADE
AGAINST THE
ORANGE COUNTY SANITATION DISTRICT

Section 1.1: A liability reserve has been established for the payment of claims made against OC San. Said reserve shall continue to be provided in each annual budget to ensure that sufficient funds are on deposit to provide for payment of those amounts incurred as a liability loss or expense.

Section 1.2: Each annual budget shall provide, in addition to the reserve established by Section 1.1, for the necessary funds to provide a sufficient balance to meet projected expenses for loss and payment of claims during the ensuing fiscal year.

Section 1.3: A claims administration firm is authorized to be retained, and said firm is hereby granted authorization to make payments and settlements of claims made against OC San in an amount not to exceed \$5,000.00 per claimant. Said firm shall be retained in accordance with the terms and conditions set forth in an agreement approved by the General Counsel.

Section 1.4: A Committee comprised of the General Manager or his designee and Director of Finance and Administrative Services are authorized to review and make full settlement of any claims made against OC San for contract or liability damages not otherwise covered by insurance by payment of a sum not to exceed \$50,000.00 per claimant. In the event a claim results in litigation, which is being legally defended by other than OC San's General Counsel, this Committee shall review and provide the approval to OC San's special legal counsel within the same limits.

Section 1.5: All claims for damages resulting in a judgment or a recommended settlement by negotiation in an amount exceeding \$50,000.00 per claimant, shall be submitted to, and approved by the Board of Directors of OC San prior to settlement payments being made.

Section 1.6: The General Counsel, with concurrence of the General Manager, is authorized to retain the services of special legal counsel for purposes of representing OC San in the defense of any claim or matter of litigation, whenever it is determined that specialized expertise or experience is desirable, a conflict of interest exists or could arise with the Office of General Counsel, or that the workload of the Office of General Counsel requires the utilization of special counsel.

ARTICLE II
COLLECTION OF DELINQUENT OBLIGATIONS OWING TO
THE ORANGE COUNTY SANITATION DISTRICT

Section 2.1: The Director of Finance and Administrative Services is authorized to write off as an uncollectible debt any delinquent obligation owing to OC San in excess of 90 days and not exceeding the sum of \$25,000.00.

Section 2.2: The Director of Finance and Administrative Services, in his discretion, is authorized to assign for collection to a person or firm of his choosing, any delinquent obligation owing to OC San in excess of 45 days and not exceeding the sum of \$100,000.00. Ninety (90) days after assigning the obligation for collection, the Director of Finance and Administrative Services is authorized to write off as an uncollectible debt any portion of the obligation which is still outstanding.

Section 2.3: The Director of Finance and Administrative Services shall forward any delinquent obligation in excess of \$100,000.00 to the General Counsel for OC San, who shall submit his recommendation to the Board of Directors as to the method of collection or disposition of said account.

Section 2.4: The Director of Finance and Administrative Services, in his discretion, is authorized to file the necessary proceedings in the small claims court of the appropriate judicial district of the County of Orange, in order to collect any delinquent obligation owing to OC San in excess of 45 days and not exceeding the sum of \$5,000.00. Upon obtaining a judgment in favor of OC San, the Director of Finance and Administrative Services and General Counsel shall take all legal measures necessary to enforce the terms of the judgment. Ninety (90) days after receiving a final judgment in favor of OC San, the Director of Finance and Administrative Services, with the concurrence of the General Counsel, is authorized to write off as an uncollectible debt, any portion of the obligation which is still outstanding.

Section 2.5: Notwithstanding the authority provided in Sections 2.2 and 2.3 above, any obligation owing to OC San, not exceeding the sum of \$100,000.00, may be compromised by acceptance of a sum less than the full amount due or may be written off as uncollectible upon that determination being made, after investigation by a Committee comprised of the General Manager, or his designee, and the Director of Finance and Administrative Services.

Section 2.6: In addition to the above authorization, the Director of Finance and Administrative Services is directed to exercise all available lawful methods to ensure prompt and full recovery of all obligations owing to OC San.

Section 2.7: The Director of Finance and Administrative Services is authorized to offset against any sums held on deposit by OC San on behalf of any person or entity who owes a delinquent obligation to OC San.

Section 2.8: The Director of Finance and Administrative Services is authorized to withhold the approval of any such permits otherwise to be issued by OC San to any person or entity who has an outstanding debt obligation owing to OC San until such time as said debt obligation is paid in full.

Section 2.9: Delinquent obligations, as used in this Resolution, shall include any invoice submitted by OC San for services rendered or for reimbursement of damages caused to OC San property or personnel, which has not been paid within:

- (a) The time prescribed by OC San Ordinance or Resolution;
- (b) Forty-five (45) days from the date of invoice, whichever is later.

ARTICLE III COLLECTION OF FEES AND CHARGES RELATING TO INDUSTRIAL WASTE DISCHARGES

Section 3.1: In the event any fees or charges, up to the amount of \$100,000.00, are owed by an Industrial Waste Permittee and are delinquent or in dispute between the Permittee and OC San, a Committee comprised of the Director of Finance and Administrative Services, and Director of Environmental Services are authorized to negotiate and enter into, on behalf of OC San, a settlement agreement relating to the financial obligation owing to OC San. This Section shall not apply to enforcement actions which are specifically provided for in Article IV below. Said agreement shall be based upon a showing of good cause and a reasonable dispute between OC San and the Permittee and can provide for acceptance of a sum less than the full amount claimed as due by OC San. This agreement may be entered into prior to or during the pendency of any litigation filed by OC San to collect the amount owed.

Section 3.2: Upon written request and establishment of good cause by an Industrial Waste Permittee, the Committee of the General Manager, or his designee, the Director of Finance and Administrative Services, and Director of Environmental Services, may negotiate and enter into a deferred payment agreement with the Permittee in accordance with the guidelines established herein. Said agreement may

be incorporated as part of, or separate and in addition to, any enforcement compliance agreements authorized by the provisions of OC San's Wastewater Discharge Regulations Ordinance.

Section 3.2.1: The installment payment agreement shall be for a maximum term not to exceed 24 months. The agreement shall provide for payment of interest on the principal amount owing at a rate not exceeding the higher of:

- (a) Ten (10%) percent per annum; or
- (b) Five (5%) percent per annum, plus the rate prevailing on the 25th day of the month preceding the earlier of:
 - (i) The date of execution of the contract to make the loan or forbearance; or
 - (ii) The date of making the loan or forbearance. (Established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act (commonly referred to as the "discount" rate).

The agreement shall provide for payment of all costs of preparing and administering the payment agreement, including legal and administrative costs.

Section 3.2.2: The agreement shall stipulate the penalties to which the Permittee shall be subjected in the event of nonpayment of any of the payments specified in the agreement, including initiation of legal action or permit suspension or revocation, as recommended by the General Counsel and the Director of Environmental Services.

Section 3.3: If the delinquent obligation is greater than \$100,000.00, any compromise settlement or any deferred payment agreement shall be submitted to and approved by the Board of Directors, who shall prescribe the terms and conditions.

ARTICLE IV
SETTLEMENT OF CIVIL ADMINISTRATIVE
ENFORCEMENT ACTIONS

Section 4.1: In the event OC San initiates or intends to initiate any civil or administrative enforcement actions based upon alleged violations of OC San's Wastewater Discharge Regulations Ordinance, a Committee comprised of the General Manager, or his designee, the Director of Finance and Administrative Services, and Director of Environmental Services are authorized to negotiate and enter into, on behalf of OC San, a settlement agreement, which may include both payment to OC San in an amount up to \$100,000.00, and enforcement compliance orders deemed appropriate to ensure compliance with the Wastewater Discharge Regulations Ordinance. This agreement may be entered into prior to or during the pendency of any administrative proceeding or litigation enforcement action.

Section 4.2: The Committee of the General Manager, Director of Finance and Administrative Services, and Director of Environmental Services may negotiate and enter into a settlement agreement which includes a schedule of payments over a period of time not to exceed 24 months, by the person or entity which is the subject of the enforcement action. The agreement shall provide for payment of interest on the principal amount owing at a rate not exceeding the higher of:

- (a) Ten (10%) percent per annum; or
- (b) Five (5%) percent per annum, plus the rate prevailing on the 25th day of the month preceding the earlier of:
 - (i) The date of execution of the contract to make the loan or forbearance; or
 - (ii) The date of making the loan or forbearance.
(Established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act (commonly referred to as the "discount" rate).)

Section 4.3: If the proposed settlement involves the payment of an amount greater than \$100,000.00, the settlement shall be submitted for approval by the Board of Directors of OC San.

ARTICLE V
SETTLEMENT OF WORKERS' COMPENSATION
CLAIMS MADE AGAINST THE
ORANGE COUNTY SANITATION DISTRICT

Section 5.1: A workers' compensation liability reserve has been established for the payment of workers' compensation claims made against OC San. Said reserve shall continue to be provided in each annual budget to ensure that sufficient funds are available to provide for payment of the amounts incurred as a workers' compensation liability loss or expense.

Section 5.2: Each annual budget shall provide, in addition to the reserve established by Section 5.1, for the sufficient funds to provide a sufficient balance to meet projected expenses for payment of claims during the ensuing fiscal year.

Section 5.3: A designated claims administrator is authorized to be retained and said administrator is hereby granted authorization to make payments and settlements of workers' compensation claims made against OC San in an amount not to exceed \$5,000.00 per claim. Said administrator shall be retained in accordance with the terms and conditions set forth in an agreement approved by the General Counsel.

Section 5.4: The Director of Human Resources or designee is authorized to review and make full settlement of any workers' compensation claims made against OC San by payment of an amount not to exceed \$25,000.00 per claim.

Section 5.5: A Committee comprised of the General Manager or designee, Assistant General Manager (Director of Finance & Administrative Services) or designee, and Director of Human Resources or designee are authorized to review and make full settlement of any workers' compensation claim made against OC San resulting in a recommended settlement by negotiation by payment of a sum not to exceed \$50,000.00 per claim, in addition to the medical expenses and associated costs to include but not limited to medical and psychological treatment, review, devices, medication, physical therapy, temporary disability payments, and permanent disability payments per claim. In the event a claim results in litigation, which is being legally defended by specialized counsel other than OC San's General Counsel, this Committee shall review and provide the approval to OC San's special legal counsel within the same limits.

Section 5.6: All workers' compensation claims resulting in a recommended settlement by negotiation in an amount exceeding \$50,000.00, in addition to the medical expenses and associated costs to include but not limited to medical and psychological treatment, review, devices, medication, physical therapy, temporary disability payments, and permanent disability payments per claim, shall be submitted to and approved by the Board of Directors of OC San prior to settlement payments

being made.

Section 5.7: In addition to specialized legal counsel selected by OC San, the General Manager is authorized to retain the services of specialized legal counsel for purposes of representing OC San in the defense of any workers' compensation claim, wherein the General Manager determines that specialized expertise is desirable, and the utilization of outside counsel is required.

Section 6.1: This Resolution supersedes Resolution No. OCSD 11-04, which shall be repealed in its entirety as of the date this Resolution becomes effective. In the event this Resolution does not become effective, Resolution No. OCSD 11-04 shall remain in full force and effect.

Section 6.2: This Resolution is effective immediately upon adoption.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Orange County Sanitation District held March 24, 2021.

David John Shawver
Chairman of the Board of Directors

ATTEST:

Kelly A. Lore, MMC
Clerk of the Board

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I, Kelly A. Lore, Clerk of the Board of Directors of the Orange County Sanitation District, do hereby certify that the foregoing Resolution No. OC SAN 21-05 was passed and adopted at a regular meeting of said Board on the 24th day of March 2021, by the following vote, to wit:

- AYES:**
- NOES:**
- ABSTENTIONS:**
- ABSENT:**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of Orange County Sanitation District this 24th day of March 2021.

Kelly A. Lore, MMC
Clerk of the Board of Directors
Orange County Sanitation District