

**AGREEMENT  
BETWEEN THE ORANGE COUNTY SANITATION DISTRICT (OCSD)  
AND THE CITY OF FULLERTON FOR DESIGN AND CONSTRUCTION  
OF OCSD SEWER FACILITIES IN CONJUNCTION WITH STATE  
COLLEGE BOULEVARD GRADE SEPARATION PROJECT**

THIS AGREEMENT ("Agreement"), is made and entered into on this 24<sup>th</sup> day of August, 2011, by and between the:

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

AND

CITY OF FULLERTON, 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 two sewer mains within the City located beneath a street called State College Boulevard between Kimberley Avenue to the south and Walnut Avenue to the north. The sewer facilities consist of one 10 to 12-inch sewer located along the west side of State College Boulevard and one 18-inch sewer located along the east side of State College Boulevard.

**WHEREAS**, the sewers and manholes within this area currently allow maintenance access and are within the City of Fullerton public right of way; and

**WHEREAS**, The City is performing the "State College Boulevard Grade Separation Project" (Grade Separation Project) which consists of lowering the grade of State College Boulevard's roadway so it passes underneath (underpass) the railroad tracks owned by Burlington Northern Santa Fe Railway (BNSF) located immediately north of State College Boulevard and Valencia Drive intersection. Modifications to existing OCSD facilities within the

Grade Separation Project area includes the abandonment of a portion of the existing 10 to 12-inch sewer main and the upsizing as well as realignment of an 18-inch sewer main (Sewer Modification Project). The City finds that it is possible for the City to allow the needed Sewer Modification Project to be included as a part of the Grade Separation Project; and

**WHEREAS**, OCSD desires to extend the installation of a sewer pipe of equivalent size downstream of the Grade Separation Project's southernmost limit south to Kimberley Avenue (Sewer Extension Project); and

**WHEREAS**, the City and OCSD desire to perform the construction of the Grade Separation Project, the Sewer Modification Project, and the Sewer Extension Project simultaneously to minimize the impacts to the environment, the public, and the surrounding homeowners; and

**WHEREAS**, City has agreed to design, administer and manage a construction contract for the construction of the Sewer Modification Project and the Sewer Extension Project. Both Projects are shown in "Exhibit A", attached hereto and incorporated in full by this reference; and

**WHEREAS**, the Parties agree to enter into a separate agreement for construction management and support services prior to the award of construction contracts; and

**WHEREAS**, OCSD hereby agrees to reimburse the City for the Sewer Modification Project and the Sewer Extension Project costs upon completion subject to the conditions set forth herein below; and

**WHEREAS**, the Parties agree to enter into an Agreement for the work as described above in a manner and subject to the conditions set forth below.

## **AGREEMENT**

**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.** City and OCSD will work cooperatively together so the City's Grade Separation Project and OCSD's Sewer Modification Project and Sewer Extension project 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: City's Specific Obligations.**

I. Sewer Modification Project and Sewer Extension Project:

- A. City will be responsible for compliance with the California Environmental Quality Act ("CEQA") (Pub. Resources Code, Section 21000 et seq.). The City will be the Lead Agency for purposes of the CEQA and, in such capacity, will conduct the applicable environmental review. City will supply to OCSD copies of the City-approved environmental documents for OCSD's files.
- B. City will enter into and administer contracts for the design services necessary to modify OCSD sewer facilities for the Sewer Modification Project and the Sewer Extension Project which includes contracting with the necessary engineering consulting services to accomplish the design efforts.
- C. City will submit prepared plans and specifications for the design and construction of the Sewer Modification Project and the Sewer Extension Project for review and approval by OCSD. The plans and specifications will meet OCSD's standards and technical requirements. OCSD will not unreasonably withhold its approval of the plans and specifications.
- D. City will issue a public works bid package as well as administer and enter into a construction contract in accordance with the plans and specifications reviewed and approved by OCSD.
- E. Upon determination of the successful bidder, City will submit information to OCSD for their files.
- F. City will obtain all necessary permits from federal, state, and local authorities, and BNSF.
- G. For the duration of project construction, the City will:
  - a. Promptly inform OCSD of any proposed changes to the construction contract as it relates to OCSD's facilities. Copies of proposed changes affecting OCSD will be provided to OCSD within five (5) working days of submission to City. All changes will be subject to OCSD's approval. OCSD agrees not to unreasonably withhold its approval;
  - b. Provide OCSD staff with contractor schedules and updates within five (5) days of acceptance by City staff and;
  - c. Invite OCSD staff to construction progress meetings.
  - d. Notify OCSD 48 hours prior the need for an inspection.

- H. City will document and inform OCSD of the date of final acceptance, which is the date when the Notice of Completion is filed.
- I. City will obtain on behalf of OCSD a one-year warranty on the work to be performed for all of OCSD sewer facilities from City's construction contractor. Such warranty will read as follows:
- J. *"Contractor guarantees for a period of one (1) year from the date of final acceptance of the work by City (for OCSD) that the Contractor will repair or remove and replace any work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship and/or materials without any expense to City or its assigns, ordinary wear and tear excepted. If Contractor fails to comply with this warranty within one (1) week after being notified in writing, City (OCSD) or its assigns are authorized to proceed to have the defects remedied at Contractor's expense. Contractor will pay the cost and charges thereof immediately on demand. If, in the opinion of City (OCSD) or its assigns, defective work detected during the guarantee period creates a dangerous condition or requires immediate correction or modification to prevent further loss to City (OCSD) or its assigns or to prevent interruption of City's (OCSD) or its assigns' operations, City (OCSD) or its assigns will be authorized to repair the condition without prior notice to the Contractor and Contractor will pay the cost and charges thereof immediately upon demand. Contractor's obligations under this section are in addition to Contractor's other express or implied assurances under the Construction Contract and State law and in no way diminish any other rights that City (OCSD) or its assigns may have against Contractor for faulty materials, equipment, or work. Contractor agrees that this warranty and guarantee will be freely assignable to the Orange County Sanitation District without any further notice to or consent from Contractor. The Faithful Performance Bond and Labor and Materials Bond required under the Agreement will continue in full force and effect for the guarantee period."*

## II. Sewer Modification Project

- A. City will grant to OCSD a non-exclusive easement along the new sewer alignment in which other utilities may be located. Easement language and alignment will be reviewed by OCSD staff prior to acceptance.

### Section 4: OCSD's Specific Obligations.

#### I. Sewer Modification Project and Sewer Extension Project

- A. OCSD will provide, at OCSD's expense, inspection services for all OCSD sewer facilities as it deems necessary to assure compliance with the approved Plans and Specifications, including, but not limited to, shop

drawing review and/or material inspection thereof provided that OCSD inspectors are provided uninhibited access to the project area and an adequate on-site work space to perform such services. OCSD will promptly notify City if any portion of the work appears not to conform to the Plans and Specifications, and will work with the City to resolve all discrepancies.

- B. OCSD will respond to City's request for an inspection within 48 hours. OCSD will be responsible for Contractor's downtime due to failure to comply with this provision.
- C. Upon receipt of invoices and supporting documentation from City detailing OCSD's share of construction costs, OCSD will reimburse the City for OCSD's share of such costs plus an additional five percent (5%). The additional 5% charge will represent the City's administration costs. OCSD shall pay invoices to the City based on its share of the progress payments until 100% of OCSD's share is paid.

## II. Sewer Modification Project

- A. OCSD's obligation to reimburse the City hereunder for the Sewer Modification Project shall not exceed a cumulative total of Three Million Dollars (\$3,000,000) for construction unless otherwise approved by OCSD's Board of Directors, or provided herein. OCSD has budgeted three million dollars (\$3,000,000) for the construction of this project, including but not limited to construction costs, reimbursements, fees, and administration costs. If OCSD's obligation to reimburse the City for the construction of the Sewer Modification Project exceeds Three Million Dollars (\$3,000,000), the City shall not be responsible for bearing OCSD's excess share. The City agrees to notify OCSD at the earliest opportunity if OCSD's share is expected to exceed Three Million Dollars (\$3,000,000) anytime during the project. If reimbursement over and above Three Million Dollars (\$3,000,000) is requested by City, OCSD staff will request approval from OCSD's Board of Directors to increase the maximum reimbursement amount.

## III. Sewer Extension Project

- A. OCSD has budgeted Two Hundred Fifty Thousand Dollars (\$250,000) for the design and permitting of the Sewer Extension Project. Upon receipt of invoices and supporting documentation from City detailing design costs including preliminary site assessment services, OCSD will reimburse the City for OCSD's share plus an additional ten percent (10%). The additional 10% represents the City's administration costs. OCSD will pay

invoices to the City based on the progress payments until 100% of OCSD's share is paid.

- B. OCSD has budgeted One Million Eight Hundred Thousand Dollars (\$1,800,000) for the construction of the Sewer Extension project, including but not limited to construction costs, reimbursements, fees, and administration costs. If the cost is anticipated to exceed One Million Eight Hundred Thousand Dollars (\$1,800,000), OCSD will seek approval from the Board for the additional cost of the Sewer Extension Project. City shall not be responsible for any costs related to the Sewer Extension Project.

Section 5: Timing of Reimbursement

- A. OCSD shall pay a deposit to the City in the amount of 10% of the total design cost of the Sewer Extension Project based on the bid prices received, and the deposit shall be due upon award of the project by City Council.
- B. OCSD shall pay a deposit to the City in the amount of 10% of the total construction cost based on the bid prices received, and the deposit shall be due within 30 days upon award of the project by City Council.
- C. For each progress payment, including the final progress payment, made by City to its consultant or contractor, City shall submit an invoice to OCSD setting forth OCSD's share of the payment, accompanied by a copy of any documentation processed with the progress payment or other documentation to substantiate the calculation of OCSD's portion. OCSD shall pay the City within thirty (30) days of OCSD's receipt of all required invoices and supporting documentation.

Section 6: Indemnification.

- A. City will indemnify, defend and hold OCSD, 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 of the acceptance by OCSD of OCSD's sewer facilities, as a result of any work or action performed by or on behalf of City, 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 OCSD, its officers, agents, employees or consultants.
- B. OCSD will indemnify, defend and hold City, 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 OCSD, its officers, agents, employees or consultants, with respect to the construction of OCSD sewer facilities as a result of or in connection with the maintenance and operation of OCSD's improvements, 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. OCSD will also indemnify, defend and hold City, 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 OCSD's denial of any change order or part thereof.

**Section 7: Insurance.** City will require the construction contractor to maintain insurance policies in the amounts stated herein during all times of the construction project. City will not allow contractor or subcontractor(s) to commence work on the project until such insurance is obtained in accordance with the requirements of this section.

City will require that insurers be admitted carriers and authorized to transact business in the State of California and that insurers have an "A-", or better, Policyholder's Rating, and a Financial Rating of at least Class VII, or better, in accordance with the most current A.M. Best Rating Guide. City will include a provision in its contract with the Contractor that OCSD may require the Contractor to substitute any insurer whose rating drops below the levels herein specified and that the substitution will occur within twenty (20) days of written notice to the Contractor by OCSD or its agent.

City will require contractor to furnish OCSD with original certificates and amendatory endorsements effecting coverage. Said policies and endorsements will conform to the requirements herein stated. All certificates and endorsements are to be received and approved by the City and OCSD before work commences. OCSD reserves the right to require complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these specifications, at any time.

City will require that all general liability and automobile liability policies be endorsed to name OCSD and City, their officers, employees, agents, and consultants as additional insureds. City will require that each insurance policy required herein be endorsed to state that coverage will not be cancelled by either party, except after thirty (30) days' written notice. City will require coverage in at least the following amounts:

- A. **General Liability.** \$2,000,000.00 per occurrence for bodily injury, personal injury, and property damage and \$4,000,000.00 aggregate for bodily injury, personal injury, and property damage.
- B. **Automobile Liability.** \$2,000,000.00 combined single limit per accident for bodily injury and property damage, including non-owned and hired vehicles.

- C. Workers' Compensation. Workers' Compensation, in accordance with the Workers' Compensation Act of the State of California for a minimum of \$1,000,000.00, or such minimum limits as the required by the State, whichever is greater. Such Workers' Compensation Insurance will be endorsed to provide for a waiver of subrogation against OCSD.

Section 8: Contract Bonds. Before final execution of the Contract with the City, the successful Bidder will furnish surety bonds on the forms provided by the City, approved by OCSD, for the Sewer Modification and Sewer Extension Projects as part of the Contract Documents. Each bond will have good and sufficient sureties subject to the approval of the City and OCSD. The first will ensure the payment of all labor performed and material used in the Work, and the second will ensure the faithful performance of the Contract.

The Payment Bond Public Works (Labor and Material Bond) will be in an amount equal to one hundred percent (100%) of the Bid price for the Grade Separation Project, which includes the Sewer Modification and Sewer Extension Projects, so conditions as to insure the benefit of persons furnishing materials to the Contractor for and/or performing labor upon the Work of the Contractor. This bond will be maintained by the Contractor in full force and effect until Work has been completed and accepted by the City and OCSD and all claims for labor and material have been paid. As changes to the Contract occur via approved Change Orders, the Contractor will assure that the amount of the bond is adjusted to maintain 100% of the Contract Price.

The bond for faithful performance (Performance Bond Public Works) will be an amount equal to one hundred percent (100%) of the Total Amount of Bid price for the Grade Separation Project, which includes the Sewer Modification and Sewer Extension Projects, so conditioned as to insure the faithful performance by the Contractor of all work within the time limit prescribed, and in a manner that is satisfactory and acceptable to OCSD. This bond will be maintained by the Contractor in full force and effect during the performance of the Work of the Contract and until the Work has been accepted by the City and OCSD. This bond will also apply to the use of patented articles, materials or processes; to guarantee the payment of all stop notice claimants, and will assure faithful performance of the one (1) year warranty from the date of Final Acceptance by OCSD, by the City, and any extensions to said warranty period as provided by the Contract Documents. As changes to the Contract occur via approved Change Orders, the Contractor will assure that the amount of the bond is adjusted to maintain the 100% of the Contract price.

Should any surety or sureties ever be deemed unsatisfactory by OCSD, the Contractor will be notified to that effect, and the Contractor will forthwith substitute a new surety or sureties satisfactory to OCSD. No further payment will be deemed due or will be made under such a Contract until the new sureties will qualify and be accepted by the Board of Directors. For surety companies to be acceptable to OCSD they must be admitted to do business as a surety in and have an agent for service process in California.

Section 9: Term. This Agreement will be in full force and effect until the specified obligations of both Parties have been fulfilled or the Agreement is terminated as set forth herein.





**Section 16: 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 17 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 18: 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 19: 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 20: 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.

APPROVED AS TO FORM:  
GENERAL COUNSEL

By   
Bradley R. Hogin  
Orange County Sanitation District

ORANGE COUNTY SANITATION DISTRICT

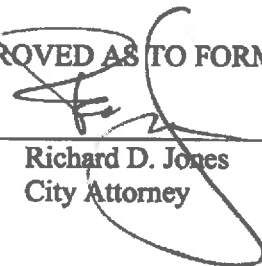
By  8/24/11  
Larry R. Crandall Date  
Chair, Board of Directors

By  8/24/11  
Maria Ayala Date  
Clerk of the Board, Board of Directors

CITY OF FULLERTON

By  7-20-11  
Donald K. Hoppe Date  
Director of Engineering

APPROVED AS TO FORM:

By   
Richard D. Jones  
City Attorney

ATTEST:

By  7-27-11  
Lucinda Williams Date  
City Clerk