

ATTACHMENT A

Agreement No. D10-037

Revised 06/08/11

A G R E E M E N T

This AGREEMENT, herinafter referred to as "AGREEMENT", for the purposes of identification hereby numbered **D10-037** and dated ____ day of _____, 20____, is

BY AND AMONGST

ORANGE COUNTY FLOOD CONTROL DISTRICT,

A body corporate and politic,

hereinafter referred to as "DISTRICT"

AND

MOULTON NIGUEL WATER DISTRICT

hereinafter referred to as "MNWD"

AND

SANTA MARGARITA WATER DISTRICT

hereinafter referred to as "SMWD"

Which are sometimes individually referred to as "PARTY" or collectively as "PARTIES", and MNWD and SMWD are sometimes referred to collectively as "WATER DISTRICT".

R E C I T A L S

WHEREAS, DISTRICT proposes the construction of Trabuco Creek (FACILITY NO. L02) Channel Levee Protection Project, Phase VII; which begins on both sides of the Trabuco Creek Channel from approximately Station 17+25 to Station 44+19, within the City of San Juan Capistrano, hereinafter referred to as "DISTRICT PROJECT";

WHEREAS, WATER DISTRICT have an interest in a segment of DISTRICT PROJECT which begins on the westerly side of Trabuco Creek Channel from approximately Station 18+96

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(Start Station to be field verified prior to construction) to Station 43+80, hereinafter referred to as "REPLACEMENT";

WHEREAS, MNWD and SMWD (WATER DISTRICT) jointly own, operate and maintain a twenty (20) inch Plant 3A Effluent Transmission Main, hereinafter referred to as "ETM", installed within DISTRICT right-of-way by way of three encroachment permits numbered 77-00580FE, 82-13826RE and 81-00535FE;

WHEREAS, a total of approximately two thousand four-hundred seventy (2,470) linear feet of the ETM falls within the limits of DISTRICT PROJECT. This reach of ETM consists of a twenty (20) inch diameter Ductile Iron Pipe (DIP);

WHEREAS, DISTRICT's engineering analyses determined that protecting ETM in place during DISTRICT PROJECT construction is not economically feasible and that this portion of DISTRICT PROJECT construction activities could result in un-repairable damage and/or catastrophic failure of ETM during construction. Therefore, DISTRICT and WATER DISTRICT agree that the safest course of action is to temporarily re-route ETM flows, remove interfering portions of ETM during DISTRICT PROJECT construction (by DISTRICT's contractor), and replace interfering portion of ETM with a new and upgraded transmission line; and

WHEREAS, per the above listed DISTRICT encroachment permits, WATER DISTRICT is obligated to remove and/or replace ETM upon DISTRICT's request and have determined to request DISTRICT include into DISTRICT PROJECT the necessary upgrade and replacement of WATER DISTRICT's twenty (20) inch ETM with a new thirty (30) inch ETM in accordance with the provisions of this AGREEMENT, with WATER DISTRICT to provide final design plans and special provisions to DISTRICT for the REPLACEMENT.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

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SECTION I

DISTRICT SHALL:

1. Include bid items in DISTRICT PROJECT plans and specifications for the removal and replacement of WATER DISTRICT's existing twenty (20) inch ETM with a new thirty (30) inch diameter polyvinyl chloride (PVC) with a Dimension Ratio (DR) of 21, or thicker, ETM; including connections to the existing pipeline, relevant appurtenances, and appropriate testing, as listed in the Schedule of Work Items and Special Provisions in Section G of the DISTRICT PROJECT bid package, also referred to as the REPLACEMENT, based on the Final Design Plans and Special Provisions provided to DISTRICT by WATER DISTRICT.
2. Solicit competitive bids for the DISTRICT PROJECT including REPLACEMENT and award of construction contract to the lowest responsive and responsible bidder, hereinafter referred to as "CONTRACTOR".
3. Be the lead agency for purposes of CEQA and prepare appropriate CEQA document(s) to address REPLACEMENT, the cost of which shall be paid by WATER DISTRICT and as included the within ten percent (10%) administrative costs described in Section II, 7C below.
4. Provide construction contract documents to WATER DISTRICT which shall identify all sub-contractors who will accomplish the REPLACEMENT.
5. Direct its CONTRACTOR to provide all relevant REPLACEMENT related construction submittals for WATER DISTRICT review and written approval for consistency with DISTRICT's Plans and Specifications; WATER DISTRICT approval shall not be unreasonably withheld.
6. Be responsible for awarding the construction contract to the CONTRACTOR and for overseeing and administering the construction contract, including those elements of the DISTRICT PROJECT and the construction contract that are related

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to the REPLACEMENT work.

7. Furnish a representative to perform the usual functions of a Resident Engineer, hereinafter referred to as "RESIDENT ENGINEER", who shall be responsible for monitoring and inspecting the CONTRACTOR'S performance. The RESIDENT ENGINEER shall be required to provide written notice seventy-two (72) hours in advance to WATER DISTRICT representative, hereinafter referred to as "WATER DISTRICT REPRESENTATIVE", of when REPLACEMENT work in DISTRICT PROJECT area and connections to existing facilities are scheduled.

8. Issue Construction Contract Change Orders ("CCOs") as required for REPLACEMENT work, but only after review and written approval by WATER DISTRICT; WATER DISTRICT approval shall not be unreasonably withheld and WATER DISTRICT shall approve within five (5) working days from receipt of a CCO. Failure to approve a CCO within the five (5) day period shall be deemed acceptance by WATER DISTRICT.

9. Incorporate within the contract documents for DISTRICT PROJECT a requirement for the CONTRACTOR to obtain and keep in full force and effect throughout the duration of DISTRICT PROJECT, for the mutual benefit of WATER DISTRICT and DISTRICT, Commercial General Liability insurance with a limit of five million dollars (\$5,000,000) per occurrence with a minimum aggregate of ten million dollars (\$10,000,000) and Commercial Automobile Liability insurance with a limit of one million dollars (\$1,000,000). Said policies shall name WATER DISTRICT and DISTRICT as additional insureds by separate endorsements, and shall, additionally contain language providing for waiver of subrogation, that the policies are primary and noncontributing with any insurance that may be carried by the parties hereto, that said insurance may not be cancelled or materially changed except upon thirty (30) calendar days written notice to

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DISTRICT, and any losses shall be payable notwithstanding any act or failure to act or negligence of the WATER DISTRICT and/or DISTRICT. DISTRICT shall also require that workers' compensation benefits are secured by the CONTRACTOR as required by law with a waiver of subrogation endorsement against WATER DISTRICT and DISTRICT. DISTRICT shall require CONTRACTOR to indemnify WATER DISTRICT in contract documents.

10. Require CONTRACTOR to construct REPLACEMENT to the requirements of WATER DISTRICT. DISTRICT shall not accept DISTRICT PROJECT work from CONTRACTOR until WATER DISTRICT concur that the REPLACEMENT has been performed to WATER DISTRICT requirements and in accordance with WATER DISTRICT Plans and Special Provisions. WATER DISTRICT shall provide concurrence in writing to RESIDENT ENGINEER within fifteen (15) working days of REPLACEMENT work completion. Failure to provide concurrence within allotted time shall be deemed acceptance of REPLACEMENT by WATER DISTRICT.

11. Require its CONTRACTOR to provide a one (1) year warranty for the REPLACEMENT for the benefit of WATER DISTRICT. This warranty requirement is stated (by reference to page 26, Section 6-8, "Completion, Acceptance, and Warranty" of the 2009 Green Book Standard Specifications for Public Works Construction as published by BNi) in the DISTRICT PROJECT Plans and Special Provisions.

12. Upon award of DISTRICT PROJECT to CONTRACTOR, written acceptance of REPLACEMENT, and issuance of Notice to Proceed (NTP), DISTRICT shall invoice MNWD for fifty percent (50%) and SMWD for fifty percent (50%) of the WATER DISTRICT Engineer's Estimate, as shown in Exhibit A: "Engineer's Estimate of Probable Construction Costs", for costs associated with REPLACEMENT. WATER DISTRICT shall pay one hundred percent (100%) of estimated amount to DISTRICT

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within sixty (60) calendar days of receipt of said Invoice.

SECTION II

WATER DISTRICT SHALL:

1. Provide final design plans, specifications, special provisions, and estimates (PS&E) to DISTRICT for REPLACEMENT to be included in DISTRICT PROJECT contract documents at least sixty (60) calendar days before DISTRICT PROJECT bid opening date.
2. Be responsible for all costs, review, approval of the design, removal, disposal, and replacement of WATER DISTRICT twenty (20) inch ETM based on the part of definition for CONTRACTOR's total bid amount and for all contract change orders as described in Section II.4 below for the REPLACEMENT portion of DISTRICT PROJECT and shall not unreasonably delay CONTRACTOR.
3. WATER DISTRICT shall deposit with DISTRICT one hundred percent (100%) of the estimated REPLACEMENT cost, as shown in Exhibit A, which is a sum of four hundred thousand dollars (\$400,000.00). Said deposit shall be made within sixty (60) calendar days of receipt of invoice from DISTRICT following the execution of this AGREEMENT and once the NTP for DISTRICT PROJECT is issued.
4. Review and approve CCOs issued by DISTRICT in accordance with Section I.8 above specifically related to REPLACEMENT, and be solely responsible for all CCO costs pertaining to REPLACEMENT. WATER DISTRICT shall not unreasonably withhold consent to CCOs and MNWD and SMWD shall pay to DISTRICT its fifty percent (50%) share of the cost of such CCO's within thirty (30) calendar days of receipt of a written request for such payment from DISTRICT. The request for payment shall be included with the request for approval of the CCO.
5. Coordinate outage (discontinue effluent flow) of twenty (20) inch ETM with

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CONTRACTOR. The CONTRACTOR will identify a Phasing Plan for the twenty (20) inch ETM and include a proposed outage period to be submitted to DISTRICT and approved in writing by WATER DISTRICT. The duration of the CONTRACTOR'S outage plan shall be extended if required for the work of REPLACEMENT, and if approved by RESIDENT ENGINEER and WATER DISTRICT REPRESENTATIVE, but not more than 20 days beyond the period accepted by the WATER DISTRICT unless additional management approvals are obtained.

6. Furnish a representative (at WATER DISTRICT'S option) to assist over-seeing construction for REPLACEMENT, hereinafter referred to as, "WATER DISTRICT CONSTRUCTION REPRESENTATIVE." Said WATER DISTRICT CONSTRUCTION REPRESENTATIVE and DISTRICT'S RESIDENT ENGINEER shall cooperate and consult with each other. Should DISTRICT'S RESIDENT ENGINEER and WATER DISTRICT CONSTRUCTION REPRESENTATIVE be unable to reach agreement, the decision of DISTRICT'S RESIDENT ENGINEER shall be final provided the ETM is constructed to the WATER DISTRICT final design plans, special provisions, standards, and specifications. Specific inspection for all REPLACEMENT work by the CONTRACTOR within the DISTRICT PROJECT limits and for all connections to existing facilities owned by the WATER DISTRICT shall be performed to the satisfaction of the WATER DISTRICT CONSTRUCTION REPRESENTATIVE.

7. Upon completion of REPLACEMENT, and within sixty (60) calendar days of receipt of a Final Accounting Report and Invoices from DISTRICT, payment from WATER DISTRICT to DISTRICT or reimbursement from DISTRICT to WATER DISTRICT (if estimated deposit amount exceeds actual costs), shall be executed for all REPLACEMENT work determined as the sum of 7A, 7B, and 7C below:

A. The actual sum of the item prices bid for the construction of REPLACEMENT from CONTRACTOR to DISTRICT for DISTRICT PROJECT.

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1 B. CCO expenses approved by WATER DISTRICT REPRESENTATIVE related to
2 REPLACEMENT work and not already paid by WATER DISTRICT, if any, shall
3 be added to the above.

4 C. An additional ten percent (10%) of the sum determined by the summation
5 of 7A and 7B above to reimburse DISTRICT for costs incurred for
6 construction administration, inspection, materials testing, bonds,
7 insurance, scheduling, and other mobilization costs related to
8 REPLACEMENT.

9 Interest accrual shall not be earned, factored, disbursed, or implied in
10 Section II.7.

11 8. MNWD and SMWD, as agreed, shall each pay fifty percent (50%) of the costs
12 for REPLACEMENT and CCOs of the ETM as determined by Section II.7 above.

13 9. Upon filing of a Notice of Completion by DISTRICT, own, operate and maintain
14 the new thirty (30) inch ETM.

15 10. Apply for, secure, and accept a County Property Encroachment Permit for
16 installation of the WATER DISTRICT's facilities within DISTRICT's right-of-way.
17 Upon completion and acceptance of REPLACEMENT within DISTRICT PROJECT, WATER
18 DISTRICT shall be responsible for compliance with the terms and conditions set
19 forth in said County Property Encroachment Permit which terms and conditions
20 will be consistent with existing County Property Permits held by WATER DISTRICT
21 for DISTRICT PROJECT. No encroachment permit fees shall be assessed against
22 WATER DISTRICT for administration or processing of documents of plans for
23 acquisition of encroachment permit or any other permit related fees. By
24 accepting County Property Encroachment Permit, WATER DISTRICT agrees to
25 relocate, reconstruct or modify the installations to be made under this permit
26 promptly upon written notice to do so, entirely at its expense, when necessary

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1 for the construction, reconstruction, improvement or alteration of DISTRICT's
2 works or tributary entries. WATER DISTRICT shall relocate the pipeline outside
3 DISTRICT Right-of-Way at its own expense if the pipeline for any reason
4 prevents DISTRICT from securing FEMA levee certification for San Juan Creek and
5 Trabuco Creek Channels.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED THAT:

- 9 1. Successors and Assigns. The terms and provisions of this AGREEMENT shall be
10 binding upon and inure to the benefit of the parties hereto and their
11 successors and assigns.
- 12 2. Entire Agreement. This AGREEMENT constitutes the entire agreement between
13 DISTRICT and WATER DISTRICT and supersedes all prior understandings and
14 agreements, if any, between the parties with respect to the subjects hereof.
15 This AGREEMENT may only be modified in writing specifically referencing this
16 AGREEMENT and signed by all parties hereto.
- 17 3. Severability. If any part of this AGREEMENT is held, determined, or
18 adjudicated to be illegal, void, or unenforceable by a court of competent
19 jurisdiction, the remainder of this AGREEMENT shall be given effect to the
20 fullest extent reasonably possible.
- 21 4. Legal Authority/Counterparts. The parties to this AGREEMENT represent and
22 warrant that this AGREEMENT has been duly authorized and executed and
23 constitutes the legally binding obligation of their respective organization or
24 entity enforceable in accordance with its terms. This AGREEMENT may be
25 executed in three counterparts, and each such counterpart shall be deemed to be
26 an original.

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5. Notices. All notices or other communications provided for herein shall be in writing and shall be personally served or delivered by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

Moulton Niguel Water District

Matt Collings, Director of Engineering & Operations

27500 La Paz Road

Laguna Niguel, CA 92677

mcollings@mnwd.com

Santa Margarita Water District

Don Ferons, Chief Engineer

26000 Antonio Parkway

Rancho Santa Margarita, CA 92688

danf@smwd.com

Orange County Flood Control District

Mary Valleau, Manager of Utilities Section

OC Public Works / OC Engineering

P.O. Box 4048

Santa Ana, CA 92702-4048

Mary.Valleau@ocpw.ocgov.com

Any party may, by notice to the others, designate a different address for notices which shall be substituted for that specified above. Any notice given as provided in this subparagraph shall be deemed to have been received, if personally served, as of the date and time of service, or if deposited in the

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mail as provided above, sixty (60) hours after deposit in the mail.

6. Governing Law and Venue. This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

7. Termination-Cause. If WATER DISTRICT breach any of the covenants or conditions of this AGREEMENT, DISTRICT shall have the right to terminate this AGREEMENT upon ten (10) days written notice prior to the effective day of termination.

8. Termination-Other.

a. In the event DISTRICT PROJECT construction (as outlined above), is not initiated within one year of the execution date of this AGREEMENT, this AGREEMENT will automatically terminate unless extended in writing by mutual agreement of the PARTIES.

b. In the event that DISTRICT is unable to proceed with DISTRICT PROJECT in accordance with terms and without cause, DISTRICT may terminate this AGREEMENT upon delivery of thirty (30) days written notice to WATER DISTRICT.

c. Notice of Termination shall be in writing and shall state the date upon which such termination is effective.

9. No Agency. This AGREEMENT is by and among WATER DISTRICT and DISTRICT and is not intended and shall not be construed so as to create, as between WATER DISTRICT and DISTRICT any agency, servant, employee, partnership, joint

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venture, association or other relationship between WATER DISTRICT and DISTRICT.

10. Waiver. The failure of the WATER DISTRICT or DISTRICT to insist upon strict performance of any of the covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that the WATER DISTRICT or DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

11. Attorneys' Fees. Should litigation be necessary to enforce any terms, covenants or provisions of this AGREEMENT then each PARTY shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

12. Indemnification. Pursuant to Section 895.4 of the Government Code, defend with counsel and approved in writing by WATER DISTRICT / DISTRICT, indemnify and save harmless WATER DISTRICT / DISTRICT, their elected and appointed officials, officers, agents and employees, from all liability from loss, damage or injury to persons or property, including any and all legal costs and attorneys' fees, in any manner arising out of the performance, by DISTRICT / WATER DISTRICT, its elected and appointed officials, officers, agents and employees, of its obligations under this AGREEMENT.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates
opposite their respective signatures:

MOULTON NIGUEL WATER DISTRICT

Date: July 21, 2011

By 
Larry McKenney
President, Board of Directors

APPROVED AS TO FORM: Bowie, Arneson, Viles
GENERAL COUNSEL Giannone

Date: July 21, 2011

By 
Pat Giannone

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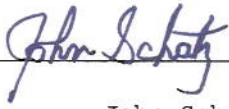
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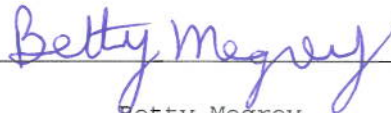
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates
opposite their respective signatures:

SANTA MARGARITA WATER DISTRICT

Date: 8/8/11

By 
John Schatz
General Manager

Date: 8/8/11

By 
Betty Megrey
Secretary, Board of Directors

APPROVED AS TO FORM
GENERAL COUNSEL

Date: 8/8/11

By 
John Schatz

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates
opposite their respective signatures:

ORANGE COUNTY FLOOD CONTROL DISTRICT
A body corporate and politic

Date: _____

By _____

Chairman of the Board of Supervisors
Orange County, CA

Signed and certified that a copy of
this document has been delivered to
the Chair of the Board per G.C. Sec 25013,
Reso 79-1535
Attest:

Date: _____

By _____

Clerk of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

Date: 1/9/12

By  _____

DEPUTY

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