



CITY OF GARDEN GROVE OFFICE OF THE CITY CLERK

*Safeguard all official records of the City.
Conduct municipal elections and oversee legislative administration.
Provide reliable, accurate, and timely information to the
City Council, staff, and the general public.*

Steven R. Jones
Mayor

Phat Bui
Mayor Pro Tem - District 4

Kris Beard
Council Member - District 1

John R. O'Neill
Council Member - District 2

Thu-Ha Nguyen
Council Member - District 3

Stephanie Klopfenstein
Council Member - District 5

Kim Bernice Nguyen
Council Member - District 6

December 11, 2017

West Orange County Water Board
2000 Main Street
Huntington Beach, CA 92648

Attention: General Manager

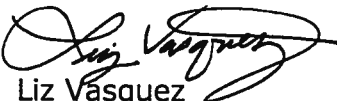
Enclosed is the Financial Participation Agreement, by and between West Orange County Water Board and the City of Garden Grove for the relocation of water facilities in connection with the Interstate 405 Freeway (I-405) Improvement Project.

The Garden Grove City Council approved the Agreement at their meeting held on October 24, 2017.

For convenience and expediency, a self-addressed envelope has been included, as our office respectfully requests that a *copy* of agreement be returned to the City Clerk's Office once it is approved and fully executed by the West Orange County Water Board.

Sincerely,

Teresa Pomeroy, CMC
City Clerk

By: 
Liz Vasquez
Deputy City Clerk

Enclosure

c: Finance Department
Finance Department/Purchasing
Public Works Department

**FINANCIAL PARTICIPATION AGREEMENT –
CITY OF GARDEN GROVE FACILITIES RELOCATION COSTS**

(405 Freeway Facilities Relocation)

This **FINANCIAL PARTICIPATION AGREEMENT – City of Garden Grove FACILITIES RELOCATION COSTS** (“Agreement”) is made and entered into and effective as of this 14th day of December 2017, by and between the **WEST ORANGE COUNTY WATER BOARD**, a joint powers agency (hereinafter referred to as “WOCWB”) and the **CITY OF GARDEN GROVE**, a California general law city, organized and existing pursuant to the Constitution and laws of the State of California (hereinafter referred to as “City”, each agency to this Agreement may in certain cases be referred to herein as a “Party” and collectively, herein as the “Parties”).

RECITALS

1. Pursuant to the WOCWB Joint Powers Agreement (as defined herein), October 25, 1967, WOCWB and its Member Agencies (as defined in the Joint Powers Agreement) own, operate and maintain certain potable water transmission and distribution lines all located within the boundaries of the County of Orange (“County”), State of California (“State”).
2. Certain WOCWB facilities extending over and across the Interstate 405 Freeway (“I-405”) are located within, and subject to, various encroachment permits and related documents currently managed by the Orange County Transportation Authority (“OCTA”) and are further described herein as the “Relocation Facilities”.
3. OCTA, by and through a cooperative agreement with the California Department of Transportation, is constructing improvements on Interstate 405 (I-405) Freeway between State Route 73 (SR-73) and Interstate 605 (I-605). The improvements include one general purpose lane in each direction from Euclid Street to I-605, and an additional lane in each direction that would combine with the existing high-occupancy vehicle lane to provide dual express lanes in each direction of I-405 from SR-73 to I-605 (“405 Project”).
4. As a result of the construction for the 405 Project, it is necessary for WOCWB to relocate its existing thirty-three (33) inch waterline located in Westminster Boulevard where it crosses Interstate 405 from east of Willow Lane to Springdale Street (the “Relocation Project”) in conflict with the 405 Project.
5. In accordance with 405 Project requirements, Utility Agreement No. UK 151087 (“UK 151087”) has been entered into between OCTA and WOCWB. UK 151087 specifies the facilities relocation work to be performed, performance of work responsibility, and that the cost liability of such relocation based on existing rights of the respective Member Agencies in the facilities to be relocated (all as set out in Exhibit “A”). Under the terms of UK 151087, one-

hundred (100) percent cost responsibility for the relocation work is assigned to WOCWB including, but not limited to, all services, final design and construction cost (hereafter, the "WOCWB Relocation Work"). UK 151087 also allows for the advancement of funds for the relocation work by OCTA upon determination of a hardship in accordance with Section 706 of the Streets and Highways Code.

6. WOCWB has entered into the OCTA Reimbursement Agreement (as defined herein) with OCTA to provide a portion of the funding necessary to provide for the WOCWB Relocation Work on the Relocated Facilities.

7. In order to provide adequate funds for WOCWB to repay the Financial Participation Payments which will come due under the OCTA Reimbursement Agreement, WOCWB is entering into this Agreement with City to provide for Financial Participation Payments to be made to WOCWB by City upon the terms and conditions set forth herein.

ARTICLE I

INTENTION; DEFINITIONS; ACTIONS BY WOCWB CONTRACT MANAGER

1.1 Intention. It is the intention of the Parties to provide for Financial Participation Payments to be made by City to WOCWB to allow WOCWB to make the OCTA Contract Payments, as specified in the OCTA Reimbursement Agreement in a timely manner. City acknowledges that WOCWB does not have financial reserves sufficient to pay the OCTA Contract Payments due from City and other involved Member Agencies of WOCWB.

1.2 Definitions. In addition to the definitions heretofore included in the Recitals, and unless the context otherwise requires, the following terms shall have the following meanings:

"Allocated Ownership" means the allocated ownership, and corresponding cost responsibility, for the Relocated Facilities as set out in Exhibit "A" attached hereto and incorporated herein by this reference. In the case of City the allocated ownership is 4.2%.

"CHB" means the City of Huntington Beach, a California charter city organized and operating pursuant to the laws of the State.

"City" means City of Garden Grove, a California general law city, organized and operating pursuant to the provisions of the California Constitution and State law.

"Contract Manager" means CHB when operating or acting in its capacity as Contract Manager for WOCWB.

"Default Rate" means an interest rate equal to the variable State Surplus Money Investment Fund (SMIF) interest rate, which may be adjusted on a periodic basis.

"Due Date(s)" means the date(s) set out in Exhibit "C".

“Event of Default” means an Event of Default as set forth in Section 4.1 of this Agreement.

“Financial Participation Payments” means those certain payments made by City to WOCWB, through CHB, pursuant to the provisions of Article III of this Agreement.

“General Manager” means the duly appointed and acting General Manager of WOCWB.

“Letter(s) of Credit” means that certain irrevocable, standby letter(s) of credit issued or provided pursuant to Section 3.6 hereof by a Letter of Credit Bank(s), or any reissuance or extension thereof, which Letter(s) of Credit shall be in the applicable Stated Amount and shall be for an initial term of no less than one year.

“Letter of Credit Bank(s)” means the issuer from time to time of a Letter(s) of Credit and the respective successors and assigns of the issuer thereof and any surviving, resulting or transferee banking association or corporation with which, or into which, it may be consolidated or merged or to which it may transfer all of its banking business, provided that such entity shall have a minimum rating, at all times during the term of the Letter(s) of Credit, of one of the following: (1) Moody’s long-term rating of “A” and short-term rating of “P-1”; or, (2) S&P long-term rating of “A” and short-term rating of “A-1”; or, (3) Fitch long-term rating of “A+” and short-term rating of “F1”; with any of the foregoing ratings to be evidenced by proof provided by the Letter of Credit Bank(s) to the Contract Manager in writing.

“Member Agencies” means the Member Agencies of WOCWB as set forth in the WOCWB Joint Powers Agreement.

“OCTA Reimbursement Agreement” means that certain Reimbursement Agreement No. U-2017-151087 between the Orange County Transportation Authority and WOCWB dated as of December 14, 2017.

“Relocation Facilities” means those facilities of WOCWB which are required to be removed, abandoned and/or relocated as a result of the 405 Project which Relocation Facilities are described in Exhibit “B,” attached hereto and incorporated herein by this reference.

“Reserve Fund” means the fund or account (regardless of actual designation) established and maintained by the Contract Manager pursuant to the provisions and requirements of Section 3.4 hereof. The Reserve Fund shall be discreet for each Member Agency using a unique object account for payment tracking.

“Reserve Requirement” means an amount equal to the average of one periodic Reimbursement Payment, as scheduled in Exhibit “C.”

“State” means the State of California.

“WOCWB” means West Orange County Water Board, a joint powers agency organized pursuant to the provisions of the WOCWB Joint Powers Agreement.

“WOCWB Joint Powers Agreement” means that certain Joint Powers Agreement, dated as of October 25, 1967, as subsequently amended, and as such may be further amended or supplemented in the future from time to time.

1.3 Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural, and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to be corresponding Articles or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision thereof.

1.4 Actions of WOCWB’s Contract Manager. Pursuant to an existing agreement WOCWB has retained CHB to act as its Contract Manager for all operational and financial purposes. For purposes of this Agreement references to WOCWB shall include the Contract Manager. All actions to be undertaken by WOCWB shall, unless otherwise expressly stated herein, be undertaken or performed on behalf of WOCWB by the Contract Manager. The Contract Manager acts through the General Manager.

1.5 WOCWB Actions to Complete Relocation of Relocation Facilities. Through the Contract Manager and pursuant to the requirements of OCTA and the terms of the OCTA Reimbursement Agreement, WOCWB shall undertake to contract for, and complete, the relocation of the Relocation Facilities. WOCWB shall provide the Member Agencies with periodic updates on the progress and status of such relocation work.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

2.1 Representations by WOCWB. WOCWB makes the following representations:

(a) WOCWB is a joint powers agency duly organized and existing under and pursuant to the laws of the State.

(b) WOCWB has full legal right, power and authority to enter into this Agreement and carry out its obligations hereunder, to carry out and consummate all other transactions contemplated by this Agreement, and WOCWB has complied with the provisions of applicable State law in all matters relating to such transactions.

(c) By proper action, WOCWB has duly authorized the execution, delivery and due performance of this Agreement.

2.2 Representations by City. City makes the following representations:

(a) City is a general law city duly organized and existing under and pursuant to the laws of the State.

(b) City has full legal right, power and authority to enter into this Agreement and carry out its obligations hereunder, to carry out and consummate all other transactions contemplated by this Agreement, and City has complied with the provisions of applicable State law in all matters relating to such transactions.

(c) By proper action, City has duly authorized the execution, delivery and due performance of this Agreement.

ARTICLE III

PAYMENT OF FINANCIAL PARTICIPATION PAYMENTS TO WOCWB

3.1 Payments of Financial Participation Payments.

(a) City shall pay to WOCWB the Financial Participation Payments allocated to City based upon City's Allocated Ownership/financial responsibility portion of the Relocation Facilities based upon the payment schedules set forth in Exhibit "C," attached hereto and incorporated herein by this reference, as such may be revised pursuant to Section 3.3. Subject to Section 3.2, each such Financial Participation Payment shall be made by City to WOCWB not later than the corresponding Due Date as shown in Exhibit "C."

(b) Unless otherwise agreed to by and between City and the Contract Manager, such Financial Participation Payments shall be made by wire transfer consistent with the wire instructions to be provided by WOCWB. In the event of a change in such wire directions, the Contract Manager shall inform City of such change in writing.

(c) Each Financial Participation Payment shall be paid to WOCWB in lawful money of the United States of America. In the event that City fails to make any of the payments required to be made by it under this Section, such payment shall continue as an obligation of City until such amount shall have been fully paid and City agrees to pay the same with interest accruing thereon at the Default Rate from and after the applicable Due Date for payment.

(d) City shall have the option to prepay all or a portion of its total allocated Financial Participation Payment at any time.

(e) The obligation of City to make the Financial Participation Payments is absolute and unconditional and until such time as all Financial Participation Payments shall have been paid in full (or provisions for the payment thereof shall have otherwise been made by mutual agreement of the Parties) City will not discontinue or suspend any of the Financial Participation Payments required to be made by it under this Section when due. The obligation to make Financial Participation Payments as set forth in this Section shall not be conditioned on the performance or non-performance by any Party of any agreement, delays resulting in the completion of the work on the Relocation Facilities by WOCWB or by any other cause whatsoever; unless the obligation to make Financial Participation Payments is otherwise discharged by mutual agreement of the Parties in the event of changed circumstances.

3.2 Initial Deposits as Against Financial Participation Payments; Application of Deposit(s); Reconciliation.

(a) City in lieu of periodic Financial Participation Payments may choose to make one or more deposits with CHB as the Financial Agent and Treasurer of WOCWB which deposit(s) shall be used as a credit against Financial Participation Payments as such shall become due.

City is expected to prepay all of its total allocated Financial Participation Payment in a single payment, which prepayment shall, upon receipt, be promptly applied by WOCWB to make an Advanced Payment, as defined in the OCTA Reimbursement Agreement, in the amount of City's allocated percent of the loan to OCTA. Upon WOCWB's receipt of City's total allocated Financial Participation Payment, City will, thereupon and thereafter, have no requirement to make further Financial Participation Payments other than as provided in 3.3. Additionally, upon full prepayment by City, Sections 3.5 and 3.6 of this Agreement shall, thereupon and thereafter, not be applicable to City.

(b) CHB shall establish and, through a federally insured banking institution maintain, a separate fund or account for receipt of such City deposits (hereinafter referred to as the "Deposit Account" regardless of actual designation). The Deposit Account shall be used to receive deposits from City for payment or prepayment of its allocated Financial Participation Payments pursuant to the terms of this Agreement. Funds held in the Deposit Account shall be expended by CHB, on behalf of WOCWB, subject to the terms of this Agreement for payment or prepayment of City's Financial Participation Payments coming due thereafter under the terms of this Agreement.

(c) CHB shall provide City with periodic statements concerning the amount of funds held in the Deposit Account and charges made to the Deposit Account for payment or prepayment of Financial Participation Payments pursuant to the terms hereof on a monthly basis. Records of all deposits and charges against the Deposit Account shall be maintained at CHB's business offices and open for review by City (or its agents) during normal business hours should City wish to review such.

(d) Following the completion of the design, construction, installation and expiration of the notice of completion period for the Relocation Facilities CHB, as the financial agent and treasurer of WOCWB, shall provide City with a final accounting of all of the total project costs as allocated to City pursuant to the terms hereof. In the event that funds remain in the Deposit Account which have not been, and are not required to be, expended pursuant to the terms of this Agreement, such funds shall be returned to City by check, or other payment means acceptable to CHB and City within thirty (30) business days following completion of the above-referenced accounting report. In the event that final accounting shows a balance due to WOCWB from City and there are no funds remaining in the Deposit Account to cover such, City shall provide final payment to CHB as Treasurer of WOCWB for the City allocated costs within thirty (30) business days of such final accounting.

3.3 Adjustment of Financial Participation Payments. The schedule of allocated Financial Participation Payments set forth in Exhibit "C" to this Agreement shall be subject to modification or amendment (i) as a result of change orders resulting from WOCWB's construction contract for the completion of the work on the Relocation Facilities and/or (ii) as a result of changes in interest rates as imposed pursuant to the terms of UK 151087. In the event of such change order(s) being approved pursuant to the WOCWB Relocation Facilities contract documents, WOCWB, through its Contract Manager, shall provide to City a modified schedule of allocated Financial Participation Payments which shall supersede Exhibit "C" upon the finalization thereof and provision to City pursuant to the provisions of Article IV, hereof.

3.4 Application of Financial Participation Payments. WOCWB, through CHB, agrees to retain all Financial Participation Payments made by City pursuant to the provision of this Agreement and apply such to the payment of construction contract costs resulting from the OCTA Reimbursement Agreement, subject to the provisions of Sections 3.2 and 3.3, hereof.

3.5 Reserve Fund and Reserve Fund Deposit.

(a) As additional security for the payment of the Reimbursement Payments, CHB, as the Contract Manager shall open and maintain a Reserve Fund (regardless of actual designation). The Reserve Fund shall be utilized solely for the retention and application of Reserve Fund deposits and usage as set forth in this Section 3.5.

(b) Not later than January 1, 2018, City shall deposit with the Contract Manager an amount equal to the Reserve Requirement for deposit into the Reserve Fund.

(c) Moneys in the Reserve Fund shall be used solely for the purpose of satisfying payments of the Reimbursement Payments to the extent that they are not made by City in a timely manner. In the event that the payment of a Reimbursement Payment is not made by City by the corresponding Due Date, the Contract Manager shall withdraw from the Reserve Fund for satisfaction of the Reimbursement Payment. The Contract Manager will, promptly thereafter, notify City in writing of the amount needed to replenish the Reserve Fund to the Reserve Requirement. City shall replenish the Reserve Fund to the Reserve Requirement within thirty (30) Business Days following such notice. Failure to replenish the Reserve Fund to the Reserve

Requirement as set forth above shall constitute an event of default for purposes of Section 4.1 hereof.

(d) Draws upon the moneys in the Reserve Fund shall not preclude a Party from pursuing other applicable remedies under the provisions of Article IV hereof.

(e) Moneys in the Reserve Fund shall be invested by the Contract Manager in investments authorized in the City of Huntington Beach's investment policy and the local agency investment guidelines issued by the California Debt and Investment Advisory Commission ("CDIAC"). The Contract Manager shall provide City with periodic statements of the balance held in the Reserve Fund. Any moneys in the Reserve Fund in excess of the Reserve Requirement shall be: (i) returned to City upon written request therefore (which request(s) shall be no more often than once per quarter); or (ii) applied to City's next occurring Reimbursement Payment, as City shall direct in writing.

(f) Upon completion of the payment of all Reimbursement Payments by City, and satisfaction of all contractual obligations of City, all moneys then held in the Reserve Fund, if any, shall be returned to City. Alternatively, monies held in the Reserve Fund, if any, may be applied to the final Reimbursement Payment due from the City.

(g) The Contract Manager may establish additional accounts of the Reserve Fund as the Contract Manager shall deem necessary and prudent in furtherance of its duties pursuant to this Agreement upon written notification to City.

3.6 Satisfaction of Reserve Requirement by Way of a Letter of Credit.

(a) In lieu of a cash deposit to the Reserve Fund as set out in Section 3.5, City may deposit with the Contract Manager one or more Letters of Credit in an amount equal to all or a portion of the Reserve Requirement.

(b) The form of such Letter of Credit shall be provided by WOCWB general legal counsel not later than January 1, 2018.

(c) Any such Letter of Credit shall be used to satisfy any draws on the Reserve Fund in the same manner as set out in Section 3.5(c), above.

(d) The Contract Manager shall notify City, in writing, promptly following the draw(s) on any Letter of Credit then on deposit in the Reserve Fund, which notification shall include the amount(s) drawn on such Letter of Credit.

(e) Any such Letter of Credit shall be renewed, replaced or replaced with a cash deposit, in the amount of the Reserve Requirement, not later than 15 days prior to the expiration of the then-current Letter of Credit. Failure to comply with this subsection shall constitute an event of default for purposes of Section 4.1 hereof.

(f) In the event any Letter of Credit Bank(s) wrongfully refuses to honor any drawing made on any Letter(s) of Credit, WOCWB, through the Contract Manager may immediately

bring an action and pursue any remedy available at law or in equity for the purpose of compelling the corresponding Letter of Credit Bank(s) to honor such drawing and to enforce the provisions of the corresponding Letter(s) of Credit. In such event, the Contract Manager shall promptly notify City, in writing, of such event.

(g) Upon completion of the payment of all Reimbursement Payments by City, and satisfaction of all contractual obligations of City, all Letter(s) of Credit then held in the Reserve Fund, if any, shall be returned to City.

ARTICLE IV

EVENT OF DEFAULT – REMEDIES

4.1 Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) An event of default by the City shall have occurred under Section 3.1 hereof.

(b) Failure by the WOCWB or City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than such failure as may constitute an event of default under clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to WOCWB, or City, as applicable; provided, however, that if the failure stated in the notice cannot be corrected within such period, then the applicable Party shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the defaulting Party within such period and diligently pursued until the default is corrected.

4.2 Remedies on Default.

(a) In the event of a breach of this Agreement, all legal and equitable remedies may be employed to enforce the terms herein, subject to the terms hereof.

(b) WOCWB, through its Contract Manager, take any appropriate action to cause City to pay any Financial Participation Payment not paid when due.

(c) Notwithstanding the provisions of Section 4.2(a) and (b), it is the intent of the parties to try and resolve any differences arising from this Agreement through mediation prior to the initiation of litigation. In the event of any disagreement over the meaning or application of this Agreement, the parties shall first attempt to resolve the matter informally. Should that prove unsuccessful, any party may ask for mediation. A neutral mediator from the State Mediation and Conciliation Service or the Judicial Arbitration and Mediation Service (“JAMS”) shall be appointed to hear each side in an informal setting, and to render an advisory recommendation. Any such mediation costs shall be equally shared by the parties.

4.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to WOCWB is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle WOCWB to exercise any remedy reserved to it, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

4.4 No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by a Party and thereafter waived by another Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

4.5 Application of Funds. All moneys received by WOCWB pursuant to any right given or action taken under the provisions of this Article IV shall be deposited into the Reimbursement Fund and shall be applied by WOCWB in the following order:

First, Costs and Expenses: to the payment of the fees, costs and expenses of WOCWB in pursuing such event(s) of default including reasonable compensation to its agents, attorneys and counsel; and

Second, Payments Due Under OCTA Agreement: to the payment of payments due under the terms of the OCTA Agreement including any penalties, interest or costs due thereunder as a result of such event(s) of default.

ARTICLE V

GENERAL PROVISIONS

5.1 Record Keeping. WOCWB shall keep records and accounts of Financial Participation Payments, and other amounts due hereunder, collected and paid by City. Such records shall be maintained by WOCWB, through its Contract Manager, and shall be available for inspection by the Parties hereto upon reasonable prior notice.

5.2 Interpretation. WOCWB and City represent that they have read this Agreement and that they are fully aware of its contents and of its legal effect. The Parties have jointly cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed in favor or against either WOCWB or City. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State.

5.3 Entire Agreement. This Agreement constitutes a single, integrated written contract which contains the sole and entire agreement and understanding of WOCWB and City with respect to the subject matter of the reimbursements set forth herein (subject to the terms of

the Settlement Agreement), and contains all covenants and agreements between the WOCWB and City with respect to such matter. No covenants, agreements, representations, or warranties of any kind whatsoever, whether express or implied in fact, have been made by any party to this Agreement, except as specifically set forth in this Agreement. All prior and contemporaneous discussions, negotiations and agreements as to such matters have been and are merged and integrated into, and are expressly superseded by, this Agreement.

5.4 Successor Is Deemed Included in All References to Predecessor. Whenever in this Agreement either the WOCWB or City is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the WOCWB or City shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

5.5 Assignment. This Agreement, and the rights and obligations hereof, shall not be assigned without the prior written consent of the other Party hereto.

5.6 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The WOCWB hereby declares that it would have entered into this Agreement and each and every other Section, subsection, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

5.7 Amendments. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representations, promise, or condition in connection with the subject matter of this Agreement shall be binding upon any party to this Agreement unless made in writing and signed by such party or by a duly authorized officer or agent of such party.

5.8 Waiver. The failure of any party hereto to insist on compliance within any of the terms, covenants or conditions of this Agreement by any other party hereto, shall not be deemed a waiver of such terms, covenants or conditions of this Agreement by such other party, nor shall any waiver constitute a relinquishment of any other right or power for all or any other times.

5.9 Waiver of Personal Liability. No member, officer, agent or employee of WOCWB or City shall be individually or personally liable for any payment(s) due hereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

5.10 Cooperation and Execution of Documents. The parties hereto agree to complete and execute any further or additional documents which may be necessary to complete or further the terms of this Agreement.

5.11 California Law. This Agreement shall be construed and governed in accordance with the laws of the State of California, applicable to contracts made and performed in the State.

5.12 Exhibits. The following exhibits attached hereto are incorporated into this Agreement by reference.

<u>Exhibit</u>	<u>Description</u>
"A"	Description of Allocated Ownership/Financial Responsibility for Relocated Facilities
"B"	Description of Relocation Facilities
"C"	Schedule of Allocated Financial Participation Payments

5.13 Notices. Any notice, demand request, consent, approval or communication that any party desires or is required to give to any other party hereunder shall be in writing, postage prepaid and addressed to each other party at the following addresses or at such other address as may have been specified by notifying the other parties of the change of address:

To WOCWB: WOCWB
 Attention: General Manager
 2000 Main Street
 Huntington Beach, CA 92648

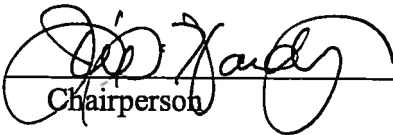
To City: City of Garden Grove
 City Clerk's Office - Attn: Liz Vasquez
 11222 Acacia Parkway
 Garden Grove, CA 92840

5.14 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

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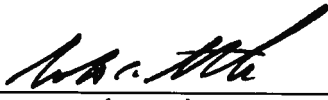
IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement by their duly Authorized Officers as of the date first set forth above.

WEST ORANGE COUNTY WATER BOARD

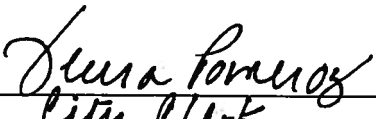
By: 
Chairperson

By: Brian A Regland
General Manager

CITY

By: 
Title: City Mgr.

ATTEST:

By: 
Title: City Clerk



APPROVED AS TO FORM
OMAR SANDOVAL
City Attorney
City of Garden Grove
DATED: 12-11-17

EXHIBIT "A"

**DESCRIPTION OF ALLOCATED OWNERSHIP/FINANCIAL RESPONSIBILITY
FOR RELOCATED FACILITIES**

**WEST ORANGE COUNTY WATER BOARD
I-405 FREEWAY PIPELINE RELOCATION PROJECT
ALLOCATION OF ESTIMATED COSTS BY AGENCY**

AGENCY	PERCENT OWNERSHIP	ESTIMATED COSTS
Huntington Beach	56.1	\$3,510,873
Garden Grove	4.2	\$262,846
Seal Beach	14.3	\$894,928
Westminster	25.4	\$1,589,593
Totals	100	\$6,258,240

Note: The estimated costs listed above are subject to changes upon the receipt of the final contract bid and as set forth in Section 3.3 herein.

EXHIBIT "B"

DESCRIPTION OF RELOCATION FACILITIES

The Orange County Transportation Authority's I-405 Freeway Widening Project requires the WOCWB to relocate approximately 2,400 feet of its 33-inch OC-35 transmission pipeline where it traverses beneath the freeway immediately to the south of the Westminster Boulevard bridge between the intersections of Willow Lane and Westminster Blvd. and the intersection of Springdale Street and Westminster Blvd.

The new pipeline will extend south from Westminster Boulevard along Willow Lane to the cul-de-sac at the end of Willow Lane on the northeast side of the I-405 Freeway. The pipeline will then cross beneath the freeway in a steel casing pipe to the intersection of Willow Lane and Mahogany Avenue on the southwest side of the freeway. From that point the pipe will then extend to the intersection of Mahogany Avenue and Springdale Street where it will connect to the OC-35 pipeline.

EXHIBIT "C"

SCHEDULE OF ALLOCATED FINANCIAL PARTICIPATION PAYMENTS

Payment Number	Payment Due Date
1	March 1, 2018
2	June 1, 2018
3	September 1, 2018
4	December 1, 2018
5	March 1, 2019
6	June 1, 2019
7	September 1, 2019
8	December 1, 2019
9	March 1, 2020
10	June 1, 2020
11	September 1, 2020
12	December 1, 2020
13	March 1, 2021
14	June 1, 2021
15	September 1, 2021
16	December 1, 2021
17	March 1, 2022
18	June 1, 2022
19	September 1, 2022
20	December 1, 2022
21	March 1, 2023
22	June 1, 2023
23	September 1, 2023
24	December 1, 2023
25	March 1, 2024
26	June 1, 2024
27	September 1, 2024
28	December 1, 2024
29	March 1, 2025
30	June 1, 2025
31	September 1, 2025
32	December 1, 2025
33	March 1, 2026
34	June 1, 2026
35	September 1, 2026
36	December 1, 2026
37	March 1, 2027
38	June 1, 2027
39	September 1, 2027
40	December 1, 2027

Notes:

- 1.) The proposed quarterly Payment schedule assumes a loan date of December 15, 2017. This quarterly payment schedule shall be adjusted based on the actual date of loan, however payment shall be provided no later than the first day of the month for each quarter for the preceding payment period.
- 2.) For each quarterly payment, quarterly loan Interest, quarterly loan principal, and any late fees for previous billing shall be included for the anticipated 40 payment (10 year) loan.
- 3.) The proposed quarterly Payment schedule will be updated with the quarterly Payment amounts when the contract bid has been finalized and accepted by the WOCWB and OCTA.
- 4.) The proposed quarterly Payment schedule and Payment amounts are subject to changes as set forth in Section 3.3 herein.