

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is executed this ____ day of October, 2019 (“**Effective Date**”), by and between the **CITY OF CARSON**, a California municipal corporation (“**City**”), and **METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“MWD”)**. City and MWD may be referred to, individually or collectively, as “**Party**” or “**Parties**.”

RECITALS

WHEREAS, as part of its Prestressed Concrete Cylinder Pipe Program, MWD is rehabilitating its Second Lower Feeder facilities (“**Project**”) pursuant to a construction contract, and a portion of the Project work is currently underway in the City of Carson; and

WHEREAS, construction projects in the City of Carson are subject to construction inspections to ensure compliance with plans and specifications, as well as local and State laws, regulations, and standards; and

WHEREAS, to meet Project deadlines, MWD’s Project is on a compressed schedule, including extended contractor work hours from Monday through Friday, 7:00 a.m. to 7:00 p.m., as well as occasionally on the weekends; and

WHEREAS, to provide construction inspection on the Project during the Project’s compressed schedule and extended work hours, the City needs to augment construction inspector staff, either by obtaining third party construction inspector services or by adding construction inspectors to City staff; and

WHEREAS, MWD has provided the City Thirty-Two Thousand Four Hundred and Five Dollars (\$32,405) to defray the costs associated with construction inspector services; and

WHEREAS, MWD is willing to reimburse the City for the additional cost of obtaining construction inspector services for inspection of the Project between 7:00 a.m. and 7:00 p.m., Monday through Friday (and on weekends if the City deems necessary) during the Project construction; and

WHEREAS, the City and MWD desire to enter into this Agreement to ensure MWD will be responsible for all City costs related to providing construction inspectors for the Project, and for MWD to deposit funds with City in advance to cover such costs, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference.

2. **MWD Responsibility for City Costs.** MWD shall be responsible for, and shall reimburse City for, all costs, fees and expenses of City related to obtaining and providing construction inspection services for the Project (the “**City Costs**”). City Costs are detailed and estimated in Exhibit A. References to construction inspectors or construction inspection services herein include construction inspectors who are City employees and construction inspectors provided by a third party. MWD’s obligation to deposit and reimburse City Costs are in addition to MWD’s duty to indemnify, defend, and hold harmless City, as set forth in Section 8, below.

Within ten (10) business days of the Effective Date, MWD shall deposit with the City the sum of Two Hundred and Seventeen Thousand Five Hundred and Ninety-Five Dollars (\$217,595), for a combined deposit of Two Hundred and Fifty Thousand Dollars (\$250,000), against which City Costs will be drawn to reimburse the City for City Costs (“**Project Deposit**”). At no point shall the minimum balance of the Project Deposit (balance of the deposits resulting from sum of initial Project Deposit of \$250,000 and any Additional Deposit (described below), minus the reimbursement costs) fall below Twenty-Five Thousand Dollars (\$25,000). If the Project Deposit balance falls below \$25,000, such balance shall be considered a “**Deficiency**.” Notwithstanding anything to the contrary herein, the Project Deposit shall solely be used by the City to cover City Costs.

2.1 Reimbursement of City Costs Previously Incurred. MWD acknowledges and agrees that the Project Deposit shall be used to reimburse the City for City Costs incurred prior to the Effective Date.

2.2 Additional Deposits by MWD. If a Deficiency occurs, MWD shall make an additional monetary deposit to the City within ten (10) days of City’s written request to the MWD. City’s written requests for additional deposits shall state what costs have been incurred to date, and what additional costs are anticipated and required to be deposited to MWD. If any deposited sums ultimately exceed the costs incurred by City, City shall refund the difference as set forth in Section 2.6. City shall promptly inform MWD when the Project Deposit falls below Fifty Thousand Dollars (\$50,000) and shall not incur City Costs, absent an amendment to the Agreement, in an amount exceeding the greater of \$250,000 or the amount specified in the most recent amendment to the Agreement.

2.3 City’s Right to Cease Work. In the event that MWD does not promptly pay or reimburse the City Costs, including by failing to replenish the Project Deposit as required by Section 2, or as required by Section 8.2, the City may immediately cease construction inspection services for the Project, and may take such further action as City deems appropriate to recover City Costs that have been incurred.

2.4 Account Maintenance; Interest on Deposits. Any amounts deposited by MWD under this Agreement, may be co-mingled with other City funds or maintained in a segregated interest-bearing account of City’s choice. In the event any deposits by MWD are maintained in an interest-bearing account, interest accruing upon any such deposits shall inure to and be created for the benefit of City.

2.5 Accounting. City shall keep an accounting of the City Costs incurred by City and all deposits made by MWD. The City shall provide to MWD a detailed accounting of expenditures made from the Project Deposit for City Costs on a monthly basis. Failure of City to provide any such accounting shall not excuse MWD’s duty to perform any act, including the

duty to make full and timely deposits required under this Section 2. MWD may question or challenge any use of funds set forth in the accounting and may appeal same to the City Council for a determination.

2.6 Unexpended Funds. Upon completion of the Project, all unexpended portions of the Project Deposit shall be refunded to MWD, without interest. If a legal or administrative challenge is made to the Project and such challenge exposes the City to liability on the basis of or relating to the City providing construction inspection services pursuant to this Agreement, then upon the resolution of such challenge the City shall return any then-unexpended portion of the Project Deposit to MWD, without interest, less an amount equal to any unpaid expenses previously incurred by the City.

3. Additional Taxes, Fee, and Charges. Notwithstanding any provision to the contrary, MWD shall pay all normal and customary fees and charges applicable to all permits necessary for the Project.

4. City Release; Termination. This Agreement shall terminate upon completion of construction inspection services on the Project, as determined by the City, unless: a) MWD has outstanding reimbursement obligations to the City at such time; or b) City reasonably determines that the City will incur additional City Costs, in which event this Agreement will be automatically extended until MWD has reimbursed all City Costs required under this Agreement.

5. Remedies. In the event of a breach by MWD, City may, in addition to any other remedies, seek to recover all City Costs incurred by City plus reasonable attorneys' fees in enforcing this Agreement. This provision will not be interpreted to curtail any of City's remedies at law or equity against MWD for any violation of any City codes or regulations, nor shall it be interpreted as a waiver of any defense of MWD.

6. Conflicts of Interest.

6.1 No Financial Relationship. MWD acknowledges the requirements of Government Code Sections 1090 *et seq.* (the "**1090 Laws**") and represents and warrants that it has not entered into any financial or transactional relationships or arrangements that would violate the 1090 Laws, nor shall MWD solicit, participate in, or facilitate a violation of the 1090 Laws.

6.2 MWD's Representations and Warranties. MWD represents and warrants that it is duly authorized to do business in the State of California. MWD further represents and warrants that MWD has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code sections 87100 *et seq.*).

7. MWD Acknowledgements. Subject to the reimbursement obligations set forth in this Agreement, MWD acknowledges and agrees that, with respect to the work concerning the Project:

7.1 City has sole discretion to select which of its employees and contractors are assigned to the work.

7.2 City has sole discretion to direct the work and evaluate the performance of the employees and contractors assigned to the work, and City retains the right to terminate or replace at any time any such person.

7.3 City has sole discretion to determine the amount of compensation paid to employees or contractors assigned to the work.

7.4 City, not MWD, shall pay employees and contractors assigned to the work from a City account.

7.5 MWD shall not attempt to direct, influence, or otherwise control the construction inspectors. Any questions or concerns MWD may have regarding inspection services shall be directed to the City.

8. Indemnification and Hold Harmless.

8.1 **Agreement Not Liability or Debt of City.** The Parties acknowledge that there may be challenges to the legality, validity and adequacy of this Agreement, or the Project itself. If such challenges are successful, such challenges could delay or prevent the performance of this Agreement, or completion of the Project. City shall have no liability whatsoever for the inability of MWD to complete the Project, as the result of any judicial determination that some or all of the Project is invalid, inadequate, or otherwise not in compliance with the law. No official, officer, employee or agent of the City shall be personally liable hereunder to any extent. The Parties further acknowledge and agree that this Agreement is not a debt of the City. The City shall not have any liability hereunder other than to return the unexpended and uncommitted portions of the Project Deposit as provided in Section 2.6 above, and to provide an accounting under Section 2.5 above. The City shall not be obligated to advance any of its own funds with respect to any City Costs.

8.2 Indemnification.

a. The Parties wish to provide for contribution or indemnification upon any liability arising out of the Agreement.

b. MWD shall indemnify, defend and hold harmless City and its elected and appointed officers, employees, and agents from and against all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with MWD's acts and/or omissions arising from and/or relating to this Agreement. Such indemnification shall not cover any claim due to the sole negligence or willful misconduct of City.

c. City shall indemnify, defend and hold harmless MWD and its elected and appointed officers, employees, and agents from and against all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with City acts and/or omissions arising from and/or

relating to this Agreement. Such indemnification shall not cover any claim due to the sole negligence or willful misconduct of MWD.

8.3 Period of Indemnification. MWD's indemnification obligations under Section 8.2 shall begin upon the Effective Date and shall survive termination or expiration of this Agreement.

9. No Obligation to Approve Project; City's Reservation of Discretion. The provisions of this Agreement shall in no way obligate the City to approve the Project or prejudice the City against such approval. The City shall use its independent judgment in determining whether to approve the Project. The City shall have no liability to MWD in any manner whatsoever therefor, other than providing the accounting of expenses as provided herein.

City reserves the right to exercise its discretion as to all governmental matters which City is, by law, entitled or required to exercise, in its sole and absolute discretion and nothing in this Agreement shall be construed as having the effect of waiving or limiting police powers and exercise of discretion by City. City reserves full and final sole discretion and approval with respect to the Project. Further, all expenses incurred by MWD with respect to the Project during the term of this Agreement are incurred at MWD's sole risk and expense. Prior to formal approvals from the City, MWD's reliance on any representations or promises by City staff, attorneys, consultants, and individual City Council members, shall be undertaken at MWD's sole risk and expense. As to any matter which City is legally entitled to exercise its unfettered discretion with respect to the Project, nothing herein shall obligate City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law is not a waiver of the City's police powers and shall not be deemed to constitute a breach or default by City under this Agreement.

10. Assignment. MWD may not assign this Agreement to any other entity unless agreed to in writing by City. Any such request shall include proof of the financial viability of the successor entity to fulfill the Agreement's obligations.

11. Relationship Between the Parties. The Parties agree that this Agreement does not operate to create the relationship of partnership, joint venture, or agency between City and MWD. Nothing herein shall be deemed to make either Party the agent of the other.

12. Notices. All notices, demands, invoices, and communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City:	City of Carson 701 East Carson Street Carson, CA 90745 Attn: Gilbert Marquez, City Engineer
Copy to:	Aleshire & Wynder, LLP 18881 Von Karman Ave. Suite 1700 Irvine, CA 92612 Fax: 949-223-1180

Email: ssoltani@awattorneys.com
Attn: Sunny Soltani, City Attorney

To MWD: Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attn: Arleen Arita

Email: aarita@mwadh2o.com

Copy to: Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attn: John Poli
Email: jpoli@mwadh2o.com

Each such notice shall be deemed delivered to the Party to whom it is addressed and shall be deemed given and delivered in the following manner: (i) if personally served or delivered, upon delivery; (ii) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, seventy-two (72) hours after such notice is deposited with the United States mail; (iii) if given by overnight courier, with courier charges prepaid, twenty-four (24) hours after delivery to said overnight courier; or (iv) if given by any other means, upon delivery at the address specified in this Section.

13. **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

14. **Construction; References; Captions.** The Parties agree that they or their agents have participated in the preparation of this Agreement, and therefore, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Unless otherwise specified, any term referencing time, days, or period for performance shall be deemed calendar days and not business days, provided, however that any deadline that falls on a weekend or holiday or other day in which the City is not open for business shall be extended to the next City business day. All references to MWD include all personnel, employees, agents, and contractors of MWD, except as otherwise specified in this Agreement. All references to City include its elected officials, appointed boards and commissions, officers, employees, agents, and volunteers. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15. **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

16. **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

17. **Binding Effect.** Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

18. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

19. **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect, and shall be construed so as to effectuate the intent of the Parties.

20. **Consent to Jurisdiction and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Los Angeles, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, MWD expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure section 394.

21. **Time is of the Essence.** Time is of the essence with respect to this Agreement.

22. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

23. **Entire Agreement.** This Agreement contains the entire agreement between City and MWD and supersedes any prior oral or written statements or agreements between City and MWD with respect to the subject matter of this Agreement.

24. **Authority.** The persons executing this Agreement on behalf of MWD hereto warrant that: (i) MWD is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of MWD; (iii) by so executing this Agreement, MWD is formally bound to the provisions of this Agreement; and (iv) the entering into of this Agreement does not violate any provision of any other agreement to which MWD is bound. Pursuant to MWD's Administrative Code, the MWD's General Manager (or his/her delegate) is authorized to sign agreements of \$250,000 or less.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY OF CARSON, a California municipal corporation

By: _____

Albert Robles, Mayor

ATTEST:

By: _____

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

By: _____

Sunny K. Soltani, City Attorney

[TC]

METROPOLITAN WATER DISTRICT

By: _____

Deven N. Upadhyay Assistant General Manager
&
Chief Operating Officer

APPROVED AS TO FORM:

By: _____

for Marcia L. Scully, General Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
	_____	NUMBER OF PAGES
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	DATE OF DOCUMENT
	<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/>	ATTORNEY-IN-FACT	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

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	_____	NUMBER OF PAGES
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	DATE OF DOCUMENT
	<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/>	ATTORNEY-IN-FACT	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

