

REIMBURSEMENT AGREEMENT
For Adjustment of Existing Water Valve and Sewer Manhole Covers to
Grade as Part of the 2015-16 Asphalt Overlay Various
South County Roads, Oceano, California

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and effective this _____ day of _____, 2015 by and between the OCEANO COMMUNITY SERVICES DISTRICT, a community services district, hereinafter referred to as "District," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, the County is preparing to construct an asphalt overlay on various roads in Oceano, California as part of the County's 2015-16 Asphalt Overlay Various South County Roads Project (hereinafter the "Project"); and

WHEREAS, the District desires to have the following work incorporated into the Project at the District's sole expense: the raising of District water valve and sewer manhole covers (hereinafter "District Facilities") located within the physical boundaries of the Project to the new street grade created by the Project (herein referred to as the Adjustment to Grade Work); and

WHEREAS, the District desires to have the Adjustment to Grade Work incorporated into the County's Project, according to the terms of this Agreement, so that the Adjustment to Grade Work can be included as a Bid item in the Project bid package; and

WHEREAS, the District agrees to reimburse the County for all reasonable costs incurred by the County relating to the Adjustment to Grade Work, including, but not limited to, those costs related to the design and contract preparation phase, bidding phase, and/or construction phase; and

WHEREAS, the parties agree to coordinate the Adjustment to Grade Work with the Project pursuant to the terms of the Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

Recitals

The above recitals are incorporated herein by reference as though fully set forth herein.

A. Design and Award of Adjustment to Grade Work

1. District agrees that it will satisfy all requirements of the California Environmental Quality Act and Public Contract Codes with respect to the Adjustment to Grade Work.

District is responsible for the accuracy and completeness of all documents and information submitted to the County relating to the design, bidding, and/or construction of the Adjustment to Grade Work. The County assumes no responsibility for the accuracy or completeness of any documents or information submitted by the District relating to the design, bidding, and construction of the Adjustment to Grade Work.

2. District shall submit to the County a list of the water valve covers and sewer manhole covers included in the Adjustment to Grade Work for the portion of each street located within the physical boundaries of the Project. The County will provide the District with the electronic files of the latest design for the Project.

3. The District shall pay to County a deposit of \$ 35,900 for the Adjustment to Grade Work no later than January 15, 2016. If said deposit for the Adjustment to Grade Work is not timely paid to the County, the Adjustment to Grade Work will not be part of the Project.

If said deposit for the Adjustment to Grade Work is timely received by the County, the County shall, at the District's expense, accept the bid amount for the Adjustment to Grade Work submitted by the responsible contractor selected by the County as long as the Adjustment to Grade Work bid price is no more than ten percent (10%) over the above amount deposited by the District.

4. In the event said bid price for the Adjustment to Grade Work bid items are more than 10% over the deposited amount, the District shall have 20 calendar days to notify the County of the District's desire to still proceed with the Adjustment to Grade Work. If the County does not receive such written notification within 20 calendar days of bid opening, the District will have been deemed to reject the bid items exceeding 10% of the deposited amount, and all District deposits shall be promptly returned less any administrative costs in processing the Adjustment to Grade Work. If the District so refuses said bid for the Adjustment to Grade Work, the County will not select the bid items, the Adjustment to Grade Work will not be included as part of the Project, and the District will have to raise the water valve and sewer manholes covers after the Project is completed.

B. Construction of Adjustment to Grade Work

1. The parties acknowledge that the County shall not be responsible for inspecting the Adjustment to Grade Work, including but not limited to, any testing of District Facilities pursuant to the Adjustment to Grade Work. As between the District and the County, the District shall be solely responsible for any and all such inspections

of the Adjustment to Grade Work. On the other hand, the parties acknowledge that the District shall not be responsible for inspecting the road work portion of the Project. As between the District and the County, the County shall be solely responsible for any and all such inspections of the road construction work.

2. County will forward any Request for Information ("RFI") it receives from the construction contractor pertaining to the Adjustment to Grade Work to the District, and the District shall be obliged to provide a timely response to the County regarding the RFI. Any change orders for the Adjustment to Grade Work will be subject to the District engineer's approval, which shall not be unreasonably withheld.

District shall provide, in a timely manner, all inspections necessary to verify that the Adjustment to Grade Work is constructed in conformance with the Construction Contract. The District shall coordinate any such inspections with the construction contractor, and shall have access to the job site to inspect the construction and testing of the Adjustment to Grade Work. The District acknowledges that the construction contractor is responsible for the safety of the job site, and the District shall hold the County harmless of any claim arising from any injury to District property or personnel which may occur on the job site. Similarly, if an independent consultant or contractor of the District suffers any injury to person or property while on the job site, the District shall defend and indemnify the County from any and all such claims related thereto unless a direct act of negligence of a County employee, at the job site, caused the injury.

3. The District shall immediately report to the County any substandard work or materials discovered by the District related to the Adjustment to Grade Work that is not in compliance with the construction contract. If the County receives such a timely report from the District, the County shall direct the construction contractor to repair or replace any such materials or work which the County agrees is substandard or defective. The parties acknowledge that no inspection performed by the District under this Agreement shall relieve the construction contractor of its obligation to perform the Adjustment to Grade Work in accordance with the Construction Contract. The District acknowledges that any claim by the construction contractor resulting from an act or omission by the District, including, but not limited to, a District caused delay, will be passed through to the District for payment. Notwithstanding the foregoing, the County will promptly tender any such claim to the District so that the District has a timely opportunity to cure and/or defend the claim prior to payment of any kind becoming due.

4. The County shall pay the construction contractor pursuant to Section 9 of the Caltrans Standard Specifications (dated May 2006), as modified by the County's construction contract. The County shall consult with the District's designated representative regarding Adjustment to Grade Work eligible for payment to the construction contractor. The County shall provide the District with a copy of all partial payment estimates, prepared by the County, regarding the Adjustment to Grade Work. The District will notify the County of any improper payment items in the partial payment estimate regarding the Adjustment to Grade Work within 5 days of receipt of the partial pay estimate.

5. Upon completion of the Adjustment to Grade Work (as defined by the earliest "Completion" date under Public Contract Code Section 7107(c)), the District shall automatically assume full, complete, and sole ownership and control over the District Facilities installed as part of the Adjustment to Grade Work, and shall be solely responsible for the maintenance of said facilities.

6. The County's Construction Contract shall require that the District, its directors, officers, and employees be named as additional insured's for the Adjustment to Grade Work under the general liability and automobile insurance policies of the construction contractor.

7. The Construction Contract shall require the construction contractor to defend, indemnify, and save harmless the District, its directors, officers, and employees in the same manner as the County under the Construction Contract.

8. District shall own, operate, and maintain all potable water facilities within the Project. District will apply for an encroachment permit from County to construct, operate, and be responsible for District facilities within the County right of way. District will be responsible for all general provisions of the encroachment permit, and the County agrees to issue the District said encroachment permit.

9. Notwithstanding the provisions of paragraph B(7) above, the parties agree that, if the Adjustment to Grade Work is not included in the County's Project as bid items, and thereafter the District constructs the Adjustment to Grade Work the parties agree that the District is allowed to cut into the new County asphalt overlay for the sole purpose of adjusting the water valves and sewer manhole covers.

C. District Reimbursement of County Costs

1. District shall reimburse the County for 100% of all costs incurred by the County, relating to the design, bidding and construction of the Adjustment to Grade Work. General Project administration costs, including, but not limited to costs relating to reviewing and assembling the bid package, advertising and evaluating bids, award of contract, environmental compliance and mitigation, processing payments to the construction contractor, construction support, and contract administration shall be shared between the District and the County on a pro rata basis based upon the actual bid amount for the Adjustment to Grade Work and the other work on the Project. (For example, if the bid amount of the Adjustment to Grade Work is 20% of the entire Project bid, the District shall pay 20% of the general Project administrative costs.) Notwithstanding the foregoing, due to the District's participation in design and construction inspection, the District's share of the aforementioned costs shall not exceed 15% of the actual bid amount for the Adjustment to Grade Work.

2. In the event any reimbursable costs of the County exceed the District's deposit, the County shall provide to the District an invoice for said costs relating to the Adjustment to Grade Work. The District shall remit payment to the County for each such invoice so that payment is received by the County within 20 days of the

District's receipt of the invoice. The District shall owe the County interest on late payments in accordance with Public Contract Code Section 20104.50 (just as if the District was the "local agency" and the County was the "Contractor" under that statute); and also, in the event the County properly pays the construction contractor for Adjustment to Grade Work before the District pays the County for said Adjustment to Grade Work.

D. General Provisions

1. Time is of the essence. If the District fails to act in a timely manner, and said failure causes the County to incur additional cost under the Construction Contract, the District shall reimburse the County for any and all such costs.
2. The County reserves the right to not proceed with the Project, or any portion thereof, for any reason. In the event the County exercises such right in writing, no Adjustment to Grade Work shall be required by the County or independent contractor hired by the County, and the District shall be obliged to reimburse the County for all costs incurred by the County relating to the Adjustment to Grade Work up to the date of termination.
3. The District shall defend, indemnify and save harmless the County, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses, judgments or liability arising from any act or omission of the District that is negligent or otherwise in breach of this Agreement. The County shall defend, indemnify and save harmless the District, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses, judgments or liability arising from any act or omission of the County, its Contractors, agents or employees that is negligent or otherwise in breach of this Agreement.
4. This Agreement shall not be changed or modified except upon written consent of the parties hereto.
5. Non-enforcement of any term, covenant or provision of the Agreement by either party shall not be considered a waiver by that party of rights under that Agreement or a waiver of any breach of the Agreement. To the extent any conduct of a party is construed as a waiver, the party's waiver of the breach of any one term, covenant or provision of this Agreement shall not be a waiver or a subsequent breach of the same term, covenant or provision of this Agreement or of the breach of any other term, covenant or provision of this Agreement.
6. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo; and such County shall be that venue for any action or proceeding that may be brought or arise out of, in connection with, or by reason of, this Agreement. If any action or other proceeding is filed to enforce or interpret this Agreement or any provision herein, the prevailing party shall be entitled to recover from

the non-prevailing party, in addition to all other relief, its reasonable attorneys' and expert witnesses' fees, expenses and costs incurred in preparation for such action or proceeding, in pursuing such action or proceeding, on appeal from any such action or proceeding, and in collecting any monetary award resulting from such action or proceeding.

7. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

8. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows:

Department of Public Works
Room 206 County Government Center
San Luis Obispo, CA 93408
Attn: Dave Flynn, Deputy Director

Notices required to be given to District shall be addressed as follows:

Oceano Community Service District
1655 Front Street
Oceano, CA 93445
Attn: Paavo Ogren, General Manager

9. This Agreement is intended by the parties as a final expression of their understanding with respect to the matters contained herein and is a complete and exclusive statement of the terms and conditions thereof.

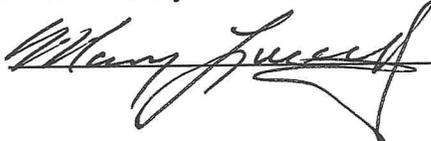
10. The time for the parties to commence and/or complete their obligations required by this Agreement shall be extended for such period reasonably necessary to take into account any delays caused by riots, insurrections, martial law, civil commotion, war, flood, earthquakes or other acts of God.

11. Each party to this Agreement agrees to do all things that may be necessary, including without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

12. The parties acknowledge that each party and its attorneys have reviewed, negotiated and revised this Agreement; and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

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

Oceano Community Services District

BY: 

DATE: 1.13.2016.

COUNTY OF SAN LUIS OBISPO

BY: _____
Chairperson of the Board of Supervisors
County of San Luis Obispo
State of California

DATE: _____

ATTEST:

BY: _____
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo
State of California

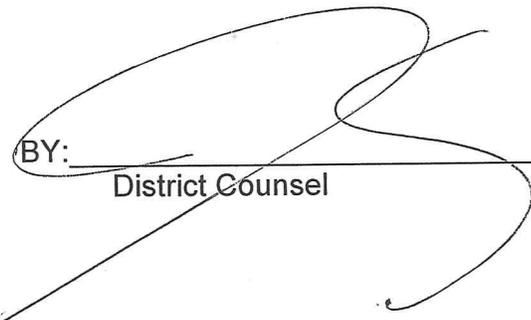
DATE: _____

APPROVED AS TO FORM AND LEGAL EFFECT

RITA NEAL
COUNTY COUNSEL

BY: _____
Deputy County Counsel

DATED _____


BY: _____
District Counsel

DATE 1.13.16