

## EXHIBIT B

### SANTA ANA REGIONAL INTERCEPTOR (SARI) LINE LOAN AND REPAYMENT AGREEMENT NO. ~~D10-022~~D12-031.

This Santa Ana Regional Interceptor (SARI) Line Loan and Repayment Agreement (“AGREEMENT”), which supersedes in its entirety the previous Santa Ana Regional Interceptor (SARI) Line Loan and Repayment Agreement entered into on June 29, 2010, between the Parties and labeled for identification purposes as Agreement No. ~~D07-042~~, D10-022 is made and entered into this \_\_\_ of \_\_\_\_\_, ~~2010~~2012, by and between the Orange County Sanitation District (“OCSD”) and the Orange County Flood Control District (“OCFCD”). In this AGREEMENT, OCSD and OCFCD are sometimes individually referred to as “Party” and collectively referred to as the “Parties.”

#### RECITALS

WHEREAS, OCSD is a County Sanitation District pursuant to California Health & Safety Code § 4700 et seq.;

WHEREAS, the OCFCD is governed by the Orange County Board of Supervisors and is established under authorization of the Orange County Flood Control Act, Chapter 723 of the State of California Statutes of 1927 to provide: control of flood and storm waters within the boundary of the County of Orange and of streams flowing into the County, such as the Santa Ana River or San Juan Creek; to mitigate the effects of tides and waves; and to protect the harbors, waterways, public highways, and property in the ~~district~~ County of Orange from such waters;

WHEREAS, OCSD owns and operates the Santa Ana Regional Interceptor (“SARI”) Line, a regional sewer pipeline along the Santa Ana River from the Orange County line to the OCSD sewage treatment plant in Huntington Beach, and the SARI Line was constructed as a joint project of OCSD and the Santa Ana Watershed Project Authority (SAWPA);

WHEREAS, OCSD requests that OCFCD advance the protection and/or relocation of the SARI (the “SARI Project”) Line, which includes the Yorba Linda Spur and SARI Main Line Projects (collectively, the “SARI Line Project”) in response to existing conditions and the raising of the Prado Dam by the U.S. Army Corps of Engineers (the “Corps”) and OCFCD;

~~WHEREAS, it is estimated that the total amount of construction, design, environmental and project administration costs will not exceed one hundred and twenty million dollars (\$120,000,000);~~

WHEREAS, protection and/or relocation of the SARI Line is an element of the Santa Ana River Mainstem Project with related expenses being eligible for up to seventy percent (70%) reimbursement from the State Flood Control Subvention Program;

WHEREAS, as of the date of this AGREEMENT, based on actual expenditures to date and the bid submitted for the construction of the SARI LINE, the estimate for the total amount of construction, design, environmental and project administration costs (“Project Costs”) is Eighty Five Million Five Hundred Sixty Thousand Dollars (\$85,560,000). To allow for unanticipated

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increases, a fifteen percent (15%) contingency fund ("Contingency") in the amount of Twelve Million Eight Hundred Thirty-Four Thousand Dollars (\$12,834,000) is needed. The Project Costs plus Contingency ("Total Costs") equals Ninety Eight Million Three Hundred Ninety-Four Thousand Dollars (\$98,394,000).

WHEREAS, the Parties propose allocating the cost of the SARI Line Project with OCSD responsible for loaning sixty percent (60%) of the SARI Line Project cost to OCFCD, SAWPA responsible for loaning ten percent (10%), and OCFCD responsible for paying thirty percent (30%) of the project cost;

WHEREAS, OCSD desires to loan funds to OCFCD under terms and conditions set forth herein to finance a portion of the costs of the SARI Line Project so that OCFCD can construct the SARI Line Project ~~ahead of~~ consistent with the schedule ~~as part~~ of the Santa Ana River Mainstem Project, ~~which will be of~~ representing a great benefit to OCSD because OCSD will have the benefit of the continued, uninterrupted use of the SARI Line;

WHEREAS, OCFCD intends to reimburse OCSD for the loan funds from funds it receives from the State Flood Control Subventions Program for the SARI Line Project;

WHEREAS, the Parties agree that as a condition of OCSD loaning funds to OCFCD, OCFCD shall publicly bid, award, and administer the SARI Line Project construction contracts; and,

WHEREAS, the Parties agree that as a condition of OCFCD causing the construction of the SARI Line Project in a manner consistent with construction plans approved by OCSD, OCSD shall continue its ownership and maintenance responsibility of the SARI Line Project after its completed construction and the acceptance by OCSD, and,

WHEREAS, the Parties agree that some features of the SARI Line Project including a protection wall near Coal Canyon may need to be implemented by the U.S. Army Corps of Engineers ("Corps Relocations") in advance of SARI construction to take advantage of more favorable conditions, more efficient construction, and cost-savings;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties hereby agree as follows:

1. Incorporation of Recitals. The intentions of the PARTIES as described in the above recitals are fully incorporated into this AGREEMENT.

2. Purpose. The purpose of this AGREEMENT is to memorialize the loan of funds to OCFCD by OCSD in furtherance of the SARI Line Project as more fully set forth in Section 3, and to provide for repayment thereof by the OCFCD as more fully set forth in Section 4.

~~3. OCSD Funds Loaned to the OCFCD. OCSD agrees to loan to the OCFCD sixty percent (60%) of the winning bid amount, plus Corps Relocations, design, environmental, and project administration (total project costs), for purposes of SARI Project design and construction,~~

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~~up to the total combined amount of seventy two million dollars (\$72,000,000) as follows: No later than 30 days prior to the scheduled OCFCD Board hearing on contract award, thirty six million dollars (\$36,000,000) and one year after initial deposit, the balance. If the SARI Project is publicly bid and the total project cost exceeds one hundred twenty million dollars (\$120,000,000), OCFCD and OCSD shall meet and confer to determine if an increase in the SARI Project loan amount is warranted and feasible prior to award of the construction contract, recognizing that, if such an increase is not warranted or feasible, the construction contract may not be awarded.~~

3. OCSD Funds Loaned to the OCFCD. OCSD agrees to loan to the OCFCD an amount not to exceed sixty percent (60%) of the Total Costs which equals fifty-nine million thirty six thousand four hundred dollars (\$59,036,400). The OCSD loan for the Project Costs will be paid in three (3) installments as follows: the first installment Net \$30,852,290 was paid by April 28, 2011, the second installment of \$10,000,000 is due on January 31, 2013 or within 30 days of written notification from OCFCD to OCSD that all of the first OCSD installment toward Project Costs has been disbursed for the SARI Line Project, whichever date is earlier, and the third installment of \$10,483,710 is due on March 1, 2013 or within 30 days of written notification from OCFCD to OCSD that all of the second OCSD installment toward Project Costs has been disbursed for the SARI Line Project, whichever date is earlier. The portion of the loan covering the Contingency will be invoiced to OCSD if OCFCD determines that the actual cost to complete the construction of the SARI Line will exceed the Project Costs. OCFCD will submit one or more invoices to OCSD for up to sixty percent (60%) of the Contingency, which will be based on OCFCD's estimated cost to complete construction of the SARI Line in excess of the Project Costs. The total amount of all invoices for the Contingency will be the lesser of (1) \$7,700,400 or (2) 60% of the actual costs to complete the construction of the SARI Lines in excess of the Project Costs. OCFCD will not invoice OCSD for the Contingency until it provides written notification to OCSD that all cash previously paid by OCSD on the invoices for the Project Costs has been disbursed for purposes of the SARI Line Project. OCSD shall remit payment on the invoice(s) for the Contingency within thirty (30) days of receipt of such invoice(s).

Should the actual cost exceed the estimated Total Cost of \$98,394,000, OCFCD and OCSD shall meet and confer to determine the timing of the OCSD's sixty percent (60%) share of the additional installment above \$59,036,400, if applicable.

~~4. OCFCD Repayment of Funds Loaned by OCSD. The OCFCD agrees to pay OCSD all funds loaned by OCSD in a maximum amount of seventy two million dollars (\$72,000,000) as soon as subvention funding is received with the total balance repaid by no later than July 1, 2022, regardless of whether OCFCD received any subvention funds. Interest shall accrue on the unpaid balance from July 1, 2018 at an annual interest rate of three percent (3%), until the unpaid balance has been repaid. Repayment installments will be made within 30 days of OCFCD's receipt of subvention funding in an amount equivalent to sixty percent (60%) of the funds received with the balance repaid by no later than July 1, 2022, regardless of whether OCFCD received any subvention funds.~~

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4. OCFCD Repayment of Funds Loaned by OCSD. OCFCD agrees to pay OCSD all funds loaned by OCSD to OCFCD in the amount of fifty-nine million thirty six thousand four hundred dollars (\$59,036,400), or the amended amount as provided in Paragraph 3, as soon as subvention funding is received for the SARI Line Project with the total balance repaid no later than July 1, 2022, regardless of whether OCFCD received any subvention funds for the SARI Line Project. Interest shall accrue on the unpaid balance starting July 1, 2018 at an annual interest rate of two percent (2%), until the unpaid balance has been repaid. In the event OCFCD receives subvention funding in installments, OCFCD shall repay OCSD in installments within 30 days of OCFCD's receipt of SARI Line Project subvention funding in an amount no less than sixty percent (60%) of the SARI Line subvention funds received.

5. CEQA and NEPA Compliance by the OCFCD, the Corps, and OCSD. OCFCD and OCSD shall comply with the California Environmental Quality Act, Public Resources Code section 21000 *et seq* ("CEQA") and with the National Environmental Policy Act ("NEPA") to the extent required by law. OCFCD shall be the lead agency and OCSD shall be a responsible agency with respect to the SARI Line Project.

6. Alteration of Terms. This AGREEMENT contains the entire agreement between OCFCD and OCSD with respect to the subject matter of this AGREEMENT, and shall constitute the entire agreement between the Parties for these purposes. No addition to, or alteration of, the terms of this AGREEMENT, whether written or verbal, shall be valid unless made in writing and formally approved and executed by the Parties.

7. Notices. Unless otherwise specified, all notices, claims, correspondence, and/or reports authorized or required by this AGREEMENT shall be effective when written and deposited in the United States mail, first class postage prepaid and addressed as follows:

OCSD: ~~James D. Ruth~~, General Manager  
Orange County Sanitation District  
10844 Ellis Avenue  
Fountain Valley, CA 92708-7018

OCFCD: ~~Jess Carbajal~~ Ignacio Ochoa, Interim Director  
OC Public Works  
300 N. Flower Street, 8<sup>th</sup> Floor  
Santa Ana, CA 92703

8. Severability. If a court of competent jurisdiction declares any provision of this AGREEMENT or application thereof to any person or circumstances to be invalid or if any provision of this AGREEMENT contravenes any Federal, State, or County statute, ordinance, or regulation, the remaining provisions of this AGREEMENT or the application thereof shall remain valid, in full force and effect, and to that extent the provisions of this AGREEMENT are severable.

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9. Term of Agreement. This AGREEMENT shall be in full force and effect for a period beginning as of the date established above and continue until all obligations of the OCFCD and OCSD to each other are satisfied in full accordance with the terms of this AGREEMENT.

10. Waiver of Default or Breach. Waiver of any default by either Party shall not be considered a waiver of any subsequent default. Waiver of any breach by either Party of any provision of this AGREEMENT shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach by either party shall not be considered a modification of the terms of this AGREEMENT.

11. Successors and Assigns. The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

12. No Third-Party Beneficiaries. Nothing in this AGREEMENT is intended to create any third-party beneficiaries to the AGREEMENT, and no person or entity other than OCSD and OCFCD, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this AGREEMENT.

13. Assignment. Neither Party may assign its interest in this AGREEMENT without the prior written consent of the other Party, which consent will not be unreasonably withheld.

14. Further Assurances. OCSD and OCFCD agree to execute, acknowledge, and deliver any and all additional papers, documents, and other assurances and shall perform any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

15. Agreement Negotiated. The text of this AGREEMENT is the product of negotiation among the Parties and their counsel and is not to be construed as having been prepared by one Party or the other.

16. Binding Obligation. The Parties to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

17. Governing Law and Venue

a. 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.

b. The Parties specifically agree that by entering into and performing their respective obligations under this AGREEMENT, each Party shall be deemed to constitute doing business within Orange County from the time of entering into this AGREEMENT, through the period when all obligations under this AGREEMENT are completed, and continuing until the expiration of any applicable limitations period.

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18. Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

19. Interpretation

a. This AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT.

b. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

c. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this AGREEMENT by any other Party hereto or by any person representing them, or both.

d. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the Party that has drafted it is not applicable and is waived.

e. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the Parties and this AGREEMENT.

20. Headings. The various headings and numbers herein, the grouping of provisions of this AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

21. Calendar Days. Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

22. Contract Construction. The Parties acknowledge that each Party and its counsel have reviewed 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 amendment or exhibits hereto.

23. Waiver of Jury Trial. Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this AGREEMENT and/or any other claim of injury or damage.

[Signatures on the following page.]

**EXHIBIT B**

**IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT in counterparts on the dates opposite their respective signatures and each such counterpart shall be deemed an original:

Orange County Sanitation District

Date: \_\_\_\_\_

By \_\_\_\_\_  
Troy Edgar  
Chair, Board of Directors

Date: \_\_\_\_\_

By \_\_\_\_\_  
Maria Ayala  
Clerk of the Board

APPROVED AS TO FORM

\_\_\_\_\_  
Bradley R. Hogin  
General Counsel

~~Orange County Flood Control District,  
a body corporate and politic~~

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chair 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 25103, Reso 79-1535 Attest

Date: \_\_\_\_\_

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
County of Orange, California

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Deputy

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**IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT in counterparts on the dates opposite their respective signatures and each such counterpart shall be deemed an original:

~~Orange County Sanitation District~~

Date: \_\_\_\_\_

By \_\_\_\_\_  
~~Chair, Board of Directors~~

Date: \_\_\_\_\_

By \_\_\_\_\_  
Clerk of the Board

~~APPROVED AS TO FORM~~

\_\_\_\_\_  
~~General Counsel~~

Orange County Flood Control District,  
a body corporate and politic

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chair 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 25103, Reso 79-1535 Attest

Date: \_\_\_\_\_

\_\_\_\_\_  
~~Darlene J. Bloom~~ Susan Novak  
Clerk of the Board of Supervisors  
County of Orange, California

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Deputy