

AGREEMENT REGARDING FILL DIRT AND RELEASE

This Agreement Regarding Fill Dirt and Release (the "**Agreement**") is made and entered into effective as of this 22 day of April, 2025, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT (the "**District**") and the CITY OF CHINO ("**City**"). The District and City are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The District is the fee simple owner of the real property at the southeast corner of Pine Avenue and Johnson Avenue located at 7319 Pine Avenue (Assessor's Parcel Number 1057-191-01-0000) and 7363 Pine Avenue (Assessor's Parcel No. 1057-191-02-0000), located in the City of Chino in San Bernardino County, California 91708 as shown on **Exhibit A**, attached hereto and incorporated herein ("**District Property**").

B. The City desires fill dirt from the District Property for purposes of completing adjacent City road projects.

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises set forth in this Agreement, the sufficiency of which is hereby acknowledged, and based on the facts stated in the Recitals above, which are incorporated herein as though fully set forth, the Parties agree to the following:

1. **Conditions Precedent.** The consummation of the transactions contemplated by this Agreement is contingent upon the satisfaction of the following conditions ("**Conditions Precedent**"). Prior to any work being performed on the District Property, the District shall have the right to receive from the City, review, and approve (which approval shall not be unreasonably withheld, conditioned, or delayed) any and all grading plans for the District Property approved by the City or any other governmental agency in connection with the City's adjacent City road projects, and any grading plans for removal of fill materials from the District Property and restorative grading of the District Property after removal ("**Grading Plans**"). The Parties acknowledge and agree that the District has reviewed conceptual grading plans presented by the City to the District on January 23, 2025, County Property Permit No. FE23-0040 pertaining to proposed grading on the District Property. Based on this initial review of the conceptual grading plans, the District concluded that the proposed grading would not unreasonably interfere with the District's use and was acceptable. The District's review of the conceptual grading plans did not, however, constitute an approval of those grading plans and nothing herein shall constitute a pre-commitment on the part of the District to formally approve the conceptual grading plans in the future. The District agrees to cooperate with the City in reviewing and developing grading plans that would be acceptable to the District and the United States Army Corps of Engineers ("**Corps**"). Without limiting the foregoing language, the District agrees that the City shall be entitled to approximately 10,820 cubic yards of fill as set forth in **Exhibit A**.

2. **Cooperation.** The District agrees to reasonably cooperate with the City by executing any documents as may be reasonably required in connection with the City's efforts to

satisfy the Conditions Precedent, including, without limitation, any documents requested by the Corps, or any other governmental agency.

3. **Termination of Agreement.** In the event any of the Conditions Precedent are not either satisfied on or before the date specified for satisfaction of each respective condition, or expressly waived by the Parties in writing, any Party shall have the right to terminate this Agreement by delivery of written notice to the other Parties. In the event of such termination, none of the Parties shall thereafter have any obligations to, or rights against, the other under this Agreement, except provisions herein which expressly survive termination. Notwithstanding anything to the contrary in the foregoing, this Section 3 shall not apply in the event of a breach of this Agreement by any Party.

4. **Agreement to Transfer and Accept Fill Dirt.** Subject to all of the terms, conditions, and provisions of this Agreement and the License issued in accordance with the provisions of section 4.A, below, and for the consideration herein set forth below, effective upon the satisfaction of the Conditions Precedent set forth above, the District agrees to allow the City, as City's sole responsibility and liability and City's sole expense, to excavate and transfer fill dirt from the District Property to adjacent City road projects, pursuant to Grading Plans approved by the District, in a volume not to exceed, in the aggregate, a total of approximately 10,820 cubic yards, and the City agrees to accept the transfer of such fill dirt and to be responsible for its complete removal from the District Property and transportation to the adjacent City road project. The City, as its sole responsibility and liability and at its sole expense, shall restore and re-grade the District Property pursuant to the aspect of the Grading Plans approved by the District that pertain to the District Property. The District's staff shall be permitted to inspect and approve the restoration of the District Property to ensure that restoration adheres to the Grading Plans approved by the District.

A. *License.* Upon final approval of the Grading Plans by the District and fulfillment of the other Conditions Precedent, above, the District will grant to the City and its agents, employees, representatives, and contractors, a non-exclusive temporary irrevocable license ("License"), for ingress and egress to the District Property to allow the City to excavate and remove the fill dirt set forth in Section 4, above. The License shall be in the form of a County Public Property Permit issued by OC Public Works/Public Property Permits ("CPP Process") and at a cost to the City of Ten Dollars (\$10.00) per cubic yard of soil for a maximum of 10,820 cubic yards of soils sought by the City for a total consideration of One Hundred Eight Thousand and Two Hundred Dollars (\$108,200.00), and subject to the conditions set forth in the permit during the CPP Process.

B. *Term.* The term of the License shall commence upon the satisfaction of the Conditions Precedent set forth above in Section 1 and shall terminate upon the earlier of (1) the completion of City's removal of the fill dirt set forth in Section 4, above; or (2) January 1, 2027, unless otherwise extended in a writing signed by the Parties.

C. *Insurance.* City agrees to maintain a program of self insurance or commercial insurance and provide to the District current Certificates of Insurance, including all endorsements if commercially insured required herein, necessary to satisfy the District that the insurance provisions of this Agreement have been complied with. City shall keep such insurance

coverage current, provide Certificates of Insurance and endorsements if commercially insured to the District during the entire term of this Agreement.

City agrees that City shall not operate on District Property at any time the required insurance is not in full force and effect as evidenced by a Certificate of Insurance and necessary endorsements or, in the interim, an official binder being in the possession of District.

If City fails to provide District with a valid Certificate of Insurance and endorsements, or binder at any time during the term of the License, District and City agree that this shall constitute a material breach of the License. Whether or not a notice of default has or has not been sent to City, said material breach shall permit District to take whatever steps necessary to interrupt any operation from or on District Property, and to prevent any persons, including, but not limited to, members of the general public, and Licensee's employees and agents, from entering the District Property until such time as District is provided with adequate evidence of insurance required herein.

All contractors performing work on behalf of City pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for City. City shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from the City under this License. It is the obligation of the City to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within District Property. Such proof of insurance must be maintained by City through the entirety of this Agreement and be available for inspection by a District representative at any reasonable time.

| <u>Coverage</u> | <u>Minimum Limits</u> |
|---|--|
| Commercial General Liability (including broad form property damage and contractual liability) | \$3,000,000 combined single limit per occurrence; |
| Comprehensive Automobile Liability (including coverage for owned, non- owned and hired automobiles) | \$2,000,000 combined single limit |
| Workers Compensation | Statutory |
| Employers Liability Insurance | \$1,000,000 per occurrence |
| Pollution Liability | \$1,000,000 per claims-made or occurrence |

Each commercial policy of insurance must be obtained and held from a company or companies licensed to do business in the State of California, having a general policyholders' rating of not less than an "A-" and a financial rating of not less than (VIII) in the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com.

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements if Commercially Insured

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the certificate of insurance:

- (1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange and Orange County Flood Control District, and their respective elected and appointed officials, officers, employees, agents* as Additional Insureds. Blanket coverage may also be provided which will state- *As Required by Written Agreement*.
- (2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the Licensee's insurance is primary and any insurance or self-insurance maintained by the District and/or the County of Orange shall be excess and non-contributing.
- (3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance;

- (1) An Additional Insured endorsement naming the County of Orange and Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents as Additional Insureds.
- (2) A primary and non-contributing endorsement evidencing that Licensee's insurance is primary and any insurance or self-insurance maintained by District and/or the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange and Orange County Flood Control District, and their respective elected and appointed officials, officers, employees, agents*. Blanket coverage may also be provided which will state- *As Required by Written Agreement*.

All insurance policies required by this contract shall waive all rights of subrogation against the *County of Orange and Orange County Flood Control District, and their respective elected and appointed officials, officers, employees, and agents* when acting within the scope of their appointment or employment.

All insurance policies required by this contract shall give the District 30 days' notice in the event of cancellation and 10 days' notice for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

If City's Pollution Liability policy is a claims-made policy, City shall agree to the following:

- (1) The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Contract services.
- (2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.,
- (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement services, City must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Agreement.

Insurance certificates should be emailed to insurance.ceore@ocgov.com and printed copies shall be forwarded to the District address provided in the Clause 6.H (Notices) below or to an address provided by Director.

The District expressly retains the right to require City to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by the County's Risk Manager as appropriate to adequately protect the District.

The procuring of such required policy or policies of insurance shall not be construed to limit the City's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor in any way to reduce the policy coverage and limits available from the insurer.

D. *Indemnity.* The City hereby agrees to indemnify, defend (with counsel approved in writing by District), and hold harmless the District and County, and their respective members, partners, officers, directors, and representatives from and against any and all losses, damages, claims, liabilities, obligations, causes of action, proceedings, costs, and expenses, including without limitation, reasonable attorneys' fees, arising from the City's entry upon, excavation, grading or use of the District Property, but excluding claims arising from the concurrent active or sole negligence of District and/or County, their officers, agents, employees and contractors. If District and/or County is/are named as co-defendant(s) in such legal action, in

which event, City shall pay to District/County its/their litigation costs, expenses, and attorney fees. If judgement is entered against District/County and City by a court of competent jurisdiction because of concurrent active negligence of District/County and City, District and City agree that liability will be apportioned as determined by the court. The City's indemnification and insurance obligations under this Agreement shall survive the termination of the License and this Agreement.

E. *Liens.* The City shall keep the District Property free and clear of all mechanics' and materialmen's liens on account of work performed, materials provided or services rendered for the City or persons claiming under the City. In the event such lien is filed against the District Property, the City shall promptly pay such lien or post a bond in the amount required by statute to remove such lien.

F. *Conditions of Fill Dirt.* The District makes no representations or warranties as to the condition of the fill dirt that is the subject of this Agreement. The City acknowledges that the District has owned the District Property for a limited time and previous owners used the District Property as a dairy or other similar purpose. The District shall give the City access to the District Property to do reasonable investigations and the City is solely responsible at its cost to perform any investigations to determine if the material is free of any hazardous materials and is otherwise suitable for use as fill material for the City's use. The City takes the fill material "as is," subject to any additional conditions imposed by the Corps and any other regulatory requirements that may be applied by other public agencies.

5. **Release.** In consideration of the District's agreements and obligations set forth herein, the City, on behalf of itself and all of its partners, contractors, successors, agents, directors, and officers (the "City Releasers"), release the District and the County, and their respective members, partners, employees, agents, officers, directors, and representatives (the "District Releasees") from any and all rights and claims and potential rights and claims arising from or related to the District's Property. In connection with the foregoing releases, the City Releasers expressly agree to waive any and all rights which they or any of them may have under Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. **Miscellaneous Provisions.**

A. *Authority to Execute and Bind.* Each of the Parties represents and warrants that each of the persons executing this Agreement has full and complete legal authority to do so and thereby binds the Party to this Agreement. Unless otherwise specified herein, the actions required to be taken by District in the implementation of this Agreement are delegated to the CEO Real Estate Officer or designee, who shall be District's representative in all matters pertaining to this Agreement.

B. *Entire Agreement.* This Agreement reflects the entire agreement between the Parties and shall supersede all prior or contemporaneous oral or written understandings, statements, representations, or promises between the Parties concerning the matters contained herein.

C. *Governing Law.* This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed under the laws of the State of California. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

D. *Successors-in-Interest.* This Agreement shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors, and assigns of the Parties.

E. *Understanding of Agreement.* This Agreement has been negotiated in good faith and each of the Parties represents and warrants that in executing this Agreement they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

F. *Legal Representation.* The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed the Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent, and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters which are the subject of this Agreement.

G. *Fees and Costs.* Except as otherwise provided in this Agreement, each of the Parties shall bear all costs and attorneys' fees individually incurred in connection with negotiating the matters described in this Agreement.

H. *Notices.* In the event that any notice is given under this Agreement, it shall be personally delivered, in which case it shall be effective upon delivery, or may be mailed by certified mail, which notice shall become effective three (3) days after mailing, to the addresses set forth below:

To the City: City of Chino
 13220 Central Avenue
 Chino, CA 91710
 Attn: City Manager

With a copy to: Fred Galante, City Attorney
 Aleshire & Wynder, LLP
 1 Park Plaza
 Irvine, CA 92614
 fgalante@awattorneys.com

To the District: County of Orange
c/o CEO/Corporate Real Estate
Attn: Chief Real Estate Officer
400 W. Civic Center Drive, , 5th Floor
Santa Ana, CA 92701-4539
Thomas.Miller@ocgov.com

With copies to: Orange County Flood Control District
ATTN: Director, OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Kevin.Onuma@ocpw.ocgov.com

Jeffrey Stock, Deputy County Counsel
Office of the Orange County Counsel
400 W. Civic Center Drive, 2nd Floor
Santa Ana, CA 92701-4439
Jeffrey.Stock@coco.ocgov.com

Any Party may change its address for notices by giving notice to the other Parties in the manner herein provided or may request that not more than two (2) additional copies of any notice be sent to addresses specified in a notice to the other Party given pursuant to this Section.

I. *Required Actions.* The Parties agree to execute such instruments and documents and to diligently undertake such actions that may be required in order to consummate the agreements contemplated herein and shall use their best efforts to accomplish the closing in accordance with the provisions hereof.

J. *Severability.* Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any part, term, portion or provision of this Agreement is determined to be illegal, invalid, or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable and in full force and effect.

K. *Captions and Headings.* The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

L. *Exhibits.* All exhibits attached hereto and referred to herein are expressly incorporated herein.

M. *Amendment to Agreement.* This Agreement may only be amended by written agreement executed by all of the Parties.

N. *Waiver.* The waiver of failure to enforce any provisions of this Agreement shall not operate as a waiver of any future breach of any of the provisions or any other provision hereof.

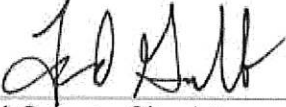
O. *Counterparts.* This Agreement may be executed in one or more counterparts, by either an original signature or signature transmitted by facsimile or electronic transmission or other similar process, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

P. *No Inferences of Intent Based on Prior Drafts.* Neither the initial inclusion in any drafts of this Agreement of any provisions that were subsequently deleted nor their deletion shall give rise to any construction or inference that the Parties intended anything by such deletion other than that the provisions not be part of this specific Agreement. The subject matter of such deleted provisions shall be governed by applicable law and/or by any subsequent agreements of the Parties.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement Regarding Fill Dirt and Release as of the day and year first above written.

APPROVED AS TO FORM:



Fred Galante, City Attorney

Dated: 4-15-25

APPROVED AS TO CONTENT:


Hye Jin Lee, P.E.
Director of Public Works

Dated: 4-15-2025


Linda Reich
City Manager

Dated: 4-15-25

ATTEST:

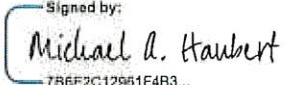

Natalie Gonzaga, City Clerk

Dated: 4/15/2025

APPROVED AS TO FORM:

DATED: 3/26/2025

COUNTY COUNSEL

By:  Signed by:
Michael A. Haubert
7B6E2C12951F4B3...
Michael A. Haubert
Deputy

DATED: April 22, 2025

ORANGE COUNTY FLOOD CONTROL DISTRICT:

By: 
Thomas A. Miller, Chief Real Estate Officer
County of Orange

EXHIBIT A

DEPICTION OF THE DISTRICT PROPERTY

(Attached)

EXHIBIT A - Depiction of District Property

