

FOR THE REHABILITATION OF EXISTING PUMP STATION

This Hold Harmless Agreement for pump station rehabilitation project ("Agreement") is made and entered into this ___ day of _____ 2007, by and between the City of Costa Mesa, a municipal corporation ("City") and Orange County Sanitation District ("Permittee").

RECITALS

A. Permittee, Orange County Sanitation District (OCSD), is the owner of certain sewer utility improvements located in the City of Costa Mesa, County of Orange, State of California, commonly known and described as sanitation pump station at 3190 College Avenue, and more particularly described in Exhibit A and Exhibit B, attached hereto and incorporated herein by this reference (the "Property").

B. Permittee has applied to the City for an encroachment permit ("Encroachment Permit No. 06-01") to rehabilitate an existing pump station located within the public right-of-way by means of Permittee's utilities (collectively, "Pump Station"), which are located within the public right-of-way and which will serve the existing OCSD sewer trunk main system owned and maintained by OCSD.

C. In connection with Permittee's rehabilitation of the pump station, the City is prepared to issue to Permittee the Encroachment Permit to allow Permittee to remove existing OCSD facilities and replace with approved improvements; provided that Permittee and its successors-in-interest agree to the obligations described herein so long as the encroachment continues.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated by this reference and the obligations set forth herein, it is hereby agreed as follows:

1. Maintenance. In consideration of approval by the City of an Encroachment Permit allowing Owner to retain the Improvements on City's Property, OCSD hereby agrees to maintain the Improvements at all times in an acceptable condition and to repair any defects or deficiencies as they occur. Any condition that may present a safety hazard to the public shall be repaired immediately upon OCSD becoming or being made aware of the deficiency.

2. Indemnification. In consideration of the approvals by the City as set forth in Section 1, above, Permittee hereby agrees to defend, indemnify and hold harmless the City and its elected and appointed boards, officers, agents, and employees from and against any and all claims, suits or liabilities and losses of any nature whatsoever, including but not limited to reasonable attorney fees and costs, for damage to property and the improvements thereon or to persons, including death, which arise out of or are related to:

- (a) The construction, connection, use, operation, repair, replacement, maintenance, or reconstruction of the Pump Station;
- (b) The discharge of any type of pollutant from the Property to the City Storm Drain or otherwise, which discharge is not in compliance with the requirements of the applicable Water Quality Management Plan.

The aforesaid indemnity obligation shall apply regardless of the fault or negligence of the indemnifier or those indemnified, excepting only that said indemnity obligation shall not apply if the claim, liability, or loss arises out of the sole, active negligence of the City.

Nothing in the Agreement is intended to transfer to the City or otherwise release Permittee, or its respective successors or assigns from any liability which any of them may now or in the future have under federal, state, or local laws or regulations relating to the discharge or release of any type of pollutant from or onto the Property whether or not such discharge or release is in compliance with the Water Quality Management Plan or any other City requirement.

Likewise, nothing in the agreement is intended to transfer to OCSD or otherwise release the City or its respective successors or assigns from any liability which any of them may now or in the future have under federal, state, or local laws or regulations relating to the discharge or release of any type of pollutant from or onto the property.

3. Successors and Assigns. This Agreement and the covenants made herein shall continue in effect and shall be binding on all successors, assigns, heirs and legal representatives of the parties hereto. Permittee shall notify City of any such sale, transfer, or assignment of any of its rights under the Encroachment Permit within thirty (30) days of said sale, transfer, or assignment. Any successor or assignee of Permittee shall execute a written acknowledgement of the terms, conditions and obligations of this Agreement. Neither Permittee nor any transferee or assignee of Permittee shall sell, transfer, or assign its interest in the Property to any person or entity that does not have the financial capability of performing the transferor's or assignor's obligations.

4. Termination and Enforcement. The parties hereby covenant and agree that this Agreement shall continue in effect for so long as the Pump Station is in operation. This Agreement will terminate when the encroachment has been permanently removed, except with respect to any damage or injury occurring prior to such removal and claims related thereto, which shall remain subject to this Agreement. The burden of the covenants herein shall be on the Permittee, and the benefits shall run in favor of City. The parties agree that monetary damages would be insufficient to remedy any violation of this Agreement and City shall be entitled to enforce the terms hereof by specific performance and/or appropriate injunctive relief.

5. Entire Agreement; Modifications in Writing. This Agreement and the Exhibits hereto constitute the entire understanding and agreement of the parties with respect to the subject matter set forth herein and supersedes any and all previous negotiations, discussions, and agreements between the parties with respect to the subject matter hereof. Each party to this Agreement acknowledges that no party, or anyone acting on behalf of any party, orally or otherwise, has made any representations, inducements, promises, or agreements that are not embodied herein. This Agreement may be terminated or modified only by a written agreement executed by the parties hereto, or by their respective successors in interest.

6. Effective Date of Agreement. This Agreement shall become effective upon the date a duly executed and acknowledged original of this Agreement is recorded in the Official Records of the Recorder of Orange County.

7. Attorneys' Fees. In the event any action, arbitration, or other legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court or arbitrator to be reasonable.

EXECUTED in the County of Orange, State of California, on this _____ day of _____, 2007.

CITY OF COSTA MESA

ORANGE COUNTY SANITATION DISTRICT

By: _____
Ernesto Munoz
City Engineer

By: _____

**RBF Consulting
14725 Alton Parkway
Irvine, California 92618**

**November 30, 2006
JN 10-103510
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EXHIBIT "A"

COLLEGE AVENUE PUMP STATION

That certain parcel of land situated in the City of Costa Mesa, County of Orange, State of California, being a portion of College Avenue and Gisler Avenue as shown on the map of Tract No. 4355 filed in Book 168, Pages 31 through 33 of Miscellaneous Maps and as shown on the map of Tract No. 4354 filed in Book 204, Pages 32 and 33 of Miscellaneous Maps, both in the Office of the County Recorder of said Orange County, described as follows:

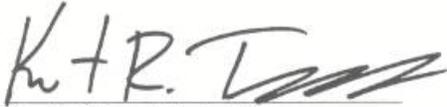
BEGINNING at the southwest corner of Lot 14 as shown on said Tract No. 4355; thence along the westerly line of said lot and its northerly prolongation North $00^{\circ}23'41''$ East 110.81 feet to a line parallel with and 28.00 feet southerly of the centerline of Gisler Avenue as shown on said Tract No. 4355; thence along said parallel line North $88^{\circ}54'44''$ West 13.76 feet to the beginning of a tangent curve concave southeasterly and having a radius of 19.50 feet, the southerly terminus of said curve shall be tangent to a line parallel with and 20.50 feet easterly of the centerline of College Avenue as shown on said Tract No. 4354; thence along said curve westerly, southwesterly and southerly 30.87 feet through a central angle of $90^{\circ}41'35''$ to said point of tangency; thence along said parallel line South $00^{\circ}23'41''$ West 19.01 feet to the beginning of a tangent curve concave easterly and having a radius of 229.50 feet, said curve being concentric with and 20.50 feet easterly of said centerline of College Avenue; thence along said concentric curve southerly 64.23 feet through a central angle of $16^{\circ}02'11''$ to a point of compound curvature with a curve concave northeasterly and having a radius of 25.00 feet, a radial line of said curves from said point bears North $74^{\circ}21'30''$ East; thence along said curve southeasterly 17.63 feet through a central angle of $40^{\circ}23'59''$; thence radially from said curve North $33^{\circ}57'31''$ East 6.93 feet to a point on a non-tangent curve concave northeasterly and having a radius of 5.00 feet, the easterly terminus of said curve shall be tangent with the westerly prolongation of the southerly line of said Lot 14, a radial line of said curve from said point bears North $33^{\circ}57'31''$ East; thence along said curve southeasterly and easterly 2.87 feet through a central angle of $32^{\circ}56'35''$ to a said point of tangency; thence along said westerly prolongation South $88^{\circ}59'04''$ East 7.82 feet to the **POINT OF BEGINNING**.

Unless otherwise noted, all bearings in this description are grid based on the California Coordinate System, (CCS83) Zone VI NAD 1983 (1991.35 EPOCH) O.C.S. GPS adjustment.

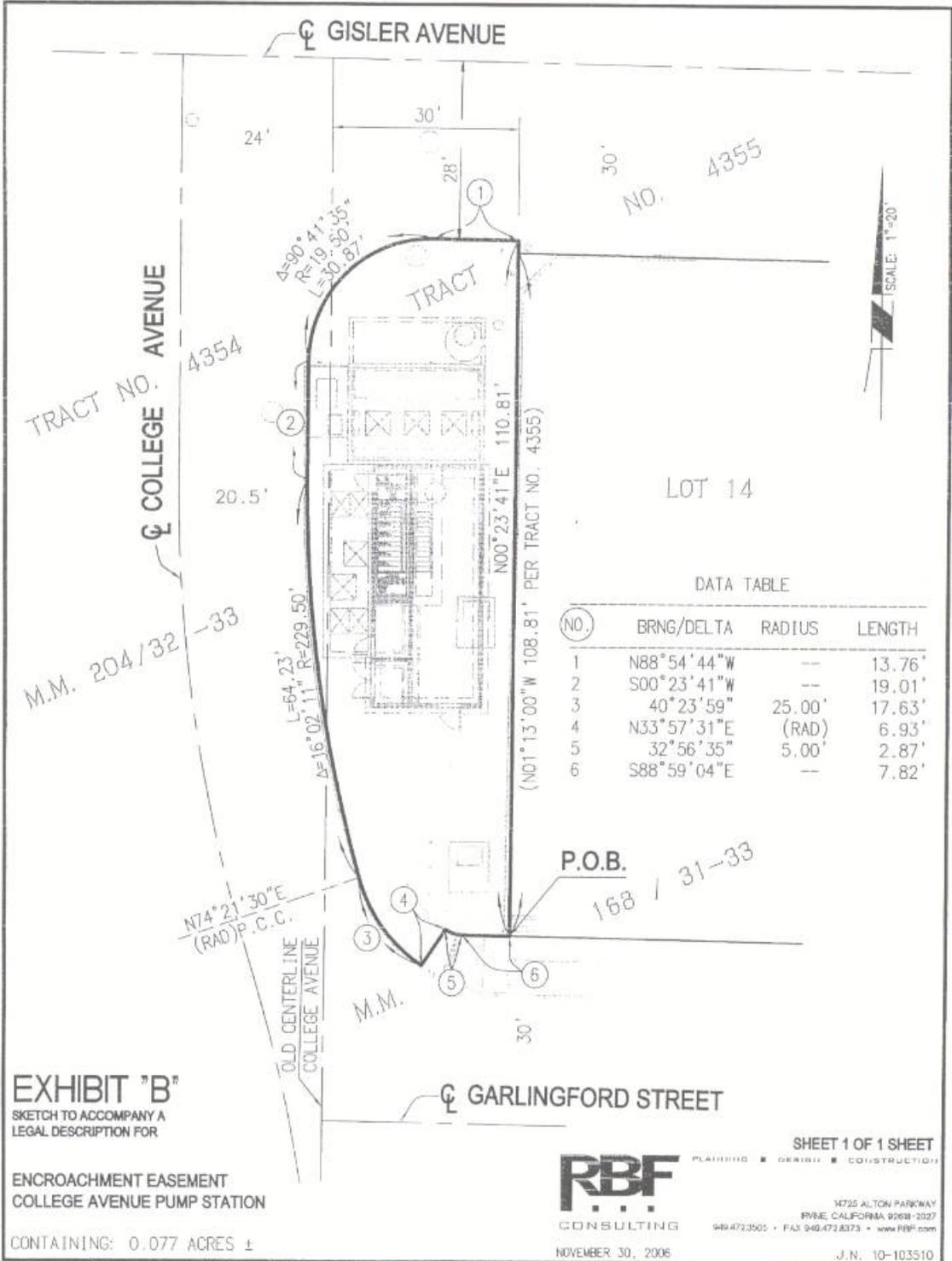
CONTAINING: 0.077 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.


Kurt R. Troxell, L.S. 7854





DATA TABLE

NO.	BRNG/DELTA	RADIUS	LENGTH
1	N88°54'44"W	--	13.76'
2	S00°23'41"W	--	19.01'
3	40°23'59"	25.00'	17.63'
4	N33°57'31"E	(RAD)	6.93'
5	32°56'35"	5.00'	2.87'
6	S88°59'04"E	--	7.82'

EXHIBIT "B"
 SKETCH TO ACCOMPANY A
 LEGAL DESCRIPTION FOR

ENCROACHMENT EASEMENT
 COLLEGE AVENUE PUMP STATION

CONTAINING: 0.077 ACRES ±

SHEET 1 OF 1 SHEET



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NOVEMBER 30, 2006

J.N. 10-103510