

EXHIBIT D.

INTERAGENCY AGREEMENTS

Seven Oaks Dam
Operation and Maintenance Manual

EXHIBIT D

LOCAL COOPERATION AGREEMENT

Version of 12/13/89

LOCAL COOPERATION AGREEMENT
AMONG THE DEPARTMENT OF THE ARMY,
ORANGE COUNTY FLOOD CONTROL DISTRICT,
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT AND
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
FOR CONSTRUCTION OF THE
SANTA ANA RIVER MAINSTEM, INCLUDING SANTIAGO CREEK,
CALIFORNIA FLOOD CONTROL PROJECT

THIS AGREEMENT, entered into this 14TH day of DECEMBER 1989, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the Santa Ana River Mainstem sponsors, comprised of the Orange County Flood Control District, the Riverside County Flood Control and Water Conservation District, and the San Bernardino County Flood Control District in California (hereinafter referred to as "Orange," "Riverside," "San Bernardino" or as "the Sponsors" when considered collectively),

WITNESSETH, THAT:

WHEREAS, the Santa Ana River Mainstem, including the Santiago Creek, California project (hereinafter referred to as "the Project") was authorized by the Water Resources Development Act of 1986, P.L. 99-662 (hereinafter referred to as "the Act") substantially in accordance with the plans and recommendations of the Chief of Engineers contained in his reports dated 15 January 1982 and 9 July 1987; and

WHEREAS, construction of recreation features is an authorized project purpose under the Act and, if implemented, will be the subject of a separate agreement between the Government and appropriate non-federal interests other than the Sponsors herein; and

WHEREAS, water conservation at Prado is the subject of a separate study and any facilities, quantities of storage, and/or changes in operation, and the cost sharing for any such items resulting from that study, if implemented, will be part of a separate agreement between the Government and non-Federal interests; and

WHEREAS, Section 103 of the Act specifies the cost-sharing requirements of non-Federal interests applicable to the Project; and

WHEREAS, on June 1, 1988, the Assistant Secretary of the Army (Civil Works) approved a credit with an estimated value of

\$3,315,000 for Orange towards Orange's share of Project cost in accordance with Section 104 of the Act; and

WHEREAS, on 2 October 1989 the Department of the Army entered into an agreement with the Orange County Flood Control District pursuant to Section 215 of 90-483 (42 U.S.C.1962d-5a), as amended, to credit or reimburse the costs of certain work accomplished by local interests which later is incorporated into an authorized project; and

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-federal interest has entered into a written agreement to furnish its required cooperation for the Project; and

WHEREAS, the Sponsors do not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Act, published in 33 C.F.R., sections 241.1 - 6, entitled "Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision"; and,

WHEREAS, it is to the benefit of the Sponsors and Government to construct this project; and

WHEREAS, the Sponsors have the authority and capability to furnish the cooperation hereinafter set forth and are willing to participate in project cost-sharing and financing, in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For purposes of This Agreement:

A. The term "Project" shall mean the Santa Ana River Mainstem project, including Santiago Creek, as described in the Phase II General Design Memorandum and shall include the construction, acquisition, or regulation of the following flood control features: Seven Oaks Dam and Basin; regulation of the 100-year flood plain between Seven Oaks Dam and Prado Basin; modifications to the existing Federal Mill Creek levee project; modifications to Prado Dam and acquisition of additional reservoir lands; construction of the Oak Street Drain from the existing debris basin to Prado reservoir, flood plain acquisition and structural improvements to the Santa Ana River channel between Prado Dam and the Pacific Ocean; Talbert Channel relocation; channelization of the lower reach of Santiago Creek and provision of an upstream detention facility with outlet structure; regulation of the 100-year floodplain between the Santiago Channel and the detention facility, and provision of mitigation and

enhancement lands and improvements, as illustrated in the Phase II General Design Memorandum (GDM). The term "Project" shall not include recreation features and facilities.

B. The term "total project costs" shall mean all costs incurred by the Sponsors and the Government directly related to construction of the Project, excluding any costs for betterments or operation and maintenance. Such costs shall include but not necessarily be limited to, actual construction costs, the value of lands, easements, and rights-of-way, including excavated material disposal areas made available for the Project, relocation and alteration costs, relocations or new construction of railroad bridges and approaches thereto, costs of applicable planning, engineering and design, incurred after October 1, 1985 (including, but not limited to preconstruction engineering and design costs, as defined in C. below), supervision and administration costs, and costs of project construction contract dispute settlements or awards. The term "total project costs" also includes the amount of the credit that will be given to Orange for the flood control work carried out by Orange which has been determined to be compatible with the Project.

C. The term "preconstruction engineering and design costs" (PED) shall mean all continuing expenditures for planning, engineering, and design incurred after 1 October 1985 towards completion of the Phase II GDM, the plans and specifications for the first phases of the project, and any feature design memoranda necessary to produce those plans and specifications.

D. The term "Santa Ana River Mainstem Project" shall include the construction described in Subparagraph A. of this Article and also the construction of the San Timoteo project, which was authorized by the Energy and Water Development Appropriations Act of 1988, P.L. 100-202, as part of the Santa Ana River Mainstem project, including Santiago Creek project and, for purposes of economic justification, the benefits and costs of the San Timoteo Creek project shall be included together with the benefits and costs of the entire Santa Ana Mainstem, including Santiago Creek. The San Timoteo Creek project, if implemented, will be the subject of a supplement to this agreement between the Government and San Bernardino, sponsor for San Timoteo Creek.

E. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the Project by the Contracting Officer.

F. The term "Contracting Officer" shall mean the Commander of the U.S. Army Engineer District, Los Angeles, or his designee.

G. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public or private road or way.

H. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new

construction related to, but not limited to, existing: railroads, highways, bridges other than railroad bridges and approaches thereto, buildings, commercial and gas pipelines, public utilities (such as municipal water and sanitary sewer lines, and telephone lines), storm drainage facilities, recreation trails, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the project. The term "relocations" does not include construction and alteration of railroad bridges and approaches thereto (including temporary detours for use while the new bridges are being constructed), and alterations to foundations and abutments for bridges that are to remain in place. Said costs shall be considered part of the total project costs and are not included in determining relocation costs borne by the Sponsors.

I. The term "betterments" shall mean any work beyond that necessary to provide a substitute structure or usage to current design standards of the State of California or the agency having jurisdiction.

J. The term "features" shall mean each of the following portions of the Project including mitigation therefore: Seven Oaks Dam and Basin; Mill Creek Levee; regulation of the flood plain between Seven Oaks Dam and Prado Basin; Prado Dam and Basin; Oak Street Drain; Santa Ana Canyon between Prado Dam and Weir Canyon Road; Santa Ana River Channel from Weir Canyon Road to the Pacific Ocean; Santiago Creek including channel work and detention basin and regulation of the floodplain between the channel work and the detention basin; and enhancement lands at the mouth of the Santa Ana River.

K. The term "phase" shall mean all or a portion of a feature, which is under a construction contract.

L. The term "enhancement" shall mean those activities to enhance fish and wildlife resources, including acquisition of lands or interests in lands, from which national economic fish and wildlife benefits are derived, or for species that have been listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. Sections 1531 et. seq.

M. The term "fish and wildlife mitigation" (hereinafter referred to as "mitigation") shall refer to those activities, including acquisition of lands or interests in lands, to compensate for project impacts to fish and wildlife resources.

N. The term "involuntary acquisitions" shall mean acquisition of lands, easements, and rights-of-way by condemnation proceedings.

O. The term "Government Fiscal Year" shall mean one fiscal year of the United States Government. The Government fiscal year begins on October 1 and ends on September 30.

P. The term "Sponsors' Fiscal Year" shall mean one fiscal year of the Sponsors. The Sponsors' fiscal year begins on 1 July and ends on 30 June.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. The Government, subject to and using funds provided by the Sponsors and funds appropriated by the Congress, shall expeditiously construct the Project (including alterations or relocations of railroad bridges and approaches thereto) applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Sponsors shall be afforded the opportunity to review and comment on all contracts, including relevant plans, specifications and special provisions prior to the issuance of invitations for bids. The Sponsors also shall be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the Contractor of a Notice to Proceed for such modification or change order unless an emergency exists or immediate action is required, in which case the Government will direct the change without review by the Sponsors. The Government will consider the views of the Sponsors, but award of the contracts including change orders and performance of the work thereunder shall be exclusively within the control of the Government.

B. When the Government determines that a feature or phase of the Project is complete and appropriate for operation and maintenance by a Sponsor or Sponsors, the Government shall turn the completed feature or phase over to the responsible Sponsor or Sponsors, who shall accept the feature or phase of the Project and all responsibility for operating, repairing, maintaining, replacing, and rehabilitating the feature or phase in accordance with Article VIII hereof. The Sponsors shall share the cost for operation, maintenance, replacement, and rehabilitation of the features and phases of the Project in accordance with the following subparagraphs:

1. Orange shall provide 100 percent of the costs of operation, maintenance, replacement and rehabilitation of Santiago Creek, Santa Ana River Channel, and Santa Ana Canyon within Orange County, and 87.70 percent of the cost of Seven Oaks Dam and Basin. Orange shall be responsible on an annual basis (Government Fiscal Year) for 24.8 percent of the costs for operation, maintenance, replacement, and rehabilitation of Prado Dam and Basin. The Government shall be responsible on an annual basis for 75.2 percent of the costs for operation, maintenance, replacement, and rehabilitation of Prado Dam and Basin.

2. Riverside shall provide 100 percent of the costs of operation, maintenance, replacement, and rehabilitation of Oak Street Drain and the portion of the Santa Ana Canyon within Riverside County and 5.27 percent of the cost of the operation, maintenance, and rehabilitation of Seven Oaks Dam and Basin.

3. San Bernardino shall provide 100 percent of the costs of operation, maintenance, replacement, and rehabilitation of Mill Creek Levee and the portion of the Santa Ana Canyon within San Bernardino County and 7.03 percent of the cost of operation, maintenance, and rehabilitation of Seven Oaks Dam and Basin.

C. Pursuant to Section 103(a)(1) of the Act, 33 U.S.C. 2213(a)(1) and in accordance with Article III of this agreement the sponsors shall provide all lands, easements, rights-of-way, excavated material disposal areas, and perform relocations (excluding railroad bridges and approaches thereto) required for construction of the project as determined by the Government, except that acquisition and restoration of enhancement lands shall be the sole responsibility of the Government. In the event any such lands, easements, or rights-of-way required for the Project (e.g. haul roads, borrow sites, or disposal areas) are common to more than one feature, acquisition of said lands, easements, and rights-of-way will be performed by the Sponsors in the counties in which they are situated, unless otherwise agreed to among the Sponsors. The Sponsors shall share costs for lands, easements, rights-of-way and disposal areas and relocations, as specified in the following subparagraphs:

1. Orange shall provide 100 percent of such costs for Santiago Creek, Santa Ana River Channel within Orange County, Santa Ana Canyon below Prado Dam within Orange County, the Prado Features, and mitigation lands located in Orange County and at Prado basin; and 87.70 percent of such costs of Seven Oaks Dam and Basin, and its associated mitigation.

2. Riverside shall provide 100 percent of such costs for the Oak Street Drain, and the Santa Ana Canyon below Prado Dam within Riverside County; and 5.27 percent of such costs of Seven Oaks Dam and its associated mitigation.

3. San Bernardino shall provide 100 percent of such costs of the Mill Creek levee and the Santa Ana Canyon below Prado Dam in San Bernardino County and 7.03 percent of such costs of Seven Oaks Dam and basin and its associated mitigation.

4. The acquisition costs for lands, easements, or rights-of-way common to more than one feature shall be shared by the sponsors in proportion to the use of said lands, easements, or rights-of-way for each feature.

D. Pursuant to Section 103(a)(1)(A) of the Act, 33 U.S.C. 2213(a)(1)(A) and as further specified in Article IV hereof, the Sponsors shall provide, during the period of construction, a cash contribution of 5 percent of the total project costs. The Sponsors shall share the required cash contribution based on the features being acquired or constructed, as specified in the following subparagraphs.

1. Orange shall provide 100 percent of such contribution for Santiago Creek, Santa Ana River Channel, Santa Ana River Canyon below Prado Dam within Orange County, and Prado Dam and Basin; 87.70 percent of such contribution for Seven Oaks Dam and Basin; and 94.95 percent of such contribution for PED costs incurred after 1 October 1985.

2. Riverside shall provide 100 percent of such contribution for the Oak Street Drain, and Santa Ana Canyon below Prado Dam within Riverside County; 5.27 percent of such contribution for Seven Oaks Dam and Basin; and 3.61 percent of such contribution for PED costs incurred after 1 October 1985.

3. San Bernardino shall provide 100 percent of such contribution for Mill Creek Levee, and Santa Ana Canyon below Prado Dam within San Bernardino County; 7.03 percent of such contribution for Seven Oaks Dam and Basin; and 1.44 percent of such contribution for PED costs incurred after 1 October 1985.

E. The Government shall afford credit for external compatible work performed by Orange toward Orange's project contributions in accordance with Section 104 of the Act. Such credit shall not exceed \$3,315,000. The credit shall be afforded against Orange's cost sharing requirements for the Project, less Orange's share of the five percent cash contribution required under Article II.D. of this Agreement. Orange's cost sharing requirements are presently estimated to be \$408,800,000. Orange's share of the five percent cash contribution is presently estimated to be \$57,800,000. Accordingly, Orange's cost sharing requirements against which credit can be applied are currently estimated to be \$351,000,000.

F. If the value of the contributions provided under paragraph D. of this Article when added to the value of any items provided pursuant to paragraph C. of this Article is less than twenty-five (25) percent of total project costs, the Sponsors shall provide, during the period of construction, an additional cash contribution in the amount necessary to make the Sponsors' total contribution equal to twenty-five (25) percent of total project costs. The Sponsors shall share such costs based on the features being acquired or constructed, as specified in Article II.D.

G. The amount of Orange's contribution required herein may be reduced by the amount of credit Orange receives for the work it performed pursuant to the Section 215 Agreement dated 2 October 1989. However any credit allowed will not reduce the 5 percent cash contribution required in paragraph D. of this Article.

H. The Sponsor shall inform affected interests of the limitations of the protection afforded by the project. Each of the Sponsors shall provide said notice to affected interests within its county by announcement in a local newspaper of general circulation upon completion of each feature of the project, but no less than once each year. In the event that the level of protection is also dependent upon completion of another project feature, the Government

shall inform the Sponsors of the level of protection provided until all such dependent features are completed. Each of the Sponsors shall also publicize floodplain information relevant to the area affected within its county and shall provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the floodplain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the project.

I. Orange shall operate and maintain, without cost to the Government, the existing Villa Park Dam on Santiago Creek in accordance with regulations prescribed by the Secretary of the Army.

J. Riverside shall operate and maintain, without cost to the Government, the existing Oak Street Drain debris basin in accordance with regulations prescribed by the Secretary of the Army.

K. The responsibility for administering the operation, maintenance and rehabilitation of the mitigation and enhancement features of the project shall be in accordance with a management plan to be developed by the Government in coordination with the Sponsors. Management of mitigation and enhancement areas may be turned over to resource agencies, organizations or local groups that can demonstrate capability and experience, and meet the approval of the Government, the Sponsors, and resource agencies.

L. The Sponsors shall be solely responsible for the costs for operating, maintaining and rehabilitating mitigation lands. With regard to mitigation applicable to the Seven Oaks feature, costs shall be shared by the Sponsors in relation to benefits received by each Sponsor, 87.70 percent by Orange, 5.27 percent by Riverside, and 7.03 percent by San Bernardino. The costs for operation, maintenance, and rehabilitation for mitigation related to the construction at Prado Dam and Basin, and the construction of the channel downstream of Prado shall be paid entirely by Orange.

M. The Government shall be responsible for operation and maintenance of the enhancement lands; however, the Sponsors shall be responsible for paying for 25 percent of the costs of such operation and maintenance on an annual basis. Each of the sponsors shall provide a portion of the Sponsors' share equal to the estimated portion of total flood control project benefits received by each of the Sponsors at the end of project construction, namely, 94.95 percent by Orange, 3.61 percent by Riverside, and 1.44 percent by San Bernardino.

N. The Sponsors shall manage the post-project floodway and flood plain fringe as designated by the Secretary of the Army from Seven Oaks Dam to Prado Basin and along Santiago Creek from Walnut Avenue to Benton Way for the future 100-year flood in accordance with the Federal Emergency Management Agency (FEMA) regulations and shall participate in and comply with applicable Federal flood plain management and flood insurance programs.

O. The Government shall coordinate with the Sponsors and develop and implement a management plan for open space wildlife habitat in the Santa Ana Canyon below Prado Dam. Each Sponsor shall be responsible for the maintenance costs of the habitat located within the sponsor's boundaries. Maintenance of said habitat shall be the responsibility of the Sponsors, in accordance with the plan.

P. No Federal funds may be used to meet the Sponsors' share of project costs under this agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting agency.

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

A. The Sponsors shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the sponsors' legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to advertisement of the construction contract.

B. Upon notification from the Government, the Sponsors shall accomplish or arrange for accomplishment at no cost to the Government, all relocations determined by the Government to be necessary for construction of the project.

C. The Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

D. Title or rights to lands acquired or necessary for project purposes which are currently held for the Project by the Sponsors or the United States shall remain in the current holder of such rights or title, except that the Government may accept title and rights to lands at Seven Oaks Dam and Basin and Prado Dam and Basin provided by the Sponsors for the Project

ARTICLE IV - VALUE OF LANDS AND FACILITIES

A. The value of the lands, easements, and rights-of-way to be included in total flood control project costs and credited toward the Sponsors' share of total flood control project costs

will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Sponsor(s) prior to the award of the first construction contract, the credit shall be the fair market value of the interest as of the date of the award of that construction contract. The fair market value shall be determined by an appraisal, to be obtained by the Sponsor(s), which has been prepared by a qualified appraiser who is acceptable to both the Sponsor(s) and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Sponsor(s) after award of the first construction contract, the credit shall be the fair market value of the interest as of the date of acquisition. The fair market value shall be determined as specified in subparagraph 1. above. If the Sponsors pay an amount in excess of the appraised fair market value, they may be entitled to a credit for the excess if the Sponsor(s) have secured prior written approval from the Government of its negotiated offer to purchase such interests.

3. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements which have received prior Government approval.

4. If the Sponsor(s) acquire more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of the acquisitions as are necessary for project purposes shall be included in total project costs and credited to the Sponsor(s)' share.

5. For lands, easements, or rights-of-way acquired by the Sponsors within a 5-year period preceding the date this Agreement is signed, or any time after this Agreement is signed, credits provided under paragraph A. of this Article will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for any payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

B. The costs of relocations which will be included in total project costs and credited towards the Sponsor(s)' share of total project costs shall be that portion of the actual costs incurred by the Sponsor(s) as set forth below and approved by the Government:

1. Highways and Highway Bridges: Only that portion of

the cost as would be necessary to construct substitute bridges and highways to the current design standard that the State of California, or the public agency which has applicable jurisdiction, would be used in constructing a new bridge, or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities (Including Railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any relocation or alteration if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If despite the availability of used material, new material is used, where the use of such material represents an additional cost, such cost will not be included in total project costs.

3. The costs of relocations that the Sponsors have accomplished within 5 years preceding the date of this Agreement may be included in total project costs and credited towards the Sponsors share as such relocations are determined by the Government to be necessary for project purposes.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

A. To provide for consistent and effective communication between the Sponsors and the Government during the period of construction, each of the Sponsors, and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the project.

B. The representatives appointed shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

C. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

ARTICLE VI - METHOD OF PAYMENT

A. The Sponsors shall provide, over the period of construction, the amounts required under Article II.D. and II.F. of this Agreement. Total project costs are presently estimated to be \$1,293,000,000. In order to meet their share, the Sponsors must provide a cash contribution presently estimated to be \$63,700,000. The dollar amounts set forth in this Article are based upon the

Government's best estimates which will reflect projections of costs, price level changes, and anticipated inflation. Such estimates are subject to adjustments based on the costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Sponsors.

B. The Sponsors shall provide their required cash contribution in proportion to the rate of Government expenditures over the period of the construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify each of the Sponsors of the estimated funds that will be required from the Sponsors to meet each Sponsor's shares of project costs for the upcoming Government fiscal year following submittal of the President's Budget to the Congress.

2. For the first Government fiscal year of construction, at least 90 days prior to the award of the first construction contract, the Government shall notify each of the Sponsors of its estimated share of project costs, including each Sponsor's share of costs attributable to the project incurred prior to the initiation of construction. Forty-five days thereafter, each of the Sponsors shall provide its share of the local contribution by verifying to the satisfaction of the Government that it has deposited the requisite amount in an escrow account acceptable to the Government, with interest accruing to the Sponsor(s).

3. For the second and subsequent Government fiscal years of project construction, the Government shall notify each of the Sponsors of its estimated share of project costs for that fiscal year following submittal of the President's Budget to the Congress. No later than 30 days prior to the beginning of that fiscal year, each of the Sponsors shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.B.2. of this agreement.

4. As Project proceeds, the Government shall adjust the amounts required to be provided from each of the Sponsors to reflect actual project costs. If the Government determines that additional funds will be needed from the Sponsors to meet their required share of project costs, the Government shall so notify the Sponsors, and the Sponsors, within sixty (60) days from receipt of notice, shall make the necessary funds available through the funding mechanism specified in Article VI.B.2. of this Agreement.

C. Each month, the Government will draw on the funds in the escrow accounts provided by the Sponsors such sums as the Government deems necessary to cover anticipated contractual and in-house fiscal obligations attributable to the project in advance of their being incurred, except that the Government will withdraw an amount equal to the Sponsors' share of total project costs incurred by the Government prior to the initiation of construction of the Project the time of the first withdrawal from the escrow accounts.

D. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and tender to the Sponsors a final accounting of the Sponsors share of total project costs. In the event the total contribution by the Sponsors is less than their minimum required share of total project costs, the Sponsors shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet their minimum required share of total project costs.

E. In the event the Sponsors have made cash contributions in excess of 5 percent of total project costs which result in the sponsors having provided more than their required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of appropriations for that purpose, return said excess to the Sponsors; however, the Sponsors shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D. of this Agreement.

F. If the Sponsors' total contribution under this Agreement (including lands, easements, rights-of-way, utility and facility alterations or relocations, and dredged material disposal areas provided by the Sponsors) exceeds 50 percent of total project costs, the Government shall, subject to the availability of appropriations for that purpose, refund the excess to the Sponsors no later than 90 calendar days after the final accounting is complete.

ARTICLE VII - DISPUTES

A. Disputes among the Sponsors: Disputes between two or more of the Sponsors in respect to this Agreement, or to any breach thereof, shall be resolved by the methods hereinafter set forth. For the purposes of the following subparagraphs, a dispute is defined to mean a determination by the District Engineer, Los Angeles District, United States Army Corps of Engineers, that the Sponsors have failed to timely agree on action required by the Sponsors under this Agreement or with respect to this Agreement.

1. When the District Engineer determines that a dispute exists between two or more Sponsors, the flood control engineer for every Sponsor to this Agreement shall meet and confer to resolve the dispute within a period of 20 calendar days of written notice of the existence of the dispute by the Government. A unanimous decision of the flood control engineers within this 20-day period shall resolve the dispute and be binding on every Sponsor.

2. Should the flood control engineers fail to reach a unanimous decision within this 20-day period, the flood control engineers shall present the dispute within the next 10 calendar days to the Chairmen of the Boards of Supervisors for every Sponsor

or to their designees, who also shall be members of the Boards of Supervisors. The Chairmen of the Boards of Supervisors or their designees shall meet and confer to resolve the dispute within a period of 20 calendar days of presentation of the dispute. A unanimous decision of the Chairmen of the Boards of Supervisors or their designees within this 20-day period shall resolve the dispute and be binding on every Sponsor.

3. If a dispute is not resolved pursuant to these procedures within the 20-calendar day time frames set forth above, the Sponsors shall refer the dispute within the next 5 calendar days to Judicial Arbitration and Mediation Services, Inc., or to another arbitration service mutually agreeable to the Sponsors. All parties agree that time is of the essence in resolving disputes relating to this Agreement and that the Sponsors shall expedite the presentation of disputes for arbitration. The Sponsors shall present the dispute to Judicial Arbitration and Mediation Services, Inc., or the mutually agreed on arbitration service, within 15 calendar days of referral of the dispute for resolution. Judicial Arbitration and Mediation Services, Inc., or the mutually agreed on arbitration service, shall decide the dispute within 15 calendar days after presentation. The Government may, in its sole discretion, bypass the procedures set forth in subparagraphs 1. and 2. above and, upon written notice, require that the Sponsors present any dispute directly for arbitration in order to arrive at an expedited decision. In such event, the referral, presentation, a resolution of the dispute will be conducted within the time frames set forth in this subparagraph.

4. The Sponsors agree that they shall accept any arbitrator assigned by the arbitration service to resolve the dispute. The Sponsors further agree that they will be bound by any award made by the arbitration service and that any award made shall conclusively resolve the dispute. All costs incurred in presenting a dispute, including the costs of any arbitration service, shall be divided equally among the Sponsors unless some other division of costs is made as part of the arbitrator's award. In no event, shall the Government bear any of the costs of presenting and resolving a dispute.

5. The arbitration conducted pursuant to the subparagraphs above shall in all respects be conducted in accordance with California Code of Civil Procedure, Section 1280, et seq., unless otherwise provided herein. The Sponsors agree that the Government may at its discretion enforce any award made pursuant to these subparagraphs in any Federal Court having jurisdiction over this Agreement.

B. Disputes between the Government and the Sponsors: Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION, MAINTENANCE, REPLACEMENT, AND REHABILITATION

A. After the Government has turned a completed feature or phase over to the responsible Sponsor or Sponsors, the Sponsor(s) in whose county the feature or phase is located shall be responsible for its operation, maintenance, replacement, and rehabilitation of that feature or phase, except that Orange shall also be responsible for the operation, maintenance, replacement, and rehabilitation of Prado Dam and Basin. All such operation, maintenance, replacement, and rehabilitation shall be in accordance with regulations or directions prescribed by the Government. During the life of the Project, the Sponsors may make recommendations to the Government concerning the operation, maintenance, replacement, and rehabilitation of the Project. The Government has complete discretion to accept, reject, or modify the Sponsor's recommendations regarding such operation, maintenance, replacement, and rehabilitation. The costs of said operation, maintenance, replacement, and rehabilitation shall be shared in accordance with Article II.B. of this Agreement.

B. The Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Sponsors own or control for access to the project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, repairing, maintaining, replacing, or rehabilitating the project. If an inspection shows that any of the Sponsors is, for any reason, are failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to each of the Sponsors. If any of the Sponsors persist in such failure for thirty (30) calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Sponsor or Sponsors own or control for access to the project for the purpose of completing, operating, repairing, maintaining, replacing, or rehabilitating the project. No completion, operation, repair, maintenance, replacement, or rehabilitation by the Government shall operate to relieve any of the Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy of law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

Orange, Riverside and San Bernardino shall hold and save the Government free from all damages arising from the construction, operation and maintenance of the project except for damages due to the fault or negligence of the Government or its contractors. Orange, Riverside, and San Bernardino shall separately hold and save the Government free from all damages arising from the

construction, operation, and maintenance of the Project features for which they pay 100% of the construction cost sharing. For the remaining project features for which more than one of the Sponsors is responsible, Orange, Riverside, and San Bernardino shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of those features in proportion to the share of construction costs borne by each of the Sponsors for that feature in accordance with Article II of this Agreement.

ARTICLE X - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsors shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government to identify the existence of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsors which are properly allowable and allocable to performance of any such environmental investigations shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

B. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsors shall provide prompt notice to the Government and shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until so directed by the Government.

C. The Government shall, after consultation with the Local Sponsors, but in its sole discretion, determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsors shall be solely responsible for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine the extent of and appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsors fail to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the

Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVII.

D. The Local Sponsors and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bear all necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph c. of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. The Local Sponsors shall operate, maintain, repair, replace, and rehabilitate the Project in a manner so that liability will not arise under CERCLA.

F. In the event such liability does arise in the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, the Local Sponsors shall indemnify the Government for any cleanup costs or response costs for which the Government is found liable under CERCLA.

ARTICLE XI - MAINTENANCE OF RECORDS

The Government and the Sponsors shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Sponsors shall maintain such books, records, documents, and other evidence for each project feature for a minimum of three (3) years after completion of construction of the feature and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XII - GOVERNMENT AUDITS

The Government shall conduct audits of the Sponsors' records upon completion of each feature of the Project to ascertain the allowability, reasonableness, and allocability of each of the Sponsors' costs for inclusion as credit against each of the Sponsors' shares of cost pertaining to that feature. When the Government determines that the Project is complete, the Government shall conduct a final audit, based upon the audits of each feature, to ascertain the final credit for each of the Sponsors against each of the Sponsors' obligations in Article II of this Agreement.

ARTICLE XIII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the

Sponsors agree to comply with all applicable Federal and State Laws and Regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Direction 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XIV - RELATIONSHIP OF PARTIES

The parties to this Agreement shall act in an independent capacity in the performance of their respective functions under this Agreement, and no party is to be considered the officer, agent, or employee of the other.

ARTICLE XV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XVI - COVENANT AGAINST CONTINGENT FEES

The Sponsors warrant that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Sponsors for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVII - TERMINATION OR SUSPENSION

A. If at any time a Sponsor or Sponsors fail to make the payments required under this Agreement, the Secretary of the Army shall, after notice to the Sponsors, terminate or suspend work on the Project until the Sponsor or Sponsors are no longer in arrears, unless the Secretary of the Army determines that continuation of work on the project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to one hundred fifty (150) per centum of the average bond equivalent rate of the 13-week treasury bills auctioned immediately prior to the date on which such payment

became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds three (3) months.

B. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Sponsors. After sixty (60) calendar days the Sponsors or the Government may elect without penalty to terminate this Agreement or to defer future performance thereunder; however deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either The Sponsors or the Government elect to terminate this Agreement pursuant to this Article, the parties shall conclude their activities relating to the project and proceed to a final accounting in accordance with Article VI. In the event that either the Sponsors or the Government elect to defer future performance under this Agreement such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVIII - MAXIMUM PROJECT COST

The Sponsors have reviewed the provisions set forth in Section 902 of the Act, and understand the limitations placed on this Project. For purposes of this Agreement, the Section 902 limit is \$1,536,000,000. This is based on October 1989 price levels and shall be adjusted to allow for appropriate increases in inflation and cost changes in the Project as provided in Section 902.

ARTICLE XIX - OBLIGATION OF FUTURE APPROPRIATIONS

Each Sponsor shall use its best efforts to utilize the alternatives set forth in Article XIII.B., et seq. of the California State Constitution (the "Gann Amendment") or to modify its budget, if necessary, in any Sponsors' fiscal year to timely meet its obligations to produce additional funds required by the Government for a fiscal year pursuant to Article VI.B.4. and Article VI.D. of this Agreement. However, if subsequent to the utilization of such best efforts a Sponsor is precluded by the Gann Amendment to the California State Constitution from timely producing such additional funds, the payment to liquidate any such obligations pursuant to Article VI.B.4. and Article VI.D. of this Agreement may be deferred to the Sponsors' next fiscal year. Any increased project costs occurring as a result of the deferral of such payments, including interest on unpaid amounts which shall be calculated as provided in Section 106 of the Act, shall be borne by the Sponsors alone and shall not be subject to cost sharing by the Government. It is specifically recognized that the deferral of

the payment to liquidate any such obligations pursuant to Article VI.B.4. and Article VI.D. of this Agreement shall not in any way be considered or construed as a suspension of these obligations or conditioning of said obligations in any manner, except as provided herein.

ARTICLE XX - NOTICES

A. All notices, requests, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegraph, or mailed by first-class (postage-prepaid), registered, or certified mail, as follows:

If to the Sponsors:

Orange County Flood Control District
12 Civic Center Plaza
P.O. Box 4048
Santa Ana, CA 92702-4048

Riverside County Flood Control and
Water Conservation District
1995 Market Street
P.O. Box 1033
Riverside, CA 92502-1033

San Bernardino County Flood Control District
825 East Third Street
San Bernardino, CA 92415-0835

If to the Government:

Los Angeles District
U.S. Army, Corps of Engineers
300 N. Los Angeles
P.O. Box 2711
Los Angeles, CA 90053-2325

B. A party may change the address to which such communications are to be directed by giving written notice to the others in the manner provided in this section.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or on the third business day after it is mailed, as the case may be.

ARTICLE XXI - CONFIDENTIALITY

To the extent permitted by the laws governing each of the parties, the parties agree to maintain the confidentiality of

exchanged information when requested to do so by the providing party.

ARTICLE XXII - ENTIRE AGREEMENT

This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the provisions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

RIVERSIDE COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

Date:

By: *Melvin Dunlap*
Chairman of the Board of Supervisors

Attest: *Gerald A. Maloney*
Gerald A. Maloney, Clerk of the Board

Date: DECEMBER 19, 1989 By: _____
Deputy

Seal

Date:

APPROVED AS TO LEGAL FORM
By: *Peter H. Lynn*
County Counsel, Riverside County

SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT

89-1087 (Revised)

Date: DEC 18 1989

By: *Barbara Crant Larson*
Chairman of the Board of Supervisors

ATTEST:

Date: DEC 18 1989

By: *Mary Louise Levano*
Deputy Clerk of the Board of Supervisors
of San Bernardino County, California

APPROVED AS TO LEGAL FORM

Date: 12-19-89

By: *[Signature]*
County Counsel, San Bernardino County

ORANGE COUNTY FLOOD CONTROL DISTRICT

Date: DEC 14 1989

By: Thomas Riley
Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF
THIS AGREEMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

Date: DEC 19 1989

By: Linda D. Ruth
Linda D. Ruth
Clerk of the Board of Supervisors
of Orange County, California

APPROVED AS TO LEGAL FORM

Date: DEC 14 1989

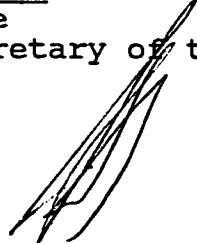
By: Ben P. de Mayo
Benjamin P. de Mayo
County Counsel, Orange County

THE DEPARTMENT OF THE ARMY

Date: 13 DEC 1989

By: 

Robert W. Page
Assistant Secretary of the Army
(Civil Works)



CERTIFICATE OF AUTHORITY

I, Peter H. Lyons, do hereby certify that I am the County Counsel for the Riverside County Flood Control and Water Conservation District, California, that said Riverside County Flood Control and Water Conservation District is a legally constituted public body with full authority and capability to perform the terms of this Local Cooperation Agreement between the Department of the Army and the Riverside County Flood Control and Water Conservation District, California, in connection with the Santa Ana River Mainstem, including Santiago Creek, California Flood Control Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed the Agreement on behalf of the Riverside County Flood Control and Water Conservation District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certificate this 17th day of December, 1989.

Peter H. Lyons
County Counsel

CERTIFICATE OF AUTHORITY

I, *Paul Hall*, do hereby certify that I am the County Counsel for the San Bernardino County Flood Control District, California, that said San Bernardino County Flood Control District is a legally constituted public body with full authority and capability to perform the terms of this Local Cooperation Agreement between the Department of the Army and the San Bernardino County Flood Control District, California, in connection with the Santa Ana River Mainstem, including Santiago Creek, California Flood Control Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed the Agreement on behalf of the San Bernardino County Flood Control District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certificate this 14 day of December, 1989.

Paul Hall
County Counsel

CERTIFICATE OF AUTHORITY

I, Bryan P. Selby, do hereby certify that I am the County Counsel for the Orange County Flood Control District, California, that said Orange County Flood Control District is a legally constituted public body with full authority and capability to perform the terms of this Local Cooperation Agreement between the Department of the Army and the Orange County Flood Control District, California, in connection with the Santa Ana River Mainstem, including Santiago Creek, California Flood Control Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed the Agreement on behalf of the Orange County Flood Control District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certificate this 14th day of December, 1989.

Bryan P. Selby
County Counsel

Seven Oaks Dam
Operation and Maintenance Manual

**SPONSORS' AGREEMENT FOR
OPERATION AND MANTENANCE**

Agreement D99-199

for

**Operation and Maintenance
of the Seven Oaks Dam**

by and among

**The Orange County
Flood Control District**

and

**The San Bernardino County
Flood Control District**

and

**The Riverside County Flood Control
and Water Conservation District**

August 2002

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AGREEMENT

This agreement ("AGREEMENT") is made and entered into this _____ day of _____, 2002,

BY and AMONG

The Orange County Flood Control District, hereinafter referred to as "ORANGE",

AND

The San Bernardino County Flood Control District, hereinafter referred to as "SAN BERNARDINO",

AND

The Riverside County Flood Control and Water Conservation District, hereinafter referred to as "RIVERSIDE".

ORANGE, SAN BERNARDINO, and RIVERSIDE are referred to collectively as the "SPONSORS".

RECITALS

WHEREAS, in the Water Resources Development Act of 1986, P. L. 99-662, the Congress of the United States authorized construction of certain flood control improvements on the Santa Ana River, including Santiago Creek, California, (hereinafter referred to as the "PROJECT"); and

WHEREAS, effective December 14, 1989, a Local Cooperation Agreement ("LCA") was entered into by the Department of the Army ("GOVERNMENT") and the SPONSORS, for construction of the Project, including Seven Oaks Dam ("DAM"); and

WHEREAS, the DAM is located in San Bernardino County and is depicted on Exhibit A, ("LOCATION MAP"), which is incorporated as though fully set forth herein; and

WHEREAS, Articles II. B. and VIII of the LCA, establish the SPONSORS' cost-share responsibilities for the operation, maintenance and rehabilitation of the DAM ("O&M"), including mitigation lands and borrow areas purchased for the construction of the DAM, once the DAM has been completed and responsibility for O&M has been turned over to the SPONSORS by the Government ("TURNOVER"); and

WHEREAS, SPONSORS entered into Agreement No. D93-035 which clarifies responsibilities and procedures for the operation, maintenance, management, rehabilitation, development, lease, sale or other disposition

1 of property rights acquired for the dam; and

2 **WHEREAS**, the Government has scheduled the TURNOVER of the DAM to SPONSORS in August 2002;
3 and

4 **WHEREAS**, it is understood that water conservation at the DAM is the subject of a separate study and any
5 facilities, quantities of storage, and/or changes in operation, and the cost sharing for water conservation, if
6 implemented, shall be addressed in a separate agreement; and

7 **WHEREAS**, the SPONSORS hereto have the authority and capability to furnish the cooperation hereinafter
8 set forth and are willing to participate in the cost-sharing of O&M responsibilities for the DAM, in accordance with the
9 terms of this AGREEMENT.

10 **NOW, THEREFORE, THE SPONSORS MUTUALLY AGREE AS FOLLOWS:**

11 **A. PURPOSE**

12 The purpose of this AGREEMENT is to prescribe the methodology for implementing the
13 responsibilities including the procedures for budgeting and tracking costs among the SPONSORS for the O&M of the
14 DAM as specified in the LCA and in accordance with the approved O&M Manual provided by GOVERNMENT.

15 **B. EFFECTIVE DATE/TERM**

16 1. The term of this AGREEMENT shall become effective upon the signature date of the last of
17 the SPONSORS to sign this AGREEMENT and shall, upon mutual agreement of all
18 SPONSORS, remain in effect until further notice, subject to Subparagraph B. 2. below or
19 unless terminated in accordance with Paragraph P (TERMINATION), below.

20 2. SPONSORS agree to review this AGREEMENT every three (3) years, or earlier as
21 described below, to determine what, if any, changes or modifications should be made to this
22 AGREEMENT, as follows:

23 a. In the event that the SPONSORS' respective Chief Engineers representing the
24 respective SPONSORS ("CHIEF ENGINEERS") agree that no changes or
25 modifications are necessary, the AGREEMENT shall remain in effect, with no further
26 action required by the SPONSORS' respective Boards' of Supervisors; however

1 b. In the event that one (1) or more CHIEF ENGINEER(S) requests changes to this
2 AGREEMENT, the SPONSORS' CHIEF ENGINEERS or respective Board of
3 Supervisors representative agree to meet within thirty (30) calendar days of the
4 mailing of written notice, to determine the extent of the changes required, and to
5 prepare the amendment(s) accordingly.

6 c. Amendments prepared shall be in accordance with Paragraph Y (AMENDMENTS),
7 below, and must be approved by the SPONSORS' respective Boards of
8 Supervisors.

9 **C. DEFINITIONS**

10 For the purposes of this AGREEMENT, the following definitions shall apply:

- 11 1. The term "GOVERNMENT" shall mean the Department of the Army.
- 12 2. The term "PROJECT" shall mean construction of certain flood control improvements on the
13 Santa Ana River, including Santiago Creek.
- 14 3. The term "LCA" shall mean the Local Cooperation Agreement between the GOVERNMENT
15 and the SPONSORS, effective December 14, 1989, for construction of the Project.
- 16 4. The term "DAM" shall mean the Seven Oaks Dam, reservoir area and appurtenances, along
17 with mitigation lands, U. S. Forest Services lands, the impervious borrow areas, and other
18 lands purchased in fee or permanent easement for the construction of the DAM, as identified
19 in Exhibit A, attached hereto.
- 20 5. The term "GDM" shall mean the General Design Memorandum, and in the context used
21 herein, refers specifically to the Phase II of the Document dated August 1988, which
22 specifies the general requirements for mitigation and enhancement lands and structural
23 improvements.
- 24 6. The term "SEVEN OAKS TRIAD" shall mean the Ad Hoc committee formed by
25 representatives of the Government, the State of California, Department of Water Resources
- 26

1 - Division of Safety of Dams (DSOD), and the SPONSORS who have the responsibility to
2 provide direction on, monitor the construction of, and operate and maintain the DAM.

3 7. The term "O&M" shall mean the operation, maintenance, repair, replacement and
4 rehabilitation activities for the DAM.

5 8. The term "TURNOVER" shall mean the time when GOVERNMENT determines the DAM is
6 complete and turns completed DAM over to SPONSORS, who shall accept the DAM and its
7 O&M responsibility in accordance with LCA, Article II, Paragraph B and Article VIII.

8 9. The term "APPROVED DAM OPERATION SCHEDULE" shall mean the Water Control Plan
9 prepared by GOVERNMENT.

10 10. The term "ANNUAL BUDGET" shall mean the budget, prepared annually by the
11 SPONSORS (based upon SPONSORS' fiscal year) for the DAM's O&M activities.
12 SPONSORS' fiscal year shall be defined as the period beginning July 1 and ending June 30.

13 11. The term "DISPUTE(S)" shall mean a determination that the SPONSORS have failed to
14 agree on action(s) in a timely manner, as required by the SPONSORS under this
15 AGREEMENT, or with respect to this AGREEMENT.

16 12. The term "CHIEF ENGINEER(S)" shall mean the respective Chief or Flood Control Engineer
17 for ORANGE, SAN BERNARDINO or RIVERSIDE.

18 13. The term "COST SHARE" shall mean the SPONSORS' sharing of expenses for DAM's O&M
19 activities, as defined in Articles II. B. and VIII. of the LCA.

20 **D. TURNOVER**

21 TURNOVER of DAM O&M responsibilities to SPONSORS is expected to occur when the following
22 requirements, as well as requirements stated in the LCA and GDM, and those outlined through the
23 Seven Oaks Triad, have occurred. GOVERNMENT will inform SPONSORS of the requirements for
24 mitigation of impacts to the San Bernardino Kangaroo Rat and other new endangered species
25 pending GOVERNMENT's consultations with the U.S. Fish and Wildlife Service:
26

1. Notification in writing by the GOVERNMENT that the DAM and all appurtenances have been completed, as well as all lands and mitigation areas required for O&M are made available to SPONSORS (If not already in SPONSORS' possession). Written notification of such action shall provide for SPONSORS' concurrence that the DAM has been completed and ready for TURNOVER.
2. Verification in writing from DSOD, that DSOD's requirements have been fulfilled. (Note: DSOD certification can only occur after the DAM has been turned over to SPONSORS.)
3. DAM's O&M Manual, has been completed and provided to SPONSORS by GOVERNMENT.
4. GOVERNMENT's construction contractor has completed the "Punch List" of items or their disposition identified in GOVERNMENT's turn-over letter.
5. As-Built drawings, including one set full size mylars, one set half size mylars, one set full size blueines, three sets half size blueines and electronic files of the As-Built drawings on CD-ROM disks have been completed and provided to SPONSORS by GOVERNMENT.
6. Foundation Report, Embankment Criteria and Performance Reports have been completed and provided to SPONSORS by GOVERNMENT.
7. Assignment of SPONSORS as agents for GOVERNMENT, for matters concerning certain rights-of-way or lands under the jurisdiction of the U.S. Forest Service, as described in the Memorandum of Understanding between the Chief, United States Department of Agriculture Forest Service and GOVERNMENT, regarding construction and O&M of the DAM.
8. A Water Control Plan which contains the "APPROVED DAM OPERATIONS SCHEDULE" has been completed and provided to SPONSORS by GOVERNMENT.
9. Emergency Action Plan (EAP) which prescribes the monitoring, reporting, remediation, notification, evacuation and recovery procedures for imminent or actual failure conditions due to flood flows at the DAM, has been completed and provided to SPONSORS by GOVERNMENT.

E. COST SHARE

1. SPONSORS acknowledge that their respective annual COST SHARE for O&M of the DAM as established in the LCA, are as follows:
 - a. ORANGE -87.70%
 - b. SAN BERNARDINO - 7.03%
 - c. RIVERSIDE - 5.27%
2. SPONSORS further acknowledge that portions of their respective COST SHARE responsibilities are subject to the payment conditions outlined in, Subparagraph F.1. k., below.

F. SPONSORS' RESPONSIBILITIES

1. SPONSORS' shall jointly be responsible for:
 - a. Operating and maintaining the DAM, adhering to the O&M Manual and The Water Control Plan. Physical operation of DAM is assigned to ORANGE and SAN BERNARDINO.
 - b. Implementing a Maintenance Management System or equivalent.
 - c. Employing operation and maintenance staff including dam tenders.
 - d. Employing security services as needed, to monitor and resolve potential trespassing violations and to secure area from potential acts of vandalism.
 - e. In accordance with the DAM's O&M Manual, performing the activities including but not limited to: Survey and reading of all operation instruments including settlement monuments, inclinometers, piezometers, tunnel pressure transducers, intake load cells, joint meters, tunnel strain meters, strong motion (seismic) instrumentation, reservoir index range lines monuments, and tunnel alignment surveys; as well as monitor water quality, exercise the gates, perform debris removal, including access road debris removal and maintenance.

1 f. Maintaining lands that were purchased by SPONSORS in fee or permanent
2 easement, and lands transferred to GOVERNMENT for DAM construction and
3 operation and maintenance, as identified in Exhibit A, unless such lands/sites are
4 properly disposed of through sale or otherwise.

5 i. Performing mitigation land management tasks, including but not limited to the
6 following:

7 1) Implement, and account separately for GOVERNMENT credit
8 purposes, for tasks defined in the Santa Ana River "Woolly Star"
9 (Eriastrum densifulium ssp. Sanctorum) Management Plan, dated
10 November 1993, or as updated, including but not limited to:

11 (a) Monitoring for exotic species, encroachments, and dumping of
12 debris.

13 (b) Removing exotic species and dumping of alien soils and other
14 material.

15 (c) Installing and maintaining human intrusion controls, and
16 patrolling the site.

17 (d) Acquiring and managing contracts for studies, (e.g. population
18 and habitat monitoring, habitat renewal and population
19 expansion).

20 2) Determine during the months of November and March of each year,
21 which land management responsibilities will be assigned to either
22 ORANGE or SAN BERNARDINO,

23 3) Acquire permits, as applicable, for tasks in Subparagraphs 1) (a),
24 (b), (c), and (d) above.

25 4) Coordinate other tasks as may be required in the future pursuant to
26 future direction by GOVERNMENT.

- 1 5) Coordinate with the GOVERNMENT, resource agencies, and others
2 as applicable.
- 3 6) Prepare an Annual Report on management activities for distribution
4 to GOVERNMENT, resource agencies, and others as applicable.
- 5 7) Prepare and update public information documents (pamphlets,
6 reports, press releases), for the "Woolly Star", and distribute such
7 documents to local schools, museums, libraries, and newspapers as
8 needed.
- 9 8) Conduct or arrange for public information programs as needed.
- 10 9) Organize and host an annual "Woolly Star Preserve Tour" as
11 needed. (Area shown in EXHIBIT A.)
- 12 10) Undertake any other actions as required by Agreement No. D93-035
13 and Management Plan for the Santa Ana River Woolly Star and
14 Woolly Star Mitigation Budget, Exhibit 'C'.

15
16 j. Preparing the Annual O&M Budget

- 17 1) During March and November of each year, determine activities to be
18 accomplished by each of the SPONSORS, and GOVERNMENT if
19 applicable, for the upcoming fiscal year (July 1 through June 30), as
20 well as to estimate requirements for the proposed annual budgets
21 for the subsequent three (3) years (4 years total), as follows:
 - 22 (a) Identify which activities will be accomplished by
23 SPONSORS' personnel (direct costs) or by contractors
24 (indirect costs).
 - 25 (b) Identify costs in the next annual and next three (3) annual
26 projected budgets for land management tasks (including

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estimated direct and contract costs), which are to be included in the O & M budget.

(c) Include applicable costs for labor burden and overhead.

2) Submit to one another in writing, by January 1st (with revisions due by February 1st) SPONSORS' respective proposed annual O&M budget for the next fiscal year. These proposed budgets shall include requirements for tasks specified in Subparagraph 10 (a), (b) and (c), above.

3) Obtain tentative approval of proposed annual budgets by each SPONSORS' respective Chief Engineer. SPONSORS' costs shall be included in each SPONSORS' respective proposed annual budget, for approval by the SPONSORS' respective Boards of Supervisors.

4) As applicable, budget separately every fifteen (15) to twenty-five (25) years, for the "major replacement" items shown in Exhibit B ("ESTIMATED ANNUAL OPERATION AND MAINTENANCE BUDGET"), attached hereto as though fully incorporated herein, based on the cost-share formula specified in Paragraph E (COST SHARE), above.

5) Should a disagreement occur among the SPONSORS regarding O&M costs or service delivery for the DAM, ORANGE, because of its responsibility for payment of the majority of O&M costs, shall have the option, at its sole discretion, of accomplishing work task(s) with its own forces or by contracting out for the services and include such expenses in determining the annual costs for each SPONSOR.

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- personnel. These activities may include but not be limited to gate removal and repair, outlet works tunnel invert overlay and major intake tower maintenance.
 - e. Contracting for reading and maintaining the seismometers and accelographs.
 - f. Performing chemical herbicide weed control for DAM and appurtenances.
 - g. Performing water quality testing and/or monitoring in accordance with the O&M Manual.
 - h. Participating in all post-earthquake, pre-flood, periodic routine and non-routine inspections of DAM and appurtenances.
 - i. Performing all survey work other than that performed by GOVERNMENT.
 - j. Administering contract items estimated to cost more than twenty five thousand dollars (\$25,000), including but not limited to inspections (i.e. annual inspections), instrument monitoring, monitoring survey settlement monumentation and interpreting the data, and if necessary, contracting for "Woolly Star" biological services and security services.
 - k. Being the lead SPONSOR for preparation of current and future Annual Budgets for DAM O&M operations.
 - l. Reconciling annual expense reports received from SAN BERNARDINO and RIVERSIDE, and invoicing or providing reimbursements to SAN BERNARDINO and RIVERSIDE, based upon results of final accounting.
3. SAN BERNARDINO shall be responsible for:
- a. Operating and maintaining the DAM gates in cooperation with ORANGE, and in accordance with, above.
 - b. Implementing a Maintenance Management System, or equivalent, in cooperation with ORANGE.
 - c. Performing O&M on behalf of the SPONSORS, unless otherwise agreed upon by SPONSORS.

- d. Maintaining "Woolly Star" habitat and other mitigation lands, as applicable or otherwise agreed upon by SPONSORS in accordance with Agreement No. D93-035.
- e. Maintaining the borrow sites, as applicable in accordance with Agreement No. D93-035.
- f. Perform rodent control.
- g. Administering contract(s) for work under twenty-five thousand dollars (\$25,000).
- h. Invoicing ORANGE and RIVERSIDE for their COST-SHARE.
- i. Paying its COST SHARE per Section E, above.

4. RIVERSIDE shall be responsible for:

- a. Paying its cost share per Section E, above.

G. PROPERTY TAXES

There are currently no property taxes ("Taxes") levied on the former impervious borrow area ("Property"), which SPONSORS own in fee, with each SPONSOR holding an interest in the Property in accordance with their cost share for DAM construction. However, in the event Taxes are levied, ORANGE shall pay Taxes, and invoice SAN BERNARDINO and RIVERSIDE for their respective cost share as all other O&M costs, pursuant to Section E. and Section F. SAN BERNARDINO shall endeavor to have Taxes reduced or eliminated based on the fact that SPONSORS jointly own the property.

H. OTHER TASKS AND SERVICES

Other tasks and services that are deemed necessary for DAM management and authorized in writing by the Sponsor's respective Chief Engineers, shall be cost shared pursuant to Section 'E' and budgeted for pursuant to Section F. Such tasks and services may include but are not limited to, tasks associated with property disposition, evaluation of water conservation proposals, or any requests for permits associated with the Woolly Star preserve.

I. ESTIMATED ANNUAL BUDGET(S)

1. The O&M cost for the initial year of DAM operation (excluding O&M for environmental mitigation) is estimated at one million one hundred twenty six thousand six hundred dollars (\$1,126,600) and is shown in Exhibit B.
2. Future O&M annual budget(s) shall be established by SPONSORS prior to July 1st of each fiscal year, in accordance with Section F above. ORANGE will be the lead SPONSOR for establishing projected annual budget(s) for DAM's O&M activities.
3. Figures and/or costs from each SPONSOR used to prepare annual budget(s) shall, in addition to direct labor costs, include applicable costs for labor burden and overhead. The established rates used to calculate these costs shall not exceed fifty-five (55%) percent each. Supporting documentation for these rates shall be maintained and available at the request of any SPONSOR.

J. AUDITS

The SPONSORS shall be allowed to audit each other's expenses. SAN BERNARDINO and ORANGE, as applicable, shall maintain all records and supporting source documents for five (5) years after each audit.

K. INSPECTIONS BY THE GOVERNMENT

GOVERNMENT may, at its own prerogative, periodically inspect the DAM to ensure the SPONSORS are operating and maintaining the DAM in accordance with the O&M Manual and to the satisfaction of the Government. Government may prepare list of items for improvement, if any, regarding SPONSORS' O&M.

L. NOTICES

1. Notices or other communications which may be required or provided under the terms of this AGREEMENT shall be given as follows.

ORANGE COUNTY: Orange County Flood Control District
 Public Facilities and Resources Department
 300 N. Flower
 P.O. Box 4048
 Santa Ana, CA 92702-4048

Attn: Director

SAN BERNARDINO

COUNTY: San Bernardino County Flood Control District
825 East Third Street
San Bernardino, CA 92415-0835
Attn: Chief Engineer

RIVERSIDE

COUNTY: Riverside County Flood Control and Water Conservation District
1995 Market Street
Riverside, CA 92501
Attn: General Manager-Chief Engineer

2. All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, SPONSORS may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours, or in the event of receipt after business hours, the following business day. Any notices, correspondence, reports and/or statements authorized or required by this AGREEMENT, addressed in any other fashion shall be deemed not given.

3. SPONSORS may change the address to which such communications are to be directed by giving written notice to the other SPONSORS in the manner provided in this section.

M. WORKERS' COMPENSATION AND LIABILITY INSURANCE

- 1. SPONSORS agree to be responsible for providing workers' compensation insurance for their respective staff employed at the DAM.
- 2. Sponsors COST SHARE of any liability insurance will be addressed in a separate agreement or MOU, or an amendment to this agreement.

N. INDEMNIFICATION

1. Indemnification by ORANGE:

ORANGE hereby agrees to indemnify, defend (with counsel acceptable to SAN BERNARDINO and RIVERSIDE), release and hold harmless SAN BERNARDINO and

1 RIVERSIDE, their elected and appointed officials, officers, employees, agents (including
2 their contractors and subcontractors), licensees, and representatives (collectively, the "SAN
3 BERNARDINO AND RIVERSIDE INDEMNITEES"), and each of them, and their property
4 from all loss, liability, damages, claims, costs and expenses (including attorneys' fees and
5 court costs) arising out of, based upon or relating to a breach of this AGREEMENT by
6 ORANGE or the willful misconduct or negligent acts or omissions of ORANGE, or its elected
7 and appointed officials, officers, employees, agents (including contractors and
8 subcontractors), licensees, and representatives (collectively, the "ORANGE
9 INDEMNITEES") in connection with this AGREEMENT; provided, however, that nothing
10 contained in this subparagraph shall operate to relieve SAN BERNARDINO and RIVERSIDE
11 from any loss, liability, damages, claims, costs, or expenses to the extent determined by a
12 court of competent jurisdiction to have been proximately caused by the willful misconduct or
13 negligent acts or omissions of SAN BERNARDINO and RIVERSIDE, the SAN
14 BERNARDINO AND RIVERSIDE INDEMNITEES, or any of them. Payment shall not be a
15 condition precedent to recovery under the foregoing indemnity.

16 **2. Indemnification by SAN BERNARDINO:**

17 SAN BERNARDINO hereby agrees to indemnify, defend (with counsel acceptable to
18 ORANGE and RIVERSIDE), release and hold harmless ORANGE and RIVERSIDE, their
19 elected and appointed officials, officers, employees, agents (including their contractors and
20 subcontractors), licensees, and representatives (collectively, the "ORANGE AND
21 RIVERSIDE INDEMNITEES"), and each of them, and their property from all loss, liability,
22 damages, claims, costs and expenses (including attorneys' fees and court costs) arising out
23 of, based upon or relating to a breach of this AGREEMENT by SAN BERNARDINO or the
24 willful misconduct or negligent acts or omissions of SAN BERNARDINO, or its elected and
25 appointed officials, officers, employees, agents (including contractors and subcontractors),
26 licensees, and representatives (collectively, the "SAN BERNARDINO INDEMNITEES") in

1 connection with this AGREEMENT; provided, however, that nothing contained in this
2 subparagraph shall operate to relieve ORANGE and RIVERSIDE from any loss, liability,
3 damages, claims, costs, or expenses to the extent determined by a court of competent
4 jurisdiction to have been proximately caused by the willful misconduct or negligent acts or
5 omissions of ORANGE AND RIVERSIDE, the ORANGE AND RIVERSIDE INDEMNITEES,
6 or any of them. Payment shall not be a condition precedent to recovery under the foregoing
7 indemnity.

8 **3. Indemnification by RIVERSIDE:**

9 RIVERSIDE hereby agrees to indemnify, defend (with counsel acceptable to ORANGE and
10 SAN BERNARDINO), release and hold harmless ORANGE and SAN BERNARDINO, their
11 elected and appointed officials, officers, employees, agents (including their contractors and
12 subcontractors), licensees, and representatives (collectively, the "ORANGE AND SAN
13 BERNARDINO INDEMNITEES"), and each of them, and their property from all loss, liability,
14 damages, claims, costs and expenses (including attorneys' fees and court costs) arising out
15 of, based upon or relating to a breach of this AGREEMENT by RIVERSIDE or the willful
16 misconduct or negligent acts or omissions of RIVERSIDE, or its elected and appointed
17 officials, officers, employees, agents (including contractors and subcontractors), licensees,
18 and representatives (collectively, the "RIVERSIDE INDEMNITEES") in connection with this
19 AGREEMENT; provided, however, that nothing contained in this subparagraph shall operate
20 to relieve ORANGE and SAN BERNARDINO from any loss, liability, damages, claims, costs,
21 or expenses to the extent determined by a court of competent jurisdiction to have been
22 proximately caused by the willful misconduct or negligent acts or omissions of ORANGE and
23 SAN BERNARDINO, the ORANGE AND SAN BERNARDINO INDEMNITEES, or any of
24 them. Payment shall not be a condition precedent to recovery under the foregoing
25 indemnity.
26

1 **O. DISPUTES**

2 DISPUTES, as defined in Paragraph C (DEFINITIONS), above, between two or more of the
3 SPONSORS in respect to the terms of this AGREEMENT, or to any breach thereof, shall be resolved
4 by the methods hereinafter set forth:

5 1. When a dispute exists between two or more SPONSORS, the respective CHIEF
6 ENGINEERS shall meet and confer to resolve the dispute within a period of twenty (20)
7 calendar days of written notice by the disputing SPONSOR or SPONSORS, of the existence
8 of the dispute. A unanimous decision of the CHIEF ENGINEERS within this twenty (20) day
9 period shall resolve the dispute and shall be binding on every SPONSOR.

10 2. Should the CHIEF ENGINEERS fail to reach a unanimous decision within the twenty (20)
11 day period, the CHIEF ENGINEERS shall present the dispute within the next ten (10) days
12 to the SPONSORS' respective Chair of the Boards of Supervisors for each SPONSOR, or to
13 their designees. The SPONSORS' respective Chair of the Boards of Supervisors, or their
14 designees, shall meet and confer to resolve the dispute within a period of twenty (20)
15 calendar days of presentation of the dispute. A unanimous decision of the respective
16 Chairs, or their designees within this twenty (20) day period shall resolve the dispute and be
17 binding on every SPONSOR.

18 3. If a dispute is not resolved pursuant to Sub paragraphs 1. and 2. above, within the time
19 frames set forth above, the SPONSORS shall refer the dispute within the next five (5)
20 calendar days to an arbitration service mutually agreeable to the SPONSORS. SPONSORS
21 agree that time is of the essence in resolving disputes relating to this AGREEMENT and that
22 the SPONSORS shall expedite the presentation of the disputes for resolution. The mutually
23 agreed upon arbitration service shall be requested to decide the dispute within fifteen (15)
24 calendar days after presentation.

25 4. The SPONSORS agree that they shall accept any arbitrator assigned by the arbitration
26 service to resolve the dispute. The SPONSORS further agree that they will be bound by any

1 award made by the arbitration service, and that any award made shall conclusively resolve
2 the dispute. All costs incurred in presenting a dispute, including the costs of any arbitration
3 service, shall be divided equally among the SPONSORS unless some other division of costs
4 is made as part of the arbitrator's award.

- 5 5. SPONSORS shall agree that before any party to this AGREEMENT may bring suit in any
6 court concerning an issue relating to this AGREEMENT, such party must first seek in good
7 faith to resolve the issue through negotiation or other forms of non-binding alternative
8 dispute resolution mutually acceptable to the other SPONSORS.

9 **P. TERMINATION**

- 10 1. Any SPONSOR may propose to terminate this AGREEMENT, subject to and effective upon
11 mutual agreement of all SPONSORS, following delivery of a written notice to the other
12 SPONSORS, one hundred eighty (180) days prior to the date the SPONSOR giving notice
13 desires the termination to be effective, and in accordance with conditions and procedures
14 described in subparagraphs 2, 3, 4, and 5 below.
- 15 2. In the event of proposed termination of this AGREEMENT pursuant to Subparagraph 1
16 above, the SPONSORS further agree to take the opportunity to meet, for the purpose of
17 discussing and resolving any outstanding issues, or curing any alleged breach of this
18 AGREEMENT, in accordance with Paragraph O (DISPUTES) above, prior to the effective
19 date of any such termination.
- 20 3. Notice of Termination shall be in writing and shall state the cause for termination, if required,
21 and the proposed date upon which such termination is to be effective. Notice shall be
22 served as provided in Paragraph L (NOTICES), above.
- 23 4. If this AGREEMENT is terminated, each SPONSOR shall be liable for payment of its COST
24 SHARE of expenses incurred while the AGREEMENT was in effect, in accordance with
25 COST SHARE provisions herein within 45 days of receipt of a final accounting by ORANGE.
26

1 5. Termination of this AGREEMENT is subject to agreement among the SPONSORS on an
 2 alternative approach to perform and pay for O & M and environmental mitigation tasks in
 3 accordance with the LCA and Agreement No. D93-035.

4 **Q. SUCESSORS AND ASSIGNS**

5 This AGREEMENT shall be binding upon the successors and assigns of the SPONSORS hereto,
 6 and shall not be assigned without the prior written consent and approval of the SPONSORS. Failure
 7 to obtain SPONSORS' written approval of any proposed transfer or assignment will be deemed to be
 8 a proposal to terminate this AGREEMENT within the meaning of Paragraph P (TERMINATION)
 9 above.

10 **R. WAIVER AND INTERPRETATION**

11 Titles or captions contained herein are inserted as a matter of convenience and for reference, and in
 12 no way define, limit, extend, or describe the scope of this AGREEMENT or any provisions hereof.
 13 No provision in this AGREEMENT is to be interpreted for or against a SPONSOR because that
 14 SPONSOR or his legal representative drafted such provision.

15 **S. WAIVER OF RIGHTS**

16 The failure of any SPONSOR to insist upon strict performance of any of the terms, covenants or
 17 conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that SPONSOR
 18 may have, and shall not be deemed a waiver of the right to require strict performance of all the
 19 terms, covenants and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the
 20 subsequent breach or default of any term, covenant or condition of this AGREEMENT.

21 **T. SEVERABILITY**

22 If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or
 23 unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be
 24 given effect to the fullest extent reasonably possible.

U. ATTORNEY FEES/COSTS

Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each SPONSOR shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees, unless as otherwise provided for in this AGREEMENT.

V. GOVERNING LAW AND VENUE

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 SPONSORS hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

W. CONFIDENTIALITY

To the extent permitted by the laws governing each of the SPONSORS, the SPONSORS agree to maintain the confidentiality of exchanged information when requested to do so by the providing SPONSOR.

X. AUTHORITY

The SPONSORS 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.

Y. AMENDMENTS

This AGREEMENT may be changed or modified only upon the written consent of the SPONSORS hereto.

Z. ENTIRE AGREEMENT

This document sets forth the entire AGREEMENT between the SPONSORS and may be modified only by further written amendment between the SPONSORS hereto, in accordance with Paragraph Y (AMENDMENTS), above.

1 ///

2 ////

3 **IN WITNESS WHEREOF**, each SPONSOR hereto has executed this AGREEMENT by a duly authorized
4 representative as of the date set forth above.

5

**ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic**

6

7

8 DATE: _____

BY: _____
Chairman of the Board of Supervisors of
Orange County, California

9

10 **SIGNED AND CERTIFIED THAT A
11 COPY OF THIS DOCUMENT HAS
12 BEEN DELIVERED TO THE
13 CHAIRMAN OF THE BOARD**

**APPROVED AS TO FORM:
LAURENCE M. WATSON,
COUNTY COUNSEL**

12

13

Darlene J. Bloom
Clerk of the Board of Supervisors of the
Orange County Flood Control District of
Orange County, California

BY: _____
Deputy Date

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SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

DATE: _____

BY: _____
Chairman of the Board of Supervisors of
San Bernardino County, California

ATTEST:

DATE: _____

BY: _____
Deputy Clerk of the Board of Supervisors of
San Bernardino County, California

APPROVED AS TO LEGAL FORM:

DATE: _____

BY: _____
County Counsel, San Bernardino County

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**RIVERSIDE COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,
a body corporate and politic**

RECOMMENDED FOR APPROVAL:

Date: _____

BY: _____
General Manager/Chief Engineer
Riverside County Flood Control
and Water Conservation District

DATE: _____

BY: _____
Chairman, Riverside County Flood Control and
Water Conservation District Board of
Supervisors

ATTEST:
Nancy Romero, Clerk of the Board

DATE: _____

BY: _____
Deputy

SEAL

APPROVED AS TO LEGAL FORM:

DATE: _____

BY: _____
Assistant County Counsel, Riverside County

EXHIBIT D

SEVEN OAKS DAM BASIN INUNDATION LIMITS

SEVEN OAKS DAM AREA

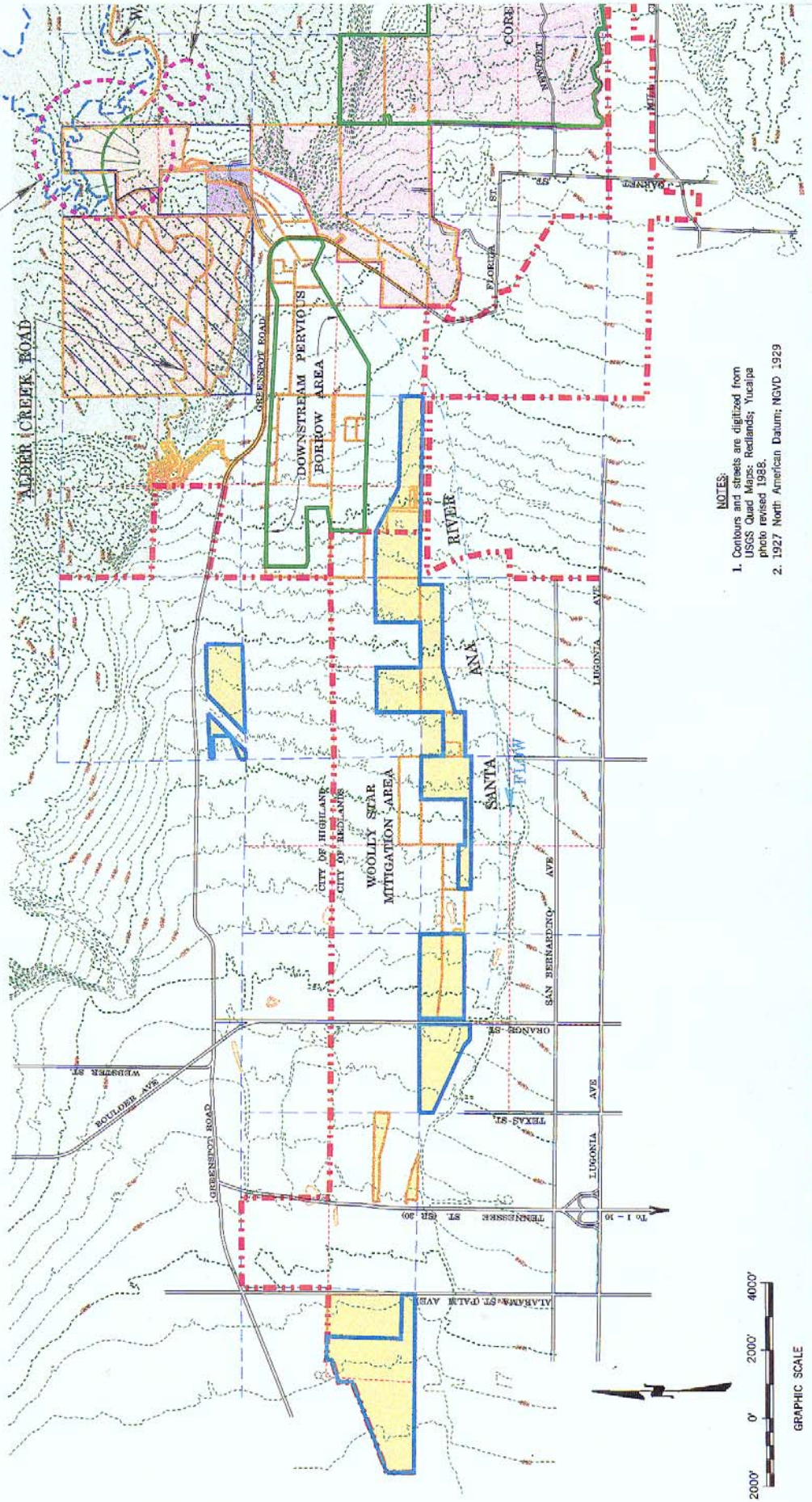
See Detail At Right



LEGEND

LAND OWNERSHIP
US FOREST SERVICE

	SEVWCD
	SRCYCD / WOOLLY STAR MITIGATION
	OCPCD / SARP
	SRCFCGD
	SRCFCGD / Future Forest Service

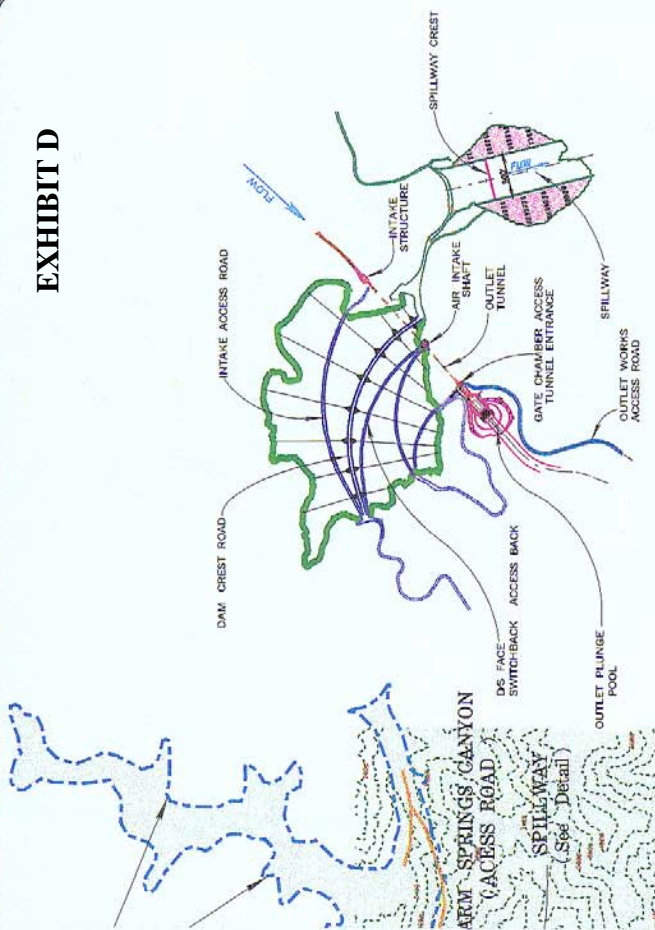


- NOTES:**
1. Contours and streets are digitized from USGS Quad Maps: Redlands; Yucaipa photo revised 1988.
 2. 1927 North American Datum; NGVD 1929



GRAPHIC SCALE

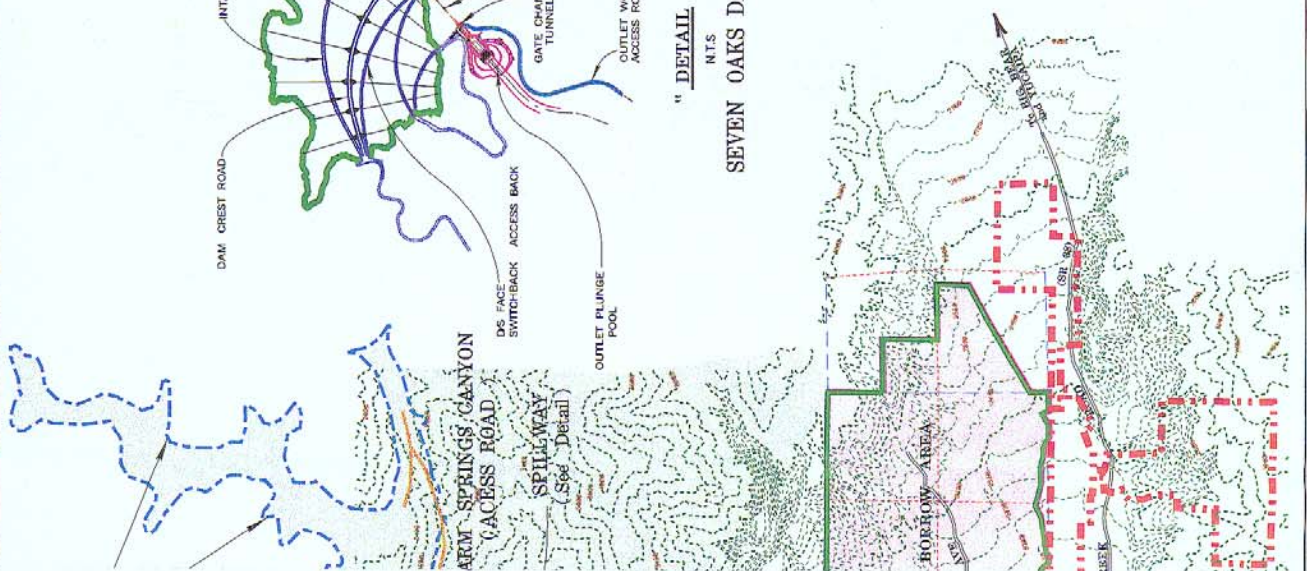
EXHIBIT D



"DETAIL"

NTS

SEVEN OAKS DAM AREA



SEVEN OAKS DAM AREA



EXHIBIT D
COUNTY OF ORANGE
PUBLIC FACILITIES & RESOURCES DEPARTMENT

Vicki L. Wilson, Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 567-6300
Fax: (714) 567-6340

DATE: November 13, 2001
TO: Herb Nakasone, Manager, PFRD/Program Development
FROM: Bill H. Tidwell, Manager, PFRD/Operations and Maintenance
SUBJECT: Proposed Operation and Maintenance Budget for Seven Oaks Dam, Mid-year Adjustment

This is in response to a request that we provide an adjusted estimate for the operation and maintenance budget for the Seven Oaks Dam Project.

As you know, our initial estimate for the O&M budget for Seven Oaks Dam during FY 2000-2001 (Attachment 1), was for approximately \$750,000. That estimate was subsequently increased to \$867,000 (Attachment 2), based upon the addition of liability insurance costs estimated at approximately \$115,000 per year. We indicated, that a number of potentially costly items had not yet been thoroughly defined and were therefore excluded from those earlier estimates.

It was recently determined that PFRD engineering staff will assume the responsibility for the oversight of reservoir operations. This oversight was formerly accomplished by Corps' staff for an estimated cost of approximately \$50,000 per year. In addition we have received more accurate information relating to the cost of liability insurance for this project. It now appears that annual insurance costs will be approximately \$324,600. Accordingly, the estimated annual O&M budget for the Seven Oaks Dam facility is currently being adjusted as follows:

Salaries	\$348,000
Reservoir Operations	\$50,000
Overtime	\$24,000
Equipment	\$125,000
Materials	\$110,000
Security	\$65,000
Training	\$5,000
Contracts	\$75,000
Liability Insurance	<u>\$324,600</u>
Adjusted Estimate:	\$1,126,600

EXHIBIT D

It is again noted that this estimate does not include potentially significant costs associated with aspects of Woolly Star and K. Rat management programs still being finalized. Nor does this estimate reflect the cost of undetermined operation and maintenance activities that may be required by the Corps' O&M Manual still being finalized.

Please contact me at (714) 567-6230 or Max Bridges at (714) 567-6286 if you have any questions regarding this matter.



Bill H. Tidwell

MB:as/jd(1317)
S:\O&M Folders\Clerical\O&M Typing\BridgesM\MM Nakasone-Proposed O&M Budget for 7 Oaks Dam Mid Yr Adj.doc

cc: A. Olomi
A. Eftekhari
B. Hisey
R. Benites



EXHIBIT D
COUNTY OF ORANGE
PUBLIC FACILITIES & RESOURCES DEPARTMENT

Vicki L. Wilson, Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 834-2300
Fax: (714) 834-5188

DATE: FEB 11 2000

TO: Bill Tidwell, Manager
PFRD/Operations and Maintenance

FROM: H. I. Nakasone, Manager
PFRD/Program Development Division

SUBJECT: Seven Oaks Dam Budget for Woolly Star Mitigation

The Attachment 1 Woolly Star Management Program/Five Year Plan (Plan) and corresponding budget has been approved by the Santa Ana River Mainstream Project Local Sponsors, the U. S. Army Corps of Engineers (Corps), the U. S. Fish and Wildlife Service (USFWS), and the State of California Fish and Game Service (FGS). Assuming that an agreement for Seven Oaks Dam Operations and Maintenance (O&M) is approved by the Local Sponsors by June 30, 2000, estimated FY 2000-2001 budget requirements are:

		<u>Estimated Cost</u>	<u>OCFCD Cost Share @ 87.7%</u>
Requirement #1	Biological Services (Consultant contract, currently managed by SBCFCD)	\$55,000	\$48,240
Requirement #2	SBCFCD Staff Services (For Control of Exotic Species and Human Intrusion, Public Education, Administration)	\$25,000	\$21,920
Total Requirement		<u>\$80,000</u>	<u>\$70,160</u>
Note:	SBCFCD/RCF&WCD Cost Share	<u>\$9,840</u>	<u>NA</u>

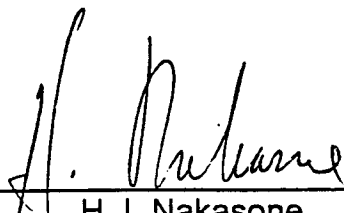
EXHIBIT D

<u>Task</u>	<u>Assigned To</u>	<u>Estimated Cost Over 5 Years</u>
4. Human Intrusion Controls	Local Sponsors	
a. Mark Mitigation Lands boundaries—aesthetic treatment barriers and elements off-road vehicle access		\$ 25,000
b. Patrol and maintenance of site boundaries		\$ 25,000
5. Public Awareness Program	Corps/Local Sponsors	\$ 15,000
a. Update Management Plan to be provided as a Habitat Protection Plan to city and county agencies		
b. Press release to media		
c. Information updates to educational institutions		
d. Contact with local citizen groups		
Estimated 5-Year Costs		<hr/> \$360,000

EXHIBIT D

SBCFCD has a contract with Psomas, on behalf of the Local Sponsors, for biological services (see Budget Requirement #1 above), and invoices OCFCD and RCFC&WCD on a quarterly basis for their respective cost share of Psomas contract expenses. David Lovell of SBCFCD manages the contract. Mr. Lovell has also been responsible for updating the Plan and corresponding budget, and for arranging meetings (at least one per year) among the Local Sponsors, the Corps, USFWS and FGS to discuss Plan progress, updates, etc. Upon approval of the O & M Agreement, we anticipate that you will directly coordinate with Mr. Lovell on responsibilities related to Budget Requirement #1, and authorize SBCFCD field staff to conduct specific Woolly Star lands management tasks per Budget Requirement #2, above.

Please contact Elayne Rail of my staff (834-6060) if you have questions regarding this memo.



H. I. Nakasone

ER:bs:\Pfr188\Memo re SOKD Budget Woolly Star Mitigation.doc

Attachment

cc: Debra Lakin, PFRD/Mgmt. Services
David Lovell, SBCFCD
Dick Runge, PFRD/PDD
Terrie Meideiros, PFRD/PDD
Ashok Tahilramani, PFRD/Mgmt Services
Steve Thomas, RCF & WCD
Mike Wellborn, PSD

EXHIBIT D

SCOPE OF WORK
SANTA ANA RIVER WOOLLY STAR MANAGEMENT PROGRAM
(Five-Year Plan for Program Years 4-8)

Tasks to be performed for the five-year program:

<u>Task</u>	<u>Assigned To</u>	<u>Estimated Cost Over 5 Years</u>
1. Population and Habitat Monitoring	Local Sponsors/Consultant	
a. Model life span data of sample unit plants		\$125,000
b. Aerial photographs following each 10-year magnitude, or on ground survey flood event for comparison to management plan sample photos (1" = 2000')		\$ 5,000
2. Habitat Renewal and Population Expansion		
a. Experimental treatment plots for plant seedlings	Local Sponsors/Consultant	\$ 90,000
b. Seed collection viability testing		\$ 50,000
3. Control of Exotic Species	Local Sponsors	
a. Removal of Eucalyptus, Peruvian Pepper, Tree of Heaven, Salt Cedar, Giant Cane in 1993 and each year thereafter		\$ 25,000
b. Regular patrol for, and removal of, dumps of alien soils and/or organic materials		\$ 25,000