

ORANGE COUNTY WATER DISTRICT
REQUEST FOR PROPOSALS
ENHANCED WATER CONSERVATION AT PRADO DAM



Proposals are due:
January 27, 2010
5 p.m.



Request for Proposals

Enhanced Water Conservation at Prado Dam

The Orange County Water District (OCWD or District) is seeking proposals from qualified firms with experience and expertise in the regulations and procedures of the United States Army Corps of Engineers, environmental analysis, flood forecasting, and related technical studies.

This Request for Proposals (RFP) describes the required scope of services, consultant selection process, and the minimum information that must be included in the proposal. Failure to submit information in accordance with these requirements and procedures may be cause for disqualification.

Background

OCWD was formed in 1933 by a special act of the California State Legislature to protect Orange County's rights to water in the Santa Ana River. OCWD manages the vast groundwater basin under northern and central Orange County that supplies water to more than 20 cities and water agencies, serving more than 2.3 million Orange County residents. Since 1933, OCWD has replenished and maintained the groundwater basin while more than doubling the basin's annual yield. This important source of water provides local groundwater producers with a reliable supply of high-quality water.

OCWD primarily recharges the basin with water from the Santa Ana River and purified water from the Groundwater Replenishment System. To a lesser extent, imported water purchased from the Metropolitan Water District of Southern California is also used to recharge the basin, when available. OCWD holds rights to 362,000 acre-feet per year of Santa Ana River flows reaching Prado Dam. Water enters the groundwater basin via recharge or percolation facilities in the cities of Anaheim and Orange. Behind Prado Dam (constructed and owned by the United States Army Corps of Engineers (USACE) for flood prevention), OCWD owns 2,100 acres in Riverside County, which the District uses for water conservation, water quality improvement and environmental enhancement.

The USACE is currently authorized to enhance water supply by conserving water behind Prado Dam. The USACE can conserve water to elevation 498 feet mean sea level during the flood season and to 505 feet during the non-flood season. Water that is conserved at Prado Dam is released by the USACE and OCWD recharges the water downstream in Orange County. Because of the dire water situation in California, OCWD and the USACE are working together on an expedited process to enhance

water conservation behind the Prado Dam. This project addresses the desire to modify the flood season elevation from 498 feet to 505 feet.

The major components of this project are:

- Technical studies to evaluate the proposed increase in the water conservation elevation and its potential impacts;
- Preparation of a Deviation Study to allow for a temporary deviation from the approved Water Control Plan for Prado Dam. The Deviation Study will request a Water Control Plan deviation for up to three years to also allow flood season water conservation behind Prado Dam to elevation 505;
- Preparation of environmental documents for the Deviation Study;
- Updating the 2005 Prado Basin Water Conservation Feasibility Study – updating this study will provide the framework for requesting a permanent change in the Water Control Plan for Prado Dam; the permanent change will be addressed by modifying the Memorandum of Agreement between the USACE and OCWD;
- Preparation of environmental documents for the updated Feasibility Study.

A Deviation Study is anticipated to be necessary as an interim measure to conserve additional water due to the length of time needed to complete review and approval of the updated Feasibility Study. The District desires to increase the water conservation storage elevation as quickly as possible. The Deviation Study should be completed in such a manner that the enhanced water conservation program can be implemented starting in October 2010. The technical studies that are completed should be applicable to both the Deviation Study and the updated Feasibility Study.

Prado Dam Deviation

The USACE EM No. 1110-2-3600, Management of Water Control Systems states that any decision to depart from specified criteria (i.e., the Water Control Plan) must be approved by the Division Commander. The EM further states that any such decision must be based upon a thorough knowledge of both current conditions and management goals as specified in the USACE ER No. 1110-2-240, Water Control Management. A Deviation Study is required when prevailing circumstances and engineering judgment and experience require varying from the approved Water Control Plan. A Deviation Study provides thorough information on current conditions, the purpose and need for the proposed deviation, alternatives to the action, and an assessment of the potential environmental impacts resulting from the action. A letter from the Corps regarding the Deviation Study is included as Attachment One.

OCWD is anticipating the need to complete a Deviation Study in order to expand the current authority to allow water conservation behind Prado Dam to elevation 505 in the flood season on an interim basis. The increased water storage would provide the opportunity for increased water supplies for the Orange County region. Increasing beneficial use of local resources also reduces demands on our over-burdened California water system.

Update of 2005 Prado Basin Water Conservation Feasibility Study

USACE prepared a Prado Basin Water Conservation Feasibility Study and Environmental Impact Statement/Environmental Impact Report in 2005. The study evaluated several alternatives to increase water conservation at Prado Dam, including:

- Flood season water conservation elevation to elevation 498 feet (alternative 2);
- Flood season water conservation to elevation 500 feet (alternative 3);
- Water conservation to elevation 505 feet year-round (alternative 4);
- Water conservation to elevation 508 feet year-round (alternative 5).

Based on the 2005 Feasibility Study, alternative 2 was selected as the National Economic Development (NED) Plan. It was determined at that time that alternative 2 provided the greatest net economic benefits, while requiring the least amount of mitigation compared to the other alternatives. Implementation of alternative 2 was formalized through a Memorandum of Agreement between the USACE and OCWD that was executed in 2006 (Attachment Two).

Since 2005, the water supply situation in California has changed significantly due to decreased supplies of imported water, below-average precipitation, and the increased value of water. Updated weather forecasting and flood prediction tools are also available. The ground surface elevation in the Prado Reservoir was resurveyed in 2008, providing updated storage-elevation information. Therefore, the evaluation of alternatives presented in the 2005 Feasibility Study needs to be updated.

SCOPE OF WORK

This scope of work (SOW) outlines technical studies related to increasing water conservation, requirements to prepare a Deviation Study with an associated Environmental Assessment (EA) / Finding of No Significant Impact (FONSI) and a Mitigated Negative Declaration to satisfy the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) requirements for changes to the water control operations for Prado Dam. Requirements to prepare an updated Feasibility Study and satisfy NEPA and CEQA requirements for the updated Feasibility Study are also defined.

Approach

The Deviation Study will be prepared in accordance with CESP R 1110-2-8, Guidance on the Preparation of Deviations from Approved Water Control Plans. In order to ensure that the Deviation Study package is approved in an expedited timeframe, the USACE will review the document to ensure that all information is current and consistent with the agency requirements.

Task 1: Project Management

The consultant will hold a kickoff meeting with OCWD and USACE staff to review the scope of work and schedule, and to develop a Project Description, Purpose and Need, and description of Alternatives for purposes of meeting the requirements of the Federal Lead and Cooperating Agencies pursuant to NEPA regulations 1501.6 and 1501.7.

To meet an expedited schedule, this approach assumes a high level of project management and coordination of the project team. This task assumes on-going calls and coordination with members of the USACE staff to obtain information, guidance and approval on elements of the Deviation Study as it is being developed and reviewed. This task also includes coordination with USACE staff to answer any questions or follow up on any items necessary to obtain the District Commander's Recommendation for approval of the Deviation Study, the Updated Feasibility Study, and the Memorandum of Agreement. This task includes monthly meetings with USACE and OCWD staff to provide updates on the project's progress. A written report should also be prepared monthly to document progress, issues that have arisen, upcoming tasks, information requests, upcoming meetings, and related project details.

Task 2: Literature Review

The consultant shall perform a literature review of existing environmental and regulatory documentation, provided by OCWD and/or others. Anticipated documents of review include (but are not limited to) the following:

- Prado Basin Water Conservation Feasibility Study, Main Report with Environmental Impact Statement/Environmental Impact Report, dated February 2005;
- Request for Deviation from Authorized Flood Release Schedule – Prado Dam and Reservoir, Santa Ana River Basin, California, dated October 22, 2004;
- Prado Dam Water Control Plan (current)
- Guidance on the Preparation of Deviations from Approved Water Control Plans (CESPD R. 1110-2-8), dated September 12, 2002;
- Guidance on Modifications to Completed Projects (ER 1165-2-119), dated September 20, 1982.

Relevant information will be gathered and utilized during field investigations, preparation of the regulatory applications, and discussions with regulatory staff.

Task 3: Field Reconnaissance

The consultant will participate in a field reconnaissance visit to familiarize themselves with the site. The field visit will also be used to gather data.

Task 4: Prepare Technical Studies

This task includes the preparation of technical studies related to increasing the flood season water conservation elevation to 505 feet and its potential impacts.

Weather Forecasting and Release Rates

The consultant will review the current requirement for weather forecasting that dictates when the conservation pool will be drained at certain release rates to safely evacuate the pool. The consultant will identify and evaluate available forecasting tools and products, appropriate triggers for draining the pool, and the risks and consequences of inaccurate forecasts, both too high and too low. Alternate triggers for draining the pool will be recommended based on updated technology for forecasting and the potential impacts to upstream and downstream resources and the Corps' flood control mission. Optimal water conservation would rely on a 72-hour weather and runoff forecast for the release rate for the pool. However, the consultant will explore different release rates given the technical requirements of the downstream conditions. The consultant will identify the alternative release rates and the risks involved to the resources upstream and downstream of the dam, as well as appropriate mitigating factors.

Economic Analysis

The consultant will update the economic analysis, including the costs and benefits of water conservation presented in the 2005 Feasibility Study. The cost for an acre-foot of water has more than doubled in the past few years and needs to be updated. The downstream impacts have changed substantially in the intervening years and must be updated to reflect current and future conditions.

Biological Resources

Utilizing existing information and field verification, the consultant will prepare a technical report to provide an update on the status and condition of natural resources, and potential effects that the proposed plan would have on listed species and their habitat. The consultant will perform a field survey and literature review to verify and update the condition and status of sensitive State and Federal species, as well as the potential impacts that the proposed deviation and changes in release of water will have on habitat upstream and downstream of the Dam. The report will be based on a complete review of available literature, including but not limited to the Biological Opinion (2002), Biological Assessment (2000), and any other relevant literature. Compensation and mitigation measures will be analyzed and presented in the document.

Air Quality Analysis

The consultant will provide a current Air Quality Analysis that will include current air monitoring data and management efforts, the current status and applicability of the SCAQMD's Air Quality Attainment Plans and *CEQA Guidelines*. The analysis will also assess the project's contribution to Global Climate Change, using the approach described in the California Air Pollution Control Officers (CAPCOA) CEQA and Climate Change White Paper (White Paper) (January 2008) and CARB's Climate Change Proposed Scoping Plan (Scoping Plan) (October 2008). The consultant will also assess how the proposed deviation would meet Federal Clean Air Act General Conformity requirements, as well as the project's conformance with the State Implementation Plan

for nonattainment pollutants. A screening level general conformity analysis and a Record of Non Applicability will be prepared as well.

Update of Alternatives

The consultant will update the alternatives in the 2005 Feasibility Study. This will include updating Alternative 4 in the 2005 Feasibility Report and the No Action Alternative which is the currently authorized plan for seasonal water conservation.

The results of each of the technical studies will be presented in a draft report provided to OCWD. The draft report will be reviewed by USACE and OCWD. The consultant will prepare a final report for each technical study that addresses comments provided by USACE and OCWD.

Deliverables:

- **Five hard copies and one electronic copy in PDF format of the Draft Technical Study Report (one for each technical study)**
- **Five hard copies and one electronic copy in PDF format of the Final Technical Study Report (one for each technical study)**

Task 5: Deviation Study

The consultant will prepare a Deviation Study in accordance CESP R 1110-2-8, Guidance on the Preparation of Deviations from Approved Water Control Plans. The Deviation Study will include the following elements:

- Copy of sponsor's letter requesting a deviation
- A description of the deviation
- The effects of the deviation on the operational objectives or project purposes
- A description of the potential flood threat over the period of the deviation
- The current and predicted maximum reservoir storage and elevation
- Documentation that the proposed deviation is in compliance with all pertinent environmental laws
- The effect on other agencies and individual interest
- The coordination that has taken place with other agencies
- Alternative measures that could be taken
- Recommendation/rationale on whether a permanent change to the Water Control Plan for this situation is warranted
- A District legal opinion (USACE)
- Any recommended fees or reimbursements to the Federal Government
- Any other information that may be pertinent to the deviation request
- The District Commander's recommendation (USACE)
- Quality Control Certification

All information and analyses as prescribed in the guidance are required. The level of analysis of the proposed increase of the buffer pool from elevation 498 feet to 505 feet should be similar in detail and depth to the analysis of alternatives performed in the 2005 Prado Basin Water Conservation Feasibility Study. However, information analyzed in the 2005 Feasibility Study relied on topography from a 1988 survey. The most current basin topography and the most current storage capacity estimates are based on updated information from a September 2008 survey. The analyses for the proposed project should reflect the updated information. Downstream impacts should be updated, including the status of construction of Reach 9 features, the Santa Ana Regional Interceptor Line, and the requirements for and consistency with the Reach 9 Habitat Management Plan (HMP).

Assumptions:

- o *USACE will provide existing pertinent hydrologic and hydraulic analyses/ data and site condition information for the project area.*

SUBTASK 5A: ADMINISTRATIVE DRAFT DEVIATION STUDY

The consultant will submit an electronic copy plus five (5) printed versions of the Administrative Draft Deviation Study and Environmental Assessment (EA)/Mitigated Negative Declaration (MND) for review by the OCWD and USACE. In order to meet the compressed schedule, OCWD and USACE will each consolidate their respective agency's comments and provide these to the consultant to address.

Deliverables:

- **Five hard copies of the Administrative Draft Deviation Study with EA/MND.**
- **One electronic copy in PDF format of the Administrative Draft Deviation Study with EA/MND.**

SUBTASK 5B: DRAFT DEVIATION STUDY

The consultant will prepare a Draft Deviation Study that addresses comments provided by OCWD and USACE during the administrative draft review process. An electronic copy in PDF format, and a photo-ready copy of the final document, including technical appendices, will be provided for the Draft Deviation Study with the environmental document. The consultant will prepare noticing information packages, including the Draft Deviation Study with EA/MND in electronic format, and distribute to agencies requested by the USACE.

Deliverables:

- **One photo-ready hard copy of the Draft Deviation Study with EA/MND**
- **One electronic copy in PDF format of the Draft Deviation Study with EA/MND**

SUBTASK 5C: FINAL DEVIATION STUDY

The consultant will respond to comments received during the 30-day public review of the Draft Deviation Study with EA/MND. If necessary, this task includes one meeting with OCWD and USACE staff to discuss any areas of concern that arise from the review period. The consultant will prepare a Final Deviation Study with EA/MND that consists of the revised text, as necessary, and the responses to comments received by the public or cooperating agencies.

Deliverables:

- **Five hard copies of the Final Deviation Study with EA/MND.**
- **One electronic copy in PDF format of the Final Deviation Study with EA/MND.**

Task 6: Prepare NEPA and CEQA Documentation for Deviation Study

The consultant will prepare an Environmental Assessment/FONSI and appropriate CEQA-compliant document in conjunction with development of the Deviation Study and in conformance with the Council on Environmental Quality (CEQ) regulations (40 CFR 1506) and CESP R 1110-2-8. The Environmental Assessment will review potential impacts relative to the federal Endangered Species Act (ESA), Clean Water Act (CWA), National Historic Preservation Act (NHPA), and Clean Air Act (CAA). For cost estimating purposes, it is assumed an Initial Study/MND will be prepared for CEQA requirements. In addition, an Environmental Justice analysis and determination will be included. This task will include subtasks 6A through 6D outlined below.

Subtask 6A: Agency Coordination

The consultant will contact the Lead Agency representatives to assist in the initial determination of the scope of the NEPA/CEQA document and which Cooperating Agencies may be appropriate. The consultant will coordinate with Cooperating Agencies to obtain input on potential impacts resulting from the proposed deviation. As part of this subtask, the consultant will coordinate with the USFWS regarding potential impacts on natural resources of national significances; the South Coast AQMD (SCAQMD) for potential impacts related to the CAA; and the USACE for potential impacts of waters and wetlands of the US. The consultant will also coordinate with the Regional Water Quality Control Board and California Department of Fish and Game. This subtask also includes meeting with the USACE for technical guidance and approvals.

SUBTASK 6B: ADMINISTRATIVE DRAFT ENVIRONMENTAL ASSESSMENT / CEQA DOCUMENT

The consultant will submit the Administrative Draft EA and appropriate CEQA documentation as part of the Administrative Draft Deviation Study. At a minimum, the consultant will develop and present the EA document pursuant to Section 1508.9 of NEPA and CEQA, including the following elements:

- Cover sheet
- Table of Contents

- Summary
- Proposed Action
 - o Purpose and Need
 - o Project Background
 - o Proposed Deviation
- Alternatives to the Proposed Action
- Environmental Setting
- Environmental Effects
- Coordination
- Compliance with Environmental Requirements
- List of Preparers
- References

SUBTASK 6C: DRAFT ENVIRONMENTAL ASSESSMENT / CEQA DOCUMENT

The consultant will prepare a Draft EA/MND that addresses comments provided by staff during the administrative draft review process. The Draft EA/MND will be submitted as part of the Draft Deviation Study.

SUBTASK 6D: FINAL ENVIRONMENTAL ASSESSMENT / FONSI/ CEQA DOCUMENT

The Final EA/MND will consist of the revised Draft EA/MND text, Mitigation Monitoring and Reporting Program, and any comments and responses to comments received from cooperating agencies or the public. The consultant will prepare the Final EA and appropriate CEQA document within two weeks of approval by OCWD and USACE. In addition, the consultant will prepare the FONSI within five (5) days. The FONSI will be issued when environmental analysis and interagency review during the EA process find that the Project has no significant impacts on the quality of the environment. As part of this subtask, the consultant will prepare and distribute any notices desired for the Final EA / FONSI and CEQA document per USACE and State CEQA guidelines.

Task 7: Regulatory Permitting

The consultant will provide regulatory services for the processing of permit applications and approvals through the USACE and RWQCB as needed, including Section 404 and Section 401 of the CWA, and CDFG 1602 Streambed Alteration Agreement Application, USFWS Section 7 and Coordination Act, Section 106 of the National Historic Preservation Act, and SCAQMD. The processing would include required correspondence or telephone calls between the reviewing staff related to the permits/approvals or points of clarification and coordination with the biological consultant, if necessary.

Task 8: Update 2005 Prado Basin Water Conservation Feasibility Study

This task consists of updating the 2005 Feasibility Study. All information and analyses as prescribed in the guidance are required. The level of analysis of the proposed increase of the buffer pool from elevation 498 feet to 505 feet should be similar in detail and depth to the analysis of alternatives performed in the 2005 Prado Basin Water Conservation Feasibility Study. The most current basin topography and the most current storage capacity estimates are based on updated information from a September 2008 survey. The analyses for the proposed project should reflect the updated information. Downstream impacts should be updated, including the status of construction of Reach 9 features, the Santa Ana Regional Interceptor Line, and the requirements for and consistency with the Reach 9 Habitat Management Plan (HMP).

Assumptions:

- o *USACE will provide existing pertinent hydrologic and hydraulic analyses/ data and site condition information for the project area.*

SUBTASK 8A: ADMINISTRATIVE DRAFT UPDATED FEASIBILITY STUDY

The consultant will submit an electronic copy plus five (5) printed versions of the Administrative Draft Updated Feasibility Study and EIS/EIR for review by the OCWD and USACE. In order to meet the compressed schedule, OCWD and USACE will each consolidate their respective agency's comments and provide these to the consultant to address.

Deliverables:

- **Five hard copies of the Administrative Draft Updated Feasibility Study with EIS/EIR.**
- **One electronic copy in PDF format of the Administrative Draft Updated Feasibility Study with EIS/EIR.**

SUBTASK 5B: DRAFT UPDATED FEASIBILITY STUDY

The consultant will prepare a Draft Updated Feasibility Study that addresses comments provided by OCWD and USACE during the administrative draft review process. An electronic copy in PDF format, and a photo-ready copy of the final document, including technical appendices, will be provided for the Draft Updated Feasibility Study with the environmental document. The consultant will prepare noticing information packages, including the Draft Updated Feasibility Study with EIS/EIR in electronic format, and distribute to agencies requested by the USACE.

Deliverables:

- **One photo-ready hard copy of the Draft Updated Feasibility Study with EIS/EIR**

- **One electronic copy in PDF format of the Draft Updated Feasibility Study with EIS/EIR**

SUBTASK 5C: FINAL UPDATED FEASIBILITY STUDY

The consultant will respond to comments received during the public review of the Draft Updated Feasibility Study with EIS/EIR. If necessary, this subtask includes one meeting with OCWD and USACE staff to discuss any areas of concern that arise from the review period. The consultant will prepare a Final Updated Feasibility Study with EIS/EIR that consists of the revised text, as necessary, and the responses to comments received by the public or cooperating agencies.

Deliverables:

- **Five hard copies of the Final Updated Feasibility Study with EIS/EIR**
- **One electronic copy in PDF format of the Final Updated Feasibility Study with EIS/EIR**

Task 9: Prepare CEQA/NEPA Documents for Updated Feasibility Study

The consultant will prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) in conjunction with updating the 2005 Feasibility Study. The NEPA and CEQA documents will be prepared in accordance with relevant guidance. The EIS will review potential impacts relative to the federal ESA, CWA, NHPA, and CAA. In addition, an Environmental Justice analysis and determination will be included. This task includes subtasks 9A through 9D outlined below.

Subtask 9A: Agency Coordination

The consultant will contact the Lead Agency representatives to assist in the initial determination of the scope of the NEPA/CEQA document and which Cooperating Agencies may be appropriate. The consultant will coordinate with Cooperating Agencies to obtain input on potential impacts resulting from the proposed deviation. As part of this task, the consultant will coordinate with the USFWS regarding potential impacts on natural resources of national significances; the SCAQMD for potential impacts related to the CAA; and the USACE for potential impacts of waters and wetlands of the US. The consultant will also coordinate with the Regional Water Quality Control Board and California Department of Fish and Game. This subtask also includes meeting with the USACE for technical guidance and approvals.

As part of this subtask, the consultant will prepare Powerpoint presentations and participate in a Scoping Meeting and in the EIS/EIR Public Hearing to receive public comments on the draft documents.

SUBTASK 9B: ADMINISTRATIVE DRAFT EIS/EIR

The consultant will submit the Administrative Draft EIS/EIR documentation as part of the Administrative Draft Updated Feasibility Study. At a minimum, the consultant will develop and present the EIS/EIR pursuant to relevant guidance for NEPA and CEQA, including the following elements:

- Cover sheet

- Table of Contents
- Summary
- Introduction
- Project Description
 - o Purpose and Need
 - o Project Background
 - o Proposed Project
- Description of Project Alternatives
- Affected Environment
- Environmental Consequences and Mitigation Measures
- Public Involvement
- Compliance with Environmental Requirements
- List of Preparers
- References

SUBTASK 9C: DRAFT EIS/EIR

The consultant will prepare a Draft EIS/EIR that addresses comments provided by staff during the administrative draft review process. The Draft EIS/EIR will be submitted as part of the Draft Updated Feasibility Study.

SUBTASK 9D: FINAL EIS/EIR

The Final EIS/EIR will consist of the revised Draft EIS/EIR text, Mitigation Monitoring and Reporting Program, and any comments and responses to comments received from cooperating agencies or the public. The consultant will prepare the Final EIS/EIR within four weeks of approval by OCWD and USACE. In addition, the consultant will prepare the Record of Decision, the Statement of Overriding Considerations, and Findings of Fact. As part of this task, the consultant will prepare and distribute any notices desired for the Final EIS/EIR per USACE guidelines. OCWD will prepare and submit the Notice of Determination for the EIR. The consultant will review and comment on the draft Notice of Determination prepared by OCWD.

Task 10: Memorandum of Agreement

The consultant will review the Memorandum of Agreement executed in 2006 and make recommendations to OCWD and USACE regarding updating the agreement. The consultant will coordinate potential revisions with both parties.

Elements of Proposal

Your firm is requested to submit five copies of your proposal with the following information:

- 1) Cover letter.
- 2) Description of firm.
- 3) Project team description (with resumes at the back of the proposal).
- 4) Proposed approach and scope of work.
- 5) Proposed schedule.
- 6) List of similar completed projects.
- 7) Hourly rates of project team members. The hourly rates will apply for a 24-month period commencing with execution of the agreement between OCWD and the firm. After 24 months the selected consultant(s) can request consideration to increase the hourly rates based upon a consumer price index factor.
- 8) A statement that you have read and can execute the District's standard professional services contract and can comply with the insurance requirements.
- 9) The cost to complete the work. The cost proposal shall be included in a separate sealed envelope labeled 'Cost proposal' and labeled with your firm's name.

Please make your proposals concise, no more than 20 pages, excluding preprinted materials.

Selection Process

The District proposes to select and process an agreement with one firm based on the written proposals. Depending upon the response to the RFP, oral interviews may or may not occur.

Selection criteria will include project staff qualifications and experience (particularly the experience and qualifications of the project manager and key staff members assigned to the project), demonstrated expertise particularly regarding the Army Corps regulations and procedures, the proposed approach and scope of work, and hourly rates. The District will also be looking for assurances that the staff identified in the proposal will remain fully committed to the project for the duration of the project.

The selected consultant will be required to sign the attached Professional Services Agreement (Attachment Three) and to provide the Insurance Certificates and all other required documentation within 15 calendar days of notice of award. Any exceptions the consultant may have to the agreement and/or insurance provisions must be included in

the proposal. The District is reluctant to modify the terms of the standard Professional Services Agreement.

The District reserves the right to reject any and all proposals, waive any proposal formalities and modify or postpone the proposed project at its sole discretion. The District also reserves the right to amend this RFP. Amendments to the RFP will be sent to potential proposers.

The District requires the following forms of insurance and coverage amounts:

- General Liability - \$2.0 million
- Professional Liability - \$2.0 million
- Workers Compensation - \$1.0 million
- Automobile - \$1.0 million

The District requests that proposals be received at the District office (marked attention: Greg Woodside), 18700 Ward Street, Fountain Valley, CA 92708 (if sent by overnight mail or courier), or P.O. Box 8300, Fountain Valley, CA 92728-8300 (if sent by regular mail).

Proposals are due at 5 pm on January 27, 2010.

To request additional information regarding this request for proposals, please contact Greg Woodside at gwoodside@ocwd.com or (714) 378-3275.

ATTACHMENT ONE

USACE LETTER DATED OCTOBER 28, 2009



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS
P. O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

October 28, 2009

Office of the
District Commander

Mr. Michael R. Markus
General Manager
Orange County Water District
18700 Ward Street
Fountain Valley, California 92708

Dear Mr. Markus:

Thank you for your letter of August 14, 2009 proposing to increase the flood season water conservation level at Prado Dam from elevation 498 feet NGVD to 505 feet NGVD, in order to increase the amount of storage space available for water conservation by approximately 10,500 acre-feet, per the latest reservoir survey. You are proposing to prepare a study to support a three year deviation from the approved water control plan for Prado Dam and also to work with the Corps of Engineers to make this operation change permanent by modifying the Prado Dam Water Control Manual. The effort to permanently modify the operation would also include updating the 2005 Prado Basin Water Conservation Feasibility Study and revising the Memorandum of Agreement between the Corps of Engineers and Orange County Water District (OCWD). You noted the current statewide water shortage and the importance of identifying and maximizing the use of local water sources. In addition you also mention management of sediment in the Santa Ana River watershed and we look forward to working with you and your staff on that issue.

The purposes of this letter are to acknowledge your letter, to provide comment on your draft scope of work (SOW), to suggest that you proceed as expeditiously as possible to prepare the deviation request documentation, and to review the U.S. Army Corps of Engineers' (USACE) procedure for processing a request for deviation from an approved water control plan. We hope that this letter and the attachment provide enough guidance so that your deviation request can be prepared, reviewed and processed in a timely manner. The attachment to this letter is the USACE South Pacific Division Engineering Regulation No. 1110-2-8 titled "Guidance on the Preparation of Deviations from Approved Water Control Plans," dated September 12, 2002 (Guidance). The guidance contains general information regarding the preparation of the materials, approval process, costs and charges for preparing deviations, fees for water supply deviations, coordination within USACE, and environmental requirements. The guidance also outlines the information and analyses required in a deviation request package.

It is important to note that all of the information and analyses as prescribed in the guidance are required. In order to make the process as efficient as possible, comments on the process as it pertains to Prado Dam are provided as follows:

a. As stated in the guidance "Deviations from approved Water Control Plans require similar level of scrutiny as applied to permanent changes to a water control plan." Therefore, the level of analysis of the proposal to increase the buffer pool from elevation 498 feet to 505 feet should be similar in detail and depth to the analysis of alternatives performed in the 2005 Prado Basin Water Conservation Feasibility Study.

b. In 2006, the Corps of Engineers began a process of conducting risk assessments of all Corps of Engineers dams. The process consists of national cadres conducting "Screening for Portfolio Risk Analysis" (SPRA) on each dam. Based on the results of these screenings each Corps dam is given a Dam Safety Action Classification (DSAC). Prado Dam was screened this past July and results of the screening are expected in November 2009. A complicating factor in the Prado Dam screening is that the dam is still under construction. It is not possible to approve a deviation that calls for an increased operating pool for a DSAC I, II, or III dam until all dam safety deficiencies are resolved. Therefore, if Prado Dam receives a DSAC I, II, or III classification it would likely preclude approval of the deviation. A low DSAC classification may also impact the implementation of a permanent change to the water control plan.

c. Please note that the sponsor of the deviation request is responsible for all the costs associated with the preparation, review, and processing of the deviation package. Even though you are proposing to complete the deviation package we must receive all funds in advance necessary to cover the cost of reviewing and coordinating the request before processing can be initiated. The estimated cost is \$50,000. My staff and will work with appropriate members of your staff to work out the details of the transfer of funds which will require a Contributed Funds Memorandum of Agreement (MOA) between the Corps and OCWD. This MOA will require approval by our Headquarters.

d. The programs and files used to perform previous hydrologic and hydraulic analyses are available and will be provided to you, if specifically requested.

e. In the 2005 Feasibility study an alternative for year round water conservation at elevation 505 feet was analyzed and described in the study report. This analysis included determination of the incremental benefits associated with increasing the buffer pool to 505 feet. However, the analysis contained in the 2005 Prado Basin Water Conservation Feasibility Study is based on storage capacity estimates derived from a 1988 survey, which is now over 20 years old. The most current basin topography and the most current storage capacity estimates for Prado Dam are based on a September 2008 survey. The hydrologic and hydraulic analyses required for the deviation should address all impacts associated with increasing the buffer pool to 505 feet and should be based on storage capacity values derived from the 2008 survey data.

f. As noted in your letter and in the draft SOW it is anticipated that the deviation request will include reliance on 72-hour weather and runoff forecasts. Identification and evaluation of the available forecasting tools and products, appropriate triggers for draining the pool, and the risks

and consequences of inaccurate forecasts, both too high and too low, must be included in the analysis. The potential affect to the Corps' flood control mission and both upstream and downstream resources must be considered, including the Santa Ana River Interceptor line and Reach 9 construction sites.

g. Task 5a of the draft scope of work refers to "Agency Consultation." We suggest that you change "Consultation" to "Coordination". The term consultation has a different meaning under the Endangered Species Act.

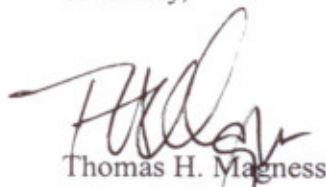
h. The deviation study should specifically address consistency with the Reach 9 Habitat Management Plan (HMP). This document was prepared by Orange County Flood Control District as a requirement of the 1988 General Design Memorandum (GDM) and Supplemental Environmental Impact Statement (SEIS) for the Santa Ana River Project. The plan was amended to include additional requirements from the 2001 GDM and SEIS and Biological Opinion for the Prado Dam and Vicinity Project. The study should assess impacts to the Habitat Management Area (HMA) and the Corps' and Orange County Flood Control's commitments in the HMP to maintain the current baseline amount of riparian vegetation in the HMA.

i. As you suggested in your letter, it is advisable that your staff closely coordinate the preparation of the deviation request package with my staff to insure that the package is complete and can be reviewed and processed in a timely manner.

j. The USACE South Pacific Division has final approval authority for Los Angeles district deviation requests. We will notify the South Pacific Division of your request and handle coordination through the review and decision process.

If you have any questions, please contact me at (213) 452-3961. For additional information or clarification, you may contact Mr. Greg Peacock, Chief of Reservoir Regulation Section, at (213) 452-3536 or Mr. Rene Vermeeren, Chief of the Hydrology & Hydraulics Branch in Engineering Division, at (213) 452-3547.

Sincerely,



Thomas H. Magness
Colonel, US Army
District Commander

Enclosure

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION CORPS OF ENGINEERS

333 Market Street
San Francisco, California 94105-2195

CESPD-MT-E

REGULATION
No. 1110-2-8

12 September 2002

Engineering and Design
GUIDANCE ON THE PREPARATION OF DEVIATIONS
FROM APPROVED WATER CONTROL PLANS

1. **PURPOSE.** This document establishes the protocol for reporting deviations from approved Water Control Plans for water control projects within the South Pacific Division. It defines coordination, review, and approval procedures between the Division and District offices. Approval from Division must be obtained from all deviations (reference e., paragraph 6.b.)¹

2. **APPLICABILITY.** The following is applicable to all South Pacific Division Districts and field-operating activities having civil works responsibilities.

3. **REFERENCES.** Authority and guidance can be found in:

- a. ER 200-2-2 (33 CFR 230), 4 March 1988, subject: Procedures for Implementing NEPA.
- b. ER 1105-2-100, 22 April 2000, subject: Guidance for Conducting Civil Works Planning Studies.
- c. ER 1110-2-240 (33 CFR 222.5), 8 October 1982, subject: Water Control Management.
- d. ER 1110-2-241 (33 CFR 208.1), 24 May 1990, subject: Use of Storage Allocated for Flood Control and Navigation at Non-Corps Projects.
- e. ER 1110-2-1400, 30 September 1993, subject: Reservoir Water Control Centers.
- f. ER 1110-2-8156, 31 August 1995, subject: Preparation of Water Control Manuals.
- g. ER 1165-2-501, 30 September 1999, subject: Civil Works Ecosystem Restoration Policy.

¹ This regulation supercedes CESPD-ET-EW Regulation, Subject: Guidance On The Preparation Of Deviations From Approved Water Control Plans dated 1 August 1999.

- h. EP 1165-2-502, 30 September 1999, subject: Ecosystem Restoration – Supporting Policy Information.
- i. EM 1110-2-3600, 30 November 1987, subject: Management of Water Control Systems.
- j. CESPD R 1110-2-8, August 1999, subject: Guidance on the Preparation of Deviations From Approved Water Control Plans.

4. OVERVIEW.

a. Water Control Plans are prepared for all Corps projects and non-Corps projects within Federal flood control space. For Corps projects, the Water Control Plan is all encompassing in that it covers regulation of the project over the entire regime of pool elevations and conditions. The Corps' responsibility regarding non-Corps reservoirs is defined by Section 7 of the Flood Control Act of 1944 (58 Stat 890), which directs the Secretary of the Army to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds.

b. Water Control Plans define the regulation criteria and guidelines that govern how and when water will be stored and released from a project. The process of formulation and eventual approval of the Water Control Plan is a complex and time-consuming process because the plan must account for diverse goals (flood control, the environment, water quality, recreation, water supply, hydropower, etc.) and situations (e.g. normal, flood, drought, and emergency operations). Formulation of these plans requires a comprehensive knowledge of such diverse items as: project goals, project history, authorizing legislation, Corps policies and regulations, how a project interacts with other reservoirs within a basin, the role of other water interests/agencies, the effects to the general public in relation to environmental and aesthetic considerations, basin meteorology and hydrology, changing conditions (e.g. sedimentation, channel capacity, scour, etc.), and the physical capabilities of project features, such as outlet works, spillways, flood routing characteristics, etc.). Prior to approval and implementation, the proposed Water Control Plan is released for public review and comment. The public review process normally occurs concurrently with the NEPA public review process.

c. Deviations from approved Water Control Plans occur because every possible circumstance cannot be accounted for in a Water Control Plan. The competing goals and complex interactions of interested groups/agencies can cause even seemingly inconsequential deviations from an approved plan to lead to unforeseen environmental and legal complications. This regulation serves to assist a District in preparing their deviation requests. It outlines a minimum set of considerations that need to be addressed when making a recommendation to deviate from an approved Water Control Plan.

d. Deviations from approved Water Control Plans are intended, therefore, to address unforeseen and unique circumstances. They are not intended as a means for identifying or

initiating new opportunities to re-operate or reallocate storage in response to new and changing public needs.

5. DEFINITIONS.

a. Emergency Deviations. An emergency deviation from an approved Water Control Plan is one that is required due to an emergency situation. An emergency situation is defined herein as a situation in which there is a potential for injury, loss of life, threat to the project, or other serious hazards; but furthermore, also demanding immediate action, such that time constraints render impractical notification to the division. Depending upon the need for immediate action, an emergency situation could include: drowning and other accidents, assistance to local authorities responding to an emergency (e.g. police and fire departments), failure of operations facilities, chemical spills, treatment plant failures, and other temporary pollution or water quality problems. Water control actions necessary to abate the problem are taken immediately unless such action would create equal or worse conditions.

b. Planned Deviations. Planned deviations cover all other deviations not addresses by an emergency deviation.

6. OFFICE OF RECORD. The originating District's water control management office will be responsible for maintaining all relevant records documenting the deviation.

7. GENERAL INFORMATION FOR PREPARING ALL DEVIATIONS.

a. Approval of Deviations. Approval for all deviations must be obtained from the Division Commander or delegated representative prior to their implementation. As noted in paragraph 5.a, an emergency deviation situation may warrant an immediate action, delegated to the Leader, Water Management Team or his designated representative. The Leader of the Water Management Team shall consult with the Chief of Engineering and Construction and appropriate SPD staff and subsequently advise the Director, Military and Technical Services Directorate of the temporary change. Approval may be made by telephone, E-mail, or FAX.

b. Preparation of Deviations. Processing of a deviation request originates at the District water control management office. The District Commander may delegate signature authority for requesting deviations from approved water control plans to the appropriate functional division head or designated representative. Consultation with the District staffs, including engineering, planning, environmental, economics, operations, construction and legal must take place.

c. Costs and Charges for Preparing Deviations. Deviations from approved Water Control Plans require a similar level of scrutiny as applied to permanent changes to a water control plan. Any District charges incurred for processing a deviation are to be assessed and collected from the agency/entity requesting the deviation. The District should estimate the cost to process the deviation and provide that estimate to the requesting agency/entity. The District must collect the funds (in a revolving fund advance account under Support for Others) prior to processing the deviation request. Examples of costs for which the requesting entity would be responsible include costs for any required reviews or studies concerning associated hydrologic, water

control, legal, real estate, and environmental matters. After the deviation work is completed, any amount of funds left over in the account would be paid back to the requesting entity.

d. Fees for Water Supply Deviations. Deviations that result in Corps project flood control space being used for water supply purposes must address reimbursement by the sponsor to the Federal government for use of the flood control space. The district's deviation request package must include an economic analysis that determines a value for the reallocated flood control space. Section 7 projects will not require the economic analysis, as water supply charges are under the authority of the project owner.

e. Time to Prepare Deviations. District offices should also inform potential agencies/entities that the lead time required to assemble the necessary information required to evaluate a deviation request may be on the order of months (normally due to the required environmental analysis and the public review process). Thus, the request to the District should be made well in advance of the proposed initiation date for the deviation. The requesting agency/entity should also be made aware that approval of the deviation request would depend upon such things as a review of the impacts (e.g., environmental, hydrologic, legal, etc.).

f. Coordinating with Division Staff. Preparation of a deviation package is a time consuming and costly undertaking, and incomplete or inadequate package can delay approval. District personnel are encouraged to coordinate any questions or concerns about potential deviations and to discuss any atypical situations with their Division counterparts early in the process and before the package submittal. All technical review will be conducted at the District level and will provide a review certification. In an emergency situation, a formal quality certification will most likely not be required. Appendix D lists the Division staff with which deviation-related issues are to be coordinated. Division will provide updates to Appendix A as needed.

g. Non-Corps Projects. Deviation requests for non-Corps (Section 7) projects must be prepared with the approval of the project owner. This is required because project owners are responsible for assuring that the project is operated as prescribed in the Water Control Plan developed in concert with the Corps' flood control interest. The owner is also ultimately responsible for dam safety at the project and for funding the project.

h. Environmental Requirements. Each deviation request shall include a summary of the environmental effects of the proposed deviation and a statement of how the proposal is in compliance with pertinent environmental requirements, including but not limited to the National Environmental Policy Act (NEPA), Endangered Species Act, the Clean Water Act, and the Clean Air Act and Section 176 Conformity Determination. NEPA documentation requirements ordinarily are met by an Environmental Assessment (EA) of the proposed action with a Finding of No Significant Impact (FONSI) signed by the District Commander. If an existing Environmental Impact Statement/Record of Decision or EA/FONSI accurately covers the action, and if there have been no environmental changes since that documentation, this can be cited. Supporting environmental documents shall be included in the deviation request package when it is submitted. Typically these will include an EA, a signed FONSI, a Biological Assessment, and a final Biological Opinion or a letter from Fish & Wildlife or National Marine and Fishery

Service concurring that there is not likely to be adverse effect on listed species. Sometimes other documents, such as 404(b)(1) evaluation are required. In the case of emergency deviation, the emergency provisions and requirements of the various environmental laws should be followed.

i. *Required Information/Analysis.* Table 1 outlines the information and analysis that are required in a deviation request package that is submitted to Division.

TABLE 1
Information and Analysis Required in a Deviation Request Package

- a. Copy of sponsor's/project owner's letter requesting a deviation.
 - b. A description of the deviation.
 - c. Its effects on the operational objectives or project purposes.
 - d. A description of the potential flood threat over the period of the deviation.
 - e. The current and predicted maximum reservoir storage and elevation.
 - f. Documentation that the proposed deviation is in compliance with all pertinent environmental laws.
 - g. The effect on other agencies and individual interest.
 - h. The coordination that has taken place with other agencies.
 - i. Alternative measures that could be taken.
 - j. Recommendation/rationale on whether a permanent change to the Water Control Plan for this situation is warranted.
 - k. A District legal opinion.
 - l. Any recommended fees or reimbursements to the Federal Government.
 - m. Any other information that may be pertinent to the deviation request.
 - n. The District Commander's recommendation.
 - o. Quality Control Certification
-

8. PREPARING EMERGENCY DEVIATIONS

a. Emergency deviations are the only type of deviation that do not require prior approval from Division, and must only be used if events warrant an immediate emergency action, such that time constraints render impractical notification to the Division. However, even in an emergency situation, the District shall notify the Division of the action as soon as possible, and shall comply with all applicable requirements.

b. A record of the emergency deviation shall be developed at the district office and transmitted to the Division office within a day of the action taken.

c. Procedures for emergency deviations:

(1) Take the necessary action.

(2) Contact Division as soon as possible (See Appendix A for telephone numbers) to describe the action taken and the cause (NOTE: The order of (1) and (2) may be reversed depending on the nature of the emergency). Continuation of the deviation will require Division approval.

(3) The District shall provide written conformation to the Division office within 7 days of the deviation. The correspondence shall include the items outlined in Table 1 (as applicable).

(4) The Division shall respond within 3 days of the district's notification of the emergency deviation.

9. PREPARING PLANNED DEVIATIONS.

a. The District shall inform Division within 2 days of receiving a request for a proposed deviation.

b. At least 7 days prior to the proposed action, the District shall transmit a deviation request package to the Division office. The deviation request package shall include the items in Table 1. This package may be initially transmitted electronically.

c. The Division shall review the proposal and approve or disapprove the District's deviation request within 5 days, assuming a complete package with all required documentation has been received. Early, detailed, coordination and transmittal of documents to Division may reduce the processing time.

d. The District and Division shall follow-up with formal correspondence within 3 days of their electronically transmitted request (District) and approval/disapproval (Division).

10. SPECIAL CIRCUMSTANCES.

Per reference 3.c, Water Control Plans are subject to continuing and progressive study in order to keep them current. Should a new re-operation or reallocation opportunity be identified for a Corps project, then it should be addressed under authority of Section 216 of Public Law 911-611, an Initial Appraisal Report can be conducted with O&M funding to determine whether or not a study, if deemed appropriate, among other things, could initiate the process to incorporate the new opportunity in the project's Water Control Plan. Re-operation or reallocation studies for non-Corps projects would need to be initiated by the project owner.


for ROBERT L. DAVIS
BG, USA
Commanding
COL, EN
DEFCR

1 Appendix

APP A - CESPD Phone list for Coordination of Water Control Plan Deviations

APP B - Quality Control Certification

DISTRIBUTION:

Electronic Copy Available

APPENDIX A

**CESPD Phone List for
Coordination of Water Control Plan Deviations**

Note: Initial District notification to the Division shall be made to Water Management.

Water Management

Office

Donald Bergner	(415) 977-8101
Boni Bigornia	(415) 977-8102
Terry Mendoza	(415) 977-8106
Tom Wang	(415) 977-8120
Frank Khroun	(415) 977-8111
Ed Sing	(415) 977-8117

Internal SPD Coordination with Respective District Support Team Members

Legal

(SPN/SPA)	Mary Gillespie	(415) 977-8214
(SPL/SPK)	Dan Dykstra	(415) 977-8211

Planning & Environmental

(SPL/SPN)	Les Tong	(415) 977-8170
(SPA)	Jim Conley	(415) 977-8108
(SPK)	Clark Frentzen	(415) 977-8164

Real Estate

(SPL/SPN)	Marilyn Rodriguez	(415) 977-8188
(SPK/SPN)	Richard Guthrie	(415) 977-8186

Operations

(SPL/SPN)	George Domurat	(415) 977-8050
(SPK)	Phil Turner	(415) 977-8058
(SPA)	Jonathan Yip	(415) 977-8057

Program Management

(SPN)	Jeannie Hritz	(415) 977-8228
(SPK)	Marcelo Pascua	(415) 977-8232
(SPA)	Hoa Ly	(415) 977-8229

September 2002

APPENDIX B

DISTRICT ENGINEER'S QUALITY CERTIFICATION

COMPLETION OF QUALITY CONTROL ACTIVITIES

The District has completed the review/analysis of the water control deviation from the Approved Water Control Plan for (Project Name and Location). Certification is hereby given that all quality control activities appropriate to the level of risk and complexity inherent in this analysis have been completed.

GENERAL FINDINGS

Compliance with clearly established policy principles and procedures, utilizing clearly justified and valid assumptions, data and the reasonableness of the results. The undersigned recommends certification of the quality control certification for this deviation request.

(Signature)

Chief, Responsible Functional Element

(Date)

CERTIFICATION OF LEGAL REVIEW*

The request for a water control deviation from the approved Water Control Plan report for indicate name of project, has been fully reviewed by the Office of Counsel, and is approved as legally sufficient.

(Signature)

District Counsel

(Date)

QUALITY CERTIFICATION

All issues and concerns resulting from technical review of the water control deviation have been resolved. This deviation is recommended for approval.

(Signature)

District Commander

(Date)

ATTACHMENT TWO

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE ORANGE COUNTY WATER DISTRICT
FOR
THE OPERATION OF THE BUFFER POOL AT
PRADO DAM, CALIFORNIA

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE ORANGE COUNTY WATER DISTRICT
FOR
THE OPERATION OF THE BUFFER POOL AT
PRADO DAM, CALIFORNIA**

THIS AGREEMENT is entered into this 7th day of July, 2006, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Assistant Secretary of the Army (Civil Works), and Orange County Water District (hereinafter called the "User") represented by its General Manager and Board President.

WITNESSETH THAT:

WHEREAS, pursuant to Public Law 74-738, the Flood Control Act of June 23, 1936, the Government constructed and is operating Prado Dam for flood control and water conservation (hereinafter called the "Project");

WHEREAS, the User desires to enter into an agreement with the Government whereby operation of the Project will enable increased recharge of the User's downstream groundwater aquifers;

WHEREAS, the User as shown in Exhibit 1, attached to and made a part of this Agreement, is empowered to enter into an agreement with the Government and is vested with all necessary powers of accomplishment of the purposes of this Agreement;

WHEREAS, Section 110 of Division C of the Consolidated Appropriations Act of 2005 (Public Law 108-447), provides that the Assistant Secretary of the Army for Civil Works shall enter into an agreement with the Orange County Water District, California for purposes of water conservation storage and operations at Prado Dam, California, and that the Orange County Water District shall pay to the Government only the separable costs associated with implementation and operation and maintenance of Prado Dam for water conservation;

WHEREAS, the Government and User entered into a previous Memorandum of Agreement, dated December 15, 1993, for water conservation operations on a smaller scale, which is being replaced by this Agreement;

WHEREAS, the April 5, 2005 Prado Basin Water Conservation Feasibility Study, Environmental Impact Statement, and Record of Decision provide information pertinent to the use of water in the Project by the User.

NOW THEREFORE, the parties mutually agree that the 1993 Memorandum of Agreement is hereby terminated pursuant to Article VII of that agreement, and superceded and replaced by this Agreement, as follows:

ARTICLE I - DEFINITIONS AND INTERPRETATION

Definition of Terms:

- i. "Flood Season" means the period October 1 to February 28, or February 29 during leap years.
- ii. "Non-flood Season" means the period March 1 to September 31.
- iii. "Buffer pool" means any pool of water above the debris pool (elevation 490 feet National Geodetic Vertical Datum) (NGVD)) up to 498 feet NGVD during the flood season, and up to 505 feet NGVD during the non-flood season.
- iv. "Water Control Manual" means the water control manual approved by the Government as the manual for the Project. The Water Control Manual forms the basis for the Government's regulation and real-time operation of the Project.
- v. "Consistent with the Water Control Manual" means consistency as determined by the Government in its sole discretion.
- vi. "Water Conservation Operations" means operation of the Project as specified in Article III of this Agreement.
- vii. "Separable Operations and Maintenance Costs" means costs incurred by the Government to operate the Project for water conservation purposes that would not have been incurred by the Government if water conservation operations pursuant to this Agreement were not occurring at the Project.

ARTICLE II - RESPONSIBILITIES OF THE PARTIES

a. Responsibilities of the User:

- i. The User shall pay all Separable Operations and Maintenance Costs, in accordance with Article VI of this Agreement. The User shall also be responsible for 100% of the cost and preparation of any additional or supplemental environmental documents necessary for water conservation operations of the Project or for releases of water at rates greater than those for water conservation that are necessary to draw down the buffer pool to allow for flood control operations of the Project. These costs are not included in the annual payment specified in Article VI of this Agreement. These costs will be billed to the User separately if, and when, they occur.

ii. The User shall pay all costs of revising the Project's Water Control Manual to reflect the water conservation operations described in this Agreement. These costs are not included in the annual payment specified in Article VI of this Agreement. These costs will be billed to the User separately if, and when, they occur.

iii. The User shall be responsible for 100% of the costs and performance of any acquisition of lands, easements, or rights of way, and performance of any removals or relocations as may be determined by the Government to be necessary to allow operation of the Project as specified in Article III of this Agreement. When undertaking a removal or relocation pursuant to this Agreement, the User shall comply with the applicable provisions of the Uniform Relocation and Assistance and Real Property Acquisition Act of 1970, 42 U.S.C. §§ 4601 *et seq.* These costs are not included in the annual payment specified in Article VI of this Agreement.

iv. The User shall implement a plan for conservation or resolution of adverse impacts on land uses in the area occurring as a result of operation of the Project for water conservation including, but not limited to, the following:

(1) Continuing to coordinate with the owner of Richardson's Dog Training facility on an annual basis regarding any adverse impacts to his business arising from operation of the Project for water conservation;

(2) Continuing to abide by the terms and conditions of the "Agreement between Orange County Water District and County of San Bernardino, California, setting forth coordinated policies regarding water conservation and land use at Prado Dam Basin," dated July 29, 1985.

v. The User shall continue to implement its annual endangered species mitigation obligations, as originally required under the 1993 Agreement, in accordance with the environmental commitments specified in the Environmental Impact Statement (EIS) of the Prado Dam Water Conservation Report, October 1992. Should further endangered species mitigation obligations for water conservation operations to elevation 494 feet NGVD or 505 feet NGVD be deemed necessary by the U.S. Fish and Wildlife Service in the future, the User shall implement appropriate measures to satisfy the required mitigation responsibilities. The User shall also continue to annually implement the mitigation measures, as originally required under the 1993 Agreement, for impacts other than to endangered species, including those for mosquito abatement and cultural resources, prior to the commencement of any water conservation operations at the Project.

These costs are not included in the annual payment specified in Article VI of this Agreement.

vi. The User shall implement a mitigation plan in accordance with the terms of the environmental commitments laid out in the EIS and Biological Opinion (BO) of the Prado Dam Water Conservation Feasibility Study and Record of Decision. The implementation plan detailed in the EIS and BO includes a one time set aside of land for habitat restoration, a one time contribution of funds to the Santa Ana River Conservation Trust Funds, an annual funding and mitigation for the endangered Santa Ana sucker and Least Bell's vireo. These costs are not included in the annual payment specified in Article VI of this Agreement.

vii. The User shall pay all additional costs of mosquito abatement efforts undertaken by the Northwest Mosquito Abatement District, the West Valley Vector Control District, or the Orange County Vector Control District that are made necessary by water conservation operation of the Project. These costs are not included in the annual payment specified in Article VI of this Agreement. The User shall provide funding when billed by the vector control districts.

viii. The User understands that the Government is currently engaged in a construction project to modify Prado Dam, and that as part of this work the Government is party to a contract with Yeager-Skanska. The Government's contract with Yeager-Skanska specifies that the highest elevation of non-flood waters the Government will hold behind Prado Dam from the period of October 1 to February 28/29 is 494 feet NGVD. The User agrees that this pre-existing contractual commitment shall take precedence over the Government's obligation to make a good faith effort to operate the Project in accordance with Article III of this Agreement.

ix. The User shall maintain such books, records, documents, or other evidence pertaining to costs and benefits of the water conservation operations undertaken pursuant to this Agreement to the extent and in such detail as will properly reflect the total costs and benefits of these operations.

b. Responsibilities of the Government:

i. The Government reserves the right to control and use all pool space in the Project in accordance with authorized Project purposes. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life and/or property, and the right to not make downstream releases or to make releases at lesser or greater rates as necessary in its sole discretion, for the operation, maintenance, inspection, rehabilitation, or repair of the Project.

ii. The Government shall manage lands under its control at or below elevation 505 feet NGVD in the Project's basin so as not to unreasonably interfere with the opportunity to conserve water afforded to the User by this Agreement.

iii. The Government shall remain responsible for operation and maintenance of the Project and reserves the right to take such measures as may be necessary in its sole discretion to operate and maintain the Project in accordance with its authorized purposes.

iv. Upon compliance by the User with the provisions of this Agreement, the Government shall make a good faith effort to operate the Project as specified in Article III of this Agreement.

ARTICLE III - WATER CONSERVATION OPERATION

a. During the Period October 1 through February 28/29: Subject to the terms and conditions of this Agreement, the Government, when it determines such actions to be consistent with the Water Control Manual, shall operate the Project to maintain the buffer pool at an elevation not to exceed 498 feet NGVD. During this time period the Government, when it deems such operations to be consistent with the Water Control Manual and flood control operations of the Project, will coordinate water conservation releases with the User to maximize the conservation of water through ground water recharge, and will make releases normally ranging from 200 to 1,000 cubic feet per second (cfs). This agreement shall not be construed as giving the User any rights to have the water level of the buffer pool maintained at any particular elevation. The Government reserves the right to, in its sole discretion, draw down the pool at any time.

b. During the Period March 1 through August 31: Subject to the terms and conditions of, this Agreement, the Government, when it determines such actions to be consistent with the Water Control Manual, shall operate the Project to maintain the buffer pool at an elevation not to exceed 505 feet NGVD. Provided that sufficient inflows to the Project are available, between March 1 and March 10, the seasonally expanded buffer pool may be gradually increased from 498 to 505 feet NGVD at an incremental rate over a 10 day period from March 1 to March 10. During this time period the Government, when it deems such operations to be consistent with the Water Control Manual and flood control operations of the Project, will coordinate water conservation releases with the User to maximize the conservation of water through ground water recharge, and will make releases normally ranging from 200 to 1,000 cubic feet per second (cfs), but at all times maintaining a running average greater than or equal to 500 cfs to satisfy the fish and wildlife mitigation obligations of the Project. This agreement shall not be construed as giving the User any rights to have the water level of the buffer pool maintained at any particular elevation. The Government reserves the right to, in its sole discretion, draw down the pool at any time.

c. During the Period September 1 through September 30: The reservoir may be regulated so as to be empty during the month of September for maintenance purposes. In the event of rare summer flood runoff, the reservoir may, at the sole discretion of the Government, be operated for water conservation up to the maximum allowable water conservation elevation of 505 feet

NGVD, provided that it does not prevent the accomplishment of required maintenance. If the reservoir is operated for water conservation in September, an alternate maintenance period in October may be required at the sole discretion of the Government. The Government may also draw down or drain the reservoir during months other than September or October, as it deems necessary for the performance of emergency maintenance actions. The User agrees that it shall have no cause of action against the Government for such drawdowns or drainings of the reservoir.

d. During Periods of Construction: The User understands that the reservoir may need to be drawn down or emptied at various points in time to accommodate the construction of modifications to Prado Dam or of other elements of the Santa Ana River Mainstem Project. The Government reserves the right to draw down or drain the reservoir for construction purposes at any time. The Government will make a good faith attempt to notify the User at least 5 (five) days in advance of any construction related reservoir drawdowns or drainings. The User agrees that it shall have no cause of action against the Government for such drawdowns or drainings of the reservoir.

e. The User understands that this Agreement only provides for limiting the rate of releases from the Project and that it is not acquiring any right for the use of storage space in the Project or any right to withdraw water from the Project. The Government makes no representation with respect to the availability, quality, or treatment of water and assumes no responsibility therefore. The water levels of the Project will be maintained at elevations that the Government deems will best serve the authorized purposes of the Project.

ARTICLE IV - REGULATION OF THE USE OF WATER

The regulation of the use of and water rights needed for the water released from the Project shall be the sole responsibility of the User and under the sole authority of the User in accord with Federal, State, and local laws and shall not be considered a part of this Agreement. The Government shall not be responsible for the use of water by the User, nor will it become a party to any controversies involving the water use, except with its written consent and as such controversies may affect the operations of the Project.

ARTICLE V - OPERATION AND MAINTENANCE

The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article VI. The User shall be responsible for operation and maintenance of all installations and facilities it may currently have or in the future install or construct for the diversion or other control of water released from the Project, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

ARTICLE VI - PAYMENTS

a. The User shall pay to the Government all Separable Operations and Maintenance Costs of water conservation operations at the Project. As of the effective date of this Agreement, the annual amount to be paid for the separable operations and maintenance costs of water conservation operations at the Project is estimated to be \$82,500.00 (eighty-two thousand and five hundred dollars), which will be adjusted for inflation annually at the rate listed in the Composite Index for the Third Quarter found in the Engineers Manual 1110-2-134, as amended or replaced in the future.

b. Each year between July 1st and July 15th, the Government will bill the User for the prior year's water conservation operations at the Project. The User shall, within 90 calendar days after receipt of such notice, provide the Government the required payment. If the User fails to make any of the aforesaid payments when due, the overdue payments shall bear interest compounded annually until paid. The interest rate for overdue payments shall be that determined by the Department of the Treasury's Treasury Fiscal Requirements Manual. The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. In the event the User fails to make payments prior to the October 1 beginning of the next year's period for water conservation operations, the Government shall have no obligation or responsibility to operate the Project for water conservation until all delinquent payments are received.

c. The dollar amounts set forth in this article and in the Prado Dam Water Conservation Feasibility Study, April 5, 2005, are based upon the Government's best estimates. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as binding on the Government or as the total financial responsibilities of the User.

ARTICLE VII - RELEASE OF CLAIMS

The User shall hold and save the Government, including its officers, agents and employees, harmless from damages and claims for damages, including costs of defending such claims, which may arise by reason of operation and maintenance of the Project pursuant to this Agreement, and which would not have arisen if the operation and maintenance of the Project had not been pursuant to this Agreement. Upon written notice from the Government, the User shall take over the defense of any such claim. This Article shall not apply to damages caused exclusively by negligence of the Government, its employees, or its contractors. This Article shall apply to claims which arise after the termination of this Agreement, from operations as described in this Agreement.

The Government does not warrant delivery of any quantity of water and the failure of reservoir regulation, in accordance with this Agreement, to produce water for conservation in any quantity shall not be grounds for a claim for damages against the Government.

ARTICLE VIII - DURATION OF AGREEMENT

This Agreement shall become effective when approved by the Secretary of the Army or his duly authorized representative and shall continue in full force and effect from the effective date until terminated pursuant to Article XVI of this Agreement. The termination of this Agreement shall not extinguish any obligations of the User for monies owed or for costs incurred pursuant to Article VI of this Agreement, nor any obligations of the User pursuant to Articles II, IV, V, VII, X, or XI of this Agreement.

ARTICLE IX - TRANSFER OR ASSIGNMENT

The User shall not transfer or assign this Agreement nor any rights acquired thereunder, nor grant any interest, privilege or license whatsoever in connection with this agreement, without the approval of the Assistant Secretary of the Army (Civil Works) provided that, unless contrary to public interest this restriction shall not be construed to apply to any water which may be obtained by the User and furnished to any third party or parties or to the rates charged therefore.

ARTICLE X - ENVIRONMENTAL QUALITY

During any construction, operation, or maintenance by the User of any downstream installations and facilities it may currently have or in the future install or construct for the diversion or other control of water released from the Project pursuant to this Agreement, the User agrees to take specific actions to control environmental pollution which may result from such activities, and to comply with applicable Federal, State and local laws and regulations concerning environmental pollution.

User also agrees to bear any and all responsibility for the remediation of any violations of the various environmental laws of the United States, and to indemnify the Government from any liability arising from such violations, that may occur during any construction, operation, and maintenance by the User of any downstream installations and facilities it may currently have or in the future install or construct for the diversion or other control of water released from the Project pursuant to this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

a. In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal, State and local laws and regulations.

b. The User furnishes as part of this agreement, Exhibit 2, an "Assurance of Compliance" with Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d *et seq.*) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 195 of Title 32, Code of Federal Regulations.

c. Any discharges of water or pollutants into a navigable stream or tributary thereof resulting from facilities and operations of the User which utilize water released under this agreement shall be performed only in accordance with applicable Federal, State and local laws and regulations.

d. The User furnishes, as part of this agreement, a certification, Exhibit 3, that it will comply with Title 31 U.S.C. Section 1352 of the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions (Public Law 101-121, October 23, 1989) and Federal Acquisition Regulation 52.203-12 issued pursuant thereto, and a Disclosure of Lobbying Activities, Exhibit 4.

ARTICLE XII - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

ARTICLE XIII - COVENANT AGAINST CONTINGENT FEES

The User warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees. 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 payments made in accordance with this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XIV - NOTICES

All notices sent pursuant to this Agreement shall be addressed as follows:

If to the Government: U.S. Army Corps of Engineers
 ATTN: Chief of Operations, CESPL-CO-O
 P.O. Box 532711
 Los Angeles, CA 90053-2325

If to the User: Orange County Water District
 10500 Ellis Avenue
 Fountain Valley, CA 92708

Both parties shall notify each other in writing of any change in address. Upon receipt of such notice, the receiving party shall send all future notices pursuant to this Agreement to the new address.

ARTICLE XV - AMENDMENT

This agreement may be bilaterally amended by written agreement of the parties that shall be attached hereto. Any such bilateral agreement will become effective ten (10) days after being executed by both parties.

ARTICLE XVI - TERMINATION

This Agreement may be terminated by the User upon ninety (90) days' written notice of termination to the Government. Termination by the User shall take effect ninety (90) days from the date of the written notice to the Government.

This Agreement may be terminated by the Government upon ninety (90) days' written notice of termination to the User if the District Engineer determines that the User has breached any term of this Agreement, or that termination of this Agreement is necessary under Federal law, or that termination of this Agreement is necessary to operate Prado Dam in accordance with authorized project purposes. Termination by the Government shall take effect ninety (90) days from the date of the written notice to the User.

Termination by either party shall not extinguish any obligations of the User for monies owed or for costs incurred pursuant to Article VI of this Agreement, nor any obligations of the User pursuant to Articles II, IV, V, VII, X, or XI of this Agreement.

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

THE DEPARTMENT OF THE ARMY

ORANGE COUNTY WATER DISTRICT

BY: John Paul Woodley, Jr.
John P. Woodley, Jr.
Assistant Secretary of the Army
for Civil Works

BY: Philip L. Anthony
Philip L. Anthony
Board President

DATE: July 7, 2006

ATTEST: Virginia Grebbien
Virginia Grebbien
General Manager

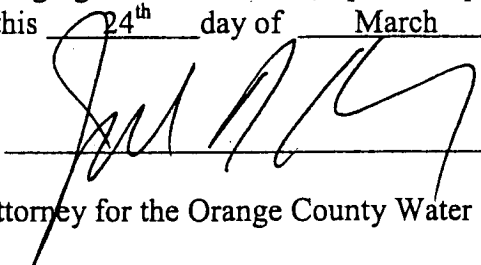
DATE: July 7, 2006

APPROVED AS TO FORM:

Joel Kuperberg
Joel Kuperberg
General Counsel

EXHIBIT 1
CERTIFICATION

I, Joel D. Kuperberg, Attorney for the Orange County Water District, have reviewed the foregoing agreement executed by President and General Manager of the Orange County Water District. And as principal legal officer of/for the Orange County Water District certify that [I have considered the legal effect of Section 221 of the 1970 Flood Control Act (Public Law 91-611) and find that] Orange County Water District is legally and financially capable of entering into contractual obligations contained in the foregoing agreement and that, upon acceptance, it will be legally enforceable. Given under my hand, this 24th day of March 2006.



Attorney for the Orange County Water District

EXHIBIT 2
ASSURANCE OF COMPLIANCE

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE AGE DISCRIMINATION ACT OF 1975; AND THE REHABILITATION ACT OF 1973, AS AMENDED

The party executing this assurance, being the applicant recipient of Federal financial assistance under the instrument to which this assurance is attached; HEREBY AGREES THAT, as a part of its obligations under the aforesaid instrument, it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CER Part 300), issued as Department of Defense Directive 5500.11 (December 28, 1964), pursuant to that title; The Age Discrimination Act 1975 (42 U.S.C. 5102); the Rehabilitation Act of 1973, as amended (29U.S.C. 794), to the end that in accordance with the aforementioned Title, Directive and Acts, no person in the United States shall on the ground of race, color, age, sex, religion, handicap or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from the Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take measures necessary to effectuate this agreement.

If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant-recipient by the Department of the Army, or if such assistance is in the form of personal property or real property, or interest therein or structure thereon, then this assurance shall obligate the applicant-recipient or in the case of any transfer of such property, any transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for the period during which it retains ownership or possession of the property whichever is longer. In all other cases, this assurance shall obligate the applicant-recipient for the period during which the Federal financial assistance is extended to it by the Department of the Army. The Department of the Army representatives will be allowed to visit the recipient's facilities. They will inspect facilities to ensure that there are no barriers to impede the handicap's accessibility in either programs or activities.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the applicant-recipient by the Department of the Army, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The applicant-recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant-recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the applicant.

Date 3-24-2006

(Applicant-Recipient)

By Virginia Sebbien

Title GENERAL MANAGER

(Applicant-Recipient's Mailing Address)

EXHIBIT 3
CERTIFICATION REGARDING LOBBYING

Memorandum of Agreement between the Department of the Army and the Orange County Water District for the Operation of the Buffer Pool at Prado Dam, California

1. The undersigned certifies, to the best of their knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the water supply agreement for the [project name], the undersigned shall complete and submit Standard Form-LLL, "Disclosure of lobbying Activities", in accordance with its instructions. This form is available to users by requesting it telephonically at (202) 761-0116, or by writing to HQUSACE (CECW-A), 20 Massachusetts Avenue, NW, Washington, D.C., 20314-1000.

c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SPONSOR

BY



EXHIBIT 4

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See continuation sheet for public burden disclosure)

1. Type of Federal Action: A a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: N/A a. bid/offer application b. initial award c. post-award	3. Report Type: Other - MOA a. initial filing b. material change
4. Name and address of Reporting Entity: ☒ Prime ☐ Subawardee Orange County Water District 10500 Ellis Ave Fountain Valley, CA 92708 Congressional District, if known: 48th		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency Army Corps of Engineers	7. Federal Program Name/Description N/A	
8. Federal Action Number, if known: N/A	9. Award Amount, if known: \$ N/A	
10 a. Name and Address of Lobbying Entity James McConnell 1130 Connecticut Ave NW Suite 300 Washington, DC 20036		10 b. Individuals Performing Services (Including address if different from No. 10a) (last name, first name, MI): (attach Continuation Sheet(s) if necessary)
11. Amount of Payment (check all that apply): \$ 44,400 ☒ actual ☐ planned		13. Type of Payment (check all that apply): ☒ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingency fee ☐ e. deferred ☐ f. other; specify:
12. Form of Payment (check all that apply): ☒ a. cash ☐ b. in-kind: specify: nature _____ value _____		
14. Brief Description of Services Performed and Date(s) of Service, including officer(s), employee(s), or members(s) contacted, for Payment Indicated in Item 11: Represent the Orange County Water District in Washington D.C. on a variety of federal issues including but not limited to: Annual appropriations for the Groundwater Replenishment System; Increasing GWRS authorization (HR 177/S 2106) Water conservation program at Prado Dam with the Army Corps of Engineers; General water issues (MTBE, CALFED, ESA, etc.); Coordination with other water agencies on federal issues; Relationship building with federal elected officials.		
15. Continuation Sheet(s) attached: ☐ Yes ☒ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: <u>Virginia Grebbien</u> Print Name: <u>VIRGINIA GREBBIE</u> Title: <u>GENERAL MANAGER</u> Telephone No.: <u>714-378-3220</u> Date: <u>3-24-2006</u>
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

EXHIBIT 4

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See continuation sheet for public burden disclosure)

1. Type of Federal Action: ☒ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: N/A ☐ a. bid/offer application ☐ b. initial award ☐ c. post-award	3. Report Type: Other - MOA ☐ a. initial filing ☐ b. material change
4. Name and address of Reporting Entity: ☒ Prime ☐ Subawardee Orange County Water District 10500 Ellis Ave Fountain Valley, CA 92708 Congressional District, if known: 48th		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency Army Corps of Engineers	7. Federal Program Name/Description N/A	
8. Federal Action Number, if known: N/A	9. Award Amount, if known: \$ ____ N/A ____	
10 a. Name and Address of Lobbying Entity Eric Sapirstein ENS Resources 1747 Pennsylvania Ave. NW Suite 420 Washington DC 20006		10 b. Individuals Performing Services (Including address if different from No. 10a) (last name, first name, MI): (attach Continuation Sheet(s) if necessary)
11. Amount of Payment (check all that apply): \$ 48,400 ____ ☒ actual ☐ planned		13. Type of Payment (check all that apply): ☒ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingency fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply): ☒ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed and Date(s) of Service, including officer(s), employee(s), or members(s) contacted, for Payment Indicated in Item 11: Represent the Orange County Water District in Washington D.C. on a variety of federal issues including but not limited to: Annual appropriations for the Groundwater Replenishment System; Increasing GWRS authorization (HR 177/S 2106) Water conservation program at Prado Dam with the Army Corps of Engineers; General water issues (MTBE, CALFED, ESA, etc.); Coordination with other water agencies on federal issues; Relationship building with federal elected officials.		
15. Continuation Sheet(s) attached: ☐ Yes ☒ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: <u>Virginia C. Subbrien</u> Print Name: <u>VIRGINIA C. SUBBRIEN</u> Title: <u>GENERAL MANAGER</u> Telephone No.: <u>714-378-3220</u> Date: <u>3-24-2006</u>
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

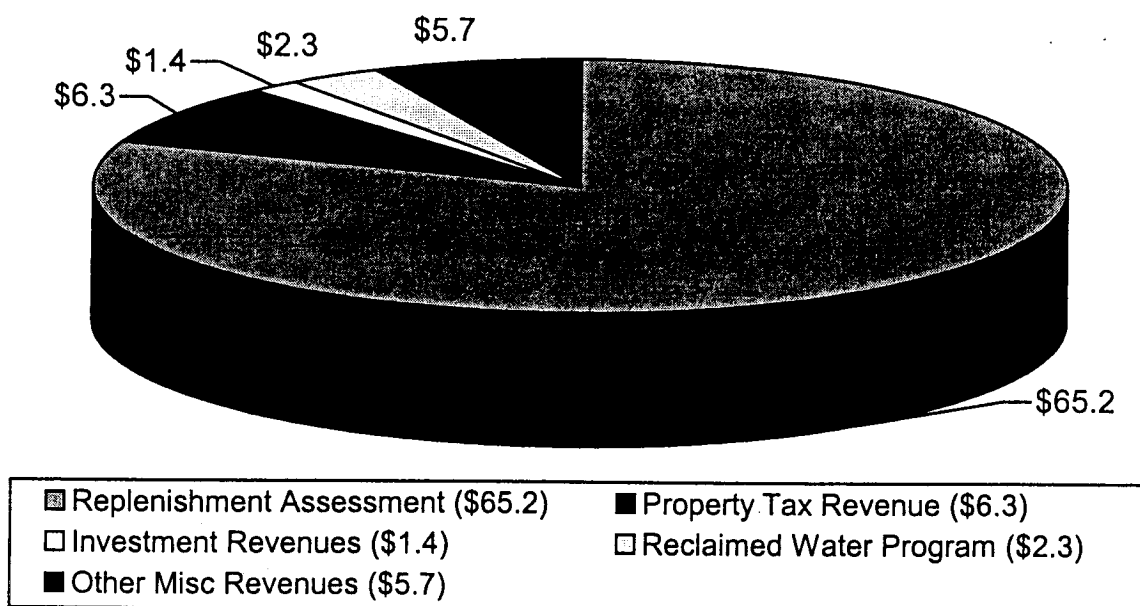
Orange County Water District

Financial Capability to Support the Water Conservation Agreement with the Army Corps of Engineers at Prado Dam

The District maintains a strong financial position and will be easily able to fund the annual operation and maintenance cost necessary to support the water conservation program behind Prado Dam. Additionally, in December 2003 the District paid to the Santa Ana River Conservation Trust Fund \$930,000 as part of a one time mitigation fee requirement for the conservation program.

Annual operating costs associated with the conservation of water at Prado Dam that are attributed to the District will be funding from our General Operating Fund. The District's budgeted operating revenues for Fiscal-Year 2005-06 are \$80.9 Million as shown below. They are primarily comprised of the Replenishment Assessment (RA), which is charged for each acre-foot of groundwater pumped from the groundwater basin. The RA is currently \$205/af.

OCWD FY05-06 Budgeted Operating Revenues (Millions)



The District enjoys a competitive rate advantage with the cost of groundwater in that alternative imported water supplies from the Metropolitan Water District of Southern California cost over \$500/af. The local cities and water district's will always maximize their groundwater pumping before purchasing more expensive supplies to meet their water demands. Total water demands within the District are approximately 491,000 af while groundwater production is expected to be 318,000 afy in FY05-06. The large discrepancy between the cost of groundwater and imported water supplies provides the District the flexibility to increase the RA as necessary to fund new expenses.

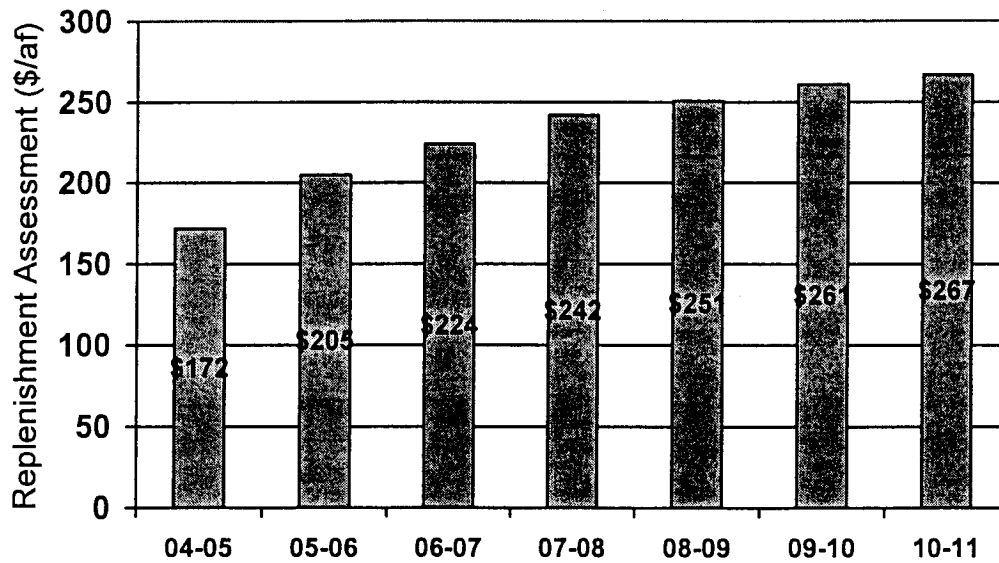
The District also holds very high credit ratings of AA+ from Standard & Poor's and Fitch along with an aa2 rating from Moody's. These ratings are among the highest for any water agency in the State of California. The ratings reflect the District's fiscal management and competitive rate advantage and allow the District to borrow funds for capital projects at very low interest rates.

The District expects to have approximately \$51.8 million in operating reserves as shown on the following table by the end of the fiscal year. These reserves are subdivided into different categories but generally insure the District's fiscal integrity by providing funds to meet emergency situations if they arise.

OPERATING RESERVES	
RESERVE	PROJECTED YEAR-END FY 05-06 (\$/MILLION)
Debt reserve required by bond covenants	4.6
Operating reserve	12.5
General Contingencies per District Act	3.0
Toxic Clean-up per Board Policy	3.1
Refurbishment and Replacement Fund per Board policy	28.6
OPERATING FUNDS	\$51.8

The District routinely prepares future estimates of the RA, and has the capability to annually modify the RA or deviate from the projections as necessary to accommodate changing conditions. As illustrated below the RA is projected to increase in the near-term.

FIVE-YEAR RATE PROJECTIONS



The District's most recent financial audit completed for the 2004-05 fiscal year by the firm of Leaf and Cole gave the District a "clean" audit indicating no financial irregularities existed.

Signature: Virginia Grebbien

Print Name: Virginia Grebbien

Title: General Manager

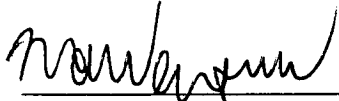
Date: 3-24-2006

Orange County, California
Prado Dam Water Supply Study

April 4, 2006

CERTIFICATION OF LEGAL REVIEW

As District Counsel, I have reviewed the Memorandum Of Agreement (MOA) for the Prado Dam Water Supply/Water Conservation Project, California, under the authority of Public Law 74-738, of the Flood Control Act of June 23, 1936 and Section 110 of Division C of the Consolidated Appropriations Act of 2005, (Public Law 108-447). Based on my review, I have determined that the MOA is legally sufficient and is consistent with the authority for this agreement.

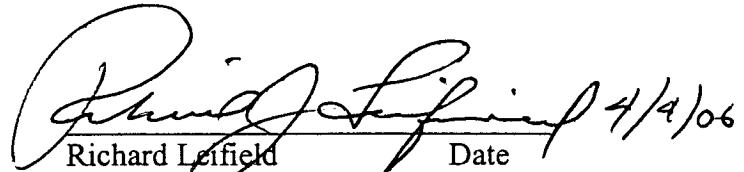
 4 April 2006
for Lawrence N. Minch Date
District Counsel
Los Angeles District

Orange County, California
Prado Dam Water Supply Study

April 4, 2006

APPROVAL OF FINANCIAL PLAN

I have reviewed Orange County Water District's Financial Plan for funding the annual payments of this Water Supply/Conservation upgrade under Public Law 74-738, of the Flood Control Act of June 23, 1936 and Section 110 of Division C of the Consolidated Appropriations Act of 2005, (Public Law 108-447) and have found it to be sufficient and acceptable.


Richard Leifield Date 4/4/06
Chief, Civil Projects Branch

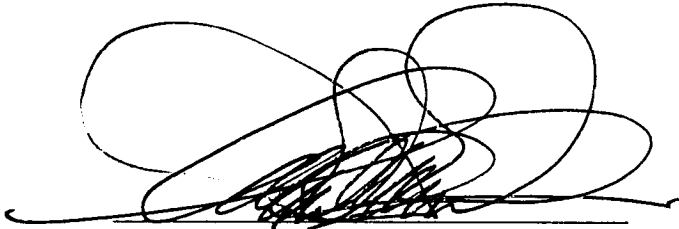
Orange County, California
Prado Dam Water Supply Study

April 4, 2006

ASSESSMENT OF FINANCIAL CAPABILITY
WATER SUPPLY PROJECT UPGRADE
ORANGE COUNTY, CALIFORNIA

The local sponsor for the Prado Water Supply/Conservation Project is Orange County Water District, Orange County, California. The sponsor is committed to providing the coordination and funding for this project. The County's funding for this project will be allocated through its approved annual budgets.

Given the sponsor's commitment to this project, together with the financial plan for the required funds, I am confident that the sponsor is fully capable of fulfilling the requirement under the terms of the Memorandum of Agreement.

A handwritten signature in black ink, consisting of several large, overlapping loops and a horizontal line at the bottom.

Alex C. Dornstaeder
Colonel, U.S. Army
Commanding

Date: 5 APR 06

ATTACHMENT THREE

SAMPLE AGREEMENT

Attachment Three
SAMPLE AGREEMENT
NO. ***
with

for

This Agreement (the "Agreement") is made and entered into as of ***, by and between the ORANGE COUNTY WATER DISTRICT, a special governmental district organized and operating under the laws of the State of California (hereinafter "OCWD") and ***, ("Contractor"). (The term Contractor includes professionals performing in a consulting capacity.)

PART I
FUNDAMENTAL TERMS

- A. Location of Project: ***
- B. Description of Services/Goods to be Provided: *** in accordance with PART IV, Scope of Services, included herein.
- C. Term: Unless terminated earlier as set forth in this Agreement, the services shall commence on *** ("Commencement Date") and the term of this Agreement shall continue through its expiration on ***.
- D. Party Representatives:
- D.1. OCWD designates the following person/officer to act on OCWD's behalf: ***.
- D.2. Contractor designates the following person to act on Contractor's behalf: ***.
- E. Notices: All notices and other writings required to be delivered under this Agreement to the parties shall be delivered at the addresses set forth in Part II ("General Provisions").
- F. Attachments: This Agreement incorporates by reference the following Attachments to this Agreement:
- | | | |
|------|-----------|--------------------|
| F.1. | Part I: | Fundamental Terms |
| F.2. | Part II: | General Provisions |
| F.3. | Part III: | Special Provisions |
| F.4. | Part IV: | Scope of Services |
| F.5. | Part V: | Budget |

G. Integration: This Agreement represents the entire understanding of OCWD and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements or understandings, if any, between the parties, and none shall be used to interpret this Agreement.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

ORANGE COUNTY WATER DISTRICT

By: _____

Michael R. Markus, P.E.
General Manager

By: _____

Title: _____

By: _____

Stephen R. Sheldon, Board President

By: _____

Title: _____

Dated: _____

APPROVED AS TO FORM:

Contractor Information:

RUTAN & TUCKER, LLP

Address for Notices and Payments:

By: _____

Joel D. Kuperberg, General Counsel

Attention:
Telephone:
Facsimile No.:

PART II
GENERAL PROVISIONS

SECTION ONE: SERVICES OF Contractor

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. OCWD shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by OCWD to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.3 Standard of Performance. Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of OCWD. Contractor agrees to perform all work to the satisfaction of OCWD within the time specified. If OCWD reasonably determines that the work is not satisfactory, OCWD shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from OCWD. In the performance of this Agreement, Contractor shall report to and receive instructions from OCWD's representative identified in Part I, or his or her designee. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the OCWD.

1.6 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the OCWD of such fact and shall not proceed except at Contractor's risk until written instructions are received from the OCWD's Representative.

1.7 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of OCWD. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior express written approval of OCWD. In the event of any unapproved transfer, including any bankruptcy proceeding, OCWD may, in its sole and absolute discretion, void the Agreement. No approved transfer shall release any surety of Contractor of any liability hereunder without the express consent of OCWD.

1.8 Compensation. Contractor shall be compensated in accordance with the terms of Part V hereto ("Budget"). Included in the Budget are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with OCWD representatives, and incidental costs incurred in performing under this Agreement. Unless otherwise specified in Part V, OCWD shall compensate Contractor on a time-and-materials basis at the rates listed in Part V. Contractor shall submit an invoice referencing this Agreement, the Work Order number, date and description of services performed, and the amount. OCWD shall pay the Contractor within 30 days of receipt of the invoice.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1. Insurance. Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subconsultants. In the event that Contractor subcontracts any portion of the work, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 2.1.

2.1.1 Insurance Coverage Required. The policies and amounts of insurance shall be as follows:

a. Commercial General Liability Insurance - The Contractor shall provide and maintain commercial general liability insurance. The coverage for commercial general liability insurance shall be at least as broad as the following: Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Contractor shall maintain limits no less than the following: Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to OCWD) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability Insurance - The Contractor shall provide and maintain automobile liability insurance. The coverage for automobile liability insurance shall be at least as broad as the following: Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001) covering Symbol 1 (any auto). Contractor shall maintain limits no less than the following: One Million Dollars (\$1,000,000.00) for bodily injury and property damage each accident limit.

c. Workers Compensation and Employer's Liability - The Contractor and all subcontractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance with limits of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

d. Professional Liability - The Contractor shall provide coverage appropriate to the Contractor's profession covering Contractor's wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement. The limits shall be no less than \$1,000,000 per claim and annual aggregate.

2.1.2. General Requirements. Contractor's insurance:

a. Shall be issued by an insurance company, which maintains an A.M. Best's rating of "-A, VII" or higher; unless otherwise approved by OCWD;

b. General Liability and Automobile Liability shall name the "OCWD, and its officers, officials, employees, agents, representatives and volunteers (collectively hereinafter "OCWD and OCWD Personnel") as additional insureds" and contain no special limitations on the scope of protection afforded to OCWD and OCWD Personnel. All insurance provided hereunder shall include the appropriate separate endorsement(s).

c. Shall be primary insurance and any insurance or self-insurance maintained by OCWD or OCWD Personnel shall be in excess of Contractor's insurance and shall not contribute with it;

d. Shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

e. Workers' Compensation and Employer's Liability shall be endorsed to state that the insurer shall waive all rights of subrogation against OCWD and OCWD Personnel, excluding Professional Liability;

f. Shall have project name and/or agreement number indicated on certificate; and

g. Shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to OCWD by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

2.1.3 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by OCWD prior to the execution of this Agreement by OCWD.

2.1.4 Evidence of Coverage. CONSULTANT shall furnish OCWD with certificates of insurance with additional insured (Form 2010) including waiver of subrogation endorsement, demonstrating the coverage required by this Agreement, which shall be received and approved by OCWD not less than five (5) working days before work commences.

2.1.5 Workers Compensation Insurance – No Employees/Sole Proprietor. By his/her signature hereunder, Contractor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this Agreement. Contractors and subcontractors will keep Workers Compensation Insurance for their employees in effect during all work covered by this Agreement.

In the event Contractor has no employees requiring Contractor to provide Workers' Compensation Insurance, Contractor shall so certify to OCWD in writing prior to OCWD's execution of this Agreement. OCWD and OCWD Personnel shall not be responsible for any claims in law or equity occasioned by failure of the Contractor to comply with this section or with the provisions of law relating to Workers' Compensation.

2.2 Indemnification.

2.2.1 The parties mutually acknowledge that OCWD has retained Contractor to perform the tasks and services set forth in this Agreement based upon the special skills, expertise and experience of Contractor. Accordingly, in performing the tasks and services under this Agreement, Contractor shall use the skill and care that a highly specialized professional, with expertise in the field, would use under similar circumstances. Further, the parties mutually agree that, to the extent that Contractor retains subcontractors or subcontractors to perform any portion of any of the tasks or services under this Agreement, Contractor has a duty to OCWD to ensure that the tasks and services performed by such subcontractors or subcontractors meet the same professional level, skill and expertise expected of Contractor.

2.2.2 Except as set forth in subdivision 2.2.3, Contractor shall indemnify, defend (with legal counsel acceptable to OCWD) and hold harmless OCWD and the OCWD Personnel from and against any and all actions, suits, claims, demands,

judgments, attorneys fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities ("Claims") that may be asserted or claimed by any person or entity arising out of Contractor's performance of any tasks or services for or on behalf of OCWD, whether or not there is concurrent active or passive negligence on the part of OCWD and/or any OCWD Personnel, but excluding any Claims arising from the active sole negligence or willful misconduct of OCWD or any OCWD Personnel.

2.2.3 The provisions of this subdivision 2.2.3 apply only in the event that Contractor is a "design professional" within the meaning of California Civil Code section 2782.8(b). If Contractor is a "design professional" within the meaning of Section 2782.8(b), then, notwithstanding subdivision 2.2.2 above, to the fullest extent permitted by law (including, without limitation, Civil Code sections 2782 and 2782.6), Contractor shall defend (with legal counsel reasonably acceptable to OCWD), indemnify and hold harmless OCWD and OCWD Personnel from and against any Claim that arises out of, pertains to, or relates to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, subcontractor or any other person directly or indirectly employed by them, or any person that any of them control, arising out of Contractor's performance of any task or service for or on behalf of OCWD under this Agreement. Such obligations to defend, hold harmless and indemnify OCWD or any OCWD Personnel shall not apply to the extent that such Claims are caused in part by the sole active negligence or willful misconduct of OCWD or such OCWD Personnel. To the extent Contractor has a duty to indemnify OCWD or any OCWD Personnel under this subdivision 2.2.3, Contractor shall be responsible for all incidental and consequential damages resulting directly or indirectly, in whole or in part, from Contractor's negligence, recklessness or willful misconduct.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Compliance with Laws. Contractor shall keep itself fully informed of all existing and future state and federal laws and all county, municipal and OCWD ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.2 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless OCWD against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against OCWD thereunder.

3.3 Covenant Against Discrimination. Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

3.4 Independent Contractor. Contractor shall perform all services required herein as an independent Contractor of OCWD and shall remain at all times as to OCWD a wholly independent Contractor. OCWD shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of OCWD. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the OCWD; and neither Contractor nor any of its employees shall be paid by OCWD time and one-half for working in excess of forty (40) hours in any one week. OCWD is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

3.5 Use of Patented Materials. Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the OCWD harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

3.6 Proprietary Information. All proprietary information developed specifically for OCWD by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of OCWD, and are confidential and shall not be made available to any person or entity without the prior written approval of OCWD. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to OCWD, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by OCWD.

3.7 Ownership of Data, Reports and Documents. The Contractor shall deliver to OCWD's representative identified in Part I, at the end of the project, notes and

surveys made, all reports of tests made, studies, reports, plans, a copy of electronic and digital files, and other materials and documents which shall be the property of OCWD. The Contractor is not responsible to third parties of OCWD's use of data, reports and documents on other projects. OCWD may use or reuse the materials prepared by Contractor in any manner desired without additional compensation to Contractor. Any work performed by Contractor under this Agreement shall be the property of OCWD.

3.8 Retention of Funds. Contractor hereby authorizes OCWD to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate OCWD for any losses, costs, liabilities, or damages suffered by OCWD, and all amounts for which OCWD may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. OCWD in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of OCWD to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay OCWD any sums Contractor owes OCWD.

3.9 Termination By OCWD. OCWD reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from OCWD, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by OCWD. Contractor shall be entitled to compensation for all services rendered prior to receipt of OCWD's notice of termination and for any services authorized in writing by OCWD thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, OCWD may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by OCWD in retaining a replacement Contractor and similar expenses, exceeds the Budget.

3.10 Right to Stop Work; Termination By Contractor. Contractor shall have the right to stop work only if OCWD fails to timely make a payment required under the terms of the Budget. Contractor may terminate this Agreement only for cause, upon thirty (30) days' prior written notice to OCWD. Contractor shall immediately cease all services hereunder as of the date Contractor's notice of termination is sent to OCWD, except such services as may be specifically approved in writing by OCWD. Contractor shall be entitled to compensation for all services rendered prior to the date notice of termination is sent to OCWD and for any services authorized in writing by OCWD thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.9 relating to OCWD's right to take over and finish the work and Contractor's liability therefor shall apply.

3.11 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the

party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing.

3.12 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

3.13 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

3.14 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including but not limited to reasonable attorney's fees, expert witness fees and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

3.15 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of OCWD or Contractor, including but not restricted to acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation and/or acts of any governmental agency, including OCWD, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, OCWD shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of OCWD such delay is justified. OCWD's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against OCWD for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.15.

3.16 Non-liability of OCWD Officers and Employees. No officer, official, employee, agent, representative or volunteer of OCWD shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by OCWD, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

3.17 Conflict of Interest. No officer, official, employee, agent, representative or volunteer of OCWD shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement which affects his or her financial interest or the financial interest of any corporation, partnership, or association in which he or she is interested, in violation of any Federal, State, or OCWD statute, ordinance, or regulation. The Contractor shall not employ any such person while this Agreement is in effect.

3.18 Compliance with California Unemployment Insurance Code Section 1088.8. If Contractor is a sole proprietor, then prior to signing the Agreement, Contractor shall provide to the OCWD a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the OCWD will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

SECTION FOUR: MISCELLANEOUS PROVISIONS

4.1 Records and Reports. Upon request by OCWD, Contractor shall prepare and submit to OCWD any reports concerning Contractor's performance of the services rendered under this Agreement. OCWD shall have access, upon reasonable notice, to the books and records of Contractor related to Contractor's performance of this Agreement. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of OCWD and shall be delivered at no cost to OCWD upon request of OCWD or upon the termination of this Agreement, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of OCWD. Contractor shall keep and maintain all records and reports related to this Agreement for a period of three (3) years following termination of this Agreement, and OCWD shall have access to such records upon 48 hours notice.

4.2 Notices. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the OCWD shall be delivered to the following address, to the attention of the OCWD Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To OCWD: Orange County Water District
 P. O. Box 8300
 Fountain Valley, CA 92728-8300
 Telephone: 714/378-3200

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

4.3 Construction and Amendment. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

4.4 Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

4.5 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

4.6 Special Provisions. Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget"), Part III shall take precedence and prevail over Parts I, II, IV and V; Part II shall take precedence and prevail over Parts I, IV and V; Part IV shall take precedence and prevail over Parts I and V; and Part V shall take precedence over Part I.

PART III
SPECIAL PROVISIONS

[INSERT THE FOLLOWING IF Contractor IS NOT A PROFESSIONAL FIRM SUCH AS ATTORNEY, CPA, ENGINEER OR ARCHITECT. CALL PURCHASING IF UNSURE]

100.1 PART II GENERAL PROVISIONS, Section 2.1.1 (d) Professional Liability insurance requirements is deleted in its entirety.

[INSERT LABOR CODE AND PREVAILING WAGE PROVISIONS IF WORK IS A "PUBLIC WORK"]

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PART IV
SCOPE OF SERVICES

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PART V
BUDGET

A.

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