

Santa Ana-Delhi Channel Diversion Project Agreement

D15-013

City of Santa Ana
Orange County Flood Control District
County of Orange
City of Newport Beach
City of Costa Mesa
Orange County Water District
Irvine Ranch Water District

AGREEMENT

This Santa Ana-Delhi Channel Diversion Project Agreement (“**Agreement**”) is made as of this ____ day of _____, 201_, (“**Effective Date**”) by and among

The City of Santa Ana, a California charter city (“**SANTA ANA**”),

The Orange County Flood Control District, a body corporate and politic (“**OCFCD**”),

The County of Orange, a political subdivision of the State of California (“**COUNTY**”),

The City of Newport Beach, a California municipal and charter city (“**NEWPORT BEACH**”),

The City of Costa Mesa, a California municipal corporation (“**COSTA MESA**”),

The Orange County Water District, a subdivision of the State of California organized under Chapter 924 of the Statutes of 1933, as amended (“**OCWD**”),
and

The Irvine Ranch Water District, a California water district organized under Section 34000 *et seq.* of the California Water Code (“**IRWD**”);

which are sometimes individually referred to as “**Party**,” or collectively referred to as “**Parties**.”

DEFINITIONS

The following definitions shall hereinafter apply:

Additional Annual O&M Costs - a Funding Party’s proportionate share as specified in Exhibit C2 to cover annual O&M expenses upon exhaustion of the Initial O&M Deposit (as defined below).

Additional Participant - a third party point source discharger in the Watershed Area or other Project beneficiary that has entered into an agreement signed by all Parties committing its contribution toward the O&M costs in order to receive regulatory compliance, offsets or credits offered by the Project.

Airport Director – the Director of John Wayne Airport

Approved Plans - those Project plans, specifications, and engineering estimates (“PS&E” see definition below) which have been approved through the County Property Permit process. Approved Plans shall also include those PS&E revisions and/or contract change orders approved in writing by the Project Representatives (as defined in Section 1).

Bond - the faithful performance bond, payment bond, or warranty bond required to be provided by the Contractor pursuant to this Agreement. (collectively “**Bonds**”)

CPP - the process to obtain a County Property Permit from the County of Orange.

CEQA – the California Environmental Quality Act (California Public Resources Code § 21000 et seq.).

Channel - the Santa Ana-Delhi Diversion Channel designated OCFCD Facility No. F01.

Cities - refers to SANTA ANA, NEWPORT BEACH, and COSTA MESA collectively

Claims - liabilities, actions, suits, claims, demands, losses, costs, tortious, contractual, condemnation, inverse condemnation, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees; including those arising from injuries to or death of persons, for damage to property, or liability of any kind or nature.

Conceptual Report – that Diversion Structure Water Capture and Reuse Structure Concept Feasibility Study dated July 8, 2013 which reviewed the technical and economic feasibility of reducing pollutants inflows and trash to the Channel.

Contractor - that contractor and its subcontractors that have entered into a construction contract with SANTA ANA for the Project.

Days – unless otherwise specified to the contrary, “days” in this Agreement shall mean business days as defined by the City of Santa Ana.

Director – the Director of OC Public Works or designee.

Diversion Structure – an urban discharge diversion system as may be constructed near the intersection of Mesa Drive and Irvine Avenue as shown on the attached Exhibit B (hereinafter referred to as the “**Preliminary Plans**”), which shall include features that

extend across a segment of Channel designed to divert trash and debris into a containment area, while conveying low-flows where pollutants will be captured, and further discharged into an Orange County Sanitation District trunk line for conveyance to its sanitary sewer treatment plant and thereafter to the OCWD Groundwater Replenishment System. The Diversion Structure will modify the existing Channel with a concrete weir crossing the channel bottom and alter approximately 100 feet of the Channel's north wall to accommodate fixture of a debris boom, inlet and bypass outlet structures.

Estimated Cost - the itemized estimate of Project Capital Costs and O&M expenses listed on Exhibit C3 from an Opinion of Probable Construction Cost referenced as "Engineer's Estimate 15-058" by AECOM dated July 24, 2015 based upon 60% Design Plans.

Facility (sometimes also referred to as the "**Facilities**" or "**Project Facilities**") – final Project (as defined below) improvements constructed in accordance with the Approved Plans, which shall include the Diversion Structure, related pumps, pipelines and features necessary for operations.

Flood Control Act - Orange County Flood Control Act set forth in California uncodified Water Code, Act 5682, section 2, also referred to as Water Code App. Sections 36-1 et seq, also referred to as Chapter 723 of the State of California Statutes of 1927, as amended.

Force Majeure Event - those events specified in Section 2.5.4 that materially and adversely interfere with or increase the costs of performing SANTA ANA's obligations hereunder, provided that such event (or the effects of such event) could not have been avoided by SANTA ANA's use of reasonable effort.

Funding Partner – SANTA ANA, NEWPORT BEACH, COSTA MESA, OCFCD, COUNTY or IRWD as shown on Exhibit C2 (collectively the "**Funding Partners**").

Golf Lessee – Public golf course operator, Newport Beach Golf Course, LLC, its successors or assigns, which leases a portion of County land, under the purview of John Wayne Airport that may be impacted by the Project.

Grant - that Measure M2 Environmental Cleanup Program Grant from the Orange County Transportation Authority awarded to SANTA ANA in the amount of TWO MILLION, FIVE-HUNDRED SEVENTY-TWO THOUSAND, EIGHT HUNDRED, and SEVENTY-FIVE DOLLARS (\$2,572,875) for Project Capital Costs.

HM-1 - hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law existing prior to the Project and not disturbed by the Project.

HM-2 - hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the Project or as a result of the Project.

HM Management Activities - management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements, clean-up and disposal facility designations.

Initial O&M Deposit - a transfer of ONE MILLION DOLLARS (\$1,000,000) from SANTA ANA to the O&M Account maintained by OCFCD in accordance with the terms herein

John Wayne Airport (“JWA” or “Airport”) – an airport established by ordinance of the County of Orange Board of Supervisors pursuant to the laws of the State of California and the federal government, which is operated on an enterprise basis at no cost to the taxpayer. Although JWA is a department of the County of Orange, the Parties agree JWA is not a Funding Partner to this Agreement, and as such is not required to financially contribute to the Project, associated O&M or Reserve Fund, but retains rights under this Agreement as a Project Representative and as otherwise provided herein.

NPDES – National Pollutant Discharge Elimination System stormwater permit program authorized by Section 402 of the Clean Water Act, 33 U.S.C. §1251 *et seq.* of 1972, as amended, also referred to as a Municipal Separate Storm Sewer System (“MS4”) Permit.

OCSD - the Orange County Sanitation District.

OCWD Project Contribution - a one-time, lump-sum payment from Orange County Water District (OCWD) of ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) toward the Project construction costs.

O&M – operation and maintenance.

O&M Contractor – a contractor under contract with OCFCD or COSTA MESA to perform operation and maintenance on the Facility or portion thereof.

O&M Fund - monies deposited into the O&M Account in amounts paid in accordance with the terms herein, to be used by OCFCD or COSTA MESA for Facility operation, maintenance, and repair or replacement required due to a catastrophic event.

O&M Account - a separate account for the Initial O&M Deposit and OCFCD O&M Fund established by OCFCD and maintained consistent with all applicable OCFCD/COUNTY or other governmental laws, rules and regulations pertaining thereto, to receive from SANTA ANA a transfer of \$1,000,000 from the Project Fund (e.g. the Initial O&M Deposit), Additional Annual O&M Costs and other monies consistent with the purposes of the O&M Fund.

O&M Manual - the Operation and Maintenance Manual for the Facility and components thereof.

Oversight Inspector - a qualified OC Public Works inspector or representative assigned through the CPP process by OCFCD/County to verify that construction of the Diversion Structure and other Facilities on OCFCD and COUNTY right-of-way are accomplished in a good, workman-like manner and in accordance with the Approved Plans per OCFCD and COUNTY standard.

NEPA - National Environmental Policy Act, 42 U.S.C § 4231 et seq.

Project – the Santa Ana-Delhi Channel Diversion Project is a regional water quality project intended to protect Upper Newport Bay from pollutant loadings generated by discharge flows, debris, and trash from the Channel and its watershed, and includes all right-of-way necessary for its implementation. The Project will remove dry-weather channel flows from the Channel watershed with the Diversion Structure, as further defined in Recital B. The Project shall include work within the limits indicated on Exhibit A performed concerning design, construction, and O&M of the Project and Facilities.

Project Capital Costs – those Project costs referenced in Exhibit C3 including, but not limited to, design engineering, permits, right-of-way, easements, project administration, consultant costs, environmental reports, costs associated with CEQA, NEPA, Resource Agency or Regulatory compliance, surveying, investigation, testing, monitoring, construction, equipment, materials, contracts, warranties, attorney fees, Newport Beach Golf Course lost revenue, costs for defense of CEQA/NEPA lawsuit and costs for hazardous material management activities related to HM-2 as defined in Section 8 (Hazardous Material). O&M costs are not a part of the Project Capital Costs.

Project Costs – those actual costs as estimated and referenced in Exhibit C1 and Exhibit C3 covering all costs associated with the Project.

Project Fund - a separate account established by SANTA ANA and maintained consistent with all applicable SANTA ANA or other governmental laws, rules and regulations pertaining thereto, wherein SANTA ANA shall deposit amounts paid by the Parties for Project Costs.

PS&E - Project plans, specifications, and engineering estimates agreeable to the Project Representatives (as defined in Section 1) which have been approved through the County Property Permit process.

Regional Board – the Santa Ana Regional Water Quality Control Board.

Regulations – those federal and state regulations or requirements applicable to point source discharges, as more particularly described in Recital A, which are prescribed by the Santa Ana Regional Water Quality Control Board, California State Water Resources Control Board, and/or United States Environmental Protection Agency that have jurisdiction within the Santa Ana-Delhi drainage system depicted on Exhibit A.

Reserve Fund - After exhaustion of the Initial O&M Deposit, monies deposited into the O&M Funds which are designated for reserve fund purposes as specified in Section 3.7.9. to be used by OCFCD and/or COSTA MESA to repair or replace the Facilities, Project-related Channel improvements and/or appurtenances, or portions thereof damaged due to a catastrophic event

Resource Agency(ies) – each one of the following entities or collectively, all of them: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, California Department of Fish and Wildlife, Santa Ana Regional Water Quality Control Board, and Coastal Commission.

Sponsor - OCFCD, the COUNTY, COSTA MESA, NEWPORT BEACH, or SANTA ANA (collectively the “**Sponsors**”) and which shall include IRWD in accordance with Exhibit C2b.

Sponsorship Share - a Sponsor’s share of participation in funding, credits and offsets pursuant this Agreement and/or the Project, based upon the percentages denoted on Exhibit C2a and C2b.

State Board – the California State Water Resources Control Board.

TCE - temporary construction easement.

Term - unless otherwise terminated or extended, this Agreement shall be effective for an initial term of twenty-five years commencing on the Effective Date, and shall automatically renew for ten year terms thereafter.

TMDL - Total Maximum Daily Loads.

Watershed Drainage Area - the impacted watershed area within Project limits shown on Exhibit A.

RECITALS

A. The Parties are subject to regulations or requirements applicable to point source discharges for bacteria, metals, nutrients, trash, selenium and other constituents; including but not limited to, TMDL, applicable provisions of dewatering permits and time schedule orders the Municipal Separate Storm Sewer System (“MS4 Permit, and/or other discharge permits, waste discharge requirements, or discharge-related orders. In a collaborative effort SANTA ANA, NEWPORT BEACH, and COSTA MESA (collectively, “**Cities**”) pursued satisfying current and future NPDES requirements and proposed trash amendment to MS4 Permit requirements (see Recital Q) through the development of a watershed regional diversion project. The Project requires OCFCD and COUNTY cooperation in order for the Diversion Structure component to be constructed, operated and maintained in and about the Channel; a portion of the land is under the purview of JWA.

B. The Parties, other than OCWD and IRWD, caused the Diversion Structure Water Capture and Reuse Structure Concept Feasibility Study dated July 8, 2013 to be conducted in order to review the technical and economic feasibility of reducing pollutants inflows and trash to the Channel (“**Conceptual Report**”). Based upon the Conceptual Report findings, possible locations for the Diversion Structure system and the Project limits shown on Exhibits A-1 and A-2 within the impacted watershed area (i.e., the Watershed Drainage Area) were proposed and alternative Facility components were discussed.

C. The proposed Project is to be designed for the benefit of the Parties, who occupy or operate within a region of approximately 11,120 acres, by diverting dry-weather flows and trash from the Santa Ana-Delhi drainage system shown in Exhibit A.

D. It is contemplated that the Diversion Structure will be constructed upon land owned by COUNTY, under the purview of JWA. Part of this County-land is leased to the “**Golf Lessee,**” and other parts are utilized for OCFCD’s Channel and flood control purposes in accordance with the Flood Control Act.

E. OCFCD, COUNTY and JWA are amenable to accommodating the Diversion Structure and appurtenant components upon their right-of-way in accordance with the terms herein, provided that the Project: (1) will not violate the COUNTY’s vesting deed restrictions or

create a nuisance, (2) will not interfere with flood control or Airport operations or operational requirements, (3) will minimize its effect on Golf Lessee, and (4) mitigates and compensates JWA and/or Golf Lessee for any negative impact due to the Project.

F. The Project's proposed plan as shown on Exhibit B (Preliminary Plan) is to install, operate, and maintain pipelines within public street right-of-way. The Cities are amenable to accommodating pipelines and other necessary Project Facilities within their respective public street right-of-way in furtherance of the Project.

G. SANTA ANA will be the lead agency for the Project under CEQA, and if applicable NEPA, as well as being responsible for the PS&E, acquisition of property rights, relocations, necessary permits and easements, and construction administration necessary for the Project.

H. The Parties anticipate the Project costs to be about \$9,367,875 ("**Estimated Cost**") based upon the itemized estimated expenses listed on Exhibit C3.

I. The Estimated Cost amount includes an estimate of long-term O&M expenses projected over twenty years in the amount of ONE MILLION DOLLARS (\$1,000,000).

J. SANTA ANA has been awarded a Measure M2 Environmental Cleanup Program Grant from the Orange County Transportation Authority in the amount of TWO MILLION, FIVE-HUNDRED SEVENTY-TWO THOUSAND, EIGHT HUNDRED, and SEVENTY-FIVE DOLLARS (\$2,572,875) ("Grant"), which shall be used for the capital construction costs associated with the Project.

K. The Project proposes to divert trash and debris into a containment area while conveying dry-weather flows into an Orange County Sanitation District trunk main which serves an OCSD sanitary sewer treatment plant and thereafter to the OCWD Groundwater Replenishment System. In furtherance of the Project, OCWD has offered to pay a one-time sum of ONE MILLION DOLLARS (\$1,000,000) toward the construction costs pursuant to the terms and conditions provided herein. SANTA ANA will accept and expend said funds from OCWD for the construction of the PROJECT.

L. SANTA ANA is committing its resources and is agreeable to contribute toward the Project design, construction, and O&M. SANTA ANA agrees to make one lump sum payment for their proportionate share in the costs for the design, construction long-term O&M costs in an aggregate amount not to exceed of ONE MILLION, NINE-HUNDRED THOUSAND DOLLARS (\$1,900,000), as denoted in Exhibit C1.

M. OCFCD and COUNTY are agreeable to contribute toward Project design, construction, and O&M. Per the terms of this Agreement, OCFCD and COUNTY agrees to make one lump sum payment of their joint proportionate share in the costs for the design and construction, and long-term O&M in an aggregate amount not to exceed ONE MILLION, SIX-HUNDRED, THOUSAND DOLLARS (\$1,600,000), as denoted in Exhibit C1. OCFCD is agreeable to accept certain ownership, O&M responsibilities, in accordance with the terms herein, for the portion of the Facilities located upon OCFCD, COUNTY and/or JWA right-of-way.

N. NEWPORT BEACH is agreeable to contribute toward the Project construction and make a lump sum payment in the amount of ONE MILLION, FIVE-HUNDRED THOUSAND DOLLARS (\$1,500,000), as denoted in Exhibit C1.

O. COSTA MESA is agreeable to contribute toward Project design, construction, and O&M. COSTA MESA agrees to make one lump sum payment for its proportionate share in the costs for the design, construction, and long-term O&M costs in an aggregate amount not to exceed SIX-HUNDRED THOUSAND DOLLARS (\$600,000), as denoted in Exhibit C1. COSTA MESA agrees to accept certain ownership, O&M responsibilities, in accordance with the terms herein, for the Facility pipelines located outside of OCFCD, COUNTY and/or JWA right-of-way.

P. IRWD discharges pumped groundwater to the Channel from wells pursuant to certain permits issued by COUNTY. In consideration of the effect of the quantity of such discharges upon the design and capacity of the Project, IRWD is willing to contribute one lump sum payment in the amount of ONE HUNDRED AND NINETY-FIVE THOUSAND DOLLARS (\$195,000), as denoted in Exhibit C1 as its share of Project design and construction. IRWD shall not contribute to O&M costs.

Q. The Parties contemplated statewide trash amendments by the State Board currently approved "Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California," which in the future would be reflected in stormwater MS4 Permits. It is intent of the Parties to collaborate efforts in order for the Project to qualify as an implementation plan, or portion thereof, under such requirements.

R. After the Diversion Structure and the Facilities become operational and at any point establish an additional regulatory benefit or credit which may be allocated among the Parties, and/or traded or sold to an outside third party at market-based rates, the Parties desire to clarify herein how a Party might receive its fair share of the economic value generated and realized.

S. The Parties further desire that the Agreement address how the Parties may amend their respective financial commitments as specified in Exhibit C2a and C2b by revising the percentages representing their proportionate share to include requiring the contribution from future, additional point source dischargers who benefit from the Project Facilities.

T. Therefore, the Parties mutually desire to enter into this Agreement to set forth their respective rights and obligations with respect to the Project development, and the possible construction, and long-term O&M of the Facilities.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Definitions and Recitals, which are incorporated herein by reference, and the mutual covenants and promises among the Parties hereinafter set forth, the Parties agree as follows:

SECTION 1 PROJECT REPRESENTATIVES

1.1 SANTA ANA Project Representative. The City Manager of the City of Santa Ana or his designee shall be authorized to perform all actions required to implement this Agreement on behalf of SANTA ANA and serve as the Project Representative for SANTA ANA for all purposes related to this Agreement.

1.2 COUNTY and OCFCD Project Representative. The Director shall be authorized to perform all actions required to implement this Agreement and to serve as the Project Representative, jointly and individually, for OCFCD and the COUNTY as Parties and property right owners; as well as, for the COUNTY as to unincorporated areas of the watershed within its jurisdiction that are not part of JWA operations.

1.3 John Wayne Airport Project Representative. The Airport Director or designee shall be authorized to perform all actions required to implement this Agreement and to serve as the Project Representative on behalf of JWA for all purposes related to this Agreement.

1.4 NEWPORT BEACH Project Representative. The City Manager of the City of Newport Beach or designee shall be authorized to perform all actions required to implement this Agreement on behalf of NEWPORT BEACH and serve as NEWPORT BEACH's Project Representative for NEWPORT BEACH for all purposes related to this Agreement.

1.5 COSTA MESA Project Representative. The City Manager of the City of Costa Mesa or designee shall be authorized to perform all actions required to implement this Agreement on behalf of COSTA MESA and serve as COSTA MESA's Project Representative for all purposes related to this Agreement.

1.6 IRWD Project Representative. The General Manager of the Irvine Ranch Water District or designee shall be authorized to perform all actions required to implement this Agreement on behalf of IRWD and serve as IRWD's Project Representative for all purposes related to this Agreement.

1.7 Whenever reference is made herein to an action or approval to be undertaken by a Party, the Project Representative shall be authorized to act on behalf of its respective Party unless specifically provided otherwise or the context requires otherwise. Any determination of change which if implemented may materially alter the terms and financial obligations of the Parties shall require an amendment of this Agreement approved in writing by each Party's board, council, or governing body.

1.8 The Project Representatives shall have authority to send invoices, make and receive

payments, and perform all other activities required to satisfy the financial responsibilities of their respective Party in accordance with the terms herein.

1.9 Each Party and their respective Project Representative acknowledge that the Project is made possible by virtue of certain Grants and agrees to make every effort to assist and cooperate with SANTA ANA, the Grant Administrator, for the Project to remain in full compliance with the terms of the Grant.

1.10 The Parties agree that JWA and/or Golf Lessee will be compensated for any unmitigated negative impacts to the Golf Course and/or Golf Lessee operations caused by the Project construction or operation only if actual losses or damages are incurred and substantiated. Costs associated with this obligation are Project Cost estimates in Exhibit C3.

SECTION 2 RESPONSIBILITIES OF SANTA ANA

2.1 General Responsibilities

SANTA ANA shall be responsible for the design, environmental review, obtaining all required Resource Agency approvals, CPP, permits and easements, and construction of the Facilities developed for the Project under the terms of this Agreement. SANTA ANA shall deposit amounts paid by the Parties for Project design and/or construction into a separate account designated for such funds as the Project Fund. Within forty (40) days of the execution of this Agreement, SANTA ANA shall deposit a lump sum amount for design, construction, and the annual O&M costs as established per Exhibit C3, into the Project Fund Account. The Grant funds shall be paid to the Project Fund on a reimbursement basis pursuant the terms and conditions of said grant.

2.2 Environmental Review / Permitting

2.2.1 SANTA ANA shall be the lead agency for purposes of CEQA, prepare the necessary environmental documents and secure all necessary resource agency permits for the Project. SANTA ANA shall secure the rights-of-way for the Project, including any needed for the O&M of the Diversion Structure and all Facilities.

2.2.2 SANTA ANA shall obtain the prior written approval from the Project Representative(s) of any Party with jurisdiction and/or property rights to any permit concerning said property which potentially includes post-construction agreements, obligations or conditions (e.g., mitigation requirements) imposed by any governmental or regulatory agency.

2.2.3 SANTA ANA shall apply for permits and maintain Project compliance with all permits, regulations and laws. As referenced in Recital Q, the development of the Project contemplated statewide trash amendments by the State of California Water Control Board currently approved "Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California." SANTA ANA shall, if the Project Representatives mutually determine it is necessary, change the Project procedures as to its implementation,

monitoring, and reporting to assist with a Party's respective stormwater discharge permit compliance.

2.3 Design

2.3.1 The Parties acknowledge SANTA ANA had the "Santa Ana-Delhi Channel Diversion Project Technical Memorandum 1", dated July 2015 and revised in October 2015, prepared which provides a description of the Project operations and land requirements for alternate design plans. Among the alternatives presented in that memorandum, the Parties wish to implement Scenario 1 where the Facilities will have direct discharge to the Orange County Sanitation District Regional Sewer System as depicted in the "Preliminary Plan" shown on Exhibit B, attached. The Facilities are to be constructed in accordance with Approved Plans that specify its components which may include, among other things and in addition to the modifications to the existing channel section, diversion structure, submersible pumps, floating boom, weirs, screening bars, and debris containment area.

2.3.2 SANTA ANA shall require and ensure that all consultants, engineers and mitigation agents working on the Project environmental, design and construction abide by the insurance and bond requirements as specified in Exhibit G (Insurance, Bonds and Warranties). SANTA ANA agrees to be responsible for the preparation of the PS&E, which shall be consistent with the standards of SANTA ANA and the Party or Parties with jurisdiction or ownership of the right-of-way where construction is to be performed. In case of conflict between such standards, the most stringent standard shall prevail. With regard to the Diversion Structure and any other Facilities appurtenant, in, on or about the Channel or right-of-way held by OCFCD or COUNTY, the PS&E shall be consistent with OCFCD standards, criteria, customs and practices and receive Director's and JWA's approval prior to commencement of construction through OCFCD's CPP process.

2.3.3 SANTA ANA shall provide the Project Representatives opportunities to review the PS&E at the 60% and 90% submittal levels and to provide timely comments prior to submittal of the PS&E to the relevant resource agencies that must issue permits for construction of the Project or O&M of the Facilities. The Project Representatives shall review the revised PS&E in a timely manner and indicate their approval or disapproval of the same to SANTA ANA. SANTA ANA shall address the comments in the drafts. SANTA ANA shall promptly provide each Project Representative with a reproducible copy of the PS&E as well as a copy of all Project-related documents. SANTA ANA shall be responsible for retaining all consultants necessary to prepare the PS&E and Approved Plans in accordance with applicable law.

2.4 Right-of-Way

2.4.1 Prior to commencing construction, SANTA ANA shall obtain all necessary permits, easements, and any right of way necessary from landowners in order to use their respective properties for the construction and O&M of the Facilities. The terms and conditions of the permits shall be consistent with this Agreement, and in the case of a conflict, the terms and conditions of this Agreement shall control. SANTA ANA shall be responsible for providing the legal descriptions required for right-of-way transactions needed for the Project, subject to the

review and approval of the Parties which are to participate in the proposed right-of-way and/or interest transaction.

2.4.2 Prior to commencing Project construction, SANTA ANA shall work with OCFCD and JWA to obtain from the Irvine Company written concurrence that the proposed Project will not unreasonably interfere with their respective rights or interest in the subject property.

2.4.3 The Parties acknowledge the primary purpose of the OCFCD/COUNTY right-of-way for the proposed Diversion Structure is for flood control purposes and operation of the Channel. If future circumstances necessitate relocation of the Diversion Structure, or if design requires additional right-of-way for the Project beyond that anticipated to be provided, the Parties shall meet and confer in good faith to identify a preferred location or other alternatives which would not impede flood control operations. Costs of relocation shall be the responsibility of the Parties and shall be allocated among the Parties, other than OCWD and IRWD, based on Sponsorship shares as specified in Exhibit C2a attached herein.

2.5 Construction

2.5.1 SANTA ANA shall be responsible for bidding, awarding, and administering the construction contract(s) of the Project in accordance with the terms of this Agreement.

2.5.2 Upon compliance with CEQA, (and NEPA if applicable), certification and approval of all necessary environmental documents, approval by all of the Project Representatives of associated mitigation requirements, receipt of all regulatory agency approvals, final approval of the PS&E and Approved Plans, and acquisition of right-of-way necessary for all work necessary for the Project, then SANTA ANA shall advertise a contract for construction of the Project for formal bids per applicable sections of the California Public Contract Code. The Project Representatives shall have the opportunity to review all bids. If the lowest responsive and responsible bid would cause the Estimated Cost shown in Exhibit C3 (which includes the 20% contingency amount) to be exceeded, then the Project Representatives shall meet and confer and mutually agree by unanimous vote whether (i) SANTA ANA should award a contract for construction of the Project to the lowest responsive and responsible bidder, (ii) SANTA ANA should reject all bids and re-bid the Project, or (iii) the Parties shall terminate or amend this Agreement. If all conditions precedent to construction of the Project set forth in this Agreement have been satisfied, SANTA ANA shall award a construction contract to the lowest responsive, responsible bidder and enter into that contract with the Contractor. SANTA ANA shall obtain advance written approval from Parties Representatives for any construction contract change orders and the implementation thereof.

2.5.3 The Parties agree to cooperate in good faith and exercise best efforts in order to meet grant(s) requirements set forth in Exhibit F, to the best of their knowledge, and to assist the Project in complying with a project schedule established by SANTA ANA to meet the requirements of Project permits and approvals. In addition, certain activities necessary to complete the Project may result in delays, such as securing environmental certifications/approvals, permitting, securing rights-of-way, Force Majeure Events, and/or obtaining necessary approvals of the Parties relative to design and construction of the Project.

2.5.4 For purposes of this Section, a “Force Majeure Event” shall mean any of the following events that materially and adversely interferes with or increases the costs of performing SANTA ANA’s obligations hereunder, provided that such event (or the effects of such event) could not have been avoided by SANTA ANA’s use of reasonable efforts: naturally occurring events (such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God), Hazardous Material Management Activities (see Section 9), explosion, sabotage or other act of war or public enemy.

2.5.5 SANTA ANA shall require and ensure that the Contractor selected pursuant to this Section and each of the Contractor’s subcontractors abide by the insurance requirements as specified in Exhibit G (Insurance, Bonds and Warranties), and name each Party and JWA as an additional insured, and that such Contractor's and subcontractors' indemnity, defense, hold harmless, and insurance obligations under SANTA ANA's agreement with the Contractor expressly benefit each other Party and JWA in the same manner and to the same extent as SANTA ANA.

2.5.6 SANTA ANA shall require and ensure that the Contractor, prior to commencement of construction, furnish a faithful performance bond, payment bond, and warranty bond in an amount equal to the estimated construction cost of the Facilities (including labor and materials) and to perform contract obligations. These bonds shall, at a minimum, comply with the requirements specified in Exhibit G. Each bond shall name the Parties and JWA as beneficiaries and grants each Project Representative the right to enforce the bond to complete the Facilities in compliance with all construction obligations including but not limited to those for warranties. SANTA ANA and the Project Representatives agree to not release the Contractor from its bond(s) without the first obtaining mutual written approval by the Project Representatives.

2.5.7 During construction, SANTA ANA shall provide access for purposes of inspection by any Project Representative to ensure that the Project work is being performed in accordance with the Approved Plans. Any Party’s entry during construction upon COUNTY land shall require prior notice to JWA.

2.5.8 After construction, SANTA ANA shall submit to OCFCD Director for written approval a Notice of Completion of the Diversion Structure and any other Facilities on OCFCD and/or COUNTY right-of-way, which approval shall not be unreasonably delayed, and only after receiving approval, file/record the approved Notice of Completion and furnish OCFCD two copies of the Notice of Completion and one (1) set of Mylar (reversed fixed – line photo Mylar) copies and electronic files in a format acceptable to OCFCD of the approved “Record Drawings” for the Facilities within OCFCD and/or COUNTY right-of-way. Approval shall be withheld only for work not completed per the Approved Plans.

2.5.9 SANTA ANA agrees to not release the Contractor from its performance bond or irrevocable letter of credit obligations prior to receipt of written approval from JWA and the Director to the Notice of Completion.

2.5.10 SANTA ANA shall be responsible to maintain the Channel and all OCFCD and COUNTY improvements impacted by the Project and/or within Project construction areas, according to OCFCD/COUNTY and JWA standards and criteria, until OCFCD/COUNTY and

JWA acceptance of the portion of the Facility within OCFCD, COUNTY, and/or JWA right-of-way in accordance with the terms herein.

2.6 Project Fund and Grant Administration

2.6.1 Within forty days of the Effective Date, SANTA ANA shall have established the Project Fund account in accordance with the terms herein and deposited into it any Grant funds and amounts paid by the Parties for Project in its possession. SANTA ANA shall be the Grant administrator and hold Grant funds and amounts paid by the Parties for Project Capital Costs in this separate Project Fund. SANTA ANA shall implement disbursements from the Project Fund to pay such Project costs as they become due and in accordance with the terms of the Grant and this Agreement.

2.6.2 SANTA ANA shall accept and use the OCWD's contribution of ONE MILLION DOLLARS and 00/100 (\$1,000,000.00), made pursuant to Paragraph 2.6.4 below, for the Project construction cost. The funds shall be made available through an escrow account and paid when construction is completed.

2.6.3 SANTA ANA shall keep appropriate records and accounts of all costs. Said records and accounts shall be subject to reasonable inspection by Project Representatives at their expense and by any Grant funding authorities. Said accounts and records may be audited annually by an independent certified public accounting firm appointed by SANTA ANA pursuant to generally accepted auditing standards. Costs incurred due to this section are to be paid by the Party or Parties initiating the inspection or audit. SANTA ANA agrees to remain at all times in compliance with the terms of the Grant.

2.6.4 SANTA ANA shall forward to OCWD a copy of the Notice of Completion approved by the Director with written request for payment of the ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) pursuant to this Agreement. OCWD's contribution will be deposited into the Project Fund and used prior to SANTA ANA invoicing the remaining Parties as part of the final reconciliation of the Project Fund.

2.6.5 SANTA ANA shall provide Project Fund account statements with updated accounting reconciliations provided upon written request from a Project Representative. Any interest accrued on the Project Fund shall be for the benefit of the Project Fund. A final reconciliation and detailed accounting report will be provided by SANTA ANA upon completion of the Project to each Party. Within forty-five (45) calendar days of Project completion, any excess funds remaining in the Project Fund, minus any unexpended Grant funds, shall be distributed to the Parties per the proportionate shares specified in Exhibit C2.

2.7 Operation and Maintenance (O&M)

2.7.1 SANTA ANA shall be responsible for the preparation of the O&M Manual for the Facility and components thereof as part of the construction contract and its distribution to the Parties for review and approval by the Project Representatives. The Notice of Completion for the Facilities shall not be prepared until the O&M Manual has been approved. SANTA ANA agrees

the Facilities shall be exclusively for the mutual use and benefit of all the Parties and those additional parties allowed pursuant Section 8 below.

2.7.2 Within forty (40) days of the Effective Date, SANTA ANA shall pay the amount of ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) to OCFCD as the initial deposit of O&M funds into the O&M Account (“**Initial O&M Deposit**”).

2.7.3 After exhaustion of the Initial O&M Deposits, SANTA ANA agrees to contribute to long-term O&M costs per its proportionate share as specified in Exhibit C2.

2.8 Project Costs

2.8.1 SANTA ANA shall be reimbursed for its actual Project Costs and actual design and construction administrations costs not to exceed the estimated amounts shown on Exhibit C3. SANTA ANA shall prepare invoices accordingly and shall be reimbursed from the Project Fund after sending its invoice(s) with documentation substantiating its actual costs to the Project Representatives within 30 days of reimbursement.

SECTION 3 RESPONSIBILITIES OF OCFCD AND COUNTY

3.1 General Responsibilities

3.1.1 OCFCD and COUNTY (“**OCFCD/COUNTY**”) shall review the Project plans and financially contribute toward the Project Fund as shown in Exhibit C2. Within forty (40) days of the execution of this Agreement, OCFCD and COUNTY shall deliver to SANTA ANA a lump sum amount for design, construction, and the annual O&M; not exceed ONE MILLION, SIX-HUNDRED THOUSAND (\$1,600,000) as established per Exhibit C2, which will be deposited into the Project Fund Account. Upon sign-off of all related CPP at completion of Project construction according to the Approved Plan, OCFCD shall take ownership, ongoing long term O&M for the portion of the Facility located upon OCFCD, COUNTY and/or JWA right-of-way.

3.2 Environmental Review / Permitting

3.2.1 OCFCD/ COUNTY and JWA shall comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements obtained for the Project provided those commitments and conditions have been approved by the OCFCD/COUNTY Project Representative and applied to each Party’s responsibilities under this Agreement.

3.2.2 OCFCD/ COUNTY Project Representative’s prior review and approval of permit conditions and other resource agency approvals shall be required for any that affect or could impact the construction or O&M of the Diversion Structure within OCFCD or COUNTY right-of-way or facilities, or other OCFCD/ COUNTY O&M activities.

3.3 Design

3.3.1 OCFCD, COUNTY and JWA shall review all draft and final design reports, calculations, and PS&E submitted by SANTA ANA for Project through the CPP process. Such OCFCD, COUNTY, JWA review and approval will be limited to review of the proposed Facilities on OCFCD, COUNTY or JWA right-of-way for conformance with OCFCD, COUNTY or JWA standards, criteria, customs, and practices; to review implications upon the Golf Lessee and proposed remedies, and to ensure the proposed will not interfere with the flood control function of the Channel. Subsequent to the OCFCD, COUNTY, JWA final PS&E approval that becomes the Approved Plans upon mutual acceptance by all Project Representatives, any material design change variance shall require mutual approval by all Project Representatives. Any design change which if implemented would materially alter the terms and financial obligations of the Parties shall require an amendment of this Agreement approved in writing by each Party's board or council.

3.4 Right of Way

3.4.1 Temporary Construction Easement

Ninety (90) days prior to the commencement of any construction activities for the Project, JWA shall deliver to SANTA ANA a Temporary Construction Easement (TCE), substantially in the form of Exhibit D attached, signed and acknowledged by the Airport Director and approved by The Irvine Company in accordance with COUNTY's vesting document obligations. If requested by JWA, SANTA ANA shall provide a legal description in accordance with Section 2.4.1 above for this TCE in a form acceptable to The Irvine Company, COUNTY and OCFCD.

3.4.2 Easement

Prior to the commencement of any construction activities for the Project, if deemed necessary, JWA shall deliver to the OCFCD's Director an easement deed substantially in the form of Exhibit E, with a legal description provided by SANTA ANA in accordance with Section 2.4.1 above that has been approved by The Irvine Company in accordance with the terms of COUNTY's vesting deed. The easement would convey rights to OCFCD needed for O&M of the portion of the Facilities located on COUNTY land.

OCFCD/COUNTY/JWA legal and administrative costs associated with this easement are a Project cost in Exhibit C3. SANTA ANA shall receive invoices accordingly from JWA and COUNTY for payment of said costs. SANTA ANA shall pay invoices as they become due from the Project Fund. JWA and COUNTY shall keep appropriate records and accounts supporting amounts invoiced. Said records and accounts shall be subject to reasonable inspection by Project Representatives at their expense and by any Grant funding authorities.

3.5 Construction

3.5.1 In order to reduce Project costs, OCFCD, COUNTY and JWA shall waive any costs or fees with respect to the permits issued by either of them in furtherance of the Project. The terms and conditions of the permits shall be consistent with this Agreement, and in the case of a conflict, the terms and conditions of this Agreement shall control.

3.5.2 During construction OCFCD, COUNTY and JWA, their agents, employees and contractors, shall have adequate access to Project areas, to perform their responsibilities pursuant to any issued CPP, this Agreement, and activities authorized under the Orange County Flood Control Act. OCFCD and COUNTY shall assign the Oversight Inspector to verify that construction of the Diversion Structure and other Facilities on OCFCD and COUNTY right-of-way are accomplished in a good, workman-like manner and in accordance with the Approved Plans per OCFCD and COUNTY standard. The Oversight Inspector shall notify JWA and SANTA ANA's Project inspector of any issue with construction per the terms of the CPP.

3.5.3 Upon receipt of notification by SANTA ANA that the Facilities (including the Diversion Structure) have been substantially completed, the CPP Inspector shall conduct a walk-through to provide a list of outstanding items, if any, needed to close out the construction permit. The Oversight Inspector shall communicate his/her concerns on all matters related to construction of Facilities within, or affecting OCFCD and/or COUNTY's right-of-way through SANTA ANA's Project inspector. Upon completion of the construction and satisfaction of all outstanding items, the Director shall provide SANTA ANA with written approval that construction of the Diversion Structure has been completed per the Approved Plans and the related CPP shall be signed off. Upon sign-off of all related CPP at completion of Project construction according to the Approved Plan, OCFCD/COUNTY shall take ownership and long-term O&M.

3.5.4 OCFCD/COUNTY costs associated with the Oversight Inspector, CPP, and any other independent inspection of the Project construction are a Project cost in Exhibit C3. SANTA ANA shall receive invoices accordingly through CPP for payment of said costs. SANTA ANA shall pay invoices as they become due from the Project Fund. OCFCD/COUNTY shall keep appropriate records and accounts supporting amounts invoiced. Said records and accounts shall be subject to reasonable inspection by Project Representatives at their expense and by any Grant funding authorities.

3.6 Grant

3.6.1 OCFCD/COUNTY acknowledges the Project is made possible by virtue of certain Grants and agrees to make every effort to assist and cooperate with SANTA ANA, the Grant Administrator, for the Project to remain in full compliance with the terms of the Grant.

3.7 Operation and Maintenance

3.7.1 Upon OCFCD/COUNTY acceptance of Facilities within OCFCD/COUNTY and/or JWA right-of-way, OCFCD shall either perform Facility O&M or alternatively, OCFCD shall enter into a contract for a third party ("**O&M Contractor**") to perform the Facilities O&M. The Facilities shall be operated and maintained in accordance with the terms approved by the Director as set forth in the O&M Manual. An approved O&M Manual pursuant to Section 2.7 above and O&M contracts covering the entire Facilities shall be provided to OCFCD/COUNTY, JWA and COSTA MESA by SANTA ANA prior to completion of Project construction to ensure long-term Facility O&M. In the case where OCFCD or COSTA MESA has chosen to perform their respective O&M duties without the aid of an independent contractor, an O&M contract may not be required.

3.7.2 OCFCD and COSTA MESA shall ensure their O&M Contractor and those performing O&M abide by the Insurance Requirements as specified in Exhibit G (Insurance, Bonds, and Warranties), and name each Party and JWA as an additional insured, and that such Contractor's and subcontractors' indemnity, defense, hold harmless, and insurance obligations under their respective O&M contract with the Contractor and that it expressly benefit each other Party and JWA in the same manner and to the same extent as if they were the original signatories of said contract. OCFCD and COSTA MESA shall further ensure workers including third party contractors follow the O&M Manual and other maintenance manuals or guides for the Facilities.

3.7.3 Within fifteen (15) days of written notice from a Project Representative of a necessary repair and/or replacement or other remedial action for compliance with the O&M Manual or this Agreement, the O&M Contractor, OCFCD and/or COSTA MESA depending upon the location in need of said work shall promptly take action to perform the necessary work. Should that party not commence or diligently work toward completion of the repairs, replacement, and/or remedy required, the Project Representative may perform or cause the repairs, replacement, and/or remedy to be completed, and the costs thereof may be reimbursed from an O&M Fund.

3.7.4 If in the course of normal O&M Facility operations, OCFCD/COUNTY notice unusual types and quantities of debris and trash collected at the Facility, the Director will so notify the Parties who may discuss what upstream debris and trash reduction measures should be implemented in the tributary system to resolve this issue which would be addressed in a separate agreement, not included within obligations herein. Costs to implement these measures, as possible, will not be assessed against an O&M Fund unless agreed to by the Parties. Each Party shall maintain its infrastructure, as needed, to minimize the conveyance of any debris and trash to the Diversion Facility. If unusual amounts of debris are found in the Facility, the Parties will discuss what upstream debris and trash reduction measures should be implemented in the tributary system to resolve this issue.

3.7.5 Operational and Maintenance Costs

Within 40 days of the Effective Date, SANTA ANA shall disburse an upfront, lump-sum initial \$1,000,000 payment into the O&M Fund of OCFCD as the Initial O&M Deposit.

A Party's proportionate share obligation to fund Additional Annual O&M Costs are to be paid as indicated on Exhibit C2 on, or before January 1st of each year, or as otherwise established in writing by the Parties. OCWD and IRWD shall not have any obligation to fund Additional O&M Costs. Amounts paid by the Parties for Additional Annual O&M may be deposited into separate O&M Fund accounts held by either OCFCD or COSTA MESA designated for O&M of the Facilities. OCFCD and COSTA MESA shall pay costs out of their respective O&M Funds as they become due and in accordance with the terms of this Agreement. COSTA MESA O&M Fund and charges are addressed in Section 5.

3.7.6 Overhead

3.7.6.1 All O&M costs for Project Facilities allocated to the Parties in accordance with the terms herein shall include the cost of OCFCD/COUNTY labor, services and equipment, determined on a time and material basis, using the actual number of man-hours and equipment-hours required

(including travel time to and from their respective facilities), multiplied by the applicable rates for the crew members and equipment deployed. After-hours services (defined as between 5:00 p.m. on a working day and 7:00 a.m. on the next, following work-day; a “work day” shall exclude Saturday, Sundays and designated holidays for OCFCD/COUNTY unless otherwise approved by the respective Project Representative for OCFCD/COUNTY) will be charged at time and a half. Equipment and material rates shall be approved by the Project Representative for OCFCD/COUNTY and in accordance with OCFCD/COUNTY’s respective standards and practices.

3.7.6.2 The labor rates are comprised of direct and indirect components. The direct labor rate component is adjusted periodically by the authorized representatives of OCFCD/COUNTY as salary adjustments, which may include cost of living, competitive wage, benefit and annual hourly-rate schedule increases. The indirect component of the labor rate reflects the general and administrative cost, which shall include burden rates as established by OCFCD/COUNTY covering costs associated with overhead, contract management and other services provided (“Burden Rate”). As of the Effective Date, the Burden Rate for OCFCD/COUNTY is Seventy Four Point Three Six Percent (74.36%). The Parties acknowledge said Burden Rate is subject to change, and agree to pay the Burden Rate in effect when labor, services or equipment are provided.

3.7.7 Nuisance Prevention Measures.

The Parties acknowledge the Diversion Structure is situated on COUNTY land with certain recorded deed restrictions and conditions prohibiting use of the land for any purpose which would constitute a nuisance or be offensive to the senses, health or safety of persons occupying the land or adjoining land. The Parties further agree OCFCD/COUNTY, the Director, an O&M Contractor or any party upholding the O&M duties of those portions of the Facilities on COUNTY land may take any reasonable action and incorporate cleaning and maintenance measures designed to reduce or eliminate odors or others aspects of the Facilities or Project at the site which might violate the aforementioned nuisance deed restrictions or to remedy a matter of particular concern they have been alerted to by person occupying the land or adjoining land. Costs associated with any such action, measure, and communications concerning these matters shall be reimbursed from the O&M Fund or Reserve Fund. The schedule for regular occurring maintenance, removal and hauling of trash and debris may be adjusted at the Director’s sole discretion. The O&M Manual shall not limit the ability to adapt maintenance procedures or restrict implementation of alternate preventive measures to avoid the presence of a nuisance.

3.7.8 Hauling, Disposal and Discharge Costs.

Facilities O&M requires the handling, extraction, hauling and disposal of solids and the discharge of diverted flows; therefore, the Parties, with exception of OCWD and IRWD, agree to jointly share in the responsibility for any such costs and charges associated therewith. Each Party shall pay its respective proportionate share of these costs as an O&M cost obligation. Notwithstanding the foregoing, the Parties agree to abide the terms in Section 9 (Hazardous Material) concerning the presence of a hazardous or toxic substances, material or waste and that this section shall not be interpreted as restricting or limiting a Party’s hazardous material responsibilities herein or under federal or state law.

3.7.9 Reserve Fund.

After exhaustion of the Initial O&M Deposit, a portion of the O&M fund may be deposited and designated as the **Reserve Fund** which is to be used to repair or replace the Facilities, Project-related Channel improvements and/or appurtenances, or portions thereof, damaged due to a catastrophic event (e.g. a severe storm, seismic activity, or fire). COSTA MESA may utilize Reserve Funds for the portions of the Facilities it shall own and maintain by having their Project Representative send a written request with supporting documentation to the Director that specifies use of funds consistent with Reserve Fund purposes. The Director shall provide Reserve Fund account statements with the annual O&M Fund reporting. Additional Annual O&M Costs contributions from the Parties, in accordance with the terms herein, are to be used to replenish the O&M Fund and Reserve Fund. .

3.7.10 Additional Annual O&M Costs

A Party's proportionate share obligation to fund Additional Annual O&M Costs are to be paid as indicated on Exhibit C2 to OCFCD on, or before January 1st of each year, or as otherwise established in writing by the Parties. OCWD and IRWD shall not have any obligation to fund Additional O&M Costs. OCFCD shall pay costs out of its O&M Fund as they become due and in accordance with the terms of this Agreement.

3.7.11 After exhaustion of the Initial O&M Deposit, OCFCD/COUNTY agree to contribute to long term O&M costs per its joint proportionate share as specified in Exhibit C2.

3.7.12 Records

OCFCD shall maintain a complete set of records and accounts of all O&M Costs, maintenance activities and schedules in accordance with generally accepted accounting principles. Upon reasonable notice, OCFCD shall permit a Party or Parties' Project Representatives to inspect and audit all work, materials, payroll, books, accounts, and other data and records of OCFCD. Project Representatives shall also have the right to reproduce any such books, records, and accounts. The above provisions with respect to audits shall extend to and/or be included in contracts with OCFCD'S contractors. Costs incurred pursuant to this section are to be paid by the Party or Parties initiating any inspection or audit.

3.7.13 O&M Cost Annual Report

OCFCD shall provide Sponsors an annual report of O&M Account transactions; that includes, O&M Costs, the O&M Fund of OCFCD and any Reserve Fund maintained by OCFCD. Should the Initial O&M Deposit be depleted to less than \$400,000 by the end of the fifth year of Facility operations, OCFCD shall so notify all Project Representatives who may meet and confer to evaluate if changes in O&M and fiscal strategies should be implemented, and to ensure enough funds by the Sponsors are available for OCFCD and COSTA MESA to satisfy their respective O&M responsibilities.

SECTION 4 RESPONSIBILITIES OF NEWPORT BEACH

4.1 General Responsibilities

NEWPORT BEACH shall review the Project's plans and financially contribute toward the Project Fund as indicated in Exhibit C2.

4.2 Environmental Review; Permitting

NEWPORT BEACH shall comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements obtained for the Project as those commitments and conditions apply to their responsibilities under this Agreement. Notwithstanding the foregoing, NEWPORT BEACH through its designated Project Representative shall review and approve all permit conditions and other resource agency approvals that affect the construction and O&M of the Facilities, or any portion thereof within its jurisdiction and in, on, or about its right-of-way as to its respective compliance with applicable Regulations.

4.3 Design

NEWPORT BEACH shall review all draft and final Project design reports, and PS&E submitted for their approval and shall have its Project Representative respond in writing to SANTA ANA as to a submittal's review for approval in a timely manner. Subsequent to approval of the final design, any material design change variance shall require mutual approval by the Project Representatives.

4.4 Right of Way

As indicated in the Preliminary Plan (Exhibit B) no pipelines for the Project are proposed to be installed within the public right-of-way of NEWPORT BEACH. However, in the event the final design necessitates the use of public right-of-way and in order to reduce Project costs, provided that a request is in compliance with all permits and regulatory approvals, NEWPORT BEACH shall allow the Project Facilities or portion thereof (including the aforementioned pipelines) to be constructed, operated, and maintained, after an appropriate review, within its respective right of way. Any additional project costs shall be shared by the Parties other than OCWD and IRWD.

4.5 Construction

NEWPORT BEACH shall waive any costs or fees with respect to the permits issued by it in furtherance of the Project. The terms and conditions of the permits shall be consistent with this Agreement, and in the case of a conflict, the terms and conditions of this Agreement shall control.

Prior to SANTA ANA's construction completion of the Diversion Structure and other Facilities, NEWPORT BEACH shall have its respective Project Representative conduct a walk-through to promptly review the improvements and provide any comments. Upon satisfaction of any and all

the comments or items, NEWPORT BEACH shall have its Project Representative provide written approval to SANTA ANA that the Facilities have been constructed in accordance with the Approved Plans or are otherwise acceptable.

4.6 Contribution

4.6.1 Within forty (40) days of the execution of this Agreement, NEWPORT BEACH shall deposit a lump sum amount of ONE MILLION, FIVE-HUNDRED THOUSAND DOLLARS and 00/100 (\$1,500,000.00), as established per Exhibit C3, into the Project Fund Account.

4.6.2 After exhaustion of the Initial O&M Deposit, NEWPORT BEACH agrees to contribute to long term O&M costs per its joint proportionate share as specified in Exhibit C2.

SECTION 5 RESPONSIBILITIES OF COSTA MESA

5.1 General Responsibilities

COSTA MESA shall review the Project plans and financially contribute toward the Project Fund as shown in Exhibit C2. In furtherance of the Project, Costa Mesa may include the installation of a segment of the Project's force main in conjunction with one of their City's current construction contracts. In this case, costs to construct this portion shall off-set its financial contribution shown in Exhibit C2. Upon completion of the Project, COSTA MESA shall take ownership, ongoing long-term O&M responsibilities for the Project force main or pipeline, excluding those portions which are part of the Facilities located on OCFCD, COUNTY and/or JWA right-of-way.

5.2 Environmental Review / Permitting.

COSTA MESA shall comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements obtained for the Project as those commitments and conditions apply to its responsibilities under this Agreement. Notwithstanding the foregoing, COSTA MESA through its designated Project Representative shall review and approve all permit conditions and other resource agency approvals that affect the construction and O&M of those portions of the Facilities not on OCFCD, COUNTY and/or JWA right-of-way as to its respective compliance with applicable Regulations.

5.3 Design

COSTA MESA shall review all draft and final Project design reports, and PS&E submitted for its approval and have its Project Representative respond in writing to SANTA ANA in a timely manner. Subsequent to approval of the final design, any material design change variance shall require mutual approval by the Project Representatives.

5.4 Right of Way

As indicated in the Preliminary Plan (Exhibit B) pipelines for the Project are proposed to be installed within the public right-of-way of COSTA MESA. In order to reduce Project costs, provided that a request is in compliance with all permits and regulatory approvals, COSTA MESA shall allow the Project Facilities or portion thereof (including the aforementioned pipelines) to be constructed, operated, and maintained within its respective right of way at no additional cost.

5.5 Construction

In order to reduce Project costs, COSTA MESA shall waive any costs or fees with respect to the permits issued by it in furtherance of the Project. The terms and conditions of the permits shall be consistent with this Agreement, and in the case of a conflict, the terms and conditions of this Agreement shall control.

Upon receipt of notification that the Facilities or separately constructed portions thereof have been substantially completed, COSTA MESA shall have its Project Representative conduct a walk-through to promptly review the improvements and provide any comments as to any portion of the Facilities not on OCFCD, COUNTY and/or JWA right-of-way. Upon satisfaction of any and all the comments or items, COSTA MESA shall have its Project Representative provide written approval to SANTA ANA that said Facility components have been constructed in accordance with the Approved Plans or otherwise acceptable. Said notice shall be deemed COSTA MESA'S acceptance of ownership and maintenance responsibility for the portions of the Facilities not on OCFCD, COUNTY and/or JWA right-of-way.

5.6 Contribution

5.6.1 Within forty (40) days of the execution of this Agreement, COSTA MESA shall deposit a lump sum amount of SIX-HUNDRED THOUSAND DOLLARS AND 00/100 (\$600,000.00), as indicated in Exhibit C2, into the Project Fund Account. COSTA MESA has the option to construct a segment of the force main in conjunction with one of their construction contracts; in this case, costs expended to construct this portion shall off-set their financial contribution as established herein; in which their portion of the \$600,000 shall be used. SANTA ANA shall advance COSTA MESA, under separate agreement, the \$600,000 and any additional funds required for the construction of a portion of the force main with one of their construction contracts. COSTA MESA shall reimburse SANTA ANA as stipulated per their agreement.

5.7 Operation and Maintenance

5.7.1 Upon COSTA MESA acceptance of certain Facility pipeline and appurtenant components, COSTA MESA or its contractor shall perform the O&M for said improvements with all expenses and costs reimbursed from an O&M Fund, as specified in Section 3.7.3 or Reserve Fund. The Facilities shall be operated and maintained in accordance with the terms as set forth in the O&M Manual. COSTA MESA shall ensure any of its contractors performing O&M on the Facilities abide by the Insurance Requirements as specified in Exhibit G (Insurance, Bonds, and Warranties), and name each Party and JWA as an additional insured, and

that such contractor's and subcontractors' indemnity, defense, hold harmless, and insurance obligations under their respective contract expressly benefit each other Party and JWA in the same manner and to the same extent as if they were the original signatories of said contract. COSTA MESA shall further ensure workers including third party contractors follow the O&M Manual and other maintenance manuals or guides for the Facilities.

5.7.2 Within twenty (20) days of written notice from a Project Representative of a necessary repair and/or replacement or other remedial action for compliance with the O&M Manual or this Agreement within those portions of the Facilities owned and maintained by COSTA MESA, COSTA MESA shall promptly take the remedial action to perform or have its contract perform the necessary work. Should it not commence or diligently work toward completion of the repairs, replacement, and/or remedy required, OCFCD may perform or cause the repairs, replacement, and/or remedy to be completed, and the costs thereof may be reimbursed by invoicing the other Parties according to their proportionate share as shown in Exhibit C2 and the terms herein.

5.8 Additional Annual O&M Costs

5.8.1 A Party's proportionate share obligation to fund Additional Annual O&M Costs are to be paid as indicated on Exhibit C2 on, or before January 1st of each year, or as otherwise established in writing by the Parties. OCWD and IRWD shall not have any obligation to fund Additional O&M Costs. COSTA MESA shall pay costs out of its O&M Funds by collaborating with OCFCD to acquire said funds for Facility O&M Costs in accordance with the terms of this Agreement.

5.9 O&M or Reserve Fund Utilization

5.9.1 In addition to reimbursement for payment of expenses, COSTA MESA may recover as O&M costs allocated to the Parties in accordance with the terms herein its labor, services and equipment costs determined on a time and material basis, using the actual number of man-hours and equipment-hours required (including travel time to and from their respective facilities), multiplied by the applicable rates for the crew members and equipment deployed. After-hours services (defined as between 5:00 p.m. on a working day and 7:00 a.m. on the next, following work-day; a "work day" shall exclude Saturday, Sundays and designated holidays for COSTA MESA unless otherwise approved by the respective Project Representative for COSTA MESA) will be charged at time and a half. Equipment and material rates shall be approved by the Project Representative for COSTA MESA, as the case may be, and in accordance with its respective standards and practices.

5.9.2 The labor rates are comprised of direct and indirect components. The direct labor rate component is adjusted periodically by the authorized representatives of COSTA MESA as salary adjustments, which may include cost of living, competitive wage, benefit and annual hourly-rate schedule increases. The indirect component of the labor rate reflects the general and administrative cost, which shall include COSTA MESA Burden Rate. As of the Effective Date, the Burden Rate for COSTA MESA is 89%. The Parties acknowledge said Burden Rate is subject to change, and agree to pay the Burden Rates in effect when labor, services or equipment are provided.

5.9.3 COSTA MESA may utilize Reserve Funds to repair or replace the Facilities or portions thereof, damaged due to a catastrophic event (e.g. a severe storm, seismic activity, or fire) by sending a written request with supporting documentation to the Director that specifies a use of funds consistent with Reserve Fund purposes. Upon completion of work paid with Reserve Funds, COSTA MESA shall send OCFCD an accounting of expended funds and return any unused funds for deposit back into the Reserve Account.

5.9.4 After exhaustion of the Initial O&M Deposit COSTA MESA agrees to contribute to long term O&M costs per its joint proportionate share as specified in Exhibit C2.

5.10 Records

COSTA MESA shall maintain a complete set of records and accounts of all O&M costs, maintenance activities and schedules in accordance with generally accepted accounting principles. Upon reasonable notice, COSTA MESA shall permit a Party or Parties' Project Representatives to inspect and audit all work, materials, payroll, books, accounts, and other data and records of COSTA MESA. Project Representatives shall also have the right to reproduce any such books, records, and accounts. The above provisions with respect to audits shall extend to and/or be included in contracts with COSTA MESA'S contractors. Costs incurred due to this section are to be paid by the Party or Parties initiating any inspection or audit.

SECTION 6 RESPONSIBILITIES OF IRWD

6.1 General Responsibilities

IRWD shall review the Project's plans and financially contribute toward the Project Fund as shown on Exhibit C1.

6.2 Environmental Review; Permitting

IRWD shall comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements obtained for the Project as those commitments and conditions apply to its responsibilities under this Agreement.

6.3 Design

IRWD shall review all draft and final Project design reports, and PS&E submitted for its approval. IRWD's Project Representative shall respond in writing to SANTA ANA as to a submittal's review for approval in a timely manner. Subsequent to approval of the final design, any material design change variance shall require mutual approval by the Project Representatives.

6.4 Right of Way - Intentionally deleted

6.5 Construction

IRWD shall waive any costs or fees with respect to the permits issued by IRWD in furtherance of the Project. The terms and conditions of the permits shall be consistent with this Agreement, and in the case of a conflict, the terms and conditions of this Agreement shall control.

Prior to SANTA ANA's construction completion of the Diversion Structure and other Facilities, IRWD shall have its Project Representative conduct a walk-through to promptly review the improvements and provide any comments. Upon satisfaction of any and all the comments or items, IRWD shall have its Project Representative provide written approval to SANTA ANA that the Facilities have been constructed in accordance with the Approved Plans or are otherwise acceptable.

6.6 Contribution

6.6.1 Within forty (40) days of the later of (i) execution of this Agreement or (ii) the expiration of the applicable challenge periods for the Project environmental documentation or (iii) the resolution of all court actions challenging such environmental documentation, IRWD shall make a one-time lump sum payment of ONE HUNDRED AND NINETY-FIVE THOUSAND DOLLARS (\$195,000), as denoted per Exhibit C1, into the Project Fund Account.

6.6.3 IRWD shall not be obligated to pay or contribute to O&M costs or required to contribute to the Reserve Fund for the Facility. Provisions in this Agreement stating IRWD's non-responsibility for particular costs or contributions shall not limit the generality of this Section.

6.7 Discharges During the Term

6.7.1 IRWD shall have the right to continue to apply for permits consistent with the terms and conditions of IRWD's existing CPP issued permits Nos. 2015-00435, 2015-00443, 2015-00444, 2015-00445, 2015-00461, 2015-00439, 2015-00440 and 2015-00441 allowing for their discharge(s) into Santa Ana Gardens Channel (which further discharges to the Channel) from its Well Nos. IRWD-1, IRWD-11, IRWD-C-8, and IRWD-C-9, and directly into the Channel from its Well Nos. IRWD-2, IRWD-4, IRWD-5 and IRWD-6, or any replacements to these wells in kind, with similar discharge release, quantities and timing.

6.7.2 COUNTY shall not unreasonably cancel or withhold renewal of any such discharge permits to IRWD, which are in full compliance and effect on the Effective Date, on substantially the same terms and conditions, provided IRWD abides by COUNTY's permit application and renewal process with payment of applicable standard fees.

SECTION 7 ORANGE COUNTY WATER DISTRICT

7.1 General Responsibilities

The Project proposes to divert dry-weather flows an Orange County Sanitation District ("OCSD") trunk line for conveyance to its sanitary sewer treatment plant and thereafter to the

OCWD Groundwater Replenishment System. In furtherance of the Project, OCWD will make a one-time, lump-sum payment of ONE MILLION DOLLARS (\$1,000,000) toward the Project construction costs (“**OCWD Project Contribution**”) pursuant to the terms and conditions provided herein. OCWD shall have no responsibility for the design, construction, operation, maintenance or repair of the Project. OCWD’s sole responsibility under this Agreement shall be payment of the OCWD Project Contribution in accordance with the terms herein.

7.2 Environmental Review; Permitting. *Intentionally deleted*

7.3 Design. *Intentionally deleted*

7.4 Right of Way. *Intentionally deleted*

7.5 Construction. *Intentionally deleted*

7.6 Contribution.

Within fifteen days of receipt from SANTA ANA of a copy of the issued Notice of Completion, OCWD shall pay SANTA ANA the OCWD Project Contribution.

OCWD shall not be responsible for sharing the O&M Costs to operate and maintain the Facility or required to contribute to the Reserve Fund for the Facility.

7.7 Water Recipient.

OCWD agrees to receive water generated by the Project by allowing flows which are diverted by the Project into an OCS trunk line and sanitary treatment plant to be conveyed via transmission pipelines into OCWD’s Groundwater Replenishment System. The Parties mutually agree that neither the Project nor operation of the Facilities shall require OCWD to pay for its receipt of the Project’s water (other than OCWD’s payment of the OCWD Project Contribution).

Nothing contained in this Agreement or in any document related hereto shall be construed to imply any representation or warranty, either express or implied, by any Party as to the quantity, quality, nature or condition of water or flows diverted by virtue of the Project or a guarantee with regard to water rights or any interest therein.

SECTION 8 INDEMNIFICATION

8.1 In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of the Government Code, each Party, pursuant to the authorization contained in Sections 895.4 and 895.6 of the Government Code, hereby agree to and shall indemnify and hold harmless the other Parties as provided in this Section.

8.2 SANTA ANA shall assume the defense of, indemnify and hold harmless the other Parties and JWA, and each of their elected or appointed officers, employees, officials, volunteers, and

agents from and against any and all actions, damages, liability or claims for death, injury, loss, damage or expense to persons or property arising from or related to, or claimed to have arisen from or be related to, the Diversion Structure, the Facilities and/or the Project or implementation of this Agreement, including claims or liability associated with SANTA ANA's responsibilities herein, including but not limited to, environmental compliance, design, construction, replacement, use, operation, maintenance, and/ or repair, of the segment of Channel impacted by the Project, the Diversion Structure, and/or the Facilities, or resulting from SANTA ANA's breach of its obligations under the Agreement, except to the extent such actions, damages, claims, losses, expenses or liabilities have arisen from or relate to the willful misconduct or negligent acts of the indemnified Party, or result from such Party's breach of its obligation(s) under the Agreement.

8.3 Each of the Parties, other than SANTA ANA and OCWD, shall assume the defense of, indemnify and hold harmless the other Parties and JWA, and each of their elected or appointed officers, employees, officials, volunteers and agents from and against any and all actions, damages, liability or claims for death, injury, loss, damage or expense to persons or property arising from or related to, or claimed to have arisen from or be related to, the willful misconduct or negligent acts or omissions of, or result from the breach of this Agreement by, such Party in connection with its participation in the Project or use of the Diversion Structure or other component of the Facilities, except to the extent such actions, damages, claims, losses, expenses or liabilities have arisen from the willful misconduct or negligent acts or omissions of, or result from the breach of this Agreement by, the indemnified Party. If judgment is entered against all the Parties by a court of competent jurisdiction because of the concurrent active negligence or improper acts of one or more Parties, the Parties agree that liability will be apportioned as determined by the court. No Party shall request a jury apportionment.

8.4 To the fullest extent permitted by law, each of the Parties other than IRWD, shall defend, indemnify, protect, and hold harmless OCWD, its officers, agents, employees, and independent contractors (OCWD Indemnitees) from and against any and all liabilities, actions, suits, claims, demands, losses, costs, tortious, contractual, condemnation, inverse condemnation, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons, for damage to property, or liability of any kind or nature which OCWD Indemnities may sustain or incur upon them or any of them as a result of, arising out of, or in any way connected with this Agreement, use, operation, maintenance, replacement, and/ or repair of improvements, the segment of Channel in association with the Project, the Diversion Structure, and Facilities or portions thereof, from any violation of any federal, state, or local law or ordinance, except to the extent such Claims are alleged to be proximately caused by the negligent acts, omissions or willful misconduct of OCWD Indemnities in connection with or arising out of this Agreement, or the performance or breach of this Agreement or the O&M Manual.

SECTION 9 HAZARDOUS MATERIAL

"HM-1" is defined as hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law existing prior to the Project

and not disturbed by the Project. "HM-2" is defined as hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the Project or as a result of the Project. "HM Management Activities" is defined as management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements, clean-up and disposal facility designations.

If HM-1 or HM-2 is found during Project implementation, SANTA ANA will immediately notify the Parties. The Parties are responsible for any HM-1 found within property they own to the extent provided by applicable law, and entry into this Agreement shall not cause that liability to be assumed by or transferred to any other Party. If HM-1 is discovered, the Parties will meet to determine the most cost-effective solution to deal with the HM-1 including, but not limited to, changes to the Project. Unless otherwise mutually agreed by the Parties, other Parties shall not be responsible for the cost of HM Management Activities related to HM-1 on another Party's property, if any. If HM-2 is found within Project limits, SANTA ANA will be responsible for HM Management Activities related to HM-2 within the Project limits. HM-2 related HM Management Activities during construction shall be paid as a Project construction cost. HM-2 related HM Management Activities after construction shall be paid from an O&M Fund in accordance with the terms herein.

SECTION 10 REGULATORY CREDITS & OFFSETS

If the Project is considered a qualified offset program by the Regional Board, such that load reductions create regulatory credits or offsets that may be traded among the Parties or collectively traded or sold to others by actions taken by a Party's Project Representative, the Parties agree that the credits will accrue to the Sponsors in proportion to their Sponsorship Share on Exhibit C2a or C2b, whichever is then in effect. Prior to offering its regulatory credits or offsets for trade or sale to others, a Sponsor through its associated Project Representative shall first present such offer to the other Sponsors' Project Representatives who shall have a first right of refusal, to acquire according to their Sponsorship Share.

SECTION 11 ADDITIONAL POINT SOURCE PARTICIPANTS

11.1 At any time the Project Facilities becoming operational, additional parties may wish to participate in the Project. Parties may initiate negotiations with others that move into the Watershed Area, such that they could enter into an agreement as an Additional Participant to receive regulatory compliance, offsets or credits offered by the Project, provided that the party appropriately contributes toward the O&M costs.

11.2 Additional Participants shall enter into an agreement with a term coinciding with this Agreement that is signed by all Parties. The Additional Participant shall agree to comply with the terms and conditions herein (excluding those pertaining solely to the Project's design and construction) and to pay invoices for their Cost Share of O&M costs within forty (40) days of receipt of an invoice. Each Additional Participant shall indemnify and hold the Parties and JWA and each of their elected or appointed officers, employees, officials, volunteers, and agents from and against any and all actions, damages, liability or claims for death, injury, loss, damage or

expense to persons or property arising from or related to, or claimed to have arisen from or be related to, the willful misconduct or negligent acts or omissions of, or result from the breach of this Agreement by, such Party in connection with its participation in the Project or use of the Diversion Structure or other component of the Facilities. Additional Participants shall not have a Project Representative for this Agreement, unless such party later becomes an assignee or successor of a Party.

11.3 After entering into an Additional Participant agreement the Parties may amend the Cost Share percentages, with any material alteration in the financial obligations of the Parties requiring an amendment to this Agreement to be approved in writing by the Party's board, council, or governing body. Additional Participants' Cost Share shall include a premium above what is attributable to them by virtue of their Watershed acreage percentage, percentage of discharge or acknowledged benefit. An additional One Point Five Percent (1.5%) premium shall be paid by the Additional Participant into an O&M Fund. The amount of premium may be revised by written approval of the Project Representatives.

SECTION 12 SUCCESSORS AND ASSIGNS

This Agreement shall inure to and be for the benefit of the successors and assigns of the Parties hereto. A Party shall not assign or delegate its responsibilities or performance under this Agreement, nor any part thereof, without the prior written consent of the non-assigning Parties. Prior to any such assignment or conveyance, that Party shall provide the Project Representatives with the proposed assignee's written assumption of all of the respective Party's responsibilities and obligations pursuant to this Agreement. Such consent shall not be unreasonably withheld. Any purported assignment, conveyance or encumbrance of any of the Facilities without such unanimous written consent shall be null and void.

In the event of any assignment, conveyance, and/or encumbrance of a Party's respective interests in the Watershed Drainage Area right-of-way, that Party shall provide the other Parties at least three (3) months' written notice of any such proposed transaction or event.

SECTION 13 ATTORNEY'S FEES

Unless otherwise specified herein, in any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the Parties shall each bear their own attorney's fees, costs and expenses.

SECTION 14 ENTIRE AGREEMENT; GOVERNING LAW; AMENDMENT; COUNTERPART; AVAILABILITY OF FUNDS

14.1 Entire Agreement. This Agreement including the Exhibits and all applicable permits and CPP constitutes the entire agreement between the Parties hereto and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Notwithstanding the foregoing, this provision shall not release any Party

from any obligations under any prior agreements to be performed through the Effective Date or from any obligations of indemnification based upon events occurring prior to the Effective Date. This Agreement shall be construed as if prepared by all Parties hereto.

14.2 Governing Law. California law shall govern the interpretation of this Agreement. Any action or proceeding brought to enforce the Agreement, or related to the Agreement, shall be brought in Orange County, California, notwithstanding the provisions of California Code of Civil Procedure Section 394.

14.3 Amendment. Any amendment to this Agreement shall be made in writing and signed by all of the Parties hereto.

14.4 Counterpart. The Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.5 Availability of Funds. All obligations of the Parties, including those exercised through the Project Representatives, under the terms of this Agreement are subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating any Party to expend or as involving any Party in any other contract or obligation for the future payment of money in excess of appropriations authorized by law.

SECTION 15 NOTICES

Any notices given pursuant to the Agreement or regarding matters contained within this Agreement shall be deemed delivered upon personal delivery or five (5) days after deposit in the United States Mail, first class, postage prepaid, addressed to the Project Representative of each Party at the address included in the signature section. Notice under this Agreement shall be given to each Party and JWA using the following contact information, unless any Project Representative gives notice of a change in Project Representative or contact information pursuant to this Section, in which case the new information shall be substituted for the information set forth in this Section.

City of Santa Ana

Tyrone Chesanek, P.E.
Principal Civil Engineer

Public Works Agency - Construction
20 Civic Center Plaza M-22
Santa Ana, CA 92702

Phone: (714) 647-5045
Email: tchesanek@santa-ana.org

City of Newport Beach

Dave Kiff
City Manager

100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658
Phone: (949) 644-3001
Email: dkiff@newportbeachca.gov

City of Costa Mesa

Baltazar Mejia
Acting City Engineer

Public Services
77 Fair Drive, 4th Flr
Costa Mesa, CA. 92626
Phone: (714) 754-5222
Email: NABIL.TOMA@costamesaca.gov

OCWD

John Kennedy
Executive Director of Engineering
and Water Resources

Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Phone: (714) 378-3304
Email: jkennedy@ocwd.com

**County of Orange/
Orange County Flood Control District**

Shane L. Silsby
OC Public Works Director

OC Public Works
300 North Flower Street
Santa Ana, CA 92703-5000
Facsimile: (714) 834-2395
RE: D15-013 F01 Diversion Project

with copy to:

John Wayne Airport

Airport Director
Barry A. Rondinella
3160 Airway Avenue
Costa Mesa, CA 92626
Facsimile: (949) 252-5044
RE: Santa Ana-Delhi Diversion Project

IRWD

General Manager

Irvine Ranch Water District
15600 Sand Canyon Ave
Irvine, CA 92716

Phone: (949) 453-5300
Facsimile: (949) 453-1228
Email: cook@irwd.com

**SECTION 16
SEVERABILITY**

If any covenant, term, condition, or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law unless that covenant, term, condition, or provision declared to be invalid is so material that its invalidity deprives any Party of the basic benefit of its bargain or renders the remainder of this Agreement meaningless.

**SECTION 17
NO THIRD PARTY BENEFICIARIES**

No customer, other person or entity other than the Parties and JWA shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement, either express or implied, is intended to confer upon any other person or entity, other than the Parties and JWA and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**SECTION 18
DISPUTE RESOLUTION**

The Parties desire to resolve as quickly and as amicably as possible any disputes as to the meaning of any portion of this Agreement, the validity of any determination or calculation, or the rights or obligations of the Parties pursuant hereto. Therefore, prior to initiation by a Party of any litigation or other proceeding in connection with this Agreement, the Parties shall meet and make good-faith efforts to resolve any such disputes on an informal basis. The Party that first raises a claim against any other Party in connection with a dispute shall be responsible for providing written notice to such other Party or Parties and initiating the informal dispute resolution efforts. Such informal efforts may include mediation of the dispute if agreed by the Parties involved in the dispute. Not sooner than thirty (30) days after diligent efforts to resolve a dispute have been initiated, if the Parties have been unable to resolve the dispute on such informal basis, any Party involved in the dispute may, in its discretion and after providing written notice to the other Parties that the informal dispute-resolution efforts are being terminated, proceed to take any and all such action to enforce or protect its rights as permitted by law and/or this Agreement. If a Party initiates informal dispute resolution with respect to a dispute, any statutory limitation for filing of a court action or commencement of any other proceeding shall be tolled for a period of days equal to the number of days that elapsed between delivery of the notice initiating informal dispute resolution and the notice terminating informal dispute-resolution.

**SECTION 19
TERMINATION AND EXPIRATION**

In the event that Project construction is not initiated within two (2) years of the execution date of this Agreement, this Agreement shall automatically expire, unless sooner terminated by a Project Representative written notice to all other Parties, or extended in writing by mutual agreement of the Project Representatives.

Once construction has begun, unless otherwise mutually agreed by all Project Representatives, a Party may not unilaterally terminate its obligations under this Agreement. Notwithstanding any termination of this Agreement, each of the Parties must comply with all terms and conditions of the Grants. In the event of a termination of this Agreement, each of the Parties shall be responsible for finding and arranging an alternate means of discharging its respective duties or other Regulatory obligations, and for payment of any fines, penalties or costs incurred by that Party as the result of a suspension or termination.

Unless otherwise terminated or extended, this Agreement shall be effective for an initial term of twenty-five (25) years commencing on the Effective Date, and shall automatically renew for a one time ten year term thereafter (the initial term and renewal terms shall collectively be referred to as the “**Term**”). Project Representatives may meet and confer to determine continued use, termination of this Agreement, transfer, closure, removal and/or abandonment of the Facilities or components thereof. The Project Representatives shall also meet and confer upon the fifteenth (15th) anniversary of Project completion to assess O&M for the Project including the payment of the Parties’ fair share of O&M costs. Prior to any termination of this Agreement, the Project Representatives are to agree upon demobilization or transfer of the Facilities and whether to sell any part of it, the proceeds of such sale and outstanding Project debts and obligations shall be allocated among the Parties in accordance with their respective proportionate share percentages in Exhibit C2.

Upon termination of this Agreement or abandonment of the Project, the Parties shall, within 120 days from written demand from JWA, remove the Diversion Structure and restore the Project Area as nearly as possible to the same condition as the Project Area was in prior to the execution of this Agreement. All costs of removal or restoration shall be borne by the Parties, in accordance with their respective proportionate share percentages in Exhibit C2.

SANTA ANA shall be responsible and ensure that the Diversion Structure and appurtenant improvements are removed from the Channel and OCFCD or COUNTY right-of-way as specified by the Director, Regulations, and all applicable laws.

SECTION 20 SURVIVAL CLAUSE

The obligations regarding: environmental commitments (as set forth herein); indemnification (as set forth in Section 8); operation, maintenance, cost allocation and ownership (as set forth herein); and specific performance (as set forth in Section 21) shall survive termination of the Agreement, as applicable, and shall remain in effect until terminated or modified in writing by mutual agreement of all Parties and JWA or the applicable statute of limitations is reached.

SECTION 21 SPECIFIC PERFORMANCE

The Parties acknowledge that monetary damages would be an inadequate remedy for breach of this Agreement, and that a Party’s breach will result in immeasurable and irreparable

harm to the other Parties. Therefore, in addition to any other remedy to which it may be entitled by reason of another Party's breach of this clause, the moving Party shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Parties from committing or continuing any breach. This clause shall survive any termination of this Agreement.

SECTION 22 EXHIBITS

This Agreement contains the following exhibits, which are attached hereto:

Exhibit A-1 – *Location Map*

Exhibit A-2 – *Santa Ana Delhi Drainage System*

Exhibit B – *Preliminary Plan*

Exhibit C – *Funding Table, Participant Shares & Estimated Costs*

Exhibit D – *Temporary Construction Easement to the City of Santa Ana*

Exhibit E – *Easement COUNTY to OCFCD*

Exhibit F – *Grant Requirements*

Exhibit G – *Insurance, Bonds and Warranties*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date written above.

CITY OF SANTA ANA,
a Municipal corporation of the State of
California

By:

David Cavazos
City Manager

APPROVED AS TO FORM:

Sonia R. Carvalho
City Attorney

By:

Jose Sandoval
Chief Assistant City Attorney

ATTEST:

Maria D. Huizar
Clerk of the Council

SIGNED AND CERTIFIED THAT A COPY
OF THIS AGREEMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE
BOARD PER G.C. Sec 25103, Reso 79-1535
Attest:

Robin Stieler
Interim Clerk of the Board
County of Orange, California

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

By: _____
Chairwoman of the Board of Supervisors
County of Orange, California

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

By: _____
Deputy

Date: _____

COUNTY OF ORANGE, a political
subdivision of the state of California

By: _____
Chairwoman of the Board of Supervisors
County of Orange, California

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

By: _____
Deputy

Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation and charter
city

By: _____
Dave Kiff
City Manager

APPROVED AS TO FORM:
City of Newport Beach

Aaron C. Harp
City Attorney

ATTEST:
City of Newport Beach

Leilani I. Brown
City Clerk

CITY OF COSTA MESA, a California
municipal corporation

By:

Tom Hatch
Chief Executive Officer

APPROVED AS TO FORM:

Tom Duarte
City Attorney

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM

Date: _____
By: _____

ORANGE COUNTY WATER DISTRICT,
a subdivision of the State of California
organized under Chapter 924 of the Statutes of
1933,

By: _____
Name: _____
Title: __

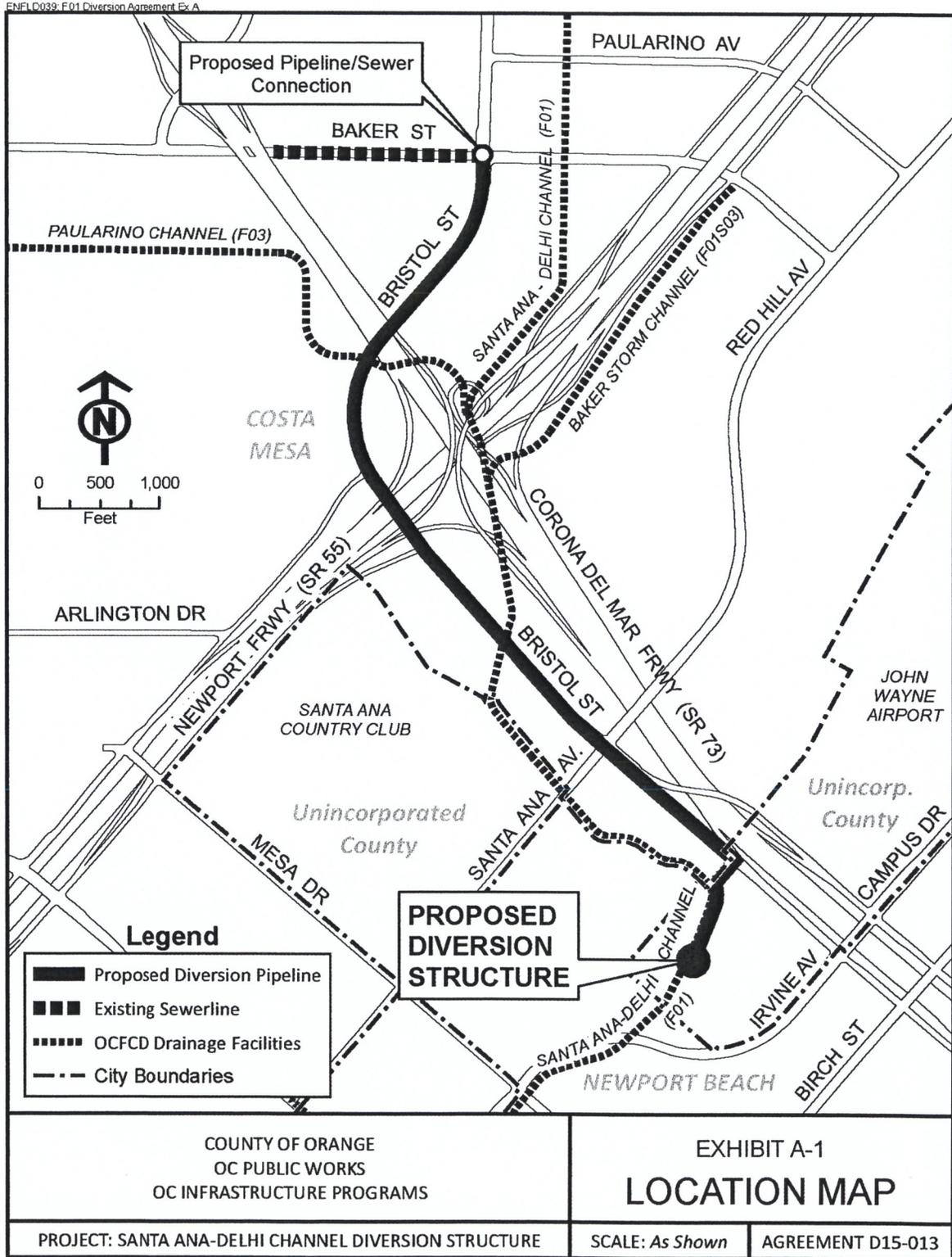
APPROVED AS TO FORM

Date: _____
By: _____

IRVINE WATER RANCH DISTRICT,
a California water district,

By: _____
Name: _____
Title: __

EXHIBIT A-1 Location Map



AH

EXHIBIT A-2 Santa Ana-Delhi Drainage System

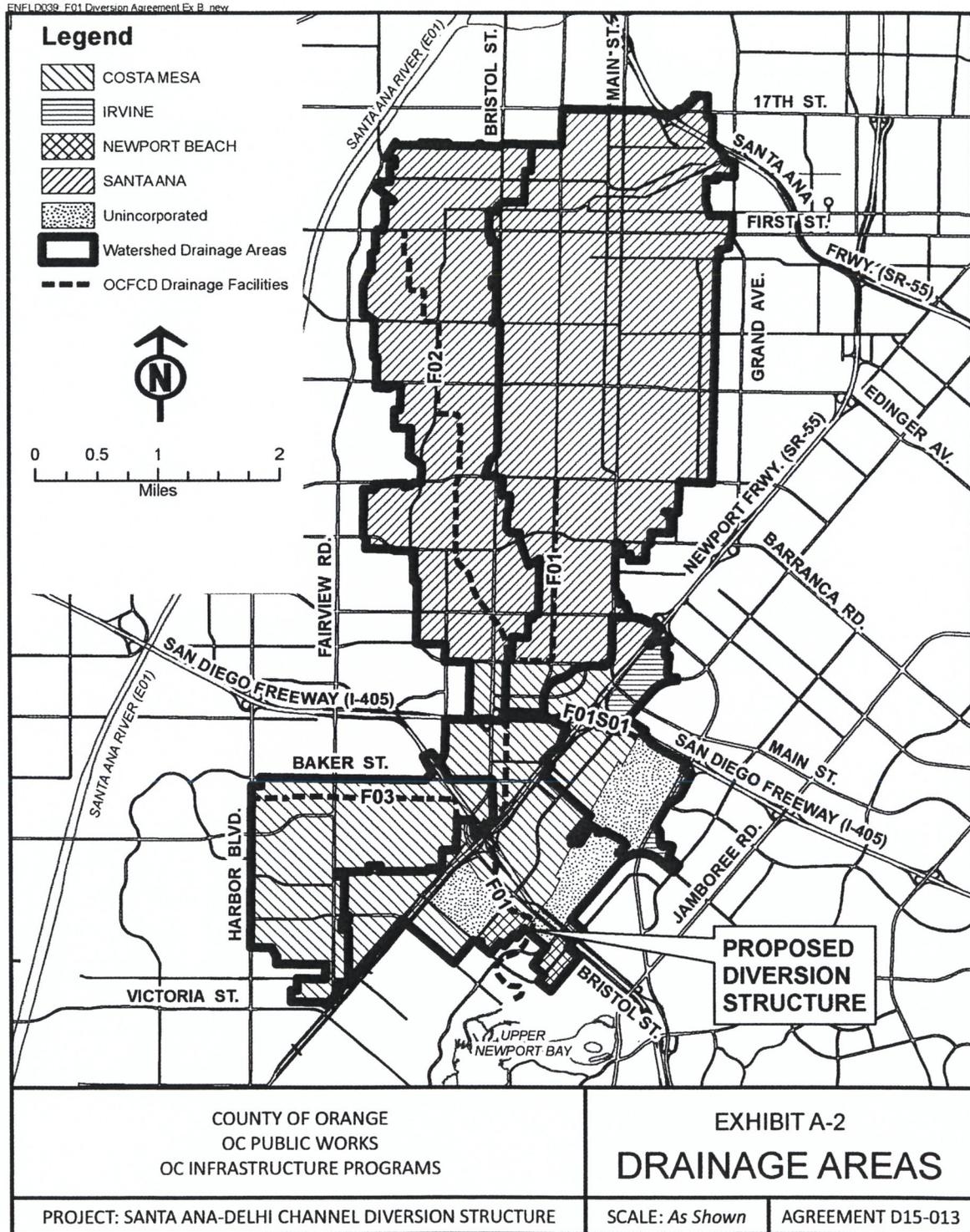


EXHIBIT C1

PROJECT FUNDING COMMITMENTS	
M2 Grant	\$ 2,572,875.00
City of Santa Ana	\$ 1,900,000.00
OCFCD & County of Orange	\$ 1,600,000.00
City of Newport Beach	\$ 1,500,000.00
OCWD	\$ 1,000,000.00
City of Costa Mesa	\$ 600,000.00
IRWD	\$ 195,000.00
Funding Total	\$ 9,367,875.00

EXHIBIT C2a

PROJECT FUNDING PARTNER SPONSORSHIP PROJECT PERCENTAGE		
Funding Partner	Funding Commitment	Sponsorship Share*
City of Santa Ana	\$ 1,900,000.00	33.93%
OCFCD & County of Orange	\$ 1,600,000.00	28.57%
City of Newport Beach	\$ 1,500,000.00	26.79%
City of Costa Mesa	\$ 600,000.00	10.71%
Total	\$ 5,600,000.00	100.00%

EXHIBIT C2b

PROJECT FUNDING PARTNER SPONSORSHIP CREDIT/OFFSET PERCENTAGE		
Funding Partner	Funding Commitment	Sponsorship Share**
City of Santa Ana	\$ 1,900,000.00	32.79%
OCFCD & County of Orange	\$ 1,600,000.00	27.61%
City of Newport Beach	\$ 1,500,000.00	25.88%
City of Costa Mesa	\$ 600,000.00	10.35%
IRWD	\$ 195,000.00	3.37%
Total	\$ 5,795,000.00	100.00%

* After the initial O&M Deposit has been exhausted, the Sponsorship Share percentages in Exhibit C2a shall be used to determine: 1. The funding partners' respective participation percentages, 2. Credit/Offsets percentages, 3. Distribution of project savings, and 4. O&M cost share in excess of the Initial O&M Deposit in accordance with the terms herein

** The Sponsorship Share in Exhibit C2b shall be used to determine 1. The funding partners' respective participation percentages except that for IRWD, the percentage and dollar amount correspond to IRWD's one-time lump sum payment, 2. Credit/Offsets percentages, and 3. Distribution of project savings during that period of time commencing when the funding partner paid its financial contribution per this Agreement until the exhaustion of the Initial O&M Deposit.

EXHIBIT C3

ESTIMATED PROJECT COSTS¹

Item	Description	Unit	Quantity	Unit Price	Amount
0	Project Administration (COSA)	%	3%	n/a	\$ 273,540.00
1	Design Engineering	LS	1.00	\$ 300,000.00	\$ 300,000.00
2	Permits/ROW/Easements	LS	1	\$ 40,000.00	\$ 40,000.00
3	Environmental Report	LS	1.00	\$ 50,000.00	\$ 50,000.00
4	Survey	LS	1.00	\$ 60,000.00	\$ 60,000.00
5	Pothole	LS	1.00	\$ 20,000.00	\$ 20,000.00
6	Site Work	LS	1.00	\$ 950,000.00	\$ 950,000.00
7	Channel Work	LS	1.00	\$ 1,101,000.00	\$ 1,010,000.00
8	Equipment/Discharge	EA	7.00	\$ 140,000.00	\$ 980,000.00
9	14" PVC Sewer Force Main	LF	8,475	\$ 240.00	\$ 2,034,000.00
10	Project Contingency	%	20%	n/a	\$ 1,024,800.00
11	Construction Management (COSA)	%	8%	n/a	\$ 409,920.00
12	Inspection & Testing (COSA)	%	7%	n/a	\$ 358,680.00
13	Inspection (County)	%	1.50%	n/a	\$ 76,860.00
14	Survey/Construction Staking	%	3%	n/a	\$ 153,720.00
15	Attorney Fees ²	LS	1	\$ 100,000.00	\$ 100,000.00
16	O&M (20yr) & Administration	LS	1	\$ 1,000,000.00	\$ 1,000,000.00
17	Site Security/Cameras	LS	1	\$ 126,355.00	\$ 126,355.00
18	Golf Course Impacts (Estimate)	LS	1	\$ 400,000.00	\$ 400,000.00
TOTAL					\$ 9,367,875.00

¹ Amounts above are estimates from an Opinion of Probable Construction Cost referenced as "Engineer's Estimate 15-058" by AECOM dated 7/24/2015 based upon 60% Design Plans; including 20 year O&M costs, and was used as a basis to estimate the project costs and were revised accordingly to reflect adjustments amenable to the Funding Partners. SANTA ANA shall charge Parties its actual Project Costs in accordance with the terms herein.

² Estimate includes paying Section 3.4 invoice(s) for costs associated with obtaining easement rights and title acceptable to The Irvine Company, OCFCD/County, JWA and the Parties.

% Bid Item 0 was calculated on the entire project costs, Bid Items 1-18. Bid Items 10, 11, 12, 13, & 14 were calculated on the construction costs only; Bid Items 6, 7, 8, 9, & 17.

EXHIBIT C4

ESTIMATED 20-YEAR O&M COSTS BREAKDOWN³

1	Contract Administration	\$100,000
2	Inspection (monthly)	\$240,000
3	Solids Handling and Disposal (monthly)	\$430,000
4	Boom Reset (2-year cycle)	\$30,000
5	Repair of Equipment	\$150,000
6	Diversion Utility Costs	\$50,000
	Total	\$1,000,000
<p>* O&M costs will be evaluated annually in accordance with the terms herein.</p>		

³ Amounts above are estimates from an Opinion of Probable Construction Cost referenced as "Engineer's Estimate 15-058" by AECOM dated 7/24/2015 based upon 60% Design Plans. Estimates include .5% allowance for All Risk Insurance and Wage Rates based upon prevailing wage rates for Orange County, California. Total wage rate includes hourly wage plus craft fringes and 32% burden with a typical work week of 1 eight hour shift per day/ five days per week. The Parties acknowledge OCFCD and COSTA MESA burden rates as indicated in Sections 3.7 and 5.9 exceed that used to formulate the estimate above, and mutually agree OCFCD and COSTA MESA shall be fully compensated based upon their respective burden rates per the terms of this Agreement.

EXHIBIT D
Temporary Construction Easement Deed
County to City of Santa Ana

Exhibit D

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:**

City of Santa Ana
20 Civic Center Plaza M-22
Santa Ana, California 92702
Attn: City Manager

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

APN:

DOCUMENTARY TRANSFER TAX \$ _____
___ Computed on the consideration or value of property conveyed
___ Exempt per Revenue & Taxation Code Section 11922
___ Exempt from Recording Fees per Govt. Code Section 27383

By: _____
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME

Unincorporated Area
Incorporated

Parcel Nos: PM-_____ (F01-209, 215)
Project: Santa Ana-Delhi Channel Division

TEMPORARY CONSTRUCTION EASEMENT DEED

For valuable consideration, receipt of which is hereby acknowledged,

COUNTY OF ORANGE,
a political subdivision of the State of California, (hereinafter
referred to as "COUNTY"),
does hereby grant to

the CITY OF SANTA ANA, a California charter city,
(hereinafter referred to as "GRANTEE") and its, successor and assigns,

a non-exclusive temporary construction easement ("Temporary Easement") in, on, over, upon and across that certain real property (hereinafter referred to as "Easement Area") described in Exhibit A, and illustrated in Exhibit B, which exhibits are attached hereto and made a part hereof.

COUNTY and GRANTEE, may sometimes hereinafter be individually referred to as "Party" or jointly as the "Parties."

The rights herein are granted for the purpose of allowing activities related to the Santa Ana-Delhi Channel Diversion Project ("Project") provided, however, that the exercise of said rights will not interfere or impede the operation and maintenance of the Santa Ana-Delhi Diversion Channel (hereinafter "the Channel"), COUNTY's public golf course lessee business operations, or utilization of the property for John Wayne Airport purposes. GRANTEE'S rights shall include rights to GRANTEE, its officers, agents, employees, contractors, and subcontractors, to conduct construction activities, including excavation and grading associated with the construction of a Diversion Structure requiring modifications to the existing Channel and installation of subsurface pumps, wet well, pipelines and a sewer force main ("Facility") within a portion of the Easement

Exhibit D

Area; and activities associated with realignment of an access road. GRANTEE'S rights shall also include the right to park or place vehicles, equipment or storage containers and to store or stockpile construction materials, tools, implements and other construction related equipment and materials, in the Easement Area as the case may be. The Parties agree the exercise of the rights granted herein shall be in conformity with the terms of that certain Santa Ana-Delhi Channel Diversion Project Agreement D15-013 dated _____ ("Agreement").

It is understood and agreed by the Parties hereto and their successor and assigns that the rights granted in this Temporary Easement shall be subject to the following terms, conditions, and reservations:

1. TERM

This Temporary Easement shall be effective for a maximum period of twenty-four (24) months ("Term"), commencing on GRANTEE'S written notice to the Airport Director and the Director OC Public Works, or their designees, of commencement of possession, and shall terminate upon recordation of a Notice of Completion, or at the end of the Term, whichever first occurs.

2. EXTENSIONS

The Term may be extended by mutual agreement of the GRANTEE, the Airport Director and Director of Public Works or their designees. Any request for extension must be in writing, shall state the requested extension period, and be forwarded to the Airport Director and the Director of Public Works via Express or Certified U.S. Postal Service, personal delivery, by courier or by overnight delivery service and addressed as provided herein below in Section 11 (Notice) no later than thirty (30) days' prior to the expiration of the Term of this Temporary Easement. Approval of such request shall be deemed denied unless both Directors or their designees provide GRANTEE with written approval of the requested extension within fifteen (15) days of receipt of the request to extend, which approval shall not be unreasonably withheld.

In no event shall this Temporary Easement be extended beyond _____.

3. GRANTEE RESPONSIBILITIES

GRANTEE hereby acknowledges that the Easement Area lies in, on and about the Channel, a regional flood control facility. GRANTEE shall perform all work in such a manner that will allow for unobstructed flood control operations and maintenance of the Channel by COUNTY or the Orange County Flood Control District ("District"). GRANTEE shall have all construction plans and specifications approved in writing by the Airport Director and the Director of Public Works or their designees prior to commencement of any work in, on or about the Easement Area; and upon completion of any such work, GRANTEE shall immediately notify both Directors or their designees in writing of such completion. Any change orders to the approved plans and specifications that alter the design shall be submitted for Airport Director and the Director of Public Work's written approval through the County Property Permit process prior to implementation of the design change.

Approval of GRANTEE'S construction and/or maintenance plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. COUNTY is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of GRANTEE'S construction and/or maintenance plans. Director approval will be based on the professional expertise of the Engineer of Record when approving GRANTEE'S construction and/or maintenance plans.

GRANTEE shall, at no cost to COUNTY, maintain the Easement Area and Channel in good repair and in safe condition, and protect in place any slope features, trees and/or landscaping within the Easement Area

Exhibit D

throughout the Term, including any extension period, of this Temporary Easement. Notwithstanding the foregoing, said features may be removed or relocated if approved by the Airport Director and the Director of Public Works through the County Property Permit process.

GRANTEE shall, at no cost to COUNTY, conduct all activities, including but not limited to the storage of materials, in, on, or about the Easement Area in a safe, good and workmanlike manner and in compliance with all applicable building, fire, and sanitary laws, ordinances, and regulations and shall maintain all equipment, used in on or about the Easement Area in good repair and in safe condition. Airport Director may, at his sole discretion, direct GRANTEE to remove items from the Easement Area, if deemed to be a hazard or nuisance.

GRANTEE acknowledges the Easement Area is situated on COUNTY property with certain recorded deed restrictions and conditions prohibiting use of the land for any purpose which would constitute a nuisance or be offensive to the senses, health or safety of persons occupying the land or adjoining land. GRANTEE agrees to make every effort to accommodate for the aforementioned nuisance deed restriction in the exercise of its rights herein.

4. COMPLIANCE WITH REGULATORY AUTHORITIES

GRANTEE shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area, which arise from GRANTEE'S use of or performance of any activities permitted to be conducted in, on, over, or across the Easement Area.

In addition, GRANTEE shall ensure that all activities in, on, over or about the Easement Area are performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits, applicable to such activities, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the Channel nor into the flood control system.

Prior to the start of any construction activity, GRANTEE shall provide Airport Director and Director of Public Works a copy of their Water Quality Management Plan (WQMP) for approval.

No approvals or consents given hereunder by COUNTY, as a party to this Temporary Easement, or concurrence by District shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

5. CONDITION OF EASEMENT AREA UPON TERMINATION

Prior to the filing of the Notice of Completion or to the expiration of this Temporary Easement, whichever first occurs, GRANTEE agrees at its expense to restore the Easement Area to the Airport Director's satisfaction. Said restoration shall include, but not be limited to the removal of construction materials (including stockpiled material), equipment, and trash and debris. GRANTEE agrees under no circumstances shall the Channel, Facility and other improvements and/or facilities within the Easement Area be left or returned to COUNTY in a state of partial completion or disrepair. Upon service of written demand from the Airport Director, or designee GRANTEE shall deliver to COUNTY, at no cost to COUNTY, a Quitclaim Deed to GRANTEE's right, title and interest hereunder.

Exhibit D

6. MECHANICS LIENS OR STOP-NOTICES

GRANTEE shall at all times indemnify, defend with counsel approved in writing by COUNTY, and save COUNTY and District harmless from all claims, losses, demands, damages, cost, expenses, or liabilities in connection with the use, construction, repair, alteration, or installation of any portion of the Facility within, upon, or under the Easement Area, and from the cost of defending against such claims, including reasonable attorney fees and costs.

In the event a lien or stop-notice is imposed upon the Easement Area as a result of such construction, repair, alteration, or installation, GRANTEE shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 or 3196 of the Civil Code, which frees the Easement Area from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

7. HOLD HARMLESS

GRANTEE acknowledges the Easement Area is in, on, and over the Channel and may be subject to all hazards associated with flood conditions and COUNTY's public golf course lessee business operations. GRANTEE agrees to assume all risks, financial or otherwise, associated therewith.

GRANTEE hereby releases and waives all claims and recourse against COUNTY and District including the right of contribution for loss of or damage to property, or injury to or death of any person arising from, growing out of or in any way connected with or related to this Temporary Easement including any damage to or loss of GRANTEE'S equipment and material, the Facility or interruption of the Project or use of the Easement Area caused by erosion, flood, or flood overflow conditions of the Channel, or caused by the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Channel or by District's flood control operations, except claims arising from the gross negligence of COUNTY and/or District, their officers, agents, employees and contractors.

GRANTEE hereby agrees to indemnify, defend and hold harmless, COUNTY and District, their elected and appointed officials, officers, agents, employees, contractors and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board against any and all claims, tortious, contractual, condemnation, inverse condemnation, judgments, arbitration awards, settlements, losses, demands, damages, cost, orders, penalties, and expenses including legal costs and attorney fees or liability for injury to or death of any persons, or loss of or damage to any property, in connection with or arising out of the Project or the use of or operations or activities conducted in, on, or over the Easement Area, and/or the exercise of the rights under this Temporary Easement by GRANTEE, its agents, officers, employees, invitees or licensees except for liability arising out of the concurrent active, or sole negligent acts of COUNTY, and/or District, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If COUNTY and/or District is/are named as co-defendant(s) in a lawsuit, GRANTEE shall notify COUNTY of such fact and shall represent DISTRICT/COUNTY in such legal action unless otherwise conflicted out. If judgment is entered against COUNTY/District and GRANTEE by a court of competent jurisdiction or jury because of the tortious conduct of COUNTY/District and GRANTEE, COUNTY and GRANTEE agree that liability will be apportioned as determined by the court or jury, as applicable.

GRANTEE acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

Exhibit D

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her, must have materially affected his or her settlement with the debtor.

GRANTEE, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this section.

8. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES8.2S)

GRANTEE or GRANTEE'S employees, agents, independent contractors or invitees ("GRANTEE Parties") shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, stored, used, generated, released into the environment or disposed of on, under, from, in, on or about the Easement Area. Notwithstanding the foregoing, GRANTEE or GRANTEE Parties may use or keep small quantities of Hazardous Materials on the Easement Area that are used in the ordinary, customary, and lawful construction operations conducted on the Easement Area. If GRANTEE, or GRANTEE Parties breach the obligations stated herein, or if contamination of the Easement Area by Hazardous Material otherwise occurs for which GRANTEE is legally liable to COUNTY for damage resulting therefrom, then GRANTEE shall indemnify, defend and hold harmless, COUNTY and/or District, and their elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Easement Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) which arise during or after GRANTEE's use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material having been introduced, placed or released by GRANTEE, and therefore, being present in the soil or ground water under the Easement Area. GRANTEE shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Easement Area to its condition prior to the introduction of such Hazardous Material by GRANTEE, provided GRANTEE shall first have obtained Director's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, the County, the state of California, or the United States government.

9. RESERVATIONS

COUNTY hereby reserves for itself and District and their respective successors and assigns, such surface, subsurface and aerial rights in the Easement Area as will not unreasonably interfere with or prohibit the use by GRANTEE of the rights and easement herein granted.

In the event COUNTY exercises such rights to utilize the Easement Area which use results in the disturbance of the Easement Area, COUNTY's only responsibility shall be to backfill with compacted earth to the grade of the surrounding property following completion of such activity.

10. CONVEYANCE SUBJECT TO EXISTING INTERESTS

This Temporary Easement is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Easement Area and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

Exhibit D

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to GRANTEE of rights in the Easement Area which exceed those owned by COUNTY, or any representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or COUNTY's interest therein.

11. NOTICES

All notices, documents, correspondence and communications concerning this Temporary Easement shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered twenty-four (24) hours after mailing. Each Party may change the address for notices by giving the other party at least ten (10) calendar days' prior written notice of the new address. Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery and so given shall be deemed to have been given upon receipt.

<p><u>To COUNTY:</u></p> <p>Director of OC Public Works Shane Silsby 300 North Flower Street Santa Ana, CA 92703-5000 Facsimile: (714) 834-2395 RE: D15-013 Santa Ana-Delhi Diversion (F01)</p> <p>John Wayne Airport Airport Director Barry A. Rondinella 3160 Airway Avenue Costa Mesa, CA 92626 Facsimile: (949) 252-5174 RE: Santa Ana-Delhi Diversion Project TCE</p>	<p><u>To GRANTEE:</u></p> <p>City of Santa Ana City Manager 20 Civic Center Plaza M-22 Santa Ana, CA 92702 Phone: Fax: Email:</p>
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12. VENUE (PMES13.1N)

The Parties hereto agree that this Temporary Easement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Temporary Easement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Los Angeles, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court. Furthermore, absent good cause shown, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

13. WAIVER OF RIGHTS (PMES14.1S)

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

Exhibit D

14. SEVERABILITY (PMES15.1S)

If any term, covenant, condition, or provision of this Temporary Easement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. ATTORNEYS' FEES (PMES16.1S)

In any action or proceeding brought to enforce or interpret any provision of this Temporary Easement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

16. SUCCESSORS AND ASSIGNS (PMES18.1S)

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

17. AUTHORITY (PMES20.1S)

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

18. FAA CONDITIONS AND RESERVATIONS

A. COUNTY hereby reserves unto itself and its operator John Wayne Airport, and their respective successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the above described real property, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on John Wayne Airport.

B. GRANTEE by entering into this easement, expressly agrees, for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the above described real property above a height as determined by the application of the requirements of 14 C.F.R., Part 77 (FAR Part 77). In the event the aforesaid covenant is breached, COUNTY reserves the right to enter on the above described real property and to remove the offending structure or object and to cut the offending natural growth, all of which shall be at the expense of the GRANTEE.

C. GRANTEE by entering into this easement, expressly agrees, for itself, its successors and assigns, that it will not make use of the above described real property in any manner which might interfere with the landing and taking off of aircraft at the John Wayne Airport, or otherwise constitute an airport hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter on the said real property and cause the abatement of such interference at the expense of GRANTEE.

D. GRANTEE expressly agrees, for itself, its successors and assigns, that if required, it will file Federal Aviation Administration (FAA) Form 7460-1, Notice of Proposed Construction or Alteration (or such other official form as designated), for the purpose of airspace evaluation for any and all current and future construction or modification proposed on the above described real property.

Signature Pages to Follow

Exhibit D

COUNTY

Approved as to Form
Office of the County Counsel
Orange County, California

COUNTY OF ORANGE, a political subdivision of
the State of California

By: _____
Paul M. Albarian, Senior Deputy

By: _____
Barry A. Rondinella, Airport Director

Date: _____

Date: _____

Per Minute Order dated _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20____ before me, _____
(Insert name of Notary Public & title)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit D

**CONSENT TO GRANT OF
TEMPORARY CONSTRUCTION EASEMENT DEED**

THE IRVINE COMPANY, a corporation, does hereby consent to the foregoing grant of this Temporary Construction Easement Deed; provided, however, that such consent shall apply to said Temporary Construction Easement Deed exclusively, and that such consent shall not be deemed or held to waive, release, alter, change, impair or in any manner affect any of the covenants and conditions provided in the deed dated June 30, 1958 by which the undersigned conveyed to the County of Orange the property described in said Temporary Construction Easement Deed.

THE IRVINE COMPANY

By: _____

By: _____

Exhibit D

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY, that the interest conveyed by this Temporary Construction Easement Deed from the County of Orange, a political subdivision of the State of California, to the City of Santa Ana, a California charter city, is hereby accepted pursuant to authority granted to the undersigned by order of the Santa Ana City Council on _____, 20____, subject to the terms, conditions and reservations set forth therein, and GRANTEE consents to the recordation of said Temporary Construction Easement Deed.

GRANTEE

CITY OF SANTA ANA

By: _____

Date: _____

ATTEST:

City Clerk

By: _____

EXHIBIT E

Easement Deed

EXHIBIT E

RECORDED AT THE REQUEST OF
WHEN RECORDED MAIL TO:

County of Orange
CEO/Real Estate
300 North Flower
Santa Ana, California 92703

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

APN:

This is to certify that this document is exempt from recording fees per Govt. Code Sec. 27383 and is exempt from Documentary Transfer Tax per Rev. & Taxation Code Sec. 11922.

By: _____
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX

- Unincorporated Area
- Incorporated, City of Newport Beach

Parcel No.: F01-215, F01-_____
Project: Santa Ana-Delhi Diversion Channel

EASEMENT AMENDMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, this amendment ("Amendment") to that certain Easement Deed dated and recorded on August 8, 1961 in Book 5862, Page 311 of the Official Records of Orange County, California ("Easement") attached hereto as Exhibit C, is entered into by and between

COUNTY OF ORANGE,
a political subdivision of the State of California, its successors and assigns
(hereinafter referred to as "GRANTOR"),

and the

ORANGE COUNTY FLOOD CONTROL DISTRICT,
(a body corporate and politic, hereinafter referred to as "DISTRICT")(GRANTOR and DISTRICT may sometimes hereinafter be individually referred to as "Party" or jointly as "Parties").

RECITALS

1. Pursuant to the Easement, DISTRICT holds a perpetual easement and right of way for flood control purposes in, over and across that certain real property identified and described in that document as the easement area within Parcel F01-215. Pursuant to these Easement rights, DISTRICT operates and maintains its flood control facility known as the Santa Ana-Delhi Diversion Channel, Facility No. F01 (the "Facility").

61

EXHIBIT E

2. The County of Orange, Board of Supervisors on _____ approved Santa Ana-Delhi Channel Diversion Project Agreement D15-013 among GRANTOR, DISTRICT, City of Santa Ana, City of Newport Beach, City of Costa Mesa, Orange County Water District and the Irvine Ranch Water District in furtherance of a regional watershed project to divert dry-weather urban discharge flows and trash from the Santa Ana-Delhi Diversion Channel to satisfy water quality compliance requirements ("Project"). Implementation of the Project entails construction of a Diversion Structure requiring modifications to the existing Facility and installation of subsurface pumps, wet well, pipelines and a sewer force main within a portion of the Easement Area; and realignment of an access road.
3. By this Amendment, the Parties intend to modify the existing Easement to add an additional easement area, referenced as Parcel F01 - _____ immediately adjacent to Parcel F01- 215 by this Amendment. Parcels F01-215 and Parcel F01 - _____.
4. The Parties understand and agree to comply with the terms, conditions and obligations of that certain Grant Deed recorded June 30, 1958 in Book 4332, Page 308 in the Official Records of Orange County, California which vests all rights, title, and interest in the Easement Area (as defined herein below) with GRANTOR.
5. The Parties intend to add terms to the existing Easement to foster collaboration in their joint use of the subject property.
6. Other than the terms herein, this Amendment shall not otherwise affect, alter, or change the Easement. As to any inconsistency existing between with the terms of this Amendment and the terms in the Easement, the Parties agree the terms of this Amendment shall control.
7. For the above stated reasons, the Parties agree to amend the Easement with the terms and conditions herein to apply to the Easement Area.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the Parties agree to the following terms, conditions, and reservations:

- A. RECITALS
Each of the above Recitals is incorporated herein and is true and correct.
- B. INSERT PARCEL F01- LEGAL DESCRIPTION AND DEPICTION
GRANTOR hereby conveys to DISTRICT the ability to exercise its rights pursuant to the Easement in, on, under and over land immediately adjacent to the existing Parcel F01-215 easement area, upon land referred to herein as Parcel F01- _____ as defined in Exhibit A and depicted in Exhibit B, each attached hereto and incorporated herein.
- C. ADD SECTION 1
The following is hereby added to the Easement as Section 1:

Section 1. The above legal description for Parcel F01-215 and the attached legal description in Exhibit A for Parcel F01- _____ as depicted in Exhibit B, which exhibits are attached hereto and by reference made a part hereof, shall collectively define the "Easement Area" for the rights conveyed herein.

EXHIBIT E

D. ADD SECTION 2

The following is hereby added to the Easement as Section 2:

Section 2. All notices, documents, correspondence, and communications concerning the perpetual easement shall be addressed as set forth in this paragraph, or as the parties may hereafter designate by written notice, and shall be sent through the United States mail, duly registered or certified with postage prepaid. Any such mailing shall be deemed served or delivered twenty-four (24) hours after mailing. Each party may change the address for notices by giving the other party at least ten (10) calendar days prior written notice of the new address. Notwithstanding the above, a party may also provide notices, documents, correspondence, or such other communications to the other party by personal delivery or regular mail and, so given, shall be deemed to have been given upon receipt if provided by personal delivery or forty-eight (48) hours after mailing if provided by regular mail.

If to GRANTOR: County of Orange
c/o John Wayne Airport
Airport Director
3160 Airway Avenue
Costa Mesa, CA 92626
Facsimile: (949) 252-5174
RE: Santa Ana-Delhi Diversion Project

If to DISTRICT: Orange County Flood Control District c/o
Director, OC Public Works
P. O. Box 4048
RE: D15-013 Santa Ana-Delhi Diversion (F01)
Santa Ana, CA 92702-4048

E. ADD SECTION 3

The following is hereby added to the Easement as Section 3:

Section 3. GRANTOR agrees that it shall not grant any surface, subsurface or aerial rights in the Easement Area as will unreasonably interfere with or prohibit the use by DISTRICT of the rights and easement herein granted.

GRANTOR reserves all rights compatible with and not prejudicial to DISTRICT exercise of the rights and easement herein granted; provided, no improvements shall be constructed, placed or permitted within, upon, under or above the Easement Area until such construction and/or maintenance plans have first been approved in writing by the Airport Director and the Director of Public Works of County of Orange or their designees. Director approval of GRANTOR's plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements.

F. ADD SECTION 4

The following is hereby added to the Easement as Section 4:

Section 4. FAA CONDITIONS AND RESERVATIONS

A. COUNTY hereby reserves unto itself and its operator John Wayne Airport, and their respective successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the above described real property, together with the right to cause in said

EXHIBIT E

airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on John Wayne Airport.

B. DISTRICT by entering into this easement, expressly agrees, for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the above described real property above a height as determined by the application of the requirements of 14 C.F.R., Part 77 (FAR Part 77). In the event the aforesaid covenant is breached, COUNTY reserves the right to enter on the above described real property and to remove the offending structure or object and to cut the offending natural growth, all of which shall be at the expense of the DISTRICT.

C. DISTRICT by entering into this easement, expressly agrees, for itself, its successors and assigns, that it will not make use of the above described real property in any manner which might interfere with the landing and taking off of aircraft at the John Wayne Airport, or otherwise constitute an airport hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter on the said real property and cause the abatement of such interference at the expense of DISTRICT.

D. DISTRICT expressly agrees, for itself, its successors and assigns, that if required, it will file Federal Aviation Administration (FAA) Form 7460-1, Notice of Proposed Construction or Alteration (or such other official form as designated), for the purpose of airspace evaluation for any and all current and future construction or modification proposed on the above described real property.

G. ADD SECTION 5

The following section is hereby added to the Easement as Section 5:

Section 5. ACCESS TO EASEMENT AREA

DISTRICT agrees to notify GRANTOR's Airport Director or designee prior to DISTRICT's commencement of, repair or relocation work in the Easement Area. GRANTOR shall have the right to designate the access to the Easement Area through GRANTOR's property by written notice to DISTRICT. This designated access route shall reasonably accommodate DISTRICT'S maintenance vehicles. In the event of a need for the GRANTOR to change the access location, GRANTOR shall attempt to give ten (10) days written notice. Said notice shall be given by Airport Director or designee.

H. ADD SECTION 6

The following section is hereby added to the Easement as Section 6:

Section 6. REMOVAL AND/OR ABANDONMENT

DISTRICT agrees that in the event the service for which said facilities were constructed is ordered discontinued and DISTRICT is not required by law, rule, or, regulation of any governmental authority to furnish said service or in the event the use of the facilities ceases for a period of more than one (1) year without written notice from DISTRICT to GRANTOR of the circumstances affecting such suspension and of DISTRICT'S intention to resume usage of the facilities, DISTRICT, at Director's request, and at no cost to GRANTOR, shall promptly remove and/or abandon any portion of said facilities owned, operated, and maintained by DISTRICT, after receipt of written notice from Airport Director to remove and/or abandon. In the event of such removal and/or abandonment, DISTRICT shall execute and record in the Official Records of Orange County, California, a Quitclaim Deed sufficient to remove the encumbrance of this easement from title to the Easement Area.

EXHIBIT E

I. ADD SECTION 7

The following section is hereby added to the Easement as Section 7:

Section 7. COMPLIANCE WITH REGULATORY AUTHORITIES

DISTRICT shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area, which arise from DISTRICT'S use of or performance of any activities permitted to be conducted in, on, over, or across the Easement Area.

In addition, DISTRICT shall ensure that all activities in, on, over or about the Easement Area are performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits, applicable to such activities, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the Channel nor into the flood control system.

Prior to the start of any construction activity, DISTRICT shall provide Airport Director and Director of Public Works a copy of their Water Quality Management Plan (WQMP) for approval.

No approvals or consents given hereunder by COUNTY, as a party to this Easement shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

Signature Page Follows

EXHIBIT E

GRANTOR

Approved as to Form
Office of the County Counsel
Orange County, California

County of Orange, a political subdivision of the
State of California

John Wayne Airport

By: _____
Paul M. Albarian, Senior Deputy

By: _____
Barry A. Rondinella, Airport Director

Date: _____

Date: _____

Per Minute Order dated: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20 ____ before me, _____, personally
(insert name/title of officer)

appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

lcb

EXHIBIT E

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, is hereby accepted by order of the Board of Supervisors of the County of Orange, California, acting as the governing board of the ORANGE COUNTY FLOOD CONTROL DISTRICT, and the ORANGE COUNTY FLOOD CONTROL DISTRICT consents to recordation thereof by its duly authorized officer.

ORANGE COUNTY
FLOOD CONTROL DISTRICT

Dated: _____

By: _____

Shane L. Silsby, Director
OC Public Works
Per Minute Order dated _____

Approved as to Form
Office of the County Counsel
Orange County, California

By: _____
Deputy

Date: _____

EXHIBIT F

OCTA Tier 2 Guidelines are available at OCTA's website; at the following link:

<http://www.octa.net/pdf/CTFPGuidelines.pdf>

EXHIBIT G

Insurance, Bonds and Warranties

I. Design and Construction

Insurance Requirements

All consultants, engineers, mitigation agents, the Contractor and each subcontractor to perform work on the Project environmental, design and construction or satisfy obligations in this Agreement shall maintain and provide OCFCD, or COSTA MESA if applicable, with proof of insurance for coverage as set forth below prior to commencement of work:

Coverage/Limits

Coverage	Minimum Limits
Commercial General Liability with products and completed operations and contractual liability	\$1,000,000 limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 limit per occurrence
Professional Liability Insurance	\$1,000,000 limit per claims made or occurrence \$1,000,000 aggregate

Required Coverage Forms

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

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming each Party and JWA and its elected and appointed officials, officers, employees, and agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance maintained by any Party shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

All insurance policies required herein shall waive all rights of subrogation against the Parties and their respective elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If a Professional Liability policy is a "claims made" policy, that contractor shall agree to maintain professional liability coverage for three years following completion of construction and acceptance of work. The Products and Completed Operations coverage shall also be maintained for three years following completion of construction and acceptance of work.

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

Required Bonds

Contractor shall provide a faithful performance bond, payment bond, and warranty bond (individually "**Bond**" or collectively "**Bonds**") subject to Director prior approval and the terms herein. Each Bond shall name the Parties as beneficiaries and grant each Project Representative the right to enforce the bond to complete the Facilities in compliance with all construction obligations including but not limited to those for warranties.

Sureties providing these Bonds shall be a Treasury Listed Surety Admitted in California (Federal Register) with a current minimum Best's Key Rating of A- and a Financial Size Category (FSC) of VIII or better. Contractor shall pay all premiums and costs thereof and incidental thereto. SANTA ANA and the Project Representatives agree to not release the Contractor from its Bond(s) without the first obtaining mutual written approval by the Project Representatives. Release of a warranty bond(s) shall occur no earlier than the third anniversary of the sign-off date on the applicable CPP(s).

Contractor to provide faithful performance bond(s) in an amount to cover 100% of the estimated construction cost for the Facilities (including labor and materials) to insure the Contractor's faithful performance of all work under the construction contract and the replacing of, or making acceptable, any defective materials or faulty workmanship. No alterations, time extensions, additional work or other changes authorized by the Agreement or the contract may be made without securing consent of the surety or sureties on the Bonds.

Contractor to provide payment bond(s) in an amount deemed the by Project Representatives as sufficient to guarantee the Contractor's faithful performance of contract obligations, including those required for warranties and any performed post-construction.

Required Warranties

Contractor to warrant that materials and equipment furnished be new or good quality and carry all available manufacturer's and installer's warranties and that construction be of good and workmanlike quality in accordance with the terms of this Agreement for a period of three years from completion of Project construction and the sign-off date on applicable CPP(s). Any work not conforming to these requirements shall be considered defective work. The construction contract shall not limit the time that owner of improvements has to pursue any action for defective work for a time period less than the applicable statute of limitations.

II. Operation and Maintenance

An O&M contractor(s) shall maintain and provide OCFCD and/or COSTA MESA, with proof of insurance for coverage, at minimum, as set forth below:

Coverage/Limits

Coverage	Minimum Limits
Commercial General Liability with products and completed operations and contractual liability	\$1,000,000 limit per occurrence \$1,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 limit per occurrence

Required Coverage Forms

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

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in The State of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 4) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming each Party and its elected and appointed officials, officers, employees, and agents as Additional Insureds.
- 5) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance maintained by any Party shall be excess and non-contributing.
- 6) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

All insurance policies required herein shall waive all rights of subrogation against the Parties and their respective elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The procuring of such required policy or policies of insurance shall not be construed to limit the contractor and/or subcontractor liability, nor to fulfill an indemnification provision and requirement, nor in any way to reduce the policy coverage and limits available from the insurer.