

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

603B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
May 17, 2011

SUBJECT: Santa Ana River below Prado Dam – Reach 9 Phase 2B Project
Project No. 2-0-00105
Cooperative Agreement

RECOMMENDED MOTION:

- 1) Approve the Cooperative Agreement between the District, the Orange County Flood Control District (OCFCD), and the Riverside County Transportation Commission (RCTC); and
- 2) Authorize the Chairman to execute the Cooperative Agreement on behalf of the District.

BACKGROUND:

The Agreement is necessary to preserve cost sharing equity and to define other responsibilities for the relocation of various facilities as required by the U.S. Army Corps of Engineers (Corps) Reach 9 Phase 2B project, as part of the larger Santa Ana River Mainstem Project, amongst the District, OCFCD and RCTC. Continued on Page 2

TT:bjj

Warren D. Williams
WARREN D. WILLIAMS
 General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:

Contributions from Riverside County Transportation Commission

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

Michael R. Shetler
 BY: Michael R. Shetler
 Michael R. Shetler

County Executive Office Signature

FOR: APPROVED COUNTY COUNSEL
 BY: *Neal R. Kipnis*
 NEAL R. KIPNIS
 DATE:

- Policy
- Policy
- Consent
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Benoit and Ashley
 Nays: None
 Absent: Stone and Tavaglione
 Date: May 17, 2011
 xc: Flood

Kecia Harper-Ihem
 Clerk of the Board
 By: *Kecia Harper-Ihem*
 Deputy

Prev. Agn. Ref.: 11.6, 07/27/10 | District: 2nd | Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

11.2

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Santa Ana River below Prado Dam – Reach 9 Phase 2B Project
Project No. 2-0-00105
Cooperative Agreement

SUBMITTAL DATE: May 17, 2011

Page 2

BACKGROUND:

On July 27, 2010 (Agenda Item 11.6) the Board authorized an expenditure of \$1,035,000 for utility relocations necessary pursuant to an existing Local Cooperation Agreement (LCA) for this project. The authorization for this Cooperative Agreement will establish the mechanism for the District to be reimbursed for the earlier expenditure from RCTC.

County Counsel has approved the Cooperative Agreement as to legal form. The Agreement is to be executed in counterpart by the participating agencies.

TT:bjj

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AGREEMENT

This agreement, hereinafter referred to as "AGREEMENT" and for purposes of identification hereby numbered **D11-002** (ORANGE COUNTY FLOOD CONTROL DISTRICT Agreement Number) and **11-31-090-00** (RIVERSIDE COUNTY TRANSPORTATION COMMISSION Agreement Number) and dated the 23rd day of August, 2011, is

BY and AMONGST

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as "OCFCD,"

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body corporate and politic, hereinafter referred to as "RCFC&WCD,"

AND

RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a body corporate and politic, hereinafter referred to as "RCTC,"

Which are sometimes individually referred to as "PARTY," or collectively referred to as "PARTIES."

RECITALS

WHEREAS, the Water Resources Development Act of 1986 (WRDA), Public Law 99-662, authorized construction of flood control improvement features for the Santa Ana River Mainstem Project ("SARMP") which includes, as a component, improvements to the Lower Santa Ana River ("LSAR");

WHEREAS, improvements to the LSAR include construction of approximately 6,000 linear feet of bank protection and a temporary water diversion canal extending through the counties of Orange and Riverside, also known as Santa Ana River Reach 9 Phase 2B (hereinafter referred to as "PROJECT");

WHEREAS, PROJECT is located within the southern portion of the Green River Golf Club ("GRGC") and adjacent to State Route 91 freeway ("SR-91"), between Coal Canyon Road and the Green River Mobile Home Park, as shown in Exhibit A (SAR Reach 9 Phase 2B Location Map) which is attached

1 hereto and incorporated by this reference;

2 **WHEREAS**, the purpose of PROJECT is to protect the SR-91, the only major route for
3 commuters between Riverside and Orange Counties, from damages due to storm water releases from
4 Prado Dam;

5 **WHEREAS**, OCFCD and RCFC&WCD, pursuant to their Local Cooperation Agreement ("LCA")
6 with United States Army Corps of Engineers ("CORPS"), are the Local Sponsors of PROJECT with the
7 CORPS, as the PROJECT proponent, responsible for the preparation of PROJECT plans, specifications
8 and estimates, construction administration, and for compliance with all applicable legal requirements
9 related thereto, as authorized by WRDA;

10 **WHEREAS**, as Local Sponsors, OCFCD and RCFC&WCD are responsible for providing all lands,
11 easements, rights-of-way, relocations and disposal sites (hereinafter referred to collectively as
12 "LERRDS") required for construction of SARMP, within their respective jurisdictional boundaries;

13 **WHEREAS**, OCFCD is the fee owner of GRGC and desires to implement various features for the
14 GRGC as part of PROJECT;

15 **WHEREAS**, in order to ensure flexibility for potential future projects, including but not limited to
16 the proposed SR-91 Corridor Improvement Project, RCTC is cost-sharing with the Local Sponsors in the
17 relocation of existing utilities and other facilities in an effort to minimize any future potential disturbances
18 to these facilities and/or relocations within the PROJECT site;

19 **WHEREAS**, as Local Sponsors, OCFCD and RCFC&WCD, by way of a request to the CORPS,
20 are allowed to implement during construction additional features not otherwise included within the scope
21 of CORPS' responsibilities, funding or otherwise, per the LCA for PROJECT (hereinafter referred to as
22 "BETTERMENTS");

23 **WHEREAS**, PARTIES desire to include various LERRDS and BETTERMENTS as part of
24

1 PROJECT, including the relocation of the bridge and driveway, the relocation of various utilities that are in
2 conflict with PROJECT and other potential future SR-91 improvements, and the construction of a
3 temporary bikeway detour, hereinafter referred to collectively as "RELOCATIONS";

4 **WHEREAS**, PARTIES understand that CORPS, as the project proponent for the entire SARMP,
5 has sole authority to determine which additional features requested by PARTIES to be implemented are
6 included within the scope of the CORPS' responsibilities per LCA for PROJECT (hereinafter referred to as
7 "PROJECT COST"), or otherwise classified as LERRDS or BETTERMENTS;

8 **WHEREAS**, PARTIES desire to enter into AGREEMENT for the purpose of defining the roles and
9 responsibilities of PARTIES for the cost-share of RELOCATIONS;

10 **WHEREAS**, it is in the public interest for PARTIES to cooperate with the financing of the design
11 and construction of RELOCATIONS.

12 **NOW, THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

13 **1. RECITALS**

14 The recitals set forth above are incorporated herein by this reference.

15 **2. PURPOSE**

16 The purpose of this AGREEMENT is to establish the terms and conditions for
17 implementation of RELOCATIONS, and establish the terms under which PARTIES will
18 contribute towards the cost-share of said RELOCATIONS.

19 **3. PROJECT COORDINATION**

- 20 a. OCFCD's Director of the OC Public Works Department ("OC Public Works"), or an
21 authorized designee, hereinafter referred to as "OCFCD REPRESENTATIVE," shall
22 be OCFCD's representative in all matters pertaining to this AGREEMENT.
23 b. RCTC's Executive Director, or an authorized designee, hereinafter referred to as
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1 "RCTC REPRESENTATIVE," shall be RCTC's representative in all matters pertaining
2 to this AGREEMENT.

- 3 c. RCFC&WCD's General Manager-Chief Engineer, or an authorized designee,
4 hereinafter referred to as "RCFC&WCD REPRESENTATIVE," shall be
5 RCFC&WCD's representative in all matters pertaining to this AGREEMENT.

6 **4. PERIOD OF PERFORMANCE**

7 The term of this AGREEMENT shall commence upon the date of the last to sign of the
8 respective Boards of each PARTY. Thereafter, the AGREEMENT shall remain in effect
9 until 90 days after CORPS' final accounting of the costs related to RELOCATIONS, as
10 defined in this AGREEMENT, has been submitted to PARTIES, unless earlier terminated
11 by one PARTY provided that ninety (90) days written notice of termination is given to all
12 other PARTIES pursuant to the requirements set forth in Paragraph 6, and that the financial
13 and other obligations incurred to that point of the PARTY seeking termination have been
14 fully satisfied as determined by the other PARTIES.

15 **5. PARTY ROLES AND RESPONSIBILITIES**

- 16 a. A summary of the cost-share amounts and percentages as described in this
17 Paragraph 5 is tabulated and attached hereto as Exhibit B (OCFCD, RCFC&WCD
18 and RCTC Cost Share Summary Table for Relocations) and incorporated by this
19 reference. Table 1 of Exhibit B includes the estimated cost-share amounts and Table
20 2 of Exhibit B sets forth the specific cost-share percentages as allocated between the
21 PARTIES. PARTIES understand and agree that the information indicated in Exhibit
22 B, Table 1 is a good faith estimate of the various costs, and may be subject to
23 adjustments as PROJECT design and/or construction progresses. Notwithstanding
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1 any adjustments to the various costs, the final costs shall be based upon CORPS'
2 final accounting of cost for RELOCATIONS and shall be allocated per the specific
3 cost-share percentages set forth in Table 2 of Exhibit B.

4 b. PARTIES shall contribute equally to the incremental difference in the construction
5 cost between a temporary and permanent bridge and driveway, as shown in Exhibit
6 B, Table 1, Item 1(a), Column 10. Including adjustments for contract administration
7 and contingencies, the difference, estimated at approximately EIGHT HUNDRED
8 THIRTY THOUSAND DOLLARS (\$830,000), shall be shared equally by all PARTIES.
9 The CORPS considers the incremental difference in cost an "BETTERMENT", and
10 PARTIES concur, since PROJECT only requires a temporary bridge and driveway
11 during construction. Similarly, the incremental design cost, as shown in Exhibit B,
12 Table 1, Item 1(b), Column 10 and estimated to be approximately TWO HUNDRED
13 SIXTY-FIVE THOUSAND DOLLARS (\$265,000), for the permanent bridge and
14 driveway shall be shared equally among PARTIES.

15 c. OCFCD shall assume 97% of the cost, as shown in Exhibit B, Tables 1 and 2, Item
16 2(a), Column 5, for implementation of the temporary bikeway detour, which is
17 estimated at approximately EIGHT HUNDRED SIXTY-FIVE THOUSAND DOLLARS
18 (\$865,000), since the existing Class I bikeway is located almost entirely within
19 Orange County. RCFC&WCD shall pay for the remaining 3%, as shown in Exhibit B,
20 Tables 1 and 2, Item 2(a), Column 7, estimated at approximately TWENTY-SEVEN
21 THOUSAND DOLLARS (\$27,000). The CORPS considers this temporary bikeway
22 detour as LERRDS within Orange and Riverside Counties, and PARTIES concur.
23 Similarly, the design cost for the bikeway detour shall be shared by the same
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1 percentage between OCFCD and RCFC&WCD, as shown in Exhibit B, Table 2, Item
2 2(b), Columns 5 and 7.

3 d. PARTIES shall contribute equally for the funding of the gas (via the Gas Company)
4 and water (via City of Corona) utility relocations, which is shown in Exhibit B, Tables
5 1 and 2, Items 3 and 4. The CORPS considers these utility relocations
6 BETTERMENTS and therefore constituting RELOCATIONS per this AGREEMENT,
7 and PARTIES concur, since these services only pertain to the GRGC. These utility
8 relocations will be implemented as part of the CORPS design and construction
9 contracts. RCTC shall remit its portion of the cost-share directly to RCFC&WCD,
10 within thirty (30) days upon receipt of an invoice from CORPS.

11 e. OCFCD shall be solely responsible for the relocation of irrigation and wells impacted
12 by PROJECT within the GRGC, as shown in Exhibit B, Tables 1 and 2, Item 5. The
13 CORPS considers these relocations as BETTERMENTS and therefore constituting
14 RELOCATIONS per this AGREEMENT, and PARTIES concur, because these utilities
15 service only the GRGC.

16 f. RCFC&WCD and RCTC shall share equally in the cost for implementation of the
17 power (via SCE) and cable/internet/phone (via AT&T) relocations, as shown in
18 Exhibit B, Tables 1 and 2, Items 6 and 7. The CORPS considers these
19 RELOCATIONS as LERRDS within Riverside County, and PARTIES concur. Should
20 RCFC&WCD and RCTC desire to include these RELOCATIONS as part of a CORPS
21 construction contract change order, payment shall be remitted directly to the CORPS
22 by way of RCFC&WCD. RCTC shall remit its portion of the cost-share directly to
23 RCFC&WCD, within ninety (90) days upon receipt of an invoice from CORPS, as the
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1 latter is the Local Sponsor of the SARMP in Riverside County.

- 2 g. Each PARTY shall each be responsible for its own individual administration costs,
3 including, but not limited to, right-of-way engineering and real estate services (e.g.,
4 quitclaim, easement deed preparation, and recording).
- 5 h. Pending the determination of prior rights, OCFCD and RCTC shall cooperate with
6 RCFC&WCD in its issuance of notices to relocate utilities within Riverside County
7 and with the preparation of reimbursement agreements with the utility agencies.
- 8 i. Concerning those RELOCATIONS that are a part of the CORPS construction
9 contract (either by bid documents or by contract change orders) for PROJECT,
10 RCTC may, at its sole discretion and solely for the benefit of RCTC, at no cost to
11 OCFCD, RCFC&WCD, or CORPS, furnish a Project Manager during construction.
12 RCTC Project Manager's access to the PROJECT site shall be subject to meeting all
13 CORPS regulations as dictated by CORPS' Resident Engineer. RCTC shall be
14 entitled to consult and cooperate with CORPS' Resident Engineer, ensure
15 conformance of the construction of RELOCATIONS with the approved plans and
16 specifications, and provide review and approval for any change orders associated
17 with the items listed in Exhibit B. However, after consultation and cooperation with
18 RCTC, the decision of CORPS' Resident Engineer regarding all matters involving the
19 construction of RELOCATIONS shall be final.
- 20 j. All proposed contract change orders for RELOCATIONS shall be subject to review,
21 consultation and concurrence by RCTC prior to their execution and implementation.
22 However, RCTC's decision regarding contract change orders shall be subordinate to
23 CORPS' Resident Engineer's decision, which shall be final.
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1 k. As construction of the items of work identified in Exhibit B for RELOCATIONS under
2 this AGREEMENT progresses, it may be determined that some items of work or
3 portions thereof may not be required, resulting in excess funds. Further, actual
4 construction costs may be less than the estimated funds as shown in Exhibit B. As
5 such, each PARTY's unused funds may be shifted among the various items of work
6 listed in Exhibit B at the discretion of each PARTY. Refund of overpayment to any
7 PARTY shall be based on a final accounting provided by the CORPS.

8 l. Similarly, as construction of the items of work identified in Exhibit B for
9 RELOCATIONS under this AGREEMENT progresses, it may be determined that
10 additional funds not previously anticipated may be required. As such, all PARTIES
11 agree that they will contribute using the same cost-share percentages shown in
12 Exhibit B, Table 2 for tasks that have been previously identified. Any additional tasks
13 required for the implementation of RELOCATIONS that were not previously identified
14 in Exhibit B shall be funded per CORPS' determination of the type of work necessary
15 (PROJECT COST, LERRDS or BETTERMENT) and with the mutual written consent
16 of all PARTIES.

17 **6. NOTICES**

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

20
21 OCFCD: Director
22 OC Public Works Department
23 County of Orange
24 P.O. Box 4048
25 Santa Ana, CA 92702-4048
26 Facsimile No. (714) 834-2395

1 RCFC&WCD: General Manager-Chief Engineer
2 Riverside County Flood Control and Water Conservation
3 District
4 1995 Market Street
5 Riverside, CA 92501
6 Facsimile No. (951) 788-9965

4 RCTC: Executive Director
5 Riverside County Transportation Commission
6 P.O. Box 12008
7 Riverside, CA 92502
8 Facsimile No. (951) 787-7920

- 8 b. All notices shall be in writing and deemed effective when delivered in person, on the
9 day of delivery, on the business day following deposit of notice with an overnight
10 delivery service such as Federal Express, or on the fifth business day after deposit in
11 the United States mail, first class, postage prepaid and addressed as above. Any
12 notices, correspondence, reports, and/or statements authorized or required by this
13 AGREEMENT, addressed in any other fashion shall be deemed not given.
- 14 c. Each PARTY hereto may change its address to which notices are to be sent by
15 giving notice of such change to the other two PARTIES.

16 **7. INDEMNIFICATION**

17 a. Indemnification by RCTC

18 RCTC hereby agrees to indemnify, defend (with counsel approved in writing by
19 OCFCD and RCFC&WCD), and hold harmless OCFCD, RCFC&WCD, Counties of
20 Orange and Riverside ("COUNTIES") and the officers, Board of Supervisors, elected
21 and appointed officials, employees, authorized agents and representatives of
22 OCFCD, RCFC&WCD, and/or COUNTIES ("OCFCD/RCFC&WCD/COUNTIES
23 INDEMNITEES") from any and all losses, injuries, liability, damages, claims,
24 proceeding or action, present or future, costs and expenses (including but not limited

1 to attorney fees and court costs, cost of investigation, defense and settlements or
2 awards), incurred by or made against OCFCD, RCFC&WCD, COUNTIES, or any
3 OCFCD/RCFC&WCD/COUNTIES INDEMNITEES, based upon, arising out of or in
4 any way relating to: (i) any breach of this AGREEMENT by RCTC, or (ii) the actual or
5 alleged willful misconduct or negligent acts or omissions of RCTC and/or RCTC
6 INDEMNITEES (as defined below) in connection with the performance under this
7 AGREEMENT; provided, however, that the indemnification provided by this
8 subparagraph shall not operate to relieve OCFCD, RCFC&WCD, or COUNTIES from
9 any loss, injury, liability, damages, claims, costs or expenses to the extent
10 determined by a court of competent jurisdiction to have been proximately caused by
11 the willful misconduct or negligent acts or omissions of OCFCD, RCFC&WCD,
12 COUNTIES, or the OCFCD/RCFC&WCD/COUNTIES INDEMNITEES, or any of
13 them. As used in this subparagraph and subparagraphs b and c below, the term
14 "OCFCD/RCFC&WCD/COUNTIES INDEMNITEES" shall include any of the officers,
15 Board of Supervisors, elected or appointed officials, employees, agents or
16 representatives of the OCFCD, RCFC&WCD, County of Orange, and County of
17 Riverside.

18 b. Indemnification by RCFC&WCD

19 RCFC&WCD hereby agrees to indemnify, defend (with counsel approved in writing
20 by OCFCD and RCTC), and hold harmless OCFCD, County of Orange ("ORANGE
21 COUNTY"), RCTC and the officers, Board of Supervisors, elected or appointed
22 officials, employees, agents and representatives of OCFCD, RCTC and/or COUNTY
23 ("OCFCD/ORANGE COUNTY/RCTC INDEMNITEES") from any and all losses,
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1 injuries, liability, damages, claims, proceeding or action, present or future, costs and
2 expenses (including but not limited to attorney fees and court costs, cost of
3 investigation, defense and settlements or awards), incurred by or made against
4 OCFCD, ORANGE COUNTY, RCTC or any OCFCD/ ORANGE COUNTY/RCTC
5 INDEMNITEES, based upon, arising out of or in any way relating to: (i) any breach of
6 this AGREEMENT by RCFC&WCD, or (ii) the actual or alleged willful misconduct or
7 negligent acts or omissions of RCFC&WCD and/or RCFC&WCD INDEMNITEES (as
8 defined above) in connection with the performance of this AGREEMENT; provided,
9 however, that the indemnification provided by this subparagraph shall not operate to
10 relieve OCFCD, ORANGE COUNTY or RCTC from any loss, injury, liability,
11 damages, claims, proceeding or action, present or future, costs or expenses
12 (including but not limited to attorney fees and court costs, cost of investigation,
13 defense and settlements or awards) to the extent determined by a court of competent
14 jurisdiction to have been proximately caused by the willful misconduct or negligent
15 acts or omissions of OCFCD, ORANGE COUNTY, RCTC or the OCFCD/ORANGE
16 COUNTY/RCTC INDEMNITEES.

17 c. Indemnification by OCFCD

18 OCFCD hereby agrees to indemnify, defend (with counsel approved in writing by
19 RCFC&WCD and RCTC), and hold harmless RCFC&WCD, County of Riverside
20 ("RIVERSIDE COUNTY"), RCTC and the officers, Board of Supervisors, elected or
21 appointed officials, employees, agents and representatives of RCFC&WCD, RCTC
22 and/or RIVERSIDE COUNTY ("RCFC&WCD/RIVERSIDE COUNTY/RCTC
23 INDEMNITEES") from any and all losses, injuries, liability, damages, claims,
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1 proceeding or action, present or future, costs and expenses (including but not limited
2 to attorney fees and court costs, cost of investigation, defense and settlements or
3 awards), incurred by or made against RCFC&WCD, RIVERSIDE COUNTY, RCTC or
4 any RCFC&WCD/RIVERSIDE COUNTY/RCTC INDEMNITEES, based upon, arising
5 out of or in any way relating to: (i) any breach of this AGREEMENT by OCFCD, or (ii)
6 the actual or alleged willful misconduct or negligent acts or omissions of OCFCD
7 and/or OCFCD INDEMNITEES (as defined above) in connection with the
8 performance of this AGREEMENT, provided, however, that the indemnification
9 provided by this subparagraph shall not operate to relieve RCFC&WCD, RIVERSIDE
10 COUNTY or RCTC from any loss, injury, liability, damages, claims, costs or
11 expenses to the extent determined by a court of competent jurisdiction to have been
12 proximately caused by the willful misconduct or negligent acts or omissions of
13 RCFC&WCD, RIVERSIDE COUNTY, RCTC or the RCFC&WCD/ RIVERSIDE
14 COUNTY/RCTC INDEMNITEES.

15 **8. INDEPENDENT CONTRACTOR STATUS**

16 This AGREEMENT is by and amongst the PARTIES for the purposes described herein and
17 is not intended and shall not be construed so as to create the relationship of agent, servant,
18 employee, partnership, joint venture or association, as amongst the PARTIES.

19 **9. SUCCESSORS**

20 This AGREEMENT shall be binding on the successors of the PARTIES hereto and shall not
21 be succeeded by any PARTY without the prior written consent of the other PARTIES. The
22 consent of such other PARTIES shall not be withheld unreasonably but, prior to approving
23 any such succession involving the performance of any obligations pursuant to this
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1 AGREEMENT, the other PARTIES shall be satisfied by competent evidence that the
2 successor is technically qualified and financially able to perform those services to be
3 succeeded. Failure to obtain the other PARTIES' required prior written approval of any
4 proposed succession will render such succession void.

5 **10. WAIVER OF RIGHTS**

6 The failure of PARTIES to insist upon strict performance of any of the terms, covenants or
7 conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that
8 PARTIES may have, and shall not be deemed a waiver of the right to require strict
9 performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor
10 shall such failure constitute a waiver of any remedy for the subsequent breach or default of
11 any term, covenant or condition of this AGREEMENT.

12 **11. APPLICABLE LAW**

13 This AGREEMENT has been negotiated and executed in the State of California and shall
14 be governed by and construed in accordance with the laws of the State of California.

15 **12. SEVERABILITY**

16 If any part of this AGREEMENT is held, determined or adjudicated to be invalid, void or
17 unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT
18 shall be given effect to the fullest extent reasonably possible.

19 **13. ATTORNEY FEES/COSTS**

20 Should litigation be necessary to enforce any terms or provisions of this AGREEMENT,
21 then each PARTY shall bear its own litigation and collection expenses, witness fees, court
22 costs and attorney fees.

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14. EXHIBITS

This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein:

- a. Exhibit A
- b. Exhibit B

15. WAIVER AND INTERPRETATION

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

16. AUTHORITY

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organizations or entities, enforceable in accordance with its terms.

17. AMENDMENT(S)

It is mutually understood and agreed by PARTIES that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by all PARTIES.

18. ENTIRE AGREEMENT

This document sets forth the entire AGREEMENT between the PARTIES and may be modified only by a written amendment amongst the PARTIES hereto, in accordance with Paragraph 17 ("AMENDMENT(S)"), above.

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19. SIGNATURE IN COUNTERPART

This AGREEMENT may be executed and delivered in any number of counterparts or copies by the PARTIES hereto. Each counterpart shall be deemed an original and, taken together, shall constitute one and the same AGREEMENT, which shall be binding and effective as to the PARTIES hereto.

///
///

1
2 IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT in
3 counterparts on the dates opposite their respective signatures and each such counterpart shall
4 be deemed an original:

5
6 Orange County Flood Control District,
a body corporate and politic

7 *Bill Casbell*

8 By _____
Chair of the Board of Supervisors
Orange County, CA

9
10 Date: 8-23-11

11 Signed and certified that a copy of this document
12 has been delivered to the Chair of the Board per
13 G.C. Sec 25103, Reso 79-1535. Attest:

14 *Darlene J. Bloom*

15 _____
Darlene J. Bloom
Clerk of the Board of Supervisors
County of Orange, California

16 Date: 8-23-11

17 Date: 4-12-11

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

21 By: *Paula Whaley*
22 _____
23 Deputy


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IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT in counterparts

on MAY 17 2011
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:


**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**
a body corporate and politic in the State
of California


By: 
WARREN D. WILLIAMS
General Manager-Chief Engineer

By: 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By: 
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By: 
Deputy

(SEAL)
Deputy

1 **IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT in counterparts on the
2 dates opposite their respective signatures and each such counterpart shall be deemed an original:

3 RIVERSIDE COUNTY TRANSPORTATION COMMISSION
4 A body corporate and politic in the State of California

5 Date: 5/24/11

6 By: 
7 Chairman, Commission

8 SIGNED AND CERTIFIED THAT A COPY OF THIS
9 DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN
10 OF THE COMMISSION

11 By: _____

12 APPROVED AS TO FORM
13 GENERAL COUNSEL, RIVERSIDE
14 COUNTY TRANSPORTATION
15 COMMISSION

16 By: 
17 General Counsel

18 Date: 5/23/11

EXHIBIT A

SAR REACH 9 PHASE 2B LOCATION MAP

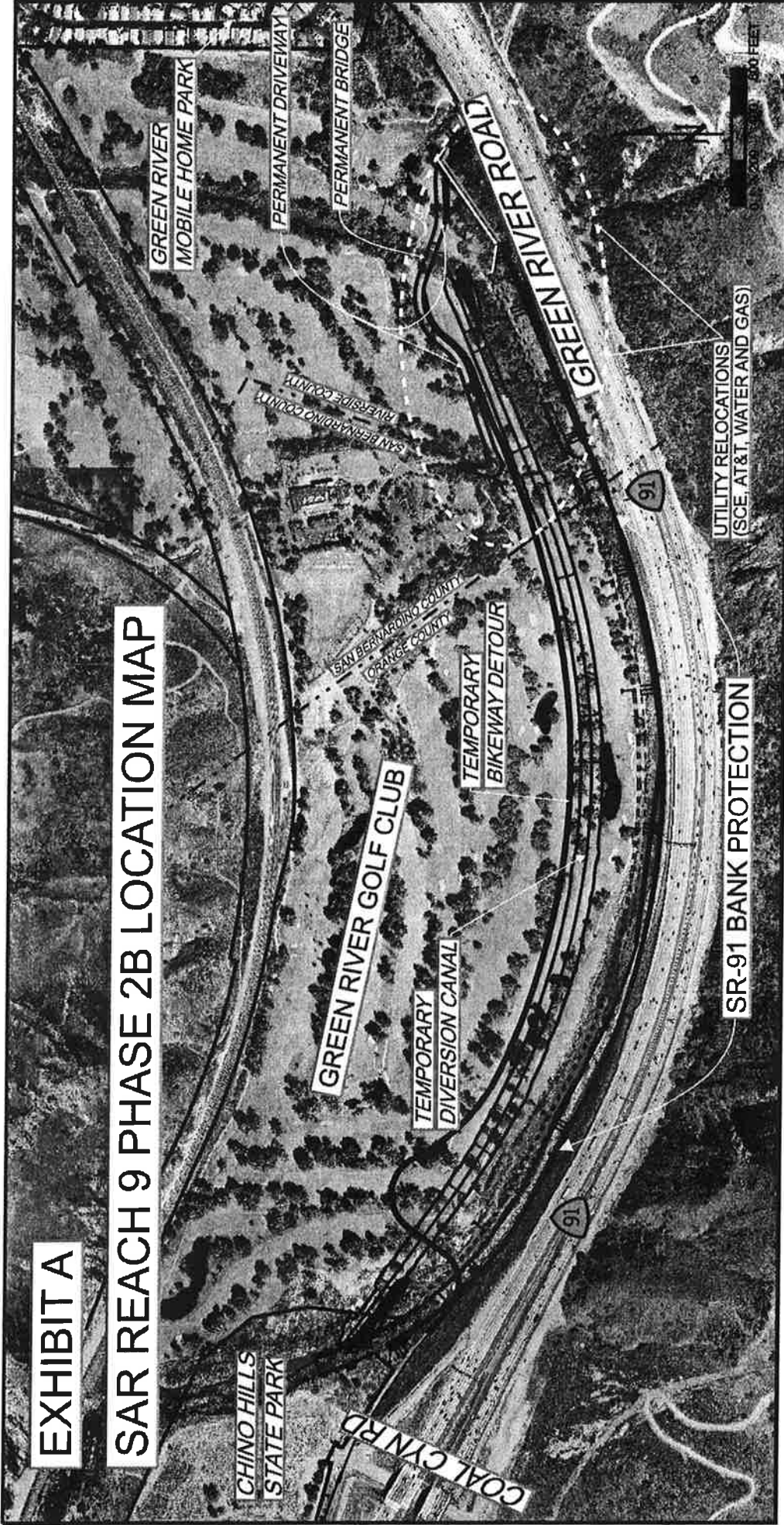


EXHIBIT B

OCFCD, RCFC&WCD & RCTC COST-SHARE SUMMARY TABLE FOR RELOCATIONS ¹

Table 1: Estimated Cost-Share in Dollars

Column Item of Work	1		2		3		4		5		6		7		8		9		10		
	Estimated Cost	Estimated Construction Admin ²	Estimated Total Cost	CORPS Const PROJECT COST	OCFCD		RCFC&WCD		RCTC		RCFC&WCD		RCTC		RCFC&WCD		RCTC		Total for Local Agencies		
					LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS
1. Bridge and Driveway																					
a) Construction	\$2,261,785	\$226,178	\$2,487,963	\$1,658,642		\$276,440		\$276,440										\$276,440		\$829,321	
b) Design	\$793,545	\$0	\$793,545	\$529,030		\$88,172		\$88,172										\$88,172		\$264,515	
Subtotal	\$3,055,330	\$226,178	\$3,281,508	\$2,187,672		\$364,612		\$364,612										\$364,612		\$1,093,836	
2. Temporary Bikeway Detour																					
a) Construction	\$812,556	\$81,256	\$893,812		\$866,998		\$26,814													\$893,812	
b) Design	\$309,164	\$0	\$309,164		\$299,889		\$9,275													\$309,164	
Subtotal	\$1,121,720	\$81,256	\$1,202,976		\$1,166,887		\$36,089													\$1,202,976	
3. Gas (The Gas Company)⁴	\$0	\$0	\$0																	\$0	
4. Water (City of Corona, by Corps)	\$203,500	\$20,350	\$223,850		\$74,617		\$74,617													\$223,850	
5. GRGC Irrigation & Wells	\$387,000	\$38,700	\$425,700		\$425,700															\$425,700	
6. Power (SCE)	\$298,408	\$0	\$298,408				\$149,204													\$298,408	
7. Cable/Internet/phone (AT&T)																					
a) Corps-performed portion	\$1,500,000	\$150,000	\$1,650,000				\$825,000													\$1,650,000	
b) AT&T-performed portion	\$500,000	\$0	\$500,000				\$250,000													\$500,000	
Subtotal	\$2,000,000	\$150,000	\$2,150,000				\$1,075,000													\$1,075,000	
Total	\$7,065,958	\$516,484	\$7,582,442	\$2,187,672	\$1,166,887	\$864,929	\$1,260,293	\$439,229	\$1,663,433											\$5,394,770	

Table 2: Estimated Cost-Share in Percentages

Item of Work	Estimated Cost	Estimated Construction Admin ²	Estimated Total Cost	CORPS Const PROJECT COST	OCFCD		RCFC&WCD		RCTC		RCFC&WCD		RCTC		RCFC&WCD		RCTC		Total for Local Agencies		
					LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT	LERRDS	BETTERMENT					
1. Bridge and Driveway																					
a) Construction	\$2,261,785	\$226,178	\$2,487,963	66.67%		11.11%		11.11%												33.33%	
b) Design	\$793,545	\$0	\$793,545	66.67%		11.11%		11.11%												33.33%	
Subtotal	\$3,055,330	\$226,178	\$3,281,508	66.67%		11.11%		11.11%												33.33%	
2. Bikeway Detour³																					
a) Construction	\$812,556	\$81,256	\$893,812		97.00%		3.00%													100.00%	
b) Design	\$309,164	\$0	\$309,164		97.00%		3.00%													100.00%	
Subtotal	\$1,121,720	\$81,256	\$1,202,976		97.00%		3.00%													100.00%	
3. Gas (The Gas Company)⁴	\$0	\$0	\$0																	100.00%	
4. Water (City of Corona)	\$203,500	\$20,350	\$223,850																	100.00%	
5. GRGC Irrigation & Wells	\$387,000	\$38,700	\$425,700																	100.00%	
6. Power (SCE)	\$298,408	\$0	\$298,408																	100.00%	
7. Cable/Internet/Telephone (AT&T)																					
a) Corps-performed portion	\$1,500,000	\$150,000	\$1,650,000																	100.00%	
b) AT&T-performed portion	\$500,000	\$0	\$500,000																	100.00%	
Subtotal	\$2,000,000	\$150,000	\$2,150,000																	100.00%	
Total	\$7,065,958	\$516,484	\$7,582,442																		

¹ Final amount subject to final accounting by Corps
² Contract administration is estimated at 10% of the construction cost for work performed by the Corps' contractor
³ Percentages based on proportion of Class I Bikeway within Counties of Orange and Riverside
⁴ Per The Gas Company, the gas relocation cost will be paid for by The Gas Company