

AGENDA REPORT

May 26, 2009

TO: Utilities Commission

FROM: Joe Tait, Acting Utilities Director

SUBJECT: Consideration of Upper Chiquita Emergency Storage Reservoir Participation and Operations Agreement. (City of San Clemente, Moulton Niguel Water District, Santa Margarita Water District, South Coast Water District.)

RECOMMENDATION:

- 1) Recommend to City Council to enter into the Upper Chiquita Emergency Storage Reservoir Participation and Operations Agreement with the City of San Clemente, the Moulton Niguel Water District, Santa Margarita Water District, and South Coast Water District; and,
 - 2) Recommend to City Council to appropriate an additional \$220,000 from the Water Capital budget to fully fund the City's share.
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SITUATION:

At its meeting of February 6, 2007, the Council directed staff to pursue a joint project with Santa Margarita Water District (SMWD) and Moulton Niguel Water District (MNWD) on the development of the Upper Chiquita Reservoir (UCR); and, set aside the balance of funding projected for the 250S Reservoir for participation in the development of the Chiquita Reservoir. The original project participation goal was for the City to obtain as much as 32.6 million gallons of operational storage capacity. In the process of developing the project the size of the project as a whole has been scaled down from the then contemplated 975 acre-feet to 750 acre-feet due to physical constraints of the available site, site geology, the logistics of construction, and environmental constraints.

The parties involved were each scaled back a proportionate amount of their planned participation level, leaving the City with the opportunity to obtain 24.8 million gallons, for a projected cost of \$5,025,085. This works out to \$0.20 per gallon, and compares very favorably with the cost of constructing reservoir storage within the City. Recent costs have come to be \$2.12 per gallon for Terminal Reservoir No. 3, (November 2006), and projected at \$1.32 per gallon for the 760S reservoir which at current has a 4 million gallon (Summer 2007) reservoir and a pad for a second 4 million gallon reservoir, and plans to complete the second 4 million gallon reservoir (Summer 2013). This would augment and more than double the City's total planned local reservoir volume of nearly

18.0 million gallons; providing a buffer from import disruptions and provide a hedge against natural disaster which may impact the local reservoirs.

SMWD recently received bids, and has completed and the attached Agreement (Attachment 1) titled the "Upper Chiquita Emergency Storage Reservoir Participation and Operations Agreement." Note that Exhibit B of the agreement is not attached. It will however show the billing of the distributed from the projected start date of construction, June 2009 though the deadline of December 2010. The deadline is of particular importance as the UCR will be needed by the participating agencies to operate during a planned 10 day shut down of the MET import system in the spring of 2011. The UCR Agreement covers both the construction process and the operations period. The system of accounting and cost sharing is based in the format highly typical of joint participation agreements in that fixed capital cost are divided based on the proportionate share of the project ownership, and the operational costs are based on the proportionate share of the use of that capacity.

FINANCIAL CONSIDERATIONS:

The projected cost of the entire project at \$49.5M has a firm basis in existing contracts with the permitting regulatory agencies and mitigation bank (The Corridor Authority, US Fish and Wildlife Service, California Department of Fish & Game, Rancho Mission Viejo Land Trust, \$2.8M) , the design engineers (Boyle Engineering, \$3.2M), the construction manager (AECOM USA, \$1.2M), the Contractor (Sukut Construction, \$36.2M), and includes a 10% contingency (\$4.5M). The detailed breakdown of the projected costs is attached as part of exhibit "A" to the Agreement. The City's portion of this is 10.15%, or \$5,025,084.

The City's budget for the Chiquita Reservoir project has \$4,834,107. The cost of participation for 24.8 million gallons is \$5,025,084; requiring a budget appropriation of an additional \$220,000. Alternately, if The City does not wish to increase its budgeted expenditure at this point or wishes to lower its participation the other participants have expressed an interest in acquiring volume for which The City does not wish to obtain.

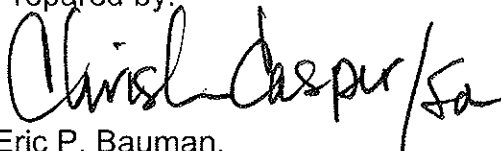
RECOMMENDATION:

- 1) Recommend to City Council to enter into the Upper Chiquita Emergency Storage Reservoir Participation and Operations Agreement with the City of San Clemente, the Moulton Niguel Water District, Santa Margarita Water District, and South Coast Water District; and,
 - 2) Recommend to City Council to appropriate an additional \$220,000 from the Water Capital budget to fully fund the City's share.
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Respectfully submitted,


Joe Tait,
Acting Utilities Director

Prepared by:


Eric P. Bauman,
Utilities Engineer

Attachment:

1. UCR Agreement

DRAFT

**Upper Chiquita Emergency Storage Reservoir Participation and
Operations Agreement
South Orange County**

April 2009

**City of San Clemente
City of San Juan Capistrano
Moulton Niguel Water District
Santa Margarita Water District
South Coast Water District**

This Agreement is made this ___ day of _____ 2009, (the “**Effective Date**”) by and between **City of San Clemente (“CSC”), City of San Juan Capistrano (“CSJC”), Moulton Niguel Water District (“MNWD”), Santa Margarita Water District (“SMWD”), and South Coast Water District (“SCWD”)** hereinafter sometimes individually or collectively referred to as “**Party**” or the “**Parties,**” respectively.

WHEREAS, the Parties hereto are south Orange County agency water suppliers who presently rely on imported water used for domestic (potable) purposes, which is supplied by **Metropolitan Water District of Southern California (“MWD”) through Municipal Water District of Orange County (“MWDOC”)** via regional importation pipelines; and

WHEREAS, each of MWD and MWDOC has each adopted a policy that its respective member or contracting agencies shall have a minimum of seven (7) average days of water supplies when imported water deliveries are curtailed during a planned or emergency shutdown; and

WHEREAS, the Parties are implementing portions of the “*South Orange County Water Reliability Study Phase 2 System Reliability Plan,*” dated June, 2004, prepared by MWDOC (the “**Plan,**” and also known as the “**Emergency Service Program**”); and

WHEREAS, the Plan analyzed various risk scenarios, including planned and emergency outages of the Diemer Filtration Plant, the Allen McColloch Pipeline and the East Orange County Feeder No. 2, and recommended a number of projects to help agencies continue to meet consumers’ water needs during outages (either planned or emergency) of key facilities; and

WHEREAS, the Plan recommended various reliability projects including: i) construction of one or more regional reservoirs, ii) pursuit of regional interconnection work iii) pursuit of emergency groundwater storage and conveyance with Orange County Water District and the groundwater producing agencies and iv) improvements by MWD, that would collectively help to improve the standard of reliability for the Parties who participate in such projects; and

WHEREAS, MNWD and SMWD entered into an memorandum of understanding entitled “*Water Storage Reservoirs Participation Agreement,*” dated April 14, 2006 (the “**MNWD Participation Agreement**”); providing for participation by MNWD in the construction of the reservoirs and establishing a reserve capacity of 470 acre-feet (“AF”) in the Upper Chiquita and East Ortega Reservoir; and

WHEREAS, MNWD Participation Agreement identified the allocation in the Reservoir may be revised based on participation by other agencies and MNWD and SMWD are willing to revise it’s prorate capacity for the other Parties; and

WHEREAS, SMWD is proceeding with plans to construct the **Upper Chiquita Domestic Water Emergency Storage Reservoir in Upper Chiquita Canyon**

(“**Reservoir**”) to address planned and emergency supply curtailment and willing to construct the Reservoir with sufficient capacity to accommodate participation by other South Orange County water agencies; and

WHEREAS, SMWD is proceeding with plans to construct an inlet/outlet pipeline and the **Upper Chiquita Reservoir Pump Station (“Pump Station”)** to the **South County Pipeline (“SCP”)** as the source of imported water for the reservoir; and

WHEREAS, the Parties, each or jointly, take imported water from Service Connections to the SCP per the rules and Regulations governing the *Operation and Maintenance of the South County Pipeline and Service Connections During Phase I and II Operation* (SCP Rules and Regulations); and

WHEREAS, MWDOC is willing and able to provide administrative services to assist with the metering and payment for water stored and delivered through the Reservoir under the terms of the SCP Rules and Regulations; and

WHEREAS, the Parties desire to participate in the Reservoir project described herein;

NOW, THEREFORE, in consideration of the foregoing 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. REPLACEMENT OF MNWD PARTICIPATION AGREEMENT

MNWD and SMWD hereby acknowledge this Agreement supersedes and replaces the MNWD Participation Agreement. Parties acknowledge that MNWD cost allocations will incorporate MNWD’s participation to date in the project.

SECTION 2. CAPACITY RIGHTS

SMWD shall own and operate the Reservoir under the terms of this Agreement. The Parties shall have Capacity Rights in the Reservoir and Pump Stations. As used herein, “**Capacity Right**” means a Party’s undivided percentage ownership interest in the capacity of the Reservoir. The total Capacity Rights in the Reservoir shall be deemed to equal the sum of all Parties’ Capacity Rights therein expressed as percentages totaling 100%. The Capacity Rights equate to approximate nominal storage capacity in the Reservoir and nominal flow capacity in the Pump Station, but no change in the percentage Capacity Rights shall occur by reason of any variance between actual storage capacity and nominal storage capacity or actual flow rates and the nominal flow rates, or increase or decrease in the nominal capacity or flow rates as a result of re-rating of the capacity in the Reservoir or Pump Station or any component thereof, except by amendment of this Agreement. The Capacity Rights do not include any capacity or right

in other SMWD system or facilities including the SCP. The Capacity Right percentage of each Party is the basis for allocation of capital and common operating costs.

The following table summarizes the Capacity Rights allocated to each of the Parties. The parties agree the Capacity Rights percentages shown on the table shall be utilized to allocate Project costs. During the operation of the Reservoir or Pump Station in either a planned or emergency water shortage, no Party shall take action to prevent the delivery to another Party of its proportionate share of available water.

Summary of Capacity Rights in Upper Chiquita Reservoir and Pump Station

Agencies	Reservoir Capacity (AF)	Percentage	Pump Station Capacity (CFS)
City of San Clemente	83.80	11.17%	5.59
City of San Juan Capistrano	76.10	10.15%	5.07
Moulton Niguel Water District	255.80	34.11%	17.05
Santa Margarita Water District	288.60	38.48%	19.24
South Coast Water District	45.70	6.09%	3.05
Total	750.00	100.00%	50.00

SECTION 3. PROJECT COMMITTEE

A Project Committee shall be appointed, consisting of one representative selected by each Party. Each Party shall also select an alternate representative to serve in the absence of its Project Committee representative. The primary purpose of the Project Committee shall be to facilitate communication among the members and aid in the administration of this Agreement. The Project Committee shall be responsible for reviewing and approving conceptual changes to the Upper Chiquita Reservoir and Pump Station as defined herein and such other matters as provided herein. Decisions of the Project Committee shall require a simple majority approval of the Project Committee representatives. The Project Committee shall meet periodically as needed during construction and implementation of the Reservoir to review and approve such items as submitted to the Project Committee. Upon implementation of said projects, the Project Committee shall meet at least once per year to review the status of the Reservoir facilities and operation.

SECTION 4. PROJECT WORK AND REVIEW

Subject to available funding from the Parties or other sources of funding, including but not limited to State and Federal funds, SMWD or its designee is solely responsible for overseeing and implementing all aspects of the planning, environmental documentation, land and right-of-way acquisition, permitting, design and construction of the Reservoir and Pump Station, and any applicable terms for receipt of any state or federal funding of the projects identified in this Agreement, including the procurement and award of all contracts SMWD deemed necessary for such purpose (collectively, the “**Project Work**”). The foregoing notwithstanding, as of the Agreement date, Project Committee approval shall be required for (1) the award of any original contracts for environmental documentation, design and construction, (2) the issuance of any design change variance that individually exceeds \$30,000 or, when added to previously issued variances, exceeds 10% of the original contract bid amount, and (3) the issuance of any construction change order that individually exceeds \$100,000 or, when added to previously issued change orders, exceeds 10% of the original contract bid amount. A schedule of the Project Work is set forth in Exhibit “B,” which exhibit is attached hereto and incorporated herein by this reference. Any changes needed in the schedule will be subject to approval by the Project Committee. All Project Work contemplated under this agreement shall meet the then applicable SMWD standards and specifications. SMWD or its designee shall provide copies of requests for proposals, staff reports, design reports, and plans and specifications, including estimates for SMWD costs related to environmental documentation, design, permits, legal fees, surveying, geotechnical services, construction management services, inspection and accounting, for review by the other Parties and any regulatory agency with authority over an aspect of the Project Work. The Parties shall provide any comments to SMWD or its designee within seven days of receipt of any such report or other document or any updated version thereof. SMWD or its designee shall review and reasonably consider all comments. In the event of any dispute or conflicting comments with respect to the Project Work, the Project Committee shall meet and confer, and resolve such disputes prior to proceeding with the Project Work.

Each Party who contracts for Project Work shall provide to each of the other Parties copies of all plans, designs, bids and construction contracts, within five (5) working days after each such document has been approved and/or finalized by SMWD.

SECTION 5. PROJECT COSTS

Each of the Parties agrees to pay its Capacity Right percentage share of the cost to complete the Reservoir and Pump Station, estimated to be \$54 million. A Party shall not reduce or increase its Capacity Right unless one or more other Parties make a corresponding increase or decrease in its/their Capacity Right(s), and the change is made in accordance with Section 8. The Parties further agree that funding received from State and/or Federal sources for the Reservoir and Pump Station shall be applied first and the

remaining Project costs shall be allocated to the Parties based on their respective Capacity Rights as shown in the table in Section 2.

SMWD or its designee will invoice the Parties for their respective shares of the prospective Project Work in two parts. The first deposit installment will fund the project cost for environmental, permitting, design and construction services identified in **Exhibit A**. The second part will fund the remaining estimated Project Work, including construction based on progress payment plan in **Exhibit B**. The first deposit shall be invoiced by SMWD upon execution of this agreement by the parties. The progress payments shall be invoiced by SMWD upon award of contract for construction of the project components per the schedule. All invoices shall be payable when mailed or delivered and shall be delinquent 45 days thereafter. A final reconciliation will be provided by SMWD or its designee upon completion of the Project Work, which may result in refunds or additional deposit invoices. From the deposits, SMWD will disburse any amounts advanced by any Party for costs of the Project Work. Funds deposited with SMWD shall earn interest for the benefit of the Party depositing the same at a rate equivalent to the average prevailing rate of earnings on SMWD's invested funds.

If any Party does not make timely payment(s) as invoiced, such Party's right to use its Capacity Rights shall be deemed to be suspended, SMWD or its designee will exercise best efforts to sell or otherwise transfer the Party's Capacity Right among the other Parties, and a change will be processed under Section 8. In any event, each Party shall remain financially responsible for its share of its Capacity Right share of cost, including the cost attributable to the suspended Capacity Right share as reallocated by SMWD among the non-suspended rights, unless and until one or more other Parties agree to acquire or use the available Capacity Right and Flow-Rate Reservation share.

SECTION 6. DEMAND MANAGEMENT

SMWD shall operate the Reservoir and Pump Station to maximize the water supply available during a planned or emergency water shortage. In the event the amount of water made available by SMWD is less than the amount specified in the table in Section 2, then the available water will be allocated based on the Parties' respective Capacity Right percentage at the time the water is made available, except in the case of a Party that through its own election withdrew its water held under its Capacity Right.

In the event of an emergency or planned outage, Parties shall notify SMWD of its requested capacity and flow rate. In the event the flow rate, provided said flow rate is equal to or less than the capacity specified in the table in Section 2. If a Party does not make a request, SMWD will provide water at the flow rate specified in the table in Section 2 until the total available capacity for the Party is used.

SECTION 7. OPERATION AND MAINTENANCE COSTS

SECTION 7.1. General

SMWD shall operate and maintain the Reservoir and Pump Station. The cost of operating and maintaining shall be determined for each facility, on the basis of specific operational criteria or limitations. SMWD will operate and use the facilities as part of its routine system SCP operations when the facilities are not being used by the Parties for planned outage or emergency use. Operation, maintenance, repair and replacement costs shall include both fixed costs that do not vary with the quantity of water delivered by the SCP system through the SCP Service Connections, and variable costs that vary with the quantity of water delivered.

SECTION 7.2. Fixed Costs

Annually, by March 1 of each year, SMWD shall prepare a budget for fixed costs during the next budget year (July 1 – June 30) for approval by the Project Committee, and shall provide each Party with a copy of the budget. Fixed costs, including the cost of facilities maintenance and repair, shall be allocated among the Parties based on their Capacity Rights. Each Party's share of the budgeted fixed costs for the budget year shall be payable by advance deposits made quarterly in four (4) equal installments or as otherwise determined by the Project Committee, and shall be due upon presentation of invoices by SMWD. In the second and each subsequent budget year, any excess/shortfall from the preceding budget year's deposits shall be subtracted from/added to the second quarterly deposit or otherwise addressed as determined by the Project Committee. If and for so long as the Project Committee fails to approve a budget for fixed costs, then the last budget approved by the Project Committee, increased in an amount equal to the percentage change, if any (but not less than zero), in the Consumer Price Index (All Items) for the [[Anaheim-Long Beach-Riverside]] Area, published by the United States Department of Labor, Bureau of Labor Statistics, or if the same shall no longer be published, the most nearly equivalent official index published by said Bureau or its successor or equivalent government agency (the "Index"), over the Index that was in effect at the commencement of the last approved budget, shall be used. .

SECTION 7.3. Variable Costs

Variable costs, including but not limited to the cost of water delivered, chemicals and power, shall be allocated among the Parties based on the volume of water delivered to each agency. Water delivered shall be deemed MWD imported water and shall be charged by MWDOC at the current applicable rate.

SECTION 7.4 Invoices

Each Party shall pay invoices presented to it within forty-five (45) days of receipt. In the event that a Party fails to pay the charges within such forty-five-day period, the Party shall be assessed and shall pay a penalty of one and one-half percent (1.5%) of the total outstanding charges each succeeding forty-five-day period or portion thereof that the amount remains unpaid until said charges are paid in full.

SECTION 7.5 Overhead.

All design, construction and operation costs allocated to the Parties under this Section and Section 5 shall include the cost of SMWD labor and equipment, on a time and materials basis, using the actual number of man-hours and equipment-hours required (including travel time to and from SMWD facilities), multiplied by the applicable rates for the crew members and equipment deployed. After-hours services (defined as between 5:00 pm on a working day and 7:00 am on the next following working day; “working day” to exclude Saturdays, Sundays and SMWD-designated holidays) will be charged at time and a half. The equipment rates effective upon the execution of this Agreement are set forth in Exhibit “C”, attached hereto and incorporated herein by this reference, and thereafter are subject to adjustment in accordance with standard SMWD practices, without the need for an amendment to this Agreement.

The labor rates are comprised of a direct component that is adjusted periodically whenever SMWD’s Board of Directors approves a salary schedule adjustment (generally, one cost of living adjustment and one competitive wage adjustment each year), and an indirect (general and administrative overhead or “G&A”) component. The G&A component includes a “benefits burden” and a “contract burden.” A total benefits and contract burden rate of 78.6% shall remain in effect through June 30, 2013, and thereafter is subject to adjustment at five (5) year intervals.

Such total benefits and contract burden rate shall be applied as follows for each crew member used:

Labor Rate = base hourly salary + (base hourly salary X (total benefits and contract burden rate))

Services contracted by SMWD to others and/or materials used shall be at SMWD’s direct cost and shall not include an SMWD indirect (general and administrative overhead) component.

SECTION 7.6 Records

SMWD shall keep appropriate records and accounts of all costs and expenses relating to the planning, design, construction, replacement, operation, maintenance and repair of the Reservoir and Pump Station. Said records and accounts shall be provided by SMWD to the Project Committee annually, in advance of the preparation of the annual budgets, and shall be subject to reasonable inspection by any authorized representative of any Party at its expense. Further, said accounts and records shall be audited annually by an independent certified public accounting firm appointed by SMWD pursuant to generally accepted auditing standards as part of SMWD’s annual audit process.

SECTION 7.7 Operating and Procedures Manual to Cover Other Matters

Prior to operation of the Reservoir and Pump Station, the Project Committee shall prepare and approve an Operating and Procedures Manual (“Manual”), which shall include, but not be limited to the following:

- A. Methodology for determining operations, maintenance and replacement expenses, including energy costs for water delivery, by SMWD.
- B. Procedures for operation of the Reservoir and Pump Station during normal operation, planned shutdown and emergency outage conditions contemplated herein, including the notification, coordination, monitoring and problem-resolution activities.
- C. Criteria for compliance with water quality objectives
- D. Development/description of operating criteria including useful service life and criteria for replacement and refurbishment.
- E. Procedures for measurement (metering) and payment for water delivered to the Parties, including the allocation and method of water delivery to the Parties, inclusive of conditions for allowing the Parties to exchange or use other Parties’ Capacity Rights

SECTION 8. TRANSFER OF CAPACITY RIGHTS

The Parties shall have the first right of refusal for any available Capacity Rights in the Reservoir and Pump Station if a Party determines to reduce its Capacity Rights. The Party acquiring the Capacity Rights will reimburse the selling/transferring Party on the basis of the selling Party’s Capacity Right cost adjusted by the ENR Construction Cost Index for the Los Angeles area from the date of acceptance of the Project Work to the date of transfer to the receiving Party, less depreciation for that same period over the expected life of the facility or facilities. An amendment to this Agreement reflecting the change shall be executed by all Parties.

SECTION 9. EMERGENCY USE OF CAPACITY RIGHTS BY NON-PARTICIPANTS

The capacity in the Reservoir and Pump Station is reserved for the use of the Parties. Capacity Rights may be transferred between the Parties as provided herein. The Parties shall have the first right of use of available Capacity Rights. If non-participating water providers request water during an emergency from the water provided by the Reservoir, the request will be forwarded to all Parties. In the event any Party/Parties are able and willing to make their Capacity Rights available for use by a non-participating water provider, a charge representing the cost for use of the Reservoir and Pump Station shall be paid by such non-participating water provider and shall include the cost of the water, operation and maintenance costs, plus a capital charge determined as follows for each time of use:

1/20 of the total current replacement capital cost of the Reservoir and Pump Station, multiplied by the volume of water delivered to the non-participant in acre feet divided by the total volume of water to participants and non-participants in acre feet delivered. The current replacement cost shall be determined by escalating the original actual cost by the ENR Construction Cost Index for Los Angeles.

The proceeds of the capital charge shall be distributed proportionately to the parties willing to make their Capacity Rights available.

SECTION 10. INDEMNIFICATION; INSURANCE

SMWD shall assume the defense of, indemnify and hold harmless the other Parties and each of their officers, employees 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, SMWD's negligent acts or omissions in the design, construction, replacement, use, operation, maintenance, and/ or repair of the Reservoir and Pump, except to the extent such actions, damages, claims, losses, expenses or liability have arisen from or relate to the negligent acts or omissions of an indemnified Party; provided, however, SMWD assumes no liability with respect to interruptions in water deliveries, reductions in water deliveries, or the quality of the source water. The foregoing indemnification obligation shall not relieve the Parties' respective obligations to pay their shares of any and all costs of the design, construction, replacement, operation, maintenance, and/ or repair of the Reservoir and Pump Station. Each Party who contracts for Project Work shall require each of the contractors and consultants retained by such Party for the Project Work to include all of the Parties and each of their officers, employees and agents as indemnified parties in the indemnification provisions of the respective contract.

Each Party shall assume the defense of, indemnify and hold harmless the other Parties and each of their officers, employees 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 negligent acts or omissions of the indemnifying Party in the design, construction, replacement, use, operation, maintenance, and/ or repair of the Reservoir and Pump Station, except to the extent such actions, damages, claims, losses, expenses or liability have arisen from or relate to the negligent acts or omissions of the indemnified Party.

Liability to third parties related to the Reservoir and Pump Station and not determined to have arisen from any Party's negligent act or omission shall be borne by the Parties in proportion to their respective cumulative volumetric measurements of use of the Reservoir and Pump Station to which such liability is related during the time interval in which such liability accrued..

Each Party who contracts for Project Work shall require each of its contractors and design consultants to include the other Parties, their officers, agents and employees

as additional insureds in the insurance coverages that the contracting Party requires such contractors and design consultants to obtain and maintain. With respect to operation of the Projects, SMWD shall maintain in full force and effect appropriate public liability and property damage insurance and shall add the names of the other Parties, their officers, agents and employees to such policies as additional insureds. A proportionate amount of SMWD's cost of insurance relative to the operation of the Projects as herein provided shall be included within the fixed costs.

SECTION 11. SUCCESSORS AND ASSIGNS

This Agreement shall inure to and be for the benefit of the successors and assigns of the Parties hereto.

SECTION 12. ATTORNEYS' FEES

In the event that an action is commenced by any Party to this Agreement to enforce or construe its rights or obligation arising hereunder, the prevailing Party in such action, in addition to any other relief or recovery awarded by the court, shall be entitled to recover all statutory costs plus a reasonable amount of attorneys' fees.

SECTION 13. ENTIRE AGREEMENT; INTERPRETATION; GOVERNING LAW; EXECUTION IN COUNTERPARTS

This Agreement and the Exhibits, as amended from time to time, 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. 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. This Agreement shall be construed as if prepared by all Parties hereto. The Agreement 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.

SECTION 14. 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 General Manager/City Manager of each Party at the address included in the signature section.

SECTION 15. 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 their bargain or renders the remainder of this Agreement meaningless.

SECTION 16. NO THIRD PARTY BENEFICIARIES

No customer, other person or entity other than Parties 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 customer or other person or entity, other than the Parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 17. 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 another Part(ies) in connection with a dispute shall be responsible for providing written notice to such other Part(ies) and thereby 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 Part(ies) 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.

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

President, Santa Margarita Water District
26111 Antonio Parkway
P.O. Box 7005
Mission Viejo, CA 92690-7005

Date

President, Moulton Niguel Water District
27500 La Paz Road
P.O. Box 30203
Laguna Niguel, CA 92607-0203

Date

Mayor, City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672

Date

President, South Coast Water District
31592 West Street
Laguna Beach, 92651

Date

Mayor, City of San Juan Capistrano

Date

Upper Chiquita Emergency Storage Reservoir Participation and Operations Agreement

Exhibit A

Activity	Vendor	Purchase Order No.	Tasks	Budget	Amount Spent	Remaining Amount
Preliminary Design	2R Drilling Inc	250255	Geotechnical investigation auger boring	\$ 11,444.00	\$ 7,665.00	\$ 3,779.00
Preliminary Design	Advanced GeoScience	250223	Phase II preliminary geotechnical Seismic Refraction survey	\$ 8,000.00	\$ 8,000.00	\$ -
Preliminary Design	Earthspectives	250667	Phase II Geotechnical investigation SPT Hammer calibration test	\$ 1,535.00	\$ 1,535.00	\$ -
Preliminary Design	Ecco Equipment	250256	Geotechnical investigation test pits	\$ 5,076.00	\$ 5,076.00	\$ -
Preliminary Design	Genterra Consulting	241442	Phase I preliminary geotechnical evaluation of site	\$ 24,996.44	\$ 24,996.44	\$ -
Preliminary Design	Genterra Consulting	241930	Phase II preliminary geotechnical evaluation of site	\$ 124,998.95	\$ 124,998.95	\$ -
Preliminary Design	Genterra Consulting	260446	Finalize Phase II Geotechnical Report and Basis For Design	\$ 24,993.48	\$ 24,993.48	\$ -
Preliminary Design	GMU Geotechnical	250669	Geotechnical Feasibility study for propose domestic reservoir sites	\$ 7,203.25	\$ 7,203.25	\$ -
Preliminary Design	Henry Miedema and Associates	241300	Project management support with review and coordination of plans and specifications and permitting	\$ 24,320.00	\$ 24,320.00	\$ -
Preliminary Design	Hilts Consulting	231724	Cover analysis and preliminary design	\$ 9,249.96	\$ 9,249.96	\$ -
Preliminary Design	Huitt Zollars	240928	Conceptual design services including topo, ownership research, concept layout	\$ 24,300.00	\$ 20,753.54	\$ 3,546.46

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Activity	Vendor	Purchase Order No.	Tasks	Budget	Amount Spent	Remaining Amount
Environmental	Bonterra Consulting	240474	Preparation of CEQA initial study	\$ 7,938.00	\$ 7,938.00	\$ -
Environmental	Bonterra Consulting	250396	Preparation of Categorical Exemption for on-site geotechnical investigation	\$ 19,155.91	\$ 19,155.91	\$ -
Environmental	Department of Fish and Game	271841	Notice of determination filing fee	\$ 2,606.75	\$ 2,606.75	\$ -
Environmental	Dudek	261786	Preparation of Project EIR	\$ 181,110.59	\$ 181,110.59	\$ -
Environmental	Dudek	270497	Biological monitoring services during geotechnical testing	\$ 4,935.16	\$ 4,935.16	\$ -
Environmental	Dudek and Associates	280469	Regulatory support for negotiations with CDFG, TCA and USFWS	\$ 10,000.00	\$ 9,807.34	\$ 192.66
Environmental	Dudek and Associates	280774	Preparation of CEQA findings and Statement of Overriding Considerations	\$ 3,000.00	\$ 2,526.17	\$ 473.83
Site Acquisition	Donahue and Associates	240989	Upper Chiquita Reservoir Site Appraisal	\$ 9,750.00	\$ 9,750.00	\$ -
Site Acquisition	First American Title	261207	Title Reports for three parcels in Upper Chiquita Canyon for property acquisition	\$ 1,750.00	\$ 1,750.00	\$ -
Site Acquisition	Huitt Zollars	261011	Preparation of Legal Descriptions	\$ 7,500.00	\$ 6,073.75	\$ 1,426.25
Design	Boyle Engineering	261875	Engineering Services	\$ 3,201,453.03	\$ 2,819,126.17	\$ 382,326.86
Design	Department of Water Resources	271552	DSOD permit fee deposit	\$ 152,000.00	\$ 152,000.00	\$ -
Design	Fluidmesh Network	281370	Radio communication survey for SCADA and security cameras	\$ 2,700.00	\$ 2,700.00	\$ -

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Design	Henry Miedema and Associates	270627	Project management support with review and coordination of plans and specifications and permitting	\$ 60,800.00	\$ 60,800.00	\$ -
Design	Henry Miedema and Associates	280486	Project management support with review and coordination of plans and specifications and permitting	\$ 65,000.00	\$ 41,520.42	\$ 23,479.58
Design	Huitt Zollars	280775	Description of Chiquita WRP Open Space per offer for mitigation	\$ 2,560.00	\$ 1,365.20	\$ 1,194.80
Design	Huitt Zollars	280922	Preparation of Legal Descriptions, staking and setting of lath	\$ 12,600.00	\$ 12,300.00	\$ 300.00
Design	OCB Reprographics	281594	Reproduction	\$ 4,600.00	\$ 3,594.40	\$ 1,005.60
Design	Saf-R-Dig	281207	Subsurface utility verification for inlet/outlet piping	\$ 4,942.00	\$	\$ 4,942.00
Design	Traffic Control Engineering	280362	Develop traffic control alternatives for access to the site from Oso Parkway and the FTC	\$ 4,000.00	\$ 4,000.00	\$ -
Design	Traffic Control Engineering	280486	Prepare traffic control plan for Cal Trans	\$ 6,000.00	\$ 6,000.00	\$ -
Mitigation	Department of Fish and Game	281318	Mitigation per Agreement with TCA, USFWS and CDFG	\$ 2,000,000.00	\$ 2,000,000.00	\$ -
Mitigation	Dudek	271578	Regulatory support for negotiations with TCA, CDFG and USFWS	\$ 11,617.50	\$ 11,617.50	\$ -

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Activity	Vendor	Purchase Order No.	Tasks	Budget	Amount Spent	Remaining Amount
Mitigation	Dudek and Associates	280820	Preparation of construction documents for onsite restoration activity	\$ 24,963.00	\$ 24,723.96	\$ 239.04
Mitigation	Earthworks Restoration	281545	Preparation of plans and monitoring during cactus salvage on County of Orange Property	\$ 24,823.00	\$ -	\$ 24,823.00
Mitigation	Rancho Mission Viejo Land Trust	270691	2007 Payment for mitigation under the Habitat Conservation Plan for Reservoir	\$ 350,000.00	\$ 350,000.00	\$ -
Mitigation	Rancho Mission Viejo Land Trust	271753	2008 Payment for mitigation under the Habitat Conservation Plan for Reservoir	\$ 350,000.00	\$ 350,000.00	\$ -
Mitigation	Rancho Mission Viejo Land Trust	281274	2009 Payment for mitigation under the Habitat Conservation Plan for Reservoir	\$ 79,000.00	\$ 79,000.00	\$ -
Construction	AECOM USA	281433	Construction Engineering Services	\$ 1,240,000.00	\$ -	\$ 1,240,000.00
Construction	County of Orange	281462	Encroachment permit No. 2008-02043 for water service for construction	\$ 5,000.00	\$ 202.00	\$ 4,798.00
Construction	Dudek and Associates	281467	Biological monitoring services during construction	\$ 348,559.50	\$ -	\$ 348,559.50
Construction	Harmon Construction	281280	Wied 4" flange for construction water	\$ 1,000.00	\$ 320.00	\$ 680.00
Construction	Huitt Zollars	281463	Field Survey Staking for clearing limits	\$ 2,800.00	\$ -	\$ 2,800.00

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Activity	Vendor	Purchase Order No.	Tasks	Budget	Amount Spent	Remaining Amount
Construction	Nakae	281163	Upper Chiquita Vegetation removal and salvage	\$ 354,642.00	\$ 337,642.00	\$ 17,000.00
Construction	Sukut Construction		Construction services	\$ 36,199,938.00	\$ -	\$ 36,199,938.00
			Subtotal	\$ 45,022,861.52	\$ 6,761,356.94	\$ 38,261,504.58
			10% Contingency	\$ 4,500,000.00	\$ -	\$ 4,500,000.00
			Total	\$ 49,522,861.52	\$ 6,761,356.94	\$ 42,761,504.58

Agencies	Reservoir Capacity (AF)	Percentage	Budget	Amount Spent	Remaining Amount
City of San Clemente	83.80	11.17%	\$ 5,533,189.32	\$ 755,446.41	\$ 4,777,742.91
City of San Juan Capistrano	76.10	10.15%	\$ 5,025,084.76	\$ 686,074.89	\$ 4,339,009.87
Moulton Niguel Water District	255.80	34.11%	\$ 16,890,762.38	\$ 2,306,096.01	\$ 14,584,666.37
Santa Margarita Water District	288.60	38.48%	\$ 19,056,397.11	\$ 2,601,770.15	\$ 16,454,626.96
South Coast Water District	45.70	6.09%	\$ 3,017,427.95	\$ 411,969.48	\$ 2,605,458.47
Total	750.00	100.00%	\$ 49,522,861.52	\$ 6,761,356.94	\$ 42,761,504.58