

AMENDMENT NO.1
TO
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SAN BERNARDINO COUNTY, CALIFORNIA
FLOOD CONTROL DISTRICT
FOR THE
SEVEN OAKS DAM WATER CONSERVATION STUDY, CALIFORNIA

THIS AMENDMENT NO. 1 is entered into this _____ day of _____, 2006, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Los Angeles District (hereinafter the “District Engineer”), and the San Bernardino County Flood District (hereinafter the “Sponsor”), represented by the Chief Engineer for the San Bernardino County Flood Control District.

WITNESSETH, THAT:

WHEREAS, the Government and the Sponsor entered into an Agreement on 23 rd day of Nov, 1993 to perform a feasibility study of the Seven Oaks Dam Water Conservation (hereinafter the “Study”);

WHEREAS, Section 225 of the Water Resources Development Act of 2000, Public Law 106-541 (Section 225), amends Section 105(a)(1)(E) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215(a)(1)(E)), to allow the Sponsor to provide their entire share of Study Costs through the provision of in-kind services; and

WHEREAS, the Government and the Sponsor desire to amend the Agreement to allow the increase in in-kind services provided by Section 225 to apply to work under this Agreement that has not yet been undertaken; and

WHEREAS, Section 105 (a) of the Water Resources Development Act of 1986, Public Law 99-662, provides that “during the period of study,” the Federal sponsor must provide 50 percent of the cost of the study; and

WHEREAS, the Sponsor wants to propose to accelerate its provision of funds to the Government in an amount not to exceed the current estimate of the Sponsor’s share of the costs of the study, less any funds or work in-kind previously or otherwise contributed, for the immediate use by the Government for the study; and

NOW, THEREFORE, the Government and the Sponsor agree to amend the Agreement as follows:

1. ARTICLE I – DEFINITIONS

Article I is amended by amending the following paragraphs:

Article I c. and throughout this agreement the term “IPMP” which means the Initial Project Management Plan” is revised with “The term “PMP” which means Project Management Plan”.

2. ARTICLE II - OBLIGATIONS OF THE PARTIES

Article II is amended by amending and adding the following:

a. In Article II b. The in-kind services is amended by deleting “25 percent” and substituting “50 percent.”

b. Article II b is amended to show the new total study cost is increased from \$2,180,000 to \$4,580,000 to accomplish the tasks outlined in the attached Project Management Plan .

b. Article II is further amended by adding the following paragraphs at the end thereof:

“h. The Sponsor may offer in writing to accelerate a portion or all of its required cash contribution pursuant to Articles II.B. and II.C. of this Agreement during the Study period for immediate use by the Government. This offer shall be limited to an amount that does not exceed the most current estimate of the total of the Sponsor’s required cash contribution pursuant to Articles III.A. of this Agreement, as determined by the Government in coordination with the Sponsor, less any funds previously contributed by the Sponsor. Upon receipt of such offer or offers, the Government, subject to receiving such approvals and concurrences as customarily are required to accept such funds, may accept the funds, or such portion thereof as the Government determines to be necessary to meet the Study Cost. If the Government elects to accept such funds, it shall notify the Sponsor of such acceptance in a writing that sets forth any applicable terms and conditions. In the event of a conflict between this Agreement and any such writing, this Agreement shall control. Such funds shall be used by the Government for the Study determined by the Government. The parties agree that such acceptance shall not represent or give rise to an obligation of the United States, including any obligation to provide reimbursement of the funds the Sponsor elects to provide or any obligation to request future funds to match the amount the Sponsor elects to provide, and that such funds will

be credited against the Sponsor's future cost share only if additional Federal funds are appropriated:

“i. As Federal appropriations are made available to pay for the Federal share of the Study, the Government shall afford credit for funds provided during the Study period in accordance Article II. h. of this Agreement. The Government shall credit this amount provided during the study period toward the Sponsor's cash contribution required by Article II B. of this Agreement. If after the final accounting at the end of the period of study, it is determined that the Sponsor has provided funds in excess of its required share pursuant to Article II B. of this Agreement, the Government shall proceed in accordance with Article III C. of this Agreement to determine whether a refund is applicable. However, if in the event of a final accounting due to termination pursuant to Article XII of this Agreement prior to the end of the period of Study, it is determined that the Sponsor has provided funds in excess of its required share pursuant to Article II. B of this Agreement, the Government shall not reimburse the Sponsor for any excess funds, except that any excess funds which have not been obligated by the Government on the Study shall be refunded to the Sponsor subject to the available of funds.”

3. ARTICLE III – INITIAL PROJECT MANAGEMENT PLAN

Article III the title is changed from Initial Project Management Plan to Project Management Plan. A revised Project Management Plan is included as part of this Agreement amendment, that would outline the additional work tasks to be accomplished beyond the data included in the 1997 Seven Oaks Water Conservation Feasibility Study.

4. ARTICLE IV – METHOD OF PAYMENT

Article IV is changed by substituting PMP for IPMP wherever it appears.

7. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the authorized representative of the Government.

DEPARTMENT OF THE ARMY

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

BY: _____
Alex Dornstauder
Colonel, Corps of Engineers

BY: _____
Chairman. Board of Supervisors

District Engineer
Los Angeles District

DATE: _____

DATE: _____