

Attachment B

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
ORANGE COUNTY FLOOD CONTROL DISTRICT

This Agreement (“Agreement”) is entered into this ___ day of _____, 20___, by and between the Department of the Army (“Government”), represented by the District Commander for the Los Angeles District, U.S. Army Corps of Engineers, and Orange County Flood Control District (“Non-Federal Sponsor”), represented by the Chief Real Estate Officer of the County of Orange, California.

WITNESSETH, THAT:

WHEREAS, the Government constructed and is operating Prado Dam, California, for flood risk management and water conservation pursuant to the Flood Control Act of 1936, Public Law 74-738 and Section 110 of Division C of the Consolidated Appropriations Act of 2005, Public Law 108-447; and

WHEREAS, as a component of the construction of Prado Dam, in 1941, the Government acquired the right to flood by easement certain lands designated as Parcel 510, and, in 1944, the Government acquired the right to flood by easement certain lands designated as Parcel 511; and

WHEREAS, as a component of the flood risk management project for the Santa Ana River Mainstem, Congress authorized modifications to Prado Dam in Section 401(a) of the Water Resources Development Act of 1986, Public Law 99-662, as modified by Section 309 of the Water Resources Development Act 1996, Public Law 104-303; and

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on 11 February 2003 (“PCA”) for construction of the Prado Dam Separable Element of the Santa Ana River Mainstem, including Santiago Creek California Project (“Project,” as defined in Article I.A. of the PCA); and

WHEREAS, the Government and the Non-Federal Sponsor entered into Amendment Number 1 to the PCA on 7 October 2020 for completion of certain Project work pursuant to the funding provisions of Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123; and

WHEREAS, per Article III.A of the PCA, the Non-Federal Sponsor acquired certain real property located at the southeast corner of Mountain Avenue and Bickmore Avenue in the City of Chino (LAT 33.957541° N, LONG -117.662515° W), (the “Property”, as further set forth on the Map in Attachment 1), which overlaps with portions of the flowage easements designated as Parcels 510 and 511; and

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WHEREAS, the Non-Federal Sponsor manages and maintains the Property in accordance with the 2003 PCA and 2020 PCA Amendment, in a manner compatible with the Project's authorized purposes; and

WHEREAS, the Non-Federal Sponsor proposes to lease the Property on the Map in Attachment 1 to Majestic Realty Co., a California corporation, or its successors and assigns ("Third-Party Lessee"), to permit the construction of two commercial warehouses with finished floors at 567-ft NGVD 29 elevation and related facilities, known as the Majestic Chino Heritage Project; and

WHEREAS, the Assistant Secretary of the Army (Civil Works) ("ASA(CW)") issued a Memorandum for Commanding General, U.S. Army Corps of Engineers, dated 20 December 2023 ("Memorandum"), finding in Paragraph 5 that the warehouse development as described therein ("Warehouse Use") does not affect the function and usefulness of the Project, and directing in Paragraph 6 the U.S. Army Corps of Engineers to dispose of the Parcel 510 and Parcel 511 flowage easements on the Property to the Non-Federal Sponsor, subject to conditions and measures to ensure that the Non-Federal Sponsor satisfies its obligations under the PCA, including, but not limited to prohibiting human habitation and any other safety measures required by the Corps; and

WHEREAS, the Memorandum in Paragraph 6 also directs that such conditions and measures be set forth in an agreement with the Non-Federal Sponsor, and in all documentation between the Non-Federal Sponsor and Third-Party Lessee; and

WHEREAS, the Non-Federal Sponsor acknowledges the ASA(CW) direction in Paragraph 10 of the Memorandum that the findings and determinations in the Memorandum shall not establish a precedent and are to be strictly confined to the parcel described in the Memorandum; and

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into this Agreement to set forth the conditions and measures required by the Memorandum to be binding upon the Non-Federal Sponsor and Third-Party Lessee.

NOW, THEREFORE, the Government and Non-Federal Sponsor agree as follows:

1. The Non-Federal Sponsor will ensure that any ground lease between the Non-Federal Sponsor and Third-Party Lessee for the Property includes the following conditions and measures:
 - a. Evidence of the mutual understanding between the Non-Federal Sponsor and Third-Party Lessee that the Property shall remain in public ownership and limited to Warehouse Uses compatible with the Prado Dam Project (Warehouse Use with finished floor at 567-ft NGVD 29 elevation or above) as operated pursuant to the Prado Dam operations documents, including the Water Control Manual.

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b. Prohibition on using any lands, easements, or rights-of way obtained by the Non-Federal Sponsor for the Project pursuant to this Article for human habitation, including housing or overnight sleeping.

c. Requirement that any warehouse structures constructed within the leased area have finished floors at 567-ft NGVD 29 elevation or above.

d. Requirement that the Third-Party Lessee, upon completion of construction, submit to the Los Angeles District, U.S. Army Corps of Engineers and the Non-Federal Sponsor electronic copies of the as-built plans showing the new work with post compilation of topographic survey information. The as-built plans must be signed by the Third-Party Lessee's Engineer of Record. Electronic copies of the as-built plans shall be submitted in .pdf format to the Non-Federal Sponsor and the Los Angeles District, U.S. Army Corps of Engineers. As-built plans must be provided within 60 days of receipt of the certificate of occupancy, or the last certificate of occupancy if more than one is issued.

e. Requirement that the Non-Federal Sponsor and Third-Party Lessee shall address maintenance of the Property in the ground lease agreement on terms that are satisfactory to the Non-Federal Sponsor and Third-Party Lessee.

f. Compliance with any federal, state, or local authorizations required by law, including but not limited to environmental mitigation and compliance, building codes for design and construction, storage or release of hazardous materials, and underground storage tanks.

2. The Non-Federal Sponsor acknowledges that the U.S. Army Corps of Engineers shall not be responsible for the design or the construction on the Property in compliance with local building codes, and that in the event of any non-compliance in the design or construction on the Property, the Non-Federal Sponsor and Third-Party Lessee are responsible for correcting such non-compliance.

3. In the event that the Third-Party Lessee abandons in place, the Non-Federal Sponsor shall be responsible to ensure use of the Property remains compatible with the Project.

4. The Non-Federal Sponsor shall hold and save the United States, the Secretary of the Army, the Army Corps of Engineers, or any officer or employee thereof, free from all damages occurring on the Property arising from lease of the Property, including damages from or to the Warehouse Use, except for damages due to the fault or negligence of the Government or its contractors.

5. As long as the Property remains in Warehouse Use and such use is in compliance with the terms of this Agreement, the Majestic Chino Heritage Project is compatible with operation of the Project.

6. Nothing in this Agreement gives the Government or the Non-Federal Sponsor authority to require the removal, alteration, and or relocation of any improvement on the Property the construction of which falls within the parameters of this Agreement.

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7. Before either party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. This Agreement shall be binding upon the Government and the Non-Federal Sponsor, and inure to the benefit of, the Government and the Non-Federal Sponsor.

9. Nothing in this Agreement shall be construed or interpreted as modifying, abrogating, or changing the terms, responsibilities, and obligations in the PCA, as amended.

10. This Agreement may be modified or amended only by written, mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

ORANGE COUNTY FLOOD CONTROL DISTRICT

BY: _____

BY: _____

Thomas A. Miller, Chief Real Estate Officer
County of Orange, California

Approved as to Form
County Counsel

DocuSigned by:

Michael Haubert

BY: _____
Deputy