

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

553



FROM: EXECUTIVE OFFICE

SUBMITTAL DATE: February 4, 2003

SUBJECT: Axial Flow Pump Operation and Maintenance for Lake Elsinore

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Agreement for the Operation and Maintenance of the Axial Flow Water Pump Destratification System for Lake Elsinore and authorize the Chairman to sign the agreement.
2. Designate and authorize the use of First District Public Facilities Developer Agreement Fund No. 30556 in the amount of \$48,677 annually per the terms of the attached agreement.

BACKGROUND: The Lake Elsinore/San Jacinto Watersheds Authority (LESJWA) proposes installation of an axial flow pump at Lake Elsinore to improve water quality and reduce the risk of fish kills that could affect the local residents and its economy. The axial flow pump operation forms the basis for other projects planned at Lake Elsinore, such as the stocking of striped bass and implementation of a Fisheries Management Plan.

The LESJWA Board has approved funding of the capital expenditures for the project, estimated at \$586,000, provided that funds are available for the annual operation and maintenance (O&M) of the destratification system. The total estimated annual O&M is \$146,000. The cost of O&M is to be divided among three member agencies in LESJWA, i.e., the Elsinore Valley Municipal Water District (EVMWD), the City of Lake Elsinore, and the County of Riverside, resulting in an annual cost of \$48,667 per agency. On January 29, 2003, the EVMWD Board committed to the annual O&M contribution and the City of Elsinore, whose staff will maintain the equipment, will consider the item on February 11, 2003. The LESJWA Board hopes to finalize action on the project at its meeting on February 13, 2003.

Under the terms of this Agreement, the City of Lake Elsinore is required to prepare and submit an annual budget to the County and EVMWD for review and approval. O&M costs will occur after the system becomes operational in June 2003. First District Public Facilities Developer Agreement Funds will be used to fund the annual costs of this project.

Katherine Gifford

Katherine Gifford, Senior Management Analyst

FINANCIAL DATA:

CURRENT YEAR COST	\$48,667	ANNUAL COST:	\$ 48,667
NET COUNTY COST	-0-	IN CURRENT YEAR BUDGET:	Yes/ No/ x
		BUDGET ADJUSTMENT FY:	Yes/ No/ x

SOURCE OF FUNDS: First District Public Facilities Developer Agreement Fund

C.E.O. RECOMMENDATION: Approve

Barbara Kinnore

County Executive Officer Signature

Department Recommendation: Policy
 Per Executive Office: Policy
 Consent
 Consent

Prev. Agn. ref.

Dist. 1

AGENDA NO.

3.24

**AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF THE AXIAL FLOW WATER PUMP DESTRATIFICATION SYSTEM
FOR LAKE ELSINORE**

THIS AGREEMENT is made and effective this _____ day of February, 2003 by and among the COUNTY OF RIVERSIDE ("COUNTY"), the CITY OF LAKE ELSINORE ("CITY") and the ELSINORE VALLEY MUNICIPAL WATER DISTRICT ("DISTRICT"). The COUNTY, CITY and DISTRICT are sometime collectively referred to as the "PARTIES".

RECITALS

A. The COUNTY, CITY and DISTRICT are Member Agencies of the Lake Elsinore San Jacinto Watersheds Authority, a joint powers public agency, formed for the purpose of implementing projects and programs to rehabilitate and improve the San Jacinto and Lake Elsinore Watersheds and the water quality of Lake Elsinore ("LESJWA").

B. The PARTIES propose the design, construction and installation of a project commonly known as the "Axial Flow Water Pump Destratification System for Lake Elsinore". The Destratification System is intended to reduce fish kills and algal densities in Lake Elsinore by:

1. Reducing internal phosphorus loading from Lake bottom sediments;
2. Preventing lengthy periods of thermal and chemical stratification; and
3. Increasing dissolved oxygen in Lake bottom waters.

The Destratification System is expected to be operational by early summer of 2003. Upon completion, the CITY will own and operate the System.

C. Once operational, the Destratification System is expected to avoid the substantial adverse environmental and aesthetic impacts that result from harmful algae blooms and resultant fish kills which, in turn, hurt the economy of the region and severely impacts tourism. For those reasons, the COUNTY, the CITY and the DISTRICT have agreed to share equally the cost of operating and maintaining the Destratification System.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions and promises contained herein, the PARTIES mutually agree as follows:

AGREEMENT

1. **CITY's Obligations.** Subject to all of the provisions of this Agreement, the CITY hereby agrees:

a. **Provision of Services:** To provide, or cause to be provided, all labor, tools, equipment, vehicles, materials, supplies and qualified personnel necessary to manage, operate, monitor, maintain and repair the Destratification System subject to the approved budget as set forth in Section 1.f. and the COUNTY's and DISTRICT's payment of financial contributions as set forth herein.

b. **Financial Contribution:** To contribute one-third (1/3) of the cost of managing, operating, monitoring, maintaining and repairing the Destratification System.

c. **Compliance:** To comply with the requirements of all federal and state statutes, rules and regulations governing the Destratification System.

d. **Monitoring:** To develop and, with the approval of the COUNTY, DISTRICT and LESJWA, implement a field testing, sampling and monitoring program that will, among other things, measure dissolved oxygen and temperature in Lake Elsinore;

e. **Reports:** To prepare and submit quarterly and annual reports summarizing operation, maintenance and monitoring activities and other matters of interest as agreed upon by the PARTIES and LESJWA. The CITY shall also provide such other written or oral reports regarding the operation and maintenance of the Destratification System as may be reasonably requested by the COUNTY, DISTRICT and LESJWA;

f. **Budget:** To prepare and submit an annual budget to the COUNTY and the DISTRICT (with a copy to LESJWA), for review and approval not later than ninety (90) days before the commencement of any fiscal year (July 1 to June 30), which budget shall estimate the expenditures necessary for the operation, maintenance, repair and replacement of the Destratification System. In the event a budget acceptable to the PARTIES is not obtained prior to the start of a fiscal year, the CITY shall continue to operate the Destratification System at the level of expenditure authorized by the last approved budget, and the PARTIES shall fund such budget until a new budget is approved.

g. **Books and Records:** Maintain, and retain for a period of not less than four (4) years following termination of this Agreement, full and accurate books and accounts in accordance with the practices established by or consistent with those utilized by the Controller of the State of California for public agencies. Such books and accounts shall be maintained on a fiscal year basis (July 1 to June 30). Such books and accounts shall be maintained by the CITY as public records.

h. **Safety:** The CITY shall be solely and completely responsible for the safety of all persons and property relative to the Destratification System. This responsibility shall be continuous and not be limited to normal working hours. The CITY's duty to ensure safety shall include, without limitation, the placement of buoys and lights and to take all other precautions necessary to protect boaters, skiers and swimmers in Lake Elsinore.

i. **Indemnification:** CITY agrees to fully indemnify the COUNTY, DISTRICT and LESJWA against, and hold each of them and their respective employees and agents completely free and harmless from any cost, expense, claim, demand judgment, loss, injury and/or liability of any kind or nature, including personal injury, death or property damage, asserted, or otherwise, whether in contract or tort, that may arise from, directly or indirectly, or be occasioned by, or be in any way connected with the CITY's performance, and/or failure to perform, under this Agreement of the maintenance and operation of the Destratification System or any negligent act or omission of the CITY, its employees, agents and/or subcontractors.

j. **Inspection:** To permit inspection of the Destratification System by representatives of the COUNTY, DISTRICT and/or LESJWA and regulatory agencies.

k. **Liaison:** To designate the City Manager, or his/her designee as the CITY's liaison between the CITY and the COUNTY and the DISTRICT; provided, however, the CITY reserves the right to change, from time-to-time, this designation.

2. **COUNTY's Obligations.** The COUNTY agrees to:

a. **Financial Contribution:** To contribute one-third (1/3) of the cost of managing, operating, monitoring, maintaining and repairing the Destratification System.

b. **Liaison:** To designate the County Executive Officer, or his/her designee, as the liaison between the CITY and the COUNTY; provided, however, the COUNTY reserves the right to change, from time-to-time, this designation.

c. **Cooperation With the CITY:** The COUNTY shall cooperatively assist the CITY, as appropriate and necessary, in performing its duties hereunder.

3. **DISTRICT's Obligations.** The DISTRICT agrees to:

a. **Financial Contribution:** To contribute one-third (1/3) of the cost of managing, operating, monitoring, maintaining and repairing the Destratification System.

b. **Liaison:** To designate the General Manager or his/her designee as the liaison between the CITY and the DISTRICT; provided, however, the DISTRICT reserves the right to change, from time-to-time, this designation.

c. **Cooperation With the CITY:** The DISTRICT shall cooperatively assist the CITY, as appropriate and necessary, in performing its duties hereunder.

4. **Commencement and Termination of Agreement.** The CITY shall begin rendering services hereunder promptly following the conveyance of title to the Destratification System to it by LESJWA and shall continue to operate and maintain the System for ten (10) full fiscal years thereafter. In the event the CITY assigns the Destratification System to another entity, the CITY shall be responsible for ensuring that the assignee shall properly staff, operate and maintain all portions of the System during its useful life and in compliance with this Agreement. During the term hereof, the CITY shall not abandon, substantially discontinue the use of, lease or otherwise dispose of the Destratification System or any significant part or portion thereof, without the prior written approval of the COUNTY, the DISTRICT and LESJWA.

5. **Extension of Term.** This Agreement may be extended beyond the date of termination upon such terms and conditions as the PARTIES may mutually agree upon.

6. **Distribution of Surplus Funds.** If, upon termination of this Agreement there are any unexpended funds in the custody or control of the CITY including, but not limited to, replacement funds, they shall be distributed to the PARTIES in proportion to their respective financial contributions hereunder.

7. **Nutrient Mitigation Credits.** The PARTIES are informed and believe that the California State Water Resources Control Board, a water quality regulatory agency, is contemplating the adoption of a program that may award nutrient mitigation credits, or offsets, to owners of projects such as the Destratification System. Therefore, the PARTIES agree that in the event the System is awarded such credits or offsets, the PARTIES shall share the same equally or in such other proportion as the PARTIES may mutually agree upon.

8. **Miscellaneous Provisions.**

a. **Independent Contractor:** The CITY shall perform the services required hereunder in the CITY's own way as an independent contractor, and not as an employee of the COUNTY or the DISTRICT.

b. **Subcontractors:** The CITY may, at its sole cost and expense, employ such competent and qualified professionals, consultants and subcontractors as the CITY deems necessary.

c. **Assignment:** Neither this Agreement nor the Destratification System shall be assigned or otherwise transferred by the CITY without the prior written consent of the COUNTY and the DISTRICT.

d. **Amendment:** This Agreement may be amended in writing by mutual agreement of the PARTIES.

e. **Specific Enforcement:** This Agreement may be specifically enforced by any PARTY hereto.

f. **Arbitration:** Any dispute which may arise by and between the PARTIES to this Agreement shall be submitted to binding arbitration. Arbitration shall be conducted by the Judicial Arbitration and Mediation Services, Inc., or its successor, or any other neutral, impartial arbitration service that the PARTIES mutually agree upon in accordance with its rules in effect at the time of the commencement of the arbitration proceeding, and as set forth in this Paragraph. The arbitrator chosen must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. The arbitrator's decision and award are subject to judicial review by a Superior Court of competent venue and jurisdiction, only for material errors of fact or law. Upon a showing of good cause, the arbitrator may permit limited discovery in the arbitration proceeding. Unless the PARTIES enter into a written stipulation to the contrary, prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation, conducted by the Judicial Arbitration and Mediation Services, Inc., or its successor, or any other neutral, impartial mediation service that the PARTIES mutually agree upon in accordance with its rules for such mediation.

g. **Enforced Delay; Extension of Times of Performance:** In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due: war; terrorism, moratorium, insurrection, strikes; lockouts; riots; floods, earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary financing, labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of the PARTIES); or any other cause(s) beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding any to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, of notice by the PARTY claiming such extension is sent to the other PARTIES within thirty (30) days of the commencement of the cause.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be effective as of the day and year first above written.

CITY OF LAKE ELSINORE

Dated: _____

By _____
Mayor

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

Dated: _____

By _____
President, Board of Directors

COUNTY OF RIVERSIDE

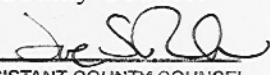
Dated: _____

By _____
Chairman, Board of Supervisors

APPROVED AS TO FORM:

FORM APPROVED
COUNTY COUNSEL

By _____
Deputy County Counsel

FEB 04 2003
BY 
ASSISTANT COUNTY COUNSEL