

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

415B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
January, 10, 2012

SUBJECT: Mockingbird Canyon Reservoir and Dam Dredging for Water Conservation Funding Agreement

RECOMMENDED MOTION:

1. Approve the Funding Agreement between the District and the City of Riverside; and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which the District will contribute funding to the City of Riverside (City) for dredging of accumulated sediment to restore the proper function and design capacity of the Mockingbird Canyon Reservoir and Dam.

Continued on page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$800,000	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	N/A	For Fiscal Year:	2011-12

SOURCE OF FUNDS: 25110 947400 536200 – Zone 1, Contributions to Non-County Agency	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Michael R. Shetler

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

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

Prev. Agn. Ref.:

District: 1st

Agenda Number:

11.3

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
 BY: NEAL R. KIPNIS
 DATE: 1/10/12
 APPROVED COUNTY COUNSEL
 BY: NEAL R. KIPNIS
 DATE: 1/10/12
 FISCAL PROCEDURES APPROVED
 BY: PAN M. CHANG, FINANCIAL DIRECTOR
 BY: IVA M. CHANG
 12/1/2011

Departmental Concurrence

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

SUBJECT: Mockingbird Canyon Reservoir and Dam Dredging for Water Conservation
Funding Agreement

SUBMITTAL DATE: January 10, 2012
Page 2

BACKGROUND:

The City of Riverside owns, operates and maintains the Mockingbird Canyon Reservoir and Dam (Facility). The storage capacity of the City's Facility has been reduced significantly by the accumulation of sediment delivered over time by the natural wash. Storm flows that would be captured by a fully operational Facility, conserved and utilized for irrigation and groundwater recharge purposes downstream, must now be discharged and wasted. Moreover sediment accumulation has further adversely impacted the Facility's operation by blocking its outlet works. The City is proposing to dredge the accumulated sediment to restore the proper function and design storage capacity of the Facility. For several years, the District has budgeted for the construction of a debris basin upstream to alleviate the problem. The proposed dredging project is necessary to solve immediate operational problems at the Facility. In addition, the project will enhance the opportunity for groundwater recharge operations both onsite and downstream within the Arlington Groundwater Basin to the benefit of the District.

County Counsel has approved the Agreement as to legal form, and the City has executed the Agreement.

FINANCIAL:

Sufficient funds are available in the District's Zone 1 budget for FY 2011-12.

CLC:bjj
P8/140660

FUNDING AGREEMENT
MOCKINGBIRD CANYON RESERVOIR AND DAM
DREDGING FOR WATER CONSERVATION

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The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF RIVERSIDE, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. Mockingbird Canyon Reservoir and Dam hereinafter called "CITY FACILITY" is owned by the CITY, and through the Gage Canal Company, operates the dam for irrigation and groundwater recharge purposes; and

B. Over time, the storage capacity of CITY FACILITY has been reduced significantly by the accumulation of sediment by the natural wash. Storm flows that would be captured by a fully operational CITY FACILITY, conserved and utilized for irrigation and groundwater recharge purposes, must now be discharged and wasted. Moreover sediment accumulation has further adversely impacted the CITY FACILITY by blocking its outlet works; and

C. CITY desires to restore the storage capacity of CITY FACILITY by dredging of accumulated sediment, hereinafter called "PROJECT", to optimize opportunities for stormwater harvesting, groundwater recharge and water conservation; and

D. DISTRICT will benefit from the PROJECT through its enhanced opportunity for groundwater recharge operations both onsite and downstream within the Arlington groundwater basin; and

E. DISTRICT wishes to provide a financial contribution as set forth herein in support of CITY'S efforts to construct the PROJECT; and

1 F. DISTRICT has included the sum of eight hundred thousand dollars
2 (\$800,000) in its Fiscal Year 2011-2012 budget, hereinafter called "DISTRICT TOTAL
3 CONTRIBUTION" for the purpose of contributing funds to the CITY'S construction of
4 PROJECT; and

5 G. DISTRICT'S financial contribution toward CITY'S actual construction cost
6 for PROJECT is based on a 50-50 cost share formula for dredging work; and

7 H. DISTRICT is willing to make an initial contribution to CITY, hereinafter
8 called "INITIAL CONTRIBUTION", of an amount equal to fifty percent (50%) of the
9 Contractor's actual bid amount for dredging work, hereinafter called "ORIGINAL BID",
10 associated with PROJECT; and

11 I. DISTRICT is also willing to contribute up to an additional ten percent
12 (10%) of ORIGINAL BID, based on a 50-50 cost share formula, should actual construction
13 costs increase above ORIGINAL BID provided DISTRICT TOTAL CONTRIBUTION does not
14 exceed a total sum of eight-hundred thousand dollars (\$800,000); and

15 J. CITY will prepare or cause to be prepared the necessary plans and
16 specifications to construct PROJECT and advertise and administer a public works construction
17 contract for PROJECT; and

18 K. CITY is seeking a reimbursement of PROJECT costs through the Federal
19 Emergency Management Agency, hereinafter called "FEMA", and is awaiting the outcome of
20 their request; and

21 L. In the event that FEMA reimbursement funding is realized in the future,
22 CITY and DISTRICT cost shares for PROJECT shall be reduced proportionately; and

23 M. The purpose of this Agreement is to memorialize the mutual
24 understandings by and between CITY and DISTRICT with respect to the construction,
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1 ownership, operation and maintenance of PROJECT, and the payment of DISTRICT
2 contribution; and

3 N. It is in the best interest of the public to proceed with construction of
4 PROJECT at the earliest possible date.

5 NOW, THEREFORE, in consideration of the preceding recitals and the mutual
6 covenants hereinafter contained, the parties hereto mutually agree as follows:

7 SECTION I

8 CITY shall:

9 1. Prepare or cause to be prepared all necessary plans and specifications for
10 PROJECT, hereinafter called "PLANS".

11 2. Secure, at its sole cost and expense, all necessary environmental
12 clearances, permits, licenses, agreements, approvals, rights of way, rights of entry and
13 temporary construction easements as may be necessary to construct, operate and maintain
14 PROJECT.
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16 3. Submit PLANS to DISTRICT for review and approval prior to advertising
17 PROJECT as a public works construction contract.

18 4. Advertise, award and administer a public works PROJECT construction
19 contract.
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21 5. Provide DISTRICT with written notice that CITY has awarded a
22 construction contract for PROJECT. The written notice shall include the Contractor's actual bid
23 amounts for dredging work.

24 6. Endeavor to begin construction of PROJECT within twelve (12) months of
25 execution of this Agreement.
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1 7. Prior to the start of construction, submit an invoice to DISTRICT for the
2 payment of INITIAL CONTRIBUTION in an amount based on the lesser of (a) fifty percent
3 (50%) of the successfully awarded ORIGINAL BID, or (b) eight hundred thousand dollars
4 (\$800,000).

5 8. Construct or cause to be constructed, PROJECT pursuant to a CITY
6 administered public works contract, in accordance with DISTRICT approved PLANS.

7 9. Inspect PROJECT construction or cause PROJECT'S construction to be
8 inspected by its construction manager.

9 10. Not permit any change to, or modification of, DISTRICT approved
10 PLANS without the prior written permission and consent of DISTRICT.

11 11. Not approve any change order(s) involving the dredging of accumulated
12 sediment without the prior written approval of DISTRICT. In the event that DISTRICT is not
13 afforded an opportunity to approve or reject such change order(s) prior to CITY'S
14 commencement of such change order(s), then CITY shall be deemed to have agreed to have
15 such change order(s) performed at its sole cost and expense.
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17 12. Continue to own, operate and maintain CITY FACILITY upon completion
18 of PROJECT construction.
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20 13. Upon completion of PROJECT construction and settlement of any
21 outstanding claims, provide DISTRICT with a copy of CITY'S recorded Notice of Completion
22 and a final accounting of construction costs for DISTRICT approved PLANS. The final
23 accounting of construction cost shall be limited to dredging work of accumulated sediment
24 within CITY FACILITY and capped at one hundred and ten percent (110%) of ORIGINAL
25 BID. The final accounting of construction costs shall include a detailed breakdown of all costs,
26 including but not limited to payment vouchers, DISTRICT approved change orders and other
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SECTION III

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2 It is further mutually agreed:

3 1. Under the provisions of this Agreement, DISTRICT shall bear no
4 responsibility whatsoever for the design, construction, ownership, operation or maintenance of
5 PROJECT.

6 2. In the event that CITY is reimbursed for the PROJECT costs from FEMA,
7 the CITY and DISTRICT portion of PROJECT costs will be reduced proportionately. CITY
8 agrees that if FEMA reimbursement is realized, CITY will reimburse DISTRICT its
9 proportionate share of PROJECT costs within thirty (30) days after receiving reimbursement
10 from FEMA.

11 3. In the event that any claim or legal action is brought against DISTRICT, in
12 connection with this Agreement and based upon the actual or alleged acts or omissions of CITY,
13 its officers, employees, consultant, contractors or agents, including but not limited to claims or
14 legal action related to design, construction or failure of PROJECT, CITY shall defend,
15 indemnify and hold DISTRICT harmless therefrom without cost to DISTRICT. This shall
16 include providing DISTRICT with legal representation and pay for related costs for any such
17 claim or legal action, and payment of any settlement or judgment on behalf of DISTRICT, all at
18 no cost to DISTRICT. Upon CITY'S failure to do so, DISTRICT shall be entitled to recover
19 from CITY all of its costs and expenses, including, but not limited to, reasonable attorneys' fees.

20 4. In the event of any arbitration, action or suit brought by either CITY or
21 DISTRICT against the other party by reason of any breach on the part of the other party of any
22 of the covenants and agreements set forth in this Agreement, or any other dispute between
23 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or
24 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
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1 other party all costs and expenses or claims, including but not limited to, attorneys' fees and
2 expert witness fees. This section shall survive any termination of this Agreement.

3 5. If any provision in this Agreement is held by a court of competent
4 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
5 continue in full force without being impaired or invalidated in any way.

6 6. This Agreement is to be construed in accordance with the laws of the State
7 of California. Neither CITY nor DISTRICT shall assign this Agreement without the written
8 consent of the other party.

9 7. This Agreement is made and entered into for the sole protection and benefit
10 of the parties hereto. No other person or entity shall have any right of action based upon the
11 provisions of this Agreement.

12 8. Any and all notices sent or required to be sent to the parties of this
13 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

14 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF RIVERSIDE PUBLIC UTILITIES
15 AND WATER CONSERVATION DISTRICT	3901 Orange Street
16 1995 Market Street	Riverside, CA 92501
17 Riverside, CA 92501	Attn: Mr. Kevin Milligan
18 Attn: Steve Thomas	

19 9. This Agreement is the result of negotiations between the parties hereto, and
20 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
21 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
22 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
23 prepared this Agreement in its final form.

24 10. Any waiver by DISTRICT or CITY of any breach by any other party of
25 any provision of this Agreement shall not be construed to be a waiver of any subsequent or other
26 breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to
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1 require from any other party exact, full and complete compliance with any of the provisions of
2 this Agreement shall not be construed as in any manner changing the terms hereof, or estopping
3 DISTRICT or CITY from enforcing this Agreement.

4 11. This Agreement is intended by the parties hereto as a final expression of
5 their understanding with respect to the subject matter hereof and as a complete and exclusive
6 statement of the terms and conditions thereof and supersedes any and all prior and
7 contemporaneous agreements and understandings, oral or written, in connection therewith. This
8 Agreement may be changed or modified only upon the written consent of the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by the Clerk of the Board)

RECOMMENDED FOR APPROVAL

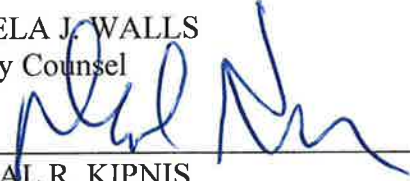
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

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 R. KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

Funding Agreement – Mockingbird Canyon Reservoir and Dam
Dredging for Water Conservation
9/9/11
TT:CLC:blj

1 **CITY OF RIVERSIDE, a California charter**
2 **City and municipal corporation**

3 By Beth J. Decker
4 City Manager

5 ATTEST:

6
7 By Sherry Menden
8 City Clerk

9 APPROVED AS TO FORM:

10 By Susan Wilson
11 Deputy City Attorney

12 (SEAL)
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25 Funding Agreement – Mockingbird Canyon Reservoir and Dam
26 Dredging for Water Conservation
27 9/9/11
28 TT:CLC:blj