



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

408 B

**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**

February 5, 2013

**SUBJECT:** Palm Springs Master Drainage Plan Line 43 and Lateral 43A  
Project No. 6-0-00163  
Cooperative Agreement  
District Four/District Four

**RECOMMENDED MOTION:**

1. Approve the Cooperative Agreement (Agreement) between the District and the City of Cathedral City (City); 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 construct certain flood control improvements identified in the District's Palm Springs Master Drainage Plan (MDP) as Line 43 and Lateral 43A. Said improvements are to be constructed and inspected by the District, in accordance with the terms and conditions as set forth in Agreement.

Continued on page 2

*Steve Thomas*

Steve Thomas

For

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Steven C. Horn*  
Steven C. Horn, MPA

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY: *Neal R. Kirns*  
NEAL R. KIRNS  
DATE: *2/3/13*

Departmental Concurrence

- Policy
- Policy
- Consent
- Consent

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

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

**SUBJECT:** Palm Springs Master Drainage Plan Line 43 and Lateral 43A  
Project No. 6-0-00163  
Cooperative Agreement  
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**Page 2**

**BACKGROUND (continued):**

The City is granting District all necessary rights to access, construct, operate and maintain the project within City road rights of way. Upon completion, the City will accept ownership and responsibility for operation and maintenance of various catch basins, connector pipes and certain storm drain facilities 36-inches or less.

This Agreement is necessary to formalize the terms and conditions by which the District will construct and operate and maintain the mainline facilities and City will accept for operation and maintenance the associated appurtenances and facilities 36-inches or less.

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

**FINANCIAL:**

The District has budgeted for and sufficient funds have been included in the District's Zone 6 Capital Improvement Plan budget. Future ongoing operations and maintenance costs will accrue to the District and City.

CLC:bjj

COOPERATIVE AGREEMENT

Palm Springs MDP Line 43 and Lateral 43A

Project No. 6-0-00163

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

RECITALS

A. DISTRICT has budgeted for and plans to design and construct certain storm drain facilities identified in DISTRICT'S Palm Springs Master Drainage Plan (MDP) as Line 43 to provide necessary flood control and drainage improvements to the adjacent area. Line 43 consists of approximately 3,400 lineal feet of underground storm drain facility. Associated with the construction of Line 43 is the construction of Lateral 43-11 and a certain rock berm as shown in District Drawing No. 6-0395. Together, Line 43, Lateral 43-11 and rock berm are hereinafter called "LINE 43 SYSTEM"; and

B. DISTRICT has also budgeted for and plans to design and construct a certain other storm drain facility identified in DISTRICT'S Palm Springs MDP as Lateral 43A. Lateral 43A consists of approximately 920 lineal feet of underground storm drain facility, hereinafter called "LAT 43A STORM DRAIN" and a small debris basin, hereinafter called "SMALL BASIN", located within private property as shown in District Drawing No. 6-0395. Together, LAT 43A STORM DRAIN and SMALL BASIN are hereinafter called "LATERAL 43A SYSTEM". DISTRICT is willing to construct LATERAL 43A SYSTEM provided that the property owner is willing i) to grant DISTRICT the necessary easement for the construction and maintenance of LATERAL 43A SYSTEM and, ii) to accept ownership and responsibilities for operation and maintenance of SMALL BASIN upon completion of construction via a separate agreement with DISTRICT. In the event that if the property owner is not willing to i) grant

DISTRICT the necessary easement for the construction and maintenance of LATERAL 43A SYSTEM, or ii) accept ownership and responsibilities for operation and maintenance of SMALL BASIN via a separate agreement with DISTRICT, LATERAL 43A SYSTEM will not be constructed by DISTRICT; and

C. Together, LINE 43 SYSTEM and LAT 43A STORM DRAIN are hereinafter called "DISTRICT DRAINAGE FACILITIES"; and

D. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of various catch basins, laterals and connector pipes located within CITY rights of way, hereinafter called "APPURTENANCES"; and

E. DISTRICT DRAINAGE FACILITIES, APPURTENANCES and SMALL BASIN are hereinafter altogether called "PROJECT"; and

F. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to design, construction, ownership, and operation and maintenance of PROJECT.

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

SECTION I

DISTRICT shall:

1. Prepare or cause to be prepared, plans and specifications for PROJECT, hereinafter called "PROJECT PLANS", in accordance with applicable DISTRICT and CITY standards.

2. Pursuant to the California Environmental Quality Act (CEQA), act as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and

1 appropriate CEQA documents pertaining to the construction, operation and maintenance of  
2 PROJECT.

3 3. Pay all DISTRICT costs associated with the preparation of PROJECT  
4 PLANS and with the processing and administration of this Agreement.

5 4. Obtain, at its sole cost and expense, all necessary licenses, agreements,  
6 permits, rights of way, and rights of entry as may be necessary to construct, inspect, operate and  
7 maintain PROJECT.

8 5. Prior to advertising for bids to construct PROJECT, submit PROJECT  
9 PLANS to CITY for its review and approval.

10 6. Advertise, award and administer a public works construction contract for  
11 PROJECT at its sole cost and expense.

12 7. Provide CITY with written notice that DISTRICT has awarded a  
13 construction contract for PROJECT.

14 8. Notify CITY in writing at least twenty (20) days prior to the start of  
15 construction of PROJECT.

16 9. Construct PROJECT pursuant to a DISTRICT administered public works  
17 construction contract, in accordance with PROJECT PLANS approved by DISTRICT and  
18 CITY, and pay all DISTRICT costs associated therewith.

19 10. Inspect construction of PROJECT.

20 11. Require its construction contractor(s) to comply with all Cal/OSHA safety  
21 regulations including regulations concerning confined space and maintain a safe working  
22 environment for all DISTRICT and CITY employees on the site.

23 12. Assume ownership and sole responsibility for the operation and  
24 maintenance of PROJECT until such time as CITY accepts ownership and responsibility for the  
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1 operation and maintenance of APPURTENANCES. Further, it is mutually understood by the  
2 parties hereto that prior to CITY acceptance of ownership and responsibility for the operation  
3 and maintenance of APPURTENANCES, APPURTENANCES shall be in a satisfactorily  
4 maintained condition as solely determined by CITY.

5 13. Within two (2) weeks of completing PROJECT construction, provide CITY  
6 with written notice that PROJECT construction is substantially complete and requesting that  
7 CITY conduct final inspections of APPURTENANCES.

8 14. Upon completion of PROJECT construction, provide CITY with a copy of  
9 DISTRICT'S Notice of Completion.

10 15. Upon CITY acceptance of APPURTENANCES for ownership, operation  
11 and maintenance, provide CITY with a reproducible duplicate set of "RECORD DRAWINGS"  
12 of PROJECT plans.

13 16. Ensure that all work performed pursuant to this Agreement by DISTRICT,  
14 its agents or contractors is done in accordance with all applicable laws and regulations,  
15 including but not limited to all applicable provisions of the Labor Code, Business and  
16 Professions Code, and Water Code. DISTRICT shall be solely responsible for all costs  
17 associated with compliance with applicable laws and regulations.

18 SECTION II

19 CITY shall:

20 1. Review and approve PROJECT PLANS prior to DISTRICT'S advertising  
21 of construction contract.

22 2. Act as a Responsible Agency under CEQA, taking all necessary and  
23 appropriate action to comply with CEQA.  
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1           3. Grant DISTRICT, by execution of this Agreement, the right to construct,  
2 inspect, operate and maintain PROJECT within CITY street rights of way. Pursuant to a  
3 separate agreement, CITY shall transfer any necessary rights of way and/or easements to  
4 DISTRICT for the construction, and operation and maintenance of PROJECT, as deemed  
5 necessary solely by DISTRICT.

6           4. Order the relocation of all utilities installed by permit or franchise within  
7 CITY rights of way which conflict with the construction of PROJECT and which must be  
8 relocated at the utility owner's expense.

9           5. Issue, at no cost to DISTRICT or DISTRICT'S contractor(s), the necessary  
10 encroachment permit to construct PROJECT.

11           6. Inspect PROJECT construction for quality control purposes at its sole cost,  
12 and provide any comments to DISTRICT personnel who shall be solely responsible for all  
13 quality control communications with DISTRICT'S contractor(s) during the construction of  
14 PROJECT.

15           7. Upon receipt of DISTRICT'S written notice that PROJECT construction is  
16 substantially complete, conduct a final inspection of PROJECT.

17           8. Accept sole responsibility for ownership, operation and maintenance of  
18 APPURTENANCES upon (i) receipt of DISTRICT'S written Notice of Completion as set forth  
19 in Section I.14, and (ii) receipt of reproducible duplicate set of RECORD DRAWINGS as set  
20 forth in Section I.15.

21           9. Upon CITY acceptance of PROJECT construction as being complete,  
22 accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located  
23 within CITY rights of way which must be performed at such time(s) that the finished grade  
24 along and above the underground portions of PROJECT are improved, repaired, replaced or  
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1 changed. It being further understood and agreed that any such adjustments shall be performed  
2 at no cost to DISTRICT.

3 SECTION III

4 It is further mutually agreed:

5 1. Except as otherwise provided herein, all construction work involved with  
6 PROJECT shall be inspected by DISTRICT, and shall not be deemed complete until approved  
7 and accepted as complete by DISTRICT.

8 2. Except as otherwise provided herein, DISTRICT shall not be responsible  
9 for any additional street repairs or improvements not shown in PROJECT PLANS and not as a  
10 result of PROJECT construction.

11 3. In the event that the property owner is not willing to i) grant DISTRICT the  
12 necessary easement for the construction and maintenance of LATERAL 43A SYSTEM, or ii)  
13 accept ownership and responsibilities for operation and maintenance of SMALL BASIN via a  
14 separate agreement with DISTRICT, LATERAL 43A SYSTEM will not be a part of the  
15 PROJECT to be constructed by DISTRICT under this Agreement.

16 4. DISTRICT shall indemnify, defend, save and hold harmless CITY  
17 (including their respective officers, districts, special districts and departments, their respective  
18 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents,  
19 representatives, independent contractors, and subcontractors) from any liabilities, claim,  
20 damage, proceeding or action, present or future, based upon, arising out of or in any way  
21 relating to DISTRICT'S (including its officers, employees, agents, representatives, independent  
22 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,  
23 performance under this Agreement, or failure to comply with the requirements of this  
24 Agreement.



1 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c)  
2 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

3           5. CITY shall indemnify, defend, save and hold harmless DISTRICT  
4 (including its officers, employees, agents, representatives, independent contractors, and  
5 subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,  
6 based upon, arising out of or in any way relating to CITY'S (including its officers, Board of  
7 Supervisors, elected and appointed officials, employees, agents, representatives, independent  
8 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,  
9 performance under this Agreement, or failure to comply with the requirements of this  
10 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)  
11 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.  
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13           6. In the event of any arbitration, action or suit brought by CITY or  
14 DISTRICT against the other party by reason of any breach on the part of the other party of any  
15 of the covenants and agreements set forth in this Agreement, or any other dispute between the  
16 CITY or DISTRICT concerning this Agreement, the prevailing party in any such action or  
17 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the  
18 other party all costs and expenses or claims, including but not limited to, attorney's fees and  
19 expert witness fees. This section shall survive any termination of this Agreement.  
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21           7. This Agreement is made and entered into for the sole protection and benefit  
22 of the parties hereto. No other person or entity shall have any right or action based upon the  
23 provisions of this Agreement.  
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25           8. DISTRICT and CITY each pledge to cooperate in regard to the operation  
26 and maintenance of their respective facilities as set forth herein and to discharge their respective  
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1 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any  
2 nuisance condition or undue maintenance impact upon the others' facilities.

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

5 RIVERSIDE COUNTY FLOOD CONTROL  
6 AND WATER CONSERVATION DISTRICT  
7 1995 Market Street  
8 Riverside, CA 92501  
9 Attn: Contract Administration Section

CITY OF CATHEDRAL CITY  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234  
Attn: City Engineer

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

13 11. This Agreement is to be construed in accordance with the laws of the State  
14 of California.

15 12. DISTRICT and CITY shall not assign this Agreement without the written  
16 consent of the other parties.

17 13. Any action at law or in equity brought by any of the parties hereto for the  
18 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of  
19 competent jurisdiction in the County of Riverside, State of California, and the parties hereto  
20 waive all provisions of law providing for a change of venue in such proceedings to any other  
21 county.

22 14. This Agreement is the result of negotiations between the parties hereto, and  
23 the advice and assistance of their respective counsel. The fact that this Agreement was prepared  
24 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty  
25 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT  
26 prepared this Agreement in its final form.  
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1 15. Any waiver by DISTRICT or CITY, of any breach by any other party of  
2 any provision of this Agreement shall not be construed to be a waiver of any subsequent or other  
3 breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to  
4 require from any other party exact, full and complete compliance with any of the provisions of  
5 this Agreement shall not be construed as in any manner changing the terms hereof, or stopping  
6 DISTRICT or CITY from enforcing this Agreement.

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

RECOMMENDED FOR APPROVAL:

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

By Steve Thomas  
For 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

KECIA HARPER-IHEM  
Clerk of the Board

By [Signature]  
NEAL R. KIPNIS  
Deputy County Counsel

By \_\_\_\_\_  
Deputy


(SEAL)

Cooperat  
Palm Springs MDP Line 43 and Lateral 43A  
Project No. 6-0-00163  
12/19/12  
TT:CLC:blj

1 RECOMMENDED FOR APPROVAL:

CITY OF CATHEDRAL CITY

2 By   
3 BILL SIMONS  
4 City Engineer

By   
KATHY DeROSA  
Mayor

5 APPROVED AS TO FORM:

ATTEST:

6  
7 By   
8 CHARLES GREEN  
9 City Attorney

By   
PAT HAMMERS  
City Clerk

(SEAL)

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