

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



403B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

November 26, 2013

SUBJECT: Cooperative Agreement [\$113,793];
West Hemet Master Drainage Plan
Project No. 4-0-00870
District 3/District 3

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District and the City of Hemet; and
2. Authorize the Chairman to execute the Cooperative Agreement on behalf of the District.

BACKGROUND:

Summary

This Cooperative Agreement (Agreement) sets forth the terms and conditions by which the District will contribute funding to the City of Hemet for the preparation of a new Master Drainage Plan (MDP) for the West Hemet area.

[Continued on page 2]

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 113,793	\$ n/a	\$ 113,793	\$ n/a	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 113,793	\$ n/a	\$ 113,793	\$ n/a	
SOURCE OF FUNDS: 25140 947460 536200 (Zone 4 Contribution to Non-County Agency)				Budget Adjustment: NO	
				For Fiscal Year: 13/14 to 16/17	

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
DATE 11/18/13
NEAL R. KIPNIS
Departmental Concurrence
FISCAL PROCEDURES APPROVED
JEANINE J. REY, FINANCE DIRECTOR BY: JEANINE J. REY 11/26/13

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: District: 3rd/3rd Agenda Number:

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

SUBJECT: Cooperative Agreement [\$113,793];
West Hemet Master Drainage Plan
Project No. 4-0-00870
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Page 2

BACKGROUND:

Summary (continued)

The District wishes to support the City's efforts to prepare a new MDP for an area that is generally bounded by Warren Road on the east; Domenigoni Parkway to the south; Highway 79 to the west; and Esplanade Avenue to the north. The study area includes areas located within the city, the City's sphere of influence and some unincorporated County territory. The study area overlaps portions of three existing MDPs and encompasses some previously unstudied areas. In addition to preparing a new MDP, the City's study contractor will prepare a program level environmental document pursuant to the California Environmental Quality Act.

The District will contribute an amount not to exceed \$113,793.00 for Fiscal Year 2013-2014 toward preparation of the MDP and the associated environmental compliance (CEQA) document.

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

Impact on Citizens and Businesses

Currently, the study area lacks adequate drainage infrastructure and is subject to flooding. Development of the MDP provides a blueprint for the future development of drainage facilities necessary to alleviate the existing flooding problems. Additionally, the MDP will facilitate new development within the study area.

SUPPLEMENTAL:

Additional Fiscal Information

The District is funding a portion of the total cost associated with the development of the MDP. Sufficient funding is available in the District's Zone 4 budget for FY 2013-14 and will be included in the proposed budget in future years as appropriate and necessary.

Contract History and Price Reasonableness

The City solicited proposals from qualified firms and selected RBF Consulting to perform the necessary engineering and environmental work.

MHW:bjj

COOPERATIVE AGREEMENT

1
2 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
3 CONSERVATION DISTRICT (DISTRICT) and the CITY OF HEMET (CITY) hereby agree
4 as follows:

RECITALS

5
6
7 A. CITY and DISTRICT share a mutual interest in identifying existing flooding
8 problems and the drainage infrastructure necessary to support anticipated future development
9 within an area that is generally bounded by Warren Road on the east; Domenigoni Parkway to
10 the south; Highway 79 to the west; and Esplanade Avenue to the north (the "STUDY AREA").
11 A more detailed map of the STUDY AREA is attached as Exhibit "A" hereto; and

12
13 B. Approximately sixty percent of the STUDY AREA is located within CITY
14 and/or CITY sphere of influence; hereinafter called "ZONE A". The remaining portion of the
15 STUDY AREA is located within unincorporated Riverside County; hereinafter called "ZONE
16 B". Currently, there are three (3) adopted master drainage plans (MDP) within the STUDY
17 AREA: 1) West Hemet MDP; 2) Southwest Hemet MDP; and 3) Winchester MDP; hereinafter
18 called ADOPTED PLANS; and

19
20 C. CITY and DISTRICT wish to cooperatively fund the engineering and
21 environmental studies necessary to produce a new master drainage plan, hereinafter called the
22 "PLAN", consistent with the California Environmental Quality Act (CEQA) and current
23 regulations regarding urban stormwater management; and

24
25 D. PLAN will encompass areas currently included within the ADOPTED PLANS
26 and other areas of interest as mutually agreed by DISTRICT and CITY; and

27
28 E. CITY, has (i) selected a qualified consulting engineering firm, RBF Consulting,
hereinafter called "CONSULTANT", to prepare PLAN, including all necessary engineering

1 and environmental studies; (ii) negotiated a fee for CONSULTANT'S services; and iii) entered
2 into a contract with CONSULTANT; and

3 F. DISTRICT is willing to support development and implementation of PLAN in
4 an administrative, technical and financial capacity as set forth herein; and

5 G. It is in the public interest to proceed with the necessary engineering and
6 environmental studies to complete PLAN in an expeditious manner.
7

8 NOW, THEREFORE, CITY and DISTRICT mutually agree as follows:

9 1. CITY shall assume the role of Lead Agency for i) preparation of PLAN; ii)
10 administration of CONSULTANT'S contract, hereinafter called "CONSULTANT'S
11 CONTRACT"; and iii) preparing and processing an appropriate environmental document
12 pursuant to CEQA.
13

14 2. DISTRICT shall provide technical advice, consultation and review of various
15 elements of PLAN and assume the role of a Responsible Agency under CEQA.

16 3. Pursuant to its contract with CONSULTANT, CITY has established the
17 following: (i) CONSULTANT'S "Scope of Work" consisting of Phases 1 through 6, hereinafter
18 called "SCOPE", attached hereto as Exhibit "B" and made a part hereof, and (ii)
19 CONSULTANT'S "Compensation", hereinafter called COMPENSATION, attached hereto as
20 Exhibit "C" and made a part hereof.
21

22 4. The total fee for the work to be performed by CONSULTANT in preparation of
23 PLAN under CONSULTANT'S CONTRACT shall not exceed \$421,847.00 (four hundred
24 twenty-one thousand eight hundred forty-seven dollars) as set forth in Exhibit "C", unless a
25 written amendment to CONSULTANT'S CONTRACT is executed by CITY and
26 CONSULTANT prior to performance of additional services.
27
28

1 5. DISTRICT'S total contribution toward preparation of PLAN, hereinafter called
2 "DISTRICT'S CONTRIBUTION", shall not exceed \$113,793.00 (one hundred thirteen
3 thousand seven hundred ninety-three dollars) unless a written amendment to this Agreement is
4 executed by both parties hereto.

5
6 6. CITY shall not authorize any change to or modification of CONSULTANT'S
7 CONTRACT affecting SCOPE, COMPENSATION or DISTRICT'S CONTRIBUTION for
8 ZONE B without first obtaining DISTRICT'S prior written consent. Prior to authorizing
9 CONSULTANT to perform any additional work for ZONE B, CITY and DISTRICT shall
10 mutually agree in writing that the additional services are necessary. Prior to deleting any items
11 from SCOPE, CITY and DISTRICT shall mutually agree in writing that the work that is to be
12 deleted is no longer necessary.

13
14 7. DISTRICT and CITY shall each be responsible for their respective staff costs
15 and expenses including the cost of any additional consultants retained by either agency to assist
16 with the administration of their respective responsibilities or with their review of
17 CONSULTANT'S work pursuant to this Agreement.

18
19 8. In the event of any conflict between DISTRICT and CITY engineering criteria
20 or policies, CITY criteria shall govern within CITY portions of STUDY AREA and DISTRICT
21 or County of Riverside criteria shall govern within the unincorporated portions of STUDY
22 AREA, except as CITY and DISTRICT may otherwise agree in writing.

23 9. As CONSULTANT'S work on PLAN progresses, DISTRICT shall reimburse
24 CITY for costs incurred in accordance with the provisions of this Section. Upon receipt of a
25 "Tangible Work Product", as set forth in Exhibit "B" and hereinafter called a
26 "DELIVERABLE", DISTRICT shall have fifteen (15) working days to review said
27 DELIVERABLE and provide any comments to CITY concerning the general completeness and
28

1 adequacy thereof. Within fifteen (15) working days after receipt of a DELIVERABLE,
2 DISTRICT shall either provide notice to CITY concerning a DELIVERABLE'S deficiencies or
3 authorize payment to CITY for fifty percent (50%) of DISTRICT'S share of the itemized cost
4 set forth in Exhibit "C". When a DELIVERABLE is found to be generally satisfactory,
5 DISTRICT shall make payment to CITY within thirty (30) days of receipt thereof. In the event
6 that DISTRICT finds a DELIVERABLE to be unsatisfactory, DISTRICT shall withhold
7 payment pending resubmission of the DELIVERABLE and/or satisfactory resolution of
8 DISTRICT'S comments.
9

10 10. Upon DISTRICT'S final approval of a DELIVERABLE, DISTRICT shall make
11 payment to CITY for ninety percent (90%) of DISTRICT'S share of the itemized cost as set
12 forth in Exhibit "C". Said payment shall be made within thirty (30) days of DISTRICT'S final
13 approval and such final approval shall not be unreasonably withheld.
14

15 11. DISTRICT shall withhold ten percent (10%) of DISTRICT'S share of the value
16 of each DELIVERABLE pending satisfactory completion of the entire PLAN.

17 12. The General Manager-Chief Engineer of DISTRICT or his designee is
18 authorized to act on behalf of DISTRICT, and approve and make payments to CITY for
19 DISTRICT'S share of PLAN preparation costs.
20

21 13. CITY Manager is authorized to act on behalf of CITY and authorize payment to
22 CONSULTANT for its services.

23 14. CITY shall indemnify, defend, save and hold harmless DISTRICT and County
24 of Riverside and their respective officers, agents, servants, employees and independent
25 contractors free and harmless from any and all claims, demands, debts, suits, actions and causes
26 of action of whatsoever kind, nature or sort, including, but not by way of limitation, wrongful
27 death, the expenses of the defense of said parties and the payment of attorneys' fees in any such
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1 action, arising out of or in any manner connected with any act or omission of CITY, its officers,
2 agents, servants and employees, done or performed pursuant to this Agreement.

3 15. DISTRICT shall indemnify, defend, save and hold harmless CITY and its
4 respective officers, agents, servants, employees and independent contractors free and harmless
5 from any and all claims, demands, debts, suits, actions and causes of action of whatsoever kind,
6 nature or sort, including, but not by way of limitation, wrongful death, the expenses of the
7 defense of said parties and the payment of attorneys' fees in any such action, arising out of or in
8 any manner connected with any act or omission of DISTRICT, its officers, agents, servants and
9 employees, done or performed pursuant to this Agreement.
10

11 16. All notices and statements required to be sent to the parties of this Agreement
12 will be mailed by first class mail, postage prepaid to the following addresses:

14 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF HEMET
14 AND WATER CONSERVATION DISTRICT	445 East Florida Avenue
15 1995 Market Street	San Jacinto, CA 92583
15 Riverside, CA 92501	Attn: Jorge Biagoni, City Engineer
16 Attn: Warren D. Williams	
16 General Manager-Chief Engineer	

17
18 17. Any waiver by DISTRICT or by CITY of any breach of any one or more of the
19 terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach
20 of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require
21 exact, full and complete compliance with any terms of this Agreement shall not be construed as
22 in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement
23 hereof.

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25 18. If any provision in this Agreement is held by a court of competent jurisdiction to
26 be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full
27 force without being impaired or invalidated in any way.
28

1 19. This Agreement is to be construed in accordance with the laws of the State of
2 California.

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

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

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

20 23. This Agreement may be executed and delivered in any number of counterparts
21 or copies, hereinafter called a "COUNTERPART", by the parties hereto. When each party has
22 signed and delivered at least one COUNTERPART to the other parties hereto, each
23 COUNTERPART shall be deemed an original and, taken together, shall constitute one and the
24 same Agreement, which shall be binding and effective as to the parties hereto.
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IN WITNESS HEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

**RECOMMENDED FOR APPROVAL:
DISTRICT**

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION**

WARREN D. WILLIAMS
General Manager-Chief Engineer
Water
Supervisors

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and
Conservation District Board of

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board


By 
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

Dated: _____

(SEAL)

CITY OF HEMET

By 
RONALD E. BRADLEY
Interim City Manager

APPROVED AS TO FORM:

ATTEST:

By 
Burke, Williams & Sorenson LLP
City Attorney

By 
SARAH MCCOMAS
City Clerk

(SEAL)

Cooperative Agreement -
West Hemet Master Drainage Plan
8/20/2013
MHW:blj