

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



159149

408 B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
May 6, 2014

SUBJECT: Amended and Restated Funding Agreement for Mockingbird Canyon Reservoir and Dam Mechanical Excavation Project, District 1/District 1; [\$700,000]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Amended and Restated 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:

Summary

This Agreement restates the terms and conditions by which the District will contribute funding to the City of Riverside for restoring some storage capacity of the City's existing Mockingbird Canyon Reservoir and Dam with focus on clearing its obstructed outlet works.

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 | \$ 700,000 | \$ 0 | \$ 700,000 | \$ N/A | Consent <input type="checkbox"/> Policy <input type="checkbox"/> |
| NET DISTRICT COST | \$ 700,000 | \$ 0 | \$ 700,000 | \$ N/A | |
| SOURCE OF FUNDS: 25110 947400 536200 – Zone 1 Contributions to Non-County Agency | | | | Budget Adjustment: NO For Fiscal Year: N/A | |

C.E.O. RECOMMENDATION:

APPROVE

BY:
Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

SCAL PROCEDURES APPROVED BY: ELEANOR J. REY, FINANCE DIRECTOR
 ELEANOR J. REY
 ELEANOR J. REY

Departmental Concurrence
 ELEANOR J. REY

FORM APPROVED COUNTY COUNSEL
 DATE: 5/13/14
 BY: NEAL R. KIPNIS

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

Prev. Agn. Ref.: 11.3 (1/10/12) | District: 1st/1st | Agenda Number:

11-3

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

FORM 11: Amended and Restated Funding Agreement for Mockingbird Canyon Reservoir and Dam
Mechanical Excavation Project, District 1/District 1; [\$700,000]

DATE: May 6, 2014

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

This Amended and Restated Funding Agreement (Agreement) revises the previous Funding Agreement (approved by the District's Board of Supervisors on January 10, 2012 as Agenda Item No. 11.3 that sets forth the terms and conditions under which District will contribute funding to the City for dredging of accumulated sediment to restore the storage capacity of the Mockingbird Canyon Reservoir and Dam. Subsequent to the execution of the previous Funding Agreement, City now wishes to optimize opportunities for stormwater harvesting, groundwater recharge and water conservation of the Mockingbird Canyon Reservoir and Dam by revising the project.

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

Impact on Residents and Businesses

The District's financial contribution toward the City's project is funded by ad-valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to citizens and businesses. Upon construction completion, citizens and businesses will benefit from the project through its enhanced opportunity for groundwater recharge operations both onsite and downstream within the Arlington Mockingbird groundwater basin.

SUPPLEMENTAL:

Additional Fiscal Information

Sufficient funds are included in District's budget for FY 2013-2014 and will be included in the future proposed budgets as necessary and appropriate.

TT:blj

1 E. Now, CITY wishes to restore some storage capacity of CITY FACILITY
2 with focus on clearing its obstructed outlet works, hereinafter called "PROJECT", to optimize
3 opportunities for stormwater harvesting, groundwater recharge and water conservation; and

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

7 G. CITY and DISTRICT now wish to amend and restate their respective
8 understandings, roles and responsibilities pertaining to PROJECT as set forth herein.
9 Furthermore, CITY and DISTRICT mutually agree that the provisions of this Agreement shall
10 supersede all provisions of PREVIOUS AGREEMENT; and

11 H. DISTRICT wishes to support CITY'S efforts to construct PROJECT by
12 providing financial contribution as set forth herein:

13 (i) Fifty percent (50%) of the design consulting cost to offset CITY'S costs
14 associated with the design, surveying, and other typical ancillary costs related
15 to the preparation of the necessary engineering plans and specifications to
16 construct PROJECT, hereinafter called "DESIGN CONTRIBUTION";

17 (ii) The lowest responsible bid contract price for PROJECT construction is
18 hereinafter called "ORIGINAL BID". DISTRICT is willing to contribute
19 fifty percent (50%) of ORIGINAL BID, hereinafter called "INITIAL
20 CONSTRUCTION CONTRIBUTION", plus an additional fifteen percent
21 (15%) of INITIAL CONSTRUCTION CONTRIBUTION to offset CITY'S
22 administrative cost associated with construction survey, construction
23 inspection, and construction contract administration related to the completion
24 of PROJECT construction, hereinafter called "CONTRACT
25 ADMINISTRATION CONTRIBUTION". In the event that actual
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1 construction costs increase above ORIGINAL BID, DISTRICT is also
2 willing to contribute, based on a 50-50 cost share formula, up to an additional
3 twenty-five percent (25%) of INITIAL CONSTRUCTION
4 CONTRIBUTION, hereinafter called "ADDITIONAL CONSTRUCTION
5 CONTRIBUTION". Together, INITIAL CONSTRUCTION
6 CONTRIBUTION, CONTRACT ADMINISTRATION CONTRIBUTION,
7 and ADDITIONAL CONSTRUCTION CONTRIBUTION are hereinafter
8 called "TOTAL CONSTRUCTION CONTRIBUTION";
9

10 (iii) Fifty percent (50%) of the environmental consulting cost to offset
11 CITY'S costs associated with the preparation, implementation and
12 administration of all necessary environmental studies and documents,
13 environmental review, environmental regulatory permits and contract
14 administration for PROJECT construction, hereinafter called
15 "ENVIRONMENTAL CONTRIBUTION"; and
16

17 I. Altogether, DESIGN CONTRIBUTION, TOTAL CONSTRUCTION
18 CONTRIBUTION and ENVIRONMENTAL CONTRIBUTION are hereinafter called
19 "DISTRICT TOTAL CONTRIBUTION". DISTRICT TOTAL CONTRIBUTION shall not
20 exceed a total sum of seven hundred thousand dollars (\$700,000); and
21

22 J. The purpose of this Agreement is to memorialize the mutual understandings
23 by and between CITY and DISTRICT with respect to the design, construction, ownership,
24 operation, and maintenance of PROJECT, and the payment of DISTRICT TOTAL
25 CONTRIBUTION; and

26 K. It is in the best interest of the public to proceed with construction of
27 PROJECT at the earliest possible date.
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1 U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California
2 State Department of Fish and Wildlife, State Water Resources Control Board, and Western
3 Riverside County Regional Conservation Authority.

4 6. Advertise, award and administer a public works construction contract for
5 PROJECT.

6 7. Provide DISTRICT with written notice (Attention: Chief of Watershed
7 Protection Division) that CITY has awarded a construction contract for PROJECT. The written
8 notice shall include the Contractor's actual bid amounts for PROJECT, setting forth the lowest
9 responsible bid contract price for PROJECT construction as set forth herein.

10 8. Invoice DISTRICT (Attn: Chief of Watershed Protection Division) for
11 INITIAL CONSTRUCTION CONTRIBUTION and CONTRACT ADMINISTRATION
12 CONTRIBUTION at the time of providing written notice to DISTRICT, or shortly thereafter, of
13 award of construction contract.

14 9. Endeavor to begin construction of PROJECT within twenty-four (24) months
15 of execution of this Agreement.

16 10. Construct, or cause to be constructed, PROJECT pursuant to a CITY
17 administered public works contract, and pay all costs associated therewith.

18 11. Keep an accurate accounting of all actual construction costs associated with
19 PROJECT and provide DISTRICT with a final accounting of construction costs when invoicing
20 DISTRICT for payment of ADDITIONAL CONSTRUCTION CONTRIBUTION. This final
21 accounting of construction costs shall include a detailed breakdown of all costs, including but
22 are not limited to payment vouchers, contract change orders, and other such construction
23 contract documents as may be necessary, to establish DISTRICT'S share of ADDITIONAL
24 CONSTRUCTION CONTRIBUTION.
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SECTION III

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2 It is further mutually agreed:

3 1. DISTRICT TOTAL CONTRIBUTION shall not exceed seven hundred
4 thousand dollars (\$700,000) and shall be used by CITY solely for the purpose of designing and
5 constructing PROJECT as set forth herein.

6 2. CITY FACILITY shall remain solely owned by and the exclusive
7 responsibility of CITY. Nothing herein shall be construed as creating any obligation or
8 responsibility on the part of DISTRICT to operate, maintain or warranty CITY FACILITY.
9 Under the provisions of this Agreement, DISTRICT shall also bear no responsibility whatsoever
10 for the design, construction, environmental compliance, ownership, operation or maintenance of
11 PROJECT.
12

13 3. In the event that any claim or legal action is brought against DISTRICT, in
14 connection with this Agreement and based upon the actual or alleged acts or omissions of CITY,
15 its officers, employees, consultant, contractors or agents, including but not limited to claims or
16 legal action related to design, construction or failure of PROJECT, CITY shall defend,
17 indemnify and hold DISTRICT harmless therefrom without cost to DISTRICT. This shall
18 include providing DISTRICT with legal representation and pay for related costs for any such
19 claim or legal action, and payment of any settlement or judgment on behalf of DISTRICT, all at
20 no cost to DISTRICT. These obligations are contingent upon DISTRICT promptly notifying
21 CITY in writing of any claims or threatened claims, CITY having sole control over the defense
22 and all negotiations for settlement of any such claim, and DISTRICT giving all reasonable
23 assistance to CITY in the defense and settlement of the claim. Upon CITY'S failure to do so,
24 DISTRICT shall be entitled to recover from CITY all of its costs and expenses, including, but
25 not limited to, reasonable attorneys' fees.
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1 4. In the event of any arbitration, action or suit brought by either CITY or
2 DISTRICT against the other party by reason of any breach on the part of the other party of any
3 of the covenants and agreements set forth in this Agreement, or any other dispute between
4 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or
5 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
6 other party all costs and expenses or claims, including but not limited to, attorneys' fees and
7 expert witness fees. This section shall survive any termination of this Agreement.
8

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

12 6. This Agreement is to be construed in accordance with the laws of the State of
13 California. Neither CITY nor DISTRICT shall assign this Agreement without the written
14 consent of the other party.
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16 7. This Agreement is made and entered into for the sole protection and benefit
17 of the parties hereto. No other person or entity shall have any right of action based upon the
18 provisions of this Agreement.

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

21 RIVERSIDE COUNTY FLOOD CONTROL
22 AND WATER CONSERVATION DISTRICT
23 1995 Market Street
24 Riverside, CA 92501
Attn: Steve Thomas

RIVERSIDE PUBLIC UTILITIES
3750 University Ave, 3rd Floor
Riverside, CA 92501
Attn: Kevin Milligan

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

3 10. Any waiver by DISTRICT or CITY of any breach by any other party of any
4 provision of this Agreement shall not be construed to be a waiver of any subsequent or other
5 breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to
6 require from any other party exact, full and complete compliance with any of the provisions of
7 this Agreement shall not be construed as in any manner changing the terms hereof, or estopping
8 DISTRICT or CITY from enforcing this Agreement.
9

10 11. This Agreement is intended by the parties hereto as a final expression of their
11 understanding with respect to the subject matter hereof and as a complete and exclusive
12 statement of the terms and conditions thereof and supersedes any and all prior and
13 contemporaneous agreements and understandings, oral or written, in connection therewith. This
14 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

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL R. KIPNIS
Deputy County Counsel

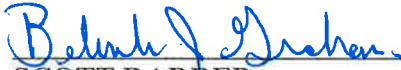
By _____
Deputy

(SEAL)

Amended and Restated Funding Agreement – Mockingbird Canyon Reservoir and Dam
Mechanical Excavation Project
3/4/14
TT:AD:blj

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

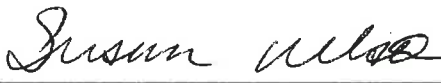
By  Date: April 21, 2014
SCOTT BARBER
City Manager

ATTEST:

By 
COLLEEN J. NICOL
City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSAN WILSON
Deputy City Attorney

Amended and Restated Funding Agreement – Mockingbird Canyon Reservoir and Dam
Mechanical Excavation Project
3/4/14
TT:AD:blj