

FORM APPROVED COUNTY COUNSEL 6/17/15
 BY: GREGORY P. PRIAMOS DATE

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

345



SUBMITTAL DATE:
 6/24/2015

FROM: Executive Office

SUBJECT: 2nd Amendment to the Agreement for the Operation and Maintenance of the Axial Flow Water Pump Destratification System for Lake Elsinore. District 1 [\$48,667] General Fund – NPDES.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the attached Amendment to extend the expiration date of the Agreement to June 30, 2016; and
2. Authorize the Chairman of the Board of Supervisors to execute the Amendment.

BACKGROUND:

Summary

The original ten-year operation and maintenance Agreement for the Axial Flow Water Pump and Destratification System (System) was approved by the Board of Supervisors on February 11, 2003 for the term of ten years. The Agreement stipulated that the total estimated annual operation and maintenance cost of \$146,000 was to be evenly divided amongst the County, the City of Lake Elsinore (operator), and Elsinore Valley Municipal Water District (EVMWD). This second amendment request extends the term of the Agreement to expire on June 30, 2016. All other terms of the agreement remain unchanged.


 Steven Horn
 Senior Management Analyst

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 48,667	\$ N/A	\$ 48,667	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 48,667	\$ N/A	\$ 48,667	\$ N/A	
SOURCE OF FUNDS: General Fund - NPDES				Budget Adjustment: N/A	
				For Fiscal Year:	14/15, 15/16

C.E.O. RECOMMENDATION:

APPROVE

BY: 
 Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: 2nd Amendment to the Agreement for the Operation and Maintenance of the Axial Flow
Water Pump Destratification System for Lake Elsinore. District 1 [\$48,667] General Fund – NPDES.**

DATE: 6/24/2015

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

The approval of this extension to the original Agreement will authorize continued general fund support to the City of Lake Elsinore for the operation and maintenance costs associated with operating the System.

Impact on Residents and Businesses

No additional fees or new taxes on residents and businesses are proposed as part of this recommended action.

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

AMENDMENT NO. 2 is made 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 hereinafter collectively referred to as the "PARTIES."

RECITALS

- A. The COUNTY, CITY and DISTRICT are PARTIES to an existing Agreement for the Operation and Maintenance of the Axial Flow Water Pump Destratification System ("AGREEMENT") signed and made effective December 2002 (copy attached as Appendix A).
- B. The initial term (Section 4) of the existing AGREEMENT was for ten years and was scheduled to terminate on June 30, 2013 unless otherwise extended by the PARTIES.
- C. In June 2013 the PARTIES agreed to change the expiration date from June 30, 2013 to June 30, 2014 thereby extending the term of the original AGREEMENT by one year (a copy of the First Amendment is attached as Appendix B).
- D. The PARTIES concur that it would be mutually beneficial to enact a new O&M Agreement in order to ensure stable operation of the Axial Flow Water Pump Destratification System. Consequently, the PARTIES are actively engaged in developing a new long-term O&M Agreement.
- E. The PARTIES believe it is essential to continue operation of the Axial Flow Water Pump Destratification System during negotiations of the terms and conditions for a new long-term O&M Agreement as a show of good faith and the PARTIES sincere commitment to improving water quality in Lake Elsinore.

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

AMENDMENT

1. Per Section 5, Extension of Term, of the AGREEMENT the PARTIES hereby mutually agree to extend the term of the AGREEMENT two years, to expire on **June 30, 2016**.
2. All other terms and conditions in the existing AGREEMENT shall remain unchanged by this amendment during the extended term.
3. The CITY shall continue to render services for the operation and maintenance of the Destratification System during said extended term.
4. This Amendment may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.
5. This Amendment shall be in effect June 30, 2014 upon execution by all PARTIES.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement

For THE CITY OF LAKE ELSINORE

By _____ *Dated:* _____

Title: _____

ATTEST

By _____ *Dated:* _____

Title: _____

APPROVED AS TO FORM

By _____ *Dated:* _____

Title: _____

For ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By _____

Dated: _____

Title: _____

For the COUNTY OF RIVERSIDE

By _____

Dated: _____

Title: _____

FORM APPROVED COUNTY COUNSEL

BY: ACG 6-17-15
AARON C. GETTIS DATE

APPENDIX - "A"

Appendix A

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

THIS AGREEMENT is made and effective this 11 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:

FEB 11 2003 3.24

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 he 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.

Dated: 2/25/03

CITY OF LAKE ELSINORE
By [Signature]
Mayor

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

Dated: 3-13-2003

By Phil Williams
President, Board of Directors

COUNTY OF RIVERSIDE

Dated: FEB 11 2003

By [Signature]
Chairman, Board of Supervisors
JOHN TAVACLONE

APPROVED AS TO FORM:

FORM APPROVED
COUNTY COUNSEL

By [Signature]
FEB 04 2003
Deputy County Counsel
BY [Signature]
ASSISTANT COUNTY COUNSEL

ATTEST
NANCY ROMERO, Clerk
By [Signature]
DEPUTY

APPENDIX - "B"

APPENDIX B

First Amendment to Extend the Term of the Agreement for the Operation and Maintenance of the Axial Flow Water Pump Destratification System for Lake Elsinore

This amendment is made 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 hereinafter collectively referred to as the "PARTIES."

RECITALS

- A. The COUNTY, CITY and DISTRICT are PARTIES to an existing Agreement for the Operation and Maintenance of the Axial Flow Water Pump Destratification System ("AGREEMENT") signed and made effective December 2002 (copy attached as Appendix A).
- B. The initial term (Section 4) of the existing AGREEMENT was for ten years and was scheduled to terminate on June 30, 2013 unless otherwise extended by the PARTIES.
- C. The PARTIES concur that it would be mutually beneficial to enact a new O&M Agreement in order to ensure stable operation of the Axial Flow Water Pump Destratification System. Consequently, the PARTIES are actively engaged in developing a new long-term O&M Agreement.
- D. The PARTIES believe it is essential to continue operation of the Axial Flow Water Pump Destratification System during negotiations of the terms and conditions for a new long-term O&M Agreement as a show of good faith and the PARTIES sincere commitment to improving water quality in Lake Elsinore.

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

AMENDMENT

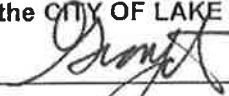
1. Per Section 5, **Extension of Term**, of the AGREEMENT the PARTIES hereby mutually agree to extend the term of the AGREEMENT so that the initial term expires on June 30, 2014 rather than June 30, 2013.
2. All other terms and conditions in the existing AGREEMENT shall remain unchanged by this amendment during the extended term.
3. The CITY shall continue to render services for the operation and maintenance of the Destratification System during said extended term.

APPENDIX B

- 4. This Amendment may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.
- 5. This Amendment shall be in effect June 30, 2013 upon execution by all three PARTIES.

IN WITNESS WHEREOF, the PARTIES have caused this Amendment to become effective by their respective endorsements (below):

For the CITY OF LAKE ELSINORE

By: 
 Title: Grant Yates, City Manager

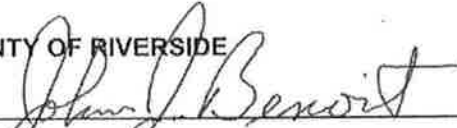
Dated: October 23, 2013

For ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By: _____
 Title: _____

Dated: _____

For the COUNTY OF RIVERSIDE

By: 
 Title: CHAIRMAN, BOARD OF SUPERVISORS

Dated: SEP 24 2013

FORM APPROVED COUNTY COUNSEL
 BY:  9/12/13
 KARIN L. WATTS-BAZAN DATE

ATTEST:
 KECIA HARPER-HEM, Clerk
 By: 
 DEPUTY

APPENDIX B

4. This Amendment may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.
5. This Amendment shall be in effect June 30, 2013 upon execution by all three PARTIES.

IN WITNESS WHEREOF, the PARTIES have caused this Amendment to become effective by their respective endorsements (below):

For the CITY OF LAKE ELSINORE

By 

Dated: October 23, 2013

Title: Grant Yates, City Manager

For ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By 

Dated: 10-10-13

Title: Board President

For the COUNTY OF RIVERSIDE

By _____

Dated: _____

Title: _____