

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

512B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
January 24, 2012

SUBJECT: Little Lake Retention Basin – Modification for Water Conservation Funding/License Agreement

RECOMMENDED MOTION:

1. Approve the Funding/License Agreement between the District and Lake Hemet Municipal Water District;
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Authorize the General Manager-Chief Engineer to terminate the Agreement at his sole discretion.

BACKGROUND:

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$250,000	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: 25140 947460 536200 – Zone 4 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

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Benoit, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: January 24, 2012
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:	District: 3rd	Agenda Number:	11.3
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ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY:
NEAL R. KIPNIS
DATE

Departmental Concurrence

FISCAL PROCEDURES APPROVED
BY:
IVAN M. CHAND 10/24/2011

Dept's Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

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

SUBJECT: Little Lake Retention Basin – Modification for Water Conservation
Funding/License Agreement

SUBMITTAL DATE: January 24, 2012
Page 2

BACKGROUND:

The Agreement sets forth the terms and conditions by which the District will contribute funding to the Lake Hemet Municipal Water District (LHMWD) for creating dead storage within the District's existing Little Lake Retention Basin (Basin) and constructing an underground pipeline/turnout to transport water between the Basin and LHMWD's Little Lake Reservoir to optimize opportunities for stormwater harvesting and groundwater recharge. Upon completion of construction, the District will allow LHMWD to operate and maintain the dead storage and underground pipeline/turnout pursuant to the terms and conditions of the Agreement.

County Counsel has approved the Agreement as to legal form, and Lake Hemet Municipal Water District has executed the Agreement.

FINANCIAL:

Sufficient funds are available in the District's Zone 4 budget for FY 2011-12.

TLC:bjj
P8/141539

FUNDING/LICENSE AGREEMENT
LITTLE LAKE RETENTION BASIN
MODIFICATION FOR WATER CONSERVATION
Project No. 4-0-00260

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the LAKE HEMET MUNICIPAL WATER DISTRICT, hereinafter called "LHMWD", hereby agree as follows:

RECITALS

A. DISTRICT owns, operates and maintains the Little Lake Retention Basin, hereinafter called "DISTRICT FACILITY", located at the southeast corner of Lake Street and Stetson Avenue within the unincorporated area of Riverside County; and

B. LHMWD owns, operates and maintains the Little Lake Reservoir, hereinafter called "LHMWD FACILITY", located at the southwest corner of Lake Street and Stetson Avenue. The capacity of LHMWD FACILITY is occasionally exceeded; and

C. LHMWD wishes to over-excavate approximately 5 feet below the invert of the existing DISTRICT FACILITY thereby creating approximately 29 acre-feet of dead storage for storm flows to be captured during periods of runoff and allowed to percolate into the soil for groundwater recharge. In addition, LHMWD wishes to utilize the dead storage as temporary storage for additional water from its LHMWD FACILITY, and then transport the water back from DISTRICT FACILITY as necessary; and

D. LHMWD wishes to optimize opportunities for stormwater harvesting and groundwater recharge by creating additional dead storage within DISTRICT FACILITY and constructing an underground pipeline/turnout to transport water between DISTRICT FACILITY and LHMWD FACILITY, hereinafter together called "PROJECT"; and

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

3 F. DISTRICT has included the sum of two hundred fifty thousand dollars
4 (\$250,000) in its Fiscal Year 2011-2012 budget, hereinafter called "DISTRICT TOTAL
5 CONTRIBUTION" for the purpose of contributing funds to LHMWD'S construction of
6 PROJECT; and

7 G. DISTRICT'S financial contribution toward LHMWD'S actual construction
8 cost for PROJECT is based on a 50-50 cost share formula; and

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

12 I. DISTRICT is also willing to contribute up to an additional ten percent
13 (10%) of ORIGINAL BID, based on a 50-50 cost share formula, should actual construction
14 costs increase above ORIGINAL BID provided DISTRICT TOTAL CONTRIBUTION does not
15 exceed a total sum of two hundred fifty thousand dollars (\$250,000); and

16 J. The purpose of this Agreement is to memorialize the mutual
17 understandings by and between LHMWD and DISTRICT with respect to the construction,
18 ownership, operation and maintenance of PROJECT, and the payment of DISTRICT
19 contribution; and

20 K. It is in the best interest of the public to proceed with construction of
21 PROJECT at the earliest possible date.

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

LHMWD shall:

1. Prepare or cause to be prepared all necessary plans and specifications for PROJECT, hereinafter called "PLANS", in accordance with applicable DISTRICT standards.
2. Secure, at its sole cost and expense, all necessary environmental clearances, permits, licenses, agreements, approvals, rights of way, rights of entry and temporary construction easements as may be necessary to construct, operate and maintain PROJECT.
3. Submit PLANS to DISTRICT for review and approval prior to advertising PROJECT as a public works construction contract.
4. Furnish DISTRICT with copies of all permits, approvals or agreements and any associated subsequent renewal or amendments thereafter, as may be required by any Federal, State or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents include but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Game, and State Water Resources Control Board.
5. Advertise, award and administer a public works PROJECT construction contract.
6. Provide DISTRICT with written notice that LHMWD has awarded a construction contract for PROJECT. The written notice shall include the Contractor's actual bid amounts for PROJECT.
7. Endeavor to begin construction of PROJECT within twelve (12) months of execution of this Agreement.

1 8. 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) two hundred fifty thousand dollars
4 (\$250,000).

5 9. Construct or cause to be constructed, PROJECT pursuant to an LHMWD
6 administered public works contract, in accordance with DISTRICT approved PLANS.

7 10. Inspect PROJECT construction or cause PROJECT'S construction to be
8 inspected by its construction manager.
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10 11. Not permit any change to, or modification of, DISTRICT approved
11 PLANS without the prior written permission and consent of DISTRICT.

12 12. Not approve any change order(s) without the prior written approval of
13 DISTRICT. In the event that DISTRICT is not afforded an opportunity to approve or reject
14 such change order(s) prior to LHMWD'S commencement of such change order(s), then
15 LHMWD shall be deemed to have agreed to have such change order(s) performed at its sole
16 cost and expense.
17

18 13. Assume sole responsibility for (i) the design, construction, operation and
19 maintenance of LHMWD constructed PROJECT and (ii) LHMWD'S use of DISTRICT
20 FACILITY under this Agreement.

21 14. Grant DISTRICT, by execution of this Agreement, the right to enter upon
22 LHMWD'S property where necessary and convenient for the purpose of gaining access to, and
23 performing inspection service for the construction of PROJECT as set forth herein.
24

25 15. Prior to commencing PROJECT construction, schedule and conduct a
26 mandatory pre-construction meeting between LHMWD, LHMWD'S construction manager,
27 LHMWD'S construction contractor(s), DISTRICT and other affected entities. LHMWD shall
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1 notify DISTRICT (Attention: Contract Administration Section) in writing at least twenty (20)
2 days prior to conducting the pre-construction meeting.

3 16. Within two weeks of completing PROJECT construction, provide
4 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
5 construction is substantially complete and requesting that DISTRICT conduct a final inspection
6 of PROJECT.

7 17. Upon completion of PROJECT construction and settlement of any
8 outstanding claims, provide DISTRICT with a copy of LHMWD recorded Notice of Completion
9 and a final accounting of construction costs for DISTRICT approved PLANS. The final
10 accounting of construction costs shall include a detailed breakdown of all costs, including but
11 not limited to payment vouchers, DISTRICT approved change orders and other such
12 construction contract documents as may be necessary to establish DISTRICT'S fifty percent
13 (50%) share of the actual cost of construction for PROJECT.
14

15 18. If DISTRICT'S share of the actual construction cost as established in
16 Section I.17 is greater than DISTRICT'S INITIAL CONTRIBUTION, submit an invoice to
17 DISTRICT (Attention: Chief of Design and Construction Division) for the difference between
18 DISTRICT'S share of actual construction costs and DISTRICT'S INITIAL CONTRIBUTION
19 up to a maximum DISTRICT TOTAL CONTRIBUTION of two hundred fifty thousand dollars
20 (\$250,000).
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22 19. Refund to DISTRICT any unexpended portion of DISTRICT'S INITIAL
23 CONTRIBUTION as set forth herein. DISTRICT'S INITIAL CONTRIBUTION shall be used
24 by LHMWD solely for PROJECT construction.
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26 20. Upon acceptance of PROJECT as being complete, provide DISTRICT with
27 a reproducible duplicate copy of "as-built" PLANS, stamped and signed by LHMWD'S civil
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1 engineer of record or construction civil engineer of record, duly registered in the State of
2 California.

3 21. Upon completion of PROJECT construction, provide DISTRICT with
4 appropriate engineering documentation necessary to establish that the PROJECT was
5 constructed in accordance with DISTRICT approved PLANS.

6 22. Utilize DISTRICT FACILITY in such a way that it will not interfere or
7 adversely affect the operation and maintenance of DISTRICT FACILITY as a flood control
8 facility. LHMWD shall endeavor to keep newly created basin invert free from vegetation.
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10 23. Promptly repair, at its sole cost and expense, any damage to DISTRICT
11 FACILITY resulting from LHMWD'S use of DISTRICT right-of-way under the license granted
12 herein.

13 24. Completely remove, at its sole cost and expense, PROJECT and any
14 associated improvements within DISTRICT right-of-way within sixty (60) days of receipt of
15 written notice from DISTRICT, should the DISTRICT, at its sole discretion, determine that the
16 PROJECT or its associated use to be incompatible with the operation and maintenance of
17 DISTRICT FACILITY. Should LHMWD fail to perform all necessary work as directed by the
18 DISTRICT within sixty (60) days of receipt of written notice from DISTRICT, LHMWD shall
19 reimburse the DISTRICT for any and all costs incurred by the DISTRICT or its Contractor(s) to
20 perform said work.
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22 SECTION II

23 DISTRICT shall:

24 1. At its sole cost and expense, review and approve PLANS prior to LHMWD
25 advertising PROJECT for bids.
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1 2. Within sixty (60) days after receipt of appropriate invoice from LHMWD
2 as set forth in Section I.8, pay the INITIAL CONTRIBUTION to LHMWD. The amount paid
3 to LHMWD shall not exceed two hundred fifty thousand dollars (\$250,000).

4 3. Review all construction change order(s) submitted to DISTRICT by
5 LHMWD and notify LHMWD in writing within seven (7) calendar days following such
6 submittal(s) regarding DISTRICT'S approval or disapproval of such change order(s).

7 4. Upon DISTRICT'S approval of the final accounting of construction cost
8 for PROJECT as set forth in Sections I.17 and I.18, pay LHMWD within sixty (60) days after
9 receipt of appropriate invoice from LHMWD. DISTRICT TOTAL CONTRIBUTION shall not
10 exceed two hundred fifty thousand dollars (\$250,000).

11 5. Grant to LHMWD a revocable license to operate and maintain the
12 LHMWD constructed PROJECT within DISTRICT FACILITY, provided that LHMWD'S
13 activities do not, in any way whatsoever, impair DISTRICT FACILITY'S primary flood control
14 purpose and function or otherwise DISTRICT'S ability to operate and maintain DISTRICT
15 FACILITY or any of its appurtenant works.

16 6. Notify LHMWD in writing of (i) any non-compatible use or condition that
17 is not in conformity with the provisions of this Agreement, or (ii) any condition which, in the
18 sole opinion of the DISTRICT'S General Manager-Chief Engineer, could impair DISTRICT
19 FACILITY'S flood control function or adversely affect DISTRICT'S ability to operate and
20 maintain DISTRICT FACILITY, and grant LHMWD thirty (30) days from and after such notice
21 to correct any such nonconforming use or condition.

22 7. Assume no responsibility, obligation or liability whatsoever, for (i) the
23 design, construction, operation and maintenance of LHMWD'S constructed PROJECT, or (ii)
24 LHMWD'S use of DISTRICT'S right-of-way under this Agreement.

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1 8. Other than in emergency situations, provide thirty (30) days written notice
 2 to LHMWD to cease use of DISTRICT FACILITY, should DISTRICT determine that it is
 3 necessary for the purpose of operation and/or maintenance of DISTRICT FACILITY.

4 **SECTION III**

5 It is further mutually agreed:

6 1. Under the provisions of this Agreement, DISTRICT shall bear no
 7 responsibility whatsoever for the design, construction, ownership, operation or maintenance of
 8 LHMWD'S constructed PROJECT.

9
 10 2. In the event that any claim or legal action is brought against DISTRICT, in
 11 connection with this Agreement and based upon the actual or alleged acts or omissions of
 12 LHMWD, its officers, employees, consultant, contractors or agents, including but not limited to
 13 claims or legal action related to design, construction or failure of PROJECT, LHMWD shall
 14 defend, indemnify and hold DISTRICT harmless therefrom without cost to DISTRICT. This
 15 shall include providing DISTRICT with legal representation and paying for related costs for any
 16 such claim or legal action, and payment of any settlement or judgment on behalf of DISTRICT,
 17 all at no cost to DISTRICT. Upon LHMWD'S failure to do so, DISTRICT shall be entitled to
 18 recover from LHMWD all of its costs and expenses, including, but not limited to, reasonable
 19 attorneys' fees.

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 21 3. In the event of any arbitration, action or suit brought by either LHMWD or
 22 DISTRICT against the other party by reason of any breach on the part of the other party of any
 23 of the covenants and agreements set forth in this Agreement, or any other dispute between
 24 DISTRICT and LHMWD concerning this Agreement, the prevailing party in any such action or
 25 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 4. 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 5. This Agreement is to be construed in accordance with the laws of the State
7 of California. Neither LHMWD nor DISTRICT shall assign this Agreement without the written
8 consent of the other party.

9 6. 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 7. 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	LAKE HEMET MUNICIPAL
15 AND WATER CONSERVATION DISTRICT	WATER DISTRICT
16 1995 Market Street	26385 Fairview Avenue
17 Riverside, CA 92501	Hemet, CA 92544
18 Attn: Mr. Steve Thomas, Asst. Chief Engineer	Attn: Mr. Tom Wagoner, General Manager

19 8. 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 9. Any waiver by DISTRICT or LHMWD 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 LHMWD
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1 to require from any other party exact, full and complete compliance with any of the provisions
2 of this Agreement shall not be construed as in any manner changing the terms hereof, or
3 estopping DISTRICT or LHMWD from enforcing this Agreement.

4 10. 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


JAN 24 2012

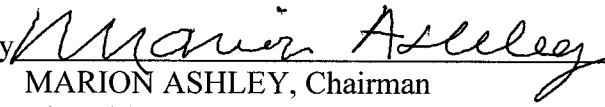
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RECOMMENDED FOR APPROVAL.

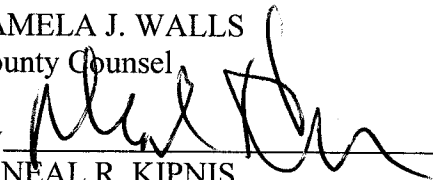
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**


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/License Agreement
Little Lake Retention Basin – Modification for Water Conservation
10/27/11
TT:TLC:blj

1 RECOMMENDED FOR APPROVAL

LAKE HEMET MUNICIPAL WATER DISTRICT

2

3 By Thomas W. Wagoner
THOMAS W. WAGONER
4 General Manager

By Frank D. Marshall III
FRANK D. MARSHALL III
President, LHMWD Board of Directors

5 APPROVED AS TO FORM:

ATTEST:

6 By Joseph Wojcik
7 JOSEPH WOJCIK
District General Counsel

By Karen Hornbarger
KAREN HORNBARGER
Assistant Board Secretary

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(SEAL)

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Funding/License Agreement
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