

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

8118



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

February 28, 2012

SUBJECT: East Cathedral Canyon Channel Levee Restoration
Project No. 6-0-00010
Cooperative Agreement
District 4/4

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 City will be reimbursed for construction of flood control improvements for the District's existing East Cathedral Canyon Channel Levee.

Continued on page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$1,462,593.39	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	N/A	For Fiscal Year:	11-12

SOURCE OF FUNDS: 25160 947500 527980 Zone 6 - Construction	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. Sheller

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Buster, Tavaglione, Stone and Benoit
Nays: None
Absent: Ashley
Date: February 28, 2012
xc: Flood

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

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

Prev. Agn. Ref.: 6/12/07, Item 11.1 | District: 4/4 | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.2

FISCAL YEAR 2012 APPROVED
 LARRY CHANG, FINANCIAL DIRECTOR
 1/10/2012
 Departmental Concurrence
 WARREN D. WILLIAMS
 FORM APPROVED COUNTY COUNCIL
 BY: NEAL R. KIPNIS
 DATE: 1/10/12

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

SUBJECT: East Cathedral Canyon Channel Levee Restoration
Project No. 6-0-00010
Cooperative Agreement

SUBMITTAL DATE: February 28, 2012
Page 2

BACKGROUND:

Upon completion of construction, the District will assume ownership, operation and maintenance responsibilities of flood control improvements.

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

FINANCIAL:

The District is reimbursing City for actual construction costs associated with flood control improvements. Sufficient funding is available in the District's Zone 6 Capital Improvement Plan Project budget. Future operations and maintenance costs will accrue to the District.

CLC:bjj
P8/142937

COOPERATIVE AGREEMENT

East Cathedral Canyon Channel Levee Restoration
Project No. 6-0-00010

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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 and CITY together with the Desert Cove Golf Resort, LLC, a California Limited Liability company ("DEVELOPER"), entered into that certain Cooperative Agreement ("PREVIOUS AGREEMENT") on June 12, 2007, providing for the design and construction or reconstruction of certain flood control facilities by CITY. PREVIOUS AGREEMENT also stated CITY'S desire for DISTRICT to reimburse CITY for all or a portion of CITY'S actual cost of constructing these certain flood control facilities and DISTRICT'S willingness to consider reimbursing CITY pursuant to the terms and conditions of PREVIOUS AGREEMENT. Accordingly, this Agreement sets forth the particular provisions by which such reimbursement may be provided upon DISTRICT'S acceptance of ownership and responsibility for the operation and maintenance of certain flood control facilities; and

B. CITY has constructed the certain flood control facilities consisting of approximately 7,900 lineal feet of slope lining toe extension as shown in District Drawing No. 6-0357 ("TOE DOWN IMPROVEMENT") and any additional work approved by DISTRICT to repair or improve the concrete slope lining ("SLOPE LINING REPAIR") for DISTRICT'S existing Cathedral Canyon Channel – East Facility (Project No. 6-0-00010); and

C. TOE DOWN IMPROVEMENT and SLOPE LINING REPAIR are hereinafter called "FLOOD CONTROL IMPROVEMENTS". FLOOD CONTROL IMPROVEMENTS expressly do not include any soil cement grade stabilization structures or

reinforcement mat which is associated with the construction of DEVELOPER'S project; and

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D. Pursuant to PREVIOUS AGREEMENT, DISTRICT wishes to reimburse CITY for CITY'S actual construction cost of said FLOOD CONTROL IMPROVEMENTS; and

E. DISTRICT has included the sum of one million four hundred sixty-two thousand five hundred ninety-three dollars and thirty-nine cents (\$1,462,593.39) in the DISTRICT'S Capital Improvement Plan Project Budget, hereinafter called "DISTRICT CONTRIBUTION", for the purpose of contributing funds to CITY'S construction of said FLOOD CONTROL IMPROVEMENTS; and

F. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and DISTRICT with respect to the remaining actions required to allow for DISTRICT'S acceptance of ownership, operation and maintenance of FLOOD CONTROL IMPROVEMENTS, and the payment of DISTRICT CONTRIBUTION.

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

SECTION I

CITY shall:

- 1. Prior to DISTRICT'S acceptance of FLOOD CONTROL IMPROVEMENTS, for ownership, operation and maintenance, provide DISTRICT with written notice (Attention: Contract Administration Section) that FLOOD CONTROL IMPROVEMENTS construction is complete and request that DISTRICT conduct a final inspection of FLOOD CONTROL IMPROVEMENTS. Further, it is mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of FLOOD CONTROL IMPROVEMENTS, FLOOD CONTROL IMPROVEMENTS shall be in a satisfactorily maintained condition as solely determined by

1 DISTRICT. If, subsequent to the final inspection and, in the sole discretion of DISTRICT,
2 FLOOD CONTROL IMPROVEMENTS are not in an acceptable condition, corrections will be
3 made at sole expense of CITY.

4 2. Provide DISTRICT with a copy of CITY'S Notice of Completion.

5 3. Invoice DISTRICT for the actual construction costs associated with the
6 FLOOD CONTROL IMPROVEMENTS based on a lump sum not to exceed one million four
7 hundred sixty-two thousand five hundred ninety-three dollars and thirty-nine cents
8 (\$1,462,593.39). The invoice shall include a detailed breakdown of all actual construction costs
9 and its associated supporting documents.
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11 SECTION II

12 DISTRICT shall:

13 1. Accept sole responsibility for ownership, operation and maintenance of
14 FLOOD CONTROL IMPROVEMENTS upon (i) DISTRICT receipt of CITY'S written Notice
15 of Completion as set forth in Section I.2., and (ii) DISTRICT inspection of FLOOD CONTROL
16 IMPROVEMENTS in accordance with Section I.1.
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18 2. Within sixty (60) days after DISTRICT receipt of an appropriate invoice
19 and supporting documentation from CITY as set forth in Section I.3., pay DISTRICT
20 CONTRIBUTION to CITY in an amount not to exceed one million four hundred sixty-two
21 thousand five hundred ninety-three dollars and thirty-nine cents (\$1,462,593.39).
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23 SECTION III

24 It is further mutually agreed:

25 1. DISTRICT CONTRIBUTION shall be used by CITY solely for the purpose
26 of reimbursement of construction costs for FLOOD CONTROL IMPROVEMENTS as set forth
27 herein.
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1 2. CITY shall indemnify, defend, save and hold harmless DISTRICT and
2 County of Riverside (including their respective officers, districts, special districts, and
3 departments, their respective directors, officers, Board of Supervisors, elected and appointed
4 officials, employees, agents, representatives, independent contractors, and subcontractors) from
5 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
6 or in any way relating to CITY'S (including its officers, employees, agents, representatives,
7 independent contractors, and subcontractors) actual or alleged acts or omissions related to this
8 Agreement, performance under this Agreement, or failure to comply with the requirements of
9 this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c)
10 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.
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12 DISTRICT shall indemnify, defend, save and hold harmless CITY
13 (including its officers, employees, agents, representatives, independent contractors, and
14 subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,
15 based upon, arising out of or in any way relating to DISTRICT'S (including its officers, Board
16 of Supervisors, elected and appointed officials, employees, agents, representatives, independent
17 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,
18 performance under this Agreement, or failure to comply with the requirements of this
19 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
20 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.
21

22 3. In the event of any arbitration, action or suit brought by either CITY or
23 DISTRICT against the other party by reason of any breach on the part of the other party of any
24 of the covenants and agreements set forth in this Agreement, or any other dispute between
25 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or
26 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, attorney's fees and
2 expert witness fees. This section shall survive any termination of this Agreement.

3 4. This Agreement is made and entered into for the sole protection and benefit
4 of the parties hereto. No other person or entity shall have any right or action based upon the
5 provisions of this Agreement.

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

8 RIVERSIDE COUNTY FLOOD CONTROL
9 AND WATER CONSERVATION DISTRICT
10 1995 Market Street
11 Riverside, CA 92501
Attn: Administrative Services Section

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

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

15 7. This agreement is to be construed in accordance with the laws of the State
16 of California.

17 8. Neither CITY nor DISTRICT shall assign this Agreement without the
18 written consent of the other party.

19 9. Any action at law or in equity brought by any of the parties hereto for the
20 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
21 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
22 waive all provisions of law providing for a change of venue in such proceedings to any other
23 county.
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25 10. 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
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1 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
2 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
3 prepared this Agreement in its final form.

4 11. Any waiver by DISTRICT or CITY or any breach by any other party of any
5 provision of this Agreement shall not be construed to be a waiver of any subsequent or other
6 breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to
7 require from any other party exact, full and complete compliance with any of the provisions of
8 this Agreement shall not be construed as in any manner changing the terms hereof, or estopping
9 DISTRICT or CITY from enforcing this Agreement.
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11 12. This Agreement is intended by the parties hereto as a final expression of
12 their understanding with respect to the subject matter hereof and as a complete and exclusive
13 statement of the terms and conditions thereof and supersedes any and all prior and
14 contemporaneous agreements and understandings, oral and written, in connection therewith.
15 This Agreement may be changed or modified only upon the written consent of the parties
16 hereto.
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on


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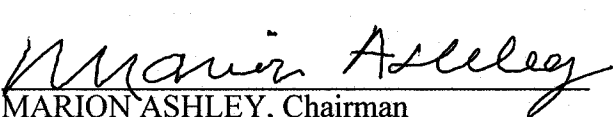
FEB 28 2012

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

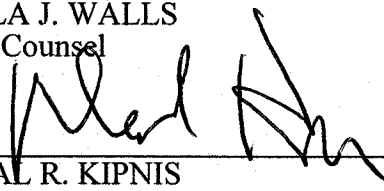
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

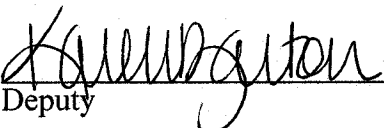
By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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
By 
NEAL R. KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By 
Deputy

(SEAL)

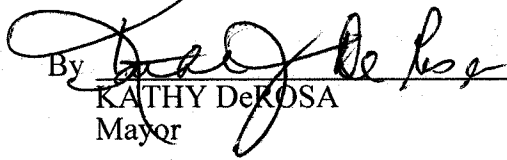
Cooperative Funding Agreement: City of Cathedral City
East Cathedral Canyon Channel Levee Restoration
CLC:blj
12/28/11

RECOMMENDED FOR APPROVAL:

CITY OF CATHEDRAL CITY


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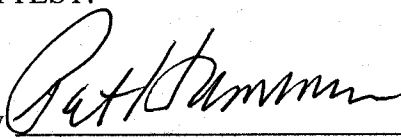
By 
BILL SIMONS
City Engineer

By 
KATHY DeROSA
Mayor

APPROVED AS TO FORM:

ATTEST:

By 
CHARLES GREEN
City Attorney

By 
PAT HAMMERS
City Clerk

(SEAL)

AYES: 4 - DEROSA, VASQUEZ, PETTIS ENGLAND
NOES: 0
ABSENT: 1 - TOLES
ABSTAIN: 0

Cooperative Funding Agreement: City of Cathedral City
East Cathedral Canyon Channel Levee Restoration
CLC:blj
12/28/11