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

106B

157370

FROM: General Manager-Chief Engineer

SUBMITTAL DATE: January 28, 2014

SUBJECT: Palm Springs Master Drainage Plan Line 43 and Lateral 43A
Project No. 6-0-00163
Cooperative Agreement
District 4/District 4 [$264,085]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District and the Desert Water Agency (DWA); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

Summary

This Cooperative Agreement (Agreement) sets forth the terms and conditions by which certain underground utilities owned and operated by DWA will be relocated as a part of the District's proposed project.

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	$ $75,000	$ $189,085	$ $264,085	$ N/A	Consent ☐ Policy ☐
NET DISTRICT COST	$ $75,000	$ $189,085	$ $264,085	$ N/A	

SOURCE OF FUNDS: 25160/947500/525440 Zone 6 Const/Maint/Misc/Professional Services

Budget Adjustment: NO

For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY: Steven C. Horn, MPA

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: January 28, 2014
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: Deputy

Prev. Agn. Ref.: | **District:** 4th/4th | **Agenda Number:** 11-3

FISCAL PROCEDURES APPROVED
JEANINE J. REY, FINANCE DIRECTOR
BY: JEANINE J. REY 12/17/2013

Departmental Concurrence

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE 12/16/13

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

SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Palm Springs Master Drainage Plan Line 43 and Lateral 43A
Project No. 6-0-00163
Cooperative Agreement
District 4/District 4 [$264,085]
DATE: January 28, 2014

BACKGROUND:
Summary (continued)

The relocation of these certain DWA facilities is necessary in order for the District to proceed with the construction of the project located within the city of Cathedral City.

Under this Agreement, the District will contribute funding toward the design, inspection and relocation of certain DWA owned facilities. Upon completion of project construction, DWA will accept ownership and responsibilities for the operation and maintenance of the relocated utilities.

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

Impact on Citizens and Businesses
None

AMR:blj

COOPERATIVE AGREEMENT
Palm Springs Master Drainage Plan Line 43 and Lateral 43A
Project No. 6-0-00163

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and the Desert Water Agency, hereinafter called "DWA", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct the Palm Springs Master Drainage Plan (MDP) Line 43 and Lateral 43A storm drains in order to provide necessary flood protection and improved drainage in the Cathedral City area; and

B. Line 43 consists of approximately 3,400 lineal feet of underground storm drain facility, as shown in District Drawing No. 6-0395, hereinafter called "LINE 43"; and

C. Associated with the construction of LINE 43 is the construction of Lateral 43A consisting of approximately 920 lineal feet of underground storm drain facility, hereinafter called "LAT 43A". Together, LINE 43 and LAT 43A are hereinafter called "PROJECT"; and

D. Within the project area, DWA owns, operates and maintains all sewer lines and waterlines located within public or private rights of way, hereinafter called "DWA FACILITIES". DWA also owns, operates and maintains all lateral water service lines, fire hydrants, fire hydrant laterals, water meters and valves, and water mains that are 12-inch or less in diameter and located within street rights of way, hereinafter called "DWA WATER SERVICE LINES". DISTRICT has determined that portions of certain DWA FACILITIES and DWA WATER SERVICE LINES interfere with the proposed construction of PROJECT. Therefore, the interfering portions of DWA FACILITIES and DWA WATER SERVICE LINES must be relocated. The interfering portions of DWA FACILITIES and DWA WATER

11-3 JAN 28 2014

SERVICE LINES that must be relocated are shown in concept on Exhibit "A" and Exhibit "B", attached hereto and made a part hereof; and

E. DWA is willing to (i) prepare, or cause to be prepared, the necessary plans and specifications for the relocation of the interfering portions of DWA FACILITIES and DWA WATER SERVICE LINES, hereinafter called "RELOCATION PLANS", including separate plans and specifications for DWA FACILITIES and DWA WATER SERVICE LINES, hereinafter called "FACILITIES RELOCATION PLANS" and "WATER SERVICE LINES RELOCATION PLANS", respectively, and (ii) relocate interfering and affected portions of DWA WATER SERVICE LINES in accordance with WATER SERVICE LINES RELOCATION PLANS; and

F. DISTRICT is willing to incorporate the DWA FACILITIES RELOCATION PLANS as part of its construction contract for PROJECT; and

G. To expedite construction of PROJECT, DISTRICT is willing to make payment to DWA as follows:

(i) An amount not to exceed seventy-five thousand dollars ($75,000) for the engineering design and cost proposal for the preparation of RELOCATION PLANS, hereinafter called "DESIGN PAYMENT"; and

(ii) One hundred percent (100%) of DWA'S actual cost for the relocation of the interfering and affected portions of DWA WATER SERVICE LINES in accordance with WATER SERVICE LINES RELOCATION PLANS, hereinafter called "SERVICE LINES PAYMENT", estimated to be one hundred seventeen thousand three hundred fifty dollars ($117,350). The total amount of DISTRICT'S SERVICE LINES PAYMENT shall not exceed one hundred and ten percent (110%) of the estimated SERVICE LINES PAYMENT; and

(iii) An amount not to exceed sixty thousand dollars ($60,000) for construction inspection services of FACILITIES RELOCATION PLANS, hereinafter called "INSPECTION PAYMENT"; and

H. Together, DESIGN PAYMENT, SERVICE LINES PAYMENT and INSPECTION PAYMENT are hereinafter called "TOTAL PAYMENT". DISTRICT'S TOTAL PAYMENT under this Agreement shall not exceed a total sum of two hundred sixty-four thousand eighty-five dollars ($264,085); and

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

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

SECTION I

DISTRICT shall:

1. Pursuant to the California Environmental Quality Act (CEQA), act as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.

2. Prepare or cause to be prepared, plans and specifications for PROJECT, hereinafter called "PROJECT PLANS.

3. Include DWA prepared FACILITIES RELOCATION PLANS as part of its construction contract for PROJECT.

4. Provide DWA an opportunity to review and approve, as appropriate, portions of PROJECT PLANS associated with FACILITIES RELOCATION PLANS prior to awarding a public works construction contract for PROJECT.

5. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or agreements required by any Federal or State resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.

6. Advertise, award and administer a public works construction contract for PROJECT PLANS, including FACILITIES RELOCATION PLANS, at its sole cost and expense.

7. Prior to commencing construction, provide DWA with written notice that DISTRICT has awarded a construction contract. DISTRICT shall also notify and invite DWA personnel to attend the PROJECT pre-construction meeting.

8. Pay DWA within thirty (30) days after receipt of DWA'S appropriate invoice for DESIGN PAYMENT as set forth in Section II.4., provided that DISTRICT'S DESIGN PAYMENT shall not exceed seventy-five thousand dollars ($75,000).

9. Notify DWA in writing at least fourteen (14) days prior to the start of construction of DWA FACILITIES as set forth in FACILITIES RELOCATION PLANS.

10. Not permit any change to, or modification of, DWA prepared FACILITIES RELOCATION PLANS without the prior written permission and consent of DWA.

11. Construct or cause to be constructed, PROJECT, including relocation of the interfering portions of DWA FACILITIES pursuant to a DISTRICT administered public works construction contract, in accordance with DISTRICT and DWA approved PROJECT PLANS and FACILITIES RELOCATION PLANS.

12. Inspect or cause to be inspected, construction of PROJECT.

13. Pay DWA within thirty (30) days after receipt of DWA'S appropriate invoice for SERVICE LINES PAYMENT as set forth in Section II.8, provided that

DISTRICT'S SERVICE LINES PAYMENT shall not exceed a total sum of one hundred twenty-nine thousand eighty-five dollars ($129,085).

14. Require its construction contractor(s) to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for all DISTRICT and DWA employees on the site.

15. Require its construction contractor(s) to include DWA as an additional insured under the liability insurance coverage for PROJECT, and also require its construction contractor(s) to include DWA as a third party beneficiary of any and all warranties of the contractor's work with regard to FACILITIES RELOCATION PLANS.

16. Within two (2) weeks of completing PROJECT and DWA FACILITIES relocation construction, provide DWA with written notice that construction is substantially complete and requesting that DWA conduct final inspections of DWA FACILITIES.

17. Pay DWA within thirty (30) days after receipt of DWA'S appropriate invoice for INSPECTION PAYMENT as set forth in Section II.11., provided that DISTRICT'S INSPECTION PAYMENT shall not exceed a total sum of sixty thousand dollars ($60,000).

18. Upon completion of PROJECT construction, provide DWA with a copy of DISTRICT'S Notice of Completion.

19. Upon DWA'S acceptance of the relocated DWA FACILITIES for ownership, operation and maintenance, provide DWA with a reproducible duplicate set of "record drawings" plans for the relocation of DWA FACILITIES.

20. Ensure that all work performed pursuant to this Agreement by DISTRICT, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to all applicable provisions of the Labor Code, Business and

Professions Code, and Water Code. DISTRICT shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II

DWA shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.

2. Prepare or cause to be prepared, RELOCATION PLANS in accordance with applicable DISTRICT and DWA standards, including separate plans and specifications for DWA FACILITIES and separate plans and specifications for DWA WATER SERVICE LINES, and submit to DISTRICT for its review and approval, as appropriate.

3. Keep an accurate accounting of all engineering design costs associated with the preparation of RELOCATION PLANS in conformance with DISTRICT approved engineering design and cost proposal, and include all pertinent documentation when submitting its invoice to DISTRICT for DESIGN PAYMENT as set forth herein.

4. Invoice DISTRICT for DESIGN PAYMENT within thirty (30) days after mylars for the relocation plans of DWA FACILITIES and DWA WATER SERVICE LINES are signed provided, however, that the total amount of DISTRICT'S DESIGN PAYMENT shall not exceed seventy-five thousand dollars ($75,000).

5. Grant DISTRICT, by execution of this Agreement, all rights necessary to relocate the interfering portions of DWA FACILITIES pursuant to DWA prepared FACILITIES RELOCATION PLANS.

6. Construct, or cause to be constructed, the interfering and affected portions of DWA WATER SERVICE LINES in accordance with DISTRICT and DWA approved WATER SERVICE LINES RELOCATION PLANS.

7. Not permit any change to or modification of DWA approved RELOCATION PLANS without the prior written permission and consent of DISTRICT.

8. Keep an accurate accounting of DWA'S actual construction cost for the relocation of the interfering portions of DWA WATER SERVICE LINES and include all pertinent documentation when submitting its invoice to DISTRICT for SERVICE LINES PAYMENT.

9. Upon completion of DWA WATER SERVICE LINES RELOCATION PLANS construction, invoice DISTRICT for SERVICE LINES PAYMENT as set forth in Section II.8.

10. Inspect the construction of the relocation of DWA FACILITIES and communicate all comments or concerns to DISTRICT personnel who shall be solely responsible for all quality control communications with DISTRICT'S contractor(s) during the construction of PROJECT.

11. Keep an accurate accounting of DWA'S actual construction inspection costs for the relocation of DWA FACILITIES and include all pertinent documentation when submitting its invoice to DISTRICT for INSPECTION PAYMENT.

12. Upon receipt of DISTRICT'S written notice that the relocation of DWA FACILITIES is substantially complete, conduct a final inspection of DWA FACILITIES as set forth in Section I.18.

13. Upon its determination that the relocation of DWA FACILITIES is satisfactorily completed, provide DISTRICT with a written Notice of Final Acceptance and, thereupon, assume sole responsibility for ownership, operation and maintenance of the relocated DWA FACILITIES.

14. Invoice DISTRICT, at the time of providing a Notice of Final Acceptance as set forth in Section II.13, for INSPECTION PAYMENT as set forth in Section II.11, provided, however, that the total amount of DISTRICT'S INSPECTION PAYMENT shall not exceed sixty thousand dollars ($60,000).

SECTION III

It is further mutually agreed:

1. DWA FACILITIES shall, at all times, remain solely owned by and the exclusive responsibility of DWA. Nothing herein shall be construed as creating any obligation or responsibility on the part of DISTRICT to operate, maintain or warranty DWA FACILITIES.

2. Except as otherwise provided herein, all construction work involved with PROJECT, including relocation of DWA FACILITIES, shall be inspected by DISTRICT, and shall not be deemed complete until approved and accepted as complete by DISTRICT.

3. In the event DWA desires to include any additional work as part of the relocation of DWA FACILTIES, DWA shall submit a written request to DISTRICT describing the additional work desired and agree to pay DISTRICT for any agreed upon work requested. Payment for DWA requested additional work shall be based upon actual quantities of materials installed at the contract unit prices bid or at the negotiated change order prices.

4. DISTRICT and DWA each pledge to cooperate in regard to the operation and maintenance of their respective facilities as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facilities.

5. DISTRICT shall indemnify, defend, save and hold harmless DWA (including its officers, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,

based upon, arising out of or in any way relating to DISTRICT'S (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c) payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

6. DWA shall indemnify, defend, save and hold harmless DISTRICT (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DWA'S (including its officers, employees, agents, representatives, independent contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

7. In the event of any arbitration, action or suit brought by DWA or DISTRICT against the other party by reason of any breach on the part of the other party of any of the covenants and agreements set forth in this Agreement, or any other dispute between the DWA or DISTRICT concerning this Agreement, the prevailing party in any such action or dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the other party all costs and expenses or claims, including but not limited to, attorney's fees and expert witness fees. This section shall survive any termination of this Agreement.

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

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Engineering Services Section

DESERT WATER AGENCY
1200 Gene Autry Trail South
Palm Springs, CA 92264
Attn: Steve L. Johnson

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

11. This Agreement is to be construed in accordance with the laws of the State of California.

12. DISTRICT and DWA shall not assign this Agreement without the written consent of the other parties.

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

14. This Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty

or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

15. Any waiver by DISTRICT or DWA, or any breach by any other party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other provision hereof. Failure on the part of DISTRICT or DWA to require from any other party exact, full and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof, or stopping DISTRICT or DWA from enforcing this Agreement.

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

_____.
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By _____
NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

Cooperative Agreement: DWA/RCFC&WCD
Palm Springs MDP Line 43 and Lateral 43A
Project No. 6-0-00163
12/4/13
TT:AMR:blj

DESERT WATER AGENCY

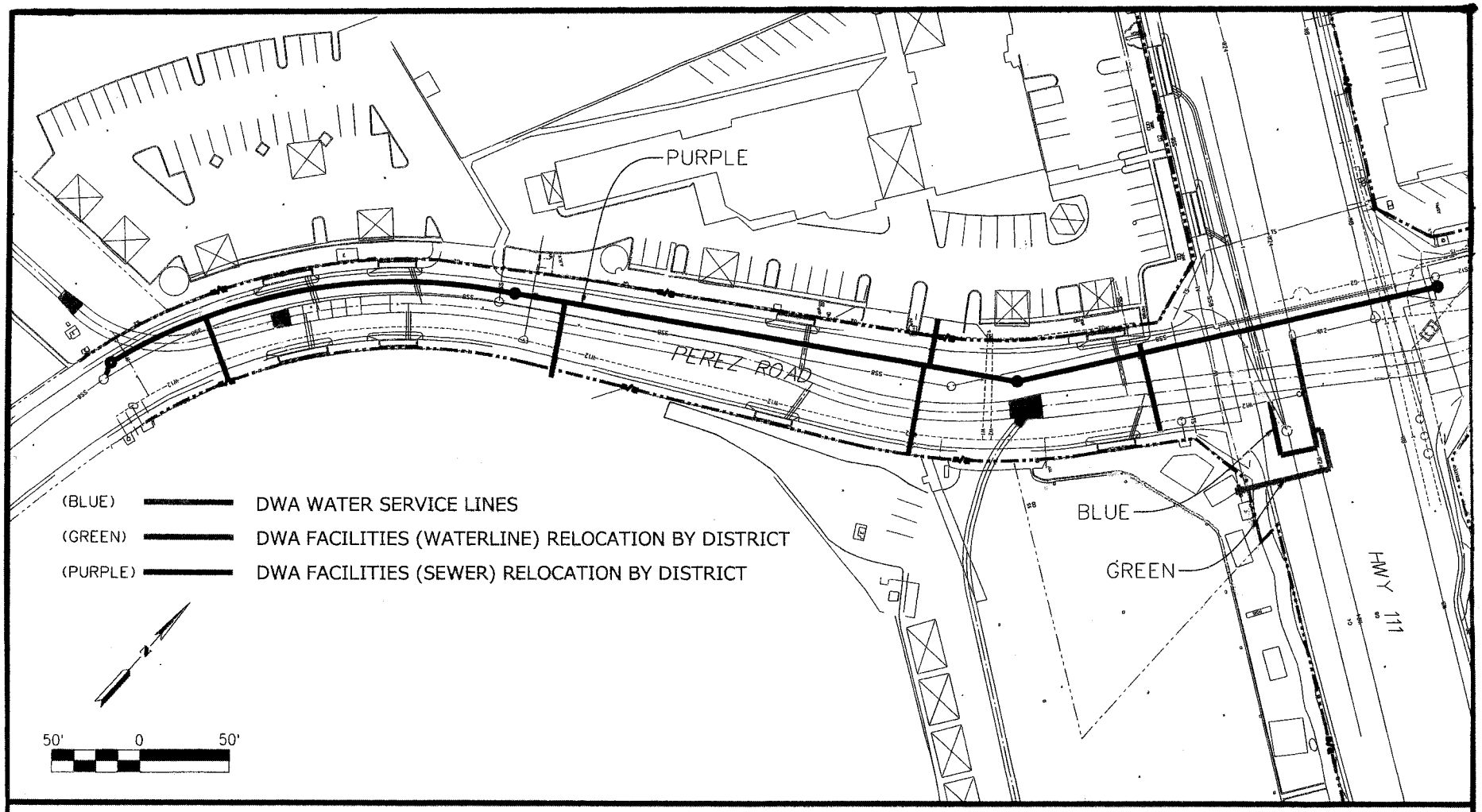
By _____
DAVE LUKER
General Manager-Chief Engineer

ATTEST:

By _____
SYLVIA BACA
Agency Secretary

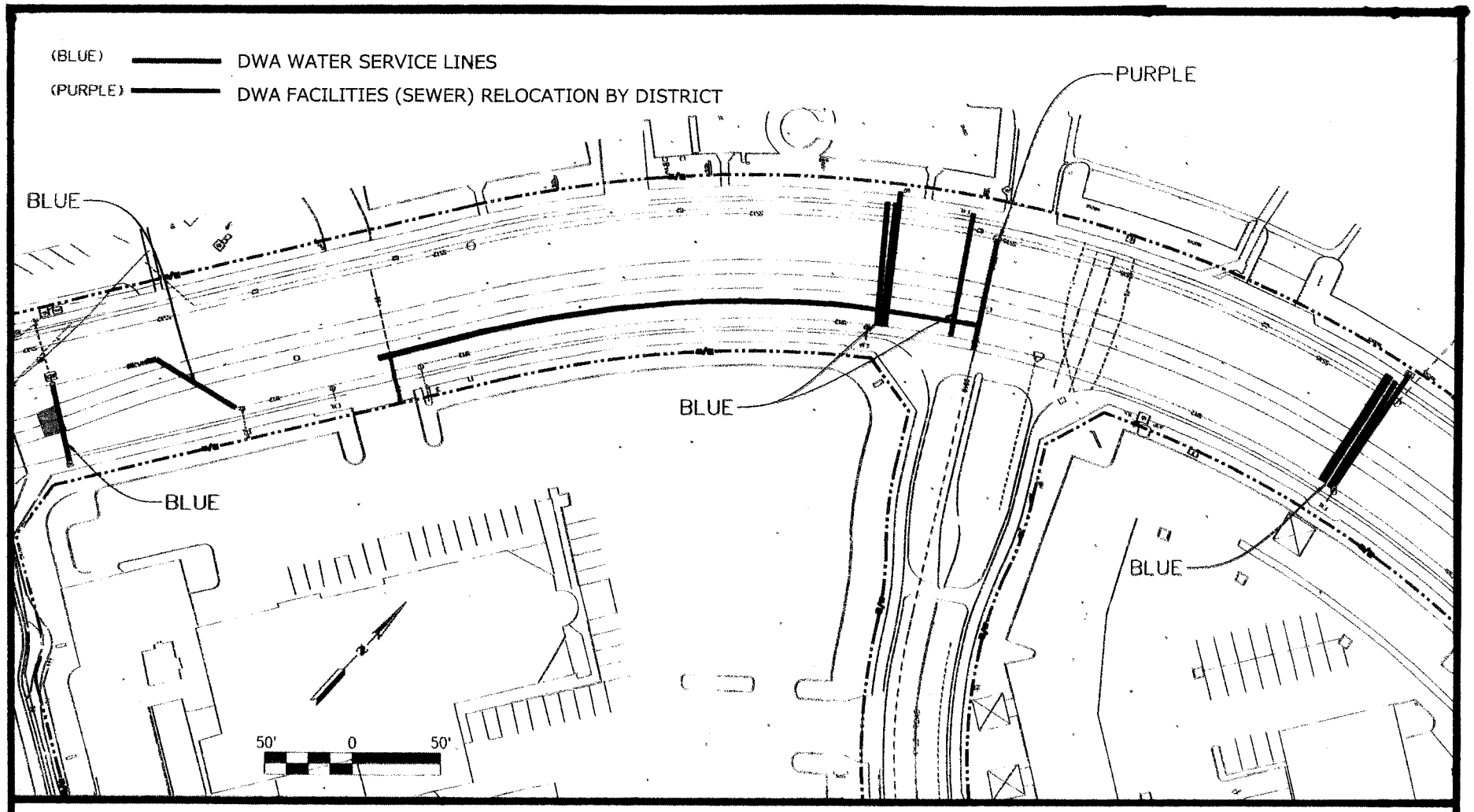
(SEAL)

Cooperative Agreement: DWA/RCFC&WCD
Palm Springs MDP Line 43 and Lateral 43A
Project No. 6-0-00163
12/4/13
TT:AMR:blj



COOPERATIVE AGREEMENT
PALM SPRINGS MDP LINE 43 AND LAT. 43A
PROJECT # 6-0-00163

EXHIBIT A



COOPERATIVE AGREEMENT
PALM SPRINGS MDP LINE 43 AND LAT. 43A
PROJECT # 6-0-00163

EXHIBIT B