

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



ITEM  
11.5  
(ID # 4334)

**MEETING DATE:**  
Tuesday, May 23, 2017

**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT - Approval of the Funding Agreement for Support for the County of Riverside's Participation in the Lake Elsinore Aeration and Mixing System (LEAMS); 3 Years; 1st/3rd/5th Districts; [\$500,000 total]; District Funds 100%

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Funding Agreement between the District and the County of Riverside ("County"); and
2. Authorize the Chairman to execute the Agreement on behalf of the District.

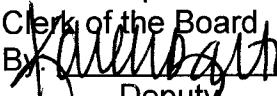
**ACTION:**

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None  
Date: May 23, 2017  
xc: Flood, EO

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

(Companion Item 3.13)

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OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 100,000	\$ 100,000	500,000	N/A
<b>NET COUNTY COST</b>	\$ 100,000	\$ 100,000	500,000	N/A
<b>SOURCE OF FUNDS:</b> 25190 947560 527240 NPDES Santa Ana Benefit Assessment – NPDES Contributions			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 16/17-20/21	

**CEO RECOMMENDATION:** APPROVE

**BACKGROUND:**

**Summary**

This Agreement is necessary for the District to contribute funds to support the County's participation in the Lake Elsinore Aeration/Mixing System (LEAMS). LEAMS is one of the program elements for in-lake remediation activities specified in the Comprehensive Nutrient Reduction Plan (CNRP) for Canyon Lake and Lake Elsinore. Implementation of the CNRP is designed to achieve compliance with the urban waste load allocations for the Nutrient TMDL approved in 2005 by various state and federal agencies.

The intent of LEAMS is to distribute dissolved oxygen throughout the water column to keep it above the critical levels needed for aquatic life. Its physical components consist of one system that moves water to improve lake circulation and another system that pumps air into twelve perforated pipelines that run along the bottom of the lake. The bubble diffuser helps lift oxygen-deficient bottom waters to the surface where they can be re-saturated through direct contact with the atmosphere.

The County currently participates in LEAMS through an agreement with the City of Lake Elsinore and Elsinore Valley Municipal Water District that is in effect until a pollutant credit program is made part of the Nutrient Reduction Plan. This funding agreement is for a three-year term with two optional one-year extensions.

County Counsel has approved this Agreement as to legal form.

**Impact on Residents and Businesses**

The operation of LEAMS is ongoing, so there is no increased cost to residents and businesses engendered by this agreement. However, LEAMS operational costs will continue to escalate due to normal inflation.

**SUPPLEMENTAL:**

**Additional Fiscal Information**



Costs incurred under this Agreement will be funded by the District's annual NPDES Benefit Assessments levied in the Santa Ana Benefit Assessment Area. Sufficient funding is available

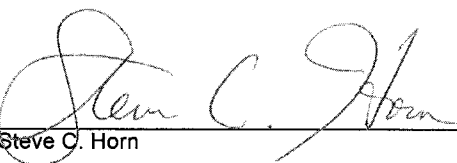
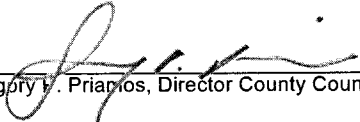
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in the District's budget for FY 2016-17 and will be included in the proposed budget(s) for FYs 2017-18, 2018-19, 2019-20 and 2020-21 as appropriate.

**ATTACHMENT**

1. Funding Agreement

   
Jeanine Rey 5/10/2017 Aaron Gettis 5/10/2017

   
Steve C. Horn 5/15/2017 Gregory V. Priamos, Director County Counsel 5/10/2017

FUNDING AGREEMENT

Support for the County of Riverside's participation in the Lake Elsinore  
Aeration and Mixing System (LEAMS) FY 2016/2017 – FY 2018/2019

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

RECITALS

A. In 1998, the Santa Ana Regional Water Quality Control Board designated  
Lake Elsinore and Canyon Lake in the Lake Elsinore and San Jacinto Watersheds as "impaired  
waterbodies" pursuant to Section 303 of the Federal Clean Water Act due to high levels of  
phosphorus and nitrogen in both lakes and low dissolved oxygen in Lake Elsinore; and

B. The Santa Ana Region National Pollutant Discharge Elimination System  
("NPDES") Municipal Separate Storm Sewer System Permit ("MS4 PERMIT") for Riverside  
County requires DISTRICT, COUNTY and the Cities of Beaumont, Canyon Lake, Hemet, Lake  
Elsinore, Menifee, Moreno Valley, Murrieta, Perris, Riverside, San Jacinto and Wildomar  
(known collectively as "MS4 PERMITTEES") to take actions to reduce their contributions to the  
impairments of Canyon Lake and Lake Elsinore; and

C. In 2006, COUNTY executed the Agreement for the Operation and  
Maintenance of the Lake Elsinore Phase II Aeration System ("LEAMS AGREEMENT") with  
Elsinore Valley Municipal Water District and the City of Lake Elsinore, in which it agreed to  
contribute its pro rata share of the cost of constructing, managing, operating, monitoring,  
maintaining and repairing the LEAMS; and

D. A mathematical model was developed that apportions the contribution of  
each MS4 PERMITTEE (including COUNTY) to Lake Elsinore's nutrient load, and sets each  
MS4 PERMITTEES urban waste load allocation; and

1           E.     A Comprehensive Nutrient Reduction Plan was completed in 2013 to  
2 achieve compliance with the urban waste load allocation requirements in the MS4 PERMIT, and  
3 the existing LEAMS was recognized as an in-lake treatment program that mitigates releases of  
4 phosphorous and nitrogen from lake sediment; and

5           F.     Operation of the LEAMS system generates credits that any MS4  
6 PERMITTEE can obtain through a license agreement to offset its nutrient contribution and meet  
7 its Comprehensive Nutrient Reduction Plan requirements; and

8           G.     As credits are licensed by MS4 PERMITTEES the partners to the LEAMS  
9 AGREEMENT have executed a further agreement to share the proceeds amongst themselves;  
10 and

11           H.     DISTRICT serves as the Principal NPDES MS4 PERMITTEE for the  
12 Santa Ana Region of Riverside County; and

13           I.     DISTRICT, in accordance with its responsibilities as the Principal NPDES  
14 MS4 PERMITTEE, desires to support COUNTY'S continued contribution to the LEAMS  
15 program to improve water quality in Lake Elsinore by contributing up to one hundred thousand  
16 dollars (\$100,000) per Fiscal Year (from July 1 to June 30) for Fiscal Year 2016/2017 through  
17 Fiscal Year 2018/2019, with two optional one-year extensions subject to Board Approval, with  
18 a maximum cap of five hundred thousand dollars (\$500,000) in total for the entire term, including  
19 the two optional one-year extensions, of this Funding Agreement; and

20           J.     DISTRICT and COUNTY desire to enter into this Funding Agreement to  
21 set forth the terms and conditions under which DISTRICT will contribute funding towards  
22 LEAMS to improve water quality in Lake Elsinore.

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

SECTION I

COUNTY shall:

1. Prepare annual invoice(s) in duplicate and submit to DISTRICT (Attention: Accounts Payable with duplicate copy to the Chief of Watershed Protection Division) no later than April 30<sup>th</sup> of each Fiscal Year. The invoice amount shall not exceed \$100,000 for each Fiscal Year that this Agreement remains in effect. All invoices shall contain, at a minimum, the following information: a reference to the Board Action Motion Order and name of this Funding Agreement (*Funding Agreement for the Support for the County of Riverside's participation in the Lake Elsinore Aeration and Mixing System*), current Fiscal Year, invoice number and date, invoice amount, remittance address, a document that establishes COUNTY'S pro rata share for the current Fiscal Year per LEAMS AGREEMENT and the proceeds from LEAMS credits license agreements during the current Fiscal Year ("CREDIT PROCEEDS"), and documentation of COUNTY'S actual nutrient contribution above its waste load allocation to Lake Elsinore translated into LEAMS credits as appropriate ("NUTRIENT CONTRIBUTION"). The amount of the invoice shall be equal to COUNTY'S Pro Rata Share less its share of the CREDIT PROCEEDS and less its NUTRIENT CONTRIBUTION (Invoice = Pro Rata Share – CREDIT PROCEEDS – NUTRIENT CONTRIBUTION).

2. Retain employee and expense records according to customary accounting methods for a period of five (5) years following the execution of this Funding Agreement and such records shall, upon request, be made available for inspection by DISTRICT to verify COUNTY invoices.

SECTION II

DISTRICT shall:

1. Pay COUNTY within forty-five (45) days after receipt of an appropriate invoice as set forth in Section I.1. DISTRICT'S financial contribution to COUNTY shall not

1 exceed \$100,000 per Fiscal Year. DISTRICT'S total financial contribution shall not exceed a  
2 total sum of \$500,000 over the entire term, including extensions, of this Funding Agreement.

3 SECTION III

4 It is further mutually agreed:

5 1. COUNTY shall indemnify, defend, save and hold harmless DISTRICT  
6 (including their respective officers, districts, special districts and departments, their respective  
7 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents,  
8 representatives, independent contractors and subcontractors) from any liabilities, claim, damage,  
9 proceeding or action, present or future, based upon, arising out of or in any way relating to  
10 COUNTY'S (including its officers, employees, agents, representatives, contractors and  
11 subcontractors) actual or alleged acts or omissions related to this Funding Agreement,  
12 performance under this Funding Agreement or failure to comply with the requirements of this  
13 Funding Agreement, including but not limited to (i) property damage, (ii) bodily injury or death,  
14 (iii) payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever. This  
15 section shall survive any termination of this Funding Agreement.

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

1                   3. This Agreement is made and entered into for the sole protection and benefit  
2 of the COUNTY and DISTRICT hereto. No other person or entity shall have any right or action  
3 based upon the provisions of this Funding Agreement.

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

9                   5. The obligation(s) of DISTRICT under this Funding Agreement are limited  
10 by and contingent upon the availability of DISTRICT funds. In the event that such funds are not  
11 forthcoming for any reason, DISTRICT shall immediately notify COUNTY in writing. Upon  
12 COUNTY'S receipt of DISTRICT'S notification, this Funding Agreement shall remain in force  
13 and effect through the remainder of that Fiscal Year, but shall be deemed terminated and have  
14 no further force or effect thereafter.

15                   6. Any notices sent or required to be sent to either the COUNTY or DISTRICT  
16 shall be mailed to the following addresses:

17 RIVERSIDE COUNTY FLOOD CONTROL	COUNTY OF RIVERSIDE
18 AND WATER CONSERVATION DISTRICT	EXECUTIVE OFFICE
19 1995 Market Street	4080 Lemon Street, 4 <sup>th</sup> Floor
20 Riverside, CA 92501	Riverside, CA 92501
21 Attn: Watershed Protection Division	Attn: Steve Horn

22  
23                   7. This Funding Agreement is to be construed in accordance with the laws of  
24 the State of California.

25                   8. If any provision of this Funding Agreement is held by a court of competent  
26 jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared  
27 severable and shall be given full force and effect to the extent possible.



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

6           10. Neither this Funding Agreement nor any part thereof shall be assigned by  
7 COUNTY without the prior written consent of DISTRICT.

8           11. Any waiver by DISTRICT or COUNTY of any breach by the other of any  
9 one or more of the terms of this Funding Agreement shall not be construed to be a waiver of any  
10 subsequent or other breach of the same or of any other term hereof. Failure on the part of  
11 DISTRICT or COUNTY to require from the other exact, full and complete compliance with any  
12 terms of the Funding Agreement shall not be construed as in any manner changing the terms  
13 hereof, or estopping DISTRICT or COUNTY from enforcement hereof.

14           12. This Funding Agreement is intended by the COUNTY and DISTRICT as  
15 their final expression with respect to the matters herein, and is a complete and exclusive statement  
16 of the terms and conditions thereof. This Funding Agreement may be changed or modified only  
17 upon the written consent of both the COUNTY and DISTRICT.  
18

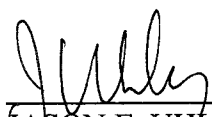
IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement on

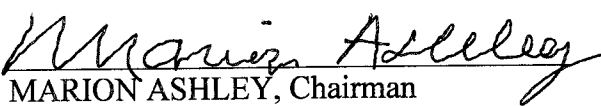
MAY 23 2017

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

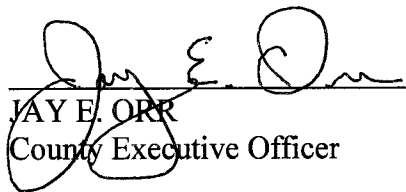
**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

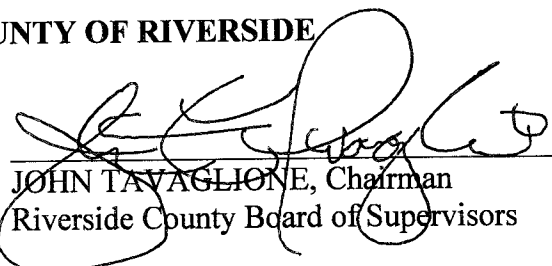
By   
\_\_\_\_\_  
JASON E. UHLEY  
General Manager-Chief Engineer

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

RECOMMENDED FOR APPROVAL:

**COUNTY OF RIVERSIDE**

By   
\_\_\_\_\_  
JAY E. ORR  
County Executive Officer


By   
\_\_\_\_\_  
JOHN TAVAGLIONE, Chairman  
Riverside County Board of Supervisors

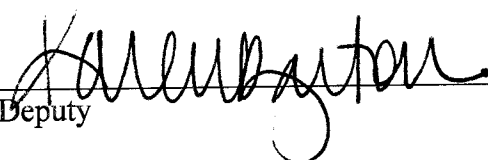
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By   
\_\_\_\_\_  
AARON C. GETTIS  
Deputy County Counsel

By   
\_\_\_\_\_  
Deputy

Dated MAY 23 2017

(SEAL)

Funding Agreement – LEAMS  
SEM:cw  
05/23/17