

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



ITEM  
11.3  
(ID # 8237)

**MEETING DATE:**

Tuesday, February 26, 2019

**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approve Memorandum of Understanding for Mitigation for the North Norco Channel Line NB, Stage 3 Project, Project No. 2-0-00145-03, CEQA Exempt, District 1. [\$150,000 - District Funds 100%]

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

1. Finds that the proposed Memorandum of Understanding ("MOU") is exempt from the California Environmental Quality Act ("CEQA") as it has been determined to qualify as a "Class 25 Categorical Exemption" pursuant to Article 19 of the State CEQA Guidelines: Section 15330(b) and the General Rule Section 15061(b)(3), as previously approved by the Board of Supervisors on July 31, 2018, therefore, no further analysis under CEQA is required; and
2. Approve the MOU by and between the Riverside County Flood Control and Water Conservation District ("District") and the GS Strategies, Inc. for the provision of funding of mitigation cleanup activities on property located in the Temescal Wash floodplain; and
3. Authorize the General Manager-Chief Engineer or his designee to execute the MOU on behalf of the District; and
4. Direct the Clerk of the Board to return two (2) fully executed originals to the District.

**ACTION:Policy**

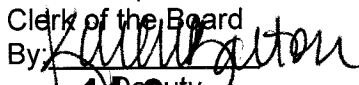
  
Bob Cullen, Assistant Chief Engineer 2/13/2019

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: February 26, 2019  
Page <sup>XC</sup> 1 of 3 Flood

Kecia Harper  
Clerk of the Board  
By:   
Deputy  
**11.3**

ID# 8237

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<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>	\$150,000	\$0	\$150,000	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS:</b> 52 3220-25120-947420 License & Permits – Zone 2 Construction/Maintenance/Misc			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 18/19	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The North Norco Channel Line NB Stage 3 project is required to mitigate for impacts to Waters of the State; the approved mitigation is the debris removal of the Pinto property ("Property") which is located in the Temescal Wash floodplain.

The Temescal Wash floodplain and floodway is a natural resource of value to the District and the County of Riverside, and has not been significantly encroached upon by development to date. The District has developed a floodplain buyout program for Temescal Wash to protect adjacent residents and properties from the unintended consequences of development encroachment upon the flood prone lands, to preserve and restore the natural floodplain functions of the wash, to protect and restore the environment, to utilize the lands for future environmental mitigation of other District projects and to preclude the need for future structural flood improvements that would ultimately exceed the cost of purchasing and preserving the floodplain. The District desires to pursue opportunities to clean up properties in the Temescal Wash area and receive mitigation credit for remediation and restoration of properties situated adjacent to and including floodplains and floodways.

GS Strategies, Inc., court appointed Receiver, is willing to cooperate and has the authority to undertake the restoration of the Property by removing the gypsum piles, containerized petroleum products, abandoned and dilapidated structures, capping the onsite well, and removing the majority of loose debris and tires. The coordinated efforts of the District, the County of Riverside and the Receiver enable the abatement of an environmental hazard and nuisance to the community to protect and restore flood prone lands within the Temescal Wash floodplain.

This MOU allows the District to provide funding to the court appointed Receiver, GS Strategies, Inc., that will be allocated to offset the cost of the previously approved Pinto project and to enable the mitigation cleanup activities to protect the existing bank of the Temescal Creek in its natural state for water quality and habitat mitigation and to alleviate the public nuisance and community degradation caused by this blighted Property. Therefore, the subject MOU is by and between the District and the Receiver and satisfies the requisite activities for the District to receive mitigation credit for the North Norco Channel Line NB, Stage 3 project. Therefore, upon

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Board approval of the MOU, funds in the amount of \$150,000 will be paid by the District to Receiver to be allocated toward the Pinto project, which was previously approved by the Board on July 31, 2018.

The project is exempt from CEQA consistent with a "Class 30" as it involves cleanup actions that will prevent, minimize, mitigate and eliminate hazardous waste/substances present onsite by cleanup activities and disposal of hazardous wastes at an appropriate facility and to minimize/prevent future hazardous wastes from being dumped on the property. The project is also consistent with CEQA Guidelines Section 15061(b)(3), the "General Rule" or "Common Sense Exemption", because it can be seen with certainty that there is no possibility that the MOU will have a significant effect on the environment. A Notice of Exemption was previously approved by the Board and filed with the County Clerk. No further environmental analysis is warranted.

County Counsel has approved the MOU as to legal form.

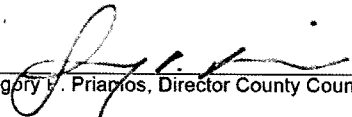
**Prev. Agn. Ref.: MT #7652, 11.10 of 07/31/18**

**Impact on Residents and Businesses**

Residents will be positively impacted by the project because it will relieve an existing public nuisance, disallow subsequent dumping, improve water quality and generally improve area conditions.

**ATTACHMENTS:**

1. Memorandum of Understanding

  
\_\_\_\_\_  
Gregory V. Priapios, Director County Counsel      2/13/2019

MEMORANDUM OF UNDERSTANDING  
FOR  
MITIGATION FOR CLEAN UP ACTIVITIES ON REAL PROPERTY

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of this 26th day of February 2019, (“Effective Date”) by and between the Riverside County Flood Control and Water Conservation District, a body politic (“District”) and GS Strategies, Inc. a California corporation, (“Receiver”), solely in its capacity as the court-appointed receiver (“Receiver”) (Riverside County Superior Court Case No. RIC1703288) (“Action”) for the property located at 14509 Lake Street, Lake Elsinore, identified with APN 394-040-006 (hereinafter referenced as the “Property”). The District and the Receiver are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

**WHEREAS**, the Temescal Wash floodplain and floodway is a natural resource of value to the District and the County of Riverside, and has not been significantly encroached upon by development to date; and

**WHEREAS**, the District has developed a floodplain buyout program for Temescal Wash to protect adjacent residents and properties from the unintended consequences of development encroachment upon the flood prone lands, to preserve and restore the natural floodplain functions of the wash, to protect and restore the environment, to utilize the lands for future environmental mitigation of other District projects and to preclude the need for future structural flood improvements that would ultimately exceed the cost of purchasing and preserving the floodplain; and

**WHEREAS**, the District desires to pursue opportunities to clean up properties in the Temescal Wash area and receive mitigation credit for remediation and restoration of properties situated adjacent to and include floodplains and floodways; and

**WHEREAS**, the Receiver is willing to cooperate in the restoration of the Property by removing the gypsum piles, containerized petroleum products, abandoned and dilapidated structures, capping the onsite well, removing the majority of loose debris and tires; and

**WHEREAS**, the Receiver, consistent with those rights and powers granted to it by the Court in the Action and otherwise given to it by law, has the ability and authority to enter into agreements regarding the Property for the betterment of the conditions of the Property and the public interest of mitigating and clean up properties within the areas of Riverside County; and

**WHEREAS**, through the coordinated efforts of the District, the County of Riverside and the Receiver, they will be able to abate an environmental hazard and nuisance to the community, acquire, protect and restore flood prone lands within the

Temescal Wash floodplain, and manage the Property to prevent it from reverting to illegal uses; and

**WHEREAS**, this MOU will serve to fund the Mitigation (defined below) necessary to protect the existing bank of the Temescal Creek in its natural state for water quality and habitat mitigation and to alleviate the public nuisance and community degradation caused by this blighted property;

**NOW, THEREFORE**, the Parties hereto agree as follows:

AGREEMENT

I. Incorporation of Recitals. The Recitals set forth above are incorporated herein and made an operative part of this MOU.

II. Purpose and Background. This MOU satisfies specific mitigation purposes by providing for Property clean-up activities that will prevent, minimize, mitigate and eliminate hazardous waste/substances present on the Property by disposal of such at an appropriate facility. The Property has been the subject of several code enforcement violations as a result of an illegal dumping operation that the Property owner had allowed to occur onsite for many years. The Property contained a large volume of trash, primarily consisting of construction waste, containerized petroleum products and other miscellaneous household trash. The Property is located within a floodplain whereupon most of the illegal dumping had occurred. Due to the numerous code enforcement violations and fines that have accrued over the years, the Property was placed into court-ordered receivership. Due to the Property being located within a floodplain, the District has an inherent interest in the remediation and clean-up of the Property in an effort to restrict any additional dumping and/or development from occurring within the floodplain. For purposes of this MOU and the mitigation credit, the term "Mitigation" means the clean-up of the Property, including the removal of bulk waste, the remediation or disposal of contaminated soils, securing the Property to prevent future illegal dumping, and capping a well that exists on the Property.

III. Terms and Conditions.

A. Funding. This MOU memorializes the terms conditions for the District's provision of funds for the Mitigation of the Property so as to provide mitigation credit in favor of the District. The District shall pay ONE HUNDRED FIFTY THOUSAND AND NO/100'S DOLLARS (\$150,000.00) ("Payment") to Receiver within twenty (20) days following approval and full execution of this MOU by both Parties. The Payment will be credited in favor of the District against the purchase price and deducted from any amount due by the District, as the Buyer, pursuant to that certain Agreement for Purchase and Sale of Real Property dated July 31, 2018 ("PSA") between the District and Receiver for the Property. Receiver agrees to pay the balance due of clean-up up costs plus any late fees that may be assessed, with the right to reimbursement by the District under the PSA.

B. Clean-Up of Property. The Receiver previously contracted with a third party for the Mitigation work and that work has been completed. The District has inspected the Mitigation work and found it to be acceptable.

C. Mitigation Credit. In consideration of the Payment and completion of the Mitigation, the District shall receive mitigation credit for the North Norco Channel Line NB Stage 3 ("Project"). The Parties explicitly agree that their intent in entering into this MOU is to provide that any Mitigation work conducted on the Property by the Receiver under this MOU or any other agreement, or any other mitigation related to the Project, shall entitle the District to receive credit for mitigation in the Temescal Wash area to satisfy any mitigation requirements of state or federal regulatory agencies that are required.

D. Term. The term of this MOU shall commence upon the Effective Date and will terminate upon the satisfaction of the entirety of the District's and the Receiver's obligations under this MOU.

E. Indemnification. The Parties acknowledge that the District is not a party to any contracts or arrangements made by Receiver for the Mitigation work. The District is merely providing funding for such activities to receive certain mitigation credits for remediation and restoration activities undertaken on the Property for the reasons described in this MOU. The District shall not be liable or responsible for the Mitigation work or for any claims that may arise out of the Mitigation work. Subject to and constrained by the Receiver's immunities and limitations on liability arising under the law or set forth in the Order Appointing Receiver in the Action, the Receiver, solely on behalf of the receivership estate and not on its own behalf, agrees to indemnify, defend and hold harmless District (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to the Receiver's (including its officers, employees, and agents) actual or alleged acts or omissions related to this MOU, performance under this MOU, or failure to comply with the requirements of this MOU, including but not limited to: (a) property damage; (b) bodily injury or death; or (c) any other element of any kind or nature whatsoever. However, the foregoing defense and indemnity obligation does not apply to any liability, claim, damage, proceeding or action to the extent attributable to the sole or contributory negligence or willful misconduct of the District or any third party.

F. Insurance. The Receiver shall procure or caused to be procured the necessary insurance for any activities undertaken on the Property.

#### IV. Miscellaneous Provisions.

A. Notices. As used in this MOU, notice includes but is not limited to the communications of any notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. All notices must be in writing. All such notices from one Party to another may be delivered in person, sent via reputable overnight courier, or

served by first-class mail, certified or registered, postage prepaid, to each and all of the addresses set forth below.

To the Receiver at:

GS Strategies, Inc.  
Attn: Kevin K. Randolph  
550 E. Hospitality Lane, Suite 300  
San Bernardino, CA 92408  
Phone: (909) 723-1703

To the District at:

Riverside County Flood Control  
and Water Conservation District  
1995 Market Street  
Riverside, CA 92501  
Attn: Jason Uhley  
Phone: (951) 955-1200

Any Party may change the address to which such notices or other communications may be sent by giving the other Parties written notice of such change.

B. Authority to Enter MOU. Each Party to this MOU warrants to the other that it is duly organized and existing and that it and the respective signatories have full right and authority to enter into and consummate this MOU and all related documents and bind the parties thereto.

C. Entire MOU. This MOU is the result of negotiations between the Parties. This MOU is intended by the Parties as a full and final expression of their understanding with respect to the matters contained in this MOU and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

D. Amendment; Modification. No supplement, modification, or amendment of this MOU shall be binding unless executed in writing and signed by both Parties.

E. Controlling Law. The interpretation and performance of this MOU shall be governed by the laws of the State of California. Venue shall be in Riverside County.

F. Attorneys' Fees. The Parties shall bear their own attorney's fees and costs.

G. No Waiver. Failure of the Parties to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

I. Severability. It is intended that each paragraph of this MOU shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this MOU is unaffected.

J. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this MOU on the date as indicated beside each Party's signature.

FORM APPROVED COUNTY COUNSEL  
BY: [Signature]  
SYNTHIA M. GUNZEL  
DATE: 2-13-19

Riverside County Flood Control and Water Conservation District

FEB 26 2019  
Date

[Signature: K. Spiegel]  
Chairman, Board of Supervisors  
KAREN SPIEGEL

ATTEST:  
KECIA B. HARPER, Clerk  
[Signature]  
DEPUTY

GS Strategies, Inc.

2/13/2019  
Date

[Signature: Keyin K. Randolph]

Keyin K. Randolph, in his capacity as the designated representative of the court-appointed receiver in Riverside County Superior Court Case No. RIC1703288 entitled County of Riverside v. Pinto, et al.