



City Council Staff Report

Date: May 21, 2014

CONSENT CALENDAR

Subject: AGREEMENT WITH THE CITY OF CATHEDRAL CITY FOR FUNDING OF THE CLEANUP PHASE OF THE EAGLE CANYON DAM BEING COMPLETED BY THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (RCFC).

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Approval of this agreement between the City of Palm Springs and Cathedral City will provide for the City of Palm Springs to pay its share of the Eagle Canyon Dam cleanup to Cathedral City.

RECOMMENDATION:

1. Approve Agreement No. _____, an agreement with the City of Cathedral City (CCC) for payment of City of Palm Springs share of Eagle Canyon Dam cleanup.
2. Authorize City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Eagle Canyon Dam project is a top priority project for the RCFC and is identified on the Palm Springs Master Drainage Plan. The site of the dam and related facilities had been historically used for illegal dumping. The construction of the dam and related facilities will remove many residential areas from the flood zone, thereby eliminating the need for many properties to purchase flood insurance.

In 2009, the City approved a Memorandum of Understanding (MOU) with The Agua Caliente Band of Cahuilla Indians, CCC and RCFC which provided that Palm Springs is responsible to pay ½ the cost of cleanup of debris and hazardous materials from the Eagle Canyon Dam site. CCC has the same payment responsibility. The RCFC has now completed all cleanup work at a total cost of \$1,193,556.50 and CCC has remitted full payment to RCFC. Pursuant to the referenced MOU, this agreement provides for Palm Springs to reimburse CCC ½ of the total cost, or \$596,778.25. CCC shall provide

ITEM NO. 7.0.

documentation of the RCFC invoice and proof of their payment prior to Palm Springs reimbursement.

FISCAL IMPACT:

Sufficient funds are available in Drainage account No. 135-4374-55007 and 135-4375-55000.

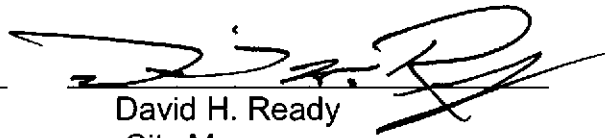
SUBMITTED:

Prepared by:

Approved by:



David J. Barakian
Director of Public Works/City Engineer



David H. Ready
City Manager

Attachment:

1. MOU
2. Agreement

**MEMORANDUM OF UNDERSTANDING
EAGLE CANYON DAM**

This Memorandum of Understanding ("MOU") is entered into by the Riverside County Flood Control and Water Conservation District ("RCFCWCD"), the City of Cathedral City ("Cathedral City"), the City of Palm Springs ("Palm Springs"), and the Agua Caliente Band of Cahuilla Indians ("ACBCI"), on March 25, 2009.

RECITALS

WHEREAS, the Parties recognize that the topography and natural water flow in or near their respective jurisdictions could result in the loss of life and/or property from flooding (the "Condition"); and

WHEREAS, the Parties have identified a System of flood control (the "System") which would greatly alleviate the Condition, thereby reducing the risk of loss of property and lives opening up opportunities for economic development; and

WHEREAS, the System is made up of improvements in RCFCWCD Zone 6 Eagle Canyon area, including construction of a dam, (the "Dam"), Lines 41 and 43, and improvements around Line 41, generally shown on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Parties desire to work together to implement the System for their mutual benefit.

NOW, THEREFORE, the Parties, in recognition of the benefits to each, agree to the following:

TERMS

Section 1. Incorporation of Recitals.

The above recitals are incorporated herein by reference.

Section 2. Effect of MOU.

This MOU specifies the Parties' respective roles in implementing the System. The Parties recognize that the cost of the System will be substantial and that all sources of funding are not presently known. This MOU is an expression of the Parties' intent to pursue locating and securing funding and in implementing the System. It is not a binding contract to perform the various tasks assigned to each. Parties understand and agree that subsequent detailed agreements will be needed to formally obligate Parties.

Section 3. RCFCWCD Obligations

RCFCWCD will be responsible for the following:

- a. It will assume responsibility for and act as lead agency in all environmental

assessments for the Dam under both the National Environmental Policy Act and the California Environmental Quality Act.

- b. It will undertake any tests or studies required for design and construction of the Dam.
- c. It will acquire the necessary land for the Dam.
- d. It will be responsible for designing the Dam and obtaining all necessary permits and approvals from affected jurisdictions, including, but not limited to, the State Department of Water Resources, Division of Safety of Dams.
- e. It will conduct the public bidding process for all improvements, which are a part of the Dam, and oversee construction and necessary testing.
- f. It will pay for the Dam's design, construction, testing and inspection.
- g. Upon completion, it will operate and maintain the Dam and Lines 41 and 43.
- h. It will use District lobbying services cooperatively to seek funding and will pursue other sources to help pay for the System.

Section 4. Cathedral City Obligations.

Cathedral City will be responsible for the following:

- a. It will pay up to one-half the cost of surface and underground cleanup of debris and hazardous materials in the vicinity of Eagle Canyon Dam (the "Cleanup"), shown on Exhibit "B" attached hereto and made a part hereof. The obligation listed herein to pay up to one half the cost of the Cleanup shall only occur upon completion of all efforts to obtain State and Federal grants to offset Cleanup costs, and only after required funds for up to one-half the cost of the Cleanup (less any State and Federal grants) are budgeted and available for use in accordance with this MOU.
- b. It will advance funds to RCFCWCD Zone 6 for the design of Line 43 and its related improvements, as shown on Exhibit "A".
- c. It will use Cathedral City lobbying services cooperatively to seek funding and will pursue other sources to help pay for the System.

Section 5. Palm Springs Obligations.

Palm Springs will be responsible for the following:

- a. It will pay up to one-half the cost of surface and underground cleanup of debris and hazardous materials in the vicinity of Eagle Canyon Dam (the "Cleanup"), shown on Exhibit "B". The obligation listed herein to pay up to one-half the cost

of the Cleanup shall only occur upon completion of all efforts to obtain State and Federal grants to offset Cleanup costs, and only after required funds for up to one-half the cost of the Cleanup (less any State and Federal grants) are budgeted and available for use in accordance with this MOU.

- b. It has pledged \$1 million to RCFCWCD Zone 6 to help pay for the extension of Line 41 and its related improvements, as shown on Exhibit "A".
- c. It will use Palm Springs City lobbying services cooperatively to seek funding and will pursue other sources to help pay for the System.

Section 6. ACBCI Obligations.

ACBCI will be responsible for the following:

- a. It will pay, facilitate funding through the Bureau of Indian Affairs and/or provide in-kind project management services for the surface and underground cleanup of debris and hazardous materials in the vicinity of Eagle Canyon Dam (the "Cleanup") shown on Exhibit "B."
- b. It will assist the Parties in processing of grants of easements, rights of way or land acquisitions, including costs for appraisals, for Trust lands affected by the System.
- c. It will use ACBCI lobbying services cooperatively to seek funding and will pursue other sources to help pay for the System.

Section 7. Financial Obligations and Grants.

- a. Unless otherwise indicated, it is the intent of the Parties that each will be responsible for the cost of its obligations as set forth above.
- b. Each Party will actively seek grants individually and cooperatively from all available sources to partially or wholly offset the costs of its obligations.
- c. Each Party will actively engage with its State and Federal legislators individually and cooperatively to gain support of the System.

Section 8. General Provisions.

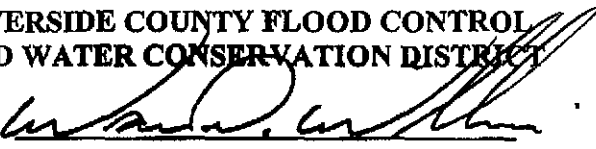
- a. The captions used in this MOU are solely for convenience and are not deemed a part of the text.
- b. The Parties agree to cooperate with each other so as to facilitate the performance of any Party's obligations under this MOU.
- c. In performing its obligations, a Party shall utilize such procedures and practices as it deems appropriate, subject only to the general obligation to act reasonably,

and may engage such consultants or experts as it deems necessary to meet the obligations.

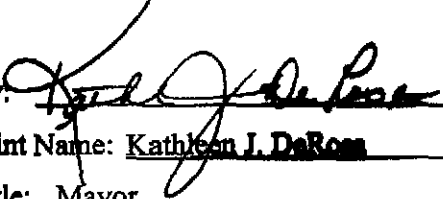
- d. All attached exhibits are incorporated by reference.
- e. This MOU shall have a five-year term and be automatically renewed each year thereafter unless one of the Parties gives notice of its intent, not less than thirty (30) days in advance of an anniversary date, not to renew at said anniversary date, in which case this MOU shall thereafter have no force or effect, unless the surviving Parties agree in writing to continue the MOU without the withdrawing Party.
- f. Each Party agrees to maintain its standard liability and casualty insurance during the performance of its obligations under this MOU. Each Party hereby indemnifies the other Parties from any loss or damage of any kind, which arises from the first Party's negligence or omission to carry out any obligations or actions in connection with this MOU or the System.
- g. This MOU may be executed in counterparts which taken together constitute a complete agreement. The Parties agree that signatures received by facsimile transmission shall be deemed to be original signatures for all purposes.
- h. The laws of the State of California shall govern the interpretation and enforcement of this MOU.

IN WITNESS WHEREOF, an authorized representative of each Party has duly executed this MOU on the date appearing by his or her name.

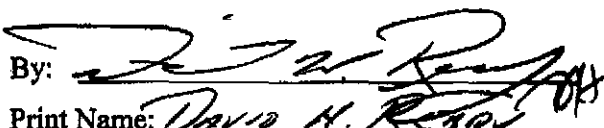
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: 
 Print Name: Warren D. Williams
 Title: General Manager-Chief Engineer
 Date: 3/4/09

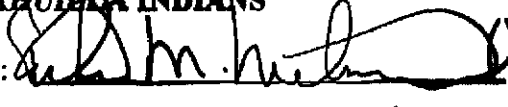
CITY OF CATHEDRAL CITY

By: 
 Print Name: Kathleen J. DeRosa
 Title: Mayor
 Date: _____

CITY OF PALM SPRINGS

By: 
 Print Name: DAVID H. READY
 Title: David H. Ready, City Manager
 Date: APPROVED BY CITY COUNCIL
03/25/09 ZK A5808

AGUA CALIENTE BAND OF CALAPUEBLA INDIANS

By: 
 Print Name: Richard M. Milanovich
 Title: Chairman, Tribal Council
 Date: 3-13-09

Attest:


 James Thompson, City Clerk

**AGREEMENT
BY AND BETWEEN
CITY OF CATHEDRAL CITY
AND
CITY OF PALM SPRINGS
FOR**

**FUNDING THE ENVIRONMENTAL CLEANUP PHASE OF THE EAGLE CANYON
DAM CONSTRUCTION BEING COMPLETED BY THE RIVERSIDE COUNTY FLOOD
CONTROL AND WATER CONSERVATION DISTRICT**

THIS AGREEMENT ("Agreement") is entered into this 13th day of November, 2013, ("Effective Date"), by and between the City of Cathedral City, a municipal corporation located in the State of California ("CCC") and the City of Palm Springs, a charter city located in the State of California ("CPS"), for the funding of the environmental cleanup phase of the Eagle Canyon Dam Construction ("Project").

RECITALS

WHEREAS, CCC and CPS share a common jurisdictional boundary between the two cities in the Eagle Canyon area; and

WHEREAS, CCC and CPS entered into a Memorandum of Understanding ("MOU"), dated March 25, 2009, with Riverside County Flood Control and Water Conservation District (RCFCWCD) to jointly fund the environmental cleanup of the Eagle Canyon Dam Construction; and

WHEREAS, the term of the MOU was for five years with automatic annual renewals unless a 30-notice is provided by one of the Parties; and

WHEREAS, the commencement and completion of the Environmental Cleanup Phase of the Project has occurred within the five year period; and

WHEREAS, pursuant to the Agreement, CCC and CPS agreed to *"each pay one-half the cost of surface and underground cleanup or debris and hazardous materials in the vicinity of Eagle Canyon Dam"*;

WHEREAS, an Evaluation of Environmental Cleanup Costs prepared by Earth Systems Southwest and identified in Exhibit B of the MOU estimated the cleanup costs to range from \$1.2 million to \$1.5 million;

WHEREAS, the Environmental Cleanup Phase of the Project is now completed and CCC has been billed and remitted payment in full to RCFCWCD, the lead Agency, in the total amount of \$1,193,556.50; and

WHEREAS, CCC has now provided supporting documentation to CPS and is requesting reimbursement for the agreed upon one-half the cost of the Environmental Cleanup in the amount of \$596,778.25; and

WHEREAS, the Riverside Co. Flood Control District has verbally agreed to allow City of Palm Springs to use funds set aside for Master Drainage Plan line 41 to meet its obligation for Eagle Canyon clean up and line 41;

NOW, THEREFORE, in consideration of the mutual covenants, obligations and subject to the conditions contained herein, the parties hereto agree as follows:

Section 1. Incorporation of Recitals.

All of the above Recitals are true and correct and incorporated herein by this reference to the same extent as though set forth in full.

Section 2. Obligations.

- a. CPS agrees to pay to CCC one half the total cost of the Environmental Cleanup Phase of the Eagle Canyon Dam construction project within 30 days of receipt of invoice from CCC including appropriate documentation from RCFCWCD.
- b. CCC shall invoice CPS not more frequently than monthly.
- c. CPS's maximum obligation for its share of the Environmental Cleanup Phase costs shall not exceed \$588,744.50.

Section 3. Notice.

- a. Any notice, demand, or request either party desires, or is required to give to the other party, or to any other person, shall be in writing and shall be served either personally or sent by first class mail, postage pre-paid, to the following addresses:

City of Cathedral City
68-700 Ave. Lalo Guerrero
Cathedral City, CA 92234
Attn: City Manager

City of Palm Springs
P.O. Box 2743
Palm Springs, CA 92263
Attn: City Manager

- b. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed communicated at the time personally delivered or after seventy two (72) hours from the time of depositing in the U.S. mail, if mailed as provided in this section.

Section 4. Integration.

This Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to the subject matter of this Agreement, and contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

Section 5. Interpretation.

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

Section 6. Waiver.

No waiver shall be binding, unless executed in writing by the party making the waiver, and no waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 7. Severability.

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 8. Governing Law.

The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the parties under this Agreement shall be construed pursuant to and in accordance with California law.

Section 9. Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 10. Venue.

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 11. Successors in Interest.

This Agreement is and will be binding upon and will inure to the benefit of the parties and their legal successors and assigns.

Section 12. Amendments.

This Agreement may be supplemented, amended or modified only by the written agreement of the parties. No supplement, amendment or modification will be binding unless it is in writing and signed by both parties.

Section 13. Counterparts.

This Agreement may be executed in counterparts and shall be deemed to be executed on the last date any such counterpart is executed.

Section 14. Authority to Enter Agreement.

Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

Section 15. Captions and Headings.

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

IN WITNESS WHEREOF, this Agreement has been duly executed by the respective parties hereto by their duly authorized officers as of the date hereinabove first written.

"CCC"

"CPS"

CITY OF CATHEDRAL CITY
A California Municipal Corporation

CITY OF PALM SPRINGS
A California Charter City

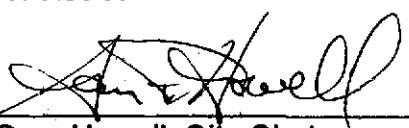


Roderick J. Wood, Interim City Manager

David H. Ready, City Manager

ATTEST:

ATTEST:

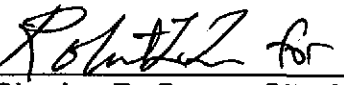


Gary Howell, City Clerk

James Thompson, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Charles R. Green, City Attorney



Douglas C. Holland, City Attorney