

**CITY OF YUCAIPA
AGENDA REPORT**

TO: Honorable Mayor and City Council

FROM: Bill Hemsley, Director of Public Works/City Engineer *BH.*

FOR: City Council Meeting on September 28, 2009

SUBJECT: Cost Share Agreement for the Santa Ana River & Tributaries-Yucaipa Streams Ecosystem Restoration Study

RECOMMENDATION:

That City Council:

1. Approve and authorize the Mayor to execute an agreement with the US Army Corps of Engineers to provide equal funding in the amount of ~~\$363,000~~\$286,000 (including in-kind services) for the Santa Ana River & Tributaries-Yucaipa Streams Study (Yucaipa and Wildwood Creeks); and
2. Authorize the City Manager or his designee to administer the terms of the agreement.

BACKGROUND:

In federal fiscal years 2008 and 2009, as a result of requests made by the City of Yucaipa, Congress appropriated \$293,000 and \$268,000 respectively (\$561,000 total) to conduct the reconnaissance phase for a new study focusing on the Santa Ana River and Tributaries Streams Ecosystem Restoration project. One of the potential areas identified in the reconnaissance study prepared by the Corps of Engineers (Corps) in September of 2008 was the City of Yucaipa streams which include Wilson Creek, Wildwood Creek, Live Oak Creek, Chicken Springs Wash and Dunlap Channel. Council approved the City's Master plans of Drainage Update in October of 2008 which included a "Detention Basin" alternative with ancillary benefits such as groundwater recharge, addressing water quality issues and habitat restoration which appear to coincide with the goals and objectives of the new Corps study.

Both the City and San Bernardino County Flood Control District (District) sent support letters to the Corps for participation in the feasibility study phase with the City agreeing to take the lead as the sponsor. Subsequently staff has had meetings with Corps staff in January and April of 2009 and met with Colonel Tom H. Magness, Corps District Engineer for the Los Angeles office on July 29th, 2009, to discuss strategies to expedite the Project

Management Plan (PMP) and Fiscal Cost Share Agreement (FCSA) to initiate the study. As a result of these meetings, the Corps has completed the PMP and FCSA for the Santa Ana River and Tributaries for a feasibility study focused on ecosystem restoration along portions of the Yucaipa Streams systems. This study would also incorporate analysis of ancillary project benefits including flood control improvements and flood damage reduction which will be vital in ensuring the District's participation in the agreement. The overall goals and objectives of the study is to determine the feasibility of restoring the ecosystems of the creeks and to provide basin and channel improvement solutions to protect downstream properties in such a manner as to maximize habitat preservation/restoration benefits.

FISCAL IMPACT

The new PMP and FCSA are Phase I versions for the Santa Ana River & Tributaries-Yucaipa Streams Ecosystem Study. They cover Feasibility Milestones 1 to 3 for survey and mapping including the recent burn areas, hydrology and hydraulics and plan formulation. Phase II will amend the Phase I PMP and FCSA and cover the remaining tasks for the overall study. The end of the current federal fiscal year budget on October 1, 2009 has necessitated this expedited phased approach. Future meetings with the Corps will be scheduled to outline the steps to complete the Phase II of the PMP, associated cost estimates and to complete the negotiation with respect to in-kind contribution. For Phase I, staff has agreed to contract for and administer the hydrology and hydraulic calculations as part of the City's share of the project including in-kind services.

According to the PMP, the feasibility study is scheduled for completion in November of 2011 and will cost an estimated \$4,055,000, 50% of which will be local match. The District Zone 3 Advisory Committee in May of 2009, agreed to participate in the study by matching the City's participating amount of \$300,000. The approved Fiscal Year 2009/2010 District budget includes \$250,000 in matching funds for this project, \$700,000 for the Wildwood Basin project and \$50,000 in un-identified funds for a Yucaipa project. Staff is working on a cost sharing agreement with SBCFCD to partner on the 50% local match and will request that the \$50,000 in un-identified funds for a Yucaipa project be allocated to the Santa Ana River & Tributaries-Yucaipa Streams Ecosystem Study. The source of funding for the City's match currently is the Drainage Facilities Fund.

SANTA ANA RIVER AND TRIBUTARIES YUCAIPA STREAMS PHASE I

<u>Available Funding</u>	<u>Budget</u>
SBCFCD (District)	\$250,000
City	\$300,000
<u>Army Corp</u>	<u>\$561,000</u>
Total	\$1,111,000
Fiscal Cost Share Agreement	Projected cost
City/District In-Kind Service	\$363,000 286,000
<u>Army Corps In-Kind Services</u>	<u>\$363,000</u> 400,000
Total for FCSA Phase I	\$726,000686,000

Consequently, there is adequate funding available to complete the proposed Phase I PMP based on the current scope of work.

CONCLUSION:

Staff recommends that City Council approve and authorize the Mayor to execute an agreement with the US Army Corps of Engineers to provide equal funding in the amount of \$363,000286,000 (including in-kind services) for the Santa Ana River & Tributaries-Yucaipa Streams Study; and authorize the City Manager or his designee to administer the terms of the agreement.

Attachments: Fiscal Cost Share Agreement
Project Management Plan Phase I

Approved by: _____

participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement, and the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement.

~~1. As of the effective date of this Agreement, *total study costs* are projected to be \$726,000; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$363,000; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$326,000; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$326,000; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$37,000; and the *non-Federal proportionate share* is projected to be fifty percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.~~

2. By October 2009 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; *study costs to be shared during the period of study*; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.C.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than sixty (60) calendar days prior to the scheduled date for issuance of the solicitation for the first contract for work on the *Study* or commencement of work on the *Study* using the Government's own forces, the Government shall notify the Non-Federal Sponsor

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement, and the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$4,055,000; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$1,927,500; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$286,000; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$286,000; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$1,641,500; and the *non-Federal proportionate share* is projected to be forty seven percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 2009 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; *study costs to be shared during the period of study*; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article

If to the Non-Federal Sponsor:

Ray Casey
City Manager
34272 Yucaipa Blvd
Yucaipa, CA92399-9950

If to the Government:

Eldon J. Kraft
Project Manager
PPMD – Civil Works Branch, 15th Floor
US Army Corps of Engineers
P.O. Box 532711
Los Angeles, CA 90053-2325

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the.

~~DEPARTMENT OF THE ARMY~~

~~CITY OF YUCAIPA~~

~~BY:~~

~~Thomas H. Magness
Colonel, US Army
District Engineer
Los Angeles District~~

BY: _____

~~Ray Casey
City Manager
City of Yucaipa~~

~~DATE:~~ _____

DATE: _____

IN WITNESS WHEREOF, the City and Department of the Army have executed this Agreement the day and year first above written.

CITY OF YUCAIPA

DEPARTMENT OF THE ARMY

Dick Riddell, Mayor

Date

Thomas H. Magness
Colonel, US Army
District Engineer
Los Angeles District

Date

ATTEST:

Jennifer Shankland,
General Services/ City Clerk
City of Yucaipa

Date

Bill Hemsley

Bill Hemsley,
Director of Public Works/City
Engineer
City of Yucaipa

9/28/09

Date

APPROVED AS TO FORM:

Michael Estrada
City Attorney
City of Yucaipa

APPROVED AS TO
CONTENT:

Greg Franklin
Administrative Services Officer
City of Yucaipa

Date