



Agenda Report

File #: 19-0002

AGENDA REPORT REQUEST FOR CITY COUNCIL AND CORONA UTILITY AUTHORITY ACTION

DATE: 1/2/2019

TO: Honorable Mayor and City Council Members
Honorable President and Board Members

FROM: Public Works Department
Department of Water and Power

SUBJECT:

City Council consideration to authorize the City Manager to execute the Termination Agreement with Riverside County Flood Control and Water Conservation District for the construction of the Lincoln Avenue Reclaimed Pipeline Project.

RECOMMENDED ACTION:

That the:

1. City Council approve execution of the attached Termination Agreement for a Funding Agreement with the Riverside County Flood Control and Water Conservation District (District) previously entered into for the construction of the Lincoln Avenue Reclaimed Pipeline Project.
2. City Council authorize the City Manager to execute the Termination Agreement between the City and the District.
3. Corona Utility Authority (CUA) review, ratify, and to the extent necessary, direct that the City Council take the above action.

ANALYSIS:

In response to statewide drought conditions experienced in California in 2015 and 2016, the Bureau of Reclamation (BOR) provided funding for activities which increased local water resources. Through this program, the City of Corona Department of Water and Power (DWP) applied for and was awarded funding to increase the use of reclaimed water in Corona. BOR funding was used to begin the design of several reclaimed water lines that would be used to convert customers from potable to reclaimed water, including the Lincoln Avenue Reclaimed Pipeline Project (Project). The Project

consists of the design and construction of an 8-inch ductile iron pipe in Lincoln Avenue that would extend from Railroad Street to Pomona Road. The intent of the Project was to supply reclaimed water in lieu of potable water for landscaping installed as part of the SR-91 Expansion Project.

Subsequently, DWP acquired partial funding for construction of the Project from the Riverside County Flood Control and Water Conservation District (District). On January 18, 2017, City Council approved the execution of a Funding Agreement with the District for the construction phase of the Lincoln Avenue Reclaimed Pipeline Project (Project). The Funding Agreement committed the District to fund 50 percent of the construction costs of the Project, up to a maximum of \$500,000.

Drought conditions in the state have since eased, but DWP has continued to prepare for the future by developing an updated Reclaimed Water Master Plan (Plan). The Plan has identified and developed a capital improvement program focusing on specific projects to improve the operation of the reclaimed water system in lieu of distribution system extensions. Through those planning efforts, DWP has identified alternative projects that will result in greater reclaimed water usage and more efficient system operation. Therefore, DWP has decided not to proceed with construction of the Project at this time.

Since construction is not proceeding for an undetermined time period, the City and the District wish to terminate the previously executed Funding Agreement by executing the attached Termination Agreement. Since construction has not yet begun, the District has not yet provided any funding to the City and thus there is no cost or reimbursement made necessary as a result of the Termination Agreement.

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

There is no fiscal impact for this action.

ENVIRONMENTAL ANALYSIS:

This action is exempt from CEQA.

PREPARED BY: TRACY MARTIN, DWP UTILITIES PROJECT MANAGER

REVIEWED BY: VERNON R. WEISMAN, P.E., DISTRICT ENGINEER

REVIEWED BY: TOM KOPER, P.E., ASSISTANT PUBLIC WORKS DIRECTOR

REVIEWED BY: NELSON D. NELSON, P.E., PUBLIC WORKS DIRECTOR

REVIEWED BY: TOM MOODY, GENERAL MANAGER

REVIEWED BY: DEAN DERLETH, CITY ATTORNEY

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

REVIEWED BY: MICHELE NISSEN, ASSISTANT CITY MANAGER

SUBMITTED BY: DARRELL TALBERT, CITY MANAGER & EXECUTIVE DIRECTOR

Attachment: Termination Agreement, Lincoln Avenue Reclamation Water Pipeline

TERMINATION AGREEMENT
Lincoln Avenue Reclamation Water Pipeline
(Project No. 2-6-00993)

This Termination Agreement, dated as of _____, 2018, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the City of Corona, a municipal corporation ("CITY").

RECITALS

WHEREAS, DISTRICT and CITY previously entered into that certain Funding Agreement, hereinafter called "FUNDING AGREEMENT", dated April 11, 2017, providing for CITY to design, construct, operate and maintain approximately 2,500 lineal feet of reclaimed water pipeline system within Lincoln Avenue from Railroad Street to Pomona Road, hereinafter called "PROJECT", in order to help alleviate reliance on and allow for replenishment of the Temescal Groundwater Basin;

WHEREAS, Due to changes in market conditions following the execution of FUNDING AGREEMENT, CITY has not yet begun construction of PROJECT. Furthermore, CITY does not anticipate beginning or completing said construction of PROJECT, nor does CITY anticipate proceeding with PROJECT within any presently known period of time;

WHEREAS, CITY desires to terminate FUNDING AGREEMENT in order to be relieved from all obligations set forth therein;

WHEREAS, DISTRICT is willing to terminate FUNDING AGREEMENT and release CITY from all obligations set forth therein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Effective as of the date this Termination Agreement is fully executed by DISTRICT and CITY that certain FUNDING AGREEMENT between DISTRICT and CITY dated April 11, 2017, is hereby cancelled and forever terminated, and all provisions thereof shall become null and void.

2. Neither termination nor expiration of this Termination Agreement will release any party from any liability or obligation under this Termination Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

3. To the maximum extent possible, each provision of this Termination Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Termination Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

4. Any and all notices sent or required to be sent to the parties of this Termination 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: Watershed Protection Division

CITY OF CORONA
755 Corporation Yard Way
Corona, CA 92880
Attn: Tom Koper (Department of
Water and Power)

5. This Termination Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Termination Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

6. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Termination Agreement on behalf of such Party and to bind such Party to this Termination Agreement. Any written notice required to be given under

the terms of this Termination Agreement shall be given in accordance with the terms of this Termination Agreement.

7. If any legal action is taken to enforce the terms of this Termination Agreement by any party, the prevailing party may be entitled to recover reasonable attorney's fees and costs only if such party has prevailed in a judgment by a court of competent jurisdiction.

8. This Termination Agreement contains the entire agreement between the parties regarding the matters covered in this Termination Agreement. There have been no other statements, promises, or representations made by the parties that are intended to alter, modify, or complement this Termination Agreement.

9. This Termination Agreement is governed and construed in accordance with California law. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Termination Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

IN WITNESS WHEREOF, the parties hereto have caused this Termination Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

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Signature pages to follow.

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement on _____.

(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

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By _____
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By _____
Deputy
(SEAL)

Termination Agreement – City of Corona
Lincoln Avenue Reclaimed Water Pipeline
Project No. 2-6-00993
AMR:blm
10/02/18

CITY OF CORONA

By _____
DARRELL TALBERT
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
DEAN DERLETH
City Attorney

By _____
SYLVIA EDWARDS
City Clerk

(SEAL)

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