

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this 9 day of September 2009 ("Effective Date"), by and between the City of Coachella, a general law city in California ("City") and Coachella Valley Water District, a public agency of the State of California ("CVWD"). Each party hereto may be hereafter referred to individually as a "Party" or collectively as the "Parties."

RECITALS

- A. Whereas CVWD and City recognize that the Whitewater River Groundwater Basin is in a state of overdraft, and that Coachella Valley water purveyors must act together to ensure that the Coachella Valley has sufficient water supplies to meet its current and future demands;
- B. Whereas, Coachella Valley Water Management Plan ("CVWMP") was adopted to provide for management of the water supplies to meet the water needs of the Coachella Valley and correct the overdraft of the groundwater basin, and
- C. Whereas, the CVWMP planning period is thirty-five years in the future, and is updated each five years, and
- D. Whereas the District is currently conducting the first five-year update to the CVWMP,
- E. Whereas, the CVWMP relies on water conservation, source water substitution and supplemental water supplies to meet the areas water needs, and
- F. Whereas the City is a municipal water supplier which pumps water from the Whitewater River Groundwater Basin, and
- G. Whereas the City through its General Plan recognized and supports the CVWMP including water conservation, source water substitution and supplemental water supplies water to meet the areas water needs, and
- H. Whereas, the City desires to insure a reliable water supply within its Sphere of Influence through actions consistent with the CVWMP, and
- I. Whereas the City desires to provide for its fair share of supplemental water for developments approved by the City or served by the City's water system, and
- J. Whereas the City desires to provide water service to future developments with water needs that were not included in the current CVWMP, and

- K. The Parties desire to enter certain understandings with respect to insuring reliable long-term water supplies.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The City agrees to:

- (a) Undertake measures effective to satisfy the water conservation goals of the CVWMP.
- (b) Cooperate with source substitution projects identified in the CVWMP.
- (c) Provide for supply of supplemental water for developments approved by the City and/or supplied by the City's water system after January 1, 2010, by any combination of the following, in a manner consistent with, and not in excess of, any requirements imposed by CVWD within its service territory:
 - (1) Water Conservation criteria in excess of the goals of the CVWMP. For example, by adopting low water use landscaping requirements which reduce water use in excess of the current CVWMP water conservation goals.
 - (2) Source Substitution not identified in the current CVWMP. For example, using recycled wastewater effluent of the City's Wastewater Treatment Plant for landscape irrigation instead of using groundwater.
 - (3) Acquire supplemental water supplies sufficient to offset the impacts of new water demands within the City or supplied by the City's water system.
 - (4) Participate in funding CVWD's acquisition of supplemental water supplies sufficient to offset the impacts of new water demands approved by the City or supplied by the City's water system. The amount paid for supplemental water supplies shall not exceed CVWD's Supplemental Water Supply Charge for similar development types and water requirements in effect at the time paid.
- (d) Provide water system demand data and projected water demand data for proposed projects to be utilized for planning and water accounting purposes.

2. CVWD agrees to:

- (a) Include water demands projections for areas within the City's Water Service Area and/or City's Sphere of Influence in the current and successive updates of the CVWMP.

- (b) Involve the City to extent reasonably possible in the CVMWP update process and consider in good faith any input the City may offer.
 - (c) If the City funds acquisition of supplemental supplies in paragraph 1 (c) (4), to use its powers to purchase and hold title to and deliver supplemental water supplies for the benefit of the City.
- 3. The City and CVWD agrees to:
 - (a) Work cooperatively to complete studies, and adopt regulations and MOUs necessary to formalize the understandings herein.
 - (b) Work cooperatively to each amend their Urban Water Management Plans to address water supplies for areas within the City's sphere of influence.
- 4. The Parties hereto agree to cooperate with each other in furthering the purposes of this MOU. The Parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this MOU and as are reasonably necessary to effectuate this MOU; provided, however, that the foregoing shall not require Parties to take any legislative action or exercise its discretion in any particular manner.
- 5. This MOU contains the final and complete agreement between the Parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them with respect to the subject matter hereof, whether oral or written, to the extent such prior communications and agreements are not consistent with this MOU.
- 6. In the event that any action or proceeding is commenced between the Parties hereto to enforce or interpret any term of this MOU, each party shall bear its own costs and fees. The costs and fees shall include, without limitation, attorneys' costs and fees incurred on appeal and those incurred in enforcing any judgment rendered in any such action or proceeding.
- 7. All notices shall be in writing and shall be considered given and received: (i) when delivered in person to the recipient named below; or (ii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iii) on the date of delivery shown in the records of an express courier such as Federal Express or DHL; or (iv) on the date of delivery by facsimile transmission to the recipient named below. All notices shall be addressed as followed:

If to District:

General Manager/Chief Engineer
Coachella Valley Water District
P.O. Box 1058
Coachella, Ca 92236-1058

If to City:

City Manager
City of Coachella
1515 Sixth Street
Coachella, CA 92236

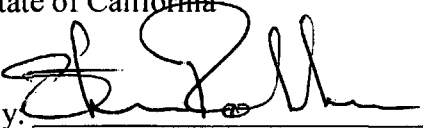
Any Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a Party or an officer or representative of a Party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

8. This MOU and all its provisions shall in all respects be interpreted, construed, enforced, and governed by and under the laws of the State of California, without regard to its conflict of laws principles.
9. Any action or proceeding brought respecting this MOU shall be instituted and maintained in the appropriate court in the County of Riverside, California.
10. This MOU may be modified only by another written instrument duly authorized, executed, acknowledged by both Parties. The MOU may be terminated by either party after 6 months notice and only after a good faith effort to resolve any dispute that may arise hereunder.
11. The provisions of this MOU are specifically made severable. If any clause, provision, right, or remedy provided for herein is determined to be unlawful or unenforceable, the remainder of this MOU shall remain in effect and shall be enforced as if such clause, provision, right, or remedy were not contained herein.
12. The language in all parts of this MOU shall in all respects be construed as a whole according to its fair meaning, and not strictly for or against any other Party. This MOU is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this MOU.
13. This MOU may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire agreement of the Parties hereto.
14. Each individual executing this MOU hereby represents and warrants that he or she has the full power and authority to execute this MOU on behalf of the named Parties.

IN WITNESS WHEREOF, the Parties have demonstrated their intent to implement the terms of the MOU by signing this MOU, effective as of the date above written.

DISTRICT:

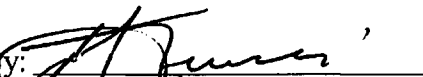
COACHELLA VALLEY WATER
DISTRICT, a public agency of the
State of California

By: 

Its: GENERAL MANAGER

CITY:

CITY OF COACHELLA, a general
law city of the State of California

By: 

Its: City Manager

Excerpt from
MINUTES
OF A REGULAR MEETING
OF THE
CITY COUNCIL OF THE CITY OF COACHELLA,

September 9, 2009

- 11f. Consideration of the City Council to Approve a Memorandum of Understanding with Coachella Valley Water District for Determining Service Areas.

Motion: To approve
Made by: Mayor Pro Tem Steven Hernandez
Seconded by: Councilmember Martinez
Approved: 5-0, by the following roll call vote:

AYES: Councilmember Martinez, Councilmember Ramirez, Councilmember Villarreal, Mayor Pro-Tem Hernandez, and Mayor Garcia.
NOES: None.
ABSTAIN: None.
ABSENT: None.

I, Isabel Castillon, City Clerk of the City of Coachella, do hereby certify that the above mentioned item was passed and adopted at a regular meeting of the City Council held on the 9th day of September, 2009.


Isabel Castillon, City Clerk

RESOLUTION OF THE BOARD OF DIRECTORS OF
COACHELLA VALLEY WATER DISTRICT

RESOLUTION NO. 2009-167

BE IT RESOLVED by the Board of Directors of the Coachella Valley Water District assembled in adjourned regular meeting this 18th day of August, 2009, that the appropriate officers are hereby authorized to execute on behalf of this District, a Memorandum of Understanding with the City of Coachella.

STATE OF CALIFORNIA)
COACHELLA VALLEY WATER DISTRICT) ss.
OFFICE OF THE SECRETARY)

I, JULIA FERNANDEZ, Secretary of the Board of Directors of the Coachella Valley Water District, DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 2009-167 adopted by the Board of Directors of said District at a adjourned regular meeting thereof duly held and convened on the 18th day of August, 2009, at which meeting a quorum of said Board was present and acting throughout. The Resolution was adopted by the following vote:

AYES: Five

NOES: None

ABSTAIN: None

Dated this 18th day of August, 2009.

(SEAL)


Board Secretary