Agenda Report



Date: August 14, 2012

To: Honorable Mayor and City Council

From: Jeffrey W. Collier, City Manager

Subject: Royalty Funding Agreement with Puente Hills Habitat

Preservation Authority

RECOMMENDATION

It is recommended the City Council approve a royalty funding agreement, in substantially the form attached, between the City of Whittier and the Puente Hills Habitat Preservation Authority; and authorize the City Manager to execute the agreement.

BACKGROUND

Staff presents a royalty funding agreement between the City of Whittier and the Puente Hills Habitat Preservation Authority for consideration by the City Council.

The form of this agreement has been drafted by the City Attorney at the direction of the City Council and provides for the City to award a portion of the revenue received from the lease payments due under the provisions of the mineral lease between the City and Matrix Oil Corporation to the Authority for services they will perform in excess of those that they are currently obliged to and financially able to provide to the City.

The agreement would award a fee to the Authority of 4% of the total lease/royalty payments actually received by the City as the lessor under the subject lease during the preceding calendar year. The payments are due to the Authority by March 31st of the year following the City's receipt. The payments are not a general obligation of the City but are only an allocation, in the form of a fee to the Authority for services, of the payments received pursuant to the lease. The maximum fee payable to the Authority in any given calendar year is \$2,000,000. It is understood by both parties that there is no method available to accurately estimate either the amount or duration of the payments to be made to the lessor and the resulting allocation to be made to the Authority.

Authority Ability to Accept Grant

The Authority is a Joint Powers Authority (JPA) operating under a joint exercise of powers agreement most recently amended on April 28, 2011. The Authority membership consists of the County Sanitation District, the County of Los Angeles, and the City of Whittier. Section 6 of the agreement relates to the funding of the JPA and anticipates their funding to come from a \$1.00 per ton fee from the refuse deposited in the Puente Hills Landfill but also allows for them to receive funding from sources other

than the District (Sanitation District, operator of the Landfill) payments. These funds may be used for any lawful purpose of the Authority. This proposed royalty funding agreement with the Authority by the City of Whittier would be a permissible source of funds under the terms of the JPA.

Additional Authority Services with Agreement Revenue

Currently, the City sits on the Board of the Authority in recognition of the benefits they provide to the citizens of Whittier. The City has also entered into a management agreement with the Authority that provides for the Authority to maintain the City-owned property in the wildlife corridor.

Both the mission of the Authority and the management agreement terms and conditions were defined prior to the educational outreach program launched by the Authority and the vast mission accepted by the Authority through the adoption of the resource management plan. In addition, the Authority's existence was primarily funded by the \$1.00 per ton landfill payments that are about to expire with the closing of the Landfill within the next 2 years. This leaves the Authority's mission vast and their funding anemic and results in their inability to meet the needs of the Puente Hills within the City of Whittier and the entire wildlife corridor stretching from the 605 freeway to Chino Hills State Park.

While many of the services to be provided to the City through this royalty funding agreement are already permitted under the current mission of the Authority and the terms of the management agreement, they cannot be provided to the benefit of the City of Whittier without this new source of funding.

FISCAL IMPACT

Payments provided under this proposed agreement will only be an allocation of payments received by the City as the lessor under the terms of the 2008 mineral lease. They are not a general obligation of the City.

Submitted by:

Jeffrey W. Collier City Manager

Attachment: A - Royalty Funding Agreement with Habitat Authority

ROYALTY FUNDING AGREEMENT

This royalty funding agreement is entered into between the CITY OF WHITTIER, a municipal corporation operating under a charter in accordance with the laws of the State of California ("City") and the PUENTE HILLS HABITAT PRESERVATION AUTHORITY, a joint powers authority established under the laws of the State of California, previously known as the PUENTE HILLS LANDFILL NATIVE HABITAT PRESERVATION AUTHORITY ("Habitat Authority").

RECITALS

- A. On or about July 20, 1993, the Los Angeles County Board of Supervisors approved Conditional Use and Oak Tree Permit 92-250-(4) ("Permit") for the continued operation of the Puente Hills Landfill, subject to certain conditions.
- B. Among the conditions to which the Permit is subject, Condition 15 requires the establishment of a joint powers authority consisting of the County Sanitation District ("District"), County of Los Angeles ("County"), and the City for the broad purpose of acquiring, restoring, and/or maintaining additional open space lands in the La Puente/Whittier Hills area ("Habitat Area"), as more specifically shown on Exhibit "A". Under the Habitat Authority's broad declaration of purpose, the Habitat Authority is granted authority to manage property owned by the City in the Habitat Area ("City Property").
- C. On or about February 15, 1994, the City, County and the County Sanitation District #2 on behalf of itself and County Sanitation District Nos. 1, 3, 5, 8, 15 17, 18, 19, 21, 22, 23, 29 and the South Bay Cities Sanitation District of Los Angeles County entered into a joint powers agreement to establish the Habitat Authority in compliance with Condition 15 of the Permit for the purposes stated above ("JPA").
- D. The Habitat Authority's operations have been funded under the JPA by requiring the District to annually pay to the Habitat Authority an amount equaling \$1.00 per ton of refuse disposed at the Puente Hills Landfill. To date this has been the primary source of funding for the Habitat Authority's.
- E. On December 18, 2002, the Los Angeles County Regional Planning Commission approved Conditional Use Permit 02-027-(4) extending the operations of the Puente Hills Landfill to 2013 at which time the Puente Hills Landfill must cease operations. When the Puente Hills Landfill ceases operations to dispose of refuse then the District's funding obligation will be reduced to zero. This will leave the Habitat Authority with an expansive and broad mission and little to no ability to pursue its purpose. The result will be a significant reduction in the Habit Authority's ability to operate within the City of Whittier and the entire Habitat area unless alternate funding is secured.

- F. The operations of the Habitat Authority in the La Puente/Whittier Hills area benefit the health, safety, and welfare of City residents and greatly increase their quality of life. Therefore, the City desires for the Habitat Authority to continue its stated purpose and to expand its operations within the City of Whittier for the benefit of City residents.
- G. In 2008 the City entered into an oil, gas, and mineral lease agreement with Matrix Oil Corporation ("Matrix") for the purpose of Matrix's development and operation of the Whittier Main Oil Field Development Project on certain City Property ("Lease Agreement"). Under section 7 of the Lease Agreement, Matrix is required to pay to City, upon satisfaction of certain conditions, a share of revenues produced ("City's Royalty Share"). Should City become entitled to City's Royalty Share under the Lease Agreement, City desires to direct a portion of City's Royalty Share to the Habitat Authority, so that Habitat Authority may continue to operate and to provide recreational and educational opportunities beyond its stated purpose. The Lease Agreement is attached as Exhibit B.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. City's Obligations.

City shall annually pay to the Habitat Authority 4% of the City's Royalty Share, up to an annual maximum of \$2,000,000.00 ("Habitat Royalty Share"). City's obligation to pay the Habitat Royalty Share is expressly contingent upon the City's receipt of the City Royalty Share from Matrix and is not an independent obligation by the City. The City's obligation to contribute the Habitat Royalty Share to the Habitat Authority shall be limited to, and shall terminate upon, such time that the City's right to the City Royalty Share is exhausted or terminated or such time as this royalty funding agreement is terminated.

City shall determine the amount of the Habitat Royalty Share by calculating 4% of the amount of the City Royalty Share received by City from Matrix during the preceding calendar year. City shall pay Habitat Authority the Habitat Royalty Share no later than March 31st of the year following the one for which the calculation was made.

2. Habitat's Obligations.

The Habitat Authority shall utilize the Habitat Royalty Share to defray the costs of the ongoing operations and activities in the City of Whittier and the Habitat Area, in accordance with the Habitat Authority's purposes as more specifically described in the JPA attached as Exhibit C, and for the expansion and enhancement of existing and future access and recreational opportunities and educational and outdoor learning opportunities for the residents of the City of Whittier.

3. Effective Date.

This royalty funding agreement shall be effective on the date that it is fully executed by all parties hereto (the "Effective Date").

4. Term and Termination.

The term of this royalty funding agreement shall commence on the Effective Date and shall continue for such period as the Lease Agreement remains in effect, unless sooner terminated. In the event the term of the Lease Agreement ends for any reason, then this royalty funding agreement shall immediately and automatically terminate. Additionally, either party may terminate this royalty funding agreement at any time for any reason and without cause upon 30 days written notice.

5. **Insurance and Indemnity.**

- (a) Habitat Authority shall secure and keep in effect during the term of this royalty funding agreement general liability insurance with limits of at least \$3,000,000 per occurrence. The Habitat Authority shall furnish certificates of insurance to the City within 30 days of the Effective Date of this agreement. The policy or policies of insurance shall name the City as additional insured, and shall provide for 30 day advance written notice by the insurance carrier to the City in the event of cancellation, reduction of coverage, or renewal.
- (b) Habitat Authority will indemnify, defend and hold harmless City, its officers, agents and employees from and against any and all claims, demands, losses and liability, including attorney fees that may arise from or occur as a result of personal injury, including death, or property damage arising out of or in any way connected with: a) the acts or omissions of the Habitat Authority or its employees, agents, contractors or invitees in the performance of this royalty funding agreement or in the use or expenditure of funds received under this Agreement; or b) any breach by Habitat Authority of the obligations contained in this Agreement; provided, however, that Habitat Authority's obligation to indemnify, defend and hold harmless City, their officers, agents and employees shall not apply to claims, demands, losses and liability to the extent caused by the negligence or willful misconduct of the City.
- 6. Attorney Fees. If any party files any action or brings any proceeding against the other arising from this Agreement, then the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorney fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney fees. No sum for attorney fees shall be included in calculating the amount of a judgment for purposes of deciding whether a party is entitled to its costs or attorney fees.

7. <u>Notices.</u> All notices and demands shall be given in writing by personal delivery, express mail, or by certified mail, postage prepaid, and return receipt requested. Notices shall be considered given on the earlier of: (a) receipt, if personally delivered or express mailed to the addressee, or to a partner or an officer of the addressee if the addressee is a partnership or corporation, or (b) forty-eight (48) hours following deposit in the United States mail, or (c) verified delivery by facsimile, provided any such "fax" or facsimile is followed by delivery in accordance with (a) or (b) herein. Notices shall be addressed as appears in Recital A for the respective parties, provided that if any party gives notice of a change of name or address, notices to such party thereafter shall be given as specified in that notice.

The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

Puente Hills Habitat Preservation Authority 1955 Workman Mill Road Whittier, CA 90601

Attn: Executive Director Tel: (562) 699-7411

FAX: (562) 908-9572

City of Whittier 13230 Penn Street Whittier, CA 90602 Attn: City Clerk Tel: (562) 464-3303

Tel: (562) 464-3300 FAX: (562) 464-3570

- 8. <u>Binding on Successors.</u> This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.
- 9. <u>Additional Documents.</u> The parties agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.
- 10. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 11. <u>Counterparts.</u> This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.
- 12. <u>Severability.</u> Each provision of this Agreement is severable from any and all other provisions of this/ Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

- 13. Rules of Construction. This Agreement was drafted by the parties and any provision thereof that is found by a court of proper jurisdiction to be ambiguous or inconsistent, either internally or in relation to other provisions contained herein, shall be construed in accordance with a fair and ordinary meaning so as to effectuate the intent of the parties to this Agreement.
- 14. <u>Governing Law.</u> This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

"PUENTE HILLS HABITAT PRESERVATION AUTHORITY" (Habitat Authority)	(City)
By: Andrea, Gullo, Executive Director	By:
Dated:	Dated:
APPROVED AS TO FORM:	ATTEST:
By: Richard D. Jones. City Attorney	By: Kathrvn A. Marshall, City Clerk/Treasurer

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