

# Agenda Report



**Date:** August 28, 2012  
**To:** Honorable Mayor and City Council  
**From:** Jeffrey W. Collier, City Manager  
**Subject:** Royalty Funding Agreement with Puente Hills Habitat Preservation Authority – Amendment

## RECOMMENDATION

It is recommended that the City Council approve an amendment revising the termination clause in the royalty funding agreement between the City of Whittier and the Puente Hills Habitat Preservation Authority and authorize the City Manager to execute the amended agreement.

## BACKGROUND

On August 14, 2012, the City Council approved a royalty funding agreement between the City of Whittier and the Puente Hills Habitat Preservation Authority. The agreement awards 4% of the total mineral extraction lease/royalty payments actually received by the City 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.

## DISCUSSION

The City Council action on August 14, 2012, approved the royalty funding agreement in substantial form as submitted since agreement provisions were not completely finalized. The parties have since agreed to remove the draft termination clause that provided that either party could terminate the agreement with 90 days notice. Original agreement language in Section 3 will be struck as follows:

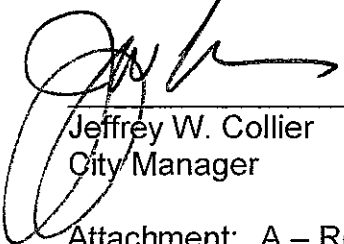
### 3. Term and Termination.

The term of this Agreement will commence on the Effective Date and will continue for as long 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 Agreement will immediately and automatically terminate. ~~Additionally, either party may terminate this Agreement at any time for any reason and without cause upon 90 days written notice.~~

**FISCAL IMPACT**

Removal of the termination clause does not affect fiscal impact.

Submitted by:



Jeffrey W. Collier  
City Manager

Attachment: A – Royalty Funding Agreement with Habitat Authority (Amended)

## ROYALTY FUNDING AGREEMENT

**This royalty funding agreement (“Agreement”) is dated August 24, 2012 (the “Effective Date”) and is 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”).**

### R E C I T A L S

- 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.** Condition 15 of the Permit requires the establishment of a joint powers authority consisting of County Sanitation District No. 2 of Los Angeles County (“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”). 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 District entered into a joint powers agreement to establish the Habitat Authority in compliance with Condition 15 of the Permit (“JPA”). The JPA was amended in 2011, and that amended JPA is attached as Exhibit I. The Habitat Area is shown on Exhibit A to the JPA.
- D.** The Habitat Authority’s operations have been primarily 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.
- 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 until 2013, at which time the Puente Hills Landfill must cease refuse disposal operations. When the Puente Hills Landfill ceases refuse disposal operations then the District’s obligation to fund the Habitat Authority will end. This will leave the Habitat Authority with an expansive and broad mission and no significant source of new revenue.
- F.** The operations of the Habitat Authority in the Habitat 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 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 for the support of ongoing operations and the expansion of recreational and educational opportunities in the Habitat Area which benefit City residents. The Lease Agreement is attached as Exhibit 2.

**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 will continue until the City's right to the City Royalty Share is exhausted or terminated or until this 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 31<sup>st</sup> of the year following the one for which the calculation was made.

**2. Habitat Authority'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 amended JPA attached as Exhibit 1, 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. Term and Termination.**

The term of this Agreement will commence on the Effective Date and will continue for as long 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 Agreement will immediately and automatically terminate.

**4. Insurance and Indemnity.**

(a) Habitat Authority shall secure and keep in effect during the term of this 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 after the Effective Date of this Agreement. The policy or policies of insurance must name the City as additional insured, and must 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 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 will not apply to claims, demands, losses and liability to the extent caused by the negligence or willful misconduct of the City.

**5. Attorney Fees.**

If any party files any action or brings any proceeding against the other party arising from this Agreement, then the prevailing party will 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" will be the party entitled to recover its costs of suit, whether or not suit proceeds to final judgment. A party not entitled to recover its costs will not recover attorney fees. No sum for attorney fees will be included in calculating the amount of a judgment for purposes of deciding whether a party is entitled to its costs or attorney fees.

**6. Notices.**

All notices and demands must be given in writing by personal delivery, express mail, or by certified mail, postage prepaid, and return receipt requested. Notices will 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 (including any notice of change of address) must be addressed as indicated below: Telephone numbers are included for information only.

Puente Hills Habitat Preservation Authority  
7702 Washington Avenue, Suite C  
Whittier, CA 90602  
Attn: Executive Director  
Tel: (562) 945-9003  
FAX: (562) 945-0303

City of Whittier  
13230 Penn Street  
Whittier, CA 90602  
Attn: City Clerk  
Tel: (562) \_\_\_\_\_  
FAX: (562) \_\_\_\_\_

**7. Binding on Successors.**

This Agreement will be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

**8. Additional Documents.**

The parties shall execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

**9. 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 will be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

**10. Counterparts.**

This Agreement may be executed in counterparts, each of which is an original and which together will constitute one and the same agreement.

**11. Severability.**

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 will nonetheless be of full force and effect.

**12. Rules of Construction.**

This Agreement was drafted by the parties and any provision that is found by a court of proper jurisdiction to be ambiguous or inconsistent, either internally or in relation to other provisions contained herein, will be construed in accordance with a fair and ordinary meaning so as to effectuate the intent of the parties to this Agreement.

**13. Governing Law.**

This Agreement will be governed by and construed in accordance with the laws of the State of California.

The parties are signing this Agreement as of the Effective Date.

**PUENTE HILLS HABITAT  
PRESERVATION AUTHORITY  
(Habitat Authority)**

**CITY OF WHITTIER  
(City)**

By: \_\_\_\_\_  
Andrea Gullo, Executive Director

By: \_\_\_\_\_  
Jeff Collier, City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Richard D. Jones, City Attorney

\_\_\_\_\_  
Kathryn Marshall, City Clerk

EXHIBIT 1  
Amended Joint Powers Agreement



EXHIBIT 2  
Lease Agreement

