

DILLON ROAD JOINT POWERS AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF COACHELLA and the TWENTY-NINE PALMS BAND OF MISSION INDIANS and CABAZON BAND OF MISSION INDIANS. The entities above are sometimes referred to in this Agreement individually as “Party” and collectively as “Parties.”

RECITALS

- A.** The City of Coachella (“Coachella”) is a public agency authorized and empowered to contract for the joint exercise of powers under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- B.** The Twenty-Nine Palms Band of Mission Indians (“29 Palms”) and the Cabazon Band of Mission Indians (“Cabazon” and, together with 29 Palms, the “Tribes”) are federally recognized Indian tribes, and are empowered and authorized to contract on their own behalf; and
- C.** A portion of Dillon Road, from State Highway 86S to Avenue 48, and the bridge over the Coachella Stormwater Channel (“Proposed Project”) are within the jurisdictions of 29 Palms and Cabazon. Dillon Road also serves as a primary access in and from Coachella.
- D.** The Parties have determined that it is in the best interests of the respective communities that they serve that a Joint Powers Authority be formed with the authority to take actions and make decisions pertaining to the administration of each Party’s responsibilities within its community for improvements for the Proposed Project.

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Parties agree as follows:

ARTICLE 1
GENERAL PROVISIONS

- 1.1** **Definitions.** Unless the context otherwise requires, the words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.
 - 1.1.1** Act means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies.
 - 1.1.2** Agreement means this Joint Exercise of Powers Agreement.
 - 1.1.3** Annual Budget means the budget adopted pursuant to Section 6.2.1 of this Agreement.

- 1.1.4 Authority means the Dillon Road Joint Powers Authority, which is created by this Agreement.
- 1.1.5 Board or Board of Directors means the Board of Directors referred to in ARTICLE 2 of this Agreement, which is the governing body of the Authority.
- 1.1.6 Director means a member of the Board appointed to the Board pursuant to Section 2.2 of this Agreement.
- 1.1.7 Effective Date means the last date on which all Parties to this Agreement have executed this Agreement.
- 1.1.8 Member Agency(ies) means Coachella, 29 Palms and Cabazon, and any other entity added to this Agreement by a subsequent amendment.
- 1.1.9 Member of the Board or Board Member means a Director.
- 1.1.10 Party(ies) means those entities who have executed this Agreement or any Amendment to this Agreement and who have not withdrawn from the Authority.
- 1.2 **Purpose.** This Agreement is made by Coachella, 29 Palms and Cabazon, each of which is authorized to contract with the other pursuant hereto. The purposes of this Agreement are to (1) create the Authority; (2) provide for the administration of the Member Agencies; and (3) seek funding, including but not limited to State and Federal sources for the improvement and maintenance of the Proposed Project.
- 1.3 **Creation of Authority.** Pursuant to the Act, there is hereby created an agency known as the “Dillon Road Joint Powers Authority.” The Authority shall be separate and apart from the Member Agencies and shall administer this Agreement. Pursuant to Government Code section 6508.1, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any Member Agency or any other agency or entity.
- 1.4 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the Parties as provided in ARTICLE 7 of this Agreement.
- 1.5 **Powers of Authority**
- 1.5.1 General Powers. The Authority shall exercise, in the manner herein provided, the powers common to the Member Agencies, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement, subject however to such restrictions as are applicable to Coachella, as a public agency, and 29 Palms and Cabazon, as federally recognized Indian tribes situated in the State of California.
- 1.5.2 Specific Powers. Subject to the limitations set out in Section 1.5.1, the Authority is hereby authorized, in its own name, to do all acts necessary, convenient and

appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

- (a) To make and enter contracts;
- (b) To employ agents and employees;
- (c) To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
- (d) To acquire, hold or dispose of property;
- (e) To incur debts, liabilities or obligations, which do not constitute a debt, liability or obligation of any Member Agency;
- (f) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions and donations;
- (g) To fix the compensation, if any, paid to the Board of Directors and the Authority's Secretary, Treasurer, Controller and Attorney, in compliance with all applicable laws;
- (h) To prescribe the duties, compensation and other terms and conditions of employment of other agents, officers and employees;
- (i) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority;
- (j) To apply for, accept, receive and disburse grants and other aid from any agency of the United States of America or of the State of California;
- (k) To sue and be sued in its own name, however, this provision in no way abridges or limits the sovereign status or immunity from suit of the Tribes;
- (l) To invest money in the treasury, pursuant to Government Code section 6505.5, that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code;
- (m) To carry out and enforce all provisions of this Agreement; and
- (n) To exercise any and all powers that are provided for in the Act and in Section 6588 of the Government Code, as they exist on the Effective Date of this Agreement or may hereafter be amended.

**ARTICLE 2
BOARD OF DIRECTORS**

- 2.1 Creation.** The Authority shall be governed by a board of seven (7) members, which is hereby established and which shall be composed of two (2) representatives from each Member Agency and one (1) member chosen by a majority of the Board from the community at large. The governing board shall be known as the “Board of Directors of the Dillon Road Joint Powers Authority.” All voting power shall reside in the Board.
- 2.2 Members of the Board of Directors.**
- 2.2.1 Directors Appointed.** Upon the Effective Date of this Agreement, each Member Agency which has not already done so shall designate and appoint, by resolution or minute order of its governing board, three (3) members of its governing body to act as its representatives on the Board of Directors, one (1) of whom shall act as an alternate to each of the other two (2) Directors so appointed. The alternate appointed by each Member Agency shall have the authority to attend, participate in and vote at any meeting of the Board when one or both of the regular Board Members are absent. The seventh (7th) Director shall be appointed by the remaining Directors of the Board of Directors from among the residents of the communities served by the Member Agencies.
- 2.2.2 Membership.** Each Director and alternate of the Board of Directors shall serve until a successor is appointed. Each Director and alternate shall serve for a term of two (2) years.
- 2.3 Powers of the Board.** All the power and authority of the Authority shall be exercised by the Board of Directors.
- 2.4 Provision for Bylaws.** The Board may cause to be developed and may adopt, from time to time, bylaws for the Authority to govern its day-to-day operations. Each Member Agency shall receive a copy of any such bylaws developed and adopted under this Section.

**ARTICLE 3
MEETINGS OF THE BOARD**

- 3.1 Meetings.** The Board shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each fiscal quarter. The date, hour and place of the regular meetings shall be fixed by resolution of the Board and filed with the governing body of each of the Member Agencies. The Board may meet in joint session with other public agencies and advisory bodies in accordance with state law.
- 3.2 Ralph M. Brown Act.** All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act, commencing with section 54950 of the Government Code.

- 3.3 **Voting.** Each Board Agency shall have two votes. Except as otherwise provided by law or by this Agreement, all actions of the Board shall be approved on the affirmative vote of a majority of the Members of the Board.
- 3.4 **Quorum.** A majority of the Members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.
- 3.5 **Minutes.** The Secretary of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and, as soon as possible after each meeting, shall cause a copy of the minutes to be forwarded to each Member of the Board and to each Member Agency.
- 3.6 **Rules.** The Board may adopt from time to time policies, procedures and such rules and regulations for the conduct of its affairs as deemed necessary by the Board.

ARTICLE 4

OFFICERS AND EMPLOYEES OF THE AUTHORITY

- 4.1 **Chair.** The Board of Directors shall elect one of its members as Chair of the Board. The term of office for the Chair of the Board shall be one year. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board of Directors.
- 4.2 **Vice-Chair.** The Board of Directors shall elect one of its members as Vice-Chair. The term of office for the Vice-Chair shall be one year. The Vice-Chair shall perform all the duties of the Chair of the Board in the absence of the Chair of the Board or in the event the Chair of the Board is unable to perform such duties and shall perform such other duties as are specified by the Board of Directors.
- 4.3 **Secretary.** The Board of Directors shall elect a Secretary who shall serve at the pleasure of the Board. The Secretary may but need not be a member of the Board of Directors. The Secretary shall be responsible for certifying the minutes and other records of the proceedings of the Board of Directors and shall perform such other duties as the Board of Directors specifies.
- 4.4 **Treasurer and Auditor Controller.** The Board of Directors shall appoint a Treasurer and an Auditor/Controller from those persons eligible under Government Code sections 6505.5 and 6505.6. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. Such offices may be held by separate officers or employees, or combined and held by one officer or employee as the Board may elect. The Treasurer and Auditor/Controller shall serve at the pleasure of the Board.

- 4.5 **Authority Attorney.** The Attorney for the Authority may be the duly appointed and acting Attorney from one of the member agencies. The Attorney for the Authority or a designated deputy shall attend all meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties as the Board of Directors specifies.
- 4.6 **Official Bond.** Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Parties to this Agreement.
- 4.7 **Additional Officers and Employees.** The Board shall have the power to appoint such additional officers and to employ such employees, assistants, contractors, consultants and others as may be appropriate.
- 4.8 **Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits that apply to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to them in the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

ARTICLE 5 COMMITTEES

- 5.1 **Committees.** The Board of Directors, by a majority vote, may form committees for any purpose. Such vote shall designate the method for appointing committee members, the scope of the duties and responsibility of the committee, whether the committee is a standing or ad hoc committee, and such other matters as the Board may deem appropriate. No compensation shall be payable to committee members unless approved by the Board.

ARTICLE 6 FINANCES

- 6.1 **Fiscal year.** The Fiscal Year of the Authority shall be the period commencing on July 1 of each year and ending on and including the following June 30.
- 6.2 **Annual Budget.**
- 6.2.1 **Interim Budget.** The Board shall, within sixty (60) days after the Effective Date of this Agreement, approve an interim budget, which shall constitute the operating budget until the Annual Budget is adopted.

6.2.2 Annual Budget. Annually, prior to July 1 of each year, the Board shall adopt a budget for all expenses to be made by the Authority during the ensuing Fiscal Year and an allocation of contributions from Member Agencies. Each annual budget shall be adopted and shall be effective on the affirmative vote of a majority of the Directors.

6.3 Funds, Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements.

6.3.1 Sources of Funds. The sources of funds available to the Authority may include, but are not limited to, the following:

- (a) Grants and donations received by the Authority from local, State, or Federal agencies or from individuals or businesses.
- (b) Funds received from State and Federal disaster relief agencies.
- (c) “In kind” contributions from Member Agencies.
- (d) Member Agencies may, in the appropriate circumstances: (i) make contributions from their treasuries for the purposes set forth in this Agreement; (ii) make payments of public funds to defray the cost of such purposes; and (iii) make advances of public funds for such purposes. The provisions of Government Code section 6513 are incorporated into this Agreement. The Authority may adopt a cost sharing formula for determining contributions from Member Agencies.

The Authority shall arrange for the receipt of such funds from the above sources as are available to the Authority and as are necessary for the conduct of the Authority’s activities.

6.3.2 Accounts. Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority, and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.

6.3.3 Reports. The Treasurer shall, within 90 days after the close of each Fiscal Year, give a complete written report of all financial activities for such fiscal year to the Board of Directors and to each Member Agency. The Authority’s books and records shall be open to inspection at all reasonable times by representatives of each Member Agency.

6.4 Payments and Advances. No expenditures in excess of those budgeted shall be made without approval of a revised or amended budget, which may from time to time be submitted to and approved by the Board of Directors.

- 6.5 **Audit.** The Treasurer and Auditor/Controller shall cause an annual independent audit of the accounts and records of the Authority to be made and reported in accordance with Sections 6505 through 6505.6 of the Government Code. The audit shall conform to generally accepted auditing standards. Such report shall be filed within 120 days of the end of the Fiscal Year under examination.
- 6.6 **Procurement Methods.** The Board may adopt such policies relating to procurement of services, equipment, supplies and other materials needed to accomplish the purposes of this Agreement.

ARTICLE 7

TERMINATION / AMENDMENT

- 7.1 **Duration and Termination.** This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by the mutual written consent of all Member Agencies; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority. The withdrawal of a Member Agency pursuant to Section 7.3 shall not terminate that Member Agency's responsibility to contribute to its share of any obligation incurred by the Board, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member Agency or (2) budgeted expenses for the Fiscal Year in which notice of intent to withdraw is given. Notwithstanding the above, the Parties hereto agree and acknowledge that this Agreement may only be terminated during the first year of its term if approved by the governing boards of each Member Agency.
- 7.2 **Amendment.** This Agreement may be amended at any time by the written consent of the governing bodies of the Member Agencies. The purpose of any such amendment can be the addition of new Member Agencies to the Authority.
- 7.3 **Withdrawal.** Notwithstanding any other provision of this Agreement, any Member Agency may withdraw from the Authority by providing the Authority with written notice of its intent to withdraw within the first seven (7) days after the commencement of each Fiscal Year. Such notice shall not become effective until the last day of the Fiscal Year in which notice was given; provided, however, that any Member Agency may withdraw, effective on the first anniversary of the Effective Date, by providing the Board of Directors with written notice of such withdrawal at least thirty (30) days before the first anniversary of the Effective Date. A withdrawal from the Authority constitutes a withdrawal of that Member Agency's representatives from the Board of Directors.

7.4 **Effect of Withdrawal.** The Authority consists of three (3) Member Agencies. When there is a withdrawal by two Member Agencies, this Agreement shall terminate, subject to the provisions of Section 7.1. Upon termination of this Agreement by withdrawal and after payment of all liabilities, costs, expenses, and charges validly incurred under this Agreement pursuant to Section 7.1, all remaining assets of the Authority shall be disbursed among Member Agencies. All assets shall be divided among the Member Agencies in accordance with and proportionate to their cash contributions (including property at market value when received) made during the term of this Agreement, if it is feasible to do so. However, the Board may, in its discretion and by a majority vote of the then-current Directors of the Board of Directors, distribute assets without regard to a Member Agency's contribution.

ARTICLE 8 SPECIAL PROVISIONS

8.1 **Insurance.** The Authority shall maintain types and levels of insurance coverage for the Authority as the Board of Directors determines to be reasonably adequate.

8.2 **Liability of Authority, Board, Officers, Employees.** The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Member Agencies or any of their respective members, officers, directors, employees or agents. The Authority, its Directors, officers, employees, staff and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Member Agency, its officer, director or employee shall be responsible for any action taken or omitted by any other Member Agency, or its officers, or employees.

8.3 **Indemnity.**

8.3.1 The Authority shall indemnify, defend and hold harmless the Board of Directors, the individual Member Agencies, their members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, except such loss or damage which was caused by the willful misconduct of the Board of Directors or any individual Member Agency. The Authority's duty to indemnify each Member Agency pursuant to this Agreement shall survive that Member Agency's withdrawal from the Agency.

8.4 **Conflict of Interest Code.** The Authority shall, by resolution, adopt a conflict of interest code as required by law.

ARTICLE 9 MISCELLANEOUS PROVISIONS

- 9.1 **Severability.** If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to the other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.
- 9.2 **Notices.** Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to the respective Parties, as follows:

City of Coachella
1515 Sixth Street
Coachella, CA 92236

Best Best & Krieger, LLP
Attn: Carlos Campos, City Attorney
74-760 Highway 111, Suite 200
Indian Wells, CA 92210

Twenty-Nine Palms Band of
Mission Indians
46-200 Harrison Place
Coachella, CA 92236

SaundersLaw
Attn: Allyson G. Saunders
10250 Constellation Blvd. Ste. 2320
Los Angeles, CA 90067

Cabazon Band of Mission Indians
84245 Indio Springs
Indio, CA 92203

[secondary contact]

- 9.3 **Other Obligations.** The responsibilities and obligations of each Party to this Agreement shall be solely as provided in this Agreement, or as may be provided for in other agreements to be executed by the Parties.
- 9.4 **Consent.** Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be unreasonably withheld.
- 9.5 **Other Agreements Not Prohibited.** Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.
- 9.6 **Assignment.** The rights, titles and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing bodies of the Member Agencies.

- 9.7 **Section Headings.** The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.
- 9.8 **Laws of California.** This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.
- 9.9 **Construction of Language.** It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.
- 9.10 **Cooperation.** The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.
- 9.11 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.
- 9.12 **Enforcement.** The Authority is hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.
- 9.13 **Integration.** This Agreement constitutes the full and complete agreement of the Parties.
- 9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below, making the same effective on the date signed by the last of all Parties hereto.

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CITY OF COACHELLA

By: [Signature]

Its Mayor

Dated: 9/24/2018

APPROVED AS TO FORM BY:

[Signature]

Dated: 9/26/18

CABAZON BAND OF MISSION INDIANS

By: [Signature]

Its Vice Chairperson

Dated: 9/13/18

APPROVED AS TO FORM BY:

Dated: _____

TWENTY-NINE PALMS BAND OF MISSION INDIANS

By: [Signature]

Its Tribal Chairman

Dated: 8.29.18

APPROVED AS TO FORM BY:

[Signature]

Dated: 8.29.18