

SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

408 B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE: May 3, 2011

SUBJECT: Funding Agreement: Santa Ana River Protection Dike

RECOMMENDED MOTION:

Approve the District's financial contribution toward the City of Norco's Santa Ana River Protection Dike.

BACKGROUND:

The City of Norco (City) proposes to construct flood protection works along the northerly bank of the Santa Ana River between Hamner Avenue and Interstate 15. The agreement sets forth the terms and conditions by which the District will make a one-time contribution not to exceed \$1,500,000 for construction of the project.

*Warren D. Williams*

MHW:bjp

WARREN D. WILLIAMS  
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$1,500,000	In Current Year Budget:	Y
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N
	Annual Net District Cost:	\$0	For Fiscal Year:	10/11

SOURCE OF FUNDS: 25120 94720 536200 – Contributions to Non-County Agency	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Michael R. Shetler*  
Michael R. Shetler

County Executive Office Signature

FISCAL PROCEDURE APPROVED  
DAN M. CHAND, FINANCIAL DIRECTOR  
*Williams* 4/25/11  
IV-21 M. CHAND

FORM APPROVED COUNTY COUNSEL  
BY: *Neal R. Kipnis* DATE: 4/25/11  
NEAL R. KIPNIS

Departmental Concurrence

- Dept Recomm.:  Consent  Policy
- Per Exec. Ofc.:  Consent  Policy

Prev. Agn. Ref.:

District: 2<sup>nd</sup>

Agenda Number:

11.2

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

FUNDING AGREEMENT  
SANTA ANA RIVER PROTECTION DIKE

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF NORCO, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. CITY has requested funding for construction of certain emergency flood protection works to be constructed on CITY owned real property located along the northerly bank of the Santa Ana River between Hamner Avenue and the Interstate 15 freeway.

B. The proposed improvements, consisting of a protection dike some 3000 feet in length, will provide up to "50-year" protection (2% annual chance flood) from Santa Ana River flows.

C. The proposed improvements will also provide ancillary protection to the District's Eastvale Line E Channel outlet works.

D. DISTRICT has budgeted the sum of one million five hundred thousand dollars (\$1,500,000) from its Fiscal Year 2010-2011 budget for the purpose of funding CITY'S proposed construction of the above referenced protection dike, hereinafter called "PROJECT".

E. CITY shall prepare or cause to be prepared the necessary plans and specifications and will be responsible for the advertising, award and administration of a public works construction contract for the PROJECT.

F. CITY has determined that the PROJECT is exempt from the California Environmental Quality Act (CEQA) and on February 8, 2011, filed a Notice of Determination with the office of the Assessor-County Clerk-Recorder for Riverside County.

1 G. CITY shall be solely responsible for complying with all applicable  
2 environmental programs and regulations including but not limited to the federal Clean Water  
3 Act (Sections 404 and 401), the National Flood Insurance Act (Section 1361(c)), CEQA, the  
4 California Fish and Game Code (Section 1600) and the Western Riverside County Multi-  
5 Species Habitat Conservation Plan (WRCMSHCP).

6 H. DISTRICT pledges to support CITY'S efforts to construct PROJECT and  
7 provide funding for PROJECT as set forth herein.  
8

9 I. The purpose of this Agreement is to memorialize the mutual  
10 understandings by and between DISTRICT and CITY with respect to the construction,  
11 inspection, ownership, operation and maintenance of PROJECT and payment of the  
12 DISTRICT'S contribution.

13 NOW, THEREFORE, in consideration of the preceding recitals and the mutual  
14 covenants hereinafter contained, the parties hereto mutually agree as follows:  
15

16 SECTION I

17 CITY shall:

18 1. Secure, at its sole cost and expense, all necessary rights of way, rights of  
19 entry and temporary construction easements necessary to construct, inspect, operate and  
20 maintain PROJECT.

21 2. Comply with the applicable provisions of CEQA, the WRCMSHCP and  
22 the National Flood Insurance Program (40 CFR Part 60).  
23

24 3. Secure, at its sole cost and expense, all necessary permits, approvals,  
25 licenses or agreements required by any Federal or State resource or regulatory agencies  
26 pertaining to the construction, operation and maintenance of PROJECT. Such documents,  
27 hereinafter called "REGULATORY PERMITS", may include, but are not limited to, a Section  
28

1 404 permit issued by USACOE, a Section 401 Water Quality Certification issued by the  
2 California Regional Water Quality Control Board (CRWQCB), a Section 1602 Streambed  
3 Alteration Agreement issued by the California Department of Fish and Game and National  
4 Pollutant Discharge Elimination System Permits issued by the State Water Resources Control  
5 Board.

6 4. Advertise PROJECT for bids pursuant to the applicable provisions of the  
7 California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a  
8 copy of the PROJECT plans, specifications, bid documents and any subsequent addenda thereto.  
9

10 5. Prior to the award of the construction contract for the PROJECT, submit an  
11 invoice to DISTRICT for the estimated cost of constructing PROJECT. The invoice shall be  
12 supported by CITY'S bid abstracts for PROJECT.

13 6. Construct PROJECT pursuant to a CITY administered public works  
14 contract.

15 7. Supervise and inspect all aspects of PROJECT construction.

16 8. Upon completion of PROJECT construction and CITY'S acceptance  
17 thereof, accept sole responsibility for the design, ownership, operation and maintenance of  
18 PROJECT.  
19

20 9. Upon completion of PROJECT construction, provide DISTRICT with a  
21 copy of the CITY'S Notice of Completion.  
22

## 23 SECTION II

24 DISTRICT shall:

25 1. Within thirty (30) days of receiving of CITY'S invoice, pay CITY the  
26 lesser of i) the bid price for all bid items pertaining directly to PROJECT construction or ii) the  
27  
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1 sum of one million five hundred thousand dollars (\$1,500,000.00); whichever is less (the  
2 "DISTRICT CONTRIBUTION").

3 SECTION III

4 It is further mutually agreed:

5 1. The DISTRICT CONTRIBUTION is a one-time cash contribution to be  
6 used by CITY solely for the purpose of constructing PROJECT as set forth herein. No  
7 additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT  
8 modifications, extensions or repairs.  
9

10 2. In the event the actual construction cost for PROJECT is less than the  
11 amount of the DISTRICT CONTRIBUTION, CITY shall refund the difference to DISTRICT  
12 within thirty (30) days of filing the Notice of Completion for PROJECT.

13 3. Under the provisions of this Agreement, the DISTRICT shall bear no  
14 responsibility whatsoever for the design, construction, ownership, operation or maintenance of  
15 PROJECT.  
16

17 4. In the event that any claim or legal action is brought against DISTRICT, in  
18 connection with this Agreement and based upon the actual or alleged acts or omissions of the  
19 CITY, its officers, employees, consultant, contractors or agents, including but not limited to  
20 claims or legal action related to the design, construction, operation, maintenance or failure of  
21 PROJECT, the CITY shall defend, indemnify and hold DISTRICT harmless therefrom without  
22 cost to DISTRICT. This shall include providing DISTRICT with legal representation and pay  
23 for related costs for any such claim or legal action, and payment of any settlement or judgment  
24 on behalf of DISTRICT, all at no cost to DISTRICT. Upon the CITY'S failure to do so,  
25 DISTRICT shall be entitled to recover from CITY all of its costs and expenses, including, but  
26 not limited to, reasonable attorneys' fees.  
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28

1           5. In the event of any arbitration, action or suit brought by either the CITY or  
 2 DISTRICT against the other party by reason of any breach on the part of the other party of any  
 3 of the covenants and agreements set forth in this Agreement, or any other dispute between  
 4 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or  
 5 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the  
 6 other party all costs and expenses or claims, including but not limited to, attorneys' fees and  
 7 expert witness fees. This section shall survive any termination of this Agreement.  
 8

9           6. If any provision in this Agreement is held by a court of competent  
 10 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless  
 11 continue in full force without being impaired or invalidated in any way.

12           7. This Agreement is to be construed in accordance with the laws of the State  
 13 of California. Neither CITY nor DISTRICT shall assign this Agreement without the written  
 14 consent of the other party.  
 15

16           8. This Agreement is made and entered into for the sole protection and benefit  
 17 of the parties hereto. No other person or entity shall have any right of action based upon the  
 18 provisions of this Agreement.

19           9. Any and all notices sent or required to be sent to the parties of this  
 20 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

21 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF NORCO
22 AND WATER CONSERVATION DISTRICT	2870 Clark Avenue
1995 Market Street	Norco, CA 92860
23 Riverside, CA 92501	

24           10. This Agreement is the result of negotiations between the parties hereto, and  
 25 the advice and assistance of their respective counsel. The fact that this Agreement was prepared  
 26 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty  
 27  
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1 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT  
2 prepared this Agreement in its final form.

3 11. Any waiver by DISTRICT or CITY of any breach by any other party of  
4 any provision of this Agreement shall not be construed to be a waiver of any subsequent or other  
5 breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to  
6 require from any other party exact, full and complete compliance with any of the provisions of  
7 this Agreement shall not be construed as in any manner changing the terms hereof, or estopping  
8 DISTRICT or CITY from enforcing this Agreement.  
9

10 12. This Agreement is intended by the parties hereto as a final expression of  
11 their understanding with respect to the subject matter hereof and as a complete and exclusive  
12 statement of the terms and conditions thereof and supersedes any and all prior and  
13 contemporaneous agreements and understandings, oral or written, in connection therewith. This  
14 Agreement may be changed or modified only upon the written consent of the parties hereto.  
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by the Clerk of the Board)

**RECOMMENDED FOR APPROVAL RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By WARREN D. WILLIAMS  
General Manager-Chief Engineer

By MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:  
KECIA HARPER-IHEM  
Clerk of the Board

PAMELA J. WALLS  
County Counsel  
By NEAL R. KIPNIS  
Deputy County Counsel

By \_\_\_\_\_  
Deputy

(SEAL)

**RECOMMENDED FOR APPROVAL: CITY OF NORCO**

By BILL THOMPSON  
Public Works Director

By BERWIN HANNA  
Mayor

APPROVED AS TO FORM:

ATTEST:  
By BRENDA JACOBS  
City Clerk

(SEAL)


Funding Agreement – Santa Ana River Protection Dike  
MHW:blj



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

(to be filled in by the Clerk of the Board)

RECOMMENDED FOR APPROVAL

By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS  
County Counsel

By \_\_\_\_\_  
NEAL R. KIPNIS  
Deputy County Counsel

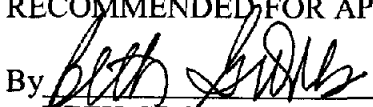
ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

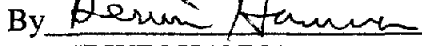
By \_\_\_\_\_  
Deputy

(SEAL)


RECOMMENDED FOR APPROVAL:

By   
BETH GROVES  
City Manager

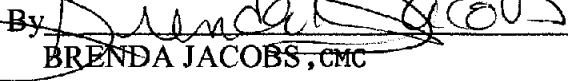
**CITY OF NORCO**

By   
BERWIN HANNA  
Mayor

APPROVED AS TO FORM:

By   
JOHN HARPER  
City Attorney

ATTEST:

By   
BRENDA JACOBS, CMC  
City Clerk

(SEAL)

Funding Agreement – Santa Ana River Protection Dike  
MHW: