

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

511B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

July 17, 2012

SUBJECT: Hemet MDP Line D
Project No. 4-0-00211
Cooperative Agreement
3rd District/3rd District

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District and the City of Hemet (City); and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which the City will design and construct certain flood control facilities within District held easements. Said facilities are to be constructed by the City and inspected by the District and City and subsequently operated and maintained by the District.

Continued on Page 2

KEC:blj

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30 ☐

Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY: Michael R. Shetter
Michael R. Shetter

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: NEAL K. KIPNIS DATE: 7/17/12

Departmental Concurrence

Dep't Recomm.: ☐ Policy ☐ Policy
☐ Consent ☐ Consent
Per Exec. Ofc.: ☐ Policy ☐ Policy

Prev. Agn. Ref.: 11/25/08, Item No. 11.2

District: 3rd/3rd

Agenda Number:

11.8

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

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Page 2

BACKGROUND:

This Agreement is also necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the referenced facilities.

County Counsel has approved the Agreement as to legal form and the City has executed the Agreement.

FINANCIAL INFORMATION:

The City is funding all design and construction costs. Future operation and maintenance costs will accrue to the District.

KEC:blj

COOPERATIVE AGREEMENT
HEMET MDP LINE D
(Project No. 4-0-00211)

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

RECITALS

A. DISTRICT and CITY previously entered into that certain agreement entitled "Agreement For the Sale of Real Property and Reservation of Easement" executed on July 19, 2011, hereinafter called "SALE AND RESERVATION OF EASEMENT AGREEMENT", which set forth the terms and conditions under which DISTRICT will convey to CITY in fee simple title a portion of DISTRICT'S existing Hemet Master Drainage Plan Line D right-of-way as further described in Exhibit "A", attached hereto and made a part hereof; and

B. The purpose of the SALE AND RESERVATION OF EASEMENT AGREEMENT is to facilitate CITY'S construction of certain underground storm drain system to replace DISTRICT'S existing concrete-lined trapezoidal channel. Construction of certain underground storm drain system is necessary to accommodate the CITY'S future expansion of Stetson Avenue west of Sanderson Avenue and the expansion of parking and landscaping on the adjacent parcel owned by CITY. The SALE AND RESERVATION OF EASEMENT AGREEMENT contains provisions that include, but are not limited to, (i) reservation of a certain easement for flood control purposes, hereinafter called "DISTRICT EASEMENT", and (ii) execution of this cooperative agreement between DISTRICT and CITY; and

C. The Hemet Master Drainage Plan Line D facility currently consists of approximately 1,070 lineal feet of existing concrete trapezoidal channel located within DISTRICT EASEMENT. CITY proposes to convert the trapezoidal channel to a double

reinforced concrete box culvert as shown in concept in red on Exhibit "B", hereinafter called "LINE D", attached hereto and made a part hereof. At both the upstream and downstream terminus, LINE D connects to existing DISTRICT maintained facilities, hereinafter called "EXISTING STORM DRAIN"; and

D. Associated with the construction of LINE D is the construction of certain catch basins, connector pipes and laterals hereinafter called "APPURTENANCES"; and

E. In conjunction with the planned expansion of its infrastructure facilities, CITY proposes to construct certain parking and landscape features over DISTRICT EASEMENT configured so as not to impede upon DISTRICT'S ability to operate and maintain LINE D or restrict DISTRICT'S ingress, egress, or access to LINE D. The above parking and landscape features of construction, hereinafter altogether called "SURFACE FEATURES", are located adjacent to and over DISTRICT EASEMENTS. Together LINE D, APPURTENANCES and SURFACE FEATURES are hereinafter called "PROJECT"; and

F. CITY desires DISTRICT to ultimately accept ownership and responsibility for operation and maintenance of LINE D, therefore, DISTRICT must review and approve CITY'S plans and specifications for PROJECT and subsequently inspect the construction of LINE D; and

G. DISTRICT desires CITY to accept ownership and sole responsibility for APPURTENANCES and SURFACE FEATURES. Additionally, it is mutually understood and agreed that CITY shall assume ownership and sole responsibility for the operation and maintenance of PROJECT until such time as LINE D is accepted by DISTRICT as set forth herein; and

H. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION I

CITY shall:

1. Pursuant to the California Environmental Quality Act (CEQA), assume sole lead agency role and responsibility for preparation, circulation, and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.

2. Prepare or cause to be prepared at its sole cost and expense, plans and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with CITY and DISTRICT standards.

3. Continue to pay or cause to be paid to DISTRICT, within thirty (30) days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS, review and approval of right of way and conveyance documents, and with the processing and administration of this Agreement.

4. Deposit or cause to be deposited with DISTRICT (Attention: Business Office – Accounts Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT construction as set forth in Section I.15. herein, the estimated cost of providing construction inspection for LINE D, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto, based upon the estimated bonded value of LINE D.

5. Obtain at its sole cost and expense, all necessary licenses, agreements, approvals, rights of way, rights of entry and temporary construction easements as may be necessary to construct, operate and maintain PROJECT.

1 6. Secure, at its sole cost and expense, all necessary permits, approvals,
2 licenses or agreements required by any Federal, State or local resource or regulatory agencies
3 pertaining to the construction, operation and maintenance of PROJECT. Such documents,
4 hereinafter called "REGULATORY PERMITS", may include, but are not limited to, a Section
5 404 permit issued by U.S. Army Corps Of Engineers, a Section 401 Water Quality Certification
6 issued by the California Regional Water Quality Control Board (CRWQCB), a Section 1602
7 Streambed Alteration Agreement issued by the California Department of Fish and Game and
8 National Pollutant Discharge Elimination System Permits issued by the State Water Resources
9 Control Board or CRWQCB.
10

11 7. Prior to commencement of PROJECT construction, provide DISTRICT
12 with an opportunity to review and approve all REGULATORY PERMITS.

13 8. Prior to commencement of PROJECT construction, provide DISTRICT
14 with an opportunity to review and approve IMPROVEMENT PLANS.

15 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
16 property owned or controlled by CITY where necessary and convenient for the purpose of
17 gaining access to, and performing inspection service for, the construction of LINE D as set forth
18 herein.
19

20 10. Not permit any change to, or modification of, the DISTRICT approved
21 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.

22 11. Construct or cause to be constructed PROJECT, pursuant to a CITY
23 administered construction contract, in accordance with IMPROVEMENT PLANS approved by
24 CITY and DISTRICT, and pay all costs associated therewith.
25

26 12. Furnish or cause its construction manager to furnish, all construction
27 survey and materials testing services necessary to construct PROJECT.
28

13. Inspect PROJECT construction or cause PROJECT'S construction to be inspected by its construction manager.

14. Prior to commencing LINE D construction, furnish DISTRICT with the final mylar IMPROVEMENT PLANS and assign their ownership to DISTRICT.

15. Prior to commencing PROJECT construction, schedule and conduct a mandatory pre-construction meeting between CITY, CITY'S construction manager, CITY'S construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT (Attention: Construction Inspection) in writing at least twenty (20) days prior to conducting the pre-construction meeting. Construction shall not begin on any element of LINE D, for any reason whatsoever, until DISTRICT has issued to CITY a written Notice to Proceed authorizing CITY to commence construction of LINE D.

16. Provide DISTRICT, as part of CITY'S written notice to DISTRICT of the pre-construction meeting as set forth in Section I.15., with copies of CITY'S Notice(s) of Acceptance of faithful performance and payment bonds provided by CITY's contractor(s), the faithful performance bond being in the amount of one hundred percent (100%) of the estimated cost for construction of LINE D as determined by DISTRICT and the material and labor payment bond being in the amount of fifty percent (50%) of the estimated cost for construction of LINE D as determined by DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect until LINE D is accepted by DISTRICT as complete; at which time the faithful performance bond amount may be reduced to ten percent (10%) for a period of one year to guarantee against any defective work, labor or materials.

17. During the term of construction of PROJECT, provide and maintain or require its construction contractor(s) to provide and maintain comprehensive liability insurance

1 which shall protect DISTRICT and County of Riverside from claims for damages for personal
2 injury, including accidental and wrongful death, as well as from claims for property damage,
3 which may arise from construction of PROJECT or the performance of its obligations
4 hereunder, whether such construction or performance be by CITY, the aforementioned
5 construction contractor(s), or any subcontractors to said construction contractor(s), or by anyone
6 employed directly or indirectly by said construction contractor(s) or subcontractors. Such
7 insurance shall provide for coverage limits of not less than two million dollars (\$2,000,000) per
8 occurrence and shall name DISTRICT and County of Riverside as additional insureds with
9 respect to this Agreement and the obligations of CITY hereunder. CITY shall also provide or
10 require its contractor(s) to provide Workers' Compensation Insurance or a State-approved Self-
11 Insurance Program in an amount and form to meet all applicable requirements of the Labor code
12 of the State of California, including Employer's Liability with one million dollar (\$1,000,000)
13 limits, covering all persons providing services on behalf of PROJECT and all risks to such
14 persons under this Agreement. Contractor shall require the insurance carriers of the above
15 required coverages to waive all rights of subrogation against DISTRICT, County of Riverside
16 and CITY. Said insurance coverage shall be provided by an insurance company licensed to
17 transact insurance business in the State of California and shall be evidenced by a certificate (or
18 certificates) of insurance indicating that the insurance is in full force and effect and that
19 DISTRICT and County of Riverside are named as additional insureds. Said certificate(s) of
20 insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written
21 notice shall be provided to CITY and DISTRICT prior to any modification, cancellation, or
22 reduction in coverage of said insurance.
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1 Prior to CITY issuing a Notice to Proceed to its construction contractor(s)
2 to begin construction of PROJECT, an original certificate of insurance evidencing the required
3 insurance coverage shall be provided to DISTRICT.

4 18. Require its construction contractor(s) to comply with all Cal/OSHA
5 safety regulations, including regulations concerning confined space and maintain a safe working
6 environment for all CITY and DISTRICT employees on the site.

7 19. Furnish DISTRICT (Attention: Contract Administration Section) with a
8 CITY approved confined space procedure specific to PROJECT. The procedure shall comply
9 with requirements contained in California Code of Regulations, Title 8, Section 5158, Other
10 Confined Space Operations, Section 5157, Permit Required Confined Space and District
11 confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by
12 DISTRICT prior to start of construction.
13

14 20. Grant DISTRICT, by execution of this Agreement, the right to inspect,
15 operate and maintain LINE D within CITY rights of way.
16

17 21. Ensure that all work performed pursuant to this Agreement by CITY, its
18 agents or contractors is done in accordance with all applicable laws and regulations, including
19 but not limited to all applicable provisions of the Public Contract Code, Labor Code, Business
20 and Professions Code, and Water Code. CITY shall be solely responsible for all costs
21 associated with compliance with applicable laws and regulations.

22 22. Assume sole responsibility for the construction, operation and maintenance
23 of SURFACE FEATURES, including all necessary modifications or corrections as deemed
24 necessary by DISTRICT for the continuing function, reconstruction, repair or operation and
25 maintenance of LINE D.
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1 23. Assume sole responsibility for the temporary removal and subsequent
2 replacement of SURFACE FEATURES, when, in the exercise of DISTRICT'S sole discretion,
3 such removal is deemed necessary by DISTRICT to ensure the proper maintenance, operation
4 and function of LINE D.

5 24. Upon completion of PROJECT construction but prior to DISTRICT'S
6 acceptance of LINE D for ownership, operation and maintenance, provide DISTRICT with
7 appropriate engineering documentation necessary to establish that LINE D was constructed in
8 accordance with CITY and DISTRICT approved IMPROVEMENT PLANS.

9 25. Within two weeks of completing PROJECT construction, provide
10 DISTRICT with written notice (Attention: Contract Administration Section) that LINE D
11 construction is substantially complete and requesting that DISTRICT conduct a final inspection
12 of LINE D.
13

14 26. Upon completion of PROJECT construction, but prior to DISTRICT
15 acceptance of LINE D for ownership, operation and maintenance, provide or cause its civil
16 engineer of record or construction civil engineer of record, duly registered in the State of
17 California, to provide DISTRICT a redlined "RECORD DRAWINGS" copy of
18 IMPROVEMENT PLANS. After DISTRICT approval of the redlined "RECORD
19 DRAWINGS", CITY'S engineer shall schedule with DISTRICT a time to transfer the redlined
20 changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall
21 review, stamp and sign IMPROVEMENTS PLANS "RECORD DRAWINGS".
22

23 27. Accept ownership and sole responsibility for the operation and
24 maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility
25 for the operation and maintenance of LINE D as set forth herein.
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29. Upon DISTRICT acceptance of LINE D construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of LINE D are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

DISTRICT shall:

- 9 -

"RECORD DRAWINGS" as set forth in Section I.26.

6. Upon DISTRICT'S acceptance of LINE D for ownership, operation and maintenance, provide CITY with a reproducible duplicate copy of the "RECORD DRAWINGS".

SECTION III

It is further mutually agreed:

1. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by CITY and shall not be deemed complete until approved and accepted as complete by CITY.

2. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of LINE D, LINE D shall be in a satisfactorily maintained condition as solely determined by DISTRICT.

3. DISTRICT personnel may observe and inspect all work being done on LINE D, but shall provide any comments to CITY personnel who shall be solely responsible for all communications with its construction contractor(s).

4. CITY shall, indemnify, defend save and hold harmless DISTRICT (including its officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY (including its officers, agents, employees, representatives, subcontractors, independent contractors, public, guests and invitees) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily

injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

5. Any notices sent or required to be sent to either party shall be mailed to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Administration Section

CITY OF HEMET
445 E. Florida Avenue
Hemet, CA 92543
Attn: John Jansons

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

7. This Agreement is to be construed in accordance with the laws of the State of California.

8. This Agreement is the result of negotiations between the parties hereto and with the advice and assistance of their respective counsel. No provision contained herein shall be construed against DISTRICT solely because, as a matter of convenience, it prepared this Agreement in final form.

9. Any waiver by DISTRICT or CITY of any breach by the other of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of DISTRICT or CITY to require from the other exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement hereof.

10. This Agreement is intended by the parties hereto as their final expression with respect to the matters herein, and is a complete and exclusive statement of the terms and

1 conditions thereof. This Agreement shall not be changed or modified except by the written
2 consent of both parties hereto.

3 11. DISTRICT and CITY each pledge to cooperate in regard to the operation
4 and maintenance of their respective facilities as set forth herein and to discharge their respective
5 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any
6 nuisance condition or undue maintenance impact upon the other's facilities.

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8 //


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10 //

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

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

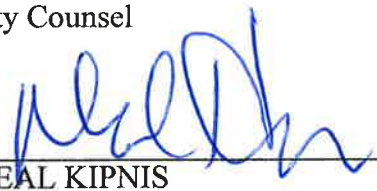
By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement: Hemet MDP- Line D
6/27/2012
KEC:blj

RECOMMENDED FOR APPROVAL:

By


~~ROBERT YOUSSEF~~ *James Foreman*
Mayor *Pro Tempore*

CITY OF HEMET

By


BRIAN NAKAMURA
City Manager


APPROVED AS TO FORM:

By


ERIC S. VAIL
City Attorney

ATTEST:

By


SARAH McCOMAS
City Clerk

(SEAL)

Cooperative Agreement: Hemet MDP-Line D
KEC:blj

EXHIBIT A

CITY OF HEMET

STETSON CROSSING

R.C.F.C. & W.C.D. RIGHT-OF-WAY ACQUISITION

That portion of Section 17, Township 5 South, Range 1 West, San Bernardino Base and Meridian in the City of Hemet, County of Riverside, State of California, described as follows:

COMMENCING at the Southwest corner of said Section 17, as said Southwest corner is shown on Record of Survey on file in Book 53, Page 15, Records of Riverside County, California;

THENCE South $89^{\circ} 04' 36''$ East along the South line of said Section 17, a distance of 1622.27 feet to an intersection with the Southerly prolongation of the West line of Parcel 2 of Parcel Map 4643 as shown by Map on file in Book 7 of Parcel Maps, Page 19, Riverside County Records;

THENCE North $00^{\circ} 41' 30''$ East, parallel with the West line of said Section 17 and along said Southerly prolongation, a distance of 44.00 feet to the North line of Stetson Avenue and the TRUE POINT OF BEGINNING;

THENCE CONTINUING North $00^{\circ} 41' 30''$ East along said prolongation, a distance of 55.00 feet;

THENCE South $89^{\circ} 04' 36''$ East, parallel with the South line of said Section 17, a distance of 978.96 feet to an intersection with a line that is parallel with and 50.00 feet West of the centerline of Sanderson Avenue;

EXHIBIT A

THENCE South $00^{\circ} 51' 46''$ West along said parallel line, a distance of 32.00 feet;

THENCE South $45^{\circ} 53' 41''$ West, a distance of 32.51 feet to an intersection with a line that is parallel with and 44.00 feet North of said South line of Section 17, being also the North line of said Stetson Avenue;

THENCE North $89^{\circ} 04' 36''$ West along said parallel line and said North line, a distance of 955.79 feet to the TRUE POINT OF BEGINNING.

CONTAINING 53,574 square feet (1.23 acres), more or less.



A handwritten signature in black ink, appearing to read "James W. Unland", written over a horizontal line.

Date: 7/1/00

LEGEND:

BOUNDARY LINE
PROPERTY TO BE PURCHASED

AREA:

53,574 S.F.
1.23 ACRES

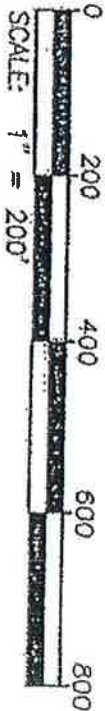
APN:

456-050-025

PTN. PCL. 1

PTN. PCL. 2

P.M. 7/19



SECTION 17, T.5S., R.1W., S.B.M.

SANDERSON AVENUE

CAWSTON AVENUE
N00°41'30"E

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P.O.C.
T.P.O.B.

P.M. 206/18-19

N89°04'36"W 978.96'
N89°04'36"W 955.79'
N89°04'36"W 44.00'

N00°51'46"E 32.00'
N45°53'41"E 32.51'



JAMES W. UNLAND & ASSOCIATES
CIVIL ENGINEERS
3550 E. Florida Ave., Suite G
Hemet, California 92344
951/892-5575, FAX 951/925-6450

CITY OF HEMET
STETSON CROSSING
PLAT MAP
R.C.F.C. & W.C.D. R/W ACQUISITION
SCALE: 1" = 200' DATE: 7/1/08

M-1-5384

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EXHIBIT B