

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

409B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
November 6, 2012

SUBJECT: Desert Hot Springs MDP Line E-5
Project No. 6-0-00035-01
Cooperative Agreement
District 5/District 4

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement between the District and the City of Desert Hot Springs; and
2. 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 District will contribute funding to the City for design and construction of the Desert Hot Springs MDP Line E-5.

Continued on Page 2.

TNK:bjl

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$4,051,381	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	N/A	For Fiscal Year:	FY2012-13

SOURCE OF FUNDS: 25160 947500 527980 – Zone 6 Construction	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

County Executive Office Signature

Large empty box for County Executive Office Signature.

FISCAL PROCEDURES APPROVED
 JEANINE J. REY, FINANCE DIRECTOR
 BY: 10/16/2012
 JEANINE J. REY
 Departmental Concurrence
 FORM APPROVED COUNTY COUNSEL
 BY: DATE: _____
 NEAL R. KIPNIS
 Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

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

SUBJECT: Desert Hot Springs MDP Line E-5
Project No. 6-0-00035-01
Cooperative Agreement
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Page 2

BACKGROUND (continued):

Said facility and associated appurtenances are to be constructed by the City and inspected, operated and maintained by the District and City.

Upon completion of project construction, the District will assume ownership, operation and maintenance of the mainline storm drains that are greater than 36-inch in diameter and the City will assume ownership, operation and maintenance of lateral storm drains that are 36-inch or less in diameter along with the associated appurtenances such as catch basins, connector pipes, etc.

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

FINANCIAL:

Sufficient funding is available in the District's Zone 6 budget for FY 2012-2013 and will be included in the proposed budget in future years. Future operation and maintenance costs will accrue to the District and the City.

TNK:blj

1 COOPERATIVE AGREEMENT
2 Desert Hot Springs MDP Line E-5
3 Project No. 6-0-00035

4 The Riverside County Flood Control and Water Conservation District,
5 hereinafter called "DISTRICT", and the City of Desert Hot Springs, hereinafter called "CITY",
6 hereby agree as follows:

7 RECITALS

8 A. CITY has budgeted for and plans to design and construct Desert Hot
9 Springs Master Drainage Plan (MDP) Line E-5. Once constructed, this facility will provide
10 improved drainage and flood control in the northerly portion of the City of Desert Hot Springs;
11 and

12 B. Line E-5, hereinafter called "DISTRICT FACILITY", consists of an
13 underground storm drain system to be constructed in 8th Street from approximately Mesquite
14 Avenue and extending westerly to outlet into the DISTRICT'S existing Line E facility near West
15 Drive, as shown in concept and highlighted in yellow on Exhibit "A" attached hereto and made
16 a part hereof; and

17 C. Associated with the construction of DISTRICT FACILITY is the
18 construction of lateral storm drains thirty-six inches (36") or less in diameter, various catch
19 basins and connector pipes located within CITY rights of way, hereinafter called
20 "APPURTENANCES". DISTRICT FACILITY and APPURTENANCES are hereinafter
21 altogether called "PROJECT"; and

22 D. CITY desires that DISTRICT contribute funding for the design and
23 construction of PROJECT; and
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1 E. DISTRICT wishes to support CITY'S efforts to construct PROJECT by
2 providing a financial contribution towards PROJECT'S design and construction along with the
3 associated administrative costs as set forth herein; and

4 F. DISTRICT'S contributions shall be as follows:

5 (i) One hundred percent (100%) of the engineering design and cost
6 proposal for the preparation of PROJECT construction plans and specifications, plus an
7 additional twenty percent (20%) to offset CITY'S administrative costs associated therewith,
8 hereinafter called "DESIGN CONTRIBUTION";

9 (ii) One hundred percent (100%) of the lowest responsible bid contract
10 price for PROJECT construction, plus an additional ten percent (10%) to offset CITY'S
11 administrative cost associated with administering the construction contract and any construction
12 contract change orders, hereinafter called "CONSTRUCTION CONTRIBUTION"; and

13 G. Altogether, DESIGN CONTRIBUTION and CONSTRUCTION
14 CONTRIBUTION are hereinafter called "DISTRICT TOTAL CONTRIBUTION". DISTRICT
15 TOTAL CONTRIBUTION shall not exceed a total sum of four million fifty one thousand three
16 hundred eighty one dollars (\$4,051,381); and

17 H. The purpose of this Agreement is to memorialize the mutual understandings
18 by and between DISTRICT and CITY with respect to design, construction, inspection,
19 ownership, operation and maintenance, and funding of PROJECT.

20 NOW, THEREFORE, in consideration of the preceding recitals and the mutual
21 covenants hereinafter contained, the parties hereto mutually agree as follows:
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SECTION I

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2 CITY shall:

3 1. Endeavor to award contract and begin construction of PROJECT within
4 eighteen (18) months of execution of this Agreement.

5 2. Prepare or cause to be prepared, PROJECT plans and specifications,
6 hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and
7 CITY standards and submit to DISTRICT for its review and approval prior to advertising
8 PROJECT for construction bids.

9
10 3. Pursuant to the California Environmental Quality Act (CEQA), act as Lead
11 Agency and assume responsibility for preparation, circulation and adoption of all necessary and
12 appropriate CEQA documents pertaining to the construction, operation and maintenance of
13 PROJECT.

14 4. Prior to entering into a contract for the preparation of PROJECT
15 construction plans and specification, provide DISTRICT with an opportunity to review and
16 approve its associated engineering design and cost proposal.

17
18 5. Keep an accurate accounting of all engineering design costs associated with
19 the preparation of plans and specifications for PROJECT, in conformance with DISTRICT
20 approved engineering design and cost proposal as set forth in Section I.4, and include this
21 accounting when invoicing DISTRICT for final payment of DESIGN CONTRIBUTION as set
22 forth in Section I.7.

23
24 6. Invoice DISTRICT (Attention: Chief of Design and Construction) for an
25 initial payment of fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this
26 Agreement or upon CITY'S execution of a contract with its engineering consultant, whichever is
27 later. The invoice shall include appropriate documentation necessary to establish DESIGN
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1 CONTRIBUTION for DISTRICT approved engineering design and cost proposal as set forth in
2 Section I.4.

3 7. Invoice DISTRICT (Attention: Chief of Design and Construction) for
4 remainder payment of DESIGN CONTRIBUTION following signing of IMPROVEMENT
5 PLANS by all parties.

6 8. Obtain, at its sole cost and expense, all rights of entry and temporary
7 construction easements necessary to construct, operate and maintain PROJECT.

8 9. INTENTIONALLY LEFT BLANK.

9 10. INTENTIONALLY LEFT BLANK.

10 11. Obtain at its sole cost and expense, all necessary permits, approvals or
11 agreements required by any Federal, State and local resource or regulatory agencies pertaining
12 to the construction, operation and maintenance of PROJECT. Such documents, hereinafter
13 called "REGULATORY PERMITS", may include but are not limited to, a Section 404 permit
14 issued by USACOE, a Section 401 Water Quality Certification issued by the California
15 Regional Water Quality Control Board (CRWQCB), a Section 1602 Streambed Alteration
16 Agreement issued by the California Department of Fish and Game and National Pollutant
17 Discharge Elimination System Permit issued by the State Water Resources Control Board or
18 CRWQCB.

19 12. Prior to advertising PROJECT for construction bids, provide DISTRICT
20 with an opportunity to review and approve all REGULATORY PERMITS. DISTRICT approval
21 of any such document(s) may be withheld when, in the sole judgment of DISTRICT'S General
22 Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs
23 DISTRICT'S ability to operate and maintain DISTRICT FACILITY.
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1 13. Prior to advertising PROJECT for construction, furnish DISTRICT with
2 final mylar IMPROVEMENT PLANS and, upon receipt of DISTRICT'S payment of DESIGN
3 CONTRIBUTION as set forth in Sections I.6 and I.7, assign ownership of IMPROVEMENT
4 PLANS to DISTRICT.

5 14. Prior to awarding a public works construction contract for PROJECT,
6 provide DISTRICT with seven (7) calendar days following construction bid opening to review
7 and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids
8 found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold
9 approval of contract.
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11 15. Advertise, award and administer a public works construction contract for
12 PROJECT.

13 16. Provide DISTRICT with written notice (Attention: Contract Administration
14 Section) that CITY has awarded a construction contract for PROJECT. The written notice shall
15 include the Contractor's actual bid amounts for PROJECT, setting forth the lowest responsible
16 bid contract price for PROJECT construction as set forth herein.
17

18 17. Invoice DISTRICT (Attention: Chief of Design and Construction) for a
19 lump sum payment of CONSTRUCTION CONTRIBUTION at the time of providing written
20 notice pursuant to Section I.16, for one hundred and ten percent (110%) of the lowest
21 responsible bid contract price for PROJECT construction.
22

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

3 19. Provide DISTRICT, as part of CITY'S written notice to DISTRICT of the
4 pre-construction meeting as set forth in Section I.18., with copies of CITY'S Notice(s) of
5 Acceptance of faithful performance and payment bonds provided by CITY'S contractor(s), the
6 faithful performance bond being in the amount of one hundred percent (100%) of the estimated
7 cost for construction of PROJECT as determined by DISTRICT and the material and labor
8 payment bond being in the amount of fifty percent (50%) of the estimated cost for construction
9 of PROJECT as determined by DISTRICT. The surety, amount and form of the bonds shall be
10 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect
11 until DISTRICT FACILITY is accepted by DISTRICT as complete; at which time the faithful
12 performance bond amount may be reduced to ten percent (10%) for a period of one year to
13 guarantee against any defective work, labor or materials.
14

15 20. Construct or cause to be constructed PROJECT, pursuant to a CITY
16 administered construction contract in accordance with IMPROVEMENT PLANS approved by
17 DISTRICT and CITY, and pay all costs associated therewith.
18

19 21. Inspect construction of PROJECT.

20 22. Furnish or cause its construction manager to furnish all construction survey
21 and materials testing services necessary to ensure PROJECT construction is accomplished in
22 accordance with the approved plans and specifications.
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24 23. Grant DISTRICT, by execution of this Agreement, the right to enter upon
25 property owned or controlled by CITY where necessary and convenient for the purpose of
26 gaining access to, and performing inspection service for, the construction of PROJECT.
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1 24. Not permit any change to or modification of the DISTRICT approved
2 IMPROVEMENT PLANS that would result in a change of functionality or maintainability of
3 PROJECT without the prior written permission and consent of DISTRICT. Failure to do so
4 shall be deemed a material breach of this Agreement and shall authorize and constitute authority
5 for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable
6 to a) perform its obligations hereunder, and or b) to accept responsibility for ownership,
7 operation and maintenance of DISTRICT FACILITY due, either in whole or in part, to said
8 breach of this Agreement.
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10 25. Provide and maintain or require its PROJECT construction contractor(s) to
11 procure and maintain comprehensive liability insurance which shall protect DISTRICT and
12 County of Riverside from claims for damages for personal injury, including accidental or
13 wrongful death, as well as from claims for property damage, which may arise from CITY's or its
14 contractor's(s') construction of PROJECT or the performance of its obligations hereunder,
15 whether such construction or performance be by CITY, the aforementioned construction
16 contractor(s), or any subcontractors to said construction contractor(s), or by anyone employed
17 directly or indirectly by said construction contractor(s) or subcontractors. Such insurance shall
18 provide for coverage limits of not less than two million dollars (\$2,000,000) per occurrence and
19 shall name DISTRICT and County of Riverside as additional insureds with respect to this
20 Agreement and the obligations of CITY hereunder. CITY shall also provide or require its
21 contractor(s) to provide Workers' Compensation Insurance or a State-approved Self-Insurance
22 Program in an amount and form to meet all applicable requirements of the Labor Code of the
23 State of California, including Employer's Liability with one million dollar (\$1,000,000) limits,
24 covering all persons providing services on behalf of PROJECT and all risks to such persons
25 under this Agreement. CITY shall require or caused to be required the insurance carriers of the
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1 above required coverage to waive all rights of subrogation against DISTRICT, County of
2 Riverside and CITY. Said insurance coverage shall be provided by an insurance company
3 licensed to transact insurance business in the State of California, having an A.M. Best rating of
4 A: VIII (A:8) or better, and shall be evidenced by a certificate (or certificates) of insurance
5 indicating that the insurance is in full force and effect and that DISTRICT and the County of
6 Riverside are named as additional insureds. Said certificate(s) of insurance shall contain the
7 covenant of the insurance carrier(s) that thirty (30) days written notice shall be provided to
8 DISTRICT and County of Riverside prior to any modification, cancellation, or reduction in
9 coverage of said insurance.
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11 Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to
12 begin construction of PROJECT, an original certificate of insurance evidencing the required
13 insurance coverage shall be provided to DISTRICT.

14 26. Require its construction contractor(s) to comply with all Cal/OSHA safety
15 regulations including regulations concerning confined space and maintain a safe working
16 environment for all CITY and DISTRICT employees on the site.

17 27. Require its construction contractor(s) to furnish DISTRICT (Attention:
18 Contract Administration Section) with a confined space procedure specific to PROJECT. The
19 procedure shall comply with requirements contained in California Code of Regulations, Title 8,
20 Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined
21 Space and District confined Space Procedures, SOM-18. The procedure shall be provided to
22 DISTRICT no less than twenty (20) days prior to requesting that DISTRICT perform a final
23 inspection for acceptance of PROJECT. The procedure shall be reviewed and approved by
24 DISTRICT prior to conducting the final inspection.
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1 28. Assume ownership and sole responsibility for the operation and
2 maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility
3 for the operation and maintenance of DISTRICT FACILITY as set forth herein. Upon
4 DISTRICT acceptance of ownership and responsibility for the operation and maintenance of
5 DISTRICT FACILITY, CITY shall assume ownership and sole responsibility for the operation
6 and maintenance of APPURTENANCES.

7 29. Within two (2) weeks of completing PROJECT construction, provide
8 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
9 construction is substantially complete and requesting that DISTRICT conduct a final inspection
10 of DISTRICT FACILITY.

11 30. Upon completion of PROJECT construction and settlement of any
12 outstanding claims, provide DISTRICT with a copy of CITY'S recorded Notice of Completion.

13 31. Upon completion of PROJECT construction but prior to DISTRICT'S
14 acceptance of DISTRICT FACILITY for ownership, operation and maintenance, provide
15 DISTRICT with appropriate engineering documentation necessary to establish that DISTRICT
16 FACILITY was constructed in accordance with the DISTRICT approved IMPROVEMENT
17 PLANS.

18 32. Upon completion of construction of PROJECT, but prior to DISTRICT'S
19 acceptance of DISTRICT FACILITY for ownership, operation and maintenance, CITY'S civil
20 engineer of record or construction civil engineer of record duly registered in the State of
21 California, shall provide DISTRICT with redlined "record drawing" plans for IMPROVEMENT
22 PLANS. After DISTRICT approval of the redlined "record drawing", CITY'S engineer shall
23 schedule with DISTRICT a time to transfer the redlined changes into DISTRICT'S original
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1 mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign mylars
2 "RECORD DRAWING".

3 33. Keep an accurate accounting of all PROJECT construction costs and
4 provide DISTRICT with a final accounting of construction costs for DISTRICT approved
5 IMPROVEMENT PLANS.

6 34. INTENTIONALLY LEFT BLANK.

7 35. Upon DISTRICT acceptance of DISTRICT FACILITY for ownership,
8 operation and maintenance, convey, or cause to be conveyed, to DISTRICT all rights of way
9 and easements deemed necessary by DISTRICT for the operation and maintenance of
10 DISTRICT FACILITY.

11 36. Upon DISTRICT acceptance of PROJECT construction as being complete,
12 accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located
13 within CITY rights of way which must be performed at such time(s) that the finished grade
14 along and above the underground portions of PROJECT are improved, repaired, replaced or
15 changed. It being further understood and agreed that any such adjustments shall be performed
16 at no cost to DISTRICT.
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19 SECTION II

20 DISTRICT shall:

21 1. Review and approve or disapprove, within fourteen (14) days of receipt,
22 CITY'S PROJECT engineering design and cost proposal pursuant to Section I.4.

23 2. Pay CITY within thirty (30) days after receipt of CITY'S appropriate
24 invoice, for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.6.

25 3. Act as a Responsible Agency under CEQA, taking all necessary and
26 appropriate action to comply with CEQA.
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1 4. Review and approve, as appropriate, all necessary REGULATORY
2 PERMITS and right of way documents prior to CITY advertising PROJECT for construction
3 bids as set forth in Section I.12.

4 5. Review and approve IMPROVEMENT PLANS prior to CITY'S
5 advertising PROJECT for construction bids.

6 6. Within seven (7) days following CITY'S construction bid opening, review
7 and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids
8 found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold
9 approval of contract.

10 7. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
11 invoice, for remainder payment of DESIGN CONTRIBUTION as set forth in Sections I.5 and
12 I.7., provided the total DESIGN CONTRIBUTION does not exceed one hundred and twenty
13 percent (120%) of DISTRICT approved engineering design and cost proposal as set forth in
14 Section I.4.

15 8. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
16 invoice, for CONSTRUCTION CONTRIBUTION as set forth in Section I.17.

17 9. INTENTIONALLY LEFT BLANK.

18 10. Conduct periodic inspections of DISTRICT FACILITY construction for
19 quality control purposes at its sole cost and provide any comments to CITY'S designated
20 PROJECT construction inspector.

21 11. Upon receipt of CITY'S written notice that PROJECT construction is
22 substantially complete, conduct a final inspection of DISTRICT FACILITY.

23 12. Accept sole responsibility for ownership, operation and maintenance of
24 DISTRICT FACILITY upon (i) DISTRICT inspection of DISTRICT FACILITY in accordance
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1 with Section I.29., (ii) DISTRICT acceptance of DISTRICT FACILITY as being complete, (iii)
 2 receipt of CITY'S recorded Notice of Completion as set forth in Section I.30., (iv) receipt of
 3 appropriate engineering documentation as set forth in Section I.31., (v) receipt of stamped and
 4 signed RECORD DRAWING construction plans as set forth in Section I.32., (vi) receipt of
 5 rights of way and easements as set forth in Section I.35., and (vii) DISTRICT'S sole
 6 determination that DISTRICT FACILITY is in a satisfactorily maintained condition.
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8 SECTION III

9 It is further mutually agreed:

10 1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of four
 11 million fifty one thousand three hundred eighty one dollars (\$4,051,381) and shall be used by
 12 CITY solely for the purpose of designing and constructing PROJECT as set forth herein.
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14 2. Except as otherwise provided herein, all construction work involved with
 15 PROJECT shall be inspected by CITY and shall not be deemed complete until approved and
 16 accepted as complete by CITY.

17 3. DISTRICT personnel may observe and inspect all work being done on
 18 DISTRICT FACILITY but shall provide any comments to CITY personnel who shall be solely
 19 responsible for all communications with CITY'S construction contractor(s).
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21 4. Prior to DISTRICT acceptance of ownership and responsibility for the
 22 operation and maintenance of DISTRICT FACILITY, DISTRICT FACILITY shall be in a
 23 satisfactorily maintained condition as solely determined by DISTRICT. If, in the sole discretion
 24 of DISTRICT, DISTRICT FACILITY is not in an acceptable condition, corrections will be
 25 made at sole expense of CITY.

26 5. CITY shall indemnify, defend, save and hold harmless DISTRICT and
 27 County of Riverside (including their respective officers, districts, special districts and
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1 departments, their respective directors, officers, Board of Supervisors, elected and appointed
2 officials, employees, agents, representatives, independent contractors, and subcontractors) from
3 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
4 or in any way relating to CITY'S (including its officers, employees, agents, representatives,
5 independent contractors, and subcontractors) actual or alleged acts or omissions related to this
6 Agreement, performance under this Agreement, or failure to comply with the requirements of
7 this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c)
8 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.
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10 6. INTENTIONALLY LEFT BLANK.

11 7. In the event of any arbitration, action or suit brought by either CITY or
12 DISTRICT against the other party by reason of any breach on the part of the other party of any
13 of the covenants and agreements set forth in this Agreement, or any other dispute between the
14 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or
15 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
16 other party all costs and expenses or claims, including but not limited to, attorney's fees and
17 expert witness fees. This section shall survive any termination of this Agreement.
18

19 8. This Agreement is made and entered into for the sole protection and benefit
20 of the parties hereto. No other person or entity shall have any right or action based upon the
21 provisions of this Agreement.
22

23 9. DISTRICT and CITY each pledge to cooperate in regard to the operation
24 and maintenance of their respective FACILITY as set forth herein and to discharge their
25 respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of
26 any nuisance condition or undue maintenance impact upon the others' FACILITY.
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1 10. Any and all notices sent or required to be sent to the parties of this
2 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

3 RIVERSIDE COUNTY FLOOD CONTROL
4 AND WATER CONSERVATION DISTRICT
5 1995 Market Street
6 Riverside, CA 92501
7 Attn: Engineering Services Section

CITY OF DESERT HOT SPRINGS
65-950 Pierson Blvd.
Desert Hot Springs, CA 92240
Attn: Hal Goldenberg

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

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

13 13. Neither CITY nor DISTRICT shall assign this Agreement without the
14 written consent of the other party.

15 14. Any action at law or in equity brought by any of the parties hereto for the
16 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
17 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
18 waive all provisions of law providing for a change of venue in such proceedings to any other
19 county.

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

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

5 17. Time is of the essence in prosecuting the work contemplated under this
6 Agreement. At any time during the term of this Agreement, DISTRICT may terminate this
7 Agreement for cause, including but not limited to CITY'S failure to prosecute the work in a
8 timely manner, upon providing CITY with a thirty (30) days written notice stating the extent
9 and effective date of termination.

10 18. The obligation(s) of DISTRICT are limited by and contingent upon the
11 availability of DISTRICT funds for DISTRICT'S financial contribution towards the PROJECT
12 as set forth herein. In the event that such funds are not forthcoming for any reason, DISTRICT
13 shall immediately notify CITY in writing.

14 19. This Agreement is intended by the parties hereto as a final expression of
15 their understanding with respect to the subject matter hereof and as a complete and exclusive
16 statement of the terms and conditions thereof and supersedes any and all prior and
17 contemporaneous agreements and understandings, oral and written, in connection therewith.
18 This Agreement may be changed or modified only upon the written consent of the parties
19 hereto.

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

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(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

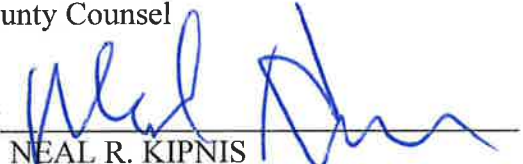
By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL R. KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement: City of Desert Hot Springs
Desert Hot Springs MDP Line E-5
9/4/2012
TNK:blj

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**CITY OF DESERT HOT SPRINGS, a California charter
City and Municipal Corporation**

By 
RICHARD A. DANIELS
City Manager

ATTEST:

By 
JERRYL SORIANO
Deputy City Clerk

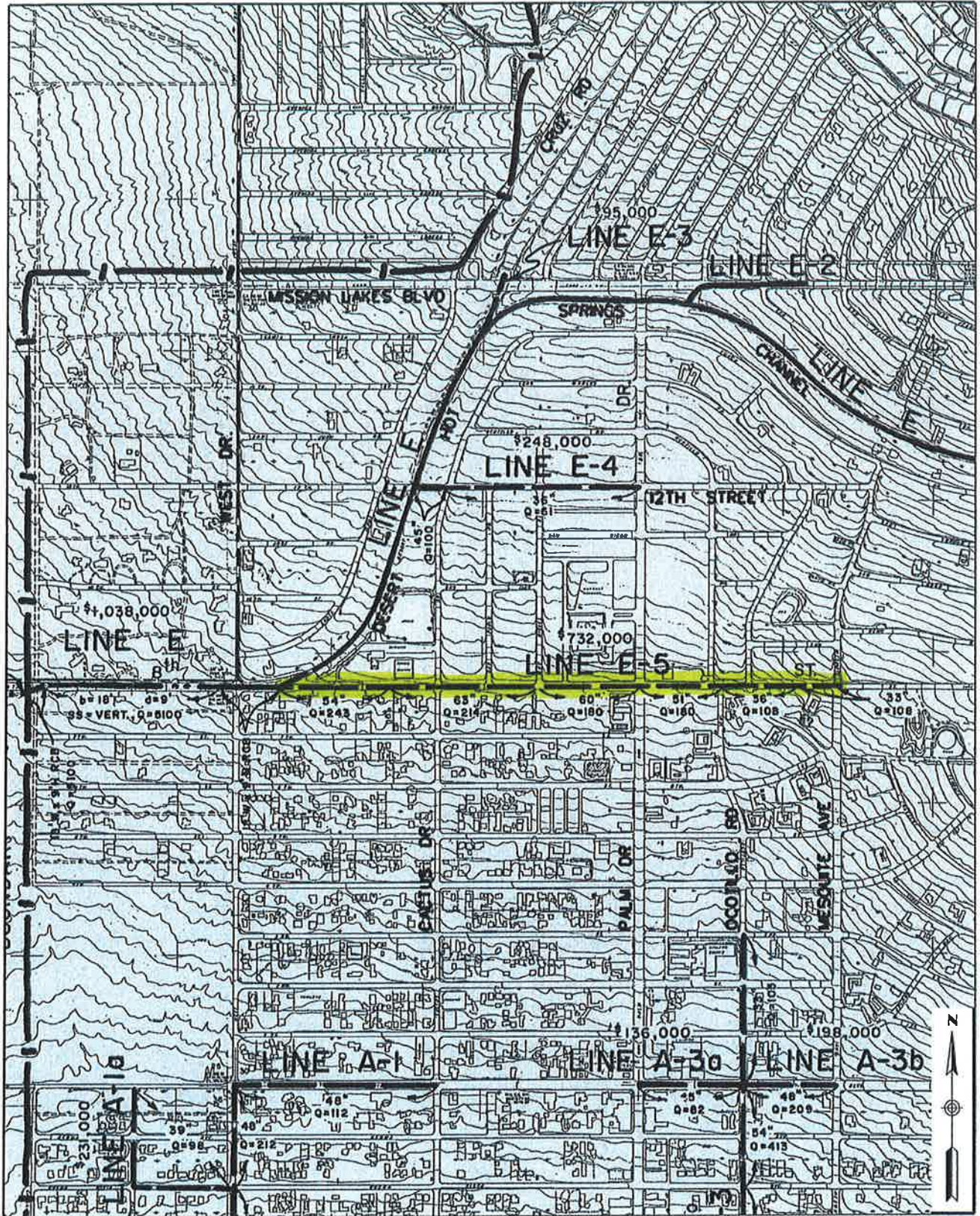
APPROVED AS TO FORM:

By 
City Attorney

(SEAL)

Cooperative Agreement: City of Desert Hot Springs
Desert Hot Springs MDP Line E-5
9/4/2012
TNK:blj

EXHIBIT A



**COOPERATIVE AGREEMENT
DESERT HOT SPRINGS MDP LINE E-5
PROJECT NUMBER: 6-O-00035**