

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

549



FROM: Economic Development Agency

SUBMITTAL DATE:
November 8, 2012

SUBJECT: Slope Armor Protection for the Larry D. Smith Correctional Facility – Approval of the Cooperative Agreement for Smith Creek – Rock Slope Protection, Stage 2

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District) and the County of Riverside (County) and authorize the Chairman of the Board to execute the agreement, (MS 147), Flood Control Project No. 5-0-0091, on behalf of the County; and
2. Authorize the Assistant County Executive Officer/EDA to administer the agreement in accordance with applicable Board policies.

BACKGROUND: (Commences on Page 2)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD Flood Control and Water Conservation District AGENDA: Yes

SOURCE OF FUNDS: (CORAL) 1985 ACES Interest Earnings	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: MARSHA L. VICTOR 11/5/12 Departmental Concurrence

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

Prev. Agn. Ref.: 3.29 of 8/28/12; 3.3 of 2/01/11 | **District:** 5/5 | **Agenda Number:** 3.11

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

BACKGROUND:

On November 2, 2010, the Board of Supervisors approved in-principle the design work for the slope armor protection along the northern bank of Smith Creek in order to protect the recently completed Larry D. Smith Correctional Facility Expansion No. 3 from flood damage.

On February 1, 2011, the Board of Supervisors approved a budget of \$228,100 for design and design support services for the Slope Armor Protection for the Larry D. Smith Correction Facility Project. EDA selected RBF Consulting from the pre-qualified list of architectural and engineering firms to provide engineering design services for the project.

On August 28, 2012, the Board approved the plans and specifications, the project budget of \$2,033,100, and authorized the Clerk to advertise for bids. It is expected that construction will commence by the end of November 2012.

In order to provide continued maintenance of the improvements, it is necessary for the District and the County to enter into the Cooperative Agreement which sets forth the terms and conditions by which EDA is to construct the project and by which the District is to maintain the project. The agreement is also necessary to provide for district construction inspection of the project. This agreement is a companion item on the Riverside County Flood Control and Water Conservation District Board agenda on the approved date.

Upon completion of construction, the District will assume ownership, operation, and maintenance of the project.

All costs associated with this project will be funded through (CORAL) 1985 ACES Interest Earnings, thus no net county costs will be incurred.

Attachment:

Cooperative Agreement

1 COOPERATIVE AGREEMENT
2 Smith Creek – Rock Slope Protection, Stage 2
3 (MS 147)
4 Project No. 5-0-00091

5 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
6 CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the COUNTY OF
7 RIVERSIDE acting by and through its ECONOMIC DEVELOPMENT AGENCY, hereinafter
8 called "COUNTY", hereby agree as follows:

9 RECITALS

10 A. COUNTY has planned and budgeted for the construction of certain
11 drainage improvements along the easterly bank of Smith Creek adjacent to the Larry D. Smith
12 Correctional Facility in the unincorporated area of Riverside County. The drainage
13 improvements include construction of approximately 1,200 lineal feet of rock slope protection,
14 hereinafter called "PROJECT", as shown on District Drawing No. 5-0222; and

15 B. COUNTY desires DISTRICT to accept ownership and responsibility for
16 the operation and maintenance of PROJECT. Therefore, DISTRICT must review and approve
17 COUNTY'S PROJECT plans and specifications and subsequently inspect the construction of
18 PROJECT; and

19 C. DISTRICT is willing to (i) review and approve COUNTY'S plans and
20 specifications for PROJECT, (ii) inspect the construction of PROJECT, and (iii) accept
21 ownership and responsibility for the operation and maintenance of PROJECT upon completion
22 provided COUNTY (i) complies with this Agreement, (ii) pays DISTRICT the amounts
23 specified herein to cover DISTRICT'S plan review and construction inspection costs for
24 PROJECT, (iii) constructs PROJECT in accordance with plans and specifications approved by
25 DISTRICT, (iv) obtains all necessary permits, regulatory permits, licenses and rights of entry as
26 set forth herein, (v) accepts ownership and responsibility for the operation and maintenance of
27 PROJECT following completion of construction until such time as DISTRICT accepts
28 ownership and responsibility for the operation and maintenance of PROJECT, in accordance

1 with the provisions of this Agreement, and (vi) conveys to DISTRICT the necessary rights of
2 way for the inspection, operation and maintenance of PROJECT as set forth herein.

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

4 SECTION I

5 COUNTY shall:

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

10 2. Prepare or cause to be prepared plans and specifications for PROJECT, as
11 shown on District Drawing No. 5-0222, hereinafter called "IMPROVEMENT PLANS", in
12 accordance with DISTRICT standards.

13 3. Submit IMPROVEMENT PLANS to DISTRICT for review and approval
14 prior to awarding a public works construction contract for PROJECT.

15 4. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
16 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
17 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS
18 and with the processing and administration of this Agreement.

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

22 6. Furnish DISTRICT with copies of all permits, approvals or agreements as
23 may be required by any Federal, State or local resource and/or regulatory agency for the
24 construction, operation and maintenance of PROJECT. Such documents include but are not
25 limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality
26 Control Board, State Water Resources Control Board, and California Department of Fish and
27 Game.

1 7. Deposit with DISTRICT (Attention: Business Office – Accounts
2 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
3 construction as set forth in Section I.10. herein, the estimated cost of providing construction
4 inspection for PROJECT based upon Engineer's Cost Estimate of PROJECT, in an amount as
5 determined and approved by DISTRICT.

6 8. Advertise, award and administer a public works PROJECT construction
7 contract.

8 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
9 COUNTY'S property where necessary and convenient for the purpose of gaining access to, and
10 performing inspection service for, the construction of PROJECT as set forth herein.

11 10. Notify DISTRICT in writing (Attention: Administrative Services Section),
12 at least twenty (20) days prior to the start of construction of PROJECT. Construction shall not
13 begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has issued to
14 COUNTY a written Notice to Proceed authorizing COUNTY to commence construction of
15 PROJECT.

16 11. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
17 the start of construction as set forth in Section I.10., with a complete list of all contractors and
18 subcontractors to be performing work on PROJECT, including the corresponding license
19 number and license classification of each. At such time, COUNTY shall further identify in
20 writing its designated superintendent for PROJECT construction.

21 12. Furnish DISTRICT with final mylar PROJECT plans and assign its
22 ownership to DISTRICT at the time DISTRICT approves and signs said final mylar plans, and
23 prior to the start of PROJECT construction.

24 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
25 the start of construction as set forth in Section I.10., a construction schedule which shall show
26 the order and dates in which COUNTY or COUNTY'S contractor proposes to carry on the
27 various parts of work, including estimated start and completion dates. As construction of
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1 PROJECT progresses, COUNTY shall update said construction schedule as requested by
2 DISTRICT.

3 14. Construct or cause to be constructed, PROJECT pursuant to a COUNTY
4 administered construction contract, in accordance with DISTRICT approved IMPROVEMENT
5 PLANS.

6 15. Furnish, or cause its construction manager to furnish, all construction
7 survey and materials testing services necessary to construct PROJECT.

8 16. Not permit any change to, or modification of, DISTRICT approved
9 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.

10 17. Comply or require its construction contractor(s) to comply with all
11 Cal/OSHA safety regulations including regulations concerning an Illness Prevention Plan and
12 maintain a safe working environment for all COUNTY and DISTRICT employees on the site.

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

15 19. Require its principal PROJECT construction contractor to procure and
16 maintain comprehensive liability insurance which shall protect DISTRICT from claims for
17 damages for personal injury, including accidental or wrongful death, as well as from claims for
18 property damage, which may arise from COUNTY'S construction of PROJECT or the
19 performance of its obligations hereunder, whether such construction or performance be by
20 COUNTY, the aforementioned construction contractor(s), or any subcontractors to said
21 construction contractor(s), or by anyone employed directly or indirectly by said construction
22 contractor(s) or subcontractors. Such insurance shall provide for coverage limits of not less than
23 two million dollars (\$2,000,000) per occurrence and shall name DISTRICT as additional
24 insureds with respect to this Agreement and the obligations of COUNTY hereunder. Said
25 insurance coverage shall be provided by an insurance company licensed to transact insurance
26 business in the State of California, and shall be evidenced by a certificate (or certificates) of
27 insurance indicating that the insurance is in full force and effect and that DISTRICT is named as
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1 additional insureds. Said certificate(s) of insurance shall contain the covenant of the insurance
2 carrier(s) that thirty (30) days written notice shall be provided to DISTRICT prior to any
3 modification, cancellation, or reduction in coverage of said insurance.

4 Prior to COUNTY issuing a Notice to Proceed to its contractor(s) to
5 commence PROJECT construction, an original certificate of insurance evidencing the required
6 insurance coverage shall be provided to DISTRICT.

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

11 21. Accept ownership and sole responsibility for the operation and maintenance
12 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
13 and maintenance of PROJECT as set forth herein. Further, it is mutually understood by the
14 parties hereto that prior to DISTRICT acceptance of ownership and responsibility for the
15 operation and maintenance of PROJECT, PROJECT shall be in a satisfactorily maintained
16 condition as solely determined by DISTRICT.

17 22. Upon completion of construction but prior to DISTRICT acceptance of
18 PROJECT for ownership, operation and maintenance, provide or cause its civil engineer of
19 record or construction civil engineer of record, duly registered in the State of California to
20 provide, DISTRICT with a redlined "RECORD DRAWING" copy of plans for PROJECT.
21 After DISTRICT approval of the redlined "RECORD DRAWING" plans, COUNTY'S engineer
22 shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S
23 original mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign the
24 original mylars "RECORD DRAWING".

25 23. Upon completion of PROJECT construction but prior to DISTRICT'S
26 acceptance of PROJECT for ownership, operation and maintenance, provide or cause its
27 construction manager to provide DISTRICT with appropriate documentation necessary to
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1 establish that PROJECT was constructed in accordance with the DISTRICT approved
2 IMPROVEMENT PLANS.

3 24. Upon completion of PROJECT construction but prior to DISTRICT'S
4 acceptance of PROJECT for ownership, operation and maintenance, convey or cause to be
5 conveyed to DISTRICT all necessary rights of way, including ingress and egress, in a form
6 approved by DISTRICT, for the rights of way as shown in concept in blue on Exhibit "A".

7 25. Upon completion of PROJECT construction and settlement of any
8 outstanding claims, provide DISTRICT with a copy of the COUNTY'S recorded Notice of
9 Completion prior to DISTRICT'S acceptance of PROJECT for ownership, operation and
10 maintenance.

11 SECTION II

12 DISTRICT shall:

13 1. Act as a Responsible Agency under CEQA, and take all necessary and
14 appropriate action to comply with CEQA.

15 2. Review and approve IMPROVEMENT PLANS prior to the start of
16 PROJECT construction.

17 3. Review and approve, as appropriate, all necessary regulatory permits for
18 the construction, operation and maintenance of PROJECT.

19 4. Conduct periodic inspections of PROJECT construction.

20 5. Upon COUNTY filing of a Notice of Completion for PROJECT, conduct a
21 final inspection of PROJECT.

22 6. Accept ownership and sole responsibility for the operation and maintenance
23 of PROJECT upon (i) COUNTY acceptance of PROJECT construction as being complete, (ii)
24 DISTRICT acceptance of PROJECT as being complete, (iii) DISTRICT receipt of appropriate
25 engineering documentation as set forth in Section I.23., (iv) DISTRICT receipt of stamped and
26 signed RECORD DRAWINGS of PROJECT plans as set forth in Section I.22., (v) DISTRICT'S
27 acceptance of all necessary rights of way as deemed necessary by DISTRICT for the operation
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1 and maintenance of PROJECT, (vi) DISTRICT receipt of COUNTY'S recorded Notice of
2 Completion as set forth in Section I.25., and (vii) DISTRICT'S sole determination that
3 PROJECT is in a satisfactorily maintained condition.

4 SECTION III

5 It is further mutually agreed:

6 1. Except as otherwise provided herein, all construction work involved with
7 PROJECT shall be inspected by COUNTY, or its construction manager, but shall not be deemed
8 complete until DISTRICT agrees that construction is completed in accordance with DISTRICT
9 approved IMPROVEMENT PLANS. COUNTY shall not request DISTRICT to accept any
10 portion of PROJECT for ownership, operation or maintenance until PROJECT construction is
11 deemed fully complete and all necessary rights of way have been conveyed as set forth herein.

12 2. DISTRICT personnel may observe and inspect all work being done on
13 PROJECT, but shall provide any comments to COUNTY personnel, or its construction
14 manager, who shall be solely responsible for all communications with COUNTY'S contractor(s)
15 during the construction of PROJECT.

16 3. COUNTY shall indemnify, defend, save and hold harmless DISTRICT and
17 County of Riverside (including their respective officers, districts, special districts and
18 departments, their respective directors, officers, Board of Supervisors, elected and appointed
19 officials, employees, agents, representatives, independent contractors, and subcontractors) from
20 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
21 or in any way relating to COUNTY (including its officers, Board of Supervisors, elected and
22 appointed officials, employees, agents, representatives, independent contractors, and
23 subcontractors) actual or alleged acts or omissions related to this Agreement, performance under
24 this Agreement, or failure to comply with the requirements of this Agreement, including but not
25 limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees; or (d)
26 any other element of any kind or nature whatsoever.

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

12 5. Any waiver by DISTRICT or COUNTY of any breach by the others of any
 13 one or more of the terms of this Agreement shall not be construed to be a waiver of any
 14 subsequent or other breach of the same or of any other term hereof. Failure on the part of
 15 DISTRICT or COUNTY to require from the others exact, full and complete compliance with
 16 any terms of this Agreement shall not be construed as in any manner changing the terms hereof,
 17 or estopping DISTRICT or COUNTY from enforcement hereof.

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

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

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

25 RIVERSIDE COUNTY FLOOD CONTROL
 26 AND WATER CONSERVATION DISTRICT
 27 1995 Market Street
 Riverside, CA 92501

RIVERSIDE COUNTY
 ECONOMIC DEVELOPMENT AGENCY
 3403 Tenth Street, Ste. 500
 Riverside, CA 92501
 Attn.: Dominick Lombardi

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

10. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof, and is a complete and exclusive statement of the terms and conditions thereof. This 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

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

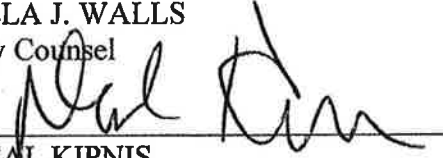
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

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:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

Smith Creek - Rock Slope Protection, Stage 2 (MS 147)
Cooperative Agreement
10/30/12
TT:bjp

COUNTY OF RIVERSIDE

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By _____
JOHN F. TAVAGLIONE, Chairman
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By *M. L. Victor* 11/5/12
MARSHA L. VICTOR
Principal Deputy County Counsel

By _____
Deputy

(SEAL)

Smith Creek - Rock Slope Protection, Stage 2 (MS 147)
Cooperative Agreement
10/30/12
TT:bjp