



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

507B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
November 20, 2012

SUBJECT: Smith Creek – Rock Slope Protection, Stage 2 (MS 147)
Project No. 5-0-00091
Cooperative Agreement
District Five/District Five

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement between the District and the Riverside County Economic Development Agency; 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 Riverside County Economic Development Agency is to design and construct the Smith Creek – Rock Slope Protection, Stage 2 project.

Continued on Page 2

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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
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

APPROVE

BY:
Michael R. Shetter

C.E.O. RECOMMENDATION:

County Executive Office Signature

FOR THE RIVERSIDE COUNTY COUNSEL
BY:
NEAL R. KIPNIS
DATE

Departmental Concurrence

- Policy
- Consent
- Per Exec. Ofc.:

Prev. Agn. Ref.:

District: 5th/5th

Agenda Number:

11.2

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

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

SUBJECT: Smith Creek – Rock Slope Protection, Stage 2 (MS147)
Project No. 5-0-00091
Cooperative Agreement
District Five/District Five

SUBMITTAL DATE: November 20, 2012
Page 2

BACKGROUND:

This Agreement is also necessary to provide for District construction inspection and maintenance of the project. Upon completion of project construction, the District will assume ownership, operation and maintenance of the project.

County Counsel has approved the Agreement as to legal form. A companion item appears on the Riverside County Economic Development Agency's Board agenda this same date.

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.
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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 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
 1995 Market Street
 27 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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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

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

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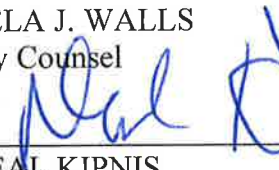
(to be filled in by Clerk of the Board)

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
By 
NEAL KIPNIS
Deputy County Counsel

ATTEST:

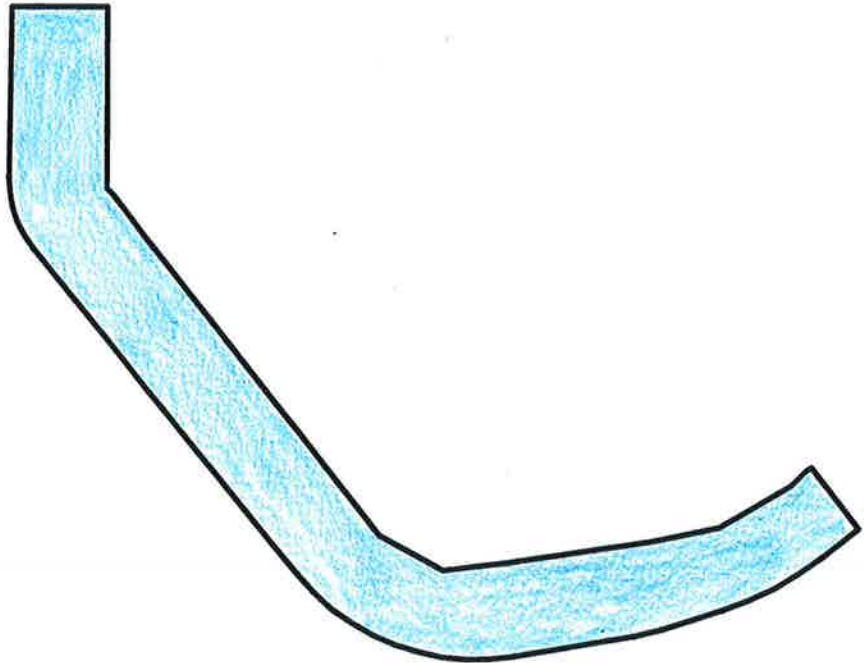
KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

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

EXHIBIT "A"



COOPERATIVE AGREEMENT

SMITH CREEK-ROCK SLOPE PROTECTION, STAGE 2 (MS147)

PROJECT NO:5-0-00091