



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

305B

SUBMITTAL DATE:
January 29, 2013

FISCAL PROCEDURES OF FIVE
JEANINE J. REY, FINANCE DIRECTOR
BY *Jeanine J. Rey* 1/29/13
JEANINE J. REY

FROM: General Manager-Chief Engineer
SUBJECT: Moreno Master Drainage Plan Lines I, J and J-9
Project Nos. 4-0-00762, 4-0-00776 and 4-0-00784
Cooperative Agreement
District Five/District Five

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement (Agreement) between the District and the City of Moreno Valley (City); 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 the construction of Moreno MDP Lines I, J and J-9 as part of a City administered public works construction project.

Continued on Page 2

Warren D. Williams
WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$565,000	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	\$565,000	For Fiscal Year:	FY 12/13

SOURCE OF FUNDS: 25140-947460-536200 Zone 4 Contribution to Non-County Agency	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY *Steven C. Horn*
Steven C. Horn, MPA

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY *Michael Kipnis* 1/29/13
MICHAEL KIPNIS, D

Policy Policy

Consent Consent

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: District: 5th/5th Agenda Number: **11-3**

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

SUBJECT: Moreno Master Drainage Plan Lines I, J, and J-9
Project Nos. 4-0-00762, 4-0-00776 and 4-0-00784
Cooperative Agreement
District Five/District Five

SUBMITTAL DATE: January 29, 2013
Page 2

BACKGROUND:

Said improvements are to be constructed by the City and inspected, operated and maintained by the City and District.

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 the interim Line J outlet, lateral storm drains that are 36-inch or less in diameter and 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 4 budget for FY 2012-2013 and will be included in the proposed budget in future years, as appropriate and necessary.

AMR:bjj

COOPERATIVE AGREEMENT

Moreno Master Drainage Plan Lines I, J and J-9
(Project Nos. 4-0-00762, 4-0-00776 and 4-0-00784)

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

RECITALS

A. CITY desires DISTRICT to contribute funding towards CITY'S construction of certain Moreno Master Drainage Plan (MDP) facilities; and

B. These certain Moreno MDP facilities consist of (i) approximately 235 lineal feet of underground storm drain system, hereinafter called "LINE I", as shown on District Drawing No. 4-955 (Sheet 10, approved November 2011), (ii) approximately 7,100 lineal feet of underground storm drain system, hereinafter called "LINE J", as shown on District Drawing No. 4-955 (Sheets 2-9, Sta. 12+50 to Sta. 83+59.73, approved November 2011), and (iii) approximately 2,200 lineal feet of underground storm drain system, hereinafter called "LINE J-9", as shown on District Drawing No. 4-1027 (Sheets 2-7, Sta. 10+27.29 to Sta. 32+42.70, approved November 2011). LINE I, LINE J and LINE J-9 are hereinafter altogether called "DISTRICT DRAINAGE FACILITIES"; and

C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of various catch basins, laterals, connector pipes, swale, access roads, and an interim LINE J outlet, hereinafter called "CITY FACILITIES". DISTRICT DRAINAGE FACILITIES and CITY FACILITIES are hereinafter called "PROJECT"; and

D. CITY has caused the necessary plans and specifications to be prepared and awarded a public works construction contract for PROJECT; and

1 E. CITY has initiated PROJECT construction prior to formally entering into a
 2 Cooperative Agreement between DISTRICT and CITY, with the recognition and understanding
 3 that the actual acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation
 4 and maintenance by DISTRICT is entirely dependent upon the execution of this Cooperative
 5 Agreement and DISTRICT DRAINAGE FACILITIES being constructed in strict accordance
 6 with plans and specifications approved by DISTRICT; and

8 F. DISTRICT has reviewed and approved the plans and specifications prepared by
 9 CITY for DISTRICT DRAINAGE FACILITIES, and DISTRICT has thus far inspected the
 10 construction of DISTRICT DRAINAGE FACILITIES pursuant to a Right of Entry and
 11 Inspection Agreement between DISTRICT and CITY executed on August 30, 2011; and

12 G. DISTRICT wishes to support CITY'S efforts to construct PROJECT by providing a
 13 financial contribution in an amount not to exceed five hundred sixty-five thousand dollars
 14 (\$565,000) towards the actual construction costs for DISTRICT DRAINAGE FACILITIES,
 15 hereinafter called "DISTRICT CONTRIBUTION". In addition, DISTRICT agrees to cover its
 16 own costs associated with construction inspection for DISTRICT DRAINAGE FACILITIES;
 17 and
 18

19 H. The purpose of this Cooperative Agreement is to memorialize the understandings
 20 by and amongst CITY and DISTRICT with respect to the funding, design, construction,
 21 inspection, ownership, operation and maintenance of PROJECT.

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

23 SECTION I

24 CITY shall:

- 25 1. Pursuant to the California Environmental Quality Act (CEQA), act as sole Lead
 26 Agency and assume responsibility for the preparation, circulation, and adoption of all necessary
 27

1 and appropriate CEQA documents pertaining to the construction, operation and maintenance of
2 PROJECT.

3 2. Prepare or cause to be prepared, plans and specifications for PROJECT, hereinafter
4 called "PROJECT PLANS", in accordance with the applicable DISTRICT and CITY standards,
5 and submit to DISTRICT for review and approval prior to awarding a public works construction
6 contract for PROJECT.

7
8 3. Obtain, at its sole cost and expense, all necessary licenses, permits, agreements,
9 approvals, rights of way, rights of entry and temporary construction easements as may be
10 necessary to construct, inspect, operate and maintain PROJECT.

11 4. Furnish DISTRICT with copies of all permits, approvals or agreements as may be
12 required by any Federal, State or local resource and/or regulatory agency for the construction,
13 operation and maintenance of PROJECT. Such documents, hereinafter called "REGULATORY
14 PERMITS", may include, but are not limited to, a Section 404 permit issued by the U.S. Army
15 Corps of Engineers, a Streambed Alteration Agreement issued by the California Department of
16 Fish and Game, a Section 401 Water Quality Certification issued by the California Regional
17 Water Quality Control Board (CRWQCB) and National Pollutant Discharge Elimination System
18 Permit issued by the State Water Resources Control Board or CRWQCB.

19
20 5. Advertise, award and administer a public works construction contract for the
21 PROJECT.

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

26 7. Inspect PROJECT construction or cause PROJECT'S construction to be inspected
27 by its construction manager.

28

1 8. Furnish, or cause its construction manager to furnish, all construction survey and
2 materials testing services necessary to construct PROJECT.

3 9. Not permit any change to, or modification of, the DISTRICT approved PROJECT
4 PLANS without DISTRICT'S prior written consent. Failure to do so shall be deemed a material
5 breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole
6 discretion, to provide written notice to CITY that DISTRICT is unable to perform its obligations
7 hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT
8 DRAINAGE FACILITIES due, either in whole or in part, to said breach of this Agreement.

10 10. Require its PROJECT construction contractor(s) to procure and maintain
11 comprehensive liability insurance which shall protect DISTRICT and County of Riverside from
12 claims for damages for personal injury, including accidental or wrongful death, as well as from
13 claims for property damage, which may arise from CITY's or its contractor's(s') construction of
14 PROJECT or the performance of its obligations hereunder, whether such construction or
15 performance be by CITY, the aforementioned construction contractor(s), or any subcontractors
16 to said construction contractor(s), or by anyone employed directly or indirectly by said
17 construction contractor(s) or subcontractors. Such insurance shall provide for coverage limits of
18 not less than two million dollars (\$2,000,000) per occurrence and shall name DISTRICT and
19 County of Riverside as additional insureds with respect to this Agreement and the obligations of
20 CITY hereunder. Said insurance coverage shall be provided by an insurance company licensed
21 to transact insurance business in the State of California, having an A.M. Best rating of A: VIII
22 (A:8) or better, and shall be evidenced by a certificate (or certificates) of insurance indicating
23 that the insurance is in full force and effect and that the DISTRICT and the County of Riverside
24 are named as additional insureds. Said certificate(s) of insurance shall contain the covenant of
25
26
27
28

1 the insurance carrier(s) that sixty (60) days written notice shall be provided to DISTRICT prior
2 to any modification, cancellation or reduction in coverage of said insurance.

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

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

10 12. Within two (2) weeks of completing PROJECT construction, provide DISTRICT
11 (Attention: Contract Administration Section) with written notice that PROJECT construction is
12 substantially complete and request DISTRICT to conduct a final inspection of DISTRICT
13 DRAINAGE FACILITIES.
14

15 13. Assume ownership and sole responsibility for the operation and maintenance of
16 PROJECT until such time as DISTRICT accepts ownership and responsibility for the operation
17 and maintenance of DISTRICT DRAINAGE FACILITIES as set forth herein.

18 14. Upon completion of PROJECT construction but prior to DISTRICT'S acceptance
19 of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, provide or
20 cause its construction manager to provide DISTRICT with appropriate engineering
21 documentation necessary to establish that DISTRICT DRAINAGE FACILITIES were
22 constructed in accordance with the DISTRICT approved plans and specifications for DISTRICT
23 DRAINAGE FACILITIES.
24

25 15. Upon completion of PROJECT construction but prior to DISTRICT'S acceptance
26 of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, provide or
27 cause its civil engineer of record or construction civil engineer of record, duly registered in the
28

1 State of California, to provide DISTRICT with a redlined "RECORD DRAWINGS" copy of
2 DISTRICT DRAINAGE FACILITIES plans. After DISTRICT approval of the redlined
3 "RECORD DRAWINGS", CITY'S engineer shall schedule with DISTRICT a time to transfer
4 the redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the
5 CITY'S engineer shall review, stamp and sign DISTRICT DRAINAGE FACILITIES plans
6 "RECORD DRAWINGS".
7

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

12 17. Upon completion of PROJECT construction but prior to DISTRICT'S acceptance
13 of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, convey or
14 cause to be conveyed to DISTRICT all flood control rights of way, including ingress and egress,
15 in a form approved by DISTRICT, for the DISTRICT DRAINAGE FACILITIES as shown in
16 concept in red on Exhibit "A".
17

18 18. At the time of recordation of the conveyance document(s) set forth in Section I.17,
19 furnish DISTRICT with policies of title insurance, each in an amount of not less than fifty
20 percent (50%) of the estimated fee value, as determined by DISTRICT, for each parcel to be
21 conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said property as being free and
22 clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded and
23 unrecorded), and except those which, in the sole discretion of DISTRICT, are deemed
24 acceptable.
25

26 19. Upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
27 construction as being complete, accept sole responsibility for the adjustment of all PROJECT
28

1 manhole rings and covers which must be performed at such time(s) that the finished grade along
2 and above the underground portions of DISTRICT DRAINAGE FACILITIES are improved,
3 repaired, replaced or changed. It being further understood and agreed that any such adjustments
4 shall be performed at no cost to DISTRICT.

5 SECTION II

6 DISTRICT shall:

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

9 2. Review and approve PROJECT PLANS prior to CITY'S advertising of
10 construction contract.

11 3. Pay CITY, within thirty (30) days after the execution of this Agreement, for
12 DISTRICT CONTRIBUTION in an amount not to exceed five hundred sixty-five thousand
13 dollars (\$565,000) for construction of DISTRICT DRAINAGE FACILITIES.

14 4. Review and approve all necessary REGULATORY PERMITS. DISTRICT may
15 withhold approval of such document(s) when, in the sole judgment of DISTRICT'S General
16 Manager-Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs
17 DISTRICT'S ability to operate and maintain DISTRICT DRAINAGE FACILITIES.

18 5. At its sole cost and expense, conduct period inspections of DISTRICT
19 DRAINAGE FACILITIES construction for quality control purposes and provide any comments
20 to CITY'S designated PROJECT construction inspector.

21 6. Upon receipt of CITY'S written notice that PROJECT construction is substantially
22 complete as set forth in Section I.12, conduct a final inspection of DISTRICT DRAINAGE
23 FACILITIES.

1 DISTRICT. If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITIES is
2 not in an acceptable condition, corrections will be made at sole expense of CITY.

3 5. CITY shall indemnify, defend, save and hold harmless DISTRICT and County of
4 Riverside (including their respective officers, districts, special districts and departments, their
5 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,
6 agents, representatives, independent contractors, and subcontractors) from any liabilities, claim,
7 damage, proceeding or action, present or future, based upon, arising out of or in any way
8 relating to CITY (including its officers, elected and appointed officials, employees, agents,
9 representatives, independent contractors, and subcontractors) actual or alleged acts or omissions
10 related to this Agreement, performance under this Agreement, or failure to comply with the
11 requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily
12 injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature
13 whatsoever.
14

15
16 6. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its
17 officers, elected and appointed officials, employees, agents, representatives, independent
18 contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action,
19 present or future, based upon, arising out of or in any way relating to DISTRICT (including its
20 officers, Board of Supervisors, elected and appointed officials, employees, agents,
21 representatives, independent contractors, and subcontractors) actual or alleged acts or omissions
22 related to this Agreement, performance under this Agreement, or failure to comply with the
23 requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily
24 injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature
25 whatsoever.
26
27
28

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

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

10 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF MORENO VALLEY
11 AND WATER CONSERVATION DISTRICT	14177 Frederick Street
12 1995 Market Street	Moreno Valley, CA 92553
Riverside, CA 92501	Attn: Viren Shah

13 9. If any provision in this Agreement is held by a court of competent jurisdiction to
 14 be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect
 15 without being impaired or invalidated in any way.

16 10. This Agreement is to be construed in accordance with the laws of the State of
 17 California.

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

21 12. This Agreement is the result of negotiations between the parties hereto, and with
 22 the advice and assistance of their respective counsel. No provision contained herein shall be
 23 construed against DISTRICT solely because, as a matter of convenience, DISTRICT prepared
 24 this Agreement in its final form.
 25
 26
 27
 28

1 13. Pursuant to Government Code Sections 895.4 and 895.6, if any party hereto is held
2 liable upon any judgment for damages caused by a negligent or wrongful act or omission in
3 connection with the performance of their respective duties and obligations set forth in this
4 Agreement and pays in excess of its pro rata share in satisfaction of such judgment, such party
5 shall be entitled to contribution from the other party to this Agreement. The pro rata share of
6 each party for purposes of this Section shall be determined according to the comparative fault of
7 the respective party, as between them.
8

9 In the event of any arbitration, action or suit brought by a party hereto against
10 another party hereunder by reason of any breach on the part of the other party of any of the
11 mutual covenants and agreements set forth herein or any other dispute between the parties
12 concerning this Agreement, then, the prevailing party in any such action or dispute, whether by
13 final judgment or arbitration award, shall be entitled to have and recover from the other party all
14 costs and expenses of suit or claim, including but not limited to, attorneys' fees and experts' fees.
15 This Section shall survive any termination of this Agreement.
16

17 14. This Agreement is intended by the parties hereto as a final expression of their
18 understanding with respect to the subject matter hereof, and is a complete and exclusive
19 statement of the terms and conditions thereof. This Agreement may be changed or modified
20 only upon the written consent of the parties hereto.
21

22 15. This Agreement may be executed and delivered in any number of counterparts or
23 copies, hereinafter called "COUNTERPART", by the parties hereto. When each party has
24 signed and delivered at least one COUNTERPART to the other parties hereto, each
25 COUNTERPART shall be deemed an original and, taken together, shall constitute one and the
26 same Agreement, which shall be binding and effective as to the parties hereto.
27

28 //

1 IN WITNESS WEHREOF, the parties hereto have executed this Agreement on

2 _____
3 (to be filled in by the Clerk of the Board)

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

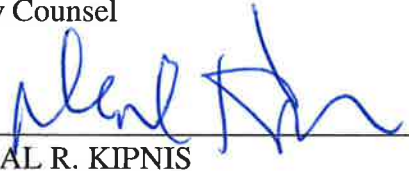
6 By  By _____
7 WARREN D. WILLIAMS MARION ASHLEY, Chairman
8 General Manager-Chief Engineer Riverside County Flood Control and Water
9 Conservation District Board of Supervisors

10 APPROVED AS TO FORM:

ATTEST:

11 PAMELA J. WALLS
12 County Counsel

KECIA HARPER-IHEM
Clerk of the Board

13 By  _____
14 NEAL R. KIPNIS
15 Deputy County Counsel

By _____
Deputy

(SEAL)

23
24 Cooperative Agreement
25 Moreno MDP Lines I, J and J-9
26 Project Nos. 4-0-00762, 4-0-00776 and 4-0-00784
27 12/4/12
28 TT:blj

1 RECOMMENDED FOR APPROVAL: CITY OF MORENO VALLEY

2 By 
3 AHMAD R. ANSARI
4 Public Works Director/City Engineer

By 
HENRY GARCIA
 City Manager

6 APPROVED AS TO FORM:

ATTEST:

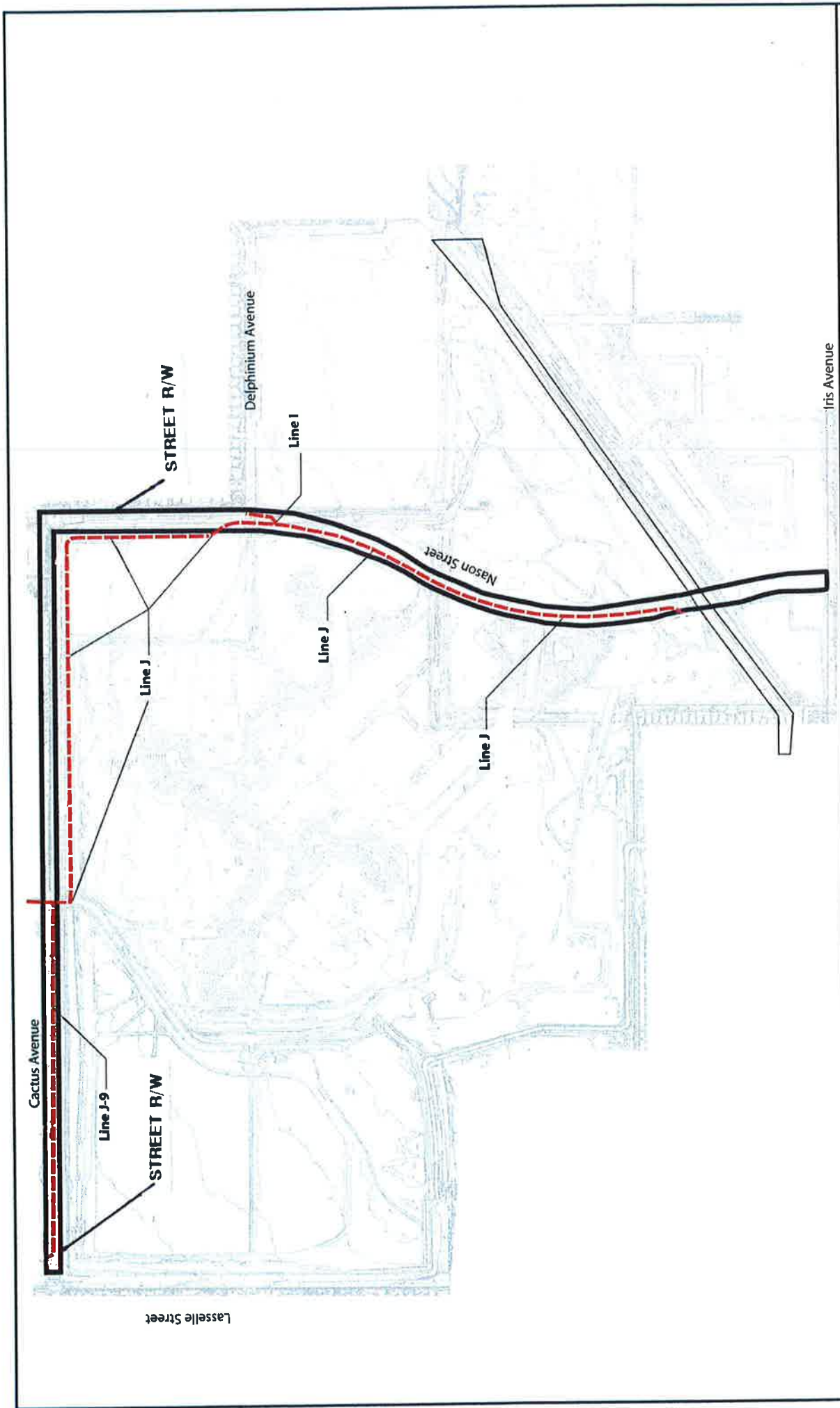
7 By  
8 ROBERT L. HANSEN
9 City Attorney

By 
JANE HALSTEAD
City Clerk

(SEAL)

- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Cooperative Agreement
Moreno MDP Lines I, J and J-9
Project Nos. 4-0-00762, 4-0-00776 and 4-0-00784
12/4/12
TT:blj



Not to scale



Exhibit A — Cooperative Agreement with City of Moreno Valley
 - MORENO MDP LINES I, J, AND J-9