

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

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FROM: TLMA – Transportation Department

SUBMITTAL DATE:
July 9, 2014

SUBJECT: Approval of Cooperative Agreement between the County of Riverside, Flood Control and Water Conservation District, and the City of Hemet for Hemet Master Drainage Plan Line C, Stage 4 Project No. 4-0-00212. District 3/District 3; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the County of Riverside, Flood Control and Water Conservation District and City of Hemet; and
2. Authorize the Chairman of the Board to execute the Cooperative Agreement documents on behalf of the County of Riverside.

BACKGROUND:

Summary

The County of Riverside, Flood Control and Water Conservation District is proposing to design and construct an underground flood control facility within Whittier Avenue, between Palm Avenue and east of San Jacinto Street in the City of Hemet and a portion of unincorporated County area.

Patricia Romo
Assistant Director of Transportation
for Juan C. Perez
Director of Transportation and Land Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: 100% Riverside County Flood Control District and Water Conservation District
Budget Adjustment: No
For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY: MARSHALA VICTOR
DATE: 7/17/14

Departmental Concurrence

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: 3/3

Agenda Number:

3-50

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of Cooperative Agreement Between the County of Riverside, Flood Control and Water Conservation District, and the City of Hemet for Hemet Master Drainage Plan Line C, Stage 4 Project No. 4-0-00212. District 3/District 3; [\$0]

DATE: July 9, 2014

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

This Cooperative Agreement (Agreement) sets forth the terms and conditions by which the Flood Control and Water Conservation District (District) will design and construct the Hemet Master Drainage Plan Line C, Stage 4 Project.

The Agreement is necessary as certain interfering portions of the City of Hemet's (City) existing waterlines and sewer line will be removed and/or relocated as a part of the District's upcoming Hemet Master Drainage Plan Line C, Stage 4 construction project.

The Agreement is also necessary for the County of Riverside (County) and City to grant the District the necessary rights to access, construct, operate, and maintain the project within their respective rights-of-way. Upon completion of project construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain that is greater than 36-inches in diameter. The County will assume ownership and responsibility for the operation and maintenance of the project's associated catch basins, inlets, curbs and gutters, and connector pipes that are 36-inches or less in diameter located within the County's rights of way. The City will assume ownership and responsibility for the operation and maintenance of the project's associated catch basins, inlets, curbs and gutters and connector pipes that are 36 inches or less in diameter located within the City's right-of-way. The City will also assume ownership and responsibility for the operation and maintenance of the relocated waterlines and sewer line.

The District is funding all design, construction, and construction inspection costs for the project.

County Counsel has approved the Agreement as to legal form, and the City has executed the Agreement. A companion item appears on the Riverside County Flood Control and Water Conservation District's Board agenda this same date. This project is funded by ad-valorem property tax revenue and entails no new fees, taxes, nor bonded indebtedness.

Impact on Residents and Businesses

The construction of this project will provide drainage improvements for adjacent property owners and reduce traffic hazards caused by flooding along Whittier Avenue.

SUPPLEMENTAL:

Additional Fiscal Information

Future operations and maintenance costs associated with said mainline storm drain that is greater than 36 inches in diameter will accrue to the District.

Contract History and Price Reasonableness

N/A

COOPERATIVE AGREEMENT
Hemet Master Drainage Plan Line C, Stage 4
Project No. 4-0-00212

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", the County of Riverside, hereinafter called "COUNTY" on behalf of its Transportation Department and the City of Hemet, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct the Hemet Master Drainage Plan (MDP) Line C, Stage 4 facility. Construction of this flood control facility will help to provide necessary drainage improvements for existing development located mostly within the City of Hemet area; and

B. Hemet MDP Line C, Stage 4 consists of approximately 6,700 lineal feet of underground reinforced concrete pipe system located within Whittier Avenue from approximately Palm Avenue to approximately 200 lineal feet east of San Jacinto Street, hereinafter called "STAGE 4", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

C. Associated with the construction of STAGE 4 is the construction of certain catch basins, inlets, curbs and gutters, laterals, storm drains and connector pipes that are thirty-six inches (36") or less in diameter located within COUNTY or CITY rights of way, hereinafter called "APPURTENANCES"; and

D. Those APPURTENANCES located within COUNTY rights of way are hereinafter called "COUNTY APPURTENANCES". Those APPURTENANCES located within CITY rights of way are hereinafter called "CITY APPURTENANCES"; and

1 E. Together, STAGE 4, COUNTY APPURTENANCES and CITY
2 APPURTENANCES are hereinafter called "PROJECT"; and

3 F. CITY owns, operates and maintains all waterlines located within CITY'S
4 rights of way, hereinafter called "CITY WATERLINES", including i) a 6-inch diameter
5 waterline, hereinafter called "6-INCH WATERLINE", ii) a 10-inch diameter waterline,
6 hereinafter called "10-INCH WATERLINE", and iii) the abandoned 2-inch diameter and 4-inch
7 diameter waterlines, hereinafter called "ABANDONED WATERLINES". DISTRICT has
8 determined that a segment of the 6-INCH WATERLINE interferes with the proposed
9 construction of PROJECT. Therefore, the interfering segment of the 6-INCH WATERLINE
10 must be removed and all associated house connections must be reconnected to the 10-INCH
11 WATERLINE, hereinafter called "WATERLINES MODIFICATION". DISTRICT has also
12 determined that portions of ABANDONED WATERLINES interfere with the proposed
13 construction of PROJECT. Therefore, the interfering portions of ABANDONED
14 WATERLINES must be removed; and

15 G. CITY also owns, operates and maintains a 4-inch diameter sewer line,
16 hereinafter called "4-INCH SEWER LINE", located within CITY'S rights of way. A small
17 segment of the 4-INCH SEWER LINE interferes with the construction of PROJECT.
18 Therefore, the interfering segment of the 4-INCH SEWER LINE must be modified in
19 accordance with applicable CITY standard as part of the construction of PROJECT, hereinafter
20 called "SEWER LINE MODIFICATION"; and

21 H. DISTRICT is willing to prepare, or cause to be prepared, the necessary
22 plans and specifications for WATERLINES MODIFICATION. DISTRICT is also willing to
23 include the plans and specifications for WATERLINES MODIFICATION as part of its
24 construction contract for PROJECT provided that CITY pays DISTRICT as follows:
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1 (i) One hundred percent (100%) of the lowest responsible bid contract
2 price for the construction of WATERLINES MODIFICATION, hereinafter called "INITIAL
3 PAYMENT";

4 (ii) One hundred percent (100%) of CITY approved construction
5 contract change orders in the event of changed or unforeseen field conditions during
6 construction that result in a construction cost increase above the lowest responsible bid contract
7 price for the construction of WATERLINES MODIFICATION, hereinafter called "FINAL
8 PAYMENT".
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10 I. The purpose of this Agreement is to memorialize the mutual
11 understandings by and between DISTRICT, COUNTY and CITY with respect to design,
12 construction, ownership, operation and maintenance of PROJECT, WATERLINES
13 MODIFICATION and the SEWER LINE MODIFICATION.
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15 J. It is in the best interest of the public to proceed with the construction of
16 PROJECT at the earliest possible date; and

17 NOW, THEREFORE, in consideration of the preceding recitals and the mutual
18 covenants hereinafter contained, the parties hereto mutually agree as follows:

19 **SECTION I**

20 DISTRICT shall:

21
22 1. Pursuant to the California Environmental Quality Act (CEQA), act as the
23 Lead Agency and assume responsibility for the preparation, circulation and adoption of all
24 necessary and appropriate CEQA documents pertaining to the construction, operation and
25 maintenance of PROJECT.

26 2. Prepare or cause to be prepared, plans and specifications for PROJECT,
27 hereinafter called "IMPROVEMENT PLANS", including separate plans and specifications for
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1 i) SEWER LINE MODIFICATION, and ii) WATERLINES MODIFICATION, in accordance
2 with applicable DISTRICT, COUNTY and CITY standards.

3 3. Prior to advertising PROJECT for public works construction contract bids,
4 submit IMPROVEMENT PLANS to COUNTY and CITY for their review and approval, as
5 appropriate.

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

9 5. Secure, at its sole cost and expense, all necessary permits, approvals,
10 licenses or agreements required by any federal, state or local resource or regulatory agencies
11 pertaining to the construction, operation and maintenance of PROJECT.

12 6. Advertise, award and administer a public works construction contract for
13 PROJECT at its sole cost and expense.

14 7. Provide COUNTY and CITY with written notice that DISTRICT has
15 awarded a construction contract for PROJECT. The written notice to CITY shall include the
16 Contractor's actual bid amounts for the construction of WATERLINES MODIFICATION,
17 setting forth the lowest responsible bid contract price for WATERLINES MODIFICATION as
18 set forth herein. DISTRICT shall also notify and invite COUNTY and CITY personnel to
19 attend the PROJECT pre-construction meeting.

20 8. Invoice CITY for INITIAL PAYMENT at the time of providing written
21 notice to CITY of the award of contract for PROJECT construction as set forth in Section I.7.

22 9. Notify COUNTY and CITY in writing at least twenty (20) days prior to
23 the start of construction of PROJECT.

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1 10. Furnish COUNTY and CITY, at the time of providing written notice for
2 the start of construction as set forth in Section I.8, with a construction schedule which shall
3 show the order and dates in which DISTRICT or DISTRICT'S contractor proposes to carry out
4 on the various parts of work, including estimated start and completion dates.

5 11. Not permit any change to, or modification of, DISTRICT, COUNTY and
6 CITY approved IMPROVEMENT PLANS without the prior written permission and consent of
7 CITY or COUNTY, as appropriate.

8 12. Construct or cause to be constructed, PROJECT including SEWER LINE
9 MODIFICATION, WATERLINES MODIFICATION and removal of the interfering portions
10 of ABANDONED WATERLINES pursuant to a DISTRICT administered construction
11 contract, in accordance with IMPROVEMENT PLANS approved by DISTRICT, COUNTY
12 and CITY and pay all costs associated therewith.

13 13. Inspect or cause to be inspected, construction of PROJECT.

14 14. 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 DISTRICT, COUNTY and CITY employees on the site.

17 15. Require its construction contractor(s) to include COUNTY and CITY as
18 additional insured under the liability insurance coverage for PROJECT, and also require its
19 construction contractor(s) to include COUNTY and CITY as a third party beneficiary of any
20 and all warranties of the contractor's work with regard to APPURTENANCES, WATERLINES
21 MODIFICATION and SEWER LINE MODIFICATION.

22 16. Keep an accurate accounting of all DISTRICT costs associated with the
23 construction of WATERLINES MODIFICATION pursuant to IMPROVEMENT PLANS, plus
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1 any additional work requested by CITY pursuant to Section IV.3., and include this accounting
2 when invoicing CITY for FINAL PAYMENT as set forth in Section I.19.

3 17. Within two (2) weeks of completing PROJECT construction, provide
4 COUNTY and CITY with written notice that PROJECT construction is substantially complete
5 and request that (i) COUNTY conducts a final inspection of COUNTY APPURTENANCES
6 and subsequently assume ownership and responsibility for operation and maintenance of
7 COUNTY APPURTENANCES, and (ii) CITY conducts a final inspection of CITY
8 APPURTENANCES, WATERLINES MODIFICATION and SEWER LINE MODIFICATION
9 and subsequently (a) assume ownership and responsibility for operation and maintenance of
10 CITY APPURTENANCES, and (b) accept WATERLINES MODIFICATION and SEWER
11 LINE MODIFICATION as operational.
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13 18. Upon DISTRICT'S acceptance of PROJECT construction as complete,
14 provide COUNTY and CITY with a copy of the Notice of Completion.
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16 19. Within thirty (30) days after DISTRICT'S acceptance of PROJECT as
17 being complete, submit an invoice to CITY for FINAL PAYMENT. The invoice shall include
18 a detailed breakdown of all costs, including but not limited to payment vouchers, CITY
19 approved change orders and other such documents as may be necessary to establish the actual
20 construction costs for WATERLINES MODIFICATION.
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22 20. Upon DISTRICT'S acceptance of PROJECT construction as complete,
23 provide (i) COUNTY and CITY with a reproducible duplicate set of "record drawings" of
24 PROJECT plans, and (ii) CITY with a reproducible set of "record drawings" of WATERLINES
25 MODIFICATION and SEWER LINE MODIFICATION plans upon receipt of CITY'S
26 payment for invoice as set forth in Section I.19.
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1 6. Pay DISTRICT for INITIAL PAYMENT, within thirty (30) days
2 following receipt of DISTRICT'S invoice as set forth in Section I.8.

3 7. Inspect construction of PROJECT for quality control purposes, at its sole
4 cost, and provide any comments to DISTRICT personnel who shall be solely responsible for all
5 quality control communications with DISTRICT'S contractor(s) during the construction of
6 PROJECT.

7 8. Upon receipt of DISTRICT'S written notice that PROJECT construction is
8 substantially complete, conduct a final inspection of CITY APPURTENANCES,
9 WATERLINES MODIFICATION and SEWER LINE MODIFICATION.

10 9. Upon its determination that WATERLINES MODIFICATION and
11 SEWER LINE MODIFICATION are satisfactorily completed, provide DISTRICT with a
12 written Notice of Final Acceptance and, thereupon, assume sole responsibility for ownership,
13 operation and maintenance of WATERLINES MODIFICATION and SEWER LINE
14 MODIFICATION.

15 10. Pay DISTRICT within thirty (30) days after receipt of appropriate invoice,
16 for FINAL PAYMENT as set forth in Section I.19.

17 11. Accept ownership and sole responsibility for the operation and
18 maintenance of CITY APPURTENANCES upon (i) receipt of DISTRICT'S written Notice of
19 Completion as set forth in Section I.18, and (ii) receipt of a reproducible duplicate copy of
20 "record drawings" of PROJECT plans as set forth in Section I.20.

21 12. Upon CITY acceptance of CITY APPURTENANCES construction as
22 being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings
23 and covers located within CITY rights of way and jurisdiction which must be performed at
24 such time(s) that the finished grade along and above the underground portions of PROJECT are
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1 improved, repaired, replaced or changed. It being further understood and agreed that any such
2 adjustments shall be performed at no cost to DISTRICT.

3 **SECTION IV**

4 It is further mutually agreed:

5 1. CITY WATERLINES and 4-INCH SEWER LINE shall, at all times,
6 remain the sole ownership and exclusive responsibility of CITY. Nothing herein shall be
7 construed as creating any obligation or responsibility on the part of DISTRICT to operate,
8 maintain or warranty CITY WATERLINES or 4-INCH SEWER LINE.

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10 2. Except as otherwise provided herein, all construction work involved with
11 PROJECT shall be inspected by DISTRICT and shall not be deemed complete until approved
12 and accepted as complete by DISTRICT.

13 3. In the event CITY desires to include any additional work as part of the
14 construction of WATERLINES MODIFICATION, CITY shall submit a written request to
15 DISTRICT describing the additional work desired and agrees to pay DISTRICT for any agreed
16 upon work requested. Payment for CITY requested additional work shall be based upon actual
17 quantities of materials installed at the contract unit prices bid or at the negotiated change order
18 prices.

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20 4. Except as otherwise provided herein, DISTRICT shall not be responsible
21 for any additional street repairs or improvements not shown in IMPROVEMENT PLANS and
22 not as a result of PROJECT construction.

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24 5. Each party, as to any claim or liability arising out of any act or omission
25 with reference to any work to be performed by or authority delegated to such party as a result
26 of this Agreement, shall save, defend, indemnify and hold harmless the other party and its
27 officers and employees from all liability for death or injury to person, or damage to property or
28 claim therefor.

1 6. In the event of any arbitration, action or suit brought by DISTRICT,
 2 COUNTY or CITY against the other party by reason of any breach on the part of the other
 3 party of any of the covenants and agreements set forth in this Agreement, or any other dispute
 4 between DISTRICT, COUNTY or CITY concerning this Agreement, the prevailing party in
 5 any such action or dispute, by a final judgment or arbitration award, shall be entitled to have
 6 and recover from the other party all costs and expenses or claims, including but not limited to,
 7 attorney's fees and expert witness fees. This section shall survive any termination of this
 8 Agreement.

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

12 8. The parties hereto each pledge to cooperate in regard to the operation and
 13 maintenance of their respective facilities, as set forth herein, and to discharge their respective
 14 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any
 15 nuisance condition or undue maintenance impact upon the others' facilities.

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

18 RIVERSIDE COUNTY FLOOD CONTROL
 19 AND WATER CONSERVATION DISTRICT
 20 1995 Market Street
 21 Riverside, CA 92501
 22 Attn: Design and Construction Division

COUNTY OF RIVERSIDE
 4080 Lemon Street, 2nd Floor
 Riverside, CA 92502-1090
 Attn: Alan French
 Plan Check Section

23 CITY OF HEMET
 24 510 E. Florida Avenue
 25 Hemet, CA 92543
 26 Attn: Jorge Biagioni
 27 Engineering Director/City Engineer
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2 10. If any provision in this Agreement is held by a court of competent
3 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless
4 continue in full force without being impaired or invalidated in any way.

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

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8 12. The parties hereto shall not assign this Agreement without the written
9 consent of the other parties.

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

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

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

3 16. This Agreement is intended by the parties hereto as a final expression of
4 their understanding with respect to the subject matter hereof and as a complete and exclusive
5 statement of the terms and conditions thereof and supersedes any and all prior and
6 contemporaneous agreements and understandings, oral and written, in connection therewith.

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8 This Agreement may be changed or modified only upon the written consent of the parties
9 hereto.

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

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By _____
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement: Riverside County Transportation Department and City of Hemet
Hemet Master Drainage Plan Line C, Stage 4
Project No. 4-0-00212
06/25/14
TT:AMR:blj

Exhibit A

