

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

614B



FISCAL PROCEDURES APPROVED
VAN M. CHAND, FINANCE DIRECTOR

BY: *Warren D. Williams*
WARREN D. WILLIAMS

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
August 16, 2011

SUBJECT: North Norco Channel Line N-5A
Project No. 2-0-00136
Funding Agreement

RECOMMENDED MOTION:

1. Approve the Funding Agreement between the District and the City of Norco; 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 of Norco (City) for design and construction of the North Norco Channel Line N-5A as part of its Sierra Avenue Improvements project. Upon completion of construction, the City will accept sole responsibility for the ownership, operation and maintenance of the facility.

Continued on Page 2

Steve Thomas

FOR **WARREN D. WILLIAMS**
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$63,336.25	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	N/A	For Fiscal Year:	2011-12

SOURCE OF FUNDS: 25120 947420 536200 – Contributions to Non-County Agency Zone 2	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY: *Alex Gann*
Alex Gann

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
DATE: 8/23/11
BY: NEAL R. KIPNIS

Departmental Concurrence

- Policy
- Policy
- Consent
- Consent

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

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: August 16, 2011
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
District: 2nd

Agenda Number:

11.6

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

SUBJECT: North Norco Channel Line N-5A
Project No. 2-0-00136
Funding Agreement

SUBMITTAL DATE: August 16, 2011
Page 2

BACKGROUND:

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

FINANCIAL:

Sufficient funds are available in the District's Zone 2 budget for FY 2011-12.

CLC:blj

FUNDING AGREEMENT
NORTH NORCO CHANNEL LINE N-5A
PROJECT NO. 2-0-00136

1
2
3 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
4 CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF NORCO,
5 hereinafter called "CITY", hereby agree as follows:

RECITALS

6
7 A. CITY has caused to be prepared the necessary plans and specifications to
8 construct certain street improvements as part of its Sierra Avenue Improvements project,
9 hereinafter called "STREET IMPROVEMENTS"; and
10

11 B. CITY has also caused to be prepared the necessary plans and specifications
12 to construct certain storm drain improvements as part of its Sierra Avenue Improvements
13 project, hereinafter called "STORM DRAIN IMPROVEMENTS"; and

14 C. Together, STREET IMPROVEMENTS and STORM DRAIN
15 IMPROVEMENTS are hereinafter called "PROJECT"; and

16 D. DISTRICT has included the sum of sixty-three thousand three hundred
17 thirty-six dollars and twenty-five cents (\$63,336.25) in its Fiscal Year 2011-2012 Zone 2
18 budget, hereinafter called "DISTRICT CONTRIBUTION", for the purpose of contributing
19 funds to CITY'S construction of said STORM DRAIN IMPROVEMENTS; and
20

21 E. CITY has awarded a construction contract for PROJECT; and

22 F. CITY has filed a Notice of Completion for PROJECT and furnished
23 DISTRICT with a copy of CITY'S Notice of Completion; and
24

25 G. CITY has submitted a request to DISTRICT for reimbursement of the
26 actual construction cost of said STORM DRAIN IMPROVEMENTS in the amount of sixty-
27 three thousand three hundred thirty-six dollars and twenty-five cents (\$63,336.25); and
28

1 H. DISTRICT wishes to support CITY'S efforts to construct STORM DRAIN
2 IMPROVEMENTS; and

3 I. The purpose of this Agreement is to memorialize the mutual
4 understandings by and between CITY and DISTRICT with respect to the construction,
5 ownership, operation and maintenance of PROJECT, and the payment of DISTRICT
6 CONTRIBUTION.

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

9
10 SECTION I

11 CITY shall:

- 12 1. Construct PROJECT pursuant to a CITY administered public works
13 contract.
- 14 2. Supervise and inspect all aspects of PROJECT'S construction.
- 15 3. Upon completion of PROJECT construction and CITY'S acceptance
16 thereof, be solely responsible for the ownership, operation and maintenance of PROJECT.
17

18 SECTION II

19 DISTRICT shall:

- 20 1. Within sixty (60) days of the execution of this Agreement, pay DISTRICT
21 CONTRIBUTION to CITY in an amount not to exceed sixty-three thousand three hundred
22 thirty-six dollars and twenty-five cents (\$63,336.25).
- 23 2. Under the provisions of this Agreement, DISTRICT shall bear no
24 responsibility whatsoever for the construction, ownership, operation and maintenance of
25 PROJECT.
26

SECTION III

1
2 It is further mutually agreed:

3 1. DISTRICT CONTRIBUTION shall be used by CITY solely for the
4 purpose of constructing STORM DRAIN IMPROVEMENTS as set forth herein.

5 2. In the event that any claim or legal action is brought against DISTRICT, in
6 connection with this Agreement and based upon the actual or alleged acts or omissions of CITY,
7 its officers, employees, consultants, contractors or agents, including but not limited to claims or
8 legal action related to design, construction or failure of PROJECT, CITY shall defend,
9 indemnify and hold DISTRICT harmless therefrom without cost to DISTRICT. This shall
10 include providing DISTRICT with legal representation and pay for related costs for any such
11 claim or legal action, and payment of any settlement or judgment on behalf of DISTRICT, all at
12 no cost to DISTRICT. Upon-CITY'S failure to do so, DISTRICT shall be entitled to recover
13 from CITY all of its costs and expenses, including, but not limited to, reasonable attorneys' fees.
14

15 3. In the event of any arbitration, action or suit brought by either CITY or
16 DISTRICT against the other party by reason of any breach on the part of the other party of any
17 of the covenants and agreements set forth in this Agreement, or any other dispute between
18 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or
19 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
20 other party all costs and expenses or claims, including but not limited to, attorneys' fees and
21 expert witness fees. This section shall survive any termination of this Agreement.
22

23 4. If any provision in this Agreement is held by a court of competent
24 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
25 continue in full force without being impaired or invalidated in any way.
26
27
28

1 5. This Agreement is to be construed in accordance with the laws of the State
2 of California. Neither CITY nor DISTRICT shall assign this Agreement without the written
3 consent of the other party.

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

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

9
10 RIVERSIDE COUNTY FLOOD CONTROL
11 AND WATER CONSERVATION DISTRICT
12 1995 Market Street
13 Riverside, CA 92501
14 Attn: Steve Thomas

CITY OF NORCO
2870 Clark Avenue
Norco, CA 92860
Attn: Bill Thompson

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

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

26 10. This Agreement is intended by the parties hereto as a final expression of
27 their understanding with respect to the subject matter hereof and as a complete and exclusive
28

1 statement of the terms and conditions thereof and supersedes any and all prior and
2 contemporaneous agreements and understandings, oral or written, in connection therewith. This
3 Agreement may be changed or modified only upon the written consent of the parties hereto.

4 //

5 //

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AUG 16 2011

(to be filled in by the Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By *Steve Thomas*
WARREN D. WILLIAMS
General Manager-Chief Engineer

By *Marion Ashley*
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 *[Signature]*
NEAL R. KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By *[Signature]*
Deputy

(SEAL)


Funding Agreement
North Norco Channel – Line N-5A
06/21/11
CLC:blj

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECOMMENDED FOR APPROVAL:


CITY OF NORCO


By 
BETH GROVES
City Manager

By 
BERWIN HANNA
Mayor

APPROVED AS TO FORM:

ATTEST:


BRENDA JACOBS, CMC
CITY CLERK

By 
JOHN HARPER
CITY ATTORNEY

(SEAL)

Funding Agreement
North Norco Channel – Line N-5A
06/21/11
CLC:blj