

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

409B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
November 6, 2012

**SUBJECT:** Desert Hot Springs MDP Line E-5  
Project No. 6-0-00035-01  
Cooperative Agreement  
District 5/District 4

**RECOMMENDED MOTION:**

1. Approve the Cooperative Agreement between the District and the City of Desert Hot Springs; 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 design and construction of the Desert Hot Springs MDP Line E-5.

Continued on Page 2.

TNK:bjl

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

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	\$4,051,381	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	No
	Annual Net District Cost:	N/A	For Fiscal Year:	FY2012-13

<b>SOURCE OF FUNDS:</b> 25160 947500 527980 - Zone 6 Construction	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Michael R. Shetler

**County Executive Office Signature**

**MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

On motion of Supervisor Ashley, seconded by Supervisor Benoit 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: November 6, 2012  
xc: Flood

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

11.5

FISCAL PROCEDURES APPROVED  
JEANINE J. REY, FINANCE DIRECTOR  
BY:   
JEANINE J. REY

FORM APPROVED COUNTY COUNSEL  
BY:   
NEAL R. KIPNIS DATE: 10/16/2012

Departmental Concurrence

Consent  Policy  
 Consent  Policy

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

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

**SUBJECT:** Desert Hot Springs MDP Line E-5  
Project No. 6-0-00035-01  
Cooperative Agreement  
District 5/District 4

**SUBMITTAL DATE:** November 6, 2012

**Page 2**

**BACKGROUND (continued):**

Said facility and associated appurtenances are to be constructed by the City and inspected, operated and maintained by the District and City.

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 lateral storm drains that are 36-inch or less in diameter along with 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 6 budget for FY 2012-2013 and will be included in the proposed budget in future years. Future operation and maintenance costs will accrue to the District and the City.

TNK:blj

COOPERATIVE AGREEMENT  
Desert Hot Springs MDP Line E-5  
Project No. 6-0-00035

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The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and the City of Desert Hot Springs, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. CITY has budgeted for and plans to design and construct Desert Hot Springs Master Drainage Plan (MDP) Line E-5. Once constructed, this facility will provide improved drainage and flood control in the northerly portion of the City of Desert Hot Springs; and

B. Line E-5, hereinafter called "DISTRICT FACILITY", consists of an underground storm drain system to be constructed in 8<sup>th</sup> Street from approximately Mesquite Avenue and extending westerly to outlet into the DISTRICT'S existing Line E facility near West Drive, as shown in concept and highlighted in yellow on Exhibit "A" attached hereto and made a part hereof; and

C. Associated with the construction of DISTRICT FACILITY is the construction of lateral storm drains thirty-six inches (36") or less in diameter, various catch basins and connector pipes located within CITY rights of way, hereinafter called "APPURTENANCES". DISTRICT FACILITY and APPURTENANCES are hereinafter altogether called "PROJECT"; and

D. CITY desires that DISTRICT contribute funding for the design and construction of PROJECT; and

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E. DISTRICT wishes to support CITY'S efforts to construct PROJECT by providing a financial contribution towards PROJECT'S design and construction along with the associated administrative costs as set forth herein; and

F. DISTRICT'S contributions shall be as follows:

(i) One hundred percent (100%) of the engineering design and cost proposal for the preparation of PROJECT construction plans and specifications, plus an additional twenty percent (20%) to offset CITY'S administrative costs associated therewith, hereinafter called "DESIGN CONTRIBUTION";

(ii) One hundred percent (100%) of the lowest responsible bid contract price for PROJECT construction, plus an additional ten percent (10%) to offset CITY'S administrative cost associated with administering the construction contract and any construction contract change orders, hereinafter called "CONSTRUCTION CONTRIBUTION"; and

G. Altogether, DESIGN CONTRIBUTION and CONSTRUCTION CONTRIBUTION are hereinafter called "DISTRICT TOTAL CONTRIBUTION". DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of four million fifty one thousand three hundred eighty one dollars (\$4,051,381); and

H. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to design, construction, inspection, ownership, operation and maintenance, and funding of PROJECT.

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

SECTION I

1  
2 CITY shall:

3 1. Endeavor to award contract and begin construction of PROJECT within  
4 eighteen (18) months of execution of this Agreement.

5 2. Prepare or cause to be prepared, PROJECT plans and specifications,  
6 hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and  
7 CITY standards and submit to DISTRICT for its review and approval prior to advertising  
8 PROJECT for construction bids.

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10 3. Pursuant to the California Environmental Quality Act (CEQA), act as Lead  
11 Agency and assume responsibility for preparation, circulation and adoption of all necessary and  
12 appropriate CEQA documents pertaining to the construction, operation and maintenance of  
13 PROJECT.

14 4. Prior to entering into a contract for the preparation of PROJECT  
15 construction plans and specification, provide DISTRICT with an opportunity to review and  
16 approve its associated engineering design and cost proposal.

17  
18 5. Keep an accurate accounting of all engineering design costs associated with  
19 the preparation of plans and specifications for PROJECT, in conformance with DISTRICT  
20 approved engineering design and cost proposal as set forth in Section I.4, and include this  
21 accounting when invoicing DISTRICT for final payment of DESIGN CONTRIBUTION as set  
22 forth in Section I.7.

23  
24 6. Invoice DISTRICT (Attention: Chief of Design and Construction) for an  
25 initial payment of fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this  
26 Agreement or upon CITY'S execution of a contract with its engineering consultant, whichever is  
27 later. The invoice shall include appropriate documentation necessary to establish DESIGN  
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1 CONTRIBUTION for DISTRICT approved engineering design and cost proposal as set forth in  
2 Section I.4.

3 7. Invoice DISTRICT (Attention: Chief of Design and Construction) for  
4 remainder payment of DESIGN CONTRIBUTION following signing of IMPROVEMENT  
5 PLANS by all parties.

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

8 9. INTENTIONALLY LEFT BLANK.

9 10. INTENTIONALLY LEFT BLANK.

10 11. Obtain at its sole cost and expense, all necessary permits, approvals or  
11 agreements required by any Federal, State and local resource or regulatory agencies pertaining  
12 to the construction, operation and maintenance of PROJECT. Such documents, hereinafter  
13 called "REGULATORY PERMITS", may include but are not limited to, a Section 404 permit  
14 issued by USACOE, a Section 401 Water Quality Certification issued by the California  
15 Regional Water Quality Control Board (CRWQCB), a Section 1602 Streambed Alteration  
16 Agreement issued by the California Department of Fish and Game and National Pollutant  
17 Discharge Elimination System Permit issued by the State Water Resources Control Board or  
18 CRWQCB.

19 12. Prior to advertising PROJECT for construction bids, provide DISTRICT  
20 with an opportunity to review and approve all REGULATORY PERMITS. DISTRICT approval  
21 of any such document(s) may be withheld when, in the sole judgment of DISTRICT'S General  
22 Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs  
23 DISTRICT'S ability to operate and maintain DISTRICT FACILITY.  
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1           13. Prior to advertising PROJECT for construction, furnish DISTRICT with  
2 final mylar IMPROVEMENT PLANS and, upon receipt of DISTRICT'S payment of DESIGN  
3 CONTRIBUTION as set forth in Sections I.6 and I.7, assign ownership of IMPROVEMENT  
4 PLANS to DISTRICT.

5           14. Prior to awarding a public works construction contract for PROJECT,  
6 provide DISTRICT with seven (7) calendar days following construction bid opening to review  
7 and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids  
8 found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold  
9 approval of contract.  
10

11           15. Advertise, award and administer a public works construction contract for  
12 PROJECT.

13           16. Provide DISTRICT with written notice (Attention: Contract Administration  
14 Section) that CITY has awarded a construction contract for PROJECT. The written notice shall  
15 include the Contractor's actual bid amounts for PROJECT, setting forth the lowest responsible  
16 bid contract price for PROJECT construction as set forth herein.  
17

18           17. Invoice DISTRICT (Attention: Chief of Design and Construction) for a  
19 lump sum payment of CONSTRUCTION CONTRIBUTION at the time of providing written  
20 notice pursuant to Section I.16, for one hundred and ten percent (110%) of the lowest  
21 responsible bid contract price for PROJECT construction.  
22

23           18. Prior to commencing PROJECT construction, schedule and conduct a  
24 mandatory pre-construction meeting between CITY, CITY'S construction manager, CITY'S  
25 construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT  
26 (Attention: Contract Administration Section) in writing at least twenty (20) days prior to  
27 conducting the pre-construction meeting. Construction shall not begin on any element of  
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1 PROJECT, for any reason whatsoever, until DISTRICT has issued to CITY a written Notice to  
2 Proceed authorizing CITY to commence construction of PROJECT.

3 19. Provide DISTRICT, as part of CITY'S written notice to DISTRICT of the  
4 pre-construction meeting as set forth in Section I.18., with copies of CITY'S Notice(s) of  
5 Acceptance of faithful performance and payment bonds provided by CITY'S contractor(s), the  
6 faithful performance bond being in the amount of one hundred percent (100%) of the estimated  
7 cost for construction of PROJECT as determined by DISTRICT and the material and labor  
8 payment bond being in the amount of fifty percent (50%) of the estimated cost for construction  
9 of PROJECT as determined by DISTRICT. The surety, amount and form of the bonds shall be  
10 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect  
11 until DISTRICT FACILITY is accepted by DISTRICT as complete; at which time the faithful  
12 performance bond amount may be reduced to ten percent (10%) for a period of one year to  
13 guarantee against any defective work, labor or materials.  
14

15 20. Construct or cause to be constructed PROJECT, pursuant to a CITY  
16 administered construction contract in accordance with IMPROVEMENT PLANS approved by  
17 DISTRICT and CITY, and pay all costs associated therewith.  
18

19 21. Inspect construction of PROJECT.

20 22. Furnish or cause its construction manager to furnish all construction survey  
21 and materials testing services necessary to ensure PROJECT construction is accomplished in  
22 accordance with the approved plans and specifications.  
23

24 23. Grant DISTRICT, by execution of this Agreement, the right to enter upon  
25 property owned or controlled by CITY where necessary and convenient for the purpose of  
26 gaining access to, and performing inspection service for, the construction of PROJECT.  
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1           24. Not permit any change to or modification of the DISTRICT approved  
2 IMPROVEMENT PLANS that would result in a change of functionality or maintainability of  
3 PROJECT without the prior written permission and consent of DISTRICT. Failure to do so  
4 shall be deemed a material breach of this Agreement and shall authorize and constitute authority  
5 for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable  
6 to a) perform its obligations hereunder, and or b) to accept responsibility for ownership,  
7 operation and maintenance of DISTRICT FACILITY due, either in whole or in part, to said  
8 breach of this Agreement.  
9

10           25. Provide and maintain or require its PROJECT construction contractor(s) to  
11 procure and maintain comprehensive liability insurance which shall protect DISTRICT and  
12 County of Riverside from claims for damages for personal injury, including accidental or  
13 wrongful death, as well as from claims for property damage, which may arise from CITY's or its  
14 contractor's(s') construction of PROJECT or the performance of its obligations hereunder,  
15 whether such construction or performance be by CITY, the aforementioned construction  
16 contractor(s), or any subcontractors to said construction contractor(s), or by anyone employed  
17 directly or indirectly by said construction contractor(s) or subcontractors. Such insurance shall  
18 provide for coverage limits of not less than two million dollars (\$2,000,000) per occurrence and  
19 shall name DISTRICT and County of Riverside as additional insureds with respect to this  
20 Agreement and the obligations of CITY hereunder. CITY shall also provide or require its  
21 contractor(s) to provide Workers' Compensation Insurance or a State-approved Self-Insurance  
22 Program in an amount and form to meet all applicable requirements of the Labor Code of the  
23 State of California, including Employer's Liability with one million dollar (\$1,000,000) limits,  
24 covering all persons providing services on behalf of PROJECT and all risks to such persons  
25 under this Agreement. CITY shall require or caused to be required the insurance carriers of the  
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1 above required coverage to waive all rights of subrogation against DISTRICT, County of  
2 Riverside and CITY. Said insurance coverage shall be provided by an insurance company  
3 licensed to transact insurance business in the State of California, having an A.M. Best rating of  
4 A: VIII (A:8) or better, and shall be evidenced by a certificate (or certificates) of insurance  
5 indicating that the insurance is in full force and effect and that DISTRICT and the County of  
6 Riverside are named as additional insureds. Said certificate(s) of insurance shall contain the  
7 covenant of the insurance carrier(s) that thirty (30) days written notice shall be provided to  
8 DISTRICT and County of Riverside prior to any modification, cancellation, or reduction in  
9 coverage of said insurance.  
10

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

14 26. 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 CITY and DISTRICT employees on the site.  
17

18 27. Require its construction contractor(s) to furnish DISTRICT (Attention:  
19 Contract Administration Section) with a confined space procedure specific to PROJECT. The  
20 procedure shall comply with requirements contained in California Code of Regulations, Title 8,  
21 Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined  
22 Space and District confined Space Procedures, SOM-18. The procedure shall be provided to  
23 DISTRICT no less than twenty (20) days prior to requesting that DISTRICT perform a final  
24 inspection for acceptance of PROJECT. The procedure shall be reviewed and approved by  
25 DISTRICT prior to conducting the final inspection.  
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1           28. Assume ownership and sole responsibility for the operation and  
2 maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility  
3 for the operation and maintenance of DISTRICT FACILITY as set forth herein. Upon  
4 DISTRICT acceptance of ownership and responsibility for the operation and maintenance of  
5 DISTRICT FACILITY, CITY shall assume ownership and sole responsibility for the operation  
6 and maintenance of APPURTENANCES.

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

11           30. Upon completion of PROJECT construction and settlement of any  
12 outstanding claims, provide DISTRICT with a copy of CITY'S recorded Notice of Completion.

13           31. Upon completion of PROJECT construction but prior to DISTRICT'S  
14 acceptance of DISTRICT FACILITY for ownership, operation and maintenance, provide  
15 DISTRICT with appropriate engineering documentation necessary to establish that DISTRICT  
16 FACILITY was constructed in accordance with the DISTRICT approved IMPROVEMENT  
17 PLANS.

18           32. Upon completion of construction of PROJECT, but prior to DISTRICT'S  
19 acceptance of DISTRICT FACILITY for ownership, operation and maintenance, CITY'S civil  
20 engineer of record or construction civil engineer of record duly registered in the State of  
21 California, shall provide DISTRICT with redlined "record drawing" plans for IMPROVEMENT  
22 PLANS. After DISTRICT approval of the redlined "record drawing", CITY'S engineer shall  
23 schedule with DISTRICT a time to transfer the redlined changes into DISTRICT'S original  
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1 mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign mylars  
2 "RECORD DRAWING".

3 33. Keep an accurate accounting of all PROJECT construction costs and  
4 provide DISTRICT with a final accounting of construction costs for DISTRICT approved  
5 IMPROVEMENT PLANS.

6 34. INTENTIONALLY LEFT BLANK.

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8 35. Upon DISTRICT acceptance of DISTRICT FACILITY for ownership,  
9 operation and maintenance, convey, or cause to be conveyed, to DISTRICT all rights of way  
10 and easements deemed necessary by DISTRICT for the operation and maintenance of  
11 DISTRICT FACILITY.

12 36. Upon DISTRICT acceptance of PROJECT construction as being complete,  
13 accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located  
14 within CITY rights of way which must be performed at such time(s) that the finished grade  
15 along and above the underground portions of PROJECT are improved, repaired, replaced or  
16 changed. It being further understood and agreed that any such adjustments shall be performed  
17 at no cost to DISTRICT.  
18

19 SECTION II

20 DISTRICT shall:

21 1. Review and approve or disapprove, within fourteen (14) days of receipt,  
22 CITY'S PROJECT engineering design and cost proposal pursuant to Section I.4.

23 2. Pay CITY within thirty (30) days after receipt of CITY'S appropriate  
24 invoice, for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.6.

25 3. Act as a Responsible Agency under CEQA, taking all necessary and  
26 appropriate action to comply with CEQA.  
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1           4. Review and approve, as appropriate, all necessary REGULATORY  
2 PERMITS and right of way documents prior to CITY advertising PROJECT for construction  
3 bids as set forth in Section I.12.

4           5. Review and approve IMPROVEMENT PLANS prior to CITY'S  
5 advertising PROJECT for construction bids.

6           6. Within seven (7) days following CITY'S construction bid opening, review  
7 and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids  
8 found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold  
9 approval of contract.

10           7. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate  
11 invoice, for remainder payment of DESIGN CONTRIBUTION as set forth in Sections I.5 and  
12 I.7., provided the total DESIGN CONTRIBUTION does not exceed one hundred and twenty  
13 percent (120%) of DISTRICT approved engineering design and cost proposal as set forth in  
14 Section I.4.  
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16           8. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate  
17 invoice, for CONSTRUCTION CONTRIBUTION as set forth in Section I.17.

18           9. INTENTIONALLY LEFT BLANK.

19           10. Conduct periodic inspections of DISTRICT FACILITY construction for  
20 quality control purposes at its sole cost and provide any comments to CITY'S designated  
21 PROJECT construction inspector.  
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23           11. Upon receipt of CITY'S written notice that PROJECT construction is  
24 substantially complete, conduct a final inspection of DISTRICT FACILITY.  
25

26           12. Accept sole responsibility for ownership, operation and maintenance of  
27 DISTRICT FACILITY upon (i) DISTRICT inspection of DISTRICT FACILITY in accordance  
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1 with Section I.29., (ii) DISTRICT acceptance of DISTRICT FACILITY as being complete, (iii)  
 2 receipt of CITY'S recorded Notice of Completion as set forth in Section I.30., (iv) receipt of  
 3 appropriate engineering documentation as set forth in Section I.31., (v) receipt of stamped and  
 4 signed RECORD DRAWING construction plans as set forth in Section I.32., (vi) receipt of  
 5 rights of way and easements as set forth in Section I.35., and (vii) DISTRICT'S sole  
 6 determination that DISTRICT FACILITY is in a satisfactorily maintained condition.  
 7

8 SECTION III

9 It is further mutually agreed:

10 1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of four  
 11 million fifty one thousand three hundred eighty one dollars (\$4,051,381) and shall be used by  
 12 CITY solely for the purpose of designing and constructing PROJECT as set forth herein.  
 13

14 2. Except as otherwise provided herein, all construction work involved with  
 15 PROJECT shall be inspected by CITY and shall not be deemed complete until approved and  
 16 accepted as complete by CITY.

17 3. DISTRICT personnel may observe and inspect all work being done on  
 18 DISTRICT FACILITY but shall provide any comments to CITY personnel who shall be solely  
 19 responsible for all communications with CITY'S construction contractor(s).  
 20

21 4. Prior to DISTRICT acceptance of ownership and responsibility for the  
 22 operation and maintenance of DISTRICT FACILITY, DISTRICT FACILITY shall be in a  
 23 satisfactorily maintained condition as solely determined by DISTRICT. If, in the sole discretion  
 24 of DISTRICT, DISTRICT FACILITY is not in an acceptable condition, corrections will be  
 25 made at sole expense of CITY.

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

10 6. INTENTIONALLY LEFT BLANK.

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

19 8. This Agreement is made and entered into for the sole protection and benefit  
20 of the parties hereto. No other person or entity shall have any right or action based upon the  
21 provisions of this Agreement.  
22

23 9. DISTRICT and CITY each pledge to cooperate in regard to the operation  
24 and maintenance of their respective FACILITY as set forth herein and to discharge their  
25 respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of  
26 any nuisance condition or undue maintenance impact upon the others' FACILITY.  
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1           10. Any and all notices sent or required to be sent to the parties of this  
2 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

3 RIVERSIDE COUNTY FLOOD CONTROL  
4 AND WATER CONSERVATION DISTRICT  
5 1995 Market Street  
6 Riverside, CA 92501  
7 Attn: Engineering Services Section

CITY OF DESERT HOT SPRINGS  
65-950 Pierson Blvd.  
Desert Hot Springs, CA 92240  
Attn: Hal Goldenberg

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

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

13           13. Neither CITY nor DISTRICT shall assign this Agreement without the  
14 written consent of the other party.

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

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

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

5 17. Time is of the essence in prosecuting the work contemplated under this  
6 Agreement. At any time during the term of this Agreement, DISTRICT may terminate this  
7 Agreement for cause, including but not limited to CITY'S failure to prosecute the work in a  
8 timely manner, upon providing CITY with a thirty (30) days written notice stating the extent  
9 and effective date of termination.  
10

11 18. The obligation(s) of DISTRICT are limited by and contingent upon the  
12 availability of DISTRICT funds for DISTRICT'S financial contribution towards the PROJECT  
13 as set forth herein. In the event that such funds are not forthcoming for any reason, DISTRICT  
14 shall immediately notify CITY in writing.  
15

16 19. This Agreement is intended by the parties hereto as a final expression of  
17 their understanding with respect to the subject matter hereof and as a complete and exclusive  
18 statement of the terms and conditions thereof and supersedes any and all prior and  
19 contemporaneous agreements and understandings, oral and written, in connection therewith.  
20 This Agreement may be changed or modified only upon the written consent of the parties  
21 hereto.

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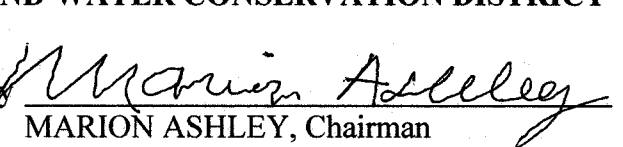
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

NOV 06 2012  
(to be filled in by Clerk of the Board)

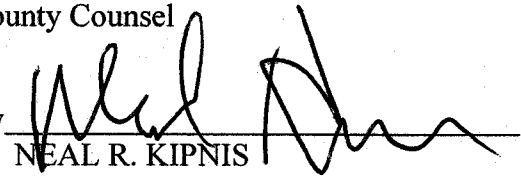
RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

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

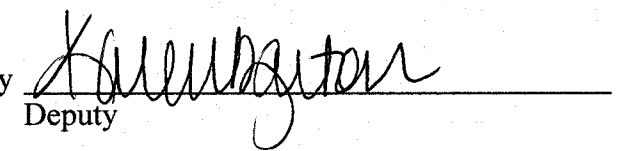
APPROVED AS TO FORM:

PAMELA J. WALLS  
County Counsel

By   
NEAL R. KIPNIS  
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

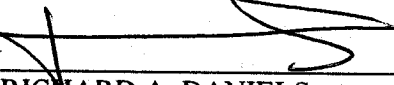
By   
Deputy

(SEAL)


Cooperative Agreement: City of Desert Hot Springs  
Desert Hot Springs MDP Line E-5  
9/4/2012  
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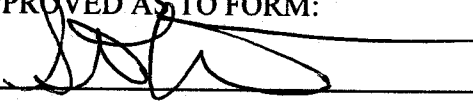
**CITY OF DESERT HOT SPRINGS, a California charter  
City and Municipal Corporation**

By   
RICHARD A. DANIELS  
City Manager

ATTEST:

By   
JERYL SORIANO  
Deputy City Clerk

APPROVED AS TO FORM:

By   
City Attorney

(SEAL)

Cooperative Agreement: City of Desert Hot Springs  
Desert Hot Springs MDP Line E-5  
9/4/2012  
TNK:blj

# EXHIBIT A

