

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



102B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

July 2, 2013

SUBJECT: Mission Creek Bridge at Dillon Road
Project No. 6-0-00090-05
Funding Agreement
District 5/District 4

RECOMMENDED MOTION:

1. Approve the Funding Agreement (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 a 20% share of funding to the City of Desert Hot Springs (City) for design and construction of the Mission Creek Bridge at Dillon Road.

Continued on Page 2.

TT:blj

WARREN D. WILLIAMS

General Manager-Chief Engineer

**FINANCIAL
DATA**

Current F.Y. District Cost:

N/A

In Current Year Budget:

No

Current F.Y. County Cost:

N/A

Budget Adjustment:

No

Annual Net District Cost:

\$600,000

For Fiscal Year:

FY 2013-2014

SOURCE OF FUNDS: 25160 947500 527980

Zone 6 Construction/Maint/Misc Contracts

**Positions To Be
Deleted Per A-30**

☐

Requires 4/5 Vote

☐

C.E.O. RECOMMENDATION:

APPROVE

BY:

Steven C. Horn, MPA

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley

Nays: None

Absent: None

Date: July 2, 2013

xc: Flood

RECEIVED RIVERSIDE COUNTY

Kecia Harper-Ihem

Clerk of the Board

By: Deputy

11-2

Prev. Agn. Ref.:

District: 5th/4th

Agenda Number:

ATTACHMENTS FILED

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE: 7/23/13

Departmental Concurrence

FISCAL PROCEDURES APPROVED
JEANINE J. REY, FINANCE DIRECTOR
BY: JEANINE J. REY 6/12/2013

Dept's Recomm.: ☐ Policy ☐ Policy
☐ Consent ☐ Consent
Per Exec. Ofc.: ☐ Policy ☐ Policy
☐ Consent ☐ Consent

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

SUBJECT: Mission Creek Bridge at Dillon Road
Project No. 6-0-00090-05
Funding Agreement
District 5/District 4

SUBMITTAL DATE: July 2, 2013

Page 2

BACKGROUND (continued):

Dillon Road is a major east-west roadway that provides access for emergency services as well as the general public to enter into and out of the City. However, Dillon Road is regularly closed during periods of even minimal runoff because it is covered by floodwaters and debris. The City plans to secure a Federal grant that would fund 80% of the cost to design and construct the Mission Creek Bridge at Dillon Road.

Upon completion of project construction, the City will assume ownership, operation and maintenance of the project.

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 2013-2014 and will be included in the proposed budget in future years. Future operation and maintenance costs will accrue to the City.

TT:blj

FUNDING AGREEMENT
Mission Creek Bridge at Dillon Road
Project No. 6-0-00090

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. DISTRICT operates and maintains approximately 7 miles of the existing Mission Creek Channel, as shown on DISTRICT Drawing Nos. 6-0203, 6-0204 and 6-0211, hereinafter called "DISTRICT FACILITY", from approximately 1,600 lineal feet northwesterly of Mission Lakes Boulevard to approximately 5,300 lineal feet south of Dillon Road; and

B. CITY has applied for U.S. Economic Development Administration grant funding. Should CITY be successful with the grant application, CITY plans to design, construct, and subsequently operate and maintain the Mission Creek Bridge at Dillon Road located within the city of Desert Hot Springs. Once constructed, the bridge crossing will greatly benefit the traveling public and allow Dillon Road to serve as access for emergency vehicles during periods of significant rainfall and runoff; and

C. It is anticipated by DISTRICT and CITY that the Mission Creek Bridge at Dillon Road will be functionally equivalent to the existing Mission Creek Bridge at Pierson Boulevard. The Mission Creek Bridge at Dillon Road, hereinafter called "PROJECT", will consist of a multi-span reinforced concrete bridge structure located approximately 1,100 lineal feet easterly of Little Morongo Road, as shown in concept and highlighted in yellow on Exhibit "A" attached hereto and made a part hereof; and

D. The aforementioned grant would fund eighty percent (80%) of the cost to complete PROJECT, while requiring a twenty percent (20%) local funding match. CITY

1 desires that DISTRICT contribute the twenty percent (20%) local share of funding for the
2 design and construction of PROJECT; and

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

6 F. DISTRICT'S contributions shall be as follows:

7 (i) DISTRICT approved engineering design and cost proposal for the
8 preparation of PROJECT construction plans and specifications is hereinafter called "DESIGN
9 COST". CITY'S anticipated administrative cost associated with administering the engineering
10 design contract is hereinafter called "DESIGN ADMINISTRATION COST". Together,
11 DESIGN COST and DESIGN ADMINISTRATION COST are hereinafter called "TOTAL
12 DESIGN COST". DISTRICT is willing to financially contribute twenty percent (20%) of the
13 TOTAL DESIGN COST, hereinafter called "DESIGN CONTRIBUTION";
14

15 (ii) DISTRICT approved lowest responsible bid contract price for
16 PROJECT construction is hereinafter called "CONSTRUCTION COST". CITY'S
17 administrative cost associated with administering the PROJECT construction contract, include
18 but are not limited to construction inspection, construction surveying, and other typical ancillary
19 costs related to the completion of PROJECT construction, is hereinafter called
20 "CONSTRUCTION ADMINISTRATION COST". Together, CONSTRUCTION COST and
21 CONSTRUCTION ADMINISTRATION COST are hereinafter called "TOTAL
22 CONSTRUCTION COST". DISTRICT is willing to financially contribute twenty percent
23 (20%) of the TOTAL CONSTRUCTION COST, hereinafter called "CONSTRUCTION
24 CONTRIBUTION"; and
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1 G. Altogether, DESIGN CONTRIBUTION and CONSTRUCTION
2 CONTRIBUTION are hereinafter called "DISTRICT TOTAL CONTRIBUTION". DISTRICT
3 TOTAL CONTRIBUTION shall not exceed a total sum of six hundred thousand dollars
4 (\$600,000); and

5 H. The purpose of this Agreement is to memorialize the mutual understandings
6 by and between DISTRICT and CITY with respect to design, construction, inspection,
7 ownership, operation and maintenance, and funding of PROJECT.
8

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

11 SECTION I

12 CITY shall:

13 1. Endeavor to award contract and begin construction of PROJECT within
14 twenty-four (24) months of execution of this Agreement.
15

16 2. Pursuant to the California Environmental Quality Act (CEQA), act as Lead
17 Agency and assume responsibility for preparation, circulation and adoption of all necessary and
18 appropriate CEQA documents pertaining to the construction, operation and maintenance of
19 PROJECT.
20

21 3. Prepare or cause to be prepared, PROJECT construction plans and
22 specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable
23 DISTRICT and CITY standards and submit to DISTRICT for its review and approval prior to
24 advertising PROJECT for construction bids.

25 4. Prior to entering into an engineering design contract for the preparation of
26 IMPROVEMENT PLANS, provide DISTRICT with an opportunity to review and approve the
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1 engineering design and cost proposal plus CITY'S administrative cost associated with
2 administering the contract.

3 5. Keep an accurate accounting of all engineering design costs associated with
4 the preparation of IMPROVEMENT PLANS, in conformance with DISTRICT approved
5 engineering design and cost plus CITY'S administrative cost associated with contract
6 administration as set forth in Section I.4., and include this accounting when invoicing
7 DISTRICT for final payment of DESIGN CONTRIBUTION as set forth in Section I.7.

8 6. Invoice DISTRICT (Attention: Chief of Design and Construction Division)
9 for an initial payment of fifty percent (50%) of DESIGN CONTRIBUTION upon CITY'S award
10 of a design contract with its engineering consultant. The invoice shall include appropriate
11 documentation necessary to establish DESIGN CONTRIBUTION for DISTRICT approved
12 engineering design and cost plus CITY'S administrative cost associated with contract
13 administration as set forth in Section I.4.

14 7. Invoice DISTRICT (Attention: Chief of Design and Construction Division)
15 for the remainder payment of fifty percent (50%) of DESIGN CONTRIBUTION following
16 signing of IMPROVEMENT PLANS by all parties. The invoice shall include a final accounting
17 of engineering design costs as set forth in Section I.5.

18 8. Obtain, at its sole cost and expense, all permanent fee title parcels and
19 easements, rights of entry and temporary construction easements necessary to construct, operate
20 and maintain PROJECT.

21 9. Obtain, at its sole cost and expense, and convey to DISTRICT, all
22 permanent fee simple or easement parcels as set forth in Section I.33 should DISTRICT
23 determine in its reasonable discretion that the construction of PROJECT will adversely impact
24 DISTRICT'S ability to access, operate and maintain DISTRICT FACILITY.

1 10. Not permit any change to, or modification of, DISTRICT approved
2 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.

3 11. Relocate or cause to be relocated at its own expense, all conflicting CITY
4 owned utilities, excepting sanitary sewers, and order the relocation of all utilities installed by
5 permit of franchise within CITY rights of way which conflict with the construction or operation
6 of PROJECT and which could be relocated at the utility company's expense. All other utilities
7 requiring relocation and which cannot be ordered relocated at the utility company's expense
8 shall be included in the construction contract for PROJECT.
9

10 12. 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 U.S. Army Corps of Engineers, a Section 401 Water Quality Certification issued by
15 the California Regional Water Quality Control Board (CRWQCB), a Streambed Alteration
16 Agreement issued by the California Department of Fish and Wildlife and a National Pollutant
17 Discharge Elimination System Permit issued by the State Water Resources Control Board or
18 CRWQCB.
19

20 13. Prior to advertising PROJECT for construction bids, provide DISTRICT
21 with an opportunity to review and approve all REGULATORY PERMITS. DISTRICT
22 approval of any such document(s) may be withheld when, in the sole judgment of DISTRICT'S
23 General Manager-Chief Engineer, the said document(s) unreasonably constrains, inhibits or
24 impairs DISTRICT'S ability to operate and maintain DISTRICT FACILITY.
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1 14. Prior to advertising PROJECT for construction and upon receipt of
2 DISTRICT'S payment of DESIGN CONTRIBUTION as set forth in Sections II.3. and II.5.,
3 furnish DISTRICT with a reproducible set of signed IMPROVEMENT PLANS.

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

10 16. Advertise, award and administer a public works construction contract for
11 PROJECT.

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

17 18. Invoice DISTRICT (Attention: Chief of Design and Construction Division)
18 for an initial payment of eighty percent (80%) of CONSTRUCTION CONTRIBUTION, at the
19 time of providing written notice to DISTRICT of the award of a construction contract, as set
20 forth in Section I.17.
21

22 19. Prior to commencing PROJECT construction, schedule and conduct a
23 mandatory pre-construction meeting between CITY, CITY'S construction manager, CITY'S
24 construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT
25 (Attention: Contract Administration Section) in writing at least twenty (20) days prior to
26 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 20. Provide DISTRICT, as part of CITY'S written notice to DISTRICT of the
4 pre-construction meeting as set forth in Section I.19., 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 CITY and the material and labor payment
8 bond being in the amount of one hundred percent (100%) of the estimated cost for construction
9 of PROJECT as determined by CITY. 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 PROJECT is accepted by CITY as complete; at which time the faithful performance bond
12 amount may be reduced to ten percent (10%) for a period of one year to guarantee against any
13 defective work, labor or materials.
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15
16 21. Construct or cause to be constructed PROJECT, pursuant to a CITY
17 administered construction contract in accordance with IMPROVEMENT PLANS approved by
18 DISTRICT and CITY, and pay all costs associated therewith.

19 22. Inspect construction of PROJECT.

20 23. 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 DISTRICT approved IMPROVEMENT PLANS.
23

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

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

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

9 27. Keep an accurate accounting of all PROJECT construction costs and
10 include this final accounting of construction costs for DISTRICT approved lowest responsible
11 bid contract price as set forth herein when invoicing DISTRICT for the remainder payment of
12 twenty percent (20%) of CONSTRUCTION CONTRIBUTION. The final accounting of
13 construction costs shall include a detailed breakdown of all costs, including but not limited to
14 payment vouchers, DISTRICT approved change orders and other such construction contract
15 documents as may be necessary, to establish the actual cost of construction for DISTRICT
16 approved IMPROVEMENT PLANS.

17 28. Within two (2) weeks of completing PROJECT construction, provide
18 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
19 construction is substantially complete and requesting that DISTRICT conduct a final inspection
20 of PROJECT.

21 29. Upon completion of PROJECT construction and settlement of any
22 outstanding claims, provide DISTRICT with a copy of CITY'S recorded Notice of Completion.

23 30. Upon completion of PROJECT construction but prior to CITY'S acceptance
24 of PROJECT for ownership, operation and maintenance, provide DISTRICT with appropriate
25

1 engineering documentation necessary to establish that PROJECT was constructed in accordance
2 with DISTRICT approved IMPROVEMENT PLANS.

3 31. Upon completion of construction of PROJECT, but prior to CITY'S
4 acceptance of PROJECT for ownership, operation and maintenance, provide or cause its civil
5 engineer of record or construction civil engineer of record, duly registered in the State of
6 California, to provide DISTRICT with a reproducible set of stamped and signed "record
7 drawing" plans for PROJECT.
8

9 32. Upon completion, assume ownership and sole responsibility for the
10 operation and maintenance of PROJECT.

11 33. Upon CITY acceptance of PROJECT for ownership, operation and
12 maintenance but prior to invoicing DISTRICT for remainder payment of CONSTRUCTION
13 CONTRIBUTION, convey, or cause to be conveyed, to DISTRICT all duly executed
14 easement(s) to the public for flood control and drainage purposes, including ingress and egress,
15 or grant deed(s) of fee title where appropriate, for the rights of way deemed necessary by
16 DISTRICT for the continued operation and maintenance of DISTRICT FACILITY. The
17 easement(s) or grant deed(s) shall be in a form approved by DISTRICT and shall be executed by
18 all legal and equitable owners of the property described in the easement(s) or grant deed(s).
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21 34. At the time of recordation of the conveyance document(s) as set forth in
22 Section I.33., furnish DISTRICT with policies of title insurance, each in the amount of not less
23 than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
24 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the
25 estimated fee value, as determined by DISTRICT, for each fee parcel to be conveyed to
26 DISTRICT, guaranteeing DISTRICT'S interest in said property as being free and clear of all
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1 liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), except
2 those which, in the sole discretion of DISTRICT, are deemed acceptable.

3 35. Invoice DISTRICT (Attention: Chief of Design and Construction Division)
4 for the remainder payment of twenty percent (20%) of CONSTRUCTION CONTRIBUTION,
5 upon CITY'S conveyance of all necessary rights of way documents as set forth in Section I.33.
6 The invoice shall include a final accounting of construction costs as set forth in Section I.27.
7

8 SECTION II

9 DISTRICT shall:

10 1. Act as a Responsible Agency under CEQA, taking all necessary and
11 appropriate action to comply with CEQA.

12 2. Review and approve or disapprove, within fourteen (14) days of receipt,
13 CITY'S PROJECT engineering design and cost proposal plus its associated contract
14 administration cost.
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16 3. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
17 invoice as set forth in Section I.6., for fifty percent (50%) of DESIGN CONTRIBUTION.

18 4. Review and approve IMPROVEMENT PLANS prior to CITY advertising
19 PROJECT for construction bids.
20

21 5. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
22 invoice as set forth in Section I.7., for the remainder payment of fifty percent (50%) of DESIGN
23 CONTRIBUTION.

24 6. Review and approve, as appropriate, all necessary REGULATORY
25 PERMITS prior to CITY advertising PROJECT for construction bids as set forth in Section
26 I.13.
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1 7. Within seven (7) days following CITY'S construction bid opening, review
2 and approve or reject bids for construction of PROJECT as set forth in Section I.15.

3 8. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
4 invoice as set forth in Section I.18., for an initial payment of eighty percent (80%) of
5 CONSTRUCTION CONTRIBUTION.

6 9. Conduct, at its sole cost, periodic inspections of PROJECT construction for
7 quality control purposes and provide any comments to CITY'S designated PROJECT
8 construction inspector.

10 10. Upon receipt of CITY'S written notice that PROJECT construction is
11 substantially complete as set forth in Section I.28., conduct a final inspection of PROJECT.

12 11. Continue to accept responsibility for operation and maintenance of the
13 channel section beneath the new Mission Creek Bridge at Dillon Road upon (i) DISTRICT
14 inspection of PROJECT in accordance with Section I.28.; (ii) DISTRICT acceptance of
15 PROJECT as being complete; (iii) DISTRICT receipt of CITY'S recorded Notice of Completion
16 as set forth in Section I.29.; (iv) DISTRICT receipt of appropriate engineering documentation as
17 set forth in Section I.30.; (v) DISTRICT receipt of stamped and signed "record drawing" plans
18 for PROJECT as set forth in Section I.31.; (vi) DISTRICT'S sole determination that the channel
19 section is in a satisfactorily maintained condition; and (vii) DISTRICT'S acceptance of all
20 necessary rights of way conveyance documents from CITY as set forth in Section I.33.

21 12. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
22 invoice as set forth in Section I.35., for the remainder payment of twenty percent (20%) of
23 CONSTRUCTION CONTRIBUTION provided and to the extent that DISTRICT TOTAL
24 CONTRIBUTION will not exceed six hundred thousand dollars (\$600,000).
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13. Grant CITY, by execution of this Agreement, the right to construct PROJECT within DISTRICT rights of way.

SECTION III

It is further mutually agreed:

1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of six hundred thousand dollars (\$600,000) and shall be used by CITY solely for the purpose of designing and constructing PROJECT as set forth herein.

2. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by CITY but shall not be deemed complete until DISTRICT and CITY mutually agree that construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

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

4. Under the provisions of this Agreement, DISTRICT shall bear no responsibility whatsoever for the design, construction, ownership, operation and maintenance of PROJECT. Prior to DISTRICT resuming its responsibility for the operation and maintenance of the channel section beneath the new Mission Creek Bridge at Dillon Road, the channel section shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, in the sole and reasonable discretion of DISTRICT, channel section is not in an acceptable condition, corrections will be made at sole expense of CITY.

5. CITY shall indemnify, defend, save and hold harmless DISTRICT and County of Riverside (including their respective officers, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed

1 officials, employees, agents, representatives, independent contractors, and subcontractors) from
2 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
3 or in any way relating to CITY'S (including its officers, employees, agents, representatives,
4 independent contractors, and subcontractors) actual or alleged acts or omissions related to this
5 Agreement, performance under this Agreement, or failure to comply with the requirements of
6 this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c)
7 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.
8

9 6. In the event that CITY is not successful in its pursuit of grant funding from
10 the U.S. Economic Development Administration by December 31, 2013, this Agreement shall
11 be rendered null and void.

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

20 8. This Agreement is made and entered into for the sole protection and benefit
21 of the parties hereto. No other person or entity shall have any right or action based upon the
22 provisions of this Agreement.
23

24 9. DISTRICT and CITY each pledge to cooperate in regard to the operation
25 and maintenance of their respective facilities as set forth herein and to discharge their respective
26 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any
27 nuisance condition or undue maintenance impact upon the others' facilities.
28

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

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

11 //

12 //

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

JUL 02 2013

(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:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By

NEAL R. KIPNIS
Deputy County Counsel


By

Deputy


(SEAL)

Funding Agreement: City of Desert Hot Springs
Mission Creek Bridge at Dillon Road
6-0-00090
05/28/13
TT:blj

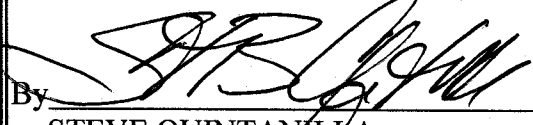
1 **CITY OF DESERT HOT SPRINGS, a California charter**
2 **City and Municipal Corporation**

3 By 
4 RICHARD A. DANIELS
5 City Manager

6 ATTEST:

7 By 
8 JERRYL SORIANO
9 Deputy City Clerk

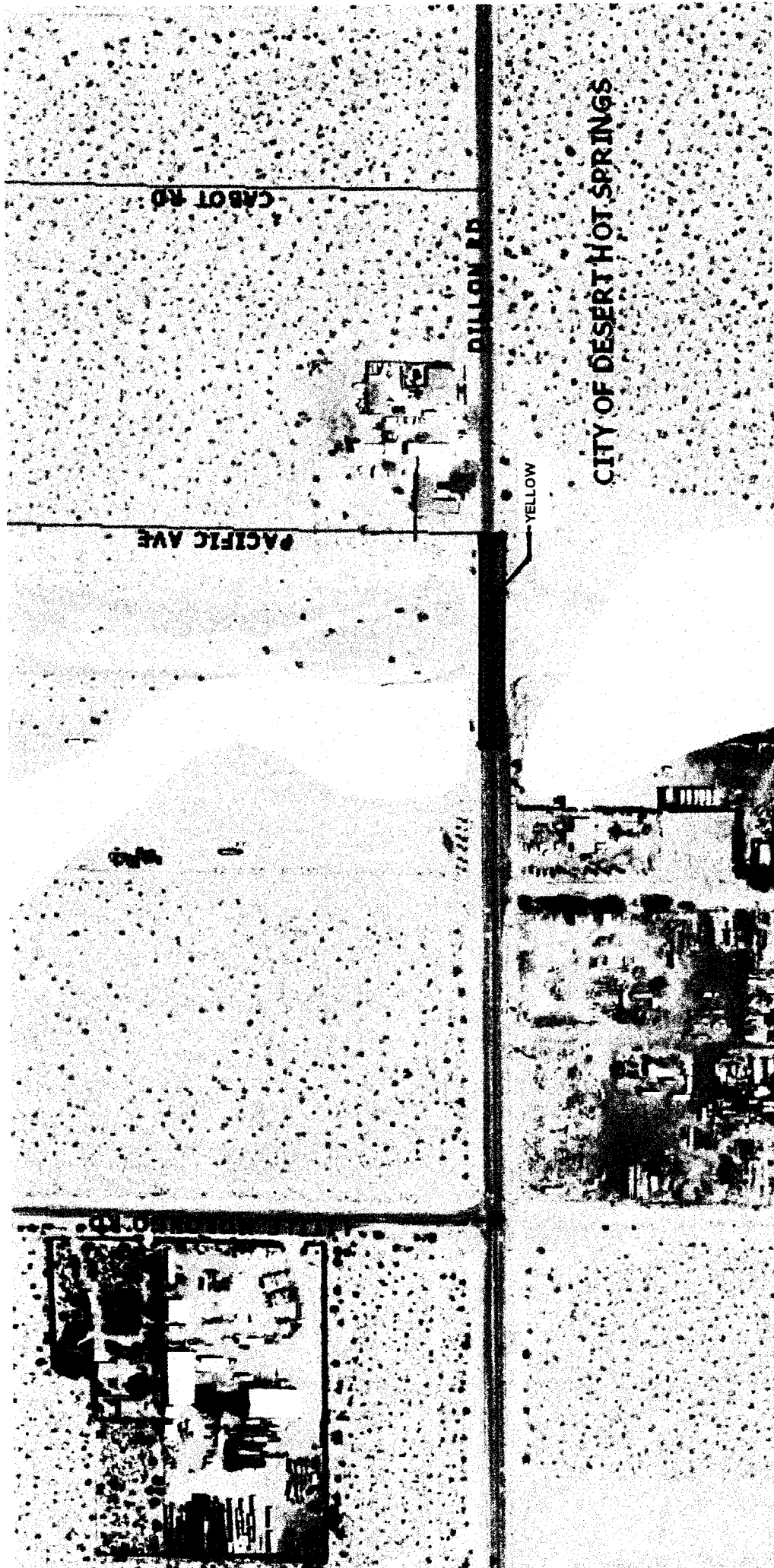
10 APPROVED AS TO FORM:

11 
12 By STEVE QUINTANILLA
13 City Attorney

14 (SEAL)
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24 Funding Agreement: City of Desert Hot Springs
25 Mission Creek Bridge at Dillon Road
26 6-0-00090
27 05/28/13
28 TT:blj

EXHIBIT A



FUNDING AGREEMENT

MISSION CREEK BRIDGE AT DILLON ROAD

PROJECT NO. 6-0-00090