

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



ITEM
11.2
(ID # 5734)

MEETING DATE:

Tuesday, January 9, 2018

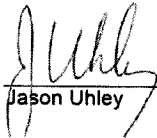
FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approve the Amended and Restated Cooperative Agreement for Desert Hot Springs MDP Line E-5, Stage 1, Project No. 6-0-00035-01; [District 4] [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Amended and Restated Cooperative Agreement between the District and the City of Desert Hot Springs ("City"); and
2. Authorize the Chairman to execute the Amended and Restated Cooperative Agreement on behalf of the District; and
3. Direct the Clerk of the Board to return three (3) copies of the executed Amended and Restated Cooperative Agreement to the District.

ACTION:

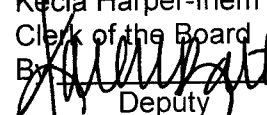

Jason Uhley

12/21/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Perez and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Perez
Nays: None
Absent: Ashley
Date: January 9, 2018
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS:			Budget Adjustment: No	
			For Fiscal Year: 17/18 – 18/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On November 6, 2012 (Agenda Item No. 11.5), the Board of Supervisors approved the cooperative agreement between the District and the City which set forth the terms and conditions by which the District would contribute funding to the City for design and construction of the Desert Hot Springs Master Drainage Plan (MDP) Line E-5 as part of a City administered public works construction contract. Pursuant to the original cooperative agreement, the District has paid the City a total of one hundred seventy-six thousand, eight hundred seventy-nine dollars (\$176,879) for the engineering design and utility potholing completed to date. However, in collaborations between the District and the City, the parties agreed that the project would be completed more expeditiously if the District finalizes the design and construction while the City takes responsibility for the street improvements. This Amended and Restated Cooperative Agreement supersedes the previous cooperative agreement in its entirety and sets forth the terms and conditions by which the District will design and construct certain flood control facilities within the Desert Hot Springs MDP. The Amended and Restated Cooperative Agreement is also necessary for the City to grant the District the necessary rights to access, construct, operate and maintain the project within City 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 facilities. The City will assume ownership and responsibility for (i) operation and maintenance of the project's associated catch basins, inlets, curbs and gutters, laterals, connector pipes and storm drains that are thirty-six inches (36") or less in diameter and (ii) operation and maintenance of street improvements located within City rights of way.

County Counsel has approved the Amended and Restated Cooperative Agreement as to legal form. The City has executed the Amended and Restated Cooperative Agreement.

Previous Agenda Reference 11-5 of November 6, 2012.

Impact on Residents and Businesses

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
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This project is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses. Upon construction completion, this project will provide drainage and street improvements for adjacent property owners and businesses.

Additional Fiscal Information

In the original cooperative agreement approved by the Board of Supervisors in 2012, the District was to contribute up to \$4,051,381 to the City for the design and construction of the Desert Hot Springs Master Drainage Plan (MDP) Line E-5. Under this Amended and Restated Cooperative Agreement, the District will be funding the design, construction and construction inspection costs for the project, and the City will contribute up to one hundred twenty-five thousand dollars (\$125,000) toward the construction of street improvements. To date, the District has paid \$176,879 to the City for the project. Future operations and maintenance costs associated with the mainline storm drain will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Amended and Restated Cooperative Agreement

RKM:blm

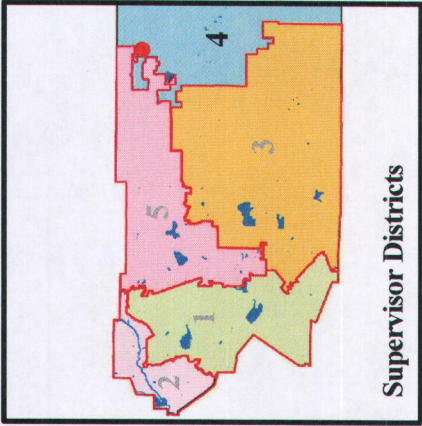
P8/217558



Scott Bruckner 1/3/2018



Gregory V. Priamos, Director County Counsel 12/26/2017

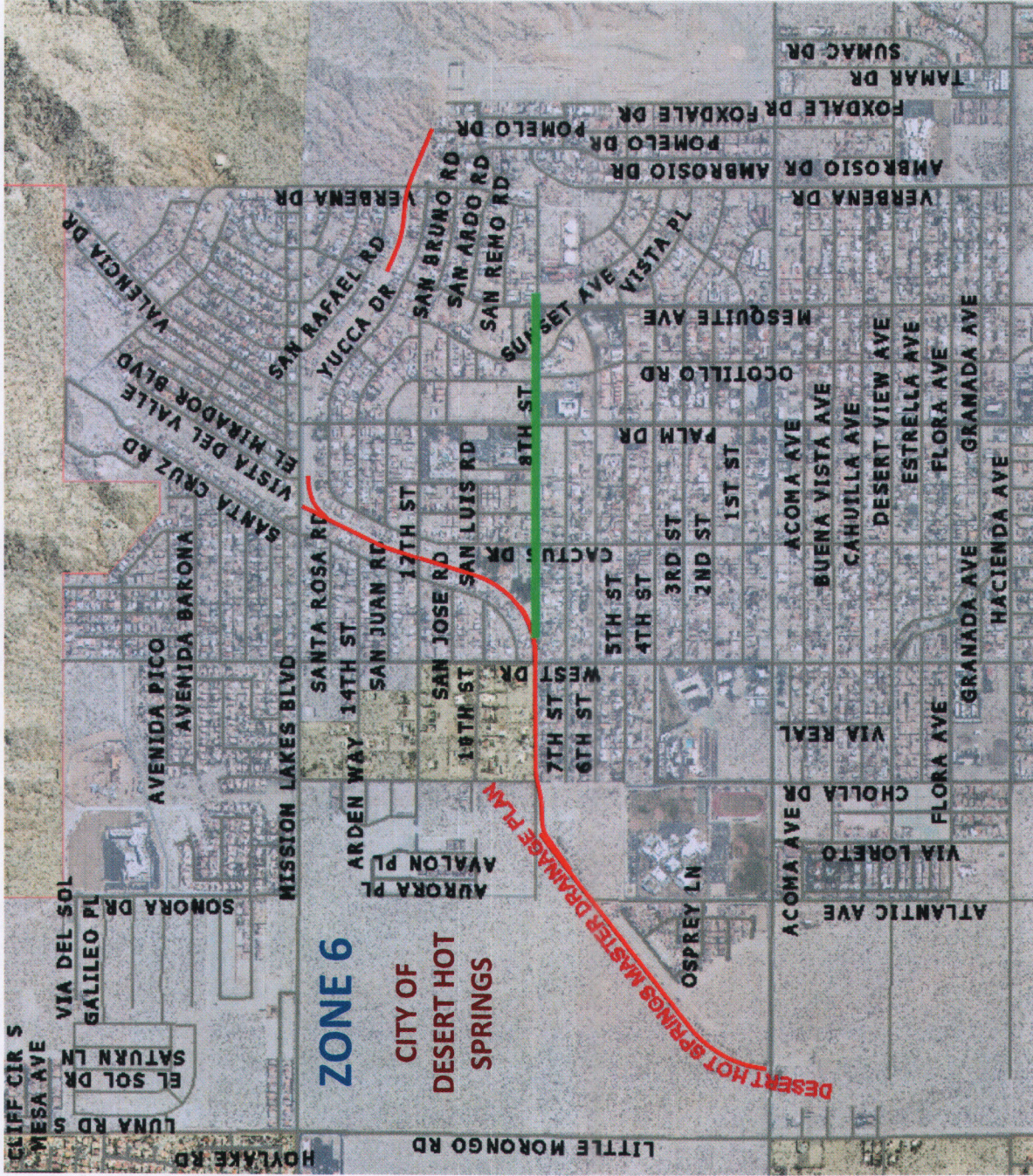


LEGEND:

- Project Vicinity
- Existing District Facilities
- Supervisorial District

DESCRIPTION:

Desert Hot Springs MDP Line E-5
 Stage 1
 Project No. 6-0-00035



AMENDED AND RESTATED COOPERATIVE AGREEMENT

Desert Hot Springs MDP Line E-5, Stage 1

Project No. 6-0-00035-01

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

RECITALS

A. On November 6, 2012 [DISTRICT'S Board Agenda Item No. 11.5], DISTRICT and CITY entered into a Cooperative Agreement, hereinafter called "PRIOR AGREEMENT", which set forth the terms and conditions under which DISTRICT would contribute funding in support of CITY'S efforts to design and construct Desert Hot Springs Master Drainage Plan (MDP) Line E-5, hereinafter called "LINE E-5 STAGE 1"; and

B. Pursuant to PRIOR AGREEMENT, DISTRICT'S contributions included one hundred percent (100%) of the engineering design and cost proposal for the preparation of the project construction plans and specifications, plus an additional twenty percent (20%) to offset CITY'S administrative costs associated therewith, hereinafter called "DESIGN CONTRIBUTION"; and

C. On January 17, 2013, pursuant to PRIOR AGREEMENT, DISTRICT paid CITY for fifty percent (50%) of DESIGN CONTRIBUTION in the amount of one hundred twenty-nine thousand eight hundred fourteen dollars and eighty cents (\$129,814.80); and

D. Pursuant to PRIOR AGREEMENT, the remaining fifty percent (50%) of DESIGN CONTRIBUTION was to be paid following the signing of the project construction plans and specifications by all parties; and

E. Subsequent to the execution of PRIOR AGREEMENT, CITY entered into a consulting services agreement with Pacific Advanced Civil Engineering ("PACE"), Inc., a California corporation, in the amount of two hundred sixteen thousand three hundred fifty-eight

1 dollars (\$216,358.00) to prepare the project construction plans and specifications, including
2 utility potholing; and

3 F. On May 18, 2017, pursuant to PRIOR AGREEMENT, DISTRICT paid CITY forty-
4 seven thousand sixty-four dollars (\$47,064.00), hereinafter called "FINAL PAYMENT". FINAL
5 PAYMENT includes thirty-nine thousand two hundred twenty dollars (\$39,220.00) for the utility
6 potholing completed to date by PACE plus an additional twenty percent (20%) to offset CITY'S
7 administrative costs associated therewith; and

9 G. In total, pursuant to PRIOR AGREEMENT, DISTRICT has paid CITY one hundred
10 seventy-six thousand eight hundred seventy-eight dollars and eighty cents (\$176,878.80) for
11 PROJECT; and

12 H. CITY and the Board of Supervisors have expressed their desire to have DISTRICT
13 complete the design and construction of the project; and

14 I. CITY and DISTRICT now wish to amend and restate their respective understandings,
15 roles and responsibilities pertaining to the project as set forth herein. Furthermore, CITY and
16 DISTRICT mutually agree that the provisions of this Agreement shall supersede all provisions
17 of PRIOR AGREEMENT; and

18 J. DISTRICT has budgeted for and now plans to design and construct LINE E-5 STAGE
19 1 to provide flood control and drainage improvements in the northerly portion of the city of
20 Desert Hot Springs; and

21 K. LINE E-5 STAGE 1 consists of approximately 3,800 lineal feet of underground storm
22 drain system to be constructed within 8th Street from approximately Mesquite Avenue and
23 extending westerly to outlet into DISTRICT'S existing Line E facility near West Drive, as shown
24 in concept in yellow on Exhibit "A" attached hereto and made a part hereof; and
25
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1 L. Associated with the construction of LINE E-5 STAGE 1 is the construction of various
2 catch basins, inlets, laterals, connector pipes and storm drains that are thirty-six inches (36") or
3 less in diameter located within CITY rights of way, hereinafter called "APPURTENANCES";
4 and
5

6 M. CITY desires DISTRICT to include as a part of its construction contract certain street
7 improvements such as street paving, curbs, curb and gutter, asphalt berms, sidewalks and cross
8 gutter, as depicted on DISTRICT Drawing No. 6-0410, hereinafter called "STREET
9 IMPROVEMENTS"; and

10 N. CITY is willing to reimburse DISTRICT for one hundred percent (100%) of the
11 lowest responsible construction contract bid price for STREET IMPROVEMENTS items
12 ("CITY INITIAL PAYMENT"), plus any cost associated with STREET IMPROVEMENTS
13 items resulting from a contract change orders (STREET IMPROVEMENTS CHANGE
14 ORDERS"). Together, CITY INITIAL PAYMENT and STREET IMPROVEMENTS
15 CHANGE ORDERS are called ("CITY CONTRIBUTION"); and
16

17 O. DISTRICT is willing to incorporate STREET IMPROVEMENTS into its
18 construction contract provided that CITY pays CITY CONTRIBUTION in an amount up to one
19 hundred twenty-five thousand dollars (\$125,000); and
20

21 P. Together, STREET IMPROVEMENTS and APPURTENANCES are hereinafter
22 called "CITY FACILITIES"; and

23 Q. LINE E-5 STAGE 1 and CITY FACILITIES are hereinafter altogether called
24 "PROJECT"; and

25 R. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed
26 with the construction of PROJECT at the earliest possible date; and
27
28

S. 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 of PROJECT.

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

SECTION I

DISTRICT shall:

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

2. Prepare or cause to be prepared plans and specifications for PROJECT (the "IMPROVEMENT PLANS") in accordance with applicable DISTRICT and CITY standards.

3. Obtain, at its sole cost and expense, all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT.

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

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

6. Advertise, award and administer a public works construction contract for PROJECT.

7. Provide CITY with written notice that DISTRICT has awarded a construction contract for PROJECT.

1 8. Invoice CITY (Attention: Community Development Department) for one hundred
2 percent (100%) of CITY INITIAL PAYMENT at the time of providing written notice pursuant
3 to Section I.7.

4 9. Within thirty (30) days of DISTRICT awarding PROJECT construction contract, pay
5 Coachella Valley Conservation Commission the costs associated with the Multiple Species
6 Habitat Conservation Plan, which is either the lesser of three percent (3%) of the lowest bid price
7 or three percent (3%) of the contract bid price, less the value of the applicable project specific
8 mitigation.
9

10 10. Prior to commencing PROJECT construction, schedule and conduct a pre-
11 construction meeting between DISTRICT, CITY and other affected entities. DISTRICT shall
12 notify CITY at least twenty (20) days prior to conducting the pre-construction meeting.
13

14 11. Furnish CITY, at the time of providing written notice for the pre-construction meeting
15 as set forth in Section I.10, with a construction schedule which shall show the order and dates in
16 which DISTRICT or DISTRICT'S contractor proposes to carry on the various parts of work,
17 including estimated start and completion dates.

18 12. Construct or cause to be constructed PROJECT pursuant to a DISTRICT administered
19 public works construction contract, in accordance with IMPROVEMENT PLANS approved by
20 DISTRICT and CITY, and pay all costs associated therewith.
21

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

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

27 15. Require its construction contractor(s) to include CITY as an additional insured under
28 the liability insurance coverage for PROJECT, and also require its construction contractor(s) to

1 include CITY as a third party beneficiary of any and all warranties of the contractor's work with
2 regard to CITY FACILITIES.

3 16. Accept ownership and sole responsibility for the operation and maintenance of
4 PROJECT until such time as CITY accepts ownership and responsibility for operation and
5 maintenance of CITY FACILITIES as set forth in Section II.11.
6

7 17. Within two (2) weeks of completing PROJECT construction, provide CITY with
8 written notice that PROJECT construction is substantially complete and requesting that CITY
9 conduct a final inspection of PROJECT.

10 18. Upon DISTRICT'S acceptance of PROJECT construction as complete, provide CITY
11 with a copy of DISTRICT'S Notice of Completion.
12

13 19. Invoice CITY (Attention: Community Development Department) for one hundred
14 percent (100%) of STREET IMPROVEMENTS CHANGE ORDERS at the time of providing
15 written notice pursuant to Section I.18.

16 20. Upon CITY'S acceptance of CITY FACILITIES for ownership, operation and
17 maintenance, provide CITY with a reproducible duplicate set of "record drawings" of PROJECT
18 plans.
19

20 21. Ensure that all work performed pursuant to this Agreement by DISTRICT, its agents
21 or contractors is done in accordance with all applicable laws and regulations, including but not
22 limited to all applicable provisions of the Labor Code, Business and Professions Code, and Water
23 Code. DISTRICT shall be solely responsible for all costs associated with compliance with
24 applicable laws and regulations.
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SECTION II

CITY shall:

1. Terminate CITY'S consulting services agreement with PACE upon issuance of final payment to PACE for the utility potholing completed to date.
2. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
3. Review and approve, as appropriate, IMPROVEMENT PLANS prior to DISTRICT'S advertising PROJECT for construction bids.
4. Pay DISTRICT, within thirty (30) days after receipt of DISTRICT'S appropriate invoice, for CITY INITIAL PAYMENT as set forth in Section I.8.
5. Grant DISTRICT, by execution of this Agreement, all rights necessary to construct, inspect, operate and maintain PROJECT within CITY rights of way or easements.
6. Issue, at no cost to DISTRICT or DISTRICT'S contractor, the necessary encroachment permit(s) required to construct PROJECT.
7. Order the relocation of all utilities within CITY rights of way which conflict with the construction of PROJECT, except as otherwise shown on IMPROVEMENT PLANS.
8. Inspect PROJECT construction at its sole cost, but provide any comments to DISTRICT personnel who shall be solely responsible for all communications with DISTRICT'S contractor(s) during the construction of PROJECT.
9. Upon receipt of DISTRICT'S written notice that PROJECT construction is substantially complete as set forth in Section I.17, conduct a final inspection of PROJECT.
10. Pay DISTRICT, within thirty (30) days after receipt of DISTRICT'S appropriate invoice, for STREET IMPROVEMENTS CHANGE ORDERS as set forth in Section I.19.

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

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

SECTION III

It is further mutually agreed:

1. The undersigned parties, who are parties to PRIOR AGREEMENT, hereby amend and restate PRIOR AGREEMENT to read in its entirety as set forth in this Agreement, all with the intent and effect that PRIOR AGREEMENT shall hereby be terminated and entirely replaced and superseded by this Agreement and shall be of no further force and effect.

2. By execution of this Agreement, CITY agrees and certifies that the disbursement of FINAL PAYMENT satisfied all claims for payment against DISTRICT under PREVIOUS AGREEMENT.

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

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

4
5 5. In the event CITY desires to include any additional work as part of PROJECT, CITY
6 shall submit a written request to DISTRICT describing the additional work desired and agrees to
7 pay DISTRICT for any agreed upon work requested. Payment for CITY-requested additional
8 work shall be based upon actual quantities of materials installed at the contract unit prices bid or
9 at the negotiated change order prices.

10 6. DISTRICT and CITY each pledge to cooperate in regard to the operation and
11 maintenance of their respective facilities as set forth herein, and to discharge their respective
12 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance
13 condition or undue maintenance impact upon the others' facilities.

14
15 7. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of
16 Riverside (including its agencies, districts, special districts and departments, their respective
17 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents,
18 representatives, independent contractors, and subcontractors) from any liabilities, claim, damage,
19 proceeding or action, present or future, based upon, arising out of or in any way relating to
20 CITY'S (including its officers, elected and appointed officials, employees, agents,
21 representatives, independent contractors, and subcontractors) actual or alleged acts or omissions
22 related to this Agreement, performance under this Agreement or failure to comply with the
23 requirements of this Agreement, including but not limited to (a) property damage; (b) bodily
24 injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature
25 whatsoever.
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8. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement hereof.

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

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

RIVERSIDE COUNTY FLOOD CONTROL
AND CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Engineering Services Section

CITY OF DESERT HOT SPRINGS
65-950 Pierson Boulevard
Desert Hot Springs, CA 92240
Attn: Charles Maynard
City Manager

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

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

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

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

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

8 16. This Agreement is intended by the parties hereto as a final expression of their
9 understanding with respect to the subject matter hereof and as a complete and exclusive statement
10 of the terms and conditions thereof and supersedes any and all prior and contemporaneous
11 agreements and understandings, oral and written, in connection therewith. This Agreement may
12 be changed or modified only upon the written consent of the parties hereto.
13

14 //

15 //

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

2 JAN 09 2018

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

4
5 RECOMMENDED FOR APPROVAL:

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

6 By J. Uhley
7 JASON E. UHLEY
8 General Manager-Chief Engineer

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

9
10 APPROVED AS TO FORM:

ATTEST:

11 GREGORY P. PRIAMOS
12 County Counsel

KECIA HARPER-IHEM
Clerk of the Board

13 By Leila Mostafaei-Danesh
14 Leila Mostafaei-Danesh
15 Deputy County Counsel

By Karen Burton
Deputy

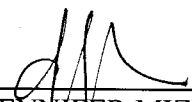
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26 Amended and Restated Cooperative Agreement w/City of Desert Hot Springs
Desert Hot Springs MDP Line E-5, Stage 1
27 Project No. 6-0-00035
RKM:blm
28 10/04/17

CITY OF DESERT HOT SPRINGS

By 
CHARLES MAYNARD
City Manager

APPROVED AS TO FORM:

By 
JENNIFER MIZRAHI
City Attorney

ATTEST:

By 
JERRYL SORIANO
City Clerk

(SEAL)

Amended and Restated Cooperative Agreement w/City of Desert Hot Springs
Desert Hot Springs MDP Line E-5, Stage 1
Project No. 6-0-00035
RKM:blm
10/04/17

Exhibit A

