

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



ITEM: 11.2
(ID # 10939)

MEETING DATE:

Tuesday, November 5, 2019

FROM: FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District and the Mission Springs Water District for Desert Hot Springs Master Drainage Plan Line E-5, Stage 1, Project No. 6-0-00035-1, Nothing Further is Required Under CEQA, District 4. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that nothing further is required under the California Environmental Quality Act ("CEQA") because the approval of the Cooperative Agreement is implementing the previously approved Desert Hot Springs Master Drainage Plan ("MDP") Line E-5, Stage 1 Project that was found to be exempt from CEQA pursuant to California Public Resource Code §21080.21;
2. Approve the Cooperative Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the Mission Springs Water District ("MSWD") for Desert Hot Springs MDP Line E-5, Stage 1 and authorize the Chairwoman of the Board to execute the same on behalf of the District; and
3. Direct the Clerk of the Board to return three (3) executed Cooperative Agreements to the District.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

10/23/2019

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: November 5, 2019
xc: Flood

Kecia R. Harper
Clerk of the Board

By:
Deputy

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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: N/A			Budget Adjustment:	No
			For Fiscal Year:	19/20, 20/21

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The District has budgeted for and plans to construct Desert Hot Springs MDP Line E-5, Stage 1 Project ("Project"), which consists of approximately 5,000 lineal feet of underground storm drain within 8th Street from West Drive to Mesquite Avenue. In addition, storm drain laterals will be constructed within Cactus Drive, San Pablo Road, San Miguel Road, Palm Drive and Mesquite Avenue. Once constructed, this project will alleviate flooding within the commercial and residential areas between Mesquite Avenue and West Drive along 8th Street.

On January 9, 2018 (Minute Order 11.2), the Board of Supervisors for the District approved the Amended and Restated Cooperative Agreement between the District and the City of Desert Hot Springs (City) for the Project. The Amended and Restated Cooperative Agreement set forth the terms and conditions by which the District would design and construct the Project and the City would grant the District the necessary rights to (i) access, inspect and construct the Project, and (ii) operate and maintain the mainline storm drain.

On July 2, 2019 (Minute Order 11.4), the Board of Supervisors for the District authorized the Clerk of the Board to advertise for construction contract bids for the Project.

On September 24, 2019 (Minute Order 11.2), the Board of Supervisors for the District accepted the low bid submitted by O'Duffy Bros, Inc. and awarded the construction contract.

The District has identified existing sewer service lines, which are owned and operated by MSWD, that need to be relocated in order for the Project to be built. This Cooperative Agreement with MSWD sets forth the terms and conditions by which the District will be responsible for the design and construction of the relocated sewer services lines. MSWD will be responsible for its review of the MSWD relocation design plans and its associated construction inspection costs.

Upon completion of the relocation of the sewer service lines, MSWD will assume ownership and responsibility for the operation and maintenance for the relocated sewer service lines. Upon completion of Project construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain.

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County Counsel has approved the Cooperative Agreement as to legal form. MSWD has executed the Cooperative Agreement.

Prev. Agn. Ref.: MT#10849 11.2 of 09/24/19
MT#10126 11.4 of 07/02/19
MT#5734 11.2 of 01/09/18
11.5 of 11/06/12

Environmental Findings

On July 2, 2019 (Minute Order 11.4), the Board of Supervisors for the District found that the Project is statutorily exempt from CEQA pursuant to California Public Resource Code §21080.21. In accordance with CEQA, a Notice of Exemption was prepared by the District and filed by the Clerk of the Board upon approval of the Project. The Cooperative Agreement being approved today is implementing what was evaluated and is consistent with the Project as approved by the Board; therefore, nothing further is required under CEQA.

Impact on Residents and Businesses

The Project will construct drainage infrastructure to remedy ongoing flooding problems. This project is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness. This project will retrofit an older, built-out neighborhood with drainage infrastructure to alleviate street and intersection flooding and will increase the public safety and quality of life for the local residents.

Additional Fiscal Information

The District is funding all design, construction and its construction inspection costs for the Project. The lowest responsible bid for the Project was \$3,498,219, which was submitted by the firm of O'Duffy Bros., Inc. Of this, the relocation of the sewer service lines is estimated to cost \$85,621.

Pursuant to the Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) executed on June 22, 2004, the District will pay up to \$104,946 (3% of bid) to the Western Riverside County Regional Conservation Authority as required mitigation for the construction of flood control facilities. The actual mitigation payment that will be made by the District may be reduced based on acquisition of replacement habitat for the benefit of Covered Species, as defined in the Implementing Agreement and the MSHCP.

Sufficient funding is available in the District's Zone 6 budget for FY 2019-2020. Future operations and maintenance costs associated with the mainline storm drain will accrue to the District. Operations and maintenance costs associated with the relocated sewer service lines will accrue to MSWD.

Desert Hot Springs Line E-5, Stage 1 Funding Summary:

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	Sewer Relocations	Project Total
Estimated Project Construction Costs	\$85,621	\$3,498,219
Estimated MSHCP		up to \$104,947
	TOTAL	\$3,603,166

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

RKM:blm
P8/227750



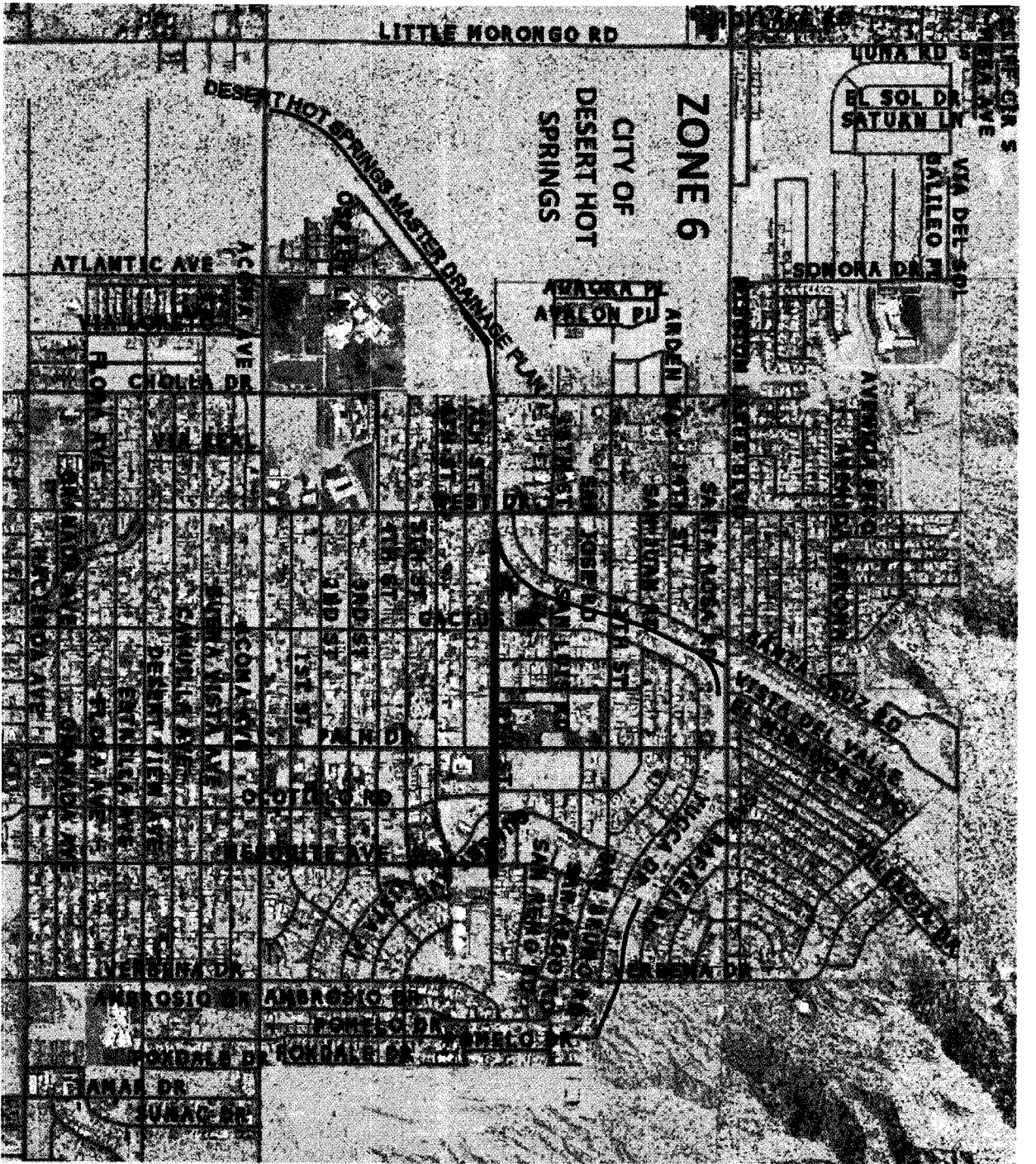
Jason Farin, Senior Management Analyst

10/30/2019

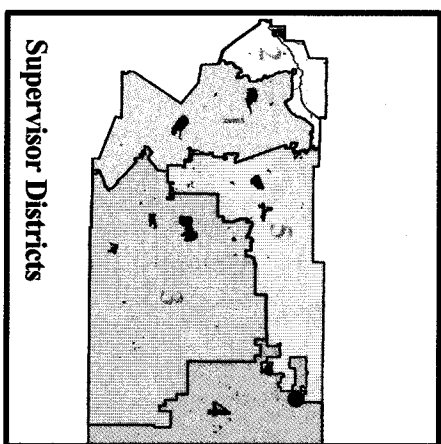


Gregory V. Priamos, Director County Counsel

10/28/2019



VICINITY MAP

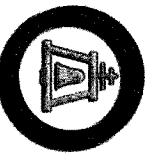
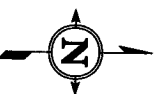


Supervisor Districts

- LEGEND:**
- ▬ Project Vicinity
 - ▬ Existing District Facilities
 - Supervisorial District

DESCRIPTION:

Desert Hot Springs MDP Line E-5
 Stage 1
 Project No. 6-0-00035-01
 Supervisorial District 4



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

This Cooperative Agreement ("Agreement"), dated as of NOV. 5, 2019, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT") and the Mission Springs Water District, a California county water district ("MSWD").

RECITALS

A. DISTRICT has budgeted for and plans to design and construct the Desert Hot Springs Master Drainage Plan ("MDP") Line E-5, Stage 1, hereinafter called "STORM DRAIN", as shown on District Drawing No. 6-0410 and as shown on in concept in magenta on Exhibit "A" attached hereto and made a part hereof. When completed, STORM DRAIN will provide improved drainage and flood control within the incorporated City of Desert Hot Springs.

B. MSWD owns, operates and maintains certain sewer lines located within MSWD public or private rights of way, hereinafter called "MSWD FACILITIES", as shown in concept as black dashed lines on Exhibit "A". A portion of the existing MSWD FACILITIES interferes with the proposed STORM DRAIN's vertical alignment; therefore, the interfering portion of the MSWD FACILITIES must be relocated.

C. DISTRICT has also budgeted for and caused to be prepared the necessary plans and specifications to relocate the interfering portions of MSWD FACILITIES as part of its STORM DRAIN project.

D. Together, STORM DRAIN and MSWD FACILITIES are hereinafter called "PROJECT".

E. DISTRICT desires MSWD to accept ownership and responsibility for the operation and maintenance of the relocated MSWD FACILITIES, as shown in concept in orange

on Exhibit "A", upon completion of relocation construction. Therefore, MSWD must review and approve DISTRICT's plans and specifications for MSWD FACILITIES and subsequently inspect and approve the construction of MSWD FACILITIES and, subsequent to approved inspection, accept MSWD facilities for operation and maintenance.

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

G. DISTRICT and MSWD acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date.

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

SECTION I

DISTRICT shall:

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

2. Prepare plans and specifications for PROJECT, hereinafter called "PROJECT PLANS", including separate plans and specifications for MSWD FACILITIES, hereinafter called "RELOCATION PLANS" in accordance with MSWD standards, and submit RELOCATION PLANS to MSWD for its review and approval prior to advertising PROJECT for construction.

3. Obtain at its sole cost and expense, all necessary right of way, rights of entry and temporary construction easements as may be needed 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 or state resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.
5. Advertise, award and administer a public works construction contract for PROJECT.
6. Provide MSWD with written notice that DISTRICT has awarded a construction contract for PROJECT.
7. Notify MSWD in writing at least twenty (20) days prior to the start of construction of PROJECT.
8. Furnish MSWD, at the time of providing written notice to MSWD of the start of construction as set forth in Section I.7., a construction schedule which shall show the order and dates in which DISTRICT or DISTRICT's contractor proposes to carry on the relocation construction of MSWD FACILITIES, including estimated start and completion dates.
9. Construct or cause to be constructed PROJECT, including relocation of MSWD FACILITIES, pursuant to a DISTRICT administered public works construction contract and pay all costs associated therewith.
10. Inspect or cause to be inspected construction of PROJECT.
11. Furnish or cause its construction manager to furnish, all construction survey and materials testing services necessary to construct PROJECT.
12. Not permit any change to or modification of MSWD approved RELOCATION PLANS relative to the relocation of MSWD FACILITIES without the prior written permission and consent of MSWD.

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

14. Require its construction contractor(s) to include MSWD as an additional insured under the liability insurance coverage required by DISTRICT's construction contract for PROJECT, and also require its construction contractor(s) to include MSWD as a third party beneficiary of any and all warranties of the contractor's work with regard to MSWD FACILITIES.

15. Within two (2) weeks of completing RELOCATION PLANS construction, provide MSWD with written notice that relocation construction is substantially complete and requesting that MSWD conduct a final inspection of MSWD FACILITIES and subsequently accept MSWD FACILITIES as operational.

16. Receive and file MSWD's written Notice of Final Acceptance.

17. Upon DISTRICT's acceptance of PROJECT construction as complete, provide MSWD with a reproducible copy of "record drawings" for RELOCATION PLANS.

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

SECTION II

MSWD shall:

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

2. Review and approve, as appropriate and at its sole cost, RELOCATION PLANS prior to DISTRICT advertising PROJECT for construction.
3. Inspect MSWD FACILITIES construction at its sole cost, but provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DISTRICT's contractor(s) during the construction of PROJECT.
4. Upon receipt of DISTRICT's written notice that construction of MSWD FACILITIES relocation is substantially complete, conduct a final inspection of MSWD FACILITIES.
5. Issue a Notice of Final Acceptance to DISTRICT and assume sole responsibility for ownership, operation and maintenance of the relocated MSWD FACILITIES upon receipt of notice from DISTRICT that relocation of MSWD FACILITIES is substantially complete as set forth in Section I.15.

SECTION III

It is further mutually agreed:

1. MSWD FACILITIES shall, at all times, remain the sole ownership and exclusive responsibility of MSWD. Nothing herein shall be construed as creating any obligation or responsibility on the part of DISTRICT to operate or maintain MSWD FACILITIES.
2. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT and MSWD and shall not be deemed complete until approved and accepted as complete by DISTRICT and MSWD as it pertains to MSWD FACILITIES.
3. DISTRICT shall indemnify, defend, save and hold harmless MSWD (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or

action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

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

5. Any waiver by DISTRICT or by MSWD 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 MSWD 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 MSWD from enforcement hereof.

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

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Design III Section

MISSION SPRINGS
WATER DISTRICT
66575 Second Street
Desert Hot Springs, CA 92240
Attn: General Manager

8. 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.

9. 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.

10. 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.

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

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

13. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

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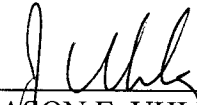
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

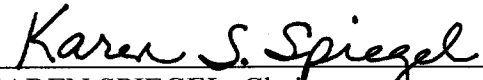
NOV 05 2019

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
JASON E. UHLEY
General Manager-Chief Engineer

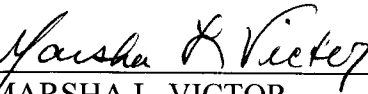
By 
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

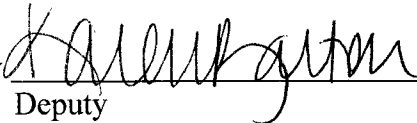
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

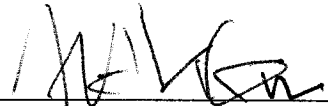
By 
MARSHA L. VICTOR
Deputy County Counsel

By 
Deputy

(SEAL)

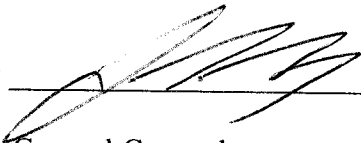
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Desert Hot Springs MDP Line E-5, Stage 1
Project No. 6-0-00035-01
RKM:blm
09/17/19

MISSION SPRINGS WATER DISTRICT

By 

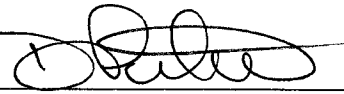
ARDEN WALLUM
General Manager

APPROVED AS TO FORM:

By 

General Counsel

ATTEST:

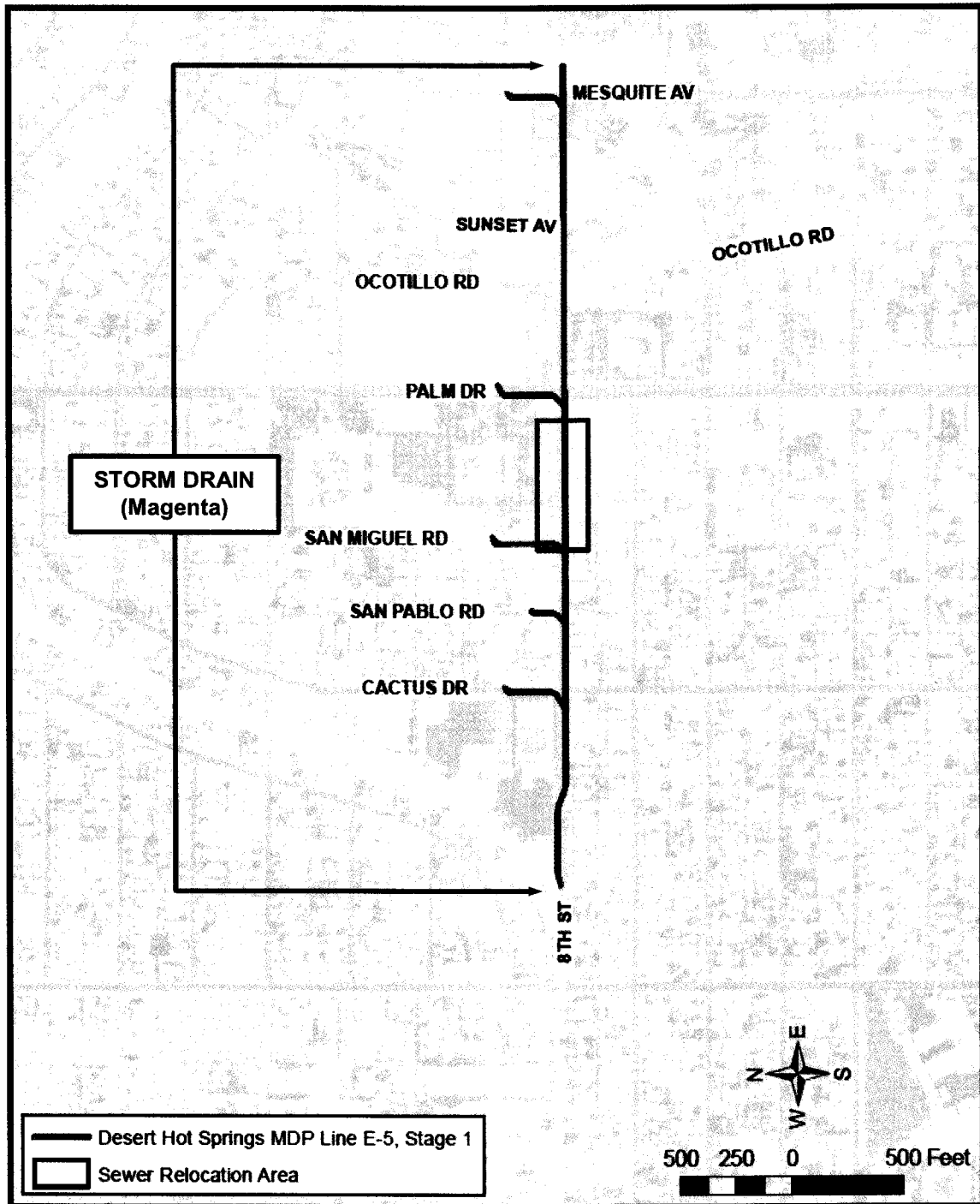
By 

Board Secretary

(SEAL)

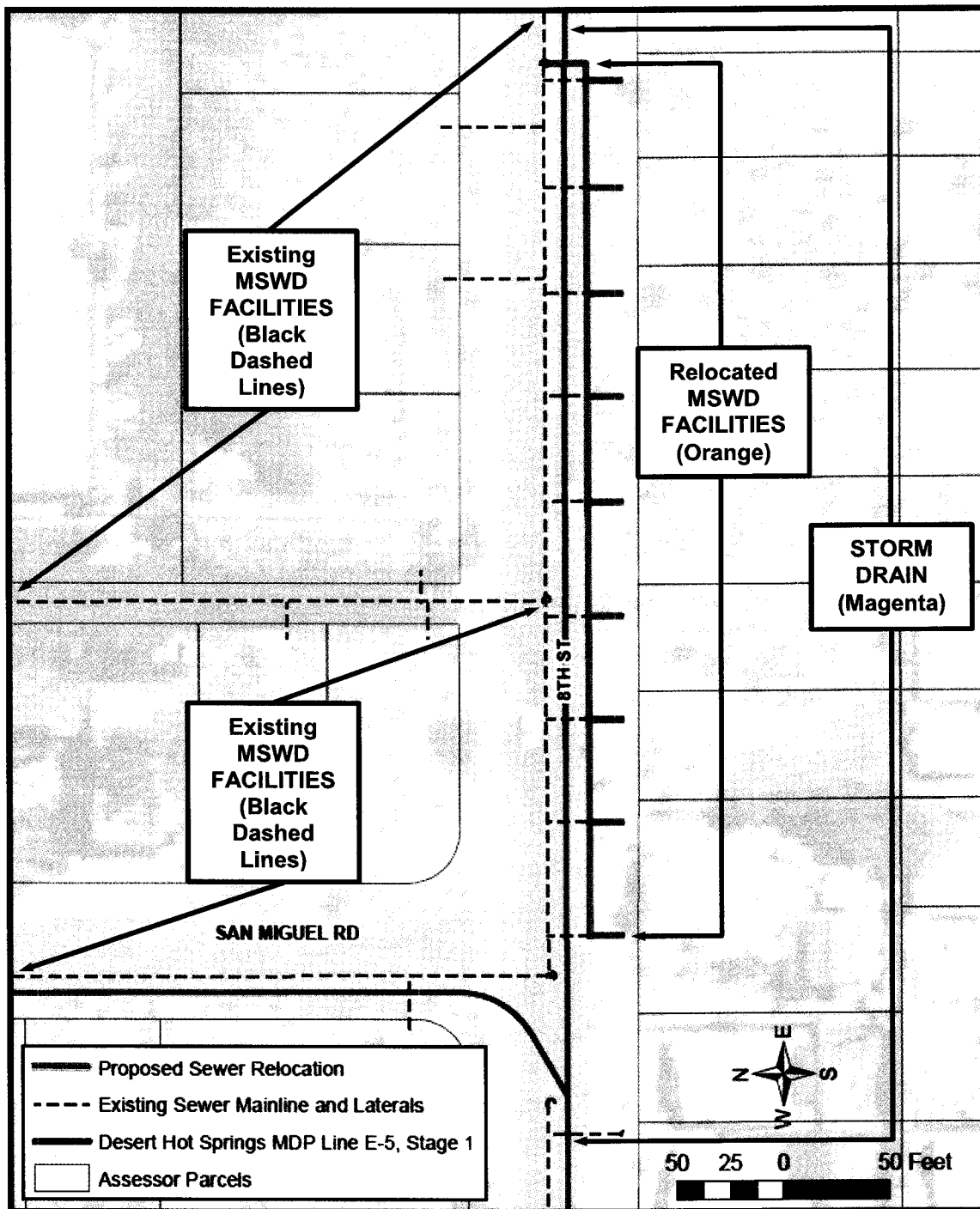
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RKM:blm
09/17/19

Exhibit A



Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Exhibit A



Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community