

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



ITEM: 11.1
(ID # 13239)

MEETING DATE:
Tuesday, September 22, 2020

FROM: FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cooperative Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Beaumont for Beaumont MDP Line 2, Stage 1, Project No. 5-0-00195, CEQA Exempt, District 5. [\$5,098,523 – District Zone 5 Funding 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Cooperative Funding Agreement ("Agreement") is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption;
2. Approve the Cooperative Funding Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Beaumont ("City"), and authorize the Chairwoman of the Board to execute the same on behalf of the District;
3. Authorize the District's General Manager-Chief Engineer to have the delegated authority to terminate the Agreement in accordance with the terms and conditions in the Agreement if such action is desired by the District; and
4. Direct the Clerk of the Board to return two (2) copies of the executed Agreement to the District.

ACTION: Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 9/10/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, 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: September 22, 2020
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	\$357,955	\$357,955	\$5,098,523	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS:			Budget Adjustment: No	
Zone 5 Funds 100% (See Additional Fiscal Information)			For Fiscal Year: 20/21-24/25	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District will contribute funding to the City for the design and construction of a certain flood control facility, Beaumont MDP Line 2, Stage 1. Said flood control facility is to be designed and constructed by the City and inspected, operated and maintained by the District and the City.

Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain system, which includes approximately 4,820 lineal feet of underground storm drain. The City will assume ownership and responsibility for the operation and maintenance for the flood control facility's associated catch basins, inlets, connector pipes and lateral storm drains that are thirty-six inches (36") or less in diameter which may need to be constructed to adequately collect and convey local flows within the City's jurisdiction or rights of way.

County Counsel has approved the Agreement as to legal form. The City approved the Agreement on September 1, 2020.

Environmental Findings

The Agreement is exempt from CEQA pursuant Section 15061(b)(3) of the State CEQA Guidelines which states, "The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Agreement establishes the terms by which the District will financially contribute to the City's design and construction of the proposed project and then upon said terms accept ownership, rights of way, and the responsibility for future operation and maintenance of the facilities.

The Agreement does not authorize to any extent whatsoever actual physical development of the underlining property, and such development, if it occurs at all, will be the result of subsequent actions taken by the City. Therefore, it can be seen with certainty that there is no possibility that the Agreement may have a significant effect on the environment. No further analysis is required under CEQA.

Impact on Residents and Businesses

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
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The District's financial contribution toward the flood control facility is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses. Upon construction completion, the flood control facility will provide flood protection and drainage improvements for the immediate adjacent areas.

Additional Fiscal Information

The District is providing up to \$5,000,000 in funding to the City for the design and construction of said flood control facility. Sufficient funding is available in the District's Zone 5 budget for FY 2020-2021 and will be included in the proposed budget in future years as appropriate and necessary. Future operation and maintenance costs associated with the mainline storm drain system will accrue to the District.

Pursuant to the Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") executed on June 22, 2004, the District is a participating agency. The District will be making a payment to the Western Riverside County Regional Conservation Authority ("RCA") for up to 3% of the total capital costs as required mitigation for the construction of flood control facility in cooperation with and on behalf of the City. The MSHCP mitigation fee listed below is based on three percent (3%) of the engineers estimated construction cost for the flood control facility. However, the actual MSHCP mitigation fee payment will be based on three percent (3%) the lowest responsive contract bid price for the construction of said flood control facility, and may be reduced based on acquisition of replacement habitat for the benefit of Covered Species, as defined in the Implementing Agreement and the MSHCP. The Agreement will not affect any MSHCP conservation areas or conflict with MSHCP policies.

Funding Summary

Estimated Design and Administration Contribution	\$ 1,715,910
Estimated Construction Contribution	\$ 3,284,090
Maximum District Contribution to the City	\$ 5,000,000
Estimated MSHCP Mitigation Fee (3% of Estimated Construction Contribution)	\$ 98,523
Total Estimated District Cost	\$ 5,098,523

SOURCE OF FUNDS: (Continued)

- 25150-947480-536200 Contribution to Non-County Agency – Zone 5
- 25150-947480-523220 License and Permits – Zone 5

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Funding Agreement

RKM:blm
P8/233196


Jason Farin, Principal Management Analyst 9/14/2020


Gregory V. Priapros, Director County Counsel 9/10/2020

Miyasato, Rene

From: Gunzel, Synthia
Sent: Tuesday, September 1, 2020 11:11 AM
To: Miyasato, Rene
Cc: Mustafa, Rohini
Subject: RE: AATF Request: Cooperative Funding Agreement for Beaumont MDP Line 2,
Attachments: Beaumont MDP Line 2 Coop Funding Agreement AATF.PDF; Printout-13239-1001 coco
rvd.docx

Attached please find the Cooperative Funding Agreement approved as to form. Also, I have reviewed the Form 11 and made minor recommended revisions. Please see the attached. Please contact me should you have any questions. Thank you.

Synthia M. Gunzel
Chief Deputy County Counsel
Contracts, Public Works & Finance Division
County of Riverside
Phone: (951) 955-6300
Fax: (951) 955-6363
Email: smgunzel@rivco.org

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From: Miyasato, Rene
Sent: Thursday, August 27, 2020 3:55 PM
To: Gunzel, Synthia <SMGunzel@RIVCO.ORG>
Cc: Mustafa, Rohini <RoMustaf@rivco.org>; Miyasato, Rene <rmiyasat@rivco.org>
Subject: AATF Request: Cooperative Funding Agreement for Beaumont MDP Line 2,

Dear Synthia:

Attached for your review and, if appropriate, approval as to legal form is the above-referenced Agreement by and between the Riverside County Flood Control and Water Conservation District ("Flood Control") and the City for the above referenced storm drain. The City has confirmed that the Agreement is scheduled for the September 1, 2020 City Council Meeting.

Once the Agreement is approved as to legal form, please email the signed Agreement to rmiyasat@rivco.org for further processing.

The Agreement is tentatively scheduled to go to the Board of Supervisors on September 15, 2020. The District's Form 11 [MT Item No. 13239] is forthcoming for review and electronic approval as appropriate.

Please contact Rene Miyasato-Gee at micro 51333, or me at micro 51282 if there are any questions. Thank you!

Sincerely,
Rene (for Rohini)

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

COOPERATIVE FUNDING AGREEMENT

Beaumont MDP- Line 2, Stage 1
Project No. 5-0-00195

This Cooperative Funding Agreement ("Agreement"), dated as of September 22, 2020, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the City of Beaumont, a municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". The Parties hereto agree as follows:

RECITALS

A. DISTRICT and CITY wish to work collaboratively to expedite the construction of Beaumont MDP- Line 2, Stage 1 ("STAGE 1"). Upon construction completion, STAGE 1 will provide the necessary flood control and drainage improvements for the immediate adjacent areas located within the city of Beaumont; and

B. STAGE 1, as shown on District Drawing No. 5-0231, includes the construction of approximately 4,820 lineal feet of underground storm drain system to be constructed within Sixth Street, Pennsylvania Avenue, and First Street. STAGE 1 will start near the intersection of Chestnut Avenue and Sixth Street and extend easterly along Sixth Street, southerly along Pennsylvania Avenue, and easterly along First Street. STAGE 1 is shown in concept in blue on Exhibit "A", attached hereto and made a part hereof; and

C. In addition to the construction of STAGE 1, certain catch basins, inlets, connector pipes and lateral storm drains that are thirty-six inches (36") or less in diameter will need to be constructed to adequately collect and convey local flows within CITY's jurisdiction or rights of way ("APPURTENANCES"); and

D. STAGE 1 and APPURTENANCES are hereinafter altogether called

"PROJECT"; and

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

F. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution towards PROJECT's design and construction costs as set forth herein; and

G. DISTRICT-approved engineering design proposal cost for PROJECT is hereinafter called "DESIGN PROPOSAL COST"; and

H. The lowest responsible bid contract price for PROJECT construction is hereinafter called "ORIGINAL BID"; and

I. DISTRICT's contribution shall be as follows:

(i) "DESIGN CONTRIBUTION"

One hundred percent (100%) of DESIGN PROPOSAL COST to offset CITY's costs associated with mapping, surveying, engineering, and other typical ancillary costs related to the preparation of the necessary plans and specifications to construct PROJECT; and

(ii) "DESIGN ADMIN"

In the event that CITY chooses to hire an engineering consulting firm to prepare the necessary plans and specifications to construct PROJECT, DISTRICT is also willing to contribute an additional twenty percent (20%) of DESIGN PROPOSAL COST to offset CITY's administrative costs associated with design contract administration; and

(iii) "CONSTRUCTION CONTRIBUTION"

One hundred percent (100%) of ORIGINAL BID; and

(iv) "CONSTRUCTION ADMIN"

An additional ten percent (10%) of ORIGINAL BID to offset CITY's administrative costs associated with construction contract administration and other typical ancillary costs related to the delivery of a flood control facility; and

(v) "CHANGE ORDERS CONTRIBUTION"

Up to an additional ten percent (10%) of the ORIGINAL BID to offset any construction contract change orders; and

(vi) Altogether, DESIGN CONTRIBUTION, DESIGN ADMIN, CONSTRUCTION CONTRIBUTION, CONSTRUCTION ADMIN, and CHANGE ORDERS CONTRIBUTION are hereinafter called "DISTRICT CONTRIBUTION". DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Dollars (\$5,000,000); and

J. CITY desires DISTRICT to ultimately accept ownership and responsibility for operation and maintenance of STAGE 1. Therefore, DISTRICT must review and approve IMPROVEMENT PLANS and subsequently inspect the construction of STAGE 1; and

K. It is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

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

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

CITY 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. Endeavor to award a public works construction contract for PROJECT and begin construction within twenty-four (24) months of execution of this Agreement.
3. Provide DISTRICT an opportunity to review and approve the engineering design cost proposal and associated design schedule for PROJECT.
4. Keep an accurate accounting of the following:
 - A. All design costs associated with the preparation of plans and specifications for PROJECT, in conformance with DISTRICT-approved engineering design cost proposal and design schedule as set forth in Section I.3. CITY shall include this accounting when invoicing DISTRICT for (i) the final payment of DESIGN CONTRIBUTION and (ii) DESIGN ADMIN, if applicable, as set forth in Section I.14. The final accounting of design costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers, change orders and other such

contract documents as may be necessary, to establish the actual cost of design and the associated contract administration cost.

- B. All PROJECT construction costs. CITY shall include this final accounting when invoicing DISTRICT for CHANGE ORDERS CONTRIBUTION as set forth in Section I.37. The final accounting of construction costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers, change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction and the associated contract administration cost for DISTRICT- and CITY- approved IMPROVEMENT PLANS.

5. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement or upon DISTRICT's approval of CITY's engineering design cost proposal as set forth in Section I.3., whichever occurs later. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Dollars (\$5,000,000).

6. Prior to commencing PROJECT design, provide DISTRICT an opportunity to review and approve the geotechnical report for PROJECT.

7. Prepare or cause to be prepared the necessary plans and specifications for PROJECT ("IMPROVEMENT PLANS"), in accordance with the applicable DISTRICT and CITY standards, and submit to DISTRICT (Attention: Special Projects Section) for its review and approval prior to advertising PROJECT for construction bids.

8. Prior to advertising PROJECT for public works construction contract, obtain, at its sole cost and expense all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the

construction, operation and maintenance of PROJECT. Such documents, hereinafter called "REGULATORY PERMITS", may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority.

9. Implement or cause to be implemented, all environmental mitigation required in association with the construction, operation and maintenance of PROJECT, except for the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP").

10. Prior to advertising PROJECT for public works construction contract, obtain, at its sole cost and expense, all necessary permits, licenses, agreements, approvals, rights of way, rights of entry, encroachment permits, and temporary construction easements as may be needed to construct, operate and maintain PROJECT ("ROW DOCUMENTS") and consult with DISTRICT regarding existing dedications, proposed legal and plats, including any requests for waivers and variances from policies.

11. Prior to advertising PROJECT for public works construction contract, provide DISTRICT an opportunity to review, comment on, and make a determination on all (i) REGULATORY PERMITS and (ii) ROW DOCUMENTS, including any existing dedications, proposed legal and plat descriptions, basemap, and survey controls. DISTRICT approval of any such document(s) or IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain STAGE 1.

12. Ensure that REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to

perform all necessary operation and maintenance activities for STAGE 1, as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within PROJECT's right of way.

13. Assume sole responsibility for compliance with the requirements of all REGULATORY PERMITS, including any amendments thereto, pertaining to the construction, operation and maintenance of PROJECT.

14. Following the signing of IMPROVEMENT PLANS by all parties, invoice DISTRICT (Attention: Special Projects Section) for (i) the remainder of DESIGN CONTRIBUTION and (ii) DESIGN ADMINISTRATION CONTRIBUTION, if applicable. The invoice shall include a final accounting of all design costs associated with the preparation of plans and specifications for PROJECT set forth in Section I.4.A. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Dollars (\$5,000,000).

15. Prior to awarding a public works construction contract for PROJECT, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. If DISTRICT so rejects bid(s) as being unreasonably high, CITY shall have the right to re-bid the PROJECT or part thereof and DISTRICT shall review such bid(s) as herein provided in good faith.

16. Advertise, award and administer a public works construction contract for PROJECT at its sole cost and expense.

17. Provide DISTRICT with written notice (Attention: Special Projects Section and Construction Management Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the Contractor's

actual bid amounts for PROJECT, setting forth herein ORIGINAL BID amount.

18. At the time of providing written notice of the award of a construction contract as set forth in Section I.17., invoice DISTRICT (Attention: Special Projects Section) for CONSTRUCTION CONTRIBUTION and CONSTRUCTION ADMIN, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Dollars (\$5,000,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION. CONSTRUCTION CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PROJECT.

19. Prior to commencing PROJECT construction, furnish DISTRICT with final mylar PROJECT plans and assign ownership of PROJECT plans to DISTRICT.

20. Not permit any change to, or modification of, DISTRICT- and CITY-approved IMPROVEMENT PLANS without DISTRICT's prior written permission and consent. Failure to do so shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable to: a) perform its obligations hereunder, and b) to accept responsibility for ownership, operation and maintenance of STAGE 1 due, either in whole or in part, to said breach of this Agreement.

21. Prior to commencing PROJECT construction, schedule and conduct a mandatory pre-construction meeting between CITY, CITY's construction manager, CITY's construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT (Attention: Construction Management Section) in writing at least twenty (20) days prior to conducting the pre-construction meeting.

22. Furnish DISTRICT (Attention: Construction Management Section), at the time of providing written notice of the pre-construction meeting as set forth in Section I.21., with:

- A. A construction schedule which shall show the order and dates in which CITY or CITY's contractor proposes to carry on the various parts of work, including estimated start and completion dates, and
- B. A confined space procedure specific to PROJECT. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5156 et seq. and DISTRICT's Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the start of PROJECT construction.

23. 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 CITY and DISTRICT employees on the site.

24. Order the relocation of all utilities within CITY rights of way which conflict with the construction of PROJECT and which must be relocated at the utility company's expense.

25. Procure or caused to be procured insurance coverages during the term of this Agreement. CITY shall require its PROJECT construction contractor(s) to furnish original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments. Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to the DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

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

27. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager and pay all costs associated therewith. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing, and construction survey services, CITY shall provide DISTRICT with written notice (Attn: Special Projects) requesting such services. However, CITY will continue to serve as construction contract manager.

28. Furnish, or cause its construction manager to furnish, DISTRICT (Attention: Construction Management) all construction survey and materials testing services necessary to ensure PROJECT construction is accomplished in accordance with the DISTRICT- and CITY-approved IMPROVEMENT PLANS.

29. Grant DISTRICT, by execution of this Agreement, the right to inspect PROJECT and subsequently operate and maintain STAGE 1 within CITY rights of way.

30. Within two (2) weeks of completing PROJECT construction, provide DISTRICT with written notice (Attention: Construction Management) that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of STAGE 1.

31. Assume ownership and sole responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of STAGE 1 as set forth herein.

32. Upon completion of PROJECT construction, provide DISTRICT with a copy of the CITY's recorded Notice of Completion.

33. Upon completion of PROJECT construction but prior to DISTRICT's

acceptance of STAGE 1 for ownership, operation and maintenance, provide DISTRICT with appropriate engineering documentation necessary to establish that STAGE 1 was constructed in accordance with the DISTRICT- and CITY- approved IMPROVEMENT PLANS.

34. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of STAGE 1 for ownership, operation and maintenance, convey, or cause to be conveyed, to DISTRICT the flood control easement(s), or grant deed(s) of fee title where appropriate, deemed necessary by DISTRICT for the operation and maintenance of STAGE 1. The easement(s) or grant deed(s) shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

35. At the time of recordation of the conveyance document(s) as set forth in Section I.34., furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value as determined by DISTRICT for each easement parcel to be conveyed to DISTRICT; or (ii) one hundred percent (100%) of the estimated value as determined by DISTRICT for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT's interest in said property as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which in the sole discretion of DISTRICT are acceptable.

36. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of STAGE 1 for ownership, operation and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT with redlined "record drawings" of PROJECT plans. After DISTRICT approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT a time to transfer the redlined changes into DISTRICT's original

mylars at DISTRICT's office, after which the engineer shall review, stamp and sign mylars "record drawings".

37. If applicable, upon DISTRICT acceptance of STAGE 1 for ownership, operation and maintenance, invoice DISTRICT (Attention: Special Projects Section) for CHANGE ORDERS CONTRIBUTION, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Dollars (\$5,000,000). The invoice shall include a final accounting of all PROJECT construction costs as set forth in Section I.4.B.

38. 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 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.

39. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Section I.32., any unexpended portions of DISTRICT CONTRIBUTION.

SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review and make a determination on CITY's engineering design cost proposal and associated design schedule for PROJECT.
3. Review and approve CITY's geotechnical report prior to CITY commencing PROJECT design.

4. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.5. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Dollars (\$5,000,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION.

5. Prior to CITY advertising PROJECT for bids, review and make a determination on, as appropriate, all (i) REGULATORY PERMITS and (ii) ROW DOCUMENTS, including any existing dedications, proposed legal and plat descriptions, basemap, and survey controls. Said REGULATORY PERMITS and ROW DOCUMENTS shall not unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 1. DISTRICT may withhold approval of any such document(s) or IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain STAGE 1.

6. Review and approve IMPROVEMENT PLANS prior to CITY's advertising PROJECT for construction bids.

7. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice, for remainder of DESIGN CONTRIBUTION and DESIGN ADMINISTRATION CONTRIBUTION, if applicable, as set forth in Sections I.4.A. and I.14. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Dollars (\$5,000,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION.

8. Within seven (7) calendar days following CITY's public works construction bid opening, review and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by DISTRICT to be unreasonably high in

comparison with the estimated cost. DISTRICT shall not unreasonably withhold approval of contract.

9. Within thirty (30) days of CITY awarding PROJECT, pay the Western Riverside County Regional Conservation Agency the mitigation fee for PROJECT per the 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), which is either the lesser of (i) three percent (3%) of the lowest responsible bid; or ii) three percent (3%) of lowest responsible bid contract price, less the value of any applicable project specific mitigation.

10. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice for CONSTRUCTION CONTRIBUTION and CONSTRUCTION ADMIN as set forth in Section I.18., subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Dollars (\$5,000,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION.

11. Conduct periodic inspections of STAGE 1 construction for quality control purposes at its sole cost and provide any comments to CITY's designated PROJECT construction inspector.

12. In the event the CITY wishes to utilize DISTRICT's construction inspection, materials testing and construction survey services for PROJECT, and CITY provides DISTRICT with a written request for such services, DISTRICT shall provide a timely response as to whether or not they have the resources to perform such services. If DISTRICT wishes to provide such services, DISTRICT shall provide all necessary construction inspection, materials testing and construction survey services for PROJECT and assist CITY as needed with the administration of PROJECT's construction contract. DISTRICT hereby agrees to pay all DISTRICT costs associated with the inspection of

PROJECT construction, as set forth herein.

13. Upon receipt of CITY's written notice that PROJECT construction is substantially complete as set forth in Section I.30., conduct a final inspection of STAGE 1.

14. Accept ownership and responsibility for the operation and maintenance of STAGE 1 upon (i) DISTRICT inspection of STAGE 1 in accordance with Sections I.30. and II.13., (ii) DISTRICT acceptance of STAGE 1 construction as being complete, (iii) DISTRICT receipt of CITY's recorded Notice of Completion as set forth in Section I.32., (iv) DISTRICT receipt of appropriate engineering documentation as set forth in Section I.33., (v) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans as set forth in Section I.36., (vi) DISTRICT's acceptance of all necessary rights of way and/or easements as set forth in Section I.34., and (vii) DISTRICT's sole determination that STAGE 1 is in a satisfactorily maintained condition.

15. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice, for CHANGE ORDERS CONTRIBUTION as set forth in Sections I.4.B. and I.37., subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Dollars (\$5,000,000). CITY shall be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION.

SECTION III

Indemnification:

1. CITY shall indemnify and hold harmless and require its construction contractor(s) to indemnify, defend and hold harmless the Riverside County Flood Control and Water Conservation District, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and

collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any acts, omissions or services of CITY and CITY's construction contractor(s), its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CITY's construction contractor(s), its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CITY or CITY's construction contractor(s) shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

2. With respect to any action or claim subject to indemnification herein by CITY or CITY's construction contractor(s), CITY or CITY's construction contractor(s) shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of DISTRICT and the County of Riverside; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CITY or CITY's construction contractor(s) indemnification to Indemnitees as set forth herein.

3. CITY and CITY's construction contractor(s) obligation hereunder shall be satisfied when CITY or CITY's construction contractor(s) has provided to DISTRICT and the County of Riverside the appropriate form of dismissal relieving DISTRICT and the County of Riverside from any liability for the action or claim involved.

4. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CITY's construction contractor(s) obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

5. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CITY's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

SECTION IV

It is further mutually agreed:

1. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Dollars (\$5,000,000) and shall be used by CITY solely for the purpose of designing and constructing PROJECT as set forth herein. CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION.

2. In the event CITY's construction contractor does not complete the construction of the PROJECT in accordance with DISTRICT standards, CITY shall complete the project utilizing the bonds and insurances secured for the PROJECT.

3. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT and CITY, or its construction manager, 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. CITY shall not request DISTRICT to accept any portion of PROJECT for ownership, operation or maintenance until PROJECT construction is deemed fully complete and all necessary rights of way have been conveyed as set forth herein.

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

5. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing and construction survey services, CITY shall provide DISTRICT with written notice (Attn: Special Projects Section) requesting such services.

6. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of STAGE 1, STAGE 1 shall be in a good and well maintained condition as reasonably determined by DISTRICT. If, in the reasonable discretion of DISTRICT, STAGE 1 is not in substantial conformation with the terms of this Agreement and IMPROVEMENT PLANS DISTRICT shall provide written notice to CITY of the non-conforming elements and the proposed remedial work required and such corrections will be made at sole expense of CITY. Upon remediation of such non-conforming elements DISTRICT will accept ownership and responsibility for the operation and maintenance of STAGE 1. CITY shall operate and maintain the APPURTENANCES.

7. DISTRICT, the County of Riverside, the State of California, or any of their duly authorized representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. CITY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. CITY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

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:

To DISTRICT: RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Special Projects Section

To CITY: CITY OF BEAUMONT
550 E. 6th Street
Beaumont, CA 92223
Attn: Director of Public Works

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. 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.

13. 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.

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

15. 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.

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

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

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

19. 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.

20. 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. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures

that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The Parties further agree that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to CUETA as amended from time to time. CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

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

September 22, 2020

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By *J. Uhley*
JASON E. UHLEY
General Manager - Chief Engineer

By *Karen S. Spiegel*
KAREN SPIEGEL, Chairwoman
Board of Supervisors, Riverside County Flood
Control and Water Conservation District

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

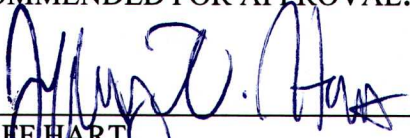
By *Synthia M. Gunzel*
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

By *Priscilla Harper*
Deputy




Cooperative Funding Agreement with the City of Beaumont
Beaumont MDP- Line 2, Stage 1
Project No. 5-0-00195
07/28/2020
RKM:blm

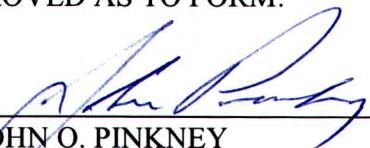
RECOMMENDED FOR APPROVAL:

By 
JEFF HART
Director of Public Works

CITY OF BEAUMONT

By 
REY SANTOS
Mayor

APPROVED AS TO FORM:

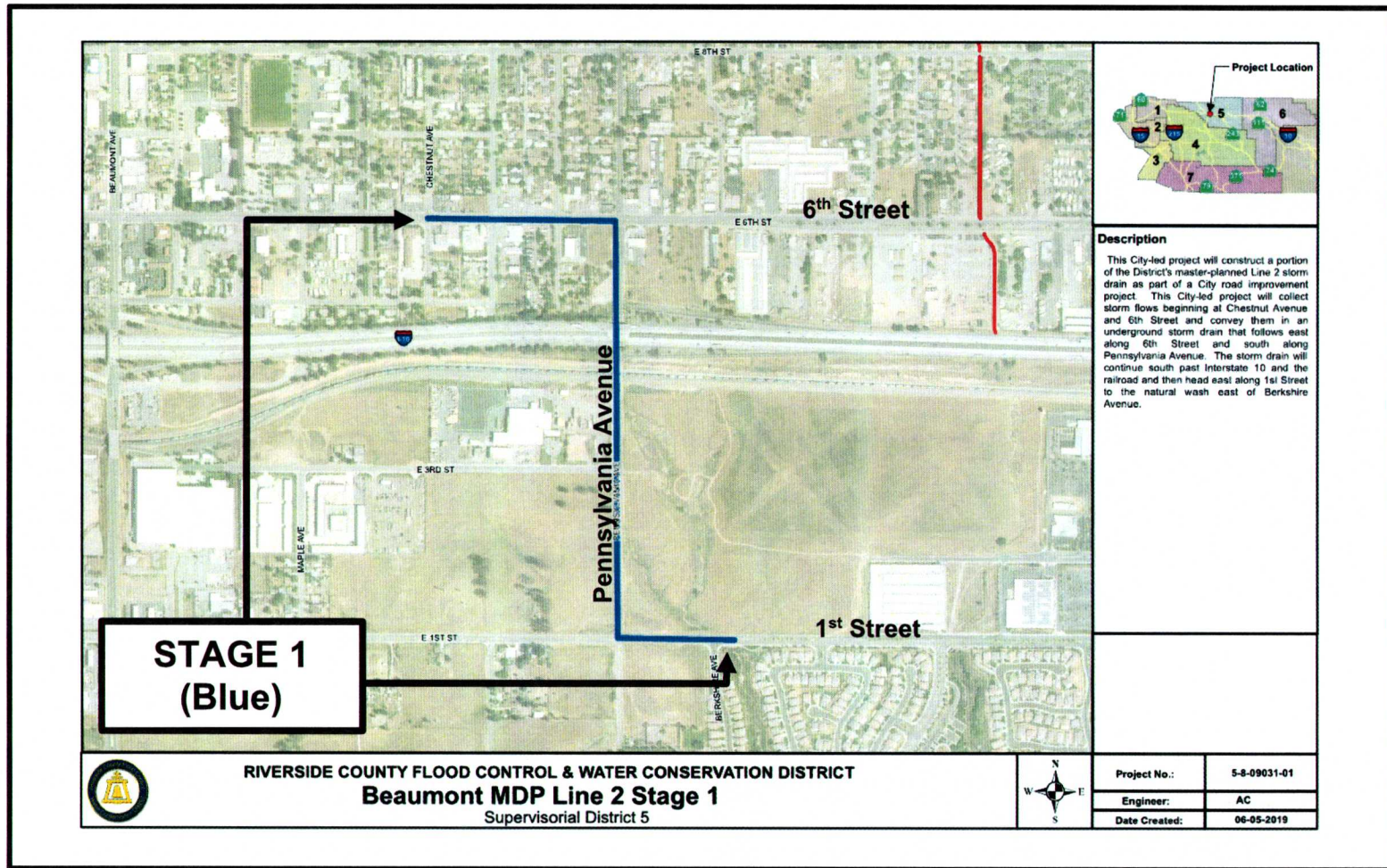
By 
JOHN O. PINKNEY
City Attorney

ATTEST:

By 
STEVEN MEHLMAN
City Clerk

Cooperative Funding Agreement with the City of Beaumont
Beaumont MDP- Line 2, Stage 1
Project No. 5-0-00195
07/28/2020
RKM:blm

EXHIBIT A



COOPERATIVE FUNDING AGREEMENT

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EXHIBIT B

DISTRICT's Required Insurance is as follows:

1. CITY's construction contractor(s) shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Exhibit.
2. Without limiting or diminishing CITY's and CITY's construction contractor(s) obligation to indemnify or hold DISTRICT harmless, CITY's construction contractor(s) shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured.
 - A. Workers' Compensation:

If CITY's construction contractor(s) has employees as defined by the State of California, CITY's construction contractor(s) shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT.
 - B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CITY's construction contractor(s) performance of its obligations hereunder. Policy shall name DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.
 - C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY's construction contractor(s) shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name DISTRICT as Additional Insured.
 - D. Professional Liability:

CITY shall cause any architect or engineer retained by CITY in connection with

COOPERATIVE FUNDING AGREEMENT

Beaumont MDP- Line 2, Stage 1

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EXHIBIT B

the performance of CITY's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. CITY shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as the law allows.

E. General Insurance Provisions – All Lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A:8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- ii. CITY's construction contractor(s) must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT's Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the DISTRICT's Risk Manager, CITY's construction contractor(s) carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- iii. CITY's construction contractor(s) shall cause their insurance carrier(s) to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by DISTRICT's Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to DISTRICT

COOPERATIVE FUNDING AGREEMENT

Beaumont MDP- Line 2, Stage 1

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EXHIBIT B

prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY's construction contractor(s) insurance carrier(s) policies does not meet the minimum notice requirement found herein, CITY's construction contractor(s) shall cause CITY's construction contractor(s) insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

- iv. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverage's set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
- v. It is understood and agreed by the Parties hereto that CITY's construction contractor(s) insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- vi. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work; or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY's construction contractor(s) has become inadequate.
- vii. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- viii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- ix. CITY's construction contractor(s) agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

COOPERATIVE FUNDING AGREEMENT

Beaumont MDP- Line 2, Stage 1

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