

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



ITEM: 11.6
(ID # 13846)

MEETING DATE:

Tuesday, November 17, 2020

FROM: FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of First Amendment to Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Moreno Valley for Moreno Master Drainage Plan Line K-1, Stage 2 (MS 122), Project No. 4-0-00766, Nothing Further is Required Under CEQA, District 5. [\$2,500,000 – District Zone 4 Funds – 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find, in its limited capacity as a responsible agency for purposes of the California Environmental Quality Act, that any impacts associated with the Moreno Master Drainage Plan Line K-1, Stage 2 Project ("Project"), including the construction, operation and maintenance of the Project and any associated agreements and amendments, were adequately analyzed as part of the Initial Study and Negative Declaration prepared by the California Department of Transportation (Caltrans) for the State Route 60/Moreno Beach Drive Interchange and Nason Street Overcrossing Improvements (SCH #2007071068);
2. Approve the First Amendment to the Cooperative Agreement between the District and the City to provide for the District's financial contribution toward the project;
3. Authorize the Chairwoman to execute the First Amendment to the Agreement on behalf of the District; and
4. Direct the Clerk of the Board to return two copies of the fully executed Amendment documents to the District.

ACTION:

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 11/4/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Washington 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 17, 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	\$2,500,000	\$ 0	\$2,500,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 25140-947460-536200 - Zone 4 Contribution to Non-County Agency – 100%			Budget Adjustment: No	
			For Fiscal Year: 20/21	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On August 23, 2016 (Agenda Item No. 11.8), the Board of Supervisors approved the Cooperative Agreement between the District and City of Moreno Valley (“City”) which set forth the terms and conditions by which the City will design and construct the Moreno Master Drainage Plan Line K-1, Stage 2 as part of a City administered public works construction contract. Said facility is to be inspected, operated and maintained by the District and City.

This Amendment No. 1 (Amendment) is necessary to provide for the District's financial contribution to the City for the construction of the Moreno Master Drainage Plan Line K-1, Stage 2. Also, the City is seeking a reimbursement of the project costs through the Federal Emergency Management Agency (FEMA). If FEMA funds are made available to the City, the City will reimburse the District for the costs associated with the project's construction costs.

County Counsel has approved the Amendment as to legal form, and the City has executed the Amendment.

Environmental Findings

The State of California Department of Transportation (Caltrans, Lead Agency) prepared an Initial Study/Negative Declaration that was approved on November 29, 2007 and revalidated on September 8, 2010 pursuant to the provisions of CEQA. The Initial Study included an analysis of the impacts associated with construction, operation and maintenance of Moreno Master Drainage Plan Line K-1 and found construction, operation and maintenance of the Moreno Master Drainage Plan Line K-1 would not result in a significant effect on the environment with implementation of the environmental commitments and mitigation measures outlined in the Initial Study. At the time the CEQA document was completed, funding for the project was proposed to come from the City of Moreno Valley Transportation Uniform Mitigation Fee (TUMF) funds and/or other federal funds.

On August 23, 2016, this Board of Supervisors approved a Cooperative Agreement between the District and City which set forth the terms and conditions by which the City would fund design and construction of the Moreno Master Drainage Plan Line K-1, Stage 2 as part of a City

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OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

administered public works construction contract, and the District would accept future operation and maintenance responsibilities upon acceptance of the facility. Approval of this Amendment to the Cooperative Agreement would modify the terms and conditions of the Cooperative Agreement such that in addition to accepting operation and maintenance responsibilities of Moreno Master Drainage Plan Line K-1, Stage 2, the District would also provide a financial contribution toward the construction cost in order to expedite the City's construction of the facility. It should be noted that the City is in the process of seeking federal reimbursement for the project. In the event that the City secures federal reimbursement, the Amendment outlines the terms under which the District will be reimbursed for its contribution.

This Amendment merely reassigns the source of funding for the project from the City to the District and outlines the terms under which the District would be reimbursed if the City is able to secure federal reimbursement for the project. Based on the findings of the Initial Study prepared by Caltrans, construction, operation and maintenance of the Moreno Master Drainage Plan Line K-1 would not result in a significant effect on the environment with implementation of the environmental commitments and mitigation measures. As such, the District, in its limited capacity as a Responsible Agency pursuant to Section 15096 of the State CEQA Guidelines, has considered the facts in this matter and independently finds that:

1. The impacts associated with construction, operation and maintenance of the Moreno Master Drainage Plan Line K-1 have been adequately addressed in the Initial Study prepared by the Lead Agency; and
2. The Amendment to the Cooperative Agreement is not a project pursuant to Section 15378(b)(4) of the State CEQA Guidelines.

Therefore, nothing further is required to comply with CEQA.

Impact on Residents and Businesses

Costs incurred under this Amendment will be funded by ad valorem property tax revenue and entail no new fees, taxes or bonded indebtedness to residents and businesses. Upon construction completion, these flood control facilities will alleviate ongoing flooding problems and will benefit the public in the area.

Prev. Agn. Ref.: 11.8 of 08/23/16

Additional Fiscal Information

The District is funding the construction and associated administrative costs for the project which is estimated to be \$2,500,000. Sufficient funding is available in the District's Zone 4 budget for Fiscal Year 2020-2021. If FEMA funds are made available to the City, the City will reimburse the District for the costs associated with project's construction costs. Future operation and maintenance costs associated with the mainline storm drain that is greater than 36 inches in diameter will accrue to the District.

ATTACHMENTS:

1. Vicinity Map

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

2. First Amendment to Cooperative Agreement

AMR:mcv
P8\234830



Scott Bruckner 11/9/2020



Gregory V. Prietas, Director County Counsel 11/5/2020

FIRST AMENDMENT TO COOPERATIVE AGREEMENT

Moreno Master Drainage Plan Line K-1, Stage 2

Project No. 4-0-00766

Miscellaneous No. 122 (MS 122)

This First Amendment to Cooperative Agreement ("FIRST AMENDMENT"), dated as of November 17, 2020, is entered into by the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT") and the City of Moreno Valley, a municipal corporation ("CITY"). DISTRICT and CITY are individually referred to herein as "party" and collectively referred to herein as "parties".

RECITALS

A. On August 23, 2016 [DISTRICT's Board Agenda Item No. 11-8], DISTRICT and CITY entered into a Cooperative Agreement ("ORIGINAL AGREEMENT"), which set forth the terms and conditions under which CITY will design and construct the Moreno Master Drainage Plan Line K-1, Stage 2, hereinafter called "PROJECT"; and

B. Pursuant to ORIGINAL AGREEMENT, CITY has not commenced construction of PROJECT; and

C. Subsequent to the execution of ORIGINAL AGREEMENT, CITY requested for DISTRICT to provide a financial contribution towards PROJECT; and

D. DISTRICT is willing to support CITY's efforts to expedite PROJECT by providing a financial contribution towards PROJECT's construction costs as set forth herein; and

E. DISTRICT has allocated and appropriated funds in its Fiscal Year 20/21 budget to ensure the construction of PROJECT; and

F. CITY is seeking a reimbursement of PROJECT costs through the Federal Emergency Management Agency, hereinafter called "FEMA", and is awaiting the outcome of their request; and

G. In the event FEMA reimbursement funding is realized in the future, CITY is willing to reimburse DISTRICT to use towards future drainage projects in the City of Moreno Valley; and

H. ORIGINAL AGREEMENT together with FIRST AMENDMENT are hereinafter collectively referred to as the "AGREEMENT"; and

I. DISTRICT and CITY desire to amend AGREEMENT to provide for DISTRICT's financial contribution towards the PROJECT; and

J. AGREEMENT specifies that it may be changed or modified subject to the written consent of the parties thereto.

NOW, therefore, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree to amend AGREEMENT as follows, effective upon approval of this FIRST AMENDMENT by DISTRICT's Board of Supervisors:

1. The first sentence in RECITALS 'B' of AGREEMENT is hereby deleted and replaced as follows:

"Moreno MDP Line K-1, Stage 2 consists of (i) approximately 1,900 lineal feet of 90-inch underground storm drain to be constructed in Ironwood Avenue from Oliver Street to Pettit Street, and (ii) a certain riprap outlet structure, earthen channel and maintenance access road with turnaround, hereinafter called "DISTRICT DRAINAGE FACILITIES", as shown in concept on Exhibit "A", attached hereto and made a part hereof."

2. RECITALS 'G' of AGREEMENT is re-lettered as RECITALS 'I' of AGREEMENT.
3. New RECITALS 'G' of AGREEMENT is added to read:

"Subject to the not to exceed amount of Two Million Five Hundred Thousand Dollars (\$2,500,000), DISTRICT's contributions shall be as follows:

- i. One hundred percent (100%) of the lowest responsible bid contract price ("CONSTRUCTION CONTRIBUTION"), plus an additional ten percent (10%) of the lowest responsible bid price 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 ("CONTRACT ADMINISTRATION CONTRIBUTION"), plus an additional ten percent (10%) for construction contract change orders ("CONSTRUCTION CHANGE ORDERS CONTRIBUTION"). Together, CONSTRUCTION CONTRIBUTION, CONTRACT ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION are hereinafter called "DISTRICT TOTAL CONTRIBUTION"; and DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Two Million Five Hundred Thousand Dollars (\$2,500,000), as set forth herein; and"

4. RECITALS 'H' of AGREEMENT is re-lettered as RECITALS 'J' of AGREEMENT.

5. New RECITALS 'H' in the AGREEMENT is added to read:

"CITY is willing to reimburse DISTRICT for DISTRICT TOTAL CONTRIBUTION, provided that FEMA funding is made available to the CITY. If CITY receives FEMA funding, the reimbursement amount to

DISTRICT shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000), hereinafter called "CITY REIMBURSEMENT"; and"

6. New RECITALS 'J' is amended to read:

"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."
7. A new Section I.25 is hereby added to this AGREEMENT as follows:

"Issue a first invoice to DISTRICT (Attention: Special Projects Section) for the payment of CONSTRUCTION CONTRIBUTION and CONTRACT ADMINISTRATION CONTRIBUTION at the time of providing written notice of the award of a construction contract as set forth in Section I.7, subject to and provided that DISTRICT TOTAL CONTRIBUTION shall not exceed the total amount of Two Million Five Hundred Thousand Dollars (\$2,500,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION."
8. A new Section I.26 is hereby added to this AGREEMENT as follows:

"Within thirty (30) days of CITY awarding PROJECT, pay the Western Riverside County Regional Conservation Authority (RCA) the mitigation fee for PROJECT, per the 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP")."
9. A new Section I.27 is hereby added to this AGREEMENT as follows:

"Keep an accurate accounting of all PROJECT costs and provide this accounting to DISTRICT with CITY's Notice of Completion, as set forth in

Section 1.20. The final accounting of construction costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, CITY approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS. If applicable, issue a second invoice to DISTRICT (Attention: Special Projects Section) for CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided that DISTRICT TOTAL CONTRIBUTION shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000)."

10. A new Section 1.28 is hereby added to this AGREEMENT as follows:

"In the event CITY receives FEMA funding, CITY shall pay CITY REIMBURSEMENT to DISTRICT, subject to and provided that CITY REIMBURSEMENT shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000)."

11. A new Section II.8 is hereby added to this AGREEMENT as follows:

"Pay CITY, within thirty (30) days after receipt of CITY's first invoice for CONSTRUCTION CONTRIBUTION and CONTRACT ADMINISTRATION CONTRIBUTION as set forth in Section 1.25, subject to and provided that DISTRICT TOTAL CONTRIBUTION shall not exceed the total amount of Two Million Five Hundred Thousand Dollars (\$2,500,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION."

12. A new Section II. 9 is hereby added to this AGREEMENT as follows:

"If applicable, pay CITY within thirty (30) days after receipt of CITY's appropriate invoice, for CONSTRUCTION CHANGE ORDERS CONTRIBUTION as set forth in Section 1.27, provided that DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Two Million Five Hundred Thousand Dollars (\$2,500,000). CITY shall be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION."

13. Section III.8 of this AGREEMENT is amended to replace the CITY's addressee for notice to:

CITY OF MORENO VALLEY
14177 Frederick Street
Moreno Valley, CA 92552
Attn: Michael L. Wolfe, P.E.

14. Except to the extent specifically deleted, added to, or amended herein, all of the terms, covenants and conditions of said ORIGINAL AGREEMENT executed on August 23, 2016 shall remain in full force and effect between the parties hereto.
15. This FIRST AMENDMENT 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 FIRST AMENDMENT

on November 17, 2020
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By [Signature]
JASON E. UHLEY
General Manager-Chief Engineer

By [Signature]
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 [Signature]
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

By [Signature]
Deputy

(SEAL)

First Amendment to Cooperative Agreement: City of Moreno Valley
Moreno Master Drainage Plan Line K-1, Stage 2
Project No. 4-0-00766
(MS 122)
09/24/2020
AMR:blm

RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

By Michael L. Wolfe
MICHAEL L. WOLFE, P.E.
Public Works Director/City Engineer

By Mike Lee
MIKE LEE
City Manager

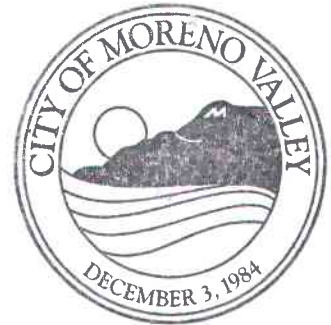
APPROVED AS TO FORM:

ATTEST:

By Steve Quintanilla
STEVE QUINTANILLA
Interim City Attorney

By Pat Jacquez-Nares
PAT JACQUEZ-NARES
City Clerk

(SEAL)



First Amendment to Cooperative Agreement: City of Moreno Valley
Moreno Master Drainage Plan Line K-1, Stage 2
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(MS 122)
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AMR:blm