

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



ITEM: 11.7  
(ID # 13848)

**MEETING DATE:**

Tuesday, November 17, 2020

**FROM:** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approval of Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Moreno Valley for Moreno MDP Line F-18, Stage 1 and Moreno MDP Line F-19, Stage 1 (MS 144), Project Nos. 4-0-00403 and 4-0-00787, CEQA Exempt, District 5. [Not to exceed \$2,049,500 – District Zone 4 Funds – 100%]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find the Cooperative Agreement to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines;
2. Approve the Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District) and the City of Moreno Valley (City);
3. Authorize the Chairwoman to execute the Cooperative Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return two executed Cooperative Agreements to the District.

**ACTION:**

A handwritten signature in blue ink, appearing to read "J. Uhley".

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

11/4/2020

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**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: A handwritten signature in blue ink, appearing to read "Kecia R. Harper".  
Deputy

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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 105,000	\$ 1,944,500	\$ 2,049,500	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Zone 4 Funds 100%			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 20/21 – 24/25	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

This Cooperative Agreement (Agreement) sets forth the terms and conditions by which the District will contribute funding to the City for the design and construction of Moreno MDP Line F-18, Stage 1 and Moreno MDP Line F-19, Stage 1 facilities as part of a City administered public works construction contract.

Moreno MDP Line F-18, Stage 1 will be located within Alessandro Boulevard between Redlands Boulevard and Merwin Street. Moreno MDP Line F-19, Stage 1 will be located within Brodiaea Avenue, Campbell Avenue or Maltby Avenue (as determined in the final design) between Redlands Boulevard and Merwin Street. Said facilities are to be constructed by the City and inspected, operated and maintained by the District and City.

Upon completion of the facilities' construction, the District will assume operation and maintenance of storm drains that are greater than 36 inches in diameter. The City will assume operation and maintenance of storm drains that are 36 inches or less in diameter and various catch basins and connector pipes located within the City's rights of way.

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

**Environmental Findings**

The District has found the Agreement to be exempt from CEQA pursuant to Section 15061(b)(3) of the State 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 will not, in and of itself, result in a physical change to the environment. The Agreement merely formalizes the terms and conditions under which the District will inspect and accept sole responsibility to operate and maintain certain flood control facilities, as identified in the Agreement, after the facilities have been constructed by the City. As noted in the Agreement, upon execution of the Agreement, the City will bear the responsibility for evaluating the potential for impacts related to constructing, operating and maintaining all

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facilities referenced in the Agreement. As such, it can be seen with certainty that there is no possibility that the Agreement in question may have a significant effect on the environment.

**Impact on Residents and Businesses**

The District's financial contribution toward the City's project is funded by ad valorem property tax revenue and entails no new fees, taxes nor bonded indebtedness to residents and businesses. Upon construction completion, the facilities will alleviate ongoing flooding problems and will benefit residents and businesses in the area.

**Additional Fiscal Information**

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 is 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 facilities in cooperation with and on behalf of the City. The MSHCP mitigation fee is based on the engineers estimated project cost, however, the actual 3% payment will be based on the project's lowest responsive contract bid price. 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. The City is the Lead Agency and the MSHCP permittee responsible for compliance with the applicable MSHCP requirements.

The District is providing up to \$2,000,000 in funding to the City. Sufficient funding is available in the District's Zone 4 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 mainline storm drains that are greater than 36 inches in diameter will accrue to the District.

**Funding Summary**

Estimated Design and Administration Contribution (FY20/21)	\$	105,000
Estimated Additional Design and Administration Contribution (FY21/22 – FY24/25)	\$	245,000
Estimated Construction Contribution (FY21/22 – FY24/25)	\$	1,650,000
<hr/> Maximum District Contribution to the City	<hr/> \$	<hr/> 2,000,000
Estimated MSHCP Mitigation Fee (3% of Estimated Construction Contribution)	\$	49,500
<hr/> Total Estimated District Cost	<hr/> \$	<hr/> 2,049,500

**SOURCE OF FUNDS:**

25140-947460-536200 Contribution to Non-County Agency – Zone 4  
25140-947460-523220 License and Permits - Zone 4

**ATTACHMENTS:**

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

1. Vicinity Map
2. Cooperative Agreement

AMR:mcv  
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Gregory L. Priamos, Director County Counsel      11/5/2020

COOPERATIVE AGREEMENT  
Moreno MDP Line F-18, Stage 1  
Moreno MDP Line F-19, Stage 1  
Project Nos. 4-0-00403 and 4-0-00787  
(Miscellaneous No. 144)

This Cooperative Agreement ("Agreement"), 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. DISTRICT has budgeted for and CITY has planned to design and construct the Moreno MDP – Line F-18, Stage 1 and Moreno MDP – Line F-19, Stage 1 facilities. Upon construction completion, will provide necessary flood control and drainage improvements for the immediate adjacent areas located in the City of Moreno Valley; and

B. Moreno MDP Line F-18, Stage 1 ("LINE F-18 STAGE 1") as identified in DISTRICT's Moreno MDP and shown on DISTRICT's Drawing No. 4-1156, consists of approximately 1,150 lineal feet of underground storm drain system to be constructed mostly within Alessandro Boulevard between Redlands Boulevard and Merwin Street; and

C. Moreno MDP Line F-19, Stage 1 ("LINE F-19 STAGE 1") as identified in DISTRICT's Moreno MDP and shown on DISTRICT's Drawing No. 4-1156, consists of approximately 600 lineal feet of underground storm drain system and may be constructed within Brodiaea Avenue, (or Campbell Avenue or Maltby Avenue as determined in the final design), between Redlands Boulevard and Merwin Street; and

D. Together, LINE F-18 STAGE 1 is called "DISTRICT DRAINAGE FACILITY" as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

E. Associated with the construction of DISTRICT DRAINAGE FACILITY is the construction of certain lateral storm drains that are thirty-six inches (36") or less in diameter, various catch basins, inlets and connector pipes located within CITY rights of way ("APPURTENANCES"). DISTRICT DRAINAGE FACILITY, LINE F-19 STAGE 1 and APPURTENANCES are hereinafter altogether called "PROJECT"; and

F. All parties recognize and acknowledge that the location and storm drain size of LINE F-19 STAGE 1 will be determined by CITY. If LINE F-19 STAGE 1, is determined to be thirty-six inches (36") or greater in diameter, DISTRICT will accept ownership, operation and maintenance of LINE F-19 STAGE 1 facility. If LINE F-19 STAGE 1, is determined to be thirty-six inches (36") or less in diameter, CITY will accept ownership, operation and maintenance of LINE F-19 STAGE 1 facility; and

G. CITY desires that DISTRICT contribute funding for portions of the cost to prepare CEQA documents and regulatory permits and for the design and construction of PROJECT; and

H. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution towards PROJECT's design and construction costs and portions of the cost to prepare CEQA documents and regulatory permits as set forth herein; and

I. DISTRICT's contributions shall be as follows, subject to the not to exceed amount provided in Recital J below:

(i) One hundred percent (100%) of DISTRICT approved 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 ("DESIGN CONTRIBUTION"). 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 the DESIGN CONTRIBUTION to offset CITY's administrative costs associated with contract administration ("DESIGN ADMINISTRATION CONTRIBUTION"). Together, DESIGN CONTRIBUTION and DESIGN ADMINISTRATION CONTRIBUTION are hereinafter called "TOTAL DESIGN CONTRIBUTION";

(ii) An amount not to exceed twenty thousand dollars (\$20,000) to cover CITY's cost associated with the preparation, application and obtaining the CEQA documents and regulatory permits required for PROJECT, hereinafter called "ENVIRONMENTAL PERMITS COST";

(iii) One hundred percent (100%) of the lowest responsible bid contract price including the actual administrative cost associated with administering the construction contract, including construction surveys, materials testing, construction inspection and any typical ancillary costs related to the delivery of PROJECT ("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 "TOTAL CONSTRUCTION CONTRIBUTION"; and

J. Altogether, TOTAL DESIGN CONTRIBUTION, ENVIRONMENTAL PERMITS COST and TOTAL CONSTRUCTION CONTRIBUTION are hereinafter called "DISTRICT TOTAL CONTRIBUTION". DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Two Million Dollars (\$2,000,000); 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.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree 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 PROJECT engineering design cost proposal and associated design schedule. As PROJECT design progresses, CITY shall update said design schedule as requested by DISTRICT.
4. Prepare or cause to be prepared, the necessary plans and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable



DISTRICT and CITY standards, and submit to DISTRICT for its review and approval prior to advertising PROJECT for construction bids.

5. Prior to commencing construction, 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 may include, but are not limited to, a Section 404 permit issued by the U.S. Army Corps of Engineers, a Section 401 Water Quality Certification issued by the California Regional Water Quality Control Board (CRWQCB), a Streambed Alteration Agreement issued by the California Department of Fish and Wildlife, and a National Pollutant Discharge Elimination System Permit issued by the State Water Resources Control Board or CRWQCB and Western Riverside County Regional Conservation Authority ("RCA"), (collectively the "REGULATORY PERMITS").

6. Keep an accurate accounting of all design costs associated with the preparation of plans and specifications for PROJECT, in conformance with the DISTRICT approved CITY's engineering design cost proposal and schedule as set forth in Section I.3, and include this accounting when invoicing DISTRICT for final payment of DESIGN CONTRIBUTION and, if applicable, DESIGN ADMINISTRATION CONTRIBUTION, as set forth in Section I.9.

7. Invoice DISTRICT (Attention: Special Projects) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement or upon DISTRICT's approval of CITY's engineering design cost proposal and schedule as set forth in Section I.3, whichever is later.

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

9. Invoice DISTRICT (Attention: Special Projects) for remainder of DESIGN CONTRIBUTION and if applicable, DESIGN ADMINISTRATION CONTRIBUTION, following signing of IMPROVEMENT PLANS by all parties.
10. Obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry and temporary construction easements as may be needed to construct, operate and maintain PROJECT.
11. Invoice DISTRICT for ENVIRONMENTAL PERMITS COST, provided the total amount does not exceed Twenty Thousand Dollars (\$20,000).
12. Prior to advertising PROJECT for public works construction contract, provide DISTRICT an opportunity to review and make a determination on all REGULATORY PERMITS and rights of way documents. DISTRICT approval of IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the REGULATORY PERMITS or rights of way documents constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT DRAINAGE FACILITY and if applicable, LINE F-19 STAGE 1 facility.
13. 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.
14. Advertise, award and administer a public works construction contract for PROJECT.
15. Provide DISTRICT with written notice (Attention: 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 the lowest responsible bid contract amount.

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

17. Invoice DISTRICT (Attention: Special Projects) for the payment of CONSTRUCTION CONTRIBUTION at the time of providing written notice of the award of a construction contract as set forth in Section I.15.

18. 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: Special Projects) in writing at least twenty (20) days prior to conducting the pre-construction meeting.

19. Furnish DISTRICT, at the time of providing written notice of intent to start construction as set forth in Section I.18, with 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.

20. 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.

21. 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 a written request (Attn: Special Projects) for such services. However, CITY will continue to serve as construction contract manager.

22. Furnish, or cause its construction manager to furnish, all construction survey and materials testing services necessary to ensure PROJECT construction is accomplished in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

23. Grant DISTRICT, by execution of this Agreement, the right to enter upon property owned or controlled by CITY where necessary and convenient for the purpose of gaining access to, and performing inspection service for, the construction of PROJECT.

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

25. Not permit any change to, or modification of, DISTRICT and CITY approved IMPROVEMENT PLANS that would result in a change of functionality or maintainability of PROJECT 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 DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility due, either in whole or in part, to said breach of this Agreement.

26. 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.

27. 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.

28. Require its construction contractor(s) to furnish DISTRICT (Attention: Construction Management Section) with a confined space procedure specific to PROJECT. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and District confined Space Procedures, SOM-18. The procedure shall be provided to DISTRICT no less than twenty (20) days prior to requesting that DISTRICT perform a final inspection for acceptance of PROJECT. The procedure shall be reviewed and approved by DISTRICT prior to conducting the final inspection.

29. 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 DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility and CITY continues to accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES, and if applicable LINE F-19 STAGE 1 facility as set forth herein.

30. Within two (2) weeks of completing PROJECT construction, provide DISTRICT with written notice (Attention: Construction Management Section) that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility.

31. Upon completion of PROJECT construction and settlement of any outstanding claims, provide DISTRICT with a copy of CITY's recorded Notice of Completion.

32. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility for ownership, operation and maintenance, provide or cause its construction manager to provide DISTRICT with appropriate engineering documentation necessary to establish that DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility was/were constructed in accordance with the DISTRICT and CITY approved IMPROVEMENT PLANS.

33. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility 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".

34. Keep an accurate accounting of all PROJECT construction costs and include this final accounting when invoicing DISTRICT for CONTRACT ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION as set forth in Section I.36. The final accounting of construction costs shall include a detailed breakdown of all costs, including but not limited to CITY's costs associated with administering the construction contract, payment vouchers, DISTRICT approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction and its



associated CITY's contract administration cost for DISTRICT and CITY approved IMPROVEMENT PLANS.

35. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility for ownership, operation and maintenance, convey, or cause to be conveyed, to DISTRICT all rights of way and easements deemed necessary by DISTRICT for the operation and maintenance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility.

36. Upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility for ownership, operation and maintenance, invoice DISTRICT (Attention: Special Projects) for the remainder payment of TOTAL CONSTRUCTION CONTRIBUTION as follows: i) ten percent (10%) of the lowest responsible bid price for CONTRACT ADMINISTRATION CONTRIBUTION, and ii (10%) of the lowest responsible bid price for CONSTRUCTION CHANGE ORDERS CONTRIBUTION, as set forth herein, provided that DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Two Million dollars (\$2,000,000).

37. 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.

38. Indemnify, defend 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 or 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 or 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.

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.

CITY or 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.

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

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 CITY or CITY's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

## 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 approve CITY's PROJECT engineering design cost proposal and associated design schedule.
3. Review and approve CITY's geotechnical report prior to CITY commencing PROJECT design.
4. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for DESIGN CONTRIBUTION as set forth in Section I.7.
5. Review and approve IMPROVEMENT PLANS prior to CITY's advertising PROJECT for construction bids.
6. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice, for remainder of DESIGN CONTRIBUTION and if applicable, DESIGN ADMINISTRATION CONTRIBUTION, as set forth in Sections I.6 and I.9.
7. Review and make a determination on, as appropriate, all necessary REGULATORY PERMITS and rights of way documents prior to CITY advertising PROJECT

for bids. DISTRICT may withhold approval of IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the REGULATORY PERMITS or rights of way documents unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility.

8. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for ENVIRONMENTAL PERMITS COST as set forth in Section I.11, provided the total sum does not exceed Twenty Thousand Dollars (\$20,000).

9. Within seven (7) calendar days of receiving 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. DISTRICT shall not unreasonably withhold approval of contract.

10. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for CONSTRUCTION CONTRIBUTION as set forth in Section I.17.

11. Within thirty (30) days of CITY awarding PROJECT construction contract, pay RCA, the costs associated with the mitigation fee 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 price or (ii) three percent (3%) of lowest responsible bid price, less the value of the applicable project specific mitigation.

12. Conduct periodic inspections of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility construction for quality control purposes at its sole cost and provide any comments to CITY's designated PROJECT construction inspector.

13. In the event CITY wishes to utilize the DISTRICT's construction inspection, materials testing and construction survey services, and CITY provides DISTRICT with a written

request for such services, DISTRICT shall provide a timely response 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.

14. Upon receipt of CITY's written notice that PROJECT construction is substantially complete, conduct a final inspection of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility.

15. Accept ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility upon (i) DISTRICT inspection of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility in accordance with Section I.30, (ii) DISTRICT acceptance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility as being complete, (iii) DISTRICT receipt of CITY's recorded Notice of Completion as set forth in Section I.31, (iv) DISTRICT receipt of appropriate engineering documentation as set forth in Section I.32, (v) DISTRICT receipt of stamped and signed "record drawing" of PROJECT plans as set forth in Section I.33, (vi) DISTRICT's acceptance of all necessary rights of way and/or easements as set forth in Section I.35, and (vii) DISTRICT's sole determination that DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility is/are in a satisfactorily maintained condition.

16. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice, for remainder of TOTAL CONSTRUCTION CONTRIBUTION as set forth in Sections I.34 and

I.36, provided that DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Two Million Dollars (\$2,000,000).

### SECTION III

It is further mutually agreed:

1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of two million dollars (\$2,000,000) and shall be used by CITY solely for the purpose of designing and constructing PROJECT and ENVIRONMENTAL PERMITS COST as set forth herein.

2. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by 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.

3. 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 quality control communications with CITY's construction contractor(s).

4. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility, DISTRICT DRAINAGE FACILITY, and if applicable LINE F-19 STAGE 1 facility shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITY, and if applicable LINE



F-19 STAGE 1 facility are not in an acceptable condition, corrections will be made at sole expense of CITY.

5. 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.

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 of 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: Special Projects Section

CITY OF MORENO VALLEY  
14177 Frederick Street  
Moreno Valley, CA 92552  
Attn: Capital Projects  
Public Works Department

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. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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 amended, changed or modified only upon the written consent of the parties hereto.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement 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   
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   
SYNTHIA M. GUNZEL  
Chief Deputy County Counsel

By   
Deputy

(SEAL)

Moreno MDP Line F-18, Stage 1  
Moreno MDP Line F-19, Stage 1  
Project Nos. 4-0-00403 and 4-0-00787  
(Miscellaneous No. 144)  
09/10/2020  
AMR:blm

RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

By *M L Wolfe*  
MICHAEL L. WOLFE  
Public Works Director/City Engineer

By *Mike Lee*  
MIKE LEE  
City Manager

APPROVED AS TO FORM:

ATTEST:

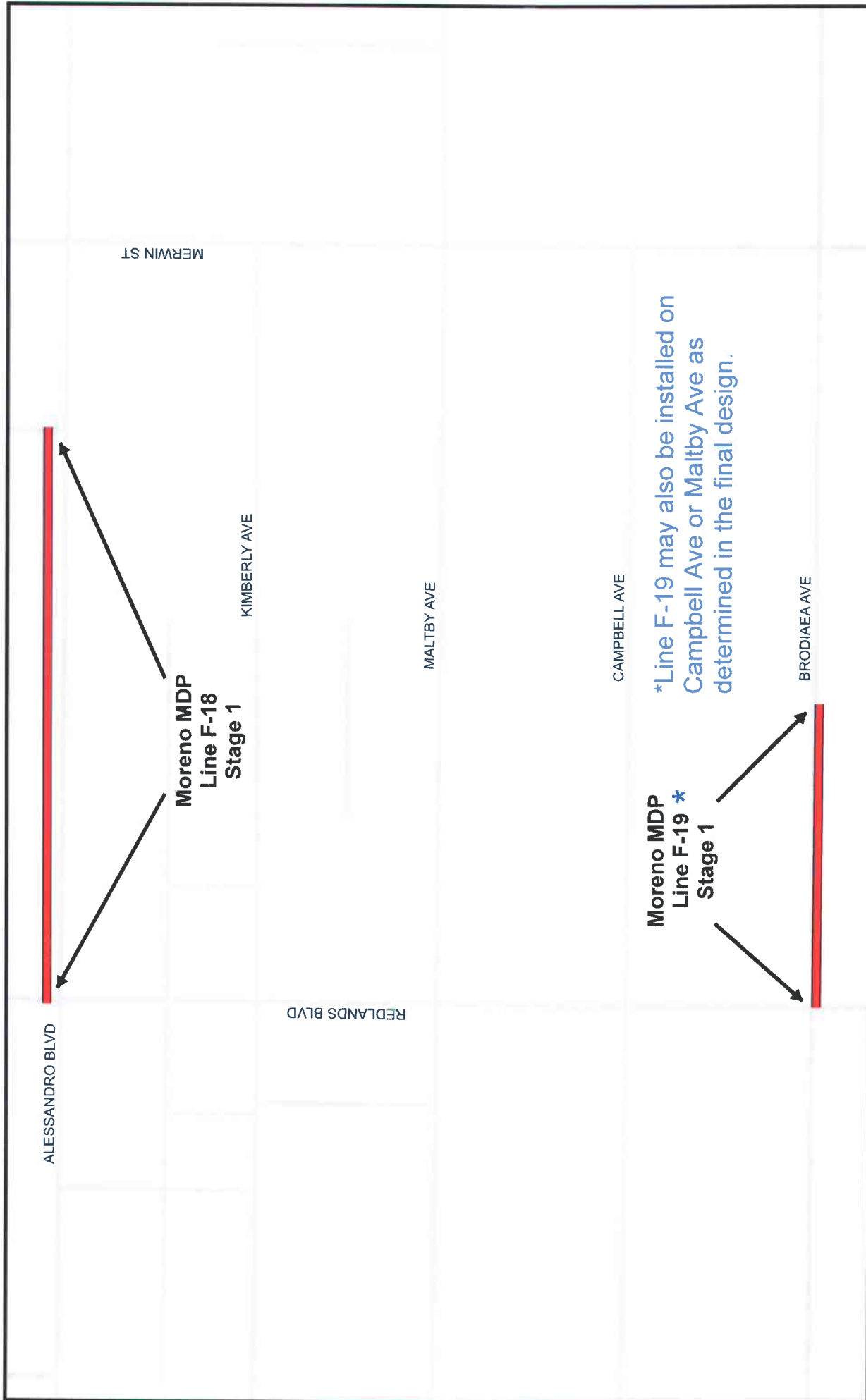
By *Steven B. Quintanilla*  
STEVE QUINTANILLA  
Interim City Attorney

By *Pat Jacquez-Nares*  
PAT JACQUEZ-NARES  
City Clerk

(SEAL)



Moreno MDP Line F-18, Stage 1  
Moreno MDP Line F-19, Stage 1  
Project Nos. 4-0-00403 and 4-0-00787  
(Miscellaneous No. 144)  
09/10/2020  
AMR:blm



**EXHIBIT A**  
**Moreno MDP Line F-18, Stage 1**  
**Moreno MDP Line F-19, Stage 1**  
**MS 144**  
**Project Nos.: 4-0-00403 and 4-0-00787**



## EXHIBIT B

DISTRICT's Insurance Requirements are as follows:

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 Section.

Without limiting or diminishing 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.

## EXHIBIT B

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 the 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 CITY's construction contractor(s) 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 the DISTRICT as Additional Insured.

D. Pollution and Asbestos Liability:

## EXHIBIT B

CITY's construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering CITY's construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the CITY's construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

CITY's construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the DISTRICT for review and approval. If CITY's construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader

## EXHIBIT B

coverage and/or higher limits maintained by CITY's construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

In the event, CITY's construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, CITY's construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT and CITY, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT and CITY.

CITY's construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

E. Professional Liability:

CITY's construction contractor(s) shall cause any architect or engineer retained by CITY's construction contractor(s) in connection with the performance of CITY's construction contractor(s) obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their

## EXHIBIT B

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. If CITY's construction contractor(s) 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 such architect or engineer's 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.

F. General Insurance Provisions – All Lines:

- a. 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.

## EXHIBIT B

- b. The 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 Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the 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.
- c. 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 the DISTRICT 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 the



## EXHIBIT B

DISTRICT 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.

- d. 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 coverages 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.
- e. 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 retentions or self-insured programs shall not be construed as contributory.

## EXHIBIT B

- f. 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 which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, 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.
- g. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. 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.