

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



ITEM: 11.1
(ID # 13773)

MEETING DATE:
Tuesday, January 12, 2021

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District, the City of Palm Springs and Far West Industries, a California Corporation, for Palm Springs – Obsidian Loop Storm Drain (Tract Map No. 36914), Project No. 6-0-00412, Nothing Further is Required Pursuant to CEQA, District 4. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the approval of the Cooperative Agreement (Agreement) and acceptance of future flood control facilities will not have a significant effect on the environment and that any potentially significant environmental effects have been adequately analyzed in the Mitigated Negative Declaration (Case No. 5.1378 PD-379) adopted by the Lead Agency (City of Palm Springs).
2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District (District), the City of Palm Springs (City) and Far West Industries, a California corporation (Developer);
3. Authorize the Chairwoman to execute the Agreement documents on behalf of the District;

ACTION:

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

12/23/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Hewitt 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: January 12, 2021
xc: Flood

Kecia R. Harper
Clerk of the Board
By:
Deputy

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4. Authorize the General Manager-Chief Engineer or designee to take all necessary steps to implement the Agreement including, but not limited to, negotiating, approving and executing any non-substantive amendments and any assignment and assumption associated with change of ownership of the property, subject to approval by County Counsel; and
5. Direct the Clerk of the Board to return five (5) copies of the executed Agreement to the District.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: N/A			Budget Adjustment: N/A	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Cooperative Agreement sets forth the terms and conditions by which certain flood control facilities for Tract Map No. 36914, required as a condition of approval, are to be constructed by the Developer, inspected, operated and maintained by the District, City and Developer.

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection and subsequent operation and maintenance of the Palm Springs-Obsidian Loop Storm Drain facility.

Upon construction completion of the drainage facilities, the District will assume ownership, operation and maintenance of the mainline storm drain system Palm Springs – Obsidian Loop Storm Drain and associated outlet structure, which is referred to as DISTRICT LINE A in the Agreement. The City will assume ownership, operations and maintenance of the project’s upstream portion of the mainline storm drain system referred to as CITY LINE A in the Agreement in addition to the lateral minor storm drains of 36 inches or less in diameter located within the CITY’s held rights of way. The Developer will retain ownership, operations and maintenance of the project’s onsite storm drain system referred to as LINE B in the Agreement, its associated laterals of 36 inches or less in diameter, street inlets, connector pipe, curb and gutter, drainage and collection basins, water quality features, and outlet structures located within its privately held rights of way within the boundary of Tract Map No. 36914.

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

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Environmental Findings

Pursuant to Section 15096 of the State CEQA Statutes and Guidelines, the District, in its limited capacity as a Responsible Agency, considered the Mitigated Negative Declaration (MND) that was prepared for the Developer's project by the City and independently finds that the MND adequately covers the District's inspection, operation and future maintenance of the facilities subject to the Agreement. Furthermore, the District finds that no significant impacts will occur as a result of the inspection, acceptance, operation and future maintenance of the proposed flood control facilities. No further analysis is required pursuant to CEQA.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of Tract Map No. 36914. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

SUPPLEMENTAL:

Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of the District maintained storm drain facilities will be accrued by the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

AK:blm:rlp
P8/233804



Gregory L. Priamos, Director County Counsel 12/24/2020

COOPERATIVE AGREEMENT
Palm Springs – Obsidian Loop Storm Drain
Project No. 6-0-00412
Tract Map No. 36914

This Cooperative Agreement ("Agreement"), dated as of JAN 12 2021, is entered into by and between, the Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT"), the City of Palm Springs, a municipal corporation of the State of California ("CITY"), and FAR WEST INDUSTRIES, a California corporation ("DEVELOPER"). DISTRICT, CITY, and DEVELOPER individually referred to herein as "party" and collectively referred to herein as "parties". The parties hereto hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the County of Riverside. The legal description of Tract No. 36914 is provided in Exhibit "A" attached hereto and made a part hereof; and

B. DEVELOPER has submitted for approval Tract No. 36914 located in the city of Palms Springs. Pursuant to the conditions of approval for Tract No. 36914, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and

C. The required flood control facilities and drainage improvements, as shown on DISTRICT's Drawing No. 6-0421 include the construction of:

- i. Approximately 1300 lineal feet of underground storm drain pipe ("DISTRICT LINE A") as shown in concept in "Blue" in Exhibit "B". At the downstream terminus, DISTRICT LINE A will connect to existing

DISTRICT maintained facility Tahquitz Creek Channel, Stage 2 as shown on Project No. 6-0-00060 and Drawing No. 6-0251.

- ii. All safety devices requested by DISTRICT staff during the course of project construction and during any final field inspections, including but not limited to concrete pads, slope protection barriers, signage and fencing, ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and installed by DEVELOPER, and subject to the DISTRICT's inspection and approval. Together, DISTRICT LINE A and SAFETY DEVICES, are hereinafter called "DISTRICT FACILITIES"; and

D. Associated with the construction of DISTRICT FACILITIES includes the construction of:

- i. At the upstream 67 lineal feet of forty-two inches (42") in diameter of reinforced concrete pipe storm drain (approximately Station 23+20.26 to Station 23+67.58) ("CITY LINE A"), as shown in concept in "Red" in Exhibit "B", will connect to DISTRICT LINE A at the manhole located approximately at Station 23+20.26; and
- ii. Approximately 423 lineal feet of reinforced concrete pipe storm drain, as shown on plans as LINE C, hereinafter called "LINE C"; and
- iii. Approximately 3 lineal feet of reinforced concrete pipe storm drain as shown on plans as LINE C-2, hereinafter called "LINE C-2"; and
- iv. Approximately 6 lineal feet of reinforced concrete pipe storm drain as shown on plans as LINE C-3, hereinafter called "LINE C-3. Together, CITY LINE A, LINE C, LINE C-2, and LINE C-3, are hereinafter called "CITY FACILITIES"; and

E. Associated with the construction of DISTRICT FACILITIES and CITY FACILITIES includes the construction of:

- i. Underground storm drain ranging from thirty-six inches (36") to forty-two inches (42") in diameter of reinforced concrete pipe storm drain tying into DISTRICT LINE A to convey onsite tract flows, as shown on the plans as LINE B, hereinafter called "LINE B"; and
- ii. Street inlets, connector pipes, curb and gutters, drainage and collection basins, water quality features, outlet structures and various lateral storm drains that are thirty-six inches (36") or less in diameter that will connect to LINE B and are located within DEVELOPER held rights of way ("HOA APPURTENANCES"); and
- iii. Boundary walls, ("HOA SAFETY DEVICES") shall be purchased and installed by DEVELOPER, and subject to the DISTRICT's and CITY's inspection and approval. Together, LINE B, HOA APPURTENANCES and HOA SAFETY DEVICES are hereinafter call "DEVELOPER FACILITIES"; and

F. Together, DISTRICT FACILITIES, CITY FACILITIES, and DEVELOPER FACILITIES, are hereinafter called "PROJECT"; and

G. DEVELOPER anticipates to construct certain trail improvement within the DISTRICT's held rights of way or easements. Therefore, it is anticipated that prior to the commencement of PROJECT construction, DISTRICT and CITY will enter into a separate License Agreement ("LICENSE AGREEMENT") setting forth the particular provisions under which DEVELOPER will construct and CITY will operate and maintain the trail improvements within the DISTRICT's rights of way.

H. DEVELOPER and CITY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES; and

I. DEVELOPER and DISTRICT desire CITY to accept ownership and responsibility for the operation and maintenance of CITY FACILITIES; and

J. CITY and DISTRICT desire DEVELOPER to accept ownership and responsibility for the operation and maintenance of DEVELOPER FACILITIES; and

K. DISTRICT is willing to (i) accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES provided DEVELOPER (a) complies with this Agreement; (b) constructs PROJECT in accordance with DISTRICT and CITY approved plans and specifications; (c) obtains and conveys to DISTRICT all rights of way necessary for the inspection, operation and maintenance of DISTRICT FACILITIES as set forth herein; and (d) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, CITY accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES as set forth herein; and

L. CITY is willing to (i) accept and hold faithful performance and payment bonds submitted by DEVELOPER on behalf of DISTRICT for DISTRICT FACILITIES; (ii) grant DISTRICT the right to inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way; and (iii) accept ownership and responsibility for the operation and maintenance of CITY FACILITIES, provided PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and CITY.

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

SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and submit to DISTRICT and CITY for their respective review and approval.
2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT's costs associated with the review of IMPROVEMENT PLANS, review and approval of rights of way and conveyance documents, and with the processing and administration of this Agreement. Additionally, DEVELOPER shall pay CITY, within thirty (30) days after receipt of periodic billings from CITY, any and all such amounts as are deemed reasonably necessary by CITY to cover CITY's costs associated with i) the review of IMPROVEMENT PLANS, ii) the review and approval of right of way and conveyance documents, and iii) the processing and administration of this Agreement.
3. Deposit with DISTRICT (Attention: Business Office – Accounts Receivable), and notify Contract Services Section, at the time of providing written notice to DISTRICT of the start of PROJECT construction as set forth in Section I.9., the estimated cost of providing construction inspection for DISTRICT FACILITIES, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto, based upon the bonded value of DISTRICT FACILITIES.
4. Grant DISTRICT and CITY, by execution of this Agreement, the right to enter upon DEVELOPER's property where necessary and convenient for the purpose of gaining access to and performing inspection services for the construction of PROJECT as set forth herein.

5. Prior to commencing construction, secure, at its sole cost and expense, all necessary licenses, agreements, permits, approvals, rights of way, rights of entry and temporary construction easements as may be needed for the construction, inspection, operation and maintenance of PROJECT.

6. DEVELOPER shall furnish DISTRICT and CITY, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.9., or not less than twenty (20) days prior to recordation of the final map for Tract No. 36914 or any phase thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured such necessary licenses, agreements, permits and rights of entry, as determined and approved by DISTRICT and CITY.

7. Prior to commencing construction, furnish DISTRICT (Attention: Plan Check Section) and CITY with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

8. Provide CITY, upon execution of this Agreement, or not less than twenty (20) days prior to recordation of the final map for Tract No. 36914 as set forth in Section I.6., or any phase thereof, whichever occurs first, with faithful performance and payment bonds in accordance with the CITY's municipal code ordinance for the estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT and of CITY FACILITIES as determined by CITY. The surety, amount and form of the bonds, shall be subject to approval of DISTRICT

(Attention: Contract Services Section) and CITY, respectively. The bonds shall remain in full force and effect until DISTRICT FACILITIES are accepted by DISTRICT and CITY as complete.

9. Notify DISTRICT in writing (Attention: Construction Management Section) after receiving DISTRICT's clearance for PROJECT construction, with twenty (20) days written notice of intent to start of construction of PROJECT, and include the PROJECT's Geotechnical Firm, Concrete Lab/Test Firm, D-Load test forms, Trench Shoring/False Work Calculations, Concrete Mix designs for DISTRICT's review and approval. Construction shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT and CITY have issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence construction of PROJECT.

10. Obtain and provide DISTRICT (Attention: Real Estate Services Section), after receiving DISTRICT's clearance for PROJECT construction as set forth in Section I.9., with duly executed Irrevocable Offers(s) of Dedication to the public for flood control and drainage purposes, including ingress and egress, for the rights of way deemed necessary by DISTRICT for the construction, inspection, operation and maintenance of DISTRICT FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the offer(s).

11. Furnish DISTRICT (Attention: Real Estate Services Section), when submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than thirty (30) days prior to date of submission of all the property described in the Irrevocable Offer(s) of Dedication.

12. Furnish DISTRICT (Attention: Contract Services Section), upon DISTRICT's approval of IMPROVEMENT PLANS, with a complete list of all contractors and subcontractors to be performing work on PROJECT, including the corresponding license number

and license classification of each. At such time, DEVELOPER shall further identify in writing its designated superintendent for PROJECT construction.

13. Furnish DISTRICT (Attention: Contract Services Section), upon DISTRICT's approval of IMPROVEMENT PLANS, with a construction schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's contractor proposes to carry out the various parts of work, including estimated start and completion dates. As construction of PROJECT progresses, DEVELOPER shall update said construction schedule as requested by DISTRICT.

14. Furnish DISTRICT (Attention: Plan Check Section) and CITY each with a set of final mylar plans PROJECT plans and assign their ownership to DISTRICT and CITY respectively prior to the start on any portion of PROJECT construction.

15. Not permit any change to or modification of DISTRICT and CITY approved IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT and CITY.

16. Comply with all Cal/OSHA safety regulations including, but not limited to, regulations concerning confined space and maintain a safe working environment for DEVELOPER, DISTRICT and CITY employees on the site.

17. Furnish DISTRICT (Attention: Contract Services Section), upon DISTRICT's approval of IMPROVEMENT PLANS, with a confined space entry 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 reviewed and approved by DISTRICT prior to the issuance of a Notice to

Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and CITY's approval.

18. DEVELOPER shall not commence operations until DISTRICT (Attention: Contract Services Section) and CITY have 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. Upon approval of IMPROVEMENT PLANS, 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 "C", attached hereto and made a part hereof. Failure to maintain the insurance required by this paragraph 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 DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this Agreement.

19. Construct or cause to be constructed, PROJECT at DEVELOPER's sole cost and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

20. Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Construction Management Section) and CITY with written notice that PROJECT construction is substantially complete and request that DISTRICT conduct a final inspection of DISTRICT FACILITIES and CITY conduct a final inspection of CITY FACILITIES.

21. Upon completion of PROJECT construction, and upon acceptance by CITY of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT FACILITIES for

ownership, operation, and maintenance, convey, or cause to be conveyed to CITY the flood control easement(s) including ingress and egress, in a form approved by DISTRICT, to the rights of way as shown in concept cross-hatched in red on Exhibit "D", attached hereto and made a part hereof. The easement(s) or grant deed(s) shall be in a form approved by both DISTRICT and CITY and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

22. At the time of recordation of the conveyance document(s) as set forth in Section I.21., 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), except those which in the sole discretion of DISTRICT are acceptable.

23. Accept ownership, sole responsibility and all liability whatsoever for the operation and maintenance of PROJECT until such time as (i) DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT FACILITIES, (ii) CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES, (iii) and the Home Owners' Association for Tract No. 36914 accepts ownership and responsibility for operation and maintenance of DEVELOPER FACILITIES.

24. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT FACILITIES 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 (Attention: Construction Management Section), with

(i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer, (ii) concrete testing report(s) – stamped and wet signed by the civil engineer of record, and (iii) a redlined "record drawings" copy of PROJECT plans. After DISTRICT approval of the redlined "record drawings", DEVELOPER's engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office; after which, the engineer shall review, stamp and sign the original DISTRICT FACILITIES engineering plans "record drawings".

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

26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees shall be computed as costs and included in any judgment rendered.

SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.

2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT's final approval.

3. Upon execution of this Agreement, record or cause to be recorded a copy of this Agreement in the Official Records of the Riverside County Recorder.
4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPER pursuant to Section I.10.
5. Inspect construction of DISTRICT FACILITIES.
6. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents, and the processing and administration of this Agreement.
7. Keep an accurate accounting of all DISTRICT construction inspection costs and within forty-five (45) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.
8. Provide DISTRICT with a reproducible duplicate copy of "record drawings" of DISTRICT FACILITIES plans upon (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawing" of DISTRICT FACILITIES plans as set forth in Section I.24.
9. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES upon (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.20., (ii) DISTRICT acceptance of PROJECT construction as being complete; (iii) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans as set forth in Section I.24., (iv) recordation of all conveyance documents described in Section I.21., (v) DISTRICT FACILITIES are fully functioning as a flood control

drainage system as solely determined by DISTRICT, and (vii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.

10. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES is not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

11. Provide CITY with a reproducible duplicate copy of "record drawings" of DISTRICT FACILITIES plans upon (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawing" of DISTRICT FACILITIES plans as set forth in Section I.24.

SECTION III

CITY shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of PROJECT construction.
2. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER as set forth in Section I.8., and hold said bonds as provided herein.
3. Inspect PROJECT construction.
4. Consent, by execution of this Agreement, to the recording of any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.
5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication as set forth herein and any other outstanding offers of dedication necessary for the construction,

inspection, operation and maintenance of DISTRICT FACILITIES and convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT FACILITIES.

6. Grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way.

7. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s) including ingress and egress, to the rights of way as shown on Exhibit "D".

8. Accept ownership and sole responsibility for the operation and maintenance of CITY'S FACILITIES upon DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance.

9. Upon DISTRICT and CITY 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 DISTRICT FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION IV

It is further mutually agreed:

1. All construction work involved with PROJECT shall be inspected by, DEVELOPER, DISTRICT and CITY but shall not be deemed complete until DISTRICT and

CITY mutually agree in writing that construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

2. CITY and DEVELOPER personnel may observe and inspect all work being done on DISTRICT FACILITIES but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DEVELOPER's contractor(s) during the construction of PROJECT.

3. DEVELOPER shall commence construction of PROJECT within twelve (12) consecutive months after execution of this Agreement. It is expressly understood that since time is of the essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for DISTRICT to perform the remaining work and require DEVELOPER's surety to pay to CITY the penal sum of any and all bonds. In which case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred, in an amount not to exceed the penal sum of any and all bonds received by CITY from DEVELOPER's surety.

4. If DEVELOPER fails to commence construction of PROJECT within nine (9) months after execution of this Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.9. In the event of a change in the existing site conditions that materially affects PROJECT function or DISTRICT's ability to operate and maintain DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT.

5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) days of receipt of DEVELOPER's complete written notice as set forth in

Section I.9.; however, DISTRICT's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff availability.

In the event DEVELOPER wishes to expedite issuance of a Notice to Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at DEVELOPER's sole cost and expense. DEVELOPER shall furnish appropriate documentation of the individual's credentials and experience to DISTRICT for review and, if appropriate, approval. DISTRICT shall review the individual's qualifications and experience, and upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act on DISTRICT's behalf on all DISTRICT FACILITIES construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER's initial inspection deposit within forty-five (45) days of DISTRICT's approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand dollars (\$10,000) shall be retained on account.

6. PROJECT construction work shall be on a five (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless otherwise approved in writing by DISTRICT and CITY. If DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a written request for permission from DISTRICT and CITY to work the additional hours. The request shall be submitted to DISTRICT and CITY at least seventy-two (72) hours prior to the requested additional work hours and state the reasons for the overtime and the specific time frames required. The decision of granting permission for overtime work shall be made by DISTRICT and CITY at their sole discretion and shall be final. If permission is granted by DISTRICT and CITY, DEVELOPER will be charged the cost incurred at the overtime rates for additional

inspection time required in connection with the overtime work in accordance with Ordinance Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

7. DEVELOPER shall indemnify and hold harmless DISTRICT, the County of Riverside, CITY, 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, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DEVELOPER's (including its officers, employees, subcontractors and agents) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to (a) property damage; (b) bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance or regulation caused by the diversion of waters from the natural drainage patterns or the discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature whatsoever arising from the performance of DEVELOPER, its officers, employees, contractors, subcontractors, agents or representatives ("Indemnitors") from this Agreement.

DEVELOPER shall defend, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards), the Indemnitees in any claim, proceeding or action for which indemnification is required.

With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, compromise any such claim, proceeding or action without the prior consent of DISTRICT, the County of Riverside or CITY; provided, however, that any

such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification obligations to Indemnitees as set forth herein.

DEVELOPER's indemnification obligations hereunder shall be satisfied when DEVELOPER has provided to DISTRICT, the County of Riverside and CITY the appropriate form of dismissal (or similar document) relieving DISTRICT, the County of Riverside or CITY from any liability for the claim, proceeding or action involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER's obligations to indemnify and hold harmless DISTRICT and CITY from third party claims.

In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782. Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT or CITY to the fullest extent allowed by law.

8. DEVELOPER for itself, its successors and assigns hereby releases DISTRICT, the County of Riverside and CITY (including their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any and all claims, demands, actions, or suits of any kind arising out of any liability, known or unknown, present or future, including but not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute a release by DEVELOPER of DISTRICT or CITY, their officers, agents and employees from any and all claims, demands, actions or suits of any kind arising out of any

liability, known or unknown, present or future, for the negligent maintenance of PROJECT, after the acceptance of PROJECT by CITY.

9. Any waiver by any part hereto 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 any party hereto 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 such part from enforcement hereof.

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: Contracts Services Section

To CITY: CITY OF PALM SPRINGS
3200 E Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: David H. Ready, City Manager
CC: City Engineer

To DEVELOPER: FAR WEST INDUSTRIES,
A CALIFORNIA CORPORATION
2922 Daimler Street
Santa Ana, CA 92705
Attn: Brian Berkson, Project Manager

11. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of 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 and effect without being impaired or invalidated in any way.

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

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

14. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

15. In the event DEVELOPER sells Tract No. 36914, DEVELOPER shall notify DISTRICT and COUNTY of any such transfer or assignment in writing no later than 30 days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties in this Agreement until DISTRICT, COUNTY, DEVELOPER and the new owner(s) of Tract No. 36914 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of Tract No. 36914.

16. The individual(s) executing this Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this Agreement, and have been authorized to do so by all boards of directors, legal counsel, and/or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this Agreement.

17. 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 or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

18. 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

January 12, 2021
(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 
LEILA MOSHREF-DANESH
Deputy County Counsel


By 
Deputy

(SEAL)

[Signed in Counterpart]

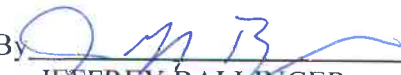
Cooperative Agreement:
Palm Springs – Obsidian Loop Storm Drain
Project No. 6-0-00412
Tract Map No. 36914
AK:blm
10/05/2020

CITY OF PALM SPRINGS

By _____
DAVID H. READY,
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
JEFFREY BALLINGER
City Attorney

By _____
ANTHONY J. MEJIA
City Clerk

(SEAL)

APPROVED BY CITY COUNCIL
A86271Q 11-12-20

Cooperative Agreement:
Palm Springs – Obsidian Loop Storm Drain
Project No. 6-0-00412
Tract Map No. 36914
AK:blm
10/05/2020

FAR WEST INDUSTRIES,
a California corporation

By 

SCOTT LISSOY
President

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement:
Palm Springs – Obsidian Loop Storm Drain
Project No. 6-0-00412
Tract Map No. 36914
AK:blm
10/05/2020

ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

On October 7, 2020, before me, Ira D. Glasky, NOTARY PUBLIC, personally appeared Scott Lissoy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature 

(Seal)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

DESCRIPTION OF ATTACHED DOCUMENT:

Title or Type of Document: COOPERATIVE AGREEMENT, PALM SPRINGS – OBSIDIAN LOOP STORM DRAIN ----

Date of Document: undated Number of Pages: 24 excluding exhibits & notary acknowledgments---

Signer(s) Other Than Named Above: Jason E. Uhley, Karen Spiegel, Leila Moshref-Danesh, Kecia Harper, David H. Ready, Jeffrey Ballinger, and Anthony J. Mejia -----

Signer's Name: <u>Scott Lissoy</u>	
<input type="checkbox"/>	Individual
<input checked="" type="checkbox"/>	Corporate Officer – Title: <u>President</u>
<input type="checkbox"/>	Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/>	Attorney in Fact
<input type="checkbox"/>	Trustee
<input type="checkbox"/>	Guardian or Conservator
<input type="checkbox"/>	Other:

Signer is Representing: Far West Industries

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Palm Springs, County of Riverside, State of California, described as follows:

PARCEL A:

PARCEL 1: (APN: 508-171-006-6)

THAT PORTION OF LOT 13 IN SECTION 23, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON PALM VALLEY COLONY LANDS ON FILE IN [BOOK 14 PAGE 652](#) OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 23; THENCE NORTH 00° 20' 36" EAST ALONG THE WEST LINE OF SAID SECTION 23, A DISTANCE OF 142.58 FEET TO A POINT ON THE WESTERLY LINE OF THE EXISTING 80.00 FOOT STATE HIGHWAY RIGHT OF WAY, KNOWN AS PALM CANYON DRIVE, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 00° 20' 36" EAST ALONG THE WEST LINE OF SAID SECTION 23, 518.57 FEET TO THE SOUTHEAST CORNER OF LOT 48 IN SECTION 22, TOWNSHIP 4 SOUTH, RANGE 4 EAST; THENCE NORTH 89° 51' 38" WEST 246.34 FEET TO A POINT OF NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 915.37 FEET ON THE WESTERLY RIGHT OF WAY OF PALM CANYON DRIVE, A RADIAL TO WHICH BEARS NORTH 75° 40' 53" WEST; THENCE SOUTHWESTERLY ALONG THE WESTERLY RIGHT OF WAY OF SAID PALM CANYON DRIVE THROUGH A CENTRAL ANGLE OF 17° 25' 23", 278.35 FEET TO A POINT OF TANGENT; THENCE SOUTH 31° 44' 30" WEST, 131.04 FEET TO A POINT OF TANGENT CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 756.78 FEET; THENCE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 12° 45' 25", 168.50 FEET, TO THE POINT OF BEGINNING.

PARCEL 2: (APN: 513-250-047-5)

SOUTH HALF OF NORTHEAST QUARTER OF SOUTHEAST QUARTER OF NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN;

EXCEPTING THEREFROM THAT PORTION DEEDED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY GRANT DEED RECORDED AUGUST 27, 1992 AS INSTRUMENT NO. [322111](#) OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 6060-314 AS SHOWN ON RECORD OF SURVEY ON FILE IN [BOOK 77 PAGES 1 THROUGH 5](#), INCLUSIVE, OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 3: (APN: 513-250-046-4)

THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 4 EAST, AS SHOWN BY THE SUPPLEMENTAL PLAT OF SAID SECTION, ACCEPTED JUNE 17, 1958.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS MORE PARTICULARLY DESCRIBED IN DOCUMENT ENTITLED RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 07, 2003 AS INSTRUMENT NO. [2003-242562](#) OF OFFICIAL RECORDS.

PARCEL B:

PARCEL 1: (APN: 508-171-005-5 AND 508-171-012-1)

THAT PORTION OF LOT 13 OF PALM VALLEY COLONY LANDS, IN SECTION 23, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN [BOOK 14 PAGE 652](#) OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING ON THE WEST LINE OF SAID LOT 13, SOUTH 00° 11' 30" WEST, 258.37 FEET FROM THE NORTHWEST CORNER THEREOF; THENCE SOUTH 00° 11' 30" WEST, ON SAID WEST LINE TO THE SOUTHEAST CORNER OF LOT 49 OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN ON SAID MAP, BEING THE NORTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO JAMES M. JACKSON, ET UX, RECORDED OCTOBER 14, 1971 AS INSTRUMENT NO. [116857](#) OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; THENCE EAST ON THE NORTH LINE OF SAID LAND TO THE WESTERLY LINE OF PALM CANYON DRIVE; THENCE NORTH ON SAID WESTERLY LINE TO THE SOUTHWEST LINE OF THE LAND CONVEYED TO THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DEED RECORDED JANUARY 12, 1949 AS INSTRUMENT NO. [1262](#) OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; THENCE NORTH 65° 44' 00" WEST, ON SAID SOUTHWEST LINE TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 6060-116, AS SHOWN ON RECORD OF SURVEY FILED APRIL 8, 1971, ON FILE IN BOOK 57 PAGES 3 TO 16, INCLUSIVE, OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; THENCE NORTH 65° 22' 34" WEST ALONG THE SOUTHERLY LINE OF SAID PARCEL 6060-116, A DISTANCE OF 298.18 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL AND TO A POINT ON THE WEST LINE OF SAID SECTION 23; THENCE SOUTH 00° 29' 40" WEST ON SAID WEST LINE 98.44 FEET; THENCE SOUTH 83° 32' 15" EAST, 273.73 FEET TO A POINT ON THE WEST LINE OF STATE HIGHWAY NO. 111, ALSO KNOWN AS PALM CANYON DRIVE, AS SHOWN ON SAID RECORD OF SURVEY; THENCE NORTH 01° 03' 20" WEST ALONG THE WEST LINE OF STATE HIGHWAY 111, AS SHOWN ON SAID RECORD OF SURVEY, 5.00 FEET TO THE POINT OF BEGINNING; A PORTION OF SAID LAND IS INCLUDED WITHIN THE AREA, AS SHOWN ON A RECORD OF SURVEY ON FILE IN BOOK 57 PAGE 3 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

AN EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AS MORE FULLY DESCRIBED IN DOCUMENT ENTITLED RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 7, 2003 AS INSTRUMENT NO. [03-242562](#) OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

Exhibit "B"

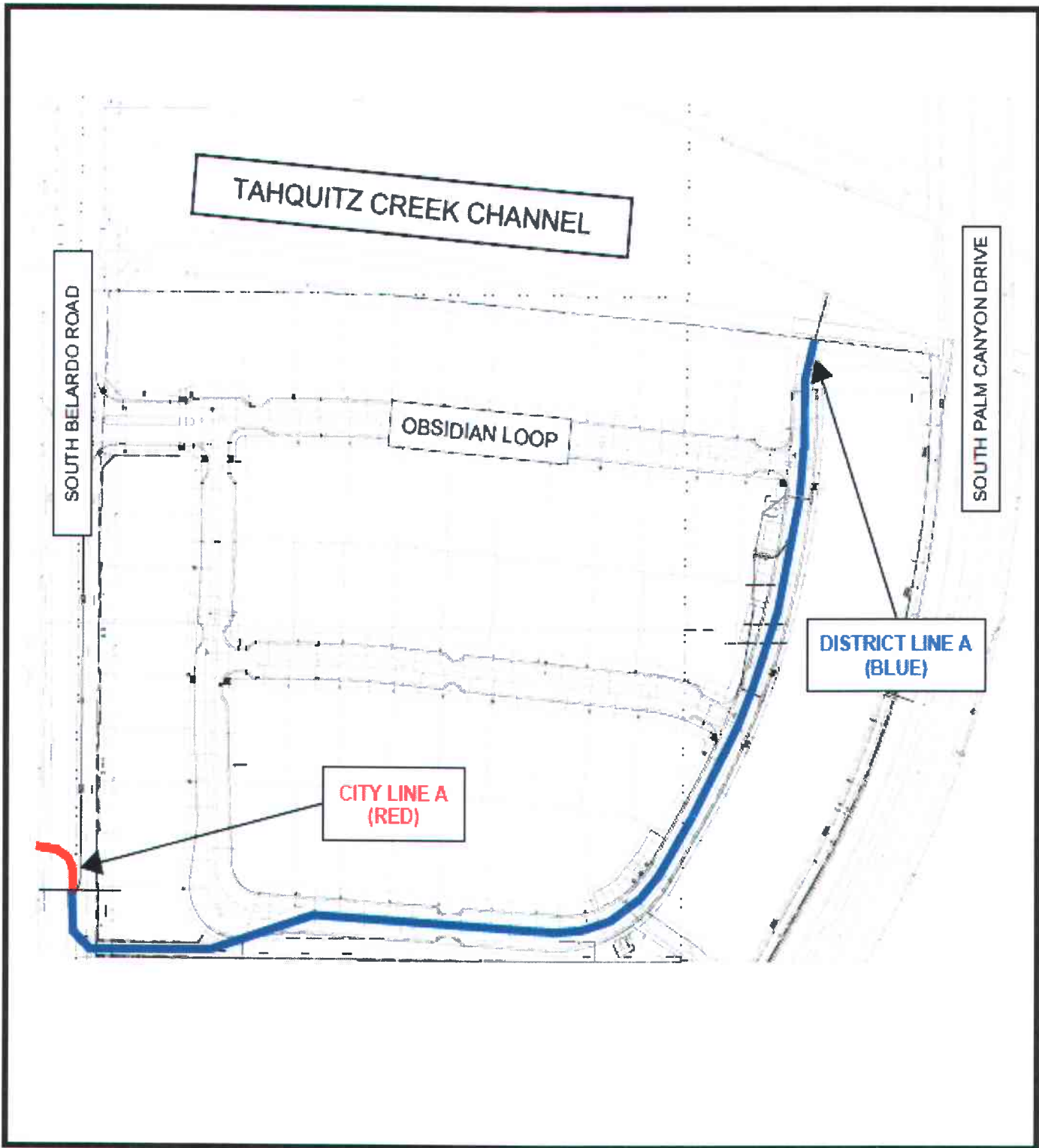


EXHIBIT "C"

DISTRICT's Insurance Requirements is as follows:

Without limiting or diminishing CITY's obligation to indemnify or hold DISTRICT harmless, CITY 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, the 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 Insureds.

A. Workers' Compensation:

If CITY has employees as defined by the State of California, CITY 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 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 vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 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 Insureds.

D. Professional Liability:

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

EXHIBIT "C"

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) shall continue for the term specified in the insurance policy as long as the law allows.

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

EXHIBIT "C"

- 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 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.
- 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 has become inadequate.
- g. CITY 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 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.

Exhibit "D"

