

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



ITEM: 11.2  
(ID # 15432)

**MEETING DATE:**  
Tuesday, September 28, 2021

**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approval of the Cooperative Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Palm Springs for the Palm Springs MDP Line 20, Stage 3, Project No. 6-0-00320, CEQA Exempt, District 4. [Not to Exceed \$7,520,000 – District Zone 6 Funding – 100%]

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

1. Find that the Cooperative Funding Agreement is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3);
2. Approve the Cooperative Funding Agreement ("Agreement") between the Riverside County Flood Control and Water Conservation District ("District") and the City of Palm Springs ("City");

Continued on page 2

**ACTION:Policy**

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

9/16/2021

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: September 28, 2021  
xc: Flood

Kecia R. Harper  
Clerk of the Board  
By:   
Deputy



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

3. Authorize the Chair of the Board of Supervisors for the District to execute the Agreement documents on behalf of the District;
4. Authorize the District's 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, subject to approval as to form by County Counsel; and
5. Direct the Clerk of the Board to return three (3) copies of the executed Agreement to the District.

<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>	\$ 0	\$ 7,520,000	\$ 7,520,000	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Zone 6 Funds 100% (See Additional Fiscal Information)			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 22/23 - 25/26	

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

**BACKGROUND:**

**Summary**

The Cooperative Funding Agreement ("Agreement") sets forth the terms and conditions by which the District will contribute up to Seven Million Five Hundred Twenty Thousand Dollars (\$7,520,000) in funding to the City of Palm Springs ("City") for construction of Palm Springs Master Drainage Plan Line 20, Stage 3 ("Project") as part of a City-administered public works construction contract. The Project will provide necessary flood control and drainage improvements to alleviate flooding on Ramon Road near Palm Springs High School in the city of Palm Springs.

Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain system, which includes approximately 4,800 lineal feet of underground storm drain system. The system runs along Ramon Road from the upstream terminus of the existing Palm Springs Master Drainage Plan Line 20, Stage 2 just west of El Cielo Road to the intersection of Farrell Drive and then north along Farrell Drive to East Tahquitz Canyon Way. The City will assume ownership and responsibility for the operation and maintenance for the flood control facility's associated catch basins, inlets, connector pipes, and lateral storm drains that are thirty-six inches (36") or less in diameter that may need to be constructed to adequately collect and convey flows within the City's jurisdiction or rights of way.



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

**Environmental Findings**

The Agreement is exempt from CEQA pursuant to the State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), which provides, "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 does not authorize to any extent whatsoever actual physical development of the underlining property. Such development, if it occurs at all, will be the result of subsequent actions subject to CEQA review by the City prior to construction. The Agreement merely establishes the terms by which the District will contribute funding to the City and assume ownership and responsibility for operation and maintenance of completed facilities. Therefore, it can be seen with certainty that there is no possibility the Agreement will 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 or bonded indebtedness to residents and businesses. Upon construction completion, the facilities will alleviate ongoing flooding concerns to city of Palm Springs residents by reducing runoff on Ramon Road near Palm Springs High School. The residents and businesses of the city of Palm Springs are the primary beneficiaries of the Project. Ancillary benefits will accrue to the public who will utilize the roadways.

**Additional Fiscal Information**

The District is providing up to \$7,520,000 in funding to the City for the project. Sufficient funding will be available in the District's Zone 6 budget for FY 2022-2023 and will included in the proposed budget in future years as appropriate and necessary.

**Funding Summary:**

Total Estimated District Cost \$ 7,520,000

**SOURCE OF FUNDS:** (Continued)

- 25160-947500-536200 Contribution to Non-County Agency – Zone 6

**ATTACHMENTS:**

1. Vicinity Map
2. Cooperative Funding Agreement

AK:blm  
P8/238997



**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
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Jason Farin, Principal Management Analyst 9/21/2021



Gregory V. Priamos, Director County Counsel 9/16/2021

**COOPERATIVE FUNDING AGREEMENT**

Palm Springs MDP Line 20, Stage 3

Project No. 6-0-00320

Miscellaneous No. 199

This Cooperative Funding Agreement ("AGREEMENT"), dated as of 28<sup>TH</sup>  
September, 2021, is entered into by and between the Riverside County Flood Control and  
Water Conservation District, a body politic ("DISTRICT"), and the City of Palm Springs, a  
municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as  
"parties" and individually as "party". The parties hereto agree as follows:

RECITALS

A. DISTRICT and CITY wish to work collaboratively to expedite the  
construction of Palm Springs Master Drainage Plan ("MDP") Line 20, Stage 3, hereinafter called  
"STAGE 3". Upon construction completion, STAGE 3 will provide necessary flood control and  
drainage improvements to alleviate flooding on Ramon Road near Palm Springs High School in  
the city of Palm Springs; and

B. STAGE 3, as identified in DISTRICT's Palm Springs MDP and shown on  
DISTRICT's Drawing No. 6-0422, includes the construction of approximately 4,800 lineal feet  
of underground storm drain system, as shown in concept in blue on Exhibit "A", attached hereto  
and made a part hereof. STAGE 3 will run from the upstream terminus of the existing Line 20,  
Stage 2 just west of El Cielo Road along Ramon Road to the intersection of Farrell Drive and  
north along Farrell Drive to East Tahquitz Canyon Way; and

C. Associated with the construction of STAGE 3 is the design and construction  
of lateral storm drains thirty six inches (36") or less in diameter, street inlets, connector pipes,  
catch basins, manholes and transition structures, all hereinafter called "CITY's  
APPURTENANCES"; and



D. Together, STAGE 3 and CITY's APPURTENANCES are hereinafter called the "PROJECT"; and

E. DISTRICT and CITY wish to work collaboratively to expedite the construction of PROJECT and, therefore, desire to have one agency take a lead role in the development and implementation of PROJECT; and

F. CITY is willing to assume the lead role for PROJECT and, therefore, will provide the administrative, technical, managerial and support services necessary to plan, design and construct PROJECT; and

G. DISTRICT wishes to support CITY's efforts for PROJECT by providing a financial contribution to implement PROJECT; and

H. DISTRICT's financial contribution to PROJECT shall be as follows, subject to the not-to-exceed amount for PROJECT described in Recital I below:

i. Financial contribution toward the lowest responsible bid contract price for construction of PROJECT ("CONSTRUCTION CONTRIBUTION COSTS"), which shall not exceed a total of Seven Million Five Hundred Thousand Dollars (\$7,500,000); and

ii. Financial contribution toward the costs of preparing, applying for and obtaining the California Environmental Quality Act ("CEQA") documents, environmental documents and regulatory permits for PROJECT ("REGULATORY PERMIT COSTS"), which shall not exceed a total of Twenty Thousand Dollars (\$20,000); and

I. Together, CONSTRUCTION CONTRIBUTION COSTS and REGULATORY PERMIT COSTS are hereinafter called "TOTAL DISTRICT CONTRIBUTION". TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total of Seven Million Five Hundred Twenty Thousand Dollars (\$7,520,000); and

J. The purpose of this AGREEMENT is to memorialize the mutual understanding by and between DISTRICT and CITY with respect to the design, construction, inspection, ownership, operation and maintenance of PROJECT and the TOTAL DISTRICT CONTRIBUTION toward PROJECT.

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

SECTION I

CITY shall:

1. Pursuant to the California Environmental Quality Act ("CEQA"), act as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.
2. Endeavor to award a public works construction contract for PROJECT and begin construction within thirty-six (36) months of execution of this AGREEMENT.
3. Prepare or cause to be prepared the necessary plans and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and submit to DISTRICT (Attention: Special Projects) for its review, comment and approval prior to advertising PROJECT for construction bids. CITY shall not permit any change to or modification of DISTRICT-approved and CITY-approved IMPROVEMENT PLANS without DISTRICT's prior written permission and consent.
4. Prior to commencing construction, secure all necessary permits, approvals or agreements required by any federal, state and local resource or regulatory agencies pertaining to 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 ("REGULATORY PERMITS").

5. Ensure that REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for STAGE 3 as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within PROJECT's right of way.

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

7. Prior to advertising PROJECT for public works construction contract, prepare all REGULATORY PERMIT applications, draft REGULATORY PERMITS and submit REGULATORY PERMITS to DISTRICT for review and approval prior to submitting any applications to the applicable regulatory agencies. Upon approval by DISTRICT of draft REGULATORY PERMITS, submit to and secure final REGULATORY PERMITS from applicable regulatory agencies. DISTRICT approval of IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, the REGULATORY PERMITS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 3.

8. Be responsible for any and all additional regulatory, mitigation and/or litigation costs, and/or mitigation measures to PROJECT resulting from this AGREEMENT and/or REGULATORY PERMITS.

9. Keep an accurate accounting of all costs associated with obtaining REGULATORY PERMITS required for PROJECT or portions thereof as set forth in Section I.4 and Recital H.ii. The accounting of these costs shall include a detailed breakdown of REGULATORY PERMIT COSTS, which shall include, but are not limited to, the following: copies of the necessary REGULATORY PERMITS, proof of payment, employee time and activity logs, and other such documents as may be necessary to establish the actual cost of obtaining the necessary REGULATORY PERMITS for PROJECT. This detailed breakdown of all REGULATORY PERMIT COSTS shall be included at the time of invoice submission to DISTRICT.

10. Issue a first invoice to DISTRICT (Attention: Special Projects Section), upon submission of final REGULATORY PERMITS to applicable regulatory agencies as set forth in Sections I.7 and I.9. The invoice shall include a full accounting of REGULATORY PERMIT COSTS as set forth in Section I.9 and Recital H.ii. The total amount of the invoice for REGULATORY PERMIT COSTS shall not exceed Twenty Thousand Dollars (\$20,000) as set forth in Recital H.ii, and CITY shall be responsible to pay REGULATORY PERMIT COSTS in excess of this amount.

11. Prior to advertising PROJECT for public works construction contract and at its sole cost and expense, prepare or cause to be prepared and obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry and temporary construction easements as may be needed to inspect, construct, operate and maintain PROJECT ("ROW DOCUMENTS"), and consult with DISTRICT regarding existing dedications, proposed legal description, plat maps, basemap and survey controls, including any requests for waivers and variances from DISTRICT policies.

12. Prior to advertising PROJECT for public works construction contract, consult with DISTRICT regarding ROW DOCUMENTS, if any, and provide DISTRICT an



opportunity to review and make a determination on all ROW DOCUMENTS, including any existing dedications, proposed legal descriptions and plat maps, basemap and survey controls. DISTRICT approval of IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, ROW DOCUMENTS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 3.

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. At its sole cost and expense, advertise, award and administer a public works contract for PROJECT of the bids pursuant to the applicable provisions of the California Public Contract Code.

15. Provide DISTRICT with written notice (Attention: Special Projects 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 the lowest responsible bid contract amount.

16. At the time of providing written notice of the award of a construction contract as set forth in Section I.15, issue a second invoice to DISTRICT (Attention: Special Projects Section) for the payment of CONSTRUCTION CONTRIBUTION COSTS, subject to and provided that the invoice for CONSTRUCTION CONTRIBUTION COSTS shall not exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000). CITY shall be responsible for any CONSTRUCTION CONTRIBUTION COSTS in excess of this amount.

17. Within thirty (30) days of awarding PROJECT construction contract, pay the Coachella Valley Conservation Commission/Coachella Valley Association of Governments the costs associated with the mitigation fee per the 2007 Implementing Agreement for the

Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan ("MSHCP").

18. Prior to commencing PROJECT construction, procure or cause 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 shall adhere to DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

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

20. At the time of providing written notice of the pre-construction meeting as set forth in Section I.19, furnish DISTRICT 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.

21. At the time of providing written notice of the pre-construction meeting as set forth in Section I.19, require its construction contractor(s) to furnish DISTRICT (Attention: Contract 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 reviewed and approved by DISTRICT prior to conducting the final inspection.

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

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

24. Inspect or cause to be inspected construction of PROJECT and pay all costs associated therewith. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing, construction survey services and assist CITY as needed with the administration of PROJECT's construction contract, CITY shall provide DISTRICT (Attn: Contract Management Section) with a written request for such services. If DISTRICT agrees to provide the requested construction services, CITY will continue to serve as construction contract manager.

25. 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 PROJECT and operation and maintenance of STAGE 3.

26. Relocate or cause to be relocated, at its sole cost and expense, all conflicting CITY owned utilities. CITY shall also 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 could be relocated at the utility company's expense.

27. 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 under AGREEMENT, and b) to accept responsibility for ownership, operation and maintenance of STAGE 3 due, either in whole or in part, to said breach of this AGREEMENT.

28. 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 or DISTRICT employees or contractors on the site.

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 STAGE 3 as set forth in Section II.11. CITY shall continue to accept ownership and sole responsibility for the operation and maintenance of CITY's APPURTENANCES as set forth herein.

30. Within two (2) weeks of completion of PROJECT construction, provide DISTRICT with written notice (Attention: Construction Management Section) that PROJECT construction is substantially complete and request that DISTRICT conduct a final inspection of STAGE 3.

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

32. At the time of providing a Notice of Completion as set forth in Section I.31, refund to DISTRICT any unexpended portions of TOTAL DISTRICT CONTRIBUTION.

33. CITY shall be responsible to pay any amounts for PROJECT in excess of TOTAL DISTRICT CONTRIBUTION.

34. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of STAGE 3 for ownership, operation and maintenance, do all of the following:

- i. Provide or cause its construction manager to provide DISTRICT with appropriate engineering documentation necessary to establish that STAGE 3 was constructed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS,
- ii. 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", and
- iii. Convey or cause to be conveyed to DISTRICT all RIGHTS OF WAY and easements deemed necessary by DISTRICT for the operation and maintenance of STAGE 3. DISTRICT's interest in said property shall be free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and accept those which, in the sole discretion of DISTRICT, are acceptable. All RIGHTS OF WAY and easements shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the RIGHTS OF WAY and easements.



35. Upon DISTRICT's 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 is improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

## SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA for PROJECT.
2. At its sole cost and expense, review, comment and approve IMPROVEMENT PLANS in accordance with the applicable DISTRICT and CITY standards prior to advertising PROJECT for construction bids.
3. At its sole cost and expense, review, comment and make a determination on, as appropriate, all necessary REGULATORY PERMITS and permit applications pursuant to Section I.7. REGULATORY PERMITS shall not unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 3. DISTRICT may withhold approval of IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, REGULATORY PERMITS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 3.
4. Pay CITY, within thirty (30) days after receipt of CITY's first invoice for REGULATORY PERMIT COSTS as set forth in Section I.10, subject to and provided that REGULATORY PERMIT COSTS shall not exceed Twenty Thousand Dollars (\$20,000).
5. At its sole cost and expense, review, comment on and approve, as appropriate, all ROW DOCUMENTS necessary for the construction and operation and

maintenance of PROJECT as set forth in Section I.12. DISTRICT may withhold approval of IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, ROW DOCUMENTS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 3

6. Within seven (7) calendar days following CITY's public works construction bid opening, review and approve or reject bids for construction of PROJECT as set forth in Section I.13. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold approval of contract.

7. Pay CITY, within thirty (30) days after receipt of CITY's second invoice for CONSTRUCTION CONTRIBUTION COSTS as set forth in Section I.16, subject to and provided that the CONSTRUCTION CONTRIBUTION COSTS shall not exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000).

8. Conduct periodic inspections of STAGE 3 construction for quality control purposes, at its sole cost, and provide any comments to CITY's designated PROJECT construction inspector.

9. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing and construction survey services for PROJECT and provides DISTRICT with a written request for such services as set forth in Section I.24, DISTRICT shall provide a timely response as to whether or not DISTRICT has the resources to perform the requested services. If DISTRICT agrees to provide the requested 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 requested services and provide any comments to CITY's designated PROJECT construction inspector as set forth herein.

10. Upon receipt of CITY's written notice that PROJECT construction is substantially complete as set forth in Section I.30, conduct a final inspection of STAGE 3.

11. Accept ownership and responsibility for the operation and maintenance of STAGE 3 upon (i) DISTRICT's final inspection of STAGE 3 in accordance with Section I.30, (ii) DISTRICT acceptance of STAGE 3 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.34.i, (v) DISTRICT receipt of stamped and signed "record drawing" of PROJECT plans as set forth in Section I.34.ii, (vi) DISTRICT's receipt of conveyance to DISTRICT all RIGHTS OF WAY and easements deemed necessary by DISTRICT for the operation and maintenance of STAGE 3, (vii) DISTRICT's acceptance of all necessary rights of way and/or easements as set forth in Section I.34.iii, and (viii) DISTRICT's sole determination that STAGE 3 is in a satisfactorily maintained condition.

### SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein this AGREEMENT, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Seven Million Five Hundred Twenty Thousand Dollars (\$7,520,000) for PROJECT and shall be used by CITY solely for the purpose of construction of said PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs. CITY shall be responsible to pay any amounts in excess of TOTAL DISTRICT CONTRIBUTION.

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



3. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of STAGE 3, STAGE 3 shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and in the sole discretion of DISTRICT, STAGE 3 is not in an acceptable condition, corrections shall be made at CITY's sole expense.

4. All work involved with PROJECT shall be inspected by DISTRICT and CITY and 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. 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 easements, rights of way or grant deeds have been conveyed as set forth herein.

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

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

7. CITY shall 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.

8. 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.

9. 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.

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

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

12. This AGREEMENT is to be construed in accordance with the laws of the State of California. 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 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. 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.

14. 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.

15. Neither CITY nor DISTRICT shall assign this AGREEMENT without the written consent of the other party. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.



16. 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 of action based upon the provisions of this AGREEMENT. Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT.

17. 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 PALM SPRINGS  
3200 E Tahquitz Canyon Way  
Palm Springs, CA 92262  
Attn: David H. Ready, City Manager

18. 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.

19. Any waiver by DISTRICT or CITY of any breach by any other party of any provision of this AGREEMENT shall not be construed to be a waiver of any subsequent or other breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to require from any other party exact, full and complete compliance with any of the provisions of this AGREEMENT shall not be construed as in any manner changing the terms hereof or estopping DISTRICT or CITY from enforcing this AGREEMENT.

20. 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. AGREEMENT shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

21. 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.

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

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


September 28, 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, Chair  
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   
SARAH K. MOORE  
Chief Deputy County Counsel

By   
Deputy

(SEAL)



Cooperative Funding Agreement: City of Palm Springs  
Palm Springs MDP Line 20, Stage 3  
Project No. 6-0-00320  
05/19/21  
AK:blm





RECOMMENDED FOR APPROVAL:

CITY OF PALM SPRINGS

APPROVED BY CITY COUNCIL  
7/22/2021 1L A8912

By   
 JUSTIN CLIFTON  
City Manager

APPROVED AS TO FORM:

ATTEST:

By   
JEFFREY BALLINGER  
City Attorney

By   
 ANTHONY J. MEJIA  
City Clerk

(SEAL)

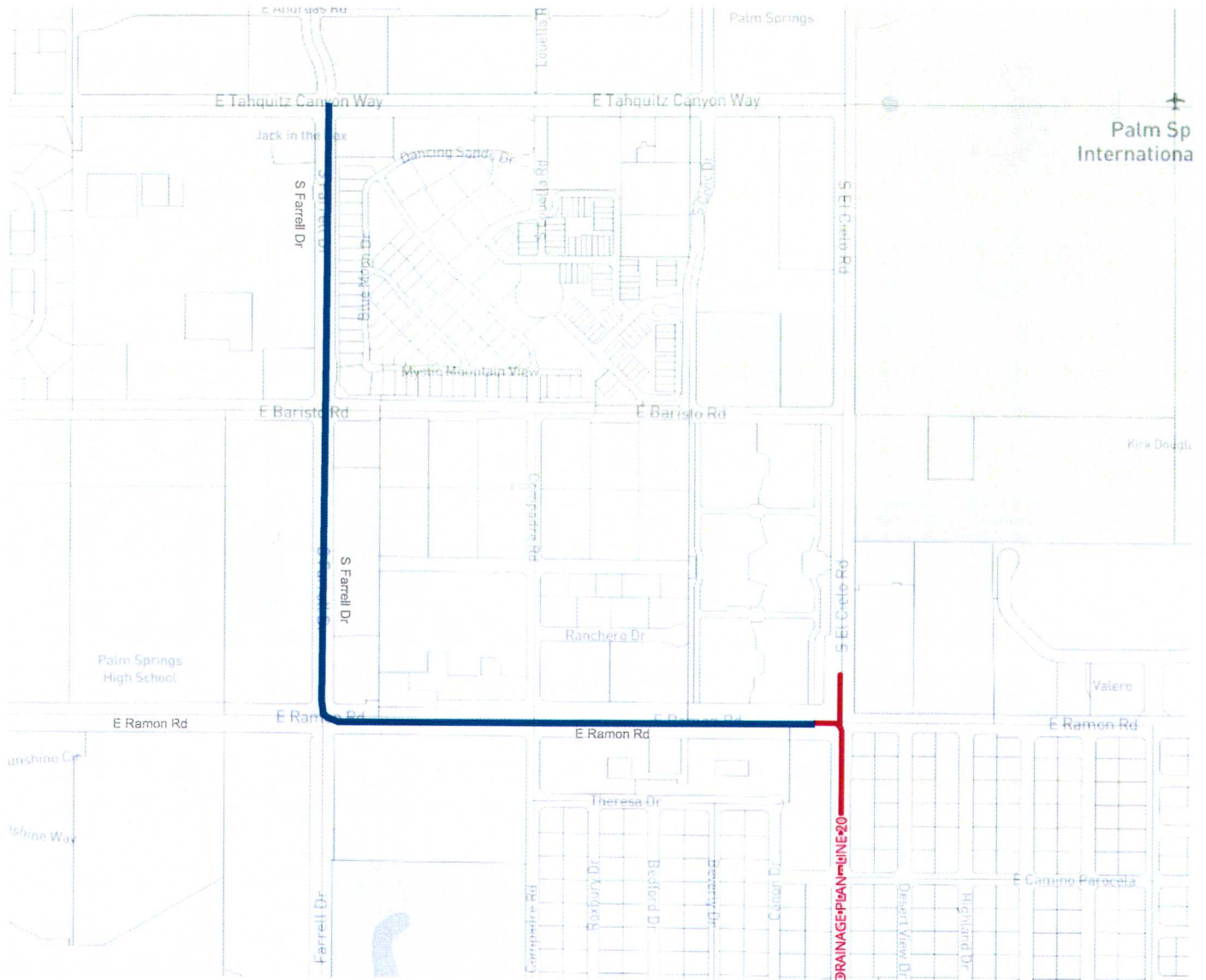


Cooperative Funding Agreement: City of Palm Springs  
Palm Springs MDP Line 20, Stage 3  
Project No. 6-0-00320  
05/19/21  
AK:blm





# EXHIBIT A



**LEGEND**

- EXISTING PALM SPRINGS LINE 20, STAGE 2
- PROPOSED PALM SPRINGS LINE 20, STAGE 3

## COOPERATIVE AGREEMENT

Palm Springs Line 20, Stage 3  
Project No. 6-0-00320  
MS 199  
Page 1 of 1



## EXHIBIT "B"

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 "B"

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 "B"

- 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.