

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



ITEM: 11.1
(ID # 17399)

MEETING DATE:

Tuesday, November 02, 2021

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Cooperative Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Riverside for Monroe Master Drainage Plan - Monroe Storm Drain, Stage 5, Project No. 1-0-00071, CEQA Exempt, District 1. [Not to Exceed \$14,131,200 - District Funds 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), the "Common Sense" exemption, Section 15301 Existing Facilities and Section 15304, Minor Alterations to Land;
2. Approve the Cooperative Funding Agreement between the Riverside County Flood Control and Water Conservation District (District) and the City of Riverside (City); and
3. Authorize the Chairwoman of the District's Board of Supervisors to execute the Cooperative Funding Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return two (2) copies of the executed Cooperative Funding Agreement to the District.

ACTION:Policy

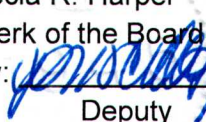
Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

10/14/2021

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: November 2, 2021
xc: Flood

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$1,150,000	\$12,981,200	\$14,131,200	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Zone 1 Funds 100% (See Additional Fiscal Information)			Budget Adjustment: No	
			For Fiscal Year: 21/22 – 25/26	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Cooperative Funding Agreement (Agreement) sets forth the terms and conditions by which the District will contribute funding to the City for the design and construction of a certain flood control facility, Monroe Master Drainage Plan – Monroe Storm Drain, Stage 5.

The Monroe Master Drainage Plan – Monroe Storm Drain, Stage 5 project will upgrade the capacity of the existing channel to convey the 10-year storm event and provide a higher level of flood protection to the surrounding area. The upgrade will consist of the removal of approximately 3,400 lineal feet of existing concrete lined channel along Monticello Avenue and replace it with an underground reinforced concrete box from California Avenue to Colorado Avenue in the city of Riverside. Said facility is to be constructed by the City and inspected, operated and maintained by the District and City.

Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the Monroe Master Drainage Plan – Monroe Storm Drain, Stage 5 project. The City will assume ownership, operation and maintenance of storm drains that are 36 inches or less in diameter, certain surface treatments and landscape features, rail fence, and various catch basins and connector pipes located within the City's rights of way.

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

Environmental Findings

The 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.

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The Agreement merely establishes the terms by which the District will contribute funding to the City and assume ownership, operation and maintenance of completed facilities. It can be seen with certainty that there is no possibility the Agreement will have a significant effect on the environment.

Further, CEQA Guidelines Section 15301 (Existing Facilities) provides a categorical exemption for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of existing or former use. The District's acceptance of the facilities for maintenance is conditional upon the final constructed facilities being in place and existing. Upon the City's completion of construction, the Agreement allows the District to accept maintenance responsibility of the existing facilities.

Additionally, CEQA Guidelines Section 15304 provides a categorical exemption for minor public or private alterations in the condition of land, water, and/or vegetation which does not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Because the Agreement allows the District to conduct future maintenance of the completed facilities, it can be seen with certainty that there will be no significant effect on the environment. Further, none of the Exceptions provided in the CEQA Guidelines Section 15300.2 apply. No cumulative impacts or unusual circumstances exist that could have a significant effect on the environment. The above facilities will not be located on or near a scenic highway, hazardous waste site, or historical resource. Therefore, nothing further is required under CEQA for the Agreement.

Impact on Residents and Businesses

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

Additional Fiscal Information

Pursuant to the Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) executed on June 22, 2004, the District is a participating agency. The District is making a payment to the Western Riverside County Regional Conservation Authority (RCA) for up to 3% of the total capital costs as required mitigation for the construction of flood control facilities in cooperation with and on behalf of the City. The MSHCP mitigation fee is based on the engineers estimated project cost, however, the actual 3% payment will be based on the project's lowest responsive contract bid price. The actual mitigation payment that will be made by the District may be reduced based on acquisition of replacement habitat for the benefit of Covered Species, as defined in the Implementing Agreement and the MSHCP. The City is the Lead Agency and the MSHCP permittee responsible for compliance with the applicable MSHCP requirements.

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The District is providing up to \$13,800,000 in funding to the City. Sufficient funding is available in the District's Zone 1 budget for FY 2021-2022 and will be included in the proposed budget in future years as appropriate and necessary. Future operation and maintenance costs associated with mainline system will accrue to the District.

Funding Summary

Estimated Design and Administration Contribution	\$ 2,760,000
Estimated Construction Contribution	\$11,040,000
<hr/>	
Maximum District Contribution to the City	\$13,800,000
Estimated MSHCP Mitigation Fee	\$ 331,200
(3% of Estimated construction Contribution)	
<hr/>	
Total Estimated District Cost	\$14,131,200


SOURCE OF FUNDS:

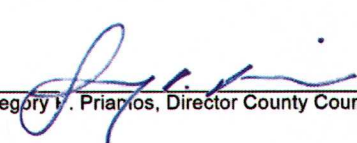
- 25110-947400-536200 Contribution to Non-County Agency – Zone 1
- 25110-947400-523220 License and Permits – Zone 1

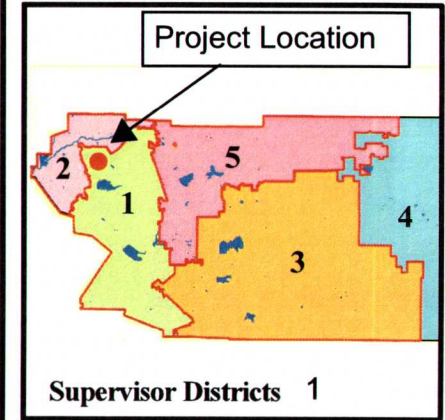
Attachment:

1. Vicinity Map
2. Cooperative Agreement


BB:blm
P8/240493


Jason Farin, Principal Management Analyst 10/25/2021


Gregory V. Priamos, Director County Counsel 10/18/2021



LEGEND:

 Monroe MDP -
Monroe Storm Drain

DESCRIPTION:

Monroe Master Drainage
Plan, Monroe Storm Drain,
Stage 5

Project No. 1-0-00071



Vicinity Map



Attachment 1

COOPERATIVE FUNDING AGREEMENT
Monroe Master Drainage Plan, Monroe Storm Drain, Stage 5
Project No. 1-0-00071-05
MS 201

This Cooperative Funding Agreement ("Agreement"), dated as of November 2, 2021, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the City of Riverside, a California charter city and 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 Monroe Storm Drain, Stage 5 ("STAGE 5"), as identified in DISTRICT's Monroe Master Drainage Plan ("MDP"), to upgrade the existing capacity of the Monroe Storm Drain to convey the 10-year storm event and provide a higher level of flood protection to the surrounding area; and

B. STAGE 5, as shown on District Drawing No. 1-0743 and as shown in concept in blue on Exhibit "A", attached hereto and made a part hereof, includes the removal of approximately 3,400 lineal feet of existing concrete lined channel along Monticello Avenue and replace it with an underground reinforced concrete box from California Avenue to Colorado Avenue in the city of Riverside; and

C. Associated with the construction of STAGE 5 is the construction of certain surface treatments and landscape features, various curb and gutter, rail fence, catch basins, inlets, and connector pipes that are thirty-six inches (36") or less in diameter located within CITY rights of way ("APPURTENANCES").

D. STAGE 5 and APPURTENANCES are hereinafter altogether called "PROJECT"; and

E. 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

F. Due to mutual interest in PROJECT, DISTRICT wishes to support CITY's efforts by providing a financial contribution to implement PROJECT; and

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

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

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

- i. "DESIGN CONTRIBUTION", defined as one hundred percent (100%) of the DESIGN PROPOSAL COST to offset CITY's cost associated with engineering and other typical ancillary costs related to the preparation of the necessary plans and specifications to construct PROJECT; and
- ii. "DESIGN ADMINISTRATION", defined as in the event the CITY chooses to hire an engineering consulting firm to prepare the necessary plans and specifications to construct PROJECT; DISTRICT is also willing to contribute an additional twenty percent (20%) of the DESIGN PROPOSAL COST to offset CITY's administrative costs associated with contract administration.

Together, DESIGN CONTRIBUTION and DESIGN ADMINISTRATION are hereinafter called TOTAL DESIGN CONTRIBUTION; and

- iii. "UTILITY CONTRIBUTION", defined as one hundred percent (100%) of the CITY's cost associated with the relocation of (i) certain street light systems, electrical wirings and conduits located within PROJECT's limits, (ii) certain water irrigation meters located within PROJECT's limits and (iii) the removal and replacement of structural pavement within PROJECT limits.
- iv. "CONSTRUCTION CONTRIBUTION", defined as one hundred percent (100%) of the ORIGINAL BID; and
- v. "CONSTRUCTION ADMINISTRATION", defined as an additional ten percent (10%) of the ORIGINAL BID to offset CITY's administrative costs associated with construction administration and other typical ancillary costs related to the delivery of a flood control facility; and
- vi. "CHANGE ORDERS CONTRIBUTION" defined as up to an additional ten percent (10%) of ORIGINAL BID to offset any construction contract change orders. Together, CONSTRUCTION CONTRIBUTION, CONTRACT ADMINISTRATION and CHANGE ORDERS CONTRIBUTION are hereinafter called TOTAL CONSTRUCTION CONTRIBUTION; and

J. Altogether, TOTAL DESIGN CONTRIBUTION, UTILITY CONTRIBUTION and TOTAL CONSTRUCTION CONTRIBUTION are hereinafter called

DISTRICT TOTAL CONTRIBUTION. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000); and

K. Should the PROJECT require additional funding, CITY will have the option to seek additional funding from the DISTRICT for the construction of the PROJECT; and

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

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

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

SECTION I

CITY shall:

1. Pursuant to the California Environmental Quality Act ("CEQA"), act as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.
2. Endeavor to advertise and award a public works construction contract for PROJECT and begin construction within twenty-four (24) months of execution of this Agreement.
3. Provide DISTRICT a copy of the engineering design cost proposal and associated design schedule for PROJECT for review and approval.

4. Keep an accurate accounting for PROJECT of the following:
 - i. All design cost associated with the preparation of plans and specifications for PROJECT, in conformance with DISTRICT approved engineering design cost proposal and associated design schedule, as set forth in Section I.3. CITY shall include this accounting when invoicing DISTRICT for (i) the final payment of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMINISTRATION, as set forth in Section I.14. The final accounting of design cost shall include a detailed breakdown of all cost, including, but not limited to, payment vouchers, change orders and other such contract documents as may be necessary to establish the actual cost of design and, if applicable, the associated design contract administration cost for the PROJECT.
 - ii. All PROJECT construction cost, including the cost associated with the relocation of conflicting utilities. CITY shall provide this accounting to DISTRICT with CITY's Notice of Completion, as set forth on Section I.32. The final accounting of construction costs shall include a detailed breakdown of all cost, including, but not limited to, payment vouchers, change orders and other such construction contract documents as may be necessary to establish the actual cost of construction and the associated contract administration cost for the DISTRICT approved and CITY approved IMPROVEMENT PLANS.
5. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent

(50%) of DESIGN CONTRIBUTION upon execution of the Agreement or upon DISTRICT's approval of CITY's engineering design cost proposal as set forth in Section 1.3., whichever occurs later. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

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

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

8. Prior to advertising PROJECT for public works construction contract, obtain all necessary permits, approvals or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT. Such documents, hereinafter called ("REGULATORY PERMITS"), may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority. CITY shall also provide DISTRICT an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS prior to submitting the applications to the applicable regulatory agencies.

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

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

11. Prior to advertising PROJECT for public works construction contract, provide DISTRICT an opportunity to review, comment on and approve all (i) REGULATORY PERMIT applications and (ii) ROW DOCUMENTS, including any existing dedications, proposed legal and plat descriptions, basemaps and survey controls. DISTRICT approval of any such document(s) or IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain STAGE 5.

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

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

14. Following the signing of IMPROVEMENT PLANS by all Parties, invoice DISTRICT (Attention: Special Projects Section) for (i) the remainder of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMINISTRATION CONTRIBUTION.

DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

15. Prior to awarding a public works construction contract for PROJECT, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by DISTRICT to be unreasonably high.

16. Advertise, award and administer a public works construction contract for PROJECT.

17. Provide DISTRICT with written notice (Attention: Construction Management Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the Contractor's actual bid amounts for PROJECT, setting forth the ORIGINAL BID.

18. At the time of providing written notice of the award of a construction contract for PROJECT as set forth in Section I.17., invoice the DISTRICT (Attention: Special Projects Section) for CONSTRUCTION CONTRIBUTION and CONSTRUCTION ADMINISTRATION, subject to and provided that DISTRICT TOTAL CONTRIBUTION does not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000). CONSTRUCTION CONTRIBUTIUN shall be supported by a copy of CITY's bid abstracts for PROJECT.

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

20. Not permit any change to or modification of DISTRICT approved and CITY approved IMPROVEMENT PLANS without DISTRICT's prior written permission and consent. Failure to do so shall be deemed a material breach of this Agreement and shall authorize

and constitute authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable to (i) perform its obligations hereunder and (ii) to accept responsibility for ownership, operation and maintenance of STAGE 5 due, either in whole or in part, to said breach of this Agreement.

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

22. Furnish DISTRICT (Attention: Construction Management Section), at the time of providing written notice of the pre-construction meeting as set forth in Section I.18., with:

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

23. Require its construction contractor(s) to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for all CITY and DISTRICT employees on the site.

24. Relocate or cause to be relocated all conflicting CITY owned utilities as set forth in Recital I.iii. 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 shall be relocated at the utilities company's expense.

25. Upon completion of the relocation of the conflicting utilities as set forth in Section I.24., invoice DISTRICT (Attention: Special Projects Section) for UTILITY CONTRIBUTION as set forth in Recital I.iii. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

26. 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 should adhere to the DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

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

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

29. Grant DISTRICT, by execution of the Agreement, the right to inspect PROJECT and subsequently operate and maintain STAGE 5 within CITY rights of way.

30. Within two (2) weeks of completing PROJECT construction, provide DISTRICT with written notice (Attention: Construction Management Section) that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of STAGE 5.

31. Assume ownership and responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of STAGE 5 as set forth herein. CITY shall continue to own operate and maintain APPURTENANCES.

32. Upon completion of PROJECT construction, provide DISTRICT with a copy of CITY's recorded Notice of Completion. The recorded Notice of Completion shall be accompanied by the final accounting of all PROJECT construction costs as set forth in Section I.4.ii.

33. Upon completion of PROJECT construction but prior to DISTRICT acceptance of STAGE 5 for ownership, operation and maintenance, provide DISTRICT with appropriate engineering documentation necessary to establish that STAGE 5 was constructed in accordance with the DISTRICT approved and CITY approved IMPROVEMENT PLANS.

34. Upon completion of PROJECT construction but prior to DISTRICT acceptance of STAGE 5 for ownership, operation and maintenance, CITY shall 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 5. DISTRICT's interest in said property shall be free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which, in the sole discretion of DISTRICT, are acceptable.

35. At the time of recordation of the conveyance document(s), provide 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 fee 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 deemed acceptable.

36. Upon completion of PROJECT construction but prior to DISTRICT acceptance of STAGE 5 for ownership, operation and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT with redlined "record drawings" of PROJECT plans. After DISTRICT approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT a time to transfer the redlined changes into DISTRICT's original mylars at DISTRICT's office, after which, the engineer shall review, stamp and sign mylars "record drawings".

37. Upon DISTRICT's acceptance of STAGE 5 for ownership, operation and maintenance, invoice DISTRICT (Attention: Special Projects Section) for CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided that DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

38. CITY shall be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION.

39. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Section I.31., any unexpended portions of DISTRICT TOTAL CONTRIBUTION.

SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review and approve CITY's geotechnical report prior to CITY commencing PROJECT design.
3. Review and make a determination on CITY's engineering design cost proposal and associated design schedule for PROJECT.
4. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.5. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).
5. Prior to CITY advertising PROJECT for bids, review and make a determination on, as appropriate, all (i) REGULATORY PERMIT applications and (ii) ROW DOCUMENTS, including any existing dedications, proposed legal and plat descriptions, basemaps and survey controls. Said REGULATORY PERMITS and ROW DOCUMENTS shall not unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 5. DISTRICT may withhold approval of any such document(s) or IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain STAGE 5.
6. Review and approve IMPROVEMENT PLANS prior to CITY's advertising PROJECT for construction bids.
7. Pay CITY, within thirty (30) days after receipt of CITY's appropriate

invoice, for (i) remainder of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMINISTRATION CONTRIBUTION, as set forth in Sections I.4.i. and I.14. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000). Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION.

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

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

10. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for CONSTRUCTION CONTRIBUTION, CONSTRUCTION ADMINISTRATION as set forth in Section I.18., subject to and provided that DISTRICT TOTAL CONTRIBUTION does not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

11. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice, for UTILITY CONTRIBUTION, as set forth in Section I.25. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

12. Conduct periodic inspections of STAGE 5 construction for quality control

purposes, at its sole cost, and provide any comments to CITY's designated PROJECT construction inspector.

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

14. Upon receipt of CITY's written notice that PROJECT construction is substantially complete as set forth in Section I.30., conduct a final inspection of STAGE 5.

15. Accept ownership and responsibility for the operation and maintenance of STAGE 5 upon (i) DISTRICT inspection of STAGE 5 in accordance with Section I.30., (ii) DISTRICT acceptance of STAGE 5 construction as being complete, (iii) DISTRICT receipt of CITY's recorded Notice of Completion as set forth in Section I.32., (iv) DISTRICT receipt of appropriate engineering documentation as set forth in Section I.33., (v) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans as set forth in Section I.36., (vi) DISTRICT's acceptance of all necessary rights of way and/or easements as set forth in Section I.34. and (vii) DISTRICT's sole determination that STAGE 5 is in a satisfactorily maintained condition.

16. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for CHANGE ORDER CONTRIBUTION, as set forth in Section I.4.ii. and I.37. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight

Hundred Thousand Dollars (\$13,800,000).

SECTION III

Indemnification:

1. CITY shall indemnify and hold harmless and require its construction contractor(s) to indemnify, defend and hold harmless the DISTRICT, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any acts, omissions or services of CITY and CITY's construction contractor(s), its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including, but not limited to, property damage, bodily injury or death, or any other element of any kind or nature whatsoever arising from the performance of CITY's or CITY's construction contractor(s), its officers, employees, subcontractors, agents or representatives ("Indemnitors") from this Agreement. CITY or CITY's construction contractor(s) shall defend, at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense, and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions. With respect to any action or claim subject to indemnification herein by CITY or CITY's construction contractor(s), CITY or CITY's construction contractor(s) shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent of DISTRICT and the County of Riverside; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CITY or CITY's construction contractor(s) indemnification to Indemnitees as set forth herein.

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

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

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

5. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) acts or omissions related to this Agreement, or performance under this Agreement, or failure to comply with the requirements of this Agreement.

SECTION IV

It is further mutually agreed:

1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000) and shall be used by CITY solely for the purpose of designing and constructing PROJECT as set forth herein. CITY shall

be responsible to pay any amounts in excess of DISTRICT TOTAL CONTRIBUTION.

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

3. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT and CITY or its construction manager, but shall not be deemed complete until DISTRICT and CITY mutually agree that construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS. CITY shall not request DISTRICT to accept any portion of STAGE 5 for ownership, operation or maintenance until PROJECT construction is deemed fully complete and all necessary rights of way have been conveyed as set forth herein.

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

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

6. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of STAGE 5, STAGE 5 shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, in the sole discretion of DISTRICT, STAGE 5 is not in an acceptable condition, corrections will be made at sole expense of CITY.

7. DISTRICT, the County of Riverside, the State of California or any of their duly authorized representatives shall have the right to review and to copy any records and

supporting documentation pertaining to the performance of this Agreement. CITY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. CITY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

8. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof or estopping DISTRICT or CITY from enforcement hereof.

9. This Agreement is to be construed in accordance with the laws of the State of California.

10. Any and all notices sent or required to be sent to the Parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

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

To CITY: CITY OF RIVERSIDE
3900 Main Street, 4th Floor
Riverside, CA 92522
Attn: Public Works Director

11. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

12. This Agreement is the result of negotiations between the Parties hereto and

the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

13. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right or action based upon the provisions of this Agreement.

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

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

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

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

18. The obligation(s) of DISTRICT are limited by and contingent upon the

availability of DISTRICT funds for DISTRICT's financial contribution toward the PROJECT as set forth herein. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify CITY in writing.

19. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral and written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the Parties hereto.

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

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

November 2, 2021
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By

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

By

[Signature]
KAREN SPIEGEL, Chair
Board of Supervisors, Riverside County Flood
Control and Water Conservation District

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA R. HARPER
Clerk of the Board

By

[Signature]
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

By

[Signature]
Deputy

Cooperative Funding Agreement with the City of Riverside
Monroe Master Drainage Plan, Monroe Storm Drain, Stage 5
Project No. 1-0-00071-05
MS 201
07/12/2021
BB:mcv


CITY OF RIVERSIDE

By


AL ZELINKA
City Manager

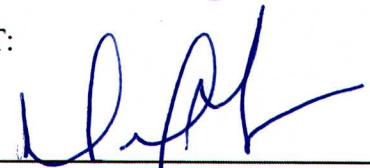
APPROVED AS TO FORM:

By


for RUTHANN M. SALERA
Deputy City Attorney

ATTEST:

By


DONESIA GAUSE
City Clerk

(SEAL)

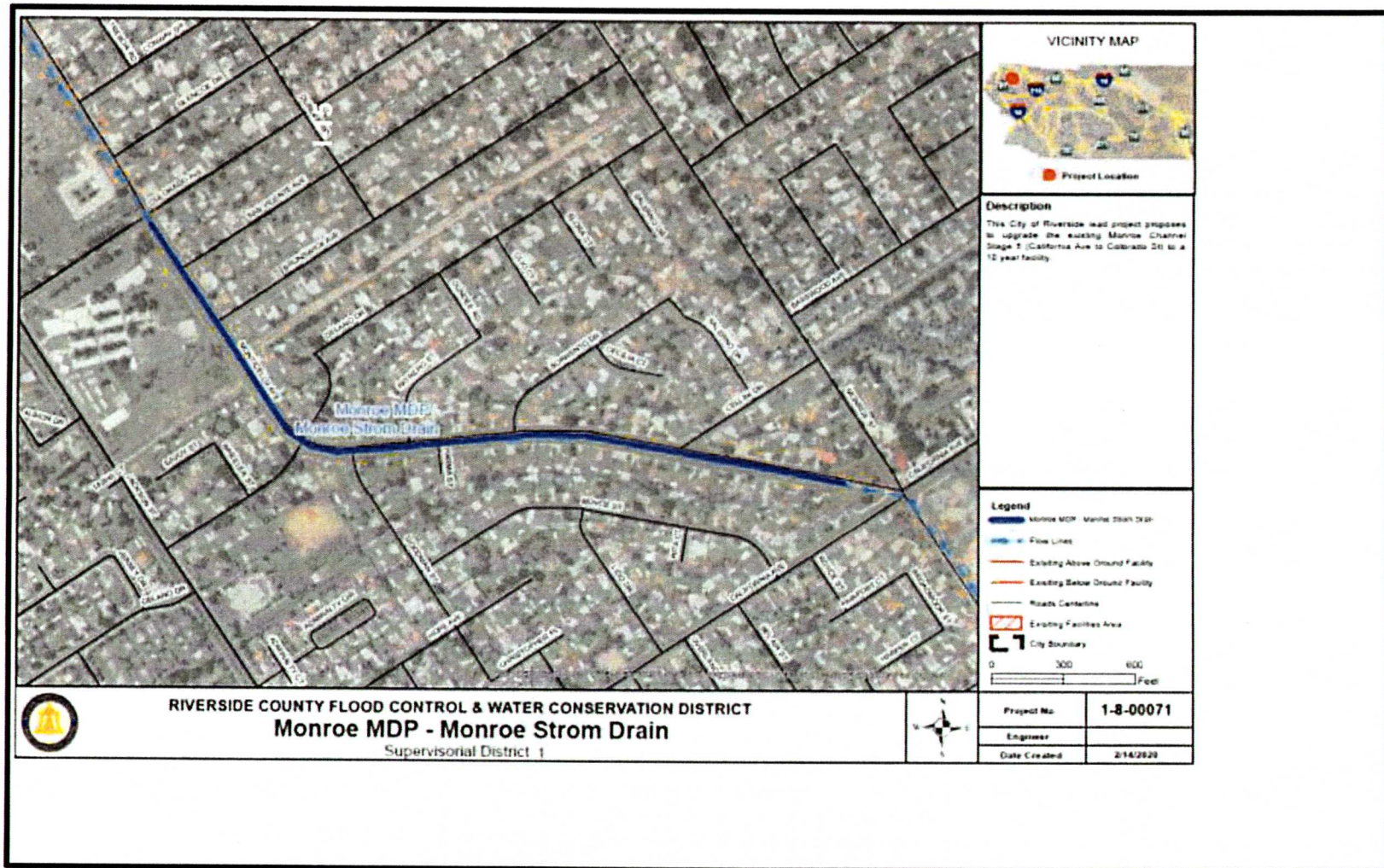
CERTIFIED AS TO FUNDS AVAILABILITY:

BY:


Chief Financial Officer/City Treasurer

Cooperative Funding Agreement with the City of Riverside
Monroe Master Drainage Plan, Monroe Storm Drain, Stage 5
Project No. 1-0-00071-05
MS 201
07/12/2021
BB:mcv

EXHIBIT A



COOPERATIVE FUNDING AGREEMENT

Monroe Master Drainage Plan, Monroe Storm Drain, Stage 5

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EXHIBIT B

DISTRICT's Required Insurance is as follows:

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

A. **Workers' Compensation:**

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

B. **Commercial General Liability:**

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

C. **Vehicle Liability:**

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

D. **Professional Liability:**

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

COOPERATIVE FUNDING AGREEMENT

Monroe Master Drainage Plan, Monroe Storm Drain, Stage 5

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EXHIBIT B

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

E. General Insurance Provisions – All Lines:

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

COOPERATIVE FUNDING AGREEMENT

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EXHIBIT B

- prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY's construction contractor(s) insurance carrier(s) policies does not meet the minimum notice requirement found herein, CITY's construction contractor(s) shall cause CITY's construction contractor(s) insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- iv. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverage's set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
 - v. It is understood and agreed by the Parties hereto that CITY's construction contractor(s) insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
 - vi. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work; or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY's construction contractor(s) has become inadequate.
 - vii. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
 - viii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
 - ix. CITY's construction contractor(s) agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

COOPERATIVE FUNDING AGREEMENT

Monroe Master Drainage Plan, Monroe Storm Drain, Stage 5

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