

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



ITEM: 11.3
(ID # 18186)

MEETING DATE:
Tuesday, March 01, 2022

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the County of Riverside for De Portola Channel Project No. 7-6-10000, CEQA Exempt, District 3. [Not-to-Exceed \$600,000 – District Zone 7 Funding 100%] (Companion Item MT Item No. 18234)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Funding Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3);
2. Approve the Funding Agreement ("Agreement") between the Riverside County Flood Control and Water Conservation District ("District") and the County of Riverside ("County");
3. Authorize the Chair of the District's Board of Supervisors to execute the Funding Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return two (2) fully executed original Funding Agreements to the District and one (1) executed original Funding Agreement to the Riverside County Transportation Department.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 2/10/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Spiegel 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: March 1, 2022
xc: Flood, TLMA-Trans.

Kecia R. Harper
Clerk of the Board

By: 
Deputy

(Companion Item 3.46)

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$600,000	\$600,000	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: Zone 7 Funds 100% (See Additional Fiscal Information)			Budget Adjustment: No	
			For Fiscal Year: 22/23	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Funding Agreement ("Agreement") sets forth the terms and conditions by which the District will contribute up to Six Hundred Thousand Dollars (\$600,000) in funding to the County for construction of the De Portola Channel ("Project") as part of a County-administered public works construction contract. Upon completion of construction, the County will accept sole responsibility for the ownership, operation and maintenance of the facility.

County Counsel has approved the Agreement as to legal form. A companion item appears on the Riverside County Transportation Department's Board agenda this same date.

Environmental Findings

The Agreement is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), which states "The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Agreement 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 further public agency approvals and CEQA review by the County. Because the Agreement is merely for the funding of construction of a channel, it can be seen with certainty that there is no possibility that the Agreement will have a significant effect on the environment. Therefore, nothing further is required under CEQA.

Impact on Residents and Businesses

The District's financial contribution toward the County'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 and excessive sediment concerns to the residents in the unincorporated area by reducing runoff on De Portola Road. The residents and businesses adjacent to De Portola Road are the primary beneficiaries of the Project. Ancillary benefits will accrue to the public who will utilize the roadways.

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Additional Fiscal Information

The District is providing up to \$600,000 in funding to the County for the Project. Sufficient funding is available in the District's Zone 7 budget for 2021/2022 and will be included in the proposed budget for FY 2022/2023.

Funding Summary:

Total Estimated District Cost	\$ 600,000
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SOURCE OF FUNDS: (Continued)

- 25170-947520-536200 Contribution to Non-County Agency – Zone 7


ATTACHMENT:

1. Vicinity Map
2. Funding Agreement

RSM:blm
P8/241954



Jason Farin, Principal Management Analyst 2/23/2022



Gregory L. Priamos, Director County Counsel 2/10/2022

FUNDING AGREEMENT
De Portola Drainage Project
Project No. 7-6-10000

This Funding Agreement ("Agreement"), dated as of March, 2022, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT") and the County of Riverside, a political subdivision of the State of California, on behalf of its Transportation Department, ("COUNTY"). DISTRICT and COUNTY are individually referred to herein as "PARTY" and collectively referred to herein as "PARTIES". The Parties hereto hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and COUNTY has plans to design, construct, operate and maintain De Portola Drainage Channel ("PROJECT") along a 500-foot segment of De Portola road approximately 0.4 miles north of Pauba Road, as shown in concept in blue on Exhibit "A" attached hereto and made a part hereof. Upon construction completion, PROJECT will provide flood protection for the residents by attenuating flows and capturing sediment; and

B. PROJECT consists of approximately 500 lineal feet of open trapezoidal channel with a concrete lined westerly side slope and earthen easterly side slope, as well as an earthen bottom to facilitate percolation. At the upstream terminus, PROJECT will construct a new concrete junction structure where various existing flowlines converge; and

C. COUNTY plans to advertise, award and administer a public works construction contract for PROJECT during Fiscal Year 2022/2023; and

D. DISTRICT wishes to support COUNTY's efforts to construct PROJECT by providing a financial contribution toward PROJECT's construction costs; and

E. DISTRICT's contribution shall be Six Hundred Thousand Dollars (\$600,000.00) towards the construction of PROJECT ("TOTAL DISTRICT CONTRIBUTION"). TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a

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total of Six Hundred Thousand Dollars (\$600,000.00). COUNTY shall pay all amounts in excess of TOTAL DISTRICT CONTRIBUTION utilizing other funding mechanisms to complete the PROJECT; and

F. DISTRICT wishes to provide only financial assistance to COUNTY and have no other role; and

G. The purpose of this Agreement is to memorialize the mutual understandings by and between COUNTY and DISTRICT with respect to the construction, ownership, operation and maintenance of PROJECT and the payment of TOTAL DISTRICT 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

COUNTY 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. At COUNTY's sole cost and expense, obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry and temporary construction easements as may be needed to construct, operate and maintain PROJECT.

3. Prior to commencing construction, obtain, at COUNTY's sole cost and expense, all necessary permits, approvals or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT. Such documents may include, but are not limited to, a Section 404 permit issued by the U.S. Army Corps of Engineers, a Section 401 Water Quality Certification

issued by the California Regional Water Quality Control Board (CRWQCB), a Streambed Alteration Agreement issued by the California Department of Fish and Wildlife, and a National Pollutant Discharge Elimination System Permit issued by the State Water Resources Control Board or CRWQCB and Western Riverside County Regional Conservation Authority

4. Within thirty-six (36) months of execution of this Agreement, endeavor to advertise, award and administer a Public Works construction contract of the bids for PROJECT pursuant to the applicable provisions of the California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a copy of PROJECT plans, specifications, bid documents and any subsequent addenda thereto.

5. Provide DISTRICT with written notice (Attention: Special Projects Section) that COUNTY intends to award the public works construction contract for PROJECT to the lowest responsible bidder. The written notice shall include the Contractor's actual bid amounts for PROJECT, setting forth the lowest responsible bid contract amount for DISTRICT's review.

6. Within thirty (30) days of awarding PROJECT construction contract, 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.

7. Issue an invoice to DISTRICT (Attention: Special Projects Section) for TOTAL DISTRICT CONTRIBUTION at the time of providing written notice of the award of a construction contract, as set forth in Section I.5.

8. Construct or cause to be constructed PROJECT pursuant to a COUNTY administered public works construction contract in accordance with IMPROVEMENT PLANS.

9. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager.
10. Procure or caused to be procured insurance coverages during the term of this Agreement.
11. 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 COUNTY and DISTRICT employees on the site.
12. Upon completion of PROJECT construction and COUNTY's acceptance thereof, accept ownership and sole responsibility for the design, operation and maintenance of PROJECT.
13. Upon completion of PROJECT construction, provide DISTRICT with a copy of COUNTY's Notice of Completion.
14. Keep an accurate accounting of all PROJECT costs and provide this accounting to DISTRICT with COUNTY's Notice of Completion.

SECTION II

DISTRICT shall:

1. Review the bid amounts from the lowest responsible bidder selected by COUNTY within seven (7) business days.
2. Within thirty (30) business days of receiving of COUNTY's invoice, pay one hundred percent (100%) of TOTAL DISTRICT CONTRIBUTION, contingent upon DISTRICT's review and concurrence of the lowest responsible bid amounts.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein, this Agreement's TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Six Hundred Thousand Dollars

(\$600,000.00); and shall be used by COUNTY 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.

2. In the event the actual construction cost for PROJECT is less than the TOTAL DISTRICT CONTRIBUTION, COUNTY shall refund the difference to DISTRICT within thirty (30) business days of filing the Notice of Completion for PROJECT.

3. Under the provisions of this Agreement, DISTRICT shall bear no responsibility whatsoever for the design, construction, ownership, operation or maintenance of PROJECT.

4. COUNTY shall indemnify, defend, save and hold harmless DISTRICT (including their respective directors, officers, Board of Supervisors, 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 COUNTY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement, including, but not limited to, (a) property damage; (b) bodily injury or death; (c) payment of attorney fees; or (d) any other element of any kind or nature whatsoever. This section shall survive any termination of this Agreement until the statute of limitations period has run for any claims that could be asserted under this Agreement.

5. 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.

6. 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 this 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. Neither COUNTY nor DISTRICT shall assign this Agreement without the written consent of the other PARTY.

7. 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.

8. 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

RIVERSIDE COUNTY
TRANSPORTATION DEPARTMENT
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Attn: Transportation Department

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

10. Any waiver by DISTRICT or COUNTY 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 COUNTY 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 COUNTY from enforcing this Agreement.

11. The obligations 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 forth coming for any reason, DISTRICT shall immediately notify COUNTY in writing. AGREEMENT shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by COUNTY.

12. 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 amended, changed or modified only upon the written consent of the PARTIES hereto.

13. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by both PARTIES and no oral understanding or agreement not incorporated herein shall be binding on either PARTY hereto.

14. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this.

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

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

March 1, 2022.
(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

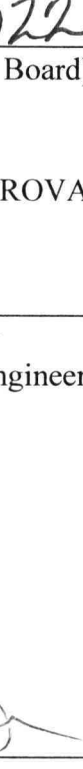
By 
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors


APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By 
MICHELLE P. CLACK
Chief Deputy County Counsel


By 
Deputy

(SEAL)

[Signed in Counterpart]

Funding Agreement
De Portola Channel
01/14/22
RSM:blm

RECOMMENDED FOR APPROVAL:


By 
MARK LANCASTER
Director of Transportation

COUNTY OF RIVERSIDE

By 
JEFF HEWITT, Chair
Board of Supervisors

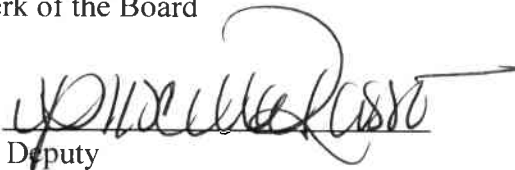
APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By 
STEPHANIE K. NELSON
Deputy County Counsel

ATTEST:

KECIA HARPER
Clerk of the Board

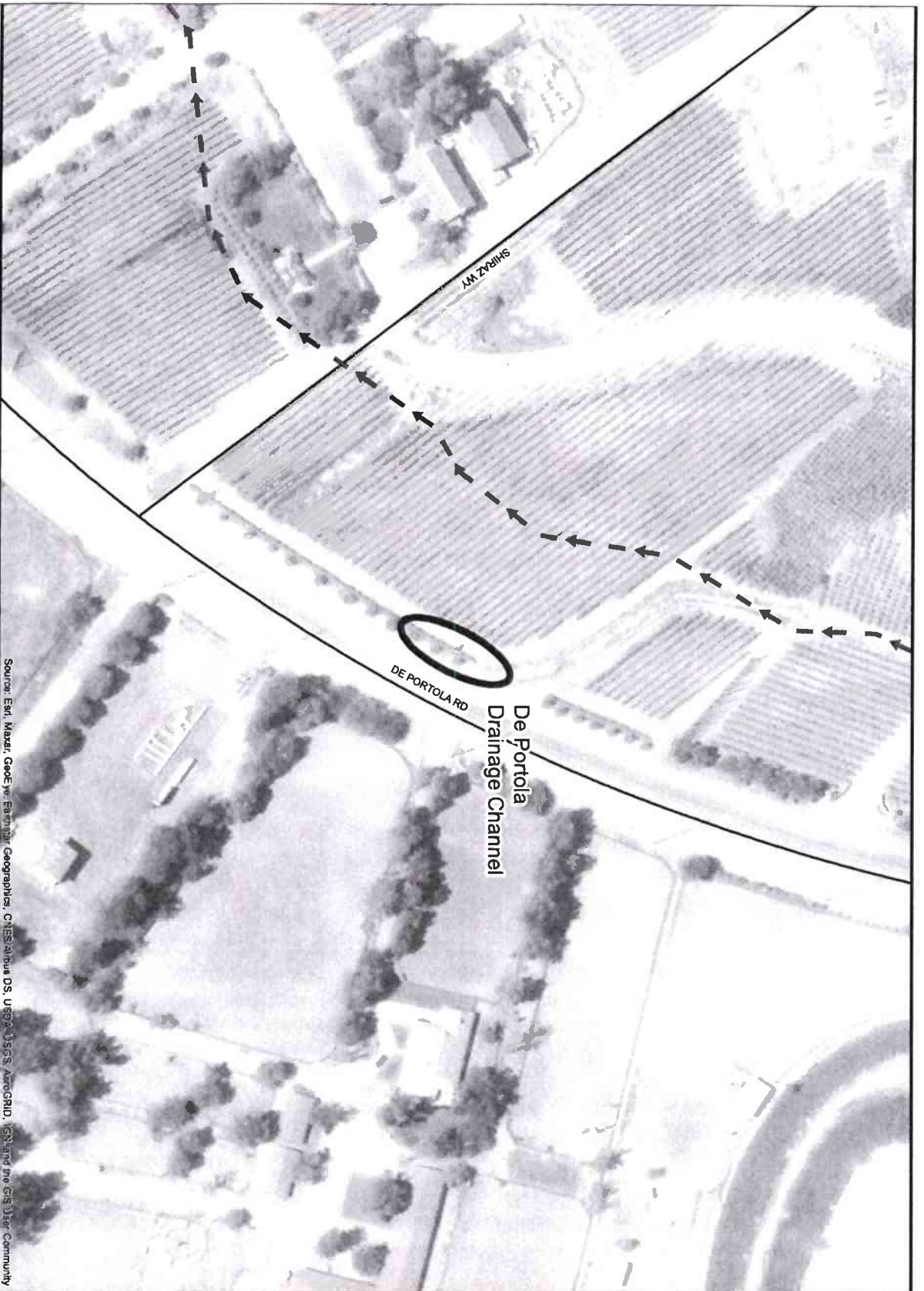
By 
Deputy

(SEAL)

[Signed in Counterpart]

Funding Agreement
De Portola Channel
01/14/22
RSM:blm

EXHIBIT A



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT De Portola Drainage Channel Supervisory District 3



VICINITY MAP

Project Location

Description
Department of Transportation led project that will reduce local flooding along De Portola Road. The project consists of a sediment basin with a concrete lined slope only on the north side. The project serves as a water quality feature allowing for the infiltration of flow and sediment capture. Fifty-five percent of the project is being funded by the District with the remainder being funded by the county transportation department.

Legend

- De Portola Drainage Channel
- Flow Lines
- Roads Centerline

0 100 200 Feet

Project No.	7-8-09019
Engineer	R. Johnson
Date Created	1/13/2021