

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



ITEM: 11.1
(ID # 18810)

MEETING DATE:
Tuesday, June 07, 2022

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 Desert Hot Springs for Desert Hot Springs MDP – Line C-1, Stage 1, MS 205, Project No. 6-8-00034-01, CEQA Exempt, District 4. [\$3,891,200 Not-to-exceed Cost – 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);
2. Approve the Cooperative Funding Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Desert Hot Springs ("City");
3. Authorize the Chair 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

5/25/2022

Aaron Gettis, Deputy County Counsel

5/25/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel 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: June 7, 2022
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	\$ 0	\$ 1,000,000	\$ 3,891,200	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Zone 6 Funds 100% (See Additional Fiscal Information)			Budget Adjustment: No	
			For Fiscal Year: 22/23-25/26	

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 flood control facility, Desert Hot Springs MDP – Line C-1, Stage 1, as part of a City administered public works construction contract to provide the necessary flood control and drainage improvements for the immediate adjacent areas within the city.

Upon construction completion, Desert Hot Springs Line C-1, Stage 1 will mitigate ongoing residential and street flooding from the intersections of Deodar Avenue and Redbud Road to Panorama Drive and Calle Amapola in the city of Desert Hot Springs. Desert Hot Springs Line C-1, Stage 1 will also reduce the amount of sediment and debris that is transported from the north and accumulates on Hacienda Avenue, one of the city's main east to west street corridors.

Once constructed, the District will assume ownership, operation and maintenance of the Desert Hot Springs Line C-1, Stage 1. The City will assume ownership, operation and maintenance of catch basins, street inlets and connector pipes located within the City's right of way, storm drain portions that are 36 inches or less in diameter, a short segment of existing storm drain and the outlet structure at the downstream end of the project.

County Counsel has approved the Agreement as to legal form, and the City executed the Agreement on April 19, 2022.

Environmental Findings

The Agreement is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), 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

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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 that are greater than 36 inches in diameter. 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 nor bonded indebtedness to residents and businesses. Upon construction completion, the project will alleviate ongoing flooding problems and reduce sediment and debris, which will benefit the homes 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 for up to 3% of the total capital costs as required mitigation for the construction of flood control facilities in cooperation with and on behalf of the City. The MSHCP mitigation fee is based on the engineers estimated project cost, however, the actual 3% payment will be based on the project's lowest responsive contract bid price. The actual mitigation payment that will be made by the District may be reduced based on acquisition of replacement habitat for the benefit of Covered Species, as defined in the Implementing Agreement and the MSHCP. The City is the lead agency and the MSHCP permittee responsible for compliance with the applicable MSHCP requirements.

The District is providing up to \$3,800,000 in funding to the City. Sufficient funding is available in the District's Zone 6 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	\$	760,000
Estimated Construction Contribution	\$	3,040,000
<hr/>		
Maximum District Contribution to the City	\$	3,800,000
Estimated MSHCP Mitigation Fee	\$	91,200
(3% of Estimated Construction Contribution)		
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Total Estimated District Cost	\$	3,891,200

SOURCE OF FUNDS:

- 25160-947460-536200 Contribution to Non-County Agency – Zone 6
- 25160-947460-523220 License and Permits – Zone 6

Attachments:

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1. Vicinity Map
2. Cooperative Agreement

RSM:blm
P8/243202



Jason Farin, Principal Management Analyst 6/1/2022

FUNDING AGREEMENT

Desert Hot Springs MDP – Line C-1, Stage 1
 Project No. 6-8-00034-01
 MS 205

This Funding Agreement ("Agreement"), dated as of June 7, 2022, is entered into by the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT") and the City of Desert Hot 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 has budgeted for and CITY has plans to design and construct Desert Hot Springs Line C-1, Stage 1 ("LINE C-1"). Upon construction completion, LINE C-1 will mitigate ongoing residential and street flooding from the intersections of Deodar Avenue and Redbud Road to Panorama Drive and Calle Amapola in the city of Desert Hot Springs. LINE C-1 will also reduce the amount of sediment and debris that is transported from the northern properties to the southern properties and Hacienda Avenue, one of CITY's main east to west streets; and

B. LINE C-1, as shown on District Drawing No. 6-0423 and as shown in concept in blue on Exhibit "A", attached hereto and made a part hereof, includes approximately 4,200 lineal feet of underground storm drain from Deodar Avenue to Panorama Drive, and LINE C-1 will remove and replace approximately 1,200 lineal feet of existing CITY 48" diameter storm drain along Panorama Drive. At the downstream terminus, LINE C-1 will connect into CITY's existing 66" diameter storm drain and outlet structure located south of Panorama Drive and west of Calle Amapola.

C. Associated with the construction of line C-1 is the construction of certain storm drains that are thirty-six inches (36") or less in diameter, various catch basins, inlets and

modifications to CITY's existing storm drains and basin ("CITY FACILITIES"). LINE C-1 and CITY FACILITIES are hereinafter called "PROJECT"; and

D. 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

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

F. DISTRICT is willing to provide Three Million Eight Hundred Thousand Dollars (\$3,800,000) toward PROJECT. All excess costs shall be borne by CITY.

G. DISTRICT's financial contributions to PROJECT shall be as follows, subject to the not to exceed amount provided in Recital H below:

- i. One hundred percent (100%) of costs associated with engineering design, hydrology and hydraulics, geo-technical analysis and potholing required to complete the design of PROJECT; and costs associated with the preparation of environmental documents, applications and obtaining the environmental clearance and permits required for PROJECT ("DESIGN CONTRIBUTION"); and
- ii. One hundred percent (100%) of the lowest responsible bid contract price for construction of PROJECT ("CONSTRUCTION CONTRIBUTION"); and
- iii. One hundred percent (100%) of the cost associated with construction, surveying, compaction and material testing, inspection and construction management of PROJECT ("CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and

H. Altogether, DESIGN CONTRIBUTION, CONSTRUCTION CONTRIBUTION and CONSTRUCTION ADMINISTRATION CONTRIBUTION are hereinafter called "TOTAL DISTRICT CONTRIBUTION". TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total of Three Million Eight Hundred Thousand Dollars (\$3,800,000); and

I. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and DISTRICT with respect to the design, 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

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. Upon execution of this Agreement, issue a first invoice to DISTRICT (Attn: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.

3. Prepare or cause to be prepared the necessary plans, bid documents and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable DISTRICT and CITY standards, and submit to DISTRICT (Attn: Special Projects

Section) 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. Issue a second invoice to DISTRICT (Attn: Special Projects Section) for the remaining fifty percent (50%) of DESIGN CONTRIBUTION, after IMPROVEMENT PLANS have been signed by all Parties, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.

5. Prior to advertising PROJECT for public works construction contract, 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"). CITY shall also provide DISTRICT an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS prior to submitting the application to the applicable regulatory agencies.

6. Ensure 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 DISTRICT FACILITIES, 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.

7. 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.

8. Prior to advertising PROJECT for public works construction contract, secure all necessary rights of way, rights of entry and construction easements, and acquire all parcels necessary to construct, inspect, operate and maintain PROJECT ("ROW DOCUMENTS").

9. Keep an accurate accounting of all costs associated with CONSTRUCTION ADMINISTRATION CONTRIBUTION. The accounting for CONSTRUCTION ADMINISTRATION CONTRIBUTION should be included when invoicing DISTRICT for payment of CONSTRUCTION ADMINISTRATION CONTRIBUTION as set forth in Section 1.16.

10. 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.

11. Advertise, award and administer a public works construction contract for PROJECT of the bids pursuant to the applicable provisions of the California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a copy of IMPROVEMENT PLANS and any subsequent addenda thereto.

12. [INTENTIONALLY DELETED]

13. [INTENTIONALLY DELETED]

14. 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 CITY contractor's actual bid amounts for PROJECT, setting forth the lowest responsible bid contract amount.

15. At the time of providing written notice of the award of a construction contract as set forth in Section I.14, issue a third invoice to DISTRICT (Attention: Special Projects Section) for the payment of CONSTRUCTION CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.

16. At the time of providing written notice of the award of a construction contract as set forth in Section I.14, issue a fourth invoice to DISTRICT (Attention: Special Projects Section) for the payment of CONSTRUCTION ADMINISTRATION CONTRIBUTION as specified in Section I.9, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.

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

18. Prior to commencing construction of PROJECT, procure or caused to be procured insurance coverages during the term of this Agreement. CITY shall require its PROJECT construction contractor(s) to furnish original certificate(s) of insurance and original certified copies of endorsements and, if requested, certified original policies of insurance, including all endorsements and any and all other attachments. Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

19. Prior to commencing construction of PROJECT, schedule and conduct a mandatory pre-construction meeting between CITY, CITY's construction manager, CITY's construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT (Attention: Special Project Section) in writing at least twenty (20) days prior to conducting the pre-construction meeting.
20. Prior to commencing construction of PROJECT, furnish DISTRICT with final mylar PROJECT plans and assign ownership of PROJECT plans to DISTRICT.
21. 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.
22. 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.
23. 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.
24. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager, and pay all costs associated therewith.
25. Upon completion of PROJECT construction and CITY's acceptance thereof, accept ownership operation and maintenance of CITY FACILITIES.
26. Upon completion of PROJECT construction, provide DISTRICT with a copy of CITY's Notice of Completion.
27. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of LINE C-1 for ownership, operation and maintenance, provide DISTRICT with

appropriate engineering documentation necessary to establish that LINE C-1 was constructed in accordance with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS.

28. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of LINE C-1 for ownership, operation and maintenance, CITY shall convey or cause to be conveyed to DISTRICT the flood control easement(s) or grant deed(s) of fee title, where appropriate, as deemed necessary by DISTRICT for the operation and maintenance of LINE C-1. The easement(s) or grant deed(s) shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property(ies) described in the easement(s) or grant deed(s).

29. At the time of recordation of the conveyance document(s) as set forth in Section 1.28, furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value as determined by DISTRICT for each easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the estimated value as determined by DISTRICT for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT's interest in each fee parcel as being 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.

30. Keep an accurate accounting of all PROJECT costs and provide this accounting to DISTRICT with CITY's Notice of Completion, as set forth in Section 1.26. The final accounting of construction costs shall include a detailed breakdown of all costs to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS. TOTAL DISTRICT CONTRIBUTION shall not exceed Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.

31. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Section 1.26, any unexpected portions of TOTAL DISTRICT CONTRIBUTION,

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. Within thirty (30) business days of receiving CITY's first invoice to DISTRICT, pay CITY for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.2, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.
3. Review the IMPROVEMENT PLANS in accordance with the applicable DISTRICT and CITY standards and approve IMPROVEMENT PLANS prior to advertising PROJECT for construction bids as set forth in Section I.3.
4. Within thirty (30) business days of receiving CITY's second invoice to DISTRICT, pay CITY for the remaining fifty percent (50%) of DESIGN CONTRIBUTION following the signing of IMPROVEMENT PLANS as set forth in Section I.4, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.
5. Review, comment and make a determination, as appropriate, on all applications for REGULATORY PERMITS prior to CITY submitting the applications to the applicable regulatory agencies as set forth in Section I.5.
6. [INTENTIONALLY DELETED]
7. Within seven (7) calendar days following CITY's public works construction bid opening, review and approve or reject bids for construction of PROJECT. CITY shall follow State law and its Municipal Code related to public works contracts. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold approval of contract.

8. [INTENTIONALLY DELETED]
9. Within thirty (30) business days of CITY awarding PROJECT construction contract, pay the Coachella Valley Conservation Commission for the costs associated with the Multiple Species Habitat Conservation Plan, which is either the lesser of (i) three percent (3%) of the lowest responsible bid price, or (ii) three percent (3%) of lowest responsible bid price less the value of applicable project-specific mitigation. This amount is separate and apart from the \$3,800,000 PROJECT amount.
10. Within thirty (30) business days of receiving CITY's third invoice to DISTRICT, pay CITY for CONSTRUCTION CONTRIBUTION as set forth in Section I.15, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.
11. Within thirty (30) business days of receiving CITY's fourth invoice to DISTRICT, pay CITY for the CONSTRUCTION ADMINISTRATION CONTRIBUTION as set forth in Section I.16, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT.
12. Upon receipt of CITY's Notice of Completion that PROJECT construction is substantially complete, conduct a final inspection of PROJECT.
13. Accept ownership and responsibility for the operation and maintenance of LINE C-1 once all of the following takes place: (i) DISTRICT's inspection of LINE C-1 in accordance with Section II.11., (ii) DISTRICT's acceptance of LINE C-1 construction as being complete, (iii) DISTRICT's receipt of CITY's recorded Notice of Completion as set forth in Section I.26., (iv) DISTRICT's receipt of appropriate engineering documentation as set forth in Section I.27., (v) DISTRICT's acceptance of all necessary rights of way, easements or grant deeds

as set forth in Section I.28., and (vi) DISTRICT's receipt of policies of title insurance for the rights of way, easements or grant deeds as set forth in Section I.29.

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 Three Million Eight Hundred Thousand Dollars (\$3,800,000) for PROJECT and shall be used by CITY solely for the purpose of the design and 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 CONSTRUCTION CONTRIBUTION, CITY shall refund the difference to DISTRICT within thirty (30) days of filing the Notice of Completion for PROJECT.
3. In the event CITY's construction contractor does not complete the construction of PROJECT in accordance with DISTRICT standards, CITY shall complete the PROJECT utilizing the bonds and insurances secured for PROJECT.
4. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of LINE C-1, LINE C-1 shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, in the sole discretion of DISTRICT, LINE C-1 is not in an acceptable condition, corrections will be made at sole expense of CITY.
5. 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.

6. 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), their 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.

7. With respect to any action or claim subject to indemnification herein by CITY, CITY 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's indemnification to Indemnitees as set forth herein.

8. CITY's obligation hereunder shall be satisfied when CITY 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.

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

10. 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 from indemnifying the Indemnitees to the fullest extent allowed by law.

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 to be construed in accordance with the laws of the State of California.

13. 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.

14. 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 effect.

15. 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.

16. 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: Contracts Services Section

CITY OF DESERT HOT SPRINGS
11-999 Palm Drive
Desert Hot Springs, CA 92240
Attn: Daniel Porras

17. 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.

18. 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 stopping DISTRICT or CITY from enforcing this Agreement.

19. The obligations of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution toward PROJECT as set forth herein. In the event that such funds are not forth coming 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.

20. 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.

21. 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.

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

23. 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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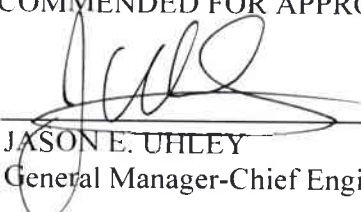
IN WITNESS WHEREOF, the Parties hereto have executed this Cooperative Agreement on

JUN 07 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 S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

COUNTY COUNSEL

KECIA HARPER
Clerk of the Board

By Synthia M. Good
SARAH K. MOORE
Deputy County Counsel

By Julie Martinez
Deputy

(SEAL)

Funding Agreement w/City of Desert Hot Springs
Desert Hot Springs MDP, Line C-1, Stage 1
03/29/22
RMU:blm

RECOMMENDED FOR APPROVAL:

CITY OF DESERT HOT SPRINGS

By Luke Rainey

LUKE RAINEY
City Manager

APPROVED AS TO FORM:

ATTEST:

By Jennifer Mizrahi

JENNIFER MIZRAHI
City Attorney

By Jerryl Soriano

JERRYL SORIANO
City Clerk

(SEAL)

Signature: *JM*
Jennifer Mizrahi (May 2, 2022 10:47 PDT)

Email: jennifer.mizrahi@streamkim.com

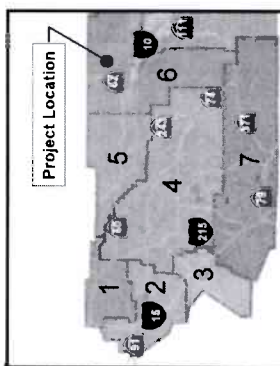
Signature: *Luke Rainey*
Luke Rainey (May 2, 2022 12:14 PDT)

Email: lrainey@cityofdhs.org

Signature: *Jerryl Soriano*
Jerryl Soriano (May 2, 2022 12:19 PDT)

Email: jsoriano@cityofdhs.org

Funding Agreement w/City of Desert Hot Springs
Desert Hot Springs MDP, Line C-1, Stage 1
03/29/22
RMU:blm



Description

The project proposes to alleviate on-going residential and street flooding from the intersections of Deodar Avenue and Redbud Road to Panorama and Calle Amaposa, in the City of Desert Hot Springs. The downstream alignment differs from the MDP to outlet the City's existing basin. The project consist of approximately 4200 LF of RCP (ranging in size from 48" - 60") and modifications to the existing retention basin.



Legend

LINE C-1 ALIGNMENT

City of DHS Basin

FCGIS, ASSESSOR, PARCELS



**RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
DESERT HOT SPRINGS MDP LINE C-1**



EXHIBIT A

Project No.: 6-8-00034-01

Engineer: TH

Date Created: 03/28/2022

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 CITY's 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.

Exhibit B

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 \$1,000,000 per occurrence and \$2,000,000 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 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

Exhibit B

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.

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.

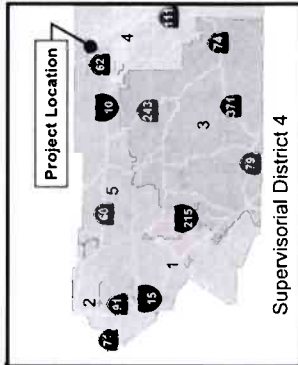
e. It is understood and agreed by the parties hereto that CITY's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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,

Exhibit B

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.



Supervisorial District 4

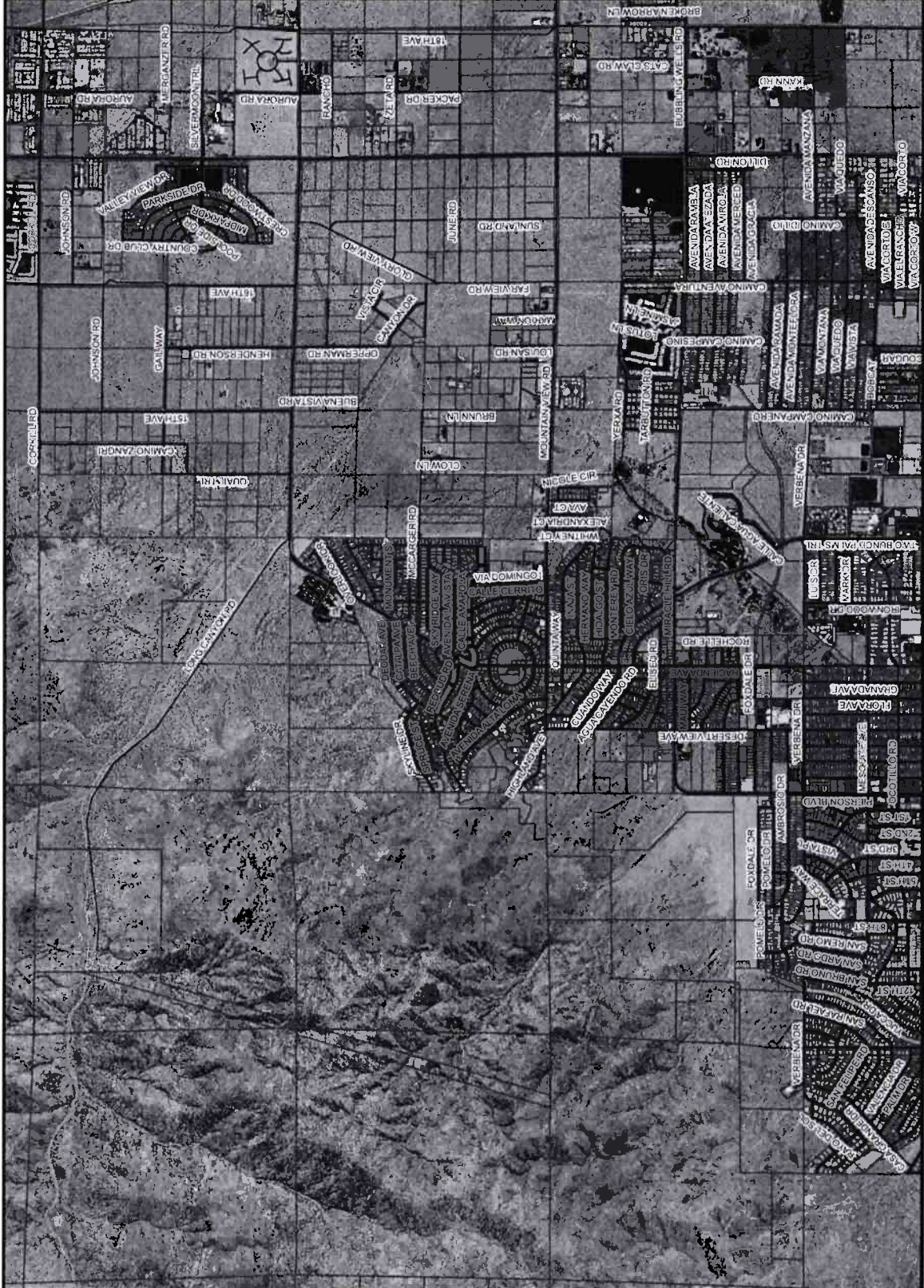
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Legend

- LINE C-1 ALIGNMENT
- ASSESSOR PARCELS

0 2,000 4,000 Feet

VICINITY MAP



RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
DESERT HOT SPRINGS MDP LINE C-1



Project No.:	6-8-00034-01
Engineer:	TH
Date Created:	04/06/2022