

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



ITEM: 11.2
(ID # 19455)

MEETING DATE:

Tuesday, August 02, 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 Eastern Municipal Water District for the Via Lobo Stream Geomorphic Assessment Study, Project No. 7-0-10001, CEQA Exempt, District 3. [\$100,000 Not to Exceed Cost – District Zone 7 Funding 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Finds that this Funding Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3), the Common Sense Exemption, and Section 15262, Feasibility and Planning Studies;
2. Approve the Funding Agreement ("Agreement") between the Riverside County Flood Control and Water Conservation District ("District") and the Eastern Municipal Water District ("EMWD");
3. Authorize the Chair of the District's Board of Supervisors to execute the Agreement documents on behalf of the District;
4. Authorize the General Manager-Chief Engineer or designee to take all necessary steps to approve, sign and execute any future non-substantive amendments within the Agreement that do not increase the cost to the District and do not materially change the scope of services, subject to approval as to form by County Counsel; and
5. Direct the Clerk of the Board to return three (3) fully executed original Agreement documents to the District.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHIEF FLD CNTRL ENG

7/20/2022

Aaron Gettis, Deputy County Counsel

7/21/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Jeffries 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: August 2, 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	\$ 100,000	\$ 0	\$ 100,000	\$ 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 – 24/25	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Agreement sets forth the terms and conditions by which the District will contribute up to One Hundred Thousand Dollars (\$100,000) in funding to support EMWD's effort toward the preparation of the Via Lobo Stream Geomorphic Assessment ("Study"). The findings of this Study will help determine the geomorphic state of the stream. The Study may also propose possible structural or non-structural solutions to prevent erosion and determine how the stream can reach equilibrium.

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

Environmental Findings

The Agreement is exempt from 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 the findings of the Study for the project. If this Study results in EMWD to consider implementing any structural or non-structural improvements within the wash, such considerations and designs will result in subsequent actions subject to CEQA review and adoption by EMWD. This Agreement only authorizes the District to contribute funding to EMWD for the purposes of conducting the Study. Therefore, it can be seen with certainty that there is no possibility that the Agreement may have a significant effect on the environment.

Additionally, the Agreement is statutorily exempt from CEQA pursuant to State CEQA Guidelines Section 15262 (Feasibility and Planning Studies), which exempts "A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded and does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities." The Study, the subject of this Agreement, is a geomorphologic exploration of the Via Lobo Stream to expose the erosion of existing sewer lines within the city of Temecula. Any physical changes that may occur as a result of the study would only cause negligible physical

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impacts. As a result, it can be seen with certainty that there is no possibility that any physical actions that may be associated with the proposed project may have a significant adverse effect on the environment. The District has not approved, adopted or funded any future actions based on the Study. If this Study results in EMWD to consider implementing any structural or non-structural improvements within the wash, such considerations and designs will result in subsequent actions subject to CEQA review and adoption by EMWD. Accordingly, the State CEQA Guidelines Section 15262 exemption applies.

Impact on Residents and Businesses

The District's financial contribution toward the EMWD project is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses.

Additional Fiscal Information

The District is providing up to \$100,000 in funding to EMWD for the Study. Sufficient funding is available in the District's Zone 7 budget for FY 2022/2023.

Funding Summary:

Estimated EMWD Cost	\$ 100,000
Maximum District Contribution to EMWD	\$ 100,000
<hr/>	
Total District Contribution	\$ 100,000

SOURCE OF FUNDS: (Continued)

1. 25170-947520-536200 Contribution to Non-County Agency – Zone 7

ATTACHMENT:

1. Vicinity Map
2. Funding Agreement

AK:blm

P8/244237



Jason Farin, Principal Management Analyst 7/25/2022

FUNDING AGREEMENT

Via Lobo Stream Geomorphic Assessment Study
Project No. 7-0-10001

This Funding Agreement ("Agreement"), dated as of August 2, 2022, is entered into by the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the Eastern Municipal Water District, a municipal water district ("EMWD"). DISTRICT and EMWD are collectively referred to herein as the "Parties" and individually as "Party". The Parties hereto agree as follows:

RECITALS

A. EMWD has requested assistance from DISTRICT with the erosion that is exposing an existing sewer line near an ephemeral stream between Via Lobo Channel and Golden Lion Drive storm drain in the city of Temecula. DISTRICT is willing to contribute funding toward the cost of the Via Lobo Stream geomorphologic study ("ASSESSMENT STUDY"). The findings of this ASSESSMENT STUDY will help determine the geomorphic state of the stream. ASSESSMENT STUDY may also propose possible structural or non-structural solutions to prevent erosion and determine how the stream can reach equilibrium and not impact existing public utilities.

B. Due to mutual interests in ASSESSMENT STUDY, EMWD wishes DISTRICT to contribute funding toward the preparation of ASSESSMENT STUDY, and DISTRICT is willing to support EMWD's efforts by contributing funding for preparation of ASSESSMENT STUDY to better understand the impacts the stream has on the existing public utilities; and

C. DISTRICT's financial contribution toward the preparation of ASSESSMENT STUDY will assist with EMWD's selected consultant's proposal costs associated with geomorphologic assessment and study, hydrology and hydraulics, and development and reports ("ASSESSMENT STUDY COSTS"). DISTRICT's financial contribution toward

ASSESSMENT STUDY COSTS shall not exceed the total sum of One Hundred Thousand Dollars (\$100,000.00), hereinafter called "TOTAL DISTRICT CONTRIBUTION"; and

D. It is in the best interest of the public to proceed with preparation of ASSESSMENT STUDY at the earliest possible date; and

E. The purpose of this Agreement is to memorialize the mutual understandings by and between EMWD and DISTRICT with respect to ASSESSMENT STUDY, the payment of ASSESSMENT STUDY COSTS and 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

EMWD shall:

1. Prepare or cause to be prepared the necessary documents and reports for EMWD's selected consultant(s) to begin the preparation of ASSESSMENT STUDY, in accordance with the applicable EMWD standards.

2. Keep an accurate accounting of all ASSESSMENT STUDY COSTS as set forth in Recital D and provide this accounting to DISTRICT with EMWD's copy of the initial submittal of ASSESSMENT STUDY. ASSESSMENT STUDY COSTS accounting invoice shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers to EMWD's selected consultant, to establish the actual cost of assessment for EMWD for preparation of ASSESSMENT STUDY.

3. Issue a Notice to Proceed to EMWD's selected consultant(s) to begin the preparation of ASSESSMENT STUDY.

4. Issue an invoice to DISTRICT (Attention: Project Planning Section) for ASSESSMENT STUDY COSTS as set forth in Recital D, at the time of providing written Notice

to Proceed to EMWD's selected consultant(s) to begin the preparation of ASSESSMENT STUDY, subject to and provided that ASSESSMENT STUDY COSTS do not exceed the TOTAL DISTRICT CONTRIBUTION for ASSESSMENT STUDY.

5. Be responsible to pay any amounts that exceed TOTAL DISTRICT CONTRIBUTION for preparation of ASSESSMENT STUDY.

6. Provide DISTRICT with a copy of ASSESSMENT STUDY, upon completion of ASSESSMENT STUDY.

SECTION II

DISTRICT shall:

1. Pay EMWD within thirty (30) business days after receipt of EMWD's invoice for ASSESSMENT STUDY COSTS as set forth in Sections I.4, subject to and provided that ASSESSMENT STUDY COSTS do not exceed TOTAL DISTRICT CONTRIBUTION sum of One Hundred Thousand Dollars (\$100,000.00).

2. Not be responsible to pay any amounts that exceed TOTAL DISTRICT CONTRIBUTION for preparation of ASSESSMENT STUDY.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein for this Agreement, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of One Hundred Thousand Dollars (\$100,000.00) solely for ASSESSMENT STUDY COSTS. EMWD shall be responsible to pay any ASSESSMENT STUDY COSTS in excess of TOTAL DISTRICT CONTRIBUTION. Furthermore, no additional funding whatsoever shall be provided by DISTRICT for any subsequent ASSESSMENT STUDY modifications or scope extensions.

2. In the event the actual cost for ASSESSMENT STUDY is less than TOTAL DISTRICT CONTRIBUTION, EMWD shall refund the difference to DISTRICT within thirty (30) business days of completion of ASSESSMENT STUDY.

3. The obligations of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution toward ASSESSMENT STUDY as set forth herein. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify EMWD in writing. Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by EMWD. However, in the event DISTRICT does not pay EMWD within (30) business days of EMWD's selected consultant's Notice to Proceed, EMWD may terminate ASSESSMENT STUDY with EMWD's selected consultant(s) and DISTRICT shall be responsible for any costs incurred up to the date of such termination.

4. Under the provisions of this Agreement, DISTRICT shall bear no responsibility whatsoever for ASSESSMENT STUDY.

5. EMWD shall indemnify, defend and hold harmless and require its consultant(s) to indemnify, defend and hold harmless DISTRICT and County of Riverside (their 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 EMWD or EMWD's consultant(s) (including their officers, employees, subcontractors, agents or representatives ("Indemnitors")) 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 Indemnitors from this Agreement. EMWD or EMWD's consultant(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.

6. With respect to any action or claim subject to indemnification herein by EMWD or EMWD's consultant(s), EMWD or EMWD's consultant(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. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe EMWD or EMWD's consultant(s) indemnification to Indemnitees as set forth herein.

7. EMWD or EMWD's consultant(s) indemnification obligation hereunder shall be satisfied when EMWD or EMWD's consultant(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.

8. 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 EMWD or EMWD's consultant(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

9. 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 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.

10. 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.

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

12. Neither EMWD nor DISTRICT shall assign this Agreement without the written consent of the other Party. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

13. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity besides the Parties shall have any right of action based upon the provisions of this Agreement. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement.

14. 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

EASTERN MUNICIPAL WATER DISTRICT
2270 Trumble Road
Perris, CA 92570
Attn: General Manager

15. 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.

16. Any waiver by DISTRICT or EMWD 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 of this Agreement. Failure on the part of DISTRICT or EMWD 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 EMWD from enforcing this Agreement.

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

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

AUGUST 2, 2022.

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By for Edwin Quinonez

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 Sarah K. Moore

SARAH K. MOORE
Deputy County Counsel

By Yvonne Raso

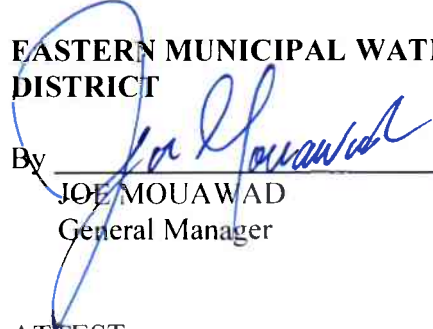
Deputy

(SEAL)

Funding Agreement: Eastern Municipal Water District
Via Lobo Stream Geomorphic Assessment Study
06/08/22
AK:blm

RECOMMENDED FOR APPROVAL:

**EASTERN MUNICIPAL WATER
DISTRICT**

By  _____
JOE MOUAWAD
General Manager

APPROVED AS TO FORM:

ATTEST:

By _____
Deputy City Attorney

By _____

(SEAL)

Funding Agreement: Eastern Municipal Water District
Via Lobo Stream Geomorphic Assessment Study
06/08/22
AK:blm