

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



ITEM: 11.2
(ID # 13940)

MEETING DATE:
Tuesday, August 30, 2022

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Norco for Norco Lateral N-1C Extension, Project No. 2-0-10035, CEQA Exempt, District 2. [\$745,293 Not-to-Exceed Cost - District Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Funding Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption;
2. Approve the Funding Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Norco ("City");
3. Authorize the Chair of the District's Board of Supervisors to execute the Funding Agreement documents on behalf of the District;
4. Authorize the General Manager-Chief Engineer or designee to approve, sign and execute any future non-substantive amendments to the Funding 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 two (2) copies of the executed Funding Agreement to the District.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 8/17/2022

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: August 30, 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	\$ 745,293	\$ 0	\$ 745,293	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Zone 2 Funds 100% (See Additional Fiscal Information)			Budget Adjustment: No	
			For Fiscal Year: 22/23	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Funding Agreement ("Agreement") sets forth the terms and conditions by which the District will contribute funding to the City to develop and implement the Norco Lateral N-1C Extension project as part of a City administered public works construction contract. Said facility is to be constructed by the City and inspected, operated and maintained by the City.

The Norco Lateral N-1C Extension project will be located within Pedley Avenue. The project will connect to the existing City facility and convey flows within Pedley Avenue north to the existing North Norco Channel Line N-1 facility.

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 CEQA Guidelines Section 15061(b)(3) ("Common Sense" exemption), which provides, "The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Agreement does not authorize to any extent whatsoever actual physical development of the underlining property. Such development, if it occurs at all, will be the result of subsequent actions subject to CEQA review by the City prior to construction. The Agreement merely establishes the terms by which the District will contribute funding to the City and assume ownership and responsibility for operation and maintenance of completed facilities greater than 36 inches in diameter. It can be seen with certainty that there is no possibility 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 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 capture the remaining runoff tributary to Pedley

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Avenue southerly of recently installed Lateral N-1C and direct it to the existing Norco Channel Line N-1 within Seventh Street.

SUPPLEMENTAL:

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 cost 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 MSHCP. The City is the lead agency and MSHCP permittee responsible for compliance with the applicable MSHCP requirements.

The District is providing up to \$725,151 in funding to the City. Sufficient funding is available in the District's Zone 2 budget for FY 2022-2023 and will be included in the proposed budget in future years as appropriate and necessary.

Funding Summary

Estimated Design and Administration Contribution	\$ 53,763
Estimated Construction Contribution	\$671,388
Maximum District Contribution to the City	\$725,151
Estimated MSHCP Mitigation Fee	\$ 20,142
(3% of Estimated Construction Contribution)	
Total Estimated District Cost	\$745,293

SOURCE OF FUNDS: (Continued)

- 25120-947240-536200 Contribution to Non-County Agency – Zone 2
- 25120-947240-523220 MSHCP – Zone 2

Attachments:

1. Vicinity Map
2. Funding Agreement

AMR:blm
P8/245241

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



Jason Farin, Principal Management Analyst 8/23/2022



Cynthia M. Guzzel, Chief Deputy County Counsel 8/18/2022

FUNDING AGREEMENT
 Norco Lateral N-1C Extension
 Project No. 2-0-10035

This Funding Agreement ("Agreement"), dated as of AUG 30 2022, 2022, is entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body politic ("DISTRICT") and the CITY OF NORCO, a municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". The Parties hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for, and CITY has prepared plans and specifications ("IMPROVEMENT PLANS") for the construction, operation and maintenance of Norco Lateral N-1C Extension (LATERAL N-1C); and

B. These IMPROVEMENT PLANS generally consist of the following:

1. LATERAL N1-C EXTENSION: A storm drain to provide flood protection to properties along Pedley Avenue which will consist of an underground storm drain approximately 1,166 lineal feet of 36-inch maximum diameter pipe that will convey flows within Pedley Avenue north to the existing LATERAL N-1C and
2. Certain inlets, catch basin, connector pipes associated with LATERAL N-1C which will be constructed to adequately collect and convey local flows within CITY-held easements or rights of way ("APPURTENANCES"); and

C. Together, LATERAL N-1C and APPURTENANCES are hereinafter called "PROJECT"; and

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

E. CITY desires that DISTRICT include certain unavoidable utility relocations as part of the DISTRICT's financial contribution to construct PROJECT. "UTILITY RELOCATIONS" is defined as (i) the relocation of CITY owned utilities that conflict with the construction of PROJECT; and (ii) the unavoidable relocation of utilities not owned by CITY that (a) conflict with the construction of PROJECT; and (b) cannot be relocated by others under CITY's franchise authority. These certain unavoidable UTILITY RELOCATIONS shall be included in the public works construction contract for PROJECT; and

F. Certain unavoidable UTILITY RELOCATIONS shall be included in the public works construction contract for PROJECT; and

G. CITY desires that DISTRICT contribute funding towards the construction of PROJECT; and

H. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution toward PROJECT's construction along with associated administrative and ancillary costs subject to the not to exceed amount in RECITALS K; and

I. DISTRICT's financial contributions shall be as follows:

1. One hundred percent (100%) of design proposal cost to offset CITY's costs associated with engineering design; hydrology and hydraulics; geotechnical analysis; potholing required to complete the design of PROJECT; California Environmental Quality Act ("CEQA") determination; preparation, application, and acquisition of the environmental clearance and permits if required for PROJECT; and other typical ancillary costs related to the preparation of improvement plans ("DESIGN CONTRIBUTION"). However, DESIGN CONTRIBUTION shall

- not include the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and
2. In the event that CITY chooses to hire an engineering consulting firm to prepare the IMPROVEMENT PLANS, DISTRICT is also willing to contribute an additional ten percent (10%) of design proposal cost to offset CITY's administrative costs associated with design contract administration ("DESIGN ADMIN"); and
 3. Up to one hundred percent (100%) of the lowest responsive and responsible bid contract amount for the construction of PROJECT and the costs associated with UTILITY RELOCATIONS ("BID PRICE"); and
 4. Up to an additional fifteen percent (15%) of BID PRICE to offset CITY's administrative cost associated with construction contract administration and other typical ancillary costs related to the delivery of the facility ("CONTRACT ADMINISTRATION CONTRIBUTION"); and
 5. Up to an additional ten percent (10%) of BID PRICE for construction contract change orders ("CONSTRUCTION CHANGE ORDERS CONTRIBUTION"); and

J. Altogether, DESIGN CONTRIBUTION, DESIGN ADMIN, BID PRICE, CONTRACT ADMINISTRATION CONTRIBUTION, and CONSTRUCTION CHANGE ORDERS CONTRIBUTION are hereinafter called "TOTAL DISTRICT CONTRIBUTION"; and

K. TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151); and

L. DISTRICT wishes to provide only financial assistance to CITY and have no other role; and

M. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY 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

CITY shall:

1. Pursuant to 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. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement. TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151) for PROJECT.

3. Prepare or cause to be prepared improvement plans, in accordance with the applicable CITY standards. CITY shall make reasonable efforts during the preparation of improvement plans to avoid utility conflicts associated with UTILITY RELOCATIONS.

4. Following the signing of IMPROVEMENT PLANS, invoice DISTRICT (Attention: Special Projects Section) for the (i) remainder of DESIGN CONTRIBUTION and

(ii) DESIGN ADMIN, and DISTRICT CONTRIBUTION shall not exceed a total sum of Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151) for PROJECT.

5. 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.

6. Upon execution of this Agreement, advertise, award and administer 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.

7. Provide DISTRICT with written notice (Attention: Contract Services Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the Contractor's actual bid amounts for PROJECT, setting forth the lowest responsible bid contract amount.

8. Order the relocation of all utilities within CITY rights of way which may conflict with the construction of PROJECT.

9. At the time of providing written notice of the award of a construction contract for PROJECT, invoice DISTRICT (Attention: Special Projects Section) for BID PRICE, subject to and provided that TOTAL DISTRICT CONTRIBUTION does not exceed a total sum of Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151) for PROJECT. BID PRICE shall be supported by a copy of CITY's bid abstracts for PROJECT.

10. 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. The procured insurance coverages shall name 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. CITY shall 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.

11. Construct or cause to be constructed PROJECT pursuant to a CITY administered public works contract in accordance with IMPROVEMENT PLANS.

12. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager.

13. 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.

14. Upon completion of PROJECT construction and CITY's acceptance thereof, accept ownership and sole responsibility for the design, operation and maintenance of PROJECT.

15. Upon completion of PROJECT construction, provide DISTRICT with a copy of CITY's Notice of Completion.

16. Keep an accurate accounting of all PROJECT costs along with CITY's CONTRACT ADMINISTRATION CONTRIBUTION. The final accounting of construction costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, CITY approved change orders and other such construction contract documents as may

be necessary, to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS.

17. At the time of providing a Notice of Completion, invoice DISTRICT (Attention: Special Projects Section) for CITY's CONTRACT ADMINISTRATION CONTRIBUTION and, if applicable, CITY's CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided TOTAL DISTRICT CONTRIBUTION shall not exceed, Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151) for DISTRICT review.

SECTION II

DISTRICT shall:

1. Within thirty (30) days after receipt of CITY's invoices (i) pay all approved CITY's invoices and (ii) review and approve associated documents as described in the RECITALS and SECTION I herein this Agreement, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed, Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151) for PROJECT.
2. 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 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.
3. Not be responsible to pay any amounts that exceed the TOTAL DISTRICT CONTRIBUTION for PROJECT.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein this Agreement, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Seven Hundred Twenty-Five Thousand One Hundred and Fifty-One Dollars (\$725,151) and shall be used by CITY solely for the purpose of constructing 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 BID PRICE, CITY shall refund the difference to DISTRICT within thirty (30) 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. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of Riverside (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, 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 CITY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontract) 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 CITY 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: Planning Division

CITY OF NORCO
2870 Clark Avenue
Norco, CA 92860
Attn: Director of Public Works

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 importance 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 CITY of any breach by any other Party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other

breach of the same or any other provision hereof. Failure on the part of DISTRICT or CITY to require from any other Party exact, full and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof or estopping DISTRICT or CITY from enforcing this Agreement.

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 such funds are not forth coming for any reason, DISTRICT shall immediately notify CITY in writing. The Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

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 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 Agreement.

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. 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 30, 2022
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By J. Uhley
JASON E. UHLEY
General Manager/Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

County Counsel

KECIA HARPER
Clerk of the Board

By Synthia M. Gunzel
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

By [Signature]
Deputy

(SEAL)

Funding Agreement w/City of Norco
Norco Lateral N-1C Extension
Project No. 2-0-10035
07/19/2022
LHM:rlp

RECOMMENDED FOR APPROVAL on August 3, 2022:

CITY OF NORCO

By 
GREG NEWTON
Mayor

APPROVED AS TO FORM:

By 
JOHN HARPER
City Attorney

ATTEST:

By 
DANA ROA
City Clerk

(SEAL)

Funding Agreement w/City of Norco
Norco Lateral N-1C Extension
Project No. 2-0-10035
07/19/2022
LHM:rlp



EXHIBIT
Lateral N-1C EXTENSION - STORM DRAIN

NTS

Exhibit B

DISTRICT's Insurance Requirements is as follows:

Without limiting or diminishing CONTRACTOR's obligation to indemnify or hold DISTRICT harmless, CONTRACTOR 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 CONTRACTOR has employees as defined by the State of California, CONTRACTOR 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 CONTRACTOR'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

FUNDING AGREEMENT

Norco Lateral N-1C
Project No. 2-6-10035

Exhibit B

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 CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

D. Professional Liability:

CONTRACTOR shall cause any architect or engineer retained by CONTRACTOR in connection with the performance of CONTRACTOR'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. CONTRACTOR 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 Trail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, prior to, the inception of this Agreement; or 3) demonstrate through

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Exhibit B

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. Pollution and Asbestos Liability:

CONTRACTOR or its construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering CONTRACTOR 's or its construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR or its construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

CONTRACTOR or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the

FUNDING AGREEMENT

Norco Lateral N-1C
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Exhibit B

DISTRICT for review and approval. If CONTRACTOR or its construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by CONTRACTOR or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

In the event, CONTRACTOR or its construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, CONTRACTOR or its construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT and CONTRACTOR, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT and CONTRACTOR. CONTRACTOR or its construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

- F. 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

FUNDING AGREEMENT

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Exhibit C

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 CONTRACTOR 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, 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.
- c. CONTRACTOR 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

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Exhibit C

DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CONTRACTOR insurance carrier(s) policies does not meet the minimum notice requirement found herein, CONTRACTOR shall cause CONTRACTOR '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 CONTRACTOR'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

FUNDING AGREEMENT

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Project No. 2-6-10035

Exhibit B

aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CONTRACTOR has become inadequate.

- g. CONTRACTOR 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. CONTRACTOR 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.

FUNDING AGREEMENT

Norco Lateral N-1C
Project No. 2-6-10035