

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 13.4
(ID # 19825)

MEETING DATE:
Tuesday, August 30, 2022

FROM : Regional Parks and Open Space District:

SUBJECT: REGIONAL PARKS AND OPEN SPACE DISTRICT: Authorization and Approval of Betterment & Reimbursement Agreement For Santa Ana River Trail Phase 3B with The Orange County Flood Control District; District 2. [\$510,000 Total Cost - Development Impact Fees Fund 30533 100%]

RECOMMENDED MOTION: That the Board of Directors:


1. Approve the Betterment & Reimbursement Agreement between the Riverside County Regional Park & Open-Space District and the Orange County Flood Control District;
2. Authorize the Chairman of the Board to execute the Agreement on behalf of the District;
3. Authorize the General Manager, based on the availability of fiscal funding and as approved by County Counsel, to sign amendments that exercise the options of the agreement including modifications of the statement of work that stay within the intent of the Agreement; and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total amount; and
4. Direct the Clerk of the Board to return (3) copies of the executed Agreement to the District.

ACTION:Policy

MINUTES OF THE BOARD OF DIRECTORS

On motion of Director Spiegel, seconded by Director 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: Parks

Kecia R. Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 510,000	\$ 0	\$ 510,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Development Impact Fees Western Regional Trails Fund 30533 – 100%			Budget Adjustment:	No
			For Fiscal Year:	22/23

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The development and construction of the Santa Ana River Trail (SART) relies on the coordination and cooperation of many different agencies to ensure the impacts of the project are minimized, both financially and environmentally.

Orange County Flood Control District (OCFCD) and the U.S. Army Corps of Engineers (Corps) are constructing the Santa Ana River, Prado Dam and other flood control and protection improvements, in and around the Prado Basin, commonly known as the Santa Ana River Mainstem Project ("SARP"). SARP is necessary to protect the safety, health and welfare of residents and properties in Orange County from the devastating effects of major storm events, including a 190-year storm event. OCFCD serves as the Local Sponsor, responsible for performing necessary relocations and acquisitions of property rights for SARP.

The Corps determined that the spillway upon land owned in fee by OCFCD and/or the Corps, as depicted and identified in the attached Exhibit "A", will act as the overflow structure situated adjacent to and just east of the Prado Dam. This work will be part of the project to construct improvements to the Prado Dam and appurtenances, Construction of the spillway will extend to the east and just north of the current auxiliary embankment.

The Riverside County Regional Park & Open-Space District (RivCoParks) has identified an opportunity for a Betterment and Reimbursement Agreement Exhibit "B" with OCFCD to reduce costs and minimize environmental impacts of a second construction project and has requested certain improvements be made to the aforementioned portion of SARP to include trail improvements for the SART.

Funding for design, environmental, administrative costs will be provided to OCFCD by RivCoParks, utilizing previously committed Development Impact Fees Western Trails Fund 30533.

The Agreement has been approved as to form by County Counsel.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**


Impact on Citizens and Businesses

This agreement will reduce costs and minimize environmental impacts of a second construction project for SART and will speed up the timeline for completion of this phase of the trail.

Attachments:

Exhibit "A" location map

Exhibit "B" Betterment & Reimbursement Agreement #MA-080-23010130



Jason Farin, Principal Management Analyst 8/24/2022

CLERK'S COPY

Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

Attachment A
MA-080-23010130

AGREEMENT

This agreement, hereinafter referred to as "AGREEMENT" and for purposes of identification hereby numbered MA-080-_____ and dated the _____ day of _____, 20____, ("EFFECTIVE DATE") is

BY and BETWEEN

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as "FLOOD DISTRICT,"

AND

RIVERSIDE COUNTY REGIONAL PARK AND OPEN-SPACE DISTRICT, a special district created pursuant to the California Public Resources Code Division 5, Chapter 3, Article 3, hereinafter referred to as "PARK DISTRICT,"

Which are sometimes individually referred to as "PARTY," or collectively referred to as "PARTIES."

RECITALS

WHEREAS, the Water Resources Development Act of 1986, P.L. 99-662 authorized construction of certain flood control improvements on the Santa Ana River and Santiago Creek, California, which includes as a component, improvements to the Prado Dam and Basin ("PRADO DAM"); and

WHEREAS, FLOOD DISTRICT and the U.S. Army Corps of Engineers ("CORPS") entered into a Project Cooperation Agreement dated February 11, 2003 as amended on October 7, 2020, to construct the PRADO DAM and other flood control and protection improvements in and around the Prado Basin, commonly known as the Santa Ana River Mainstem, Prado Dam Project ("PROJECT") which established FLOOD DISTRICT as the Local Sponsor, would be responsible for performing necessary relocations and acquiring property rights needed for completion of the PROJECT; while the CORPS will be responsible for preparation of plans, specifications, and estimates, and construction administration for the PROJECT; and,

WHEREAS, the CORPS determined as part of the PROJECT to construct improvements to the PRADO DAM and appurtenances that include the spillway upon land owned in fee title by FLOOD DISTRICT and/or the CORPS, as depicted and identified in the attached Exhibit A ("SPILLWAY"), to act as the overflow structure situated adjacent to and just east of the PRADO DAM. Construction of the SPILLWAY will extend to the east and just north of the current auxiliary embankment; and

WHEREAS, PARK DISTRICT is the lead agency in the development of the Santa Ana River Trail ("SART")

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1 through Riverside County and has funding available to develop and construct the SART; and

2 **WHEREAS**, PARK DISTRICT desires to include as part of PROJECT's Construction of the SPILLWAY, to
3 include the environmental document, design, installation, and construction of a PARK DISTRICT riding and hiking trail
4 for non-motorized bicycle, equestrian, and pedestrian use, as shown in the attached **Exhibit A** and incorporated by
5 this reference hereinafter referred to as "BETTERMENT"; and

6 **WHEREAS**, PARTIES desire to enter into this AGREEMENT to delineate the PARTIES' respective roles and
7 responsibilities for administration of funds, design, and construction of BETTERMENT, at PARK DISTRICT's cost;
8 and

9 **WHEREAS**, it is understood by PARTIES that the preeminent use of the property serving the PROJECT and
10 the proposed BETTERMENT is for flood control purposes; and

11 **WHEREAS**, PARK DISTRICT will be solely responsible for paying for all costs associated with inclusion of
12 the BETTERMENT as an addendum to the CORPS' PROJECT and shall obtain any resource agency or regulatory
13 approvals/permits as may be needed for implementation of the BETTERMENT; and

14 **WHEREAS**, CORPS has expressed its willingness to perform the development of the environmental
15 document in compliance with California Environmental Quality Act ("CEQA") and National Environmental Policy Act
16 ("NEPA"), and the design and construction of the BETTERMENT to aid PARK DISTRICT in completion of the SART
17 within the Prado Basin area shown in the attached Exhibit A, provided that PARK DISTRICT bears all related costs,
18 with no cost or expense to FLOOD DISTRICT or CORPS; and

19 **WHEREAS**, FLOOD DISTRICT, is willing to review the PARK DISTRICT-endorsed BETTERMENT
20 environmental documents and the plans, and specifications and engineer's estimate ("PSE") which are to be prepared
21 by the CORPS for compatibility with the SPILLWAY and flood control purposes, and to request that the CORPS: (1)
22 incorporate the BETTERMENT plans and specifications, which are determined to be compatible, as part of the
23 PROJECT's SPILLWAY plans, and (2) administer the construction contract for BETTERMENT; and

24 **WHEREAS**, FLOOD DISTRICT is willing to facilitate and pass-through funds from PARK DISTRICT to the
25 CORPS as needed to complete the BETTERMENT with the establishment of a separate account specifically for the
26 BETTERMENT FUND, as defined in Section 5(b) below; and

1 WHEREAS, the PARTIES wish to enter into this AGREEMENT to facilitate the CORPS' development of a
2 PSE which will provide an engineer's estimated cost to construct the BETTERMENT. The PARTIES are amenable to
3 amending this AGREEMENT as needed to incorporate PARK DISTRICT deposit of sufficient funds to cover the cost
4 of construction of the BETTERMENT based upon the CORPS' approved PSE. PARK DISTRICT understands
5 sufficient payment into the BETTERMENT FUND is required in advance of the FLOOD DISTRICT or the CORPS
6 incurring costs per this AGREEMENT; as such, entering into this AGREEMENT does not obligate the PARTIES to
7 construct the BETTERMENT.

8 **NOW, THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

9 **1. RECITALS**

10 The recitals set forth above are incorporated herein by this reference.

11 **2. PURPOSE**

12 The purpose of this AGREEMENT is to establish the terms and conditions between the PARTIES for
13 implementation of the CEQA/NEPA environmental documentation, design and construction phases of
14 the BETTERMENT in coordination with the CORPS and the CORPS' implementation of the PROJECT.

15 **3. AUTHORIZED PARTY REPRESENTATIVES**

16 a. FLOOD DISTRICT's Director of OC Public Works, or an authorized designee, hereinafter referred
17 to as "FLOOD DISTRICT REPRESENTATIVE," shall be FLOOD DISTRICT's representative in
18 all matters pertaining to this AGREEMENT.

19 b. PARK DISTRICT's General Manager, or an authorized designee, hereinafter referred to as
20 "PARK DISTRICT REPRESENTATIVE," shall be PARK DISTRICT's representative in all matters
21 pertaining to this AGREEMENT.

22 **4. PERIOD OF PERFORMANCE AND TERMINATION**

23 The term of this AGREEMENT shall commence upon the EFFECTIVE DATE. Thereafter, the
24 AGREEMENT shall remain in effect until such time the BETTERMENT has been found by the FLOOD
25 DISTRICT REPRESENTATIVE, to be constructed in accordance with approved BETTERMENT plans.
26 Once CORPS is contractually obligated to a contractor for construction of the BETTERMENT, or funds

1 for construction of the BETTERMENT have been transferred to CORPS, whichever happens sooner,
2 this AGREEMENT may not be terminated until the BETTERMENT is completed unless otherwise
3 mutually agreed to by both PARTIES.

4 **5. PARK DISTRICT RESPONSIBILITIES**

5 a. PARK DISTRICT shall be solely responsible for costs incurred for the BETTERMENT, including
6 expenses for CORPS preparation of the PSE, payment or reimbursement to the CORPS for
7 preparation of the necessary environmental documents, costs incurred by DISTRICT or the
8 CORPS for construction and implementation of the BETTERMENT portion of PROJECT, and
9 payment or reimbursement to the FLOOD DISTRICT for all costs associated with collaborating
10 with PARK DISTRICT and others for the preparation and review of the PSE and any other
11 documents for the BETTERMENT per this AGREEMENT; as well as costs associated with FLOOD
12 DISTRICT's discernment as to its compatibility with the SPILLWAY and flood control purposes.

13 PARK DISTRICT specifically agrees to reimburse costs ("BETTERMENT PAYMENT") associated
14 with the CORPS' preparation of the CEQA/NEPA environmental documentation and a PSE for the
15 BETTERMENT at PARK DISTRICT's direction. As of the Effective Date, the estimated
16 BETTERMENT PAYMENT is FIVE HUNDRED THOUSAND DOLLARS (\$500,000), with PARK
17 DISTRICT bearing additional costs for FLOOD DISTRICT's negotiation, finalization and
18 implementation of this AGREEMENT and the administration of the monies held in the
19 ADMINISTRATIVE FUND, as that term is defined in Section 5.f. below.

20 If the CORPS opts to develop the SPILLWAY plans to incorporate the BETTERMENT PSE, the
21 CORPS will inform FLOOD DISTRICT as to the engineer's estimated cost to construct the
22 BETTERMENT. At that time FLOOD DISTRICT will inform PARK DISTRICT as to the estimated
23 BETTERMENT cost and the PARTIES may amend this agreement to incorporate the cost of
24 construction and request the deposit of the funds from PARK DISTRICT.

25 b. Within thirty (30) calendar days of receipt of the Effective Date, PARK DISTRICT shall provide to
26 FLOOD DISTRICT an initial deposit of five hundred thousand dollars (\$500,000). FLOOD

1 DISTRICT shall manage this deposit as prescribed below in Section 6. ("BETTERMENT FUND").

2 c. Within ten (10) business days of receipt of CORPS' notification of its lowest bidder's bid amount
3 for construction of the BETTERMENT, PARK DISTRICT agrees to notify FLOOD DISTRICT if it
4 wishes to have CORPS construct the BETTERMENT according to said bid amount. Failure to
5 provide timely notification by PARK DISTRICT may result in the BETTERMENT not being
6 awarded and constructed.

7 d. PARK DISTRICT may at its discretion, at no cost to FLOOD DISTRICT and CORPS, furnish a
8 Resident Engineer during construction of the BETTERMENT portion of PROJECT. PARK
9 DISTRICT's Resident Engineer's access to the PROJECT site shall be subject to meeting all
10 CORPS regulations as dictated by CORPS' Resident Engineer. PARK DISTRICT shall be
11 entitled to consult and cooperate with CORPS' Resident Engineer, ensure conformance of the
12 construction of BETTERMENT with the approved plans and specifications and provide review
13 and approval for any change orders. However, after consultation and cooperation with PARK
14 DISTRICT, the decision of CORPS' Resident Engineer regarding all matters involving the
15 construction of BETTERMENT shall be final.

16 e. Subject to Section 5.c. above, PARK DISTRICT shall be responsible for payment of the full cost
17 to construct the BETTERMENT, the bid amount and all approved change orders for the
18 BETTERMENT portion of PROJECT. All material change orders shall be subject to review,
19 consultation and concurrence by PARK DISTRICT REPRESENTATIVE prior to their execution
20 and implementation, however, PARK DISTRICT's decision regarding change orders shall be
21 subordinate to CORPS' Resident Engineer's decision, which shall be final. Subject to this Section
22 and the Section above, PARK DISTRICT shall pay the costs for all approved change orders within
23 sixty (60) days after receipt of a written request for payment from FLOOD DISTRICT provided
24 such change order does not require approval by the Board of Directors for the PARK DISTRICT.
25 Should a change order require prior approval by the Board of Directors for the PARK DISTRICT,
26 then the PARK DISTRICT shall pay within sixty (60) days after approval Board of Directors for

1 the PARK DISTRICT. Documentation for change order requests pertaining to the BETTERMENT
2 shall be provided to PARK DISTRICT. PARK DISTRICT shall pay any cost increases for the
3 PROJECT or BETTERMENT due to time needed by PARK DISTRICT to review change orders.
4 FLOOD DISTRICT will notify PARK DISTRICT in writing when 75% of the BETTERMENT FUND
5 has been expended, and whenever it anticipates change orders that may affect the
6 BETTERMENT, with the goal of providing PARK DISTRICT adequate time to choose a course of
7 action.

8 f. PARK DISTRICT has separately allocated and approved funds for administrative costs incurred
9 by the FLOOD DISTRICT. PARK DISTRICT shall pay funds to FLOOD DISTRICT, in addition and
10 separate from BETTERMENT FUND, hereinafter referred to as "ADMINISTRATION FUND" to pay
11 for reasonable costs and expenses incurred by FLOOD DISTRICT in the performance of this
12 AGREEMENT. Within thirty (30) calendar days of the Effective Date, PARK DISTRICT shall make
13 an initial deposit with FLOOD DISTRICT of Ten thousand dollars (\$10,000) for the
14 ADMINISTRATION FUND. PARK DISTRICT shall deposit additional funds to FLOOD DISTRICT
15 for ADMINISTRATION FUND quarterly, within thirty (30) calendar days of receipt of written request
16 for replenishment of ADMINISTRATION FUND from FLOOD DISTRICT. In the event that such
17 amount exceeds the PARK DISTRICT's authority or approved amounts, PARK DISTRICT will
18 undertake efforts to approve additional funding; however, the PARK DISTRICT is not pre-
19 committed to obligate and approve additional funds. FLOOD DISTRICT shall include
20 documentation and justification with all requests for replenishment of the ADMINISTRATION
21 FUND.

22 g. PARK DISTRICT shall obtain all necessary approvals and permits, licenses, leases and/or
23 outgrants as may be required for the BETTERMENT and any modifications of the BETTERMENT
24 during the PROJECT construction. PARK DISTRICT shall obtain all permits at no cost to FLOOD
25 DISTRICT, including paying all incidental processing, reporting and/or administrative charges (as
26 well as for any amendments, re-application fees, etc.), as required by, but not limited to, the

1 following agencies and jurisdictions:

- 2 1) Orange County Flood Control District
- 3 2) Orange County Property Permits
- 4 3) United States of America, Department of the Army
- 5 4) U.S. Army Corps of Engineers
- 6 5) City of Corona

7 **6. FLOOD DISTRICT RESPONSIBILITIES**

- 8 a. FLOOD DISTRICT shall review the environmental documents, and any plans and specifications
9 prepared by CORPS for the BETTERMENT portion of PROJECT for its compatibility with the
10 SPILLWAY and flood control purposes. In the event the CORPS requests additional information
11 regarding the PSE or the environmental documents for compatibility with the SPILLWAY, or
12 requires modification to the plans, FLOOD DISTRICT will inform PARK DISTRICT. PARK
13 DISTRICT shall be responsible for providing all requested information and review/concurrence of
14 plan modifications by the CORPS and is responsible for all related costs. Once the additional
15 information is available and/or modifications have been reviewed and concurred with, PARK
16 DISTRICT shall transmit said information to FLOOD DISTRICT which shall transmit it to the
17 CORPS, for CORPS review and consideration as set forth herein.
- 18 b. If PARK DISTRICT submits additional BETTERMENT data to FLOOD DISTRICT, FLOOD
19 DISTRICT will forward said plans to the CORPS.
- 20 c. FLOOD DISTRICT shall directly transfer all appropriate BETTERMENT FUND amounts received
21 from PARK DISTRICT to CORPS for the environmental document development, design and
22 construction of BETTERMENT, if PARK DISTRICT elects to proceed with the BETTERMENT
23 after bid opening, in accordance with the terms of this AGREEMENT.
- 24 d. FLOOD DISTRICT shall deposit all ADMINISTRATION FUND payments from PARK DISTRICT
25 in a non-interest bearing deposit account, and use said funds to cover its administrative costs to
26 implement this AGREEMENT. FLOOD DISTRICT will provide quarterly and annual accounting in

1 a manner acceptable to both FLOOD DISTRICT and PARK DISTRICT, within thirty (30) calendar
2 days after the end of each quarter and sixty (60) calendar days after the end of each fiscal year.
3 FLOOD DISTRICT will exercise prudence with due fiduciary care in its use of the
4 ADMINISTRATION FUND. In the event the BETTERMENT is not constructed, FLOOD
5 DISTRICT is still entitled to recover its administrative costs from the ADMINISTRATIVE FUND
6 that were incurred pursuant to this AGREEMENT.

7 e. FLOOD DISTRICT shall instruct the CORPS to list the BETTERMENT as a deletable or "Option
8 Item" in the PROJECT bid documents, which will allow removal of the BETTERMENT from the
9 PROJECT bid documents if the PARK DISTRICT elects not to proceed with the BETTERMENT.
10 If CORPS, for whatever reason, fails to list the BETTERMENT as a deletable or Option Item, this
11 AGREEMENT may be terminated by either PARTY if discovery of said failure occurs prior to
12 PROJECT advertisement period provided that FLOOD DISTRICT can notify CORPS and request
13 to rectify the error. Under no circumstances may this AGREEMENT be terminated due to this
14 error after the PROJECT has been advertised.

15 f. After bid opening for the PROJECT, FLOOD DISTRICT will notify PARK DISTRICT of the total
16 BETTERMENT FUND required per this AGREEMENT, including the line item bid price for
17 construction of the BETTERMENT, as set forth in that lowest responsive and responsible bid as
18 determined by the CORPS, plus CORPS' design and administrative costs and contingencies.
19 As set forth in Section 5(c) PARK DISTRICT will have 10 business days to inform FLOOD
20 DISTRICT whether it elects to proceed with construction of the BETTERMENT accordingly. If
21 PARK DISTRICT elects to proceed, and if the post-bid BETTERMENT cost exceeds the amount
22 of money in the BETTERMENT FUND remitted to FLOOD DISTRICT by PARK DISTRICT, written
23 explanation of such excess amount shall be provided by FLOOD DISTRICT to PARK DISTRICT
24 prior to the award of the PROJECT contract by the CORPS to the successful bidder. After
25 reviewing such written explanation, PARK DISTRICT shall provide additional funds to be paid into
26 the BETTERMENT FUND and shall provide those additional funds to FLOOD DISTRICT within

1 sixty (60) calendar days of its receipt of a request for payment from FLOOD DISTRICT, and after
2 approval by the Board of Directors for the PARK DISTRICT if such approval is required.

3 g. If PARK DISTRICT elects to proceed with construction of the BETTERMENT and the successful
4 bid is such that total BETTERMENT FUND required to implement BETTERMENT is less than
5 PARK DISTRICT's initial deposit payment, FLOOD DISTRICT shall refund the amount remaining
6 in the BETTERMENT FUND to PARK DISTRICT within sixty (60) calendar days after the date
7 the contract is awarded to the successful bidder, and the BETTERMENT FUND being received
8 by the CORPS. Notwithstanding, within fifteen (15) calendar days after the date the contract is
9 awarded to the successful bidder, the PARK DISTRICT REPRESENTATIVE may notify FLOOD
10 DISTRICT in writing that PARK DISTRICT opts to keep the monies in the BETTERMENT FUND
11 that can be used for contract change orders/contract modifications or contingencies related to the
12 BETTERMENT, in which case FLOOD DISTRICT shall refund the amount remaining in the
13 BETTERMENT FUND to PARK DISTRICT within sixty (60) calendar days after the date the
14 SPILLWAY construction has been deemed by the CORPS to be completed.

15 h. FLOOD DISTRICT shall request that the CORPS require in the PROJECT specifications that all
16 persons or entities hired to perform the work contemplated by this AGREEMENT obtain, and
17 require their subcontractors to obtain, insurance of the types and in the amounts satisfactory to
18 both FLOOD DISTRICT and PARK DISTRICT prior to construction.

19 i. After completion of the PROJECT, FLOOD DISTRICT shall provide to PARK DISTRICT a final
20 written accounting of BETTERMENT FUND for the BETTERMENT portion of PROJECT
21 provided by the CORPS, and reconcile the amount deposited by PARK DISTRICT and refund
22 any amount remaining in BETTERMENT FUND as indicated by FLOOD DISTRICT's annual
23 accounting within thirty (30) calendar days of the date of the completion of final accounting. In
24 the case where this AGREEMENT has been terminated without initiation of the BETTERMENT
25 construction, FLOOD DISTRICT shall provide to PARK DISTRICT a final written accounting of
26 BETTERMENT FUND and refund any amount remaining in BETTERMENT FUND as indicated

1 by FLOOD DISTRICT's annual accounting within thirty (30) calendar days of the date of the
2 completion of final accounting.

3 j. After completion of the PROJECT, FLOOD DISTRICT shall provide to PARK DISTRICT a final
4 written accounting of ADMINISTRATION FUND and refund any amount remaining in
5 ADMINISTRATION FUND as indicated by FLOOD DISTRICT's annual accounting within thirty
6 (30) calendar days of the date of the completion of final accounting. In the case where this
7 AGREEMENT has been terminated without initiation of the BETTERMENT construction, FLOOD
8 DISTRICT shall provide to PARK DISTRICT a final written accounting of ADMINISTRATION
9 FUND and refund any amount remaining in ADMINISTRATION FUND as indicated by FLOOD
10 DISTRICT's annual accounting within thirty (30) calendar days of the date of the completion of
11 final accounting.

12 k. Prior to termination or expiration of this AGREEMENT, and regardless of whether the
13 BETTERMENT is to be constructed, FLOOD DISTRICT shall provide PARK DISTRICT a final
14 written request for PARK DISTRICT to make a payment to the BETTERMENT FUND and/or
15 ADMINISTRATIVE FUND, as needed to close out the costs incurred by FLOOD DISTRICT and
16 the CORPS. Within thirty (30) calendar days of the date of this final BETTERMENT
17 FUND/ADMINISTRATIVE FUND request, PARK DISTRICT agrees to pay FLOOD DISTRICT
18 the amount in the written request.

19 **7. NOTICES**

20 a. Notices or other communications which may be required or provided under the terms of this
21 AGREEMENT shall be given as follows:

22 FLOOD DISTRICT: Director, OC Public Works
23 County of Orange
24 P. O. Box 4048
25 Santa Ana, CA 92702-4048
26 Facsimile No. (714) 967-0876

1 PARK DISTRICT: General Manager
2 Riverside County Regional Park and Open-Space District
3 4600 Crestmore Road
4 Jurupa Valley, CA 92509-6858
5 Facsimile No. (951) 955-4305

- 6 b. All notices shall be in writing and deemed effective when delivered in person or on the second
7 business day after deposit in the United States mail, first class, postage prepaid and addressed
8 as above. Notwithstanding the above, the PARTIES may also provide notices by facsimile
9 transmission, and any such notice so given shall be deemed to have been given upon receipt
10 during normal business hours or in the event of receipt after business hours, the following
11 business day. Any notices, correspondence, reports and/or statements authorized or required by
12 this AGREEMENT, addressed in any other fashion shall be deemed not given.
- 13 c. Either PARTY hereto may change its address to which notices are to be sent by giving written
14 notice of such change to the other PARTY.

15 **8. INDEMNIFICATION**

16 a. Indemnification by PARK DISTRICT

17 PARK DISTRICT hereby agrees to indemnify, defend (with counsel approved in writing by
18 FLOOD DISTRICT), and hold harmless FLOOD DISTRICT, County of Orange ("COUNTY") and
19 the elected or appointed officers, employees, agents and authorized representatives of FLOOD
20 DISTRICT and/or COUNTY ("FLOOD DISTRICT/COUNTY INDEMNITEES") from any and all
21 losses, injuries, liability, damages, claims, costs and expenses (including attorneys' fees and
22 court costs), incurred by or made against FLOOD DISTRICT, COUNTY, or any FLOOD
23 DISTRICT/COUNTY INDEMNITEES arising out of or resulting from (i) any breach of this
24 AGREEMENT by PARK DISTRICT, and/or any claims related to or arising out of this
25 AGREEMENT including but not limited to the environmental documentation, the PSE, the design
26 and specifications of BETTERMENT and compliance with CEQA and/or NEPA, or (ii) the willful
 misconduct or negligent acts or omissions of PARK DISTRICT and/or PARK DISTRICT
 INDEMNITEES (as defined below) in connection with the performance of this AGREEMENT,

1 provided, however, that the indemnification provided by this subsection shall not operate to relieve
2 FLOOD DISTRICT or COUNTY from any loss, injury, liability, damages, claims, costs or
3 expenses to the extent determined by a court of competent jurisdiction to have been proximately
4 caused by the willful misconduct or negligent acts or omissions of FLOOD DISTRICT, COUNTY,
5 or the FLOOD DISTRICT/COUNTY INDEMNITEES, or the contractors, agents, employees,
6 representatives, invitees, licensees or guests of any of them. Approval by FLOOD DISTRICT of
7 PSE or construction plans for BETTERMENT improvements shall not relieve PARK DISTRICT of
8 any obligation described in this Section. As used in this subsection and Section 8(b), below, the
9 term "PARK DISTRICT INDEMNITEES" shall include any of the elected or appointed officers,
10 employees, agents or official representatives of the PARK DISTRICT.

11 b. Indemnification by FLOOD DISTRICT

12 FLOOD DISTRICT hereby agrees to indemnify, defend (with counsel approved in writing by
13 PARK DISTRICT) and hold harmless PARK DISTRICT and PARK DISTRICT INDEMNITEES
14 and the County of Riverside, or their elected or appointed officials, employees, agents and
15 authorized representatives from any and all losses, injuries, liability, damages, claims, costs and
16 expenses (including attorneys' fees and court costs), incurred by or made against PARK
17 DISTRICT, any PARK DISTRICT INDEMNITEE, or the County of Riverside arising out of or
18 resulting from (i) any breach of this AGREEMENT by the FLOOD DISTRICT, (ii) the willful
19 misconduct or negligent acts or omissions of the FLOOD DISTRICT or its elected or appointed
20 officials, officers, employees, agents, contractors and authorized representatives in connection
21 with the performance of this AGREEMENT, and (iii) FLOOD DISTRICT's obligations under the
22 terms of this Agreement or any other instruments provided for in this AGREEMENT; provided,
23 however, that the indemnification provided by this subsection shall not operate to relieve PARK
24 DISTRICT from any loss, injury, liability, damages, claims or expenses to the extent determined
25 by a court of competent jurisdiction to have been proximately caused by the willful misconduct or
26 negligent acts or omissions of PARK DISTRICT, PARK DISTRICT INDEMNITEES or the guests

1 or licensees of any of them. PARK DISTRICT acknowledges that FLOOD DISTRICT's indemnity
2 obligations do not include any loss, injury, liability, damages, claims or expenses arising out of
3 any risks assumed by PARK DISTRICT.

4 **9. HAZARDOUS OR TOXIC MATERIALS**

5 PARK DISTRICT shall not store or allow toxic or hazardous materials in areas that may affect
6 PROJECT, including BETTERMENT. If PARK DISTRICT breaches the obligations stated herein, or
7 if contamination by toxic or hazardous materials otherwise occurs for which PARK DISTRICT is legally
8 liable to FLOOD DISTRICT for damage resulting therefrom, then PARK DISTRICT shall indemnify,
9 defend with counsel approved in writing by FLOOD DISTRICT, and hold FLOOD DISTRICT and
10 COUNTY harmless from any and all claims, attorneys fees, consultant fees and expert witness fees
11 that arise during or after the term of this AGREEMENT as a result of such contamination. The
12 indemnification obligations imposed upon the PARK DISTRICT by this AGREEMENT shall only
13 survive until such time the statute of limitations period have run on such claims. This indemnification
14 includes without limitation costs and penalties paid, if any, incurred by FLOOD DISTRICT or COUNTY
15 in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration
16 work required by any federal, state or local governmental entity because of toxic or hazardous
17 materials being present in the soil or ground water and the presence of such materials in the soil or
18 ground water is determined to be proximately caused by the negligent acts or omissions of PARK
19 DISTRICT, its indemnitees, licensees or guests. PARK DISTRICT shall promptly take all actions at
20 its sole cost and expense as are necessary to clean, remove and restore the PROJECT to its condition
21 prior to the introduction of such toxic or hazardous materials by PARK DISTRICT provided PARK
22 DISTRICT shall first have obtained FLOOD DISTRICT's approval and the approval of any necessary
23 governmental entities.

24 **10. PARTY STATUS**

25 This AGREEMENT is by and between FLOOD DISTRICT and PARK DISTRICT and is not intended
26 and shall not be construed so as to create the relationship of agent, servant, employee, partnership,

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joint venture or association, as between FLOOD DISTRICT and PARK DISTRICT.

11. SUCCESSORS

This AGREEMENT shall be binding on the successors of the PARTIES hereto and shall not be succeeded by any PARTY without the prior written consent of the other PARTY. The consent of such other PARTY shall not be withheld unreasonably but, prior to approving any such succession involving the performance of any obligations pursuant to this AGREEMENT, the other PARTY shall be satisfied by competent evidence that the successor is technically qualified and financially able to perform those services to be succeeded. Failure to obtain the other PARTY's required prior written approval of any proposed succession will render such succession void.

12. WAIVER OF RIGHTS

The failure of FLOOD DISTRICT or PARK DISTRICT to insist upon strict performance of any of the terms, covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that FLOOD DISTRICT or PARK DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor shall such failure constitute a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

13. APPLICABLE LAW

This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Riverside, California and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the PARTIES have specifically agreed, as part of the consideration given and received for entering into this AGREEMENT, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

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14. SEVERABILITY

If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

15. ATTORNEY FEES/COSTS

Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each PARTY shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

16. WAIVER AND INTERPRETATION

Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this AGREEMENT or any provisions hereof. No provision in this AGREEMENT is to be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision.

17. AUTHORITY

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organizations or entities, enforceable in accordance with its terms.

18. AMENDMENTS

It is mutually understood and agreed by PARTIES that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by both PARTIES.

19. ENTIRE AGREEMENT

This document sets forth the entire AGREEMENT between the FLOOD DISTRICT and PARK DISTRICT and may be modified only by a written amendment between the PARTIES hereto, in accordance with Section 18 (AMENDMENTS), above.

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20. EXECUTION IN COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this AGREEMENT, the PARTIES may execute and exchange by telephone facsimile or email counterparts of the signature pages.

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1 **IN WITNESS WHEREOF**, each PARTY hereto has executed this AGREEMENT by its duly authorized representatives
2 as of the date set forth below.

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RIVERSIDE COUNTY REGIONAL PARK AND OPEN-SPACE DISTRICT, a special district created pursuant to the California Public Resources Code Division 5, Chapter 3, Article 3

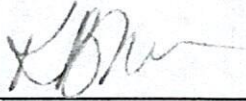
Date: AUG 30 2022

By: 
Chairman, Board of Directors

ATTEST
KECIA HARPER-IHEM
CLERK OF THE BOARD for the Board of Directors
for the Riverside County Regional Park & Open-Space District

APPROVED AS TO FORM
GREGORY P. PRIAMOS
COUNTY COUNSEL

By: 
Deputy

By:  8/3/22
Supervising Deputy County Counsel Date

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic in the State of California

Date: _____

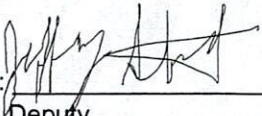
By: _____
Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

ATTEST

By: _____
ROBIN STIELER
Clerk of the Board of Supervisors of the Orange County Flood Control District, Orange County, California

By:  8-8-22
Deputy Date

Phase 3B Alignment

End of Phase 3B

Phase 3B

Start of Phase 3B

PRADO SPILLWAY

PRADO DAM

Santa Ana River



1000 ft

SANTA ANA RIVER TRAIL (SART)

EXHIBIT A

Palisades Dr

Palisades Dr

Palisades Dr

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