

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



ITEM: 11.3
(ID # 19690)

MEETING DATE:
Tuesday, September 13, 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 San Jacinto for Park Side Minor Drainage Improvement, Project No. 4-6-10001, CEQA Exempt, District 3. [\$240,500 Not to Exceed Cost – District Zone 4 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; and
2. Approve the Funding Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of San Jacinto ("City"); and
3. Authorize the Chair of the District's Board of Supervisors to execute the Funding Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return two (2) executed Funding Agreements to the District.

ACTION:Policy

A handwritten signature in blue ink, appearing to read "J. Uhley".

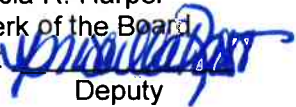
Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

8/31/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, 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: September 13, 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	\$240,500	\$0	\$240,500	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: Zone 4 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 in an amount not to exceed \$240,500 to the City for the sole purpose of improving an existing retention basin's force main, outlet ("Basin Improvements") and pump ("Basin Pump"), collectively referred to as the "Project", located on the Park Side Minor community development. The Project's construction is located on the east side of Sanderson Avenue, south of Cottonwood Avenue and north of 7th Street. The Project shall be inspected, owned, operated and maintained by the City. The District shall have no additional role.

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 the CEQA Guidelines Section 15061(b)(3), the "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 the City will assume ownership and responsibility for operation and maintenance of the Project. Therefore, it can be seen with certainty that there is no possibility the Agreement will have a significant effect on the environment.

Impact on Residents and Businesses

The District's financial contribution toward the City's Project is funded by ad valorem property tax revenue and entails no new fees, taxes nor bonded indebtedness to residents and businesses. Upon construction completion, the Project will alleviate ongoing flooding problems and will benefit residents and businesses in the area.

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Additional Fiscal Information

The District is providing up to \$240,500 in funding to the City. Sufficient funding is available in the District's Zone 4 budget for FY 2022-2023 as appropriate and necessary.

Funding Summary

Estimated Design and Administration Contribution	\$	120,250
Estimated Total Construction Contribution	\$	120,250
<hr/>		
Maximum District Contribution to the City	\$	240,500
Estimated MSHCP Mitigation Fee	\$	0
(3% of Estimated Construction Contribution)		
<hr/>		
Total Estimated District Cost	\$	240,500

SOURCE OF FUNDS: (Continued)

1. 25140-947460-536200 Contribution to Non-County Agency – Zone 4

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Funding Agreement

AK:blm

P8/243660


Jacqueline Ruiz, Sr. Management Analyst 9/7/2022


Cynthia M. Gwartzel, Chief Deputy County Counsel 8/31/2022

FUNDING AGREEMENT

**Park Side Minor Drainage Improvement
Project No. 4-6-10001**

This Funding Agreement ("Agreement"), dated as of September 13, 2022, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT") and the City of San Jacinto, a municipal corporation, ("CITY"). DISTRICT and CITY are individually referred to herein as "Party" and collectively referred to herein as "Parties". The Parties hereto hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and CITY proposes to redesign and reconstruct an existing retention basin's force main and outlet ("PARK SIDE IMPROVEMENTS") located on the east side corner of Sanderson Avenue, south of Cottonwood Avenue and north of 7th Street. Upon construction completion, PARK SIDE IMPROVEMENTS will provide the necessary flood control and drainage improvements along Sanderson Avenue as well as provide flood protection for the surrounding residential properties and adjacent streets located downstream of the area, all of which are located within the city of San Jacinto. PARK SIDE IMPROVEMENTS include the upgrade of an existing retention basin's pump ("PARK SIDE BASIN APPURTENANCES"), as shown in concept in blue on Exhibit "A", attached hereto and made a part hereto, located on the development area of the Park Side Village community; and

B. PARK SIDE IMPROVEMENTS and PARK SIDE BASIN APPURTENANCES shall be designed, constructed, inspected, owned, operated and maintained by CITY; and

C. PARK SIDE IMPROVEMENTS and PARK SIDE BASIN 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 DISTRICT to contribute funding toward the design and construction costs as set forth herein; and

F. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution toward PROJECT's design and construction costs as set forth herein and have no other role; and

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

- i. Up to one hundred percent (100%) of CITY's selected consultant's design proposal cost associated with engineering design, hydrology and hydraulics, geotech analysis and potholing ("DESIGN COST"), plus an additional ten percent (10%) of CITY's administrative costs associated with design administration ("DESIGN ADMIN COST"); and**
- ii. Up to one hundred percent (100%) of all costs associated with the California Environmental Quality Act ("CEQA") determination required for PROJECT, hereinafter called "CEQA COST"; and**
- iii. Up to one hundred percent (100%) of all costs associated with the lowest responsible bid construction contract price ("CONSTRUCTION CONTRACT COST"); and**
- iv. Up to an additional ten percent (10%) of CONSTRUCTION CONTRACT COST to offset CITY's administrative costs associated with construction contract administration and other typical ancillary costs related to the delivery of PROJECT ("CONSTRUCTION ADMIN COST"); and**

v. Up to an additional ten percent (10%) of CONSTRUCTION CONTRACT COST for construction contract change orders ("CONSTRUCTION CHANGE ORDER"); and

H. Altogether, DESIGN COST, DESIGN ADMIN COST, CEQA COST, CONSTRUCTION CONTRACT COST, CONSTRUCTION ADMIN COST and CONSTRUCTION CHANGE ORDER are hereinafter called "TOTAL DISTRICT CONTRIBUTION". TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum amount of Two Hundred Forty Thousand Five Hundred Dollars (\$240,500.00). CITY shall be responsible to pay any amounts in excess of TOTAL DISTRICT CONTRIBUTION; and

I. It is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

J. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to funding design, construction, inspection, ownership, operation and maintenance of PROJECT and the payment of TOTAL DISTRICT CONTRIBUTION.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

CITY shall:

1. Pursuant to the California Environmental Quality Act ("CEQA"), act as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.

2. Prepare or cause to be prepared the necessary plans and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable DISTRICT and CITY standards.

3. Keep an accurate accounting of all PROJECT costs associated to TOTAL DISTRICT CONTRIBUTION and provide this accounting along with future invoices to DISTRICT. 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.

4. Issue the first invoice to DISTRICT (Attention: Special Project Section) of fifty percent (50%) of DESIGN COST and CEQA COST along with a copy of CITY's selected consultant's proposal, as set forth in Recital H(i). TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum amount of Two Hundred Forty Thousand Five Hundred Dollars (\$240,500.00).

5. Issue the second invoice to DISTRICT (Attention: Special Project Section) of the remaining fifty percent (50%) of DESIGN COST, CEQA COST and 100% of the DESIGN ADMIN COST along with a copy of CITY signed IMPROVEMENT PLANS, as set forth in Recitals H(i) and H(ii). TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum amount of Two Hundred Forty Thousand Five Hundred Dollars (\$240,500.00).

6. If applicable, prior to advertising PROJECT for public works construction contract, secure all necessary permits, approvals or agreements required by any federal, state and local resource or regulatory agencies pertaining to PROJECT. Such documents may include, but are not limited to, a Section 404 permit issued by the U.S. Army Corps of Engineers, a Section 401 Water Quality Certification issued by the California Regional Water Quality Control Board (CRWQCB), a Streambed Alteration Agreement issued by the California Department of Fish and

Wildlife, and a National Pollutant Discharge Elimination System Permit issued by the State Water Resources Control Board or CRWQCB and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

7. Implement or cause to be implemented all environmental mitigation required in association with the construction, operation and maintenance of PROJECT, except for the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP").

8. Endeavor to advertise, award and administer a public works construction contract of the bids for PROJECT pursuant to the applicable provisions of the California Public Contract Code.

9. Prior to awarding a public works construction contract for PROJECT, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by DISTRICT to be unreasonably high.

10. Provide DISTRICT with written notice (Attention: Special Projects Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the construction contractor's actual bid amounts for PROJECT, setting forth CONSTRUCTION CONTRACT COST.

11. Issue the third invoice to DISTRICT (Attention: Special Project Section) of one hundred percent (100%) of CONSTRUCTION CONTRACT COST and CONSTRUCTION ADMIN COST, as set forth in Recitals H(iii) and H(iv), respectively, at the time of providing written notice of the award of the construction contract for PROJECT, as set forth in Section 1.10. TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum amount of Two Hundred Forty Thousand Five Hundred Dollars (\$240,500.00).

12. 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.

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

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

16. If applicable, issue the fourth invoice to DISTRICT (Attention: Special Project Section) of CONSTRUCTION CHANGE ORDER, as set forth in Recital H(iii), and provide DISTRICT the opportunity to review and approve CONSTRUCTION CHANGE ORDER prior to submitting the fourth invoice.

17. Upon completion of PROJECT construction and CITY's acceptance thereof, accept ownership and sole responsibility for the design, inspection, operation and maintenance of PROJECT in accordance with Recital C.

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

SECTION II

DISTRICT shall:

1. Within thirty (30) calendar days after receipt of CITY's first invoice, pay fifty percent (50%) of the DESIGN COSTS as set forth in Section I.4.
2. Within thirty (30) calendar days after receipt of CITY's second invoice, pay fifty percent (50%) of DESIGN COSTS, CEQA COSTS and DESIGN ADMIN COSTS as set forth in Section I.5.
3. Within thirty (30) calendar days after receipt of CITY's third invoice, pay CONSTRUCTION CONTRACT COSTS and CONSTRUCTION ADMIN COSTS as set forth in Section I.11.
4. If applicable, within thirty (30) calendar days after receipt of CITY's fourth invoice, pay CONSTRUCTION CHANGE ORDER as set forth in Section I.16.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein, this Agreement's TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Two Hundred Forty Thousand Five Hundred Dollars (\$240,500.00) and shall be used by CITY solely for the purpose of construction of said PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs. CITY shall be responsible to pay any amounts in excess of TOTAL DISTRICT CONTRIBUTION.
2. In the event the actual construction cost for PROJECT is less than the TOTAL DISTRICT CONTRIBUTION, CITY shall refund the difference to DISTRICT within thirty (30) calendar 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, inspection, operation or maintenance of PROJECT.

4. CITY shall indemnify, defend and hold harmless and require its construction contractor(s) to indemnify, defend and hold harmless DISTRICT and the County of Riverside (its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives (individually and collectively hereinafter referred to as "Indemnitees")) from any liability whatsoever, based or asserted upon any acts, omissions or services of CITY and CITY's construction contractor(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. CITY or CITY's construction contractor(s) shall defend, at its sole expense, all costs and fees, including, but not limited, to attorney fees, cost of investigation, defense, and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

5. With respect to any action or claim subject to indemnification herein by CITY or CITY's construction contractor(s), CITY or CITY's construction contractor(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 only with the prior consent of DISTRICT and the County of Riverside. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe CITY's or CITY's construction contractor(s) indemnification to Indemnitees as set forth herein.

6. CITY's and CITY's construction contractor(s) obligation hereunder shall be satisfied when CITY or CITY's construction contractor(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.

7. 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.

8. 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.

9. 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.

10. Any and all notices sent or required to be sent to the Parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contracts Services Section

CITY OF SAN JACINTO
166 East Main Street, Ste 2
San Jacinto, CA 92583
Attn: Stuart McKibbin

11. 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.

12. The obligations of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution toward PROJECT as set

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

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

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

15. 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.

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

17. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one 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

September 13, 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

By Karen S. Spiegel

JASON E. UHLEY
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

COUNTY COUNSEL

KECIA HARPER
Clerk of the Board

By Synthia M. Gunzel

By [Signature]
Deputy


SYNTHIA M. GUNZEL
Chief Deputy County Counsel

(SEAL)

Funding Agreement: City of San Jacinto
Park Side Minor Drainage Improvement
05/06/22
AK:blm

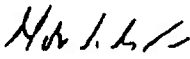
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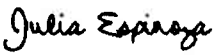
CITY OF SAN JACINTO

By 
ROBERT A. JOHNSON
City Manager

APPROVED AS TO FORM:

ATTEST:

By 
MICHAEL J. MAURER
City Attorney

By 
JULIA ESPINOZA
Deputy City Clerk

Funding Agreement: City of San Jacinto
Park Side Minor Drainage Improvement
05/06/22
AK:blm

EXHIBIT "A"



FUNDING AGREEMENT

Park Side Minor Drainage Improvement
Project No. 4-6-10001