

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



ITEM: 11.6
(ID # 20681)

MEETING DATE:

Tuesday, December 13, 2022

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Reimbursement Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Hemet for the Whittier Storm Drain, Stage 1 (aka Whittier Avenue Channel), CEQA Exempt per State CEQA Guidelines section 15061(b)(3), Project No. 4-0-00213, District 3. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Cooperative Funding Agreement is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3);
2. Approve the Reimbursement Agreement Between the Riverside County Flood Control and Water Conservation District ("District") and the City of Hemet ("City");
3. Authorize the Chair of the District's Board of Supervisors to execute the Reimbursement Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return two (2) fully executed Reimbursement Agreements to the District.

ACTION:Policy

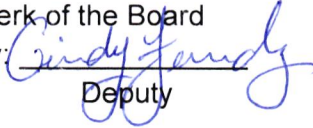


Claudio Padres 11/28/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Spiegel and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, and Hewitt
Nays: None
Absent: Perez
Date: December 13, 2022
xc: Flood

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment: No	
			For Fiscal Year: 22/23	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Reimbursement Agreement ("Agreement") sets forth the terms and conditions by which the City will reimburse the District for damages to its Whittier Storm Drain facility due to a broken City waterline. Through a contractor agreement with Scorpion Backhoe, Inc., the District repaired the concrete channel invert in the area of Kirby Street and Whittier Avenue Channel in an amount of One Hundred Ninety-Seven Thousand Four Hundred Sixteen Dollars (\$197,416).

Environmental Findings

The Agreement is exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines, which states "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 any physical development of the underlying property and the repair has already taken place. The Agreement is merely an administrative action for the City to reimburse the District for past repair work performed on its Whittier Storm Drain facility. 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 Agreement imposes no additional impacts to residents and businesses.

Additional Fiscal Information

The City will reimburse the District an amount of One Hundred Ninety-Seven Thousand Four Hundred Sixteen Dollars (\$197,416), which will be available for use on other Zone 4 projects.

ATTACHMENTS:

1. Vicinity Map
2. Reimbursement Agreement

AM:ju
P8/247210

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



Jason Farin, Principal Management Analyst 12/5/2022



Aaron Gettis, Deputy County Counsel 12/1/2022

REIMBURSEMENT AGREEMENT

Whittier Storm Drain, Stage 1
(aka Whittier Avenue Channel)
Project No. 4-0-00213

This Reimbursement Agreement ("Reimbursement Agreement"), dated as of December 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 Hemet, a California charter city and municipal corporation ("CITY"). DISTRICT and CITY may be referred to individually as a "Party" or collectively as the "Parties". The Parties hereby agree as follows:

RECITALS

A. DISTRICT owns, operates and maintains Whittier Storm Drain, Stage 1 (Project No. 4-0-00213), identified on DISTRICT's Drawing No. 4-0209, and as shown on Exhibit "A", hereinafter called "WHITTIER AVENUE CHANNEL", principally located in the city of Hemet; and

B. WHITTIER AVENUE CHANNEL is an essential and integral part of DISTRICT's regional system of stormwater management infrastructure that provides critical flood protection and drainage for the immediate adjacent areas within the city of Hemet; and

C. Due to a broken waterline discovered by DISTRICT on or about February 27, 2020, within the city of Hemet limits in Kirby Street (along the northbound travel way adjacent to the channel), WHITTIER AVENUE CHANNEL was damaged, requiring repair by DISTRICT ("Channel Invert Incident"); and

D. DISTRICT, through a construction agreement with Scorpion Backhoe, Inc., repaired the concrete channel invert in the area of Kirby Street and DISTRICT's WHITTIER AVENUE CHANNEL; and

E. As a result, DISTRICT is now seeking reimbursement from CITY in the amount of One Hundred Ninety-Seven Thousand Four Hundred Sixteen Dollars (\$197,416) for

the repairs to its WHITTIER AVENUE CHANNEL facility hereinafter called "DISTRICT CONSTRUCTION COSTS"; and

F. Subject to the provisions of this Reimbursement Agreement, CITY is willing to reimburse DISTRICT CONSTRUCTION COSTS associated with WHITTIER AVENUE CHANNEL; and

G. CITY desires to be relieved from all liability associated with DISTRICT's repairs to WHITTIER AVENUE CHANNEL; and

H. DISTRICT is willing to release CITY from all liability associated with DISTRICT's repairs to WHITTIER AVENUE CHANNEL; and

I. The Parties agree CITY's reimbursement of DISTRICT CONSTRUCTION COSTS for the repair of WHITTIER AVENUE CHANNEL and DISTRICT's release of CITY from all liability associated with DISTRICT's repairs to WHITTIER AVENUE CHANNEL are in the mutual interest of the Parties and the best interest of the public.

NOW, THEREFORE, in consideration of the preceding recitals, which are true and correct and incorporated into the term of this Reimbursement Agreement and of the mutual covenants and provisions of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION I

DISTRICT shall:

1. Upon execution of this Reimbursement Agreement, invoice CITY for DISTRICT CONSTRUCTION COSTS, in the amount of One Hundred Ninety-Seven Thousand Four Hundred Sixteen Dollars (\$197,416), as set forth herein in Recitals E and F.

2. Continue to accept ownership and responsibility for the hydraulic conveyance of WHITTIER AVENUE CHANNEL.

SECTION II

CITY shall:

1. Upon execution of this Reimbursement Agreement and within thirty (30) days after receipt of DISTRICT's invoice, as described in Section I.1, pay DISTRICT for DISTRICT CONSTRUCTION COSTS in the amount of One Hundred Ninety-Seven Thousand Four Hundred Sixteen Dollars (\$197,416), as set forth as set forth in Recitals E and F.

2. Continue to accept ownership and responsibility for the structural integrity of CITY's water production and distribution system that crosses WHITTIER AVENUE CHANNEL at Kirby Street, as well as responsibility for the maintenance of the bridge thereat.

SECTION III

It is further mutually agreed:

1. This Reimbursement 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 or action based upon the provisions of this Reimbursement Agreement.

2. Except for the obligations contained or created herein by this Reimbursement Agreement, the Parties hereby mutually release and forever discharge and hold harmless each other, the County of Riverside, including each of their respective Boards, elected officials, officers, commissions, departments, members, directors, employees, agents, insurers, adjusters, bonding companies, sureties, engineers, consultants, contractors, subcontractors, suppliers, successors, assigns, heirs, predecessors, attorneys, representatives and executors, both past and present, in any and all capacities, from any and all debts, claims, rights, potential claims, demands, losses, liabilities, liens, promises, acts, agreements, costs, interest, refunds, expenses (including, but not limited to, attorneys' fees, costs and interest), accounts, damages, judgments, obligations, actions and causes of action, of whatever kind or nature, in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, fixed or contingent, apparent or

concealed arising out of or relating in any way to only the Channel Invert Incident, Reimbursement Agreement, repairs to WHITTIER AVENUE CHANNEL by DISTRICT as described in the Reimbursement Agreement and payment of DISTRICT CONSTRUCTION COSTS by CITY, hereinafter collectively referred to as "Channel Invert Repair Matter". DISTRICT retains the right to take such action as may be permitted by law, and which DISTRICT determines to be in the public interest with regard to any future events involving WHITTIER AVENUE CHANNEL which occur after the execution of this Reimbursement Agreement.

3. It is the intention of the Parties to hereby settle and release fully and finally any and all matters, disputes and differences, known and unknown, suspected and unsuspected, which do now exist, may exist or heretofore have existed with respect to the Channel Invert Repair Matter. In furtherance of this intention and for avoidance of doubt, this release of all claims herein pertains only to the Channel Invert Repair Matter and does not pertain to any other claims nor are any future events covered by the release.

4. The Parties acknowledge and agree that nothing herein contained shall be construed as an admission of any liability of any kind on the part of the Parties by whom such liability is expressly denied. The release of all claims, described in Sections III.2 and III.3, is simply intended to resolve any underlining disputes in connection with the Channel Invert Repair Matter only, as specified here in, without admission of any liability.

5. This Reimbursement Agreement is to be construed in accordance with the laws of the State of California. To the maximum extent possible, each provision of this Reimbursement Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision in this Reimbursement Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect without being impaired or invalidated in any way.

6. Any waiver by a Party of any breach of any one or more of the terms of this Reimbursement Agreement by the other Party shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of a Party to require exact, full and complete compliance of the other Party with any terms of this Reimbursement Agreement shall not be construed as in any manner changing the terms hereof or estopping a Party from enforcement hereof.

7. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Reimbursement 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.

8. If any legal action is taken to enforce the terms of this Reimbursement Agreement by any Party, the prevailing Party may be entitled to recover reasonable attorney's fees and costs of such proceeding only if such Party has prevailed in a judgment by a court of competent jurisdiction.

9. No Party shall assign this Reimbursement Agreement without the written consent of the other Party. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

10. This Reimbursement 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 or action based upon the provisions of this Reimbursement Agreement.

11. Any and all notices sent or required to be sent to the Parties of this Reimbursement 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: Operations and Maintenance
Division

CITY OF HEMET
445 East Florida Avenue
Hemet, CA 92543
Attn: Lynn Merrill
Interim Public Works Director

12. This Reimbursement Agreement is the result of negotiations between the Parties hereto and with the advice and assistance of their respective counsel. No provision contained herein shall be construed against DISTRICT solely because, as a matter of convenience, DISTRICT prepared this Reimbursement Agreement in its final form.

13. This Reimbursement 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 and written, in connection therewith. This Reimbursement Agreement shall not be changed or modified except upon the written consent of the Parties hereto.

14. Each Party represents and warrants that the individuals executing this Reimbursement Agreement on behalf of that Party has authority to execute this Reimbursement Agreement on behalf of such Party, to bind such Party to this Reimbursement Agreement, and when executed by and delivered to all Parties, this Reimbursement Agreement shall be a valid and binding obligation of the Parties.

15. This Reimbursement Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument. Each Party of this Reimbursement 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 Reimbursement Agreement. The Parties further agree that the

electronic signatures of the Parties included in this Reimbursement 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.

//

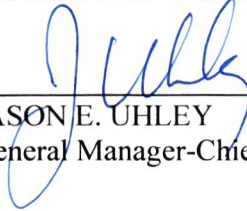
//

IN WITNESS WHEREOF, the Parties hereto have executed this Reimbursement

Agreement on December 13, 2022
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
JASON E. UHLEY
General Manager-Chief Engineer

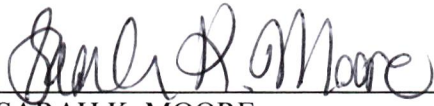
By 
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

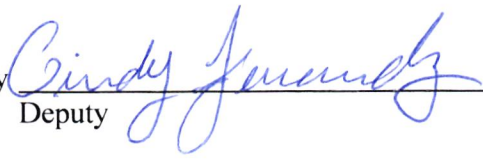
APPROVED AS TO FORM:

ATTEST:

COUNTY COUNSEL

KECIA HARPER
Clerk of the Board

By 
SARAH K. MOORE
Deputy County Counsel

By 
Deputy
(SEAL)

Reimbursement Agreement – City of Hemet:
Whittier Storm Drain, Stage 1
Project No. 4-0-00213
AMR:blm
03/31/22

RECOMMENDED FOR APPROVAL:

CITY OF HEMET

DocuSigned by:
Eddie Pust, Interim City Manager
By _____
4B1893760273405
Eddie Pust
Interim City Manager

DocuSigned by:
Malcolm Lilienthal, Mayor
By _____
288D6EFB2D64400
MALCOLM LILIENTHAL
Mayor

APPROVED AS TO FORM:

ATTEST:

DocuSigned by:
Steven Graham, City Attorney
By _____
CF04052F02D144D
STEVEN GRAHAM
City Attorney

DocuSigned by:
John Paul
By _____
E809F7C3AE0432
JOHN PAUL MAIER
City Clerk

(SEAL)

Reimbursement Agreement – City of Hemet:
Whittier Storm Drain, Stage 1
Project No. 4-0-00213
AMR:blm
03/31/22

Exhibit A



— District Facility