

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



ITEM: 11.1
(ID # 21382)

MEETING DATE:

Tuesday, May 09, 2023

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cooperative Maintenance Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Calimesa, on behalf of its Community Facilities District No. 2018-1 (Summerwind Trails), for Calimesa – Coriander Road Storm Drain, Calimesa – Engleman Road Storm Drain, and Calimesa – Palmer Avenue Storm Drain (Parcel Map 33105), Project Nos. 5-0-00163, 5-0-00164, and 5-0-00166, Nothing Further is Required Under CEQA, District 5. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that nothing further is required under CEQA because the Cooperative Maintenance Agreement and acceptance of the flood control facilities will not have a significant adverse effect on the environment and that any potentially significant environmental effects have been adequately analyzed in Final Environmental Impact Report (EIR) (SCH No. 2004061035), adopted with a Notice of Determination filed on April 21, 2005 by the Lead Agency (City of Calimesa);
2. Approve the Cooperative Maintenance Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Calimesa ("City"), on behalf of its Community Facilities District (CFD) No. 2018-1 (Summerwind Trails);

Continued on Page 2

ACTION:Policy

Jason Uhley, GENERAL MGR-CHIEF FLD CNTRL ENG 4/26/2023

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Gutierrez, 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 Gutierrez
Nays: None
Absent: None
Date: May 9, 2023
xc: Flood

Kimberly A. Rector
Clerk of the Board
By
Deputy

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

RECOMMENDED MOTION: That the Board of Supervisors:

3. Authorize the Chair of the District's Board of Supervisors ("Board") to execute the Cooperative Maintenance Agreement on behalf of the District;
4. Authorize the District's General Manager-Chief Engineer or designee to take all necessary steps to implement the Cooperative Maintenance Agreement, including, but not limited to, negotiating, approving, and executing any non-substantive amendments, subject to approval as to form by County Counsel; and
5. Direct the Clerk of the Board to return four (4) executed originals of the Cooperative Maintenance Agreement to the District.

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:			Budget Adjustment: No	
N/A			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Cooperative Maintenance Agreement ("Agreement") sets forth the terms and conditions by which certain flood control facilities required as a condition of approval for Parcel Map 33105, which were constructed by a previous developer, are to be inspected, operated, and maintained by the District and the City.

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District operation and maintenance of the referenced flood control facilities.

Once the City and the District mutually agree that said flood control facilities were constructed in accordance with the plans and specifications approved by the District and the City, the District will assume ownership and responsibility for the operation and maintenance of (i) Calimesa – Coriander Road Storm Drain, (ii) Calimesa – Engleman Road Storm Drain, and (iii) Calimesa – Palmer Avenue Storm Drain.

The City will assume ownership and responsibility for the operation and maintenance of certain access roads, catch basins, inlets, outlets, riprap, connector pipes and various storm drains, rock slope protection and embankment, emergency overflow area, various surface improvements, and water quality features that are located within City- or CFD-held easements or rights of way.

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County Counsel has approved the Agreement as to legal form. The City has executed the Agreement.

Environmental Findings

Pursuant to Section 15096 of the California Environmental Quality Act (CEQA) Statutes and State CEQA Guidelines, the District, in its limited capacity as a Responsible Agency, considered the EIR that was prepared by the Lead Agency for the developer's residential project and independently finds that the EIR adequately covers the District's actions. No significant adverse impacts will result from execution of the Agreement or from the operation and maintenance of the flood control facilities that are the subject of the Agreement. No mitigation or significant impacts would attribute to the District's actions as this is merely a maintenance agreement. The agreement would also be deemed exempt from CEQA pursuant to the State 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 merely establishes the terms and conditions under which the District will accept future operation and maintenance responsibilities of the facilities identified in the Agreement. As such, nothing further is required under CEQA.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements was a requirement for the development of Parcel Map 33105. The principal beneficiaries are the residents of the associated tracts. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Additional Fiscal Information

Future operation and maintenance costs of the District-maintained flood control facilities will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Maintenance Agreement

RMG:ju
P8/249917


Jason Farin, Principal Management Analyst 5/3/2023


Aaron Gettis, Deputy County Counsel 4/28/2023

COOPERATIVE MAINTENANCE AGREEMENT

Calimesa - Coriander Road Storm Drain
 Calimesa - Engleman Road Storm Drain
 Calimesa - Palmer Avenue Storm Drain
 Project Nos. 5-0-00163, 5-0-00164 and 5-0-00166
 Parcel Map 33105

This Cooperative Maintenance Agreement ("Agreement"), dated as of May 9th, 2023, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the City of Calimesa, a California municipal corporation ("CITY"), on behalf of its Community Facilities District No. 2018-1 (Summerwind Trails), hereinafter called "CFD". DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". The Parties hereto agree as follows:

RECITALS

A. LBREP/L-SunCal Summerwind LLC, a Delaware limited liability company ("PREVIOUS DEVELOPER") owned certain real property located in the city of Calimesa, including Parcel Map No. 33105; and

B. Pursuant to the conditions of approval for Parcel Map No. 33105, PREVIOUS DEVELOPER was required to construct certain flood control facilities in order to provide flood protection and drainage for PREVIOUS DEVELOPER's planned development; and

C. Pursuant to a Right of Entry and Inspection Agreement executed on February 15, 2007 by and between DISTRICT and PREVIOUS DEVELOPER, PREVIOUS DEVELOPER constructed, or caused to be constructed, the following flood control facilities as shown on DISTRICT's Drawing No. 5-0210, and as shown in concept on Exhibit "A", attached hereto and made a part hereof:

- i. Calimesa - Coriander Road Storm Drain ("CORIANDER STAGE 1"), which is shown as Line "E" on DISTRICT's Drawing No. 5-0210 and as shown in concept in green on Exhibit "A".

CORIANDER STAGE 1 consists of approximately 835 lineal feet of underground storm drain system, including the associated outlet structure; and

- ii. Calimesa - Engleman Road Storm Drain ("ENGLEMAN STAGE 1"), which is shown as Line "D" on DISTRICT's Drawing No. 5-0210 and as shown in concept in blue on Exhibit "A". ENGLEMAN STAGE 1 consists of approximately 2,240 lineal feet of underground storm drain system together with the associated outlet structure, and riprap located from Station 9+55.00 to Station 9+78.00; and
- iii. Calimesa - Palmer Avenue Storm Drain ("PALMER STAGE 1"), which is shown as Line "A" on DISTRICT's Drawing No. 5-0210 and as shown in concept in purple on Exhibit "A". PALMER STAGE 1 consists of approximately 3,490 lineal feet of underground storm drain system together with the associated offsite inlet structure, and offsite access road area. At its downstream terminus, PALMER STAGE 1 connects to an underground storm drain system owned, operated, and maintained by the City of Beaumont; and

D. Together, CORIANDER STAGE 1, ENGLEMAN STAGE 1 and PALMER STAGE 1 are hereinafter called "DISTRICT FACILITIES"; and

E. DISTRICT's Drawing No. 5-0210 is hereinafter called, "IMPROVEMENT PLANS"; and

F. Associated with DISTRICT FACILITIES was the construction of certain

access roads, catch basins, inlets, outlets, riprap, connector pipes and various storm drains that are labeled as "(MAINTAINED BY CITY OF CALIMESA)" or "TO BE MAINTAINED BY CITY OF CALIMESA" on IMPROVEMENT PLANS and rock slope protection and embankment, emergency overflow area, various surface improvements, and water quality features that are located within CITY or CFD held easements or rights of way (collectively, "CFD FACILITIES").

G. Together, DISTRICT FACILITIES and CFD FACILITIES are hereinafter called "PROJECT"; and

H. DISTRICT FACILITIES were constructed by PREVIOUS DEVELOPER, but have not been accepted by DISTRICT for ownership, operation and maintenance; and

I. CFD FACILITIES were constructed by PREVIOUS DEVELOPER, but have not been accepted by CITY for ownership, operation and maintenance; and

J. PREVIOUS DEVELOPER has ceased operation of its business; and

K. Additionally, a subsequent developer to Parcel Map No. 33105 constructed certain public use recreational facilities ("Trails"), some of which have replaced some the access roads for DISTRICT FACILITIES and CFD FACILITIES; and

L. The Trails are to be maintained by a homeowner's association; and

M. DISTRICT and CITY mutually agree that it is within the best interest of the public for DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES and CITY to accept ownership and responsibility for the operation and maintenance of CFD FACILITIES; and

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

DISTRICT shall:

1. To the extent possible under the prevailing conditions, inspect DISTRICT FACILITIES as deemed necessary and appropriate by DISTRICT.
2. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES provided CITY complies with the terms and conditions set forth in this Agreement, and upon (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.1, (ii) DISTRICT acceptance of DISTRICT FACILITIES construction as being complete, (iii) DISTRICT's General Manager-Chief Engineer determines that DISTRICT FACILITIES have been constructed in substantial compliance with IMPROVEMENT PLANS and the applicable engineering specifications, (iv) DISTRICT's determination that no defects in workmanship or materials are known to exist within DISTRICT FACILITIES or that any known defects have been corrected, (v) DISTRICT FACILITIES are fully functioning as a flood control drainage system as solely determined by DISTRICT, (vi) all rights of way and easements necessary for the ownership, operation and maintenance of DISTRICT FACILITIES are conveyed to DISTRICT by CITY as described in Section II.3., and (vii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.
3. Provide CITY with a reproducible duplicate copy of "record drawings" PROJECT plans within thirty (30) days of DISTRICT acceptance of DISTRICT FACILITIES as being complete.

SECTION II

CITY shall:

1. Inspect PROJECT.

2. Grant DISTRICT, by execution of this Agreement, the right to inspect, own, operate and maintain DISTRICT FACILITIES within CITY rights of way.

3. Prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, convey, or cause to be conveyed, to DISTRICT the flood control easement(s), or grant deed(s) of fee title, where appropriate, including ingress and egress, as deemed necessary by DISTRICT for the ownership, operation and maintenance of DISTRICT FACILITIES. The easement(s) or grant deed(s) shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property(ies) described in the easement(s) or grant deed(s).

4. At the time of recordation of the conveyance document(s) as set forth in Section II.3, furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value as determined by DISTRICT for each easement parcel to be conveyed to DISTRICT; or (ii) one hundred percent (100%) of the estimated value as determined by DISTRICT for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT's interest in said property as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which in the sole discretion of DISTRICT are acceptable.

5. Accept ownership and sole responsibility for the operation and maintenance of CFD FACILITIES upon (i) CITY acceptance of CFD FACILITIES construction as being complete, (ii) CITY's determination that CFD FACILITIES have been constructed in substantial compliance with the IMPROVEMENT PLANS and the applicable engineering specifications, (iii) CITY's determination that no defects in workmanship or materials are known to exist within CFD FACILITIES or that any known defects have been corrected, (iv) CFD FACILITIES are found to be in a satisfactorily maintained condition as solely determined by CITY, and (v)

DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance.

6. Upon DISTRICT and CITY acceptance of PROJECT construction as being complete, (i) accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY or CFD rights of way which must be performed at such time(s) that the finished grade along and above the underground portion of DISTRICT FACILITIES is improved, repaired, replaced or changed, (ii) utilize its authority to enforce the covenants, conditions and restrictions provisions and any applicable CITY ordinances to mitigate any adverse impacts to the District's ability to maintain DISTRICT FACILITIES, and (iii) not issue permits or approvals to the HOA for any modifications or improvements to Trails that would adversely impact DISTRICT's ability to maintain DISTRICT FACILITIES. It being further understood and agreed that any such adjustments to the manhole rings and covers located within CITY or CFD rights of way shall be performed at no cost to DISTRICT.

SECTION III

It is further mutually agreed:

1. All work involved with PROJECT shall be inspected by DISTRICT and CITY but shall not be deemed complete until (i) DISTRICT accepts DISTRICT FACILITIES construction as being complete and (ii) CITY accepts CFD FACILITIES construction as being complete.

2. CITY shall indemnify, defend, and hold harmless the DISTRICT and the County of Riverside (including their respective Agencies, Districts, Special Districts and Departments and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, contractors, agents and representatives) (individually and collectively hereinafter referred to as "Indemnitees") from any liability, action, claim or damage whatsoever, based or asserted upon any acts, omissions, or services of CITY (including its officers, elected

and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) (collectively "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. CITY shall defend, at its sole expense, the Indemnitees, including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged acts or omissions.

3. With respect to any action or claim subject to indemnification herein by CITY, CITY shall, at its sole cost, have the right to use counsel of its own choice and may adjust, settle, compromise any such claim only with 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 indemnification obligations to Indemnitees as set forth herein.

4. CITY indemnification obligations hereunder shall be satisfied when CITY has provided to DISTRICT and the County of Riverside the appropriate form of dismissal (or similar document) relieving DISTRICT and the County of Riverside from any liability for the claim, proceeding or action involved.

5. DISTRICT shall indemnify, defend, and hold harmless the CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liability, action, claim or damage whatsoever, based or asserted upon any acts, omissions, or services of DISTRICT (including their respective Agencies, Districts, Special Districts and Departments and their respective directors, officers, City Council, elected and appointed officials, employees, contractors, agents and representatives) related to sole negligence or willful misconduct of DISTRICT's performance under this Agreement beginning

with the date DISTRICT accepts DISTRICT FACILITIES in accordance with Section I.2 of this Agreement.

6. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this Agreement 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 DISTRICT or CITY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement hereof.

7. 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:

To DISTRICT: RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Operations Engineering Section

To CITY/CFD: CITY OF CALIMESA
COMMUNITY FACILITIES DISTRICT NO. 2018-1
(SUMMERWIND TRAILS)
c/o City of Calimesa
908 Park Avenue
Calimesa, CA 92320
Attn: City Manager

8. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of 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.

9. Any action at law or in equity brought by any of the Parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of

competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

10. 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.

11. 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 or action based upon the provisions of this Agreement.

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

13. Each Party to this Agreement warrants to the other that it is duly organized and existing and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents and bind the Parties thereto.

14. DISTRICT and CITY each pledge to cooperate in regard to the operation and maintenance of their respective facility as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facility.

15. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matters 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.

16. 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.

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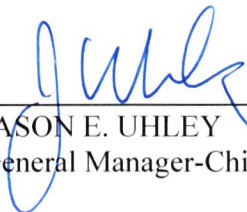
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on


5/9/23

(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

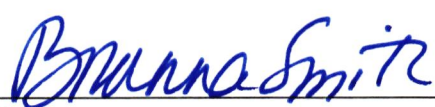
APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
CAROLINE K. MONROY
Deputy County Counsel

By 
Deputy

(SEAL)

Cooperative Maintenance Agreement
Calimesa - Coriander Road Storm Drain
Calimesa - Engleman Road Storm Drain
Calimesa - Palmer Avenue Storm Drain
Project Nos. 5-0-00163, 5-0-00164 and 5-0-00166
Parcel Map 33105
01/24/2023
RMG:ju

MAY 9 2023 11.1

CITY OF CALIMESA

By: *William Davis*
WILLIAM DAVIS
Mayor

APPROVED AS TO FORM:

By: *Quinn Barrow*
QUINN M. BARROW
City Attorney

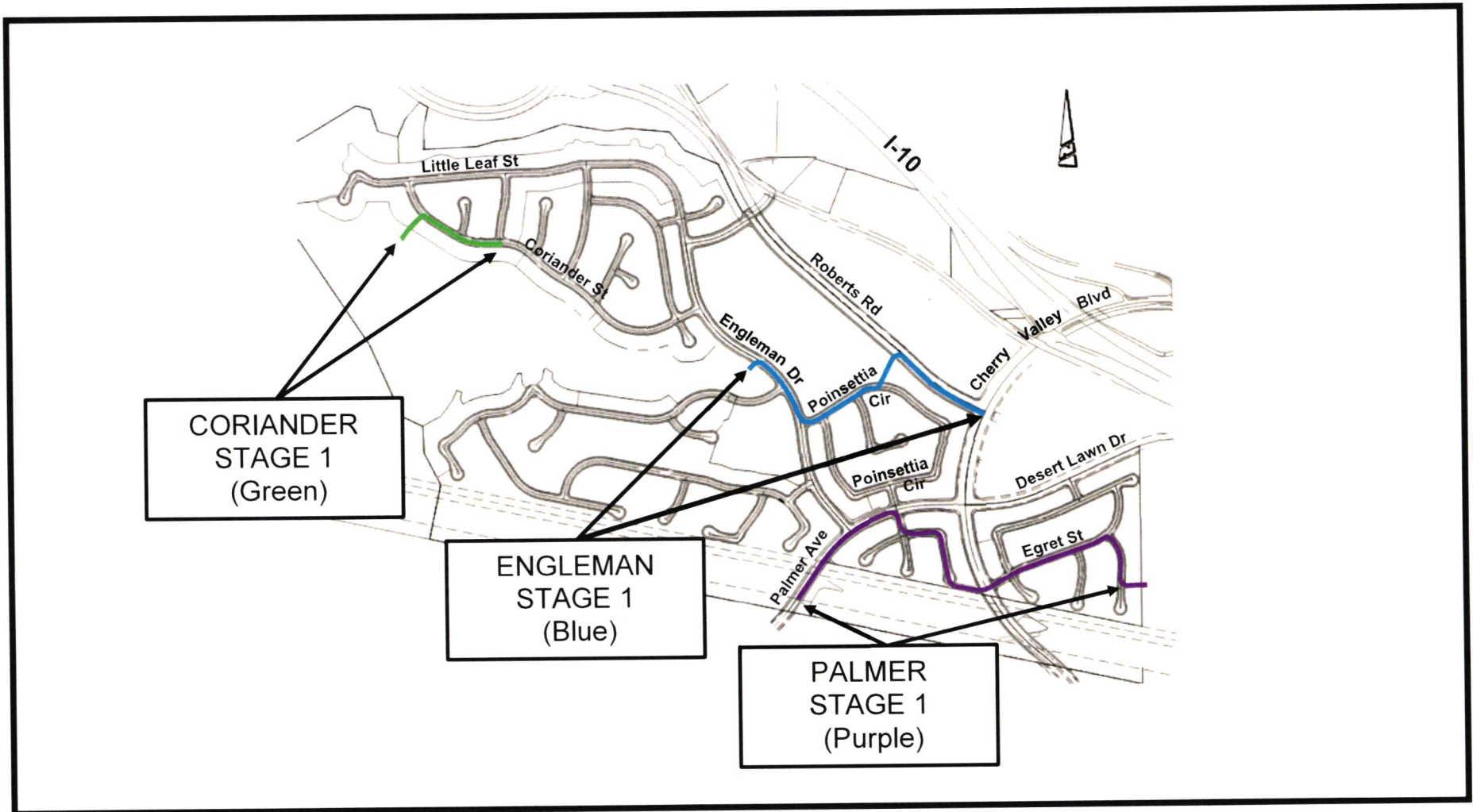
ATTEST:

By: *Darlene Gerdes*
DARLENE GERDES
City Clerk



Cooperative Maintenance Agreement
Calimesa - Coriander Road Storm Drain
Calimesa - Engleman Road Storm Drain
Calimesa - Palmer Avenue Storm Drain
Project Nos. 5-0-00163, 5-0-00164 and 5-0-00166
Parcel Map 33105
01/24/2023
RMG:ju

Exhibit A



COOPERATIVE MAINTENANCE AGREEMENT

Calimesa - Coriander Road Storm Drain | Calimesa - Engleman Road Storm Drain | Calimesa - Palmer Avenue Storm Drain

Project Nos. 5-0-00163, 5-0-00164, and 5-0-00166

Parcel Map 33105

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