

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



ITEM: 11.7
(ID # 22805)

MEETING DATE:

Tuesday, August 29, 2023

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approve the Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Norco for the Norco Elementary Storm Drain, Project No. 2-0-10048, CEQA Exempt, District 2. [\$1,617,723 Total Cost – District Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Funding Agreement ("Agreement") is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption;
2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Norco ("City");
3. Authorize the Chair of the District's Board of Supervisors to execute the Agreement documents on behalf of the District;
4. Authorize the General Manager-Chief Engineer or designee to take all necessary steps to implement the Agreement, including, but not limited to, negotiating, approving and executing any non-substantive amendments that do not increase the cost to the District and do not materially change the scope of services, subject to approval by County Counsel; and
5. Direct the Clerk of the Board to return two (2) executed Agreements to the District.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 8/16/2023

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: August 29, 2023
xc: Flood

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$1,617,723	\$0	\$1,617,723	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: (see source of funds below)			Budget Adjustment: No	
			For Fiscal Year: 2023/2024	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District will contribute funding to the City to develop and implement the Norco Elementary Storm Drain project as part of a City administered public works construction contract. Said facility is to be inspected, operated and maintained by the City.

The Norco Elementary Storm Drain project ("Project") will be located along Temescal Avenue and Norco Elementary School. The Project will collect flows along Temescal Avenue and Norco Elementary School and convey them to the District's South Norco Channel Line SA facility.

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

Environmental Findings

The Agreement is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), 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 for the construction of the Project. It can be seen with certainty that there is no possibility the Agreement will have a significant effect on the environment. Therefore, nothing further is required under CEQA.

Impact on Residents and Businesses

The District's financial contribution toward the City's Project is funded by ad valorem property tax revenue and entails no new fees, taxes nor bonded indebtedness to residents and businesses. Upon construction completion, the facilities will capture the flows along Temescal Avenue and Norco Elementary School and convey them to the District's South Norco Channel Line SA to reduce community flooding.

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Additional Fiscal Information

Pursuant to the Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") executed on June 22, 2004, the District is a participating agency. The District is making a payment to the Western Riverside County Regional Conservation Authority for up to 3% of the total capital cost as required mitigation for the construction of flood control facilities in cooperation with and on behalf of the City. The MSHCP mitigation fee is based on the engineer's estimated project cost, however, the actual 3% payment will be based on the project's lowest responsive contract bid price. The actual mitigation payment that will be made by the District may be reduced based on acquisition of replacement habitat for the benefit of Covered Species, as defined in the Implementing Agreement and MSHCP. The City is the Lead Agency and MSHCP permittee responsible for compliance with the applicable MSHCP requirements.

The District is providing up to \$1,572,261 in funding to the City. Sufficient funding is available in the District's recommended budget for FY 2023-2024 and will be included in the proposed future budgets as necessary.

Funding Summary

Estimated Design and Administration Contribution	\$ 56,870
Estimated Construction Contribution	\$1,515,391
Maximum District Contribution to the City	\$1,572,261
Estimated MSHCP Mitigation Fee (3% of Estimated Construction Contribution)	\$ 45,462
Total Estimated District Cost	\$1,617,723

SOURCE OF FUNDS:

1. 25120-947420 - 536200 Contribution to Non-County Agency – Zone 2
2. 25120-947240 - 523220 Licenses and Permits – Zone 2

ATTACHMENTS:

1. Vicinity Map
2. Funding Agreement

SK:blm
P8/252315


Jason Farin, Principal Management Analyst

8/22/2023


Kristine Bell-Valdez, Supervising Deputy County Counsel

8/17/2023

FUNDING AGREEMENT
Norco Elementary Storm Drain
Project No. 2-0-10048

This Funding Agreement ("Agreement"), dated as of August 29, 2023, is entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body politic ("DISTRICT") and the CITY OF NORCO, a municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". Parties hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and CITY has prepared plans and specifications ("IMPROVEMENT PLANS") for the construction, operation and maintenance of Norco Elementary Storm Drain ("NORCO ELEMENTARY"); and

B. These IMPROVEMENT PLANS generally consist of the following:

1. NORCO ELEMENTARY: A storm drain to provide flood protection to Norco Elementary School and properties along Temescal Avenue which will consist of a storm drain approximately 1,500 lineal feet of 24-inch maximum diameter pipe that will convey flows to South Norco Channel Line SA, as shown in concept on Exhibit "A"; and
2. Certain inlets, catch basin and connector pipes associated with NORCO ELEMENTARY which will be constructed to adequately collect and convey local flows within CITY-held easements or rights of way ("APPURTENANCES"); and

C. Together, NORCO ELEMENTARY and APPURTENANCES are hereinafter called "PROJECT"; and

D. CITY plans to advertise, award and administer a public works construction contract for PROJECT during Fiscal Year 2023/2024; and

AUG 29 2023 11.7

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

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

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

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

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

1. One hundred percent (100%) of the design proposal cost to offset CITY's costs associated with the engineering design; hydrology and hydraulics; geotechnical analysis; potholing required to complete the design of PROJECT; California Environmental Quality Act ("CEQA") determination; preparation, application and acquisition of the environmental clearance and permits, if required for PROJECT and other typical ancillary costs related to the preparation of improvement plans ("DESIGN CONTRIBUTION"). However, DESIGN CONTRIBUTION shall not include the fees associated with

the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and

2. In the event that CITY chooses to hire an engineering consulting firm to prepare IMPROVEMENT PLANS, DISTRICT is also willing to contribute an additional ten percent (10%) of design proposal costs to offset CITY's administrative costs associated with the design contract administration ("DESIGN ADMIN"); and
3. Up to one hundred percent (100%) of the lowest responsive and responsible bid contract amount for the construction of PROJECT and the costs associated with UTILITY RELOCATIONS ("BID PRICE"); and
4. Up to an additional fifteen percent (15%) of BID PRICE to offset CITY's administrative costs associated with construction contract administration and other typical ancillary costs related to the delivery of the facility ("CONTRACT ADMINISTRATION CONTRIBUTION"); and
5. Up to an additional ten percent (10%) of BID PRICE for construction contract change orders ("CONSTRUCTION CHANGE ORDERS CONTRIBUTION"); and

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

K. TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261); and

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

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

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

SECTION I

CITY shall:

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

2. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement. TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261) for PROJECT.

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

4. Following the signing of IMPROVEMENT PLANS, invoice DISTRICT (Attention: Special Projects Section) for the (i) remainder of DESIGN CONTRIBUTION and (ii) DESIGN ADMIN and TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261) for PROJECT.

5. Prior to advertising PROJECT for public works construction contract, obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry, encroachment permits, and temporary construction easements as may be needed to construct, operate and maintain PROJECT.

6. Upon execution of this Agreement, advertise, award and administer PROJECT pursuant to the applicable provisions of the California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a copy of PROJECT plans, specifications, bid documents and any subsequent addenda thereto.

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

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

9. At the time of providing written notice of the award of a construction contract for PROJECT, invoice DISTRICT (Attention: Special Projects Section) for BID PRICE, subject to and provided that TOTAL DISTRICT CONTRIBUTION does not exceed a total sum of One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261) for PROJECT. BID PRICE shall be supported by a copy of CITY's bid abstracts for PROJECT.

10. Procure or cause to be procured insurance coverages during the term of this Agreement. CITY shall require its PROJECT construction contractor(s) to furnish original certificate(s) of insurance and original certified copies of endorsements and, if requested, certified original policies of insurance including all endorsements and any and all other attachments. Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. The procured insurance coverages shall name DISTRICT, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured. CITY shall notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

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

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

13. Require its construction contractor(s) to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for all CITY and DISTRICT employees on the site.

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

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

16. Keep an accurate accounting of all PROJECT costs along with CITY's CONTRACT ADMINISTRATION CONTRIBUTION. The final accounting of construction

costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, CITY approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS.

17. At the time of providing a Notice of Completion, invoice DISTRICT (Attention: Special Projects Section) for CITY's CONTRACT ADMINISTRATION CONTRIBUTION and, if applicable, CITY's CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided TOTAL DISTRICT CONTRIBUTION shall not exceed, One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261) for DISTRICT review.

SECTION II

DISTRICT shall:

1. Within thirty (30) days after receipt of CITY's invoices (i) pay all approved CITY invoices and (ii) review and approve associated documents as described in the RECITALS and SECTION I herein this Agreement, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed, One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261) for PROJECT.

2. Within thirty (30) days of CITY awarding PROJECT, pay the Western Riverside County Regional Conservation Agency the mitigation fee for PROJECT per the 2004 Implementing Agreement for the MSHCP, which is either the lesser of (i) three percent (3%) of the lowest responsible bid; or (ii) three percent (3%) of lowest responsible bid contract price, less the value of any applicable PROJECT specific mitigation.

3. Not be responsible to pay any amounts that exceed the TOTAL DISTRICT CONTRIBUTION for PROJECT.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein this Agreement, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of One Million Five Hundred Seventy-Two Thousand Two Hundred and Sixty-One Dollars (\$1,572,261) and shall be used by CITY solely for the purpose of constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

2. In the event the actual construction cost for PROJECT is less than the BID PRICE, CITY shall refund the difference to DISTRICT within thirty (30) days of filing the Notice of Completion for PROJECT.

3. Under the provisions of this Agreement, DISTRICT shall bear no responsibility whatsoever for the design, construction, ownership, operation or maintenance of PROJECT.

4. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of Riverside (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontract) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including, but not limited to (a) property damage; (b) bodily injury or death; (c) payment of attorney fees; or (d) any other element of any kind or nature

whatsoever. This Section shall survive any termination of this Agreement until the statute of limitations period has run for any claims that could be asserted under this Agreement.

5. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6. This Agreement is to be construed in accordance with the laws of the State of California. Any action at law or in equity brought by any of 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 Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other Party.

7. This Agreement is made and entered into for the sole protection and benefit of Parties hereto. No other person or entity shall have any right of action based upon the provisions of this Agreement.

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Planning Division

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

9. This Agreement is the result of negotiations between Parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no importance or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

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

11. The obligations of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution toward PROJECT as set forth herein. In the event such funds are not forth coming for any reason, DISTRICT shall immediately notify CITY in writing. The Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

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

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

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

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions

Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. Parties further agree that the electronic signatures of 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 Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by 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 Agreement on

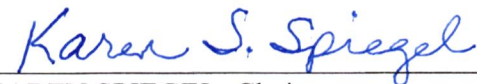
8/29/23

(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 
~~RYAN YABKO~~ *Kristine Bell Valdez*
Deputy County Counsel

By 
Deputy

(SEAL)

Funding Agreement with City of Norco
Norco Elementary Storm Drain
Project No. 2-0-10048
06/15/23
SK:blm

RECOMMENDED FOR APPROVAL:

CITY OF NORCO

Date: July 19, 2023

By Robin M Grundmeyer
ROBIN GRUNDMEYER
Mayor

APPROVED AS TO FORM:

ATTEST:

By [Signature]
HARPER & BURNS, LLC
City Attorney

By [Signature]
DANA ROA, CMC
City Clerk

(SEAL)

Funding Agreement with City of Norco
Norco Elementary Storm Drain
Project No. 2-0-10048
06/15/23
SK:blm

EXHIBIT A



Fiscal Year 2021-22
Proposed Project 5 - NORCO ELEMENTARY STORM DRAIN

