

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



ITEM: 11.2
(ID # 24567)

MEETING DATE:
Tuesday, April 09, 2024

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cooperative Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Calimesa for Calimesa Channel, Stage 3, Calimesa Channel, Stage 4 and Calimesa Detention Basin, Project Numbers 5-0-00160 and 5-0-00141 (Miscellaneous No. 183), CEQA Exempt per CEQA Guidelines Section 15061(b)(3), District 5. [\$11,447,260 Not-to-Exceed Cost – District Zone 5 Funding 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Cooperative Funding Agreement ("Agreement") is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3);

Continued on Page 2

ACTION:Policy

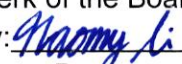
Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

3/26/2024

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: April 9, 2024
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:

2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Calimesa ("City");
3. Authorize the Chair of the District's Board of Supervisors to execute the Agreement 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 future non-substantive amendments to the Agreement that do not increase the cost to the District or materially change the provisions of the Agreement, subject to approval as to form by County Counsel, and to have the delegated authority to terminate the Agreement in accordance with the terms and conditions in the Agreement, if such action is desired by the District; and
5. Direct the Clerk of the Board to return two (2) fully executed originals of the Agreement to the District.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 3,147,412	\$ 8,299,848	\$ 11,447,260	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 25150-947480-536200 Contribution to Non-County Agency – Zone 5 100%			Budget Adjustment: No	
			For Fiscal Year: 23/24-27/28	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District will contribute up to Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) in funding to the City for the environmental permitting and mitigation, right of way acquisition and construction costs of Calimesa Channel, Stages 3 and 4 and Calimesa Detention Basin. Said flood control facilities, which include approximately 3,170 lineal feet of underground storm drain system and a 53-acre-foot detention basin, are to be designed and constructed by the City and inspected, operated and maintained by the District and the City. It is anticipated that the flood control facilities will be constructed in two phases:

- Phase 1, which consists of Calimesa Channel, Stage 3 and its associated appurtenances.
- Phase 2, which consists of Calimesa Channel, Stage 4 and its associated appurtenances, and Calimesa Detention Basin, which includes water conservation features.

Upon completion of construction of both phases, the District will assume ownership and responsibility for the operation and maintenance of the portions of the mainline storm drain

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

system that are greater than 36 inches in diameter and the detention basin, but not including the water conservation features. The City will assume ownership and responsibility for the operation and maintenance of (i) a low flow diversion storm drain, including the associated junction structure and outlet structure with grouted riprap and (ii) the flood control facilities' associated catch basins, inlets, connector pipes and storm drains that are 36 inches or less in diameter which will need to be constructed within the City's easements or rights of way. Additionally, the City will also assume responsibility for the operation and maintenance of water conservation features within the detention basin until a separate agreement or similar legal instrument for the operation and maintenance of said water conservation features is fully executed.

The City will enter into a separate agreement with the City of Yucaipa for the operation and maintenance of the flood control facilities' associated catch basins, inlets, manholes, connector pipes and storm drains that are 36 inches or less in diameter within the City of Yucaipa's rights of way.

County Counsel has approved the Agreement as to legal form, and the City intends to sign a counterpart to the Agreement on its April 15, 2024, meeting agenda. The City's executed Agreement is forthcoming.

Environmental Findings

The Agreement is exempt from CEQA pursuant to 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 does not authorize, to any extent whatsoever, actual physical development of the underlying property. The City is the Lead Agency pursuant to CEQA and will assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of the project. The City is also the responsible agency for preparing or causing to be prepared the necessary plans and specifications for the project; advertising and awarding the public works construction contract; and overseeing permits and approvals for the project. The Agreement merely establishes the terms by which the District will contribute funding to the City and assume ownership and responsibility for operation and maintenance of completed facilities. Therefore, it can be seen with certainty that there is no possibility the Agreement will have a significant effect on the environment and, thus, nothing further is required under CEQA for the Agreement.

Impact on Residents and Businesses

The District's financial contribution toward the flood control facilities is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses. Upon construction completion, the flood control facilities will provide flood protection and drainage improvements for County Line Road, Park Avenue, Calimesa Boulevard and the immediate adjacent areas.

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

Additional Fiscal Information

The District is providing up to up \$11,447,260 in funding to the City for the environmental permitting and mitigation, right of way acquisition and construction costs of said flood control facilities. Sufficient funding is available in the District's Zone 5 budget for FY 2023-2024 and will be included in the proposed budget in future years as appropriate and necessary. Future operation and maintenance costs associated with the portions of the mainline storm drain system that are greater than 36 inches in diameter and the detention basin will accrue to the District.

Funding Summary

\$ 3,723,965	Estimated Environmental and Right of Way Acquisition Contribution
\$ 7,723,295	Estimated Construction Contribution
<hr/>	
\$ 11,447,260	Maximum District Contribution to the City / Total Not-to-Exceed District Cost

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

AMR/RKM:rlp
P8/255328



Jason Farin, Principal Management Analyst 4/2/2024



Aaron Gettis, Chief of Deputy County Counsel 3/27/2024

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1019,
Post Office Box 1147, Riverside, Ca 92502-1147

Thank you

COOPERATIVE FUNDING AGREEMENT

Calimesa Channel, Stage 3
Calimesa Channel, Stage 4
Calimesa Detention Basin
Project Nos. 5-0-00160 and 5-0-00141
Miscellaneous No. 183

This Cooperative Funding Agreement ("Agreement"), dated as of April 09, 2024, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), and the City of Calimesa, a California municipal corporation ("CITY"). DISTRICT and CITY may be referred to collectively as the "Parties" and individually as a "Party." The Parties hereto agree as follows:

RECITALS

A. DISTRICT and CITY wish to work collaboratively to expedite the construction of certain flood control facilities to provide the necessary flood control and drainage improvements for County Line Road, Park Avenue, Calimesa Boulevard and the immediate adjacent areas within the cities of Calimesa and Yucaipa; and

B. These flood control facilities include Calimesa Channel, Stage 3, Calimesa Channel, Stage 4 and Calimesa Detention Basin; and

C. Calimesa Channel, Stage 3 ("STAGE 3"), as shown on DISTRICT's Drawing No. 5-0230 and in concept in magenta on Exhibit "A", attached hereto and made a part hereof, includes the construction of:

- i. ("MAINLINE"), which is comprised of approximately 2,200 lineal feet of underground storm drain system, which is to be constructed within County Line Road. At its upstream terminus, MAINLINE will terminate with a concrete bulkhead for future extension. At its downstream terminus, MAINLINE will terminate with a concrete bulkhead for future extension; and

- ii. ("LINE A1"), which is comprised of approximately 200 lineal feet of underground storm drain system, which is to be constructed within County Line Road and Calimesa Boulevard. At its upstream terminus, LINE A1 will terminate with a concrete bulkhead for future extension. At its downstream terminus, LINE A1 will connect to MAINLINE; and

D. Associated with the construction of STAGE 3 is the construction of:

- i. Certain catch basins, inlets, connector pipes and storm drains that are 36 inches or less in diameter located within CITY-held easements or rights of way ("CALIMESA PH 1"); and
- ii. Certain catch basins, inlets, manholes, connector pipes and storm drains that are 36 inches or less in diameter located within the City of Yucaipa-held easements or rights of way ("YUCAIPA APPURTENANCES"); and

E. Calimesa Channel, Stage 4 ("STAGE 4") and Calimesa Detention Basin ("BASIN"), as shown on DISTRICT's Drawing No. 5-0238, include the construction of:

- i. STAGE 4, which is comprised of three flood control facilities that total to approximately 770 lineal feet described in subparagraphs (a) through (c) below. STAGE 4 is shown in concept in yellow on Exhibit "A":
 - a. "STG 4A" is comprised of approximately 120 lineal feet of underground storm drain system. At its upstream terminus, STG 4A will connect to MAINLINE. At its downstream terminus,

STG 4A will connect to an existing 78-inch storm drain ("EXISTING STORM DRAIN"); and

- b. "STG 4B" is comprised of approximately 440 lineal feet of underground storm drain system and approximately 70 lineal feet of box culvert warped wingwalls. To construct STG 4B, CITY must remove a certain portion of DISTRICT's existing Calimesa Channel, Stage 1 ("STAGE 1"), as shown on DISTRICT's Drawing No. 5-0139. At its upstream terminus, STG 4B will connect to the remaining STAGE 1. At its downstream terminus, STG 4B will connect to MAINLINE; and
- c. LINE A2 is comprised of approximately 210 lineal feet of underground storm drain system. At its upstream terminus, LINE A2 will connect to an existing 6' x 6' reinforced concrete box storm drain. At its downstream terminus, LINE A2 will connect to LINE A1; and

- ii. BASIN, as shown in concept in blue on Exhibit "A", which is comprised of an approximately 53-acre-foot detention basin and the associated inlet, outlet, maintenance access road, access ramp, fencing, lines and grades, rectangular channel, and spillway; and

F. Associated with the construction of STAGE 4 is the construction of:

- i. Certain catch basins, inlets, connector pipes and storm drains that are 36 inches or less in diameter that will need to be constructed within CITY-held easements or rights of way are hereinafter called ("CALIMESA PH 2"); and

ii. A low flow diversion storm drain that will need to be constructed within CITY-held easements or rights of way are hereinafter called ("CALIMESA LINE B"). CALIMESA LINE B is comprised of a junction structure, an outlet structure with grouted riprap, and a storm drain that is 36 inches or less in diameter; and

G. Altogether, STAGE 3, STAGE 4 and BASIN are hereinafter called ("DISTRICT FACILITIES"); and

H. Altogether, CALIMESA PH 1, CALIMESA PH 2 and CALIMESA LINE B are hereinafter called ("CITY APPURTENANCES"); and

I. DISTRICT FACILITIES, CITY APPURTENANCES and YUCAIPA APPURTENANCES are hereinafter altogether called ("PROJECT"); and

J. CITY wishes to incorporate water conservation features within BASIN ("WATER CONSERVATION FEATURES"). CITY and/or the South Mesa Water District shall be responsible for the operation and maintenance of such WATER CONSERVATION FEATURES pursuant to a separate agreement or similar legal instrument ("SEPARATE AGREEMENT"). CITY is willing to be responsible for the operation and maintenance of WATER CONSERVATION FEATURES until such time that SEPARATE AGREEMENT is fully executed, provided CITY agrees that such WATER CONSERVATION FEATURES shall not interfere with PROJECT as per of this Agreement; and

K. CITY anticipates advertising and constructing PROJECT in two phases:

i. "PHASE 1", which is defined as STAGE 3, CALIMESA PH 1, and YUCAIPA APPURTENANCES; and

- ii. "PHASE 2", which is defined as STAGE 4, BASIN, CALIMESA PH 2, and CALIMESA LINE B. PHASE 1 and PHASE 2 may be referred to individually as a "PHASE" or collectively as the "PHASES"; and

L. Since PHASE 2 includes the outlet for PHASE 1, if construction of PHASE 1 is completed prior to the completion of PHASE 2 construction, CITY is willing to:

- i. Plug, seal, and prevent operation of all PHASE 1 inlets and catch basins; and
- ii. Upon completion of construction of PHASE 1:
 - a. Own, operate, and maintain STAGE 3 until DISTRICT accepts DISTRICT FACILITIES for ownership, operation, and maintenance; and
 - b. Own, operate, and maintain CALIMESA PH 1; and
 - c. Accept YUCAIPA APPURTENANCES for ownership, operation and maintenance; and

M. City of Yucaipa is willing to be responsible for the operations and maintenance of YUCAIPA APPURTENANCES. CITY intends to enter into a separate agreement or legal similar instrument with the City of Yucaipa setting forth the operation and maintenance responsibilities for YUCAIPA APPURTENANCES ("YUCAIPA AGREEMENT").

N. DISTRICT will not accept DISTRICT FACILITIES for ownership, operation, and maintenance until: (i) construction of PHASE 1 and PHASE 2 are completed pursuant to this Agreement and (ii) EXISTING STORM DRAIN is accepted by either DISTRICT or CITY for ownership, operation, and maintenance in accordance with Section III; and

O. CITY is willing to assume the lead role for PROJECT and, therefore, will provide the administrative, technical, managerial and support services necessary to plan, design and construct PROJECT; and

P. CITY desires that DISTRICT include certain unavoidable utility relocations as part of the 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

Q. Due to the Parties' mutual interest in PROJECT, DISTRICT wishes to support CITY's efforts by providing a financial contribution to implement PROJECT; and

R. DISTRICT is willing to provide a financial contribution toward PROJECT and shall be as follows, subject to the not to exceed amount provided in Recital S below:

i. "ENVIRONMENTAL CONTRIBUTION", defined as

One hundred percent (100%) of CITY's actual, reasonable cost of obtaining environmental permits and mitigation required specifically for PROJECT, or portions thereof. However, ENVIRONMENTAL CONTRIBUTION shall not include the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and

ii. ("ROW CONTRIBUTION"), defined as

One hundred percent (100%) of the actual costs (not to exceed appraised value and/or administrative settlement costs and estimated escrow and

closing costs) for right of way acquisition, rights of entry and temporary construction easements for PROJECT; and

- iii. ("PH 1 CONSTRUCTION CONTRIBUTION"), defined as
Up to one hundred percent (100%) of the lowest responsible and responsive bid contract price for construction of PHASE 1 and the costs associated with UTILITY RELOCATIONS. In addition, any remaining funds may be used for PHASE 2 as defined below; and
- iv. ("PH 2 CONSTRUCTION CONTRIBUTION"), defined as
Up to one hundred percent (100%) of the lowest responsible and responsive bid contract price for construction of PHASE 2 and the costs associated with UTILITY RELOCATIONS, PH 2 CONSTRUCTION CONTRIBUTION; and
- v. Up to an additional fifteen percent (15%) of PH 1 CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration and other typical ancillary costs related to the delivery of PROJECT ("PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and
- vi. Up to an additional fifteen percent (15%) of PH 2 CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration and other typical ancillary costs related to the delivery of PROJECT ("PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and

S. Altogether, ENVIRONMENTAL CONTRIBUTION, ROW CONTRIBUTION, PH 1 CONSTRUCTION CONTRIBUTION, PH 2 CONSTRUCTION

CONTRIBUTION, PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION and PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION are hereinafter called ("DISTRICT CONTRIBUTION"). DISTRICT CONTRIBUTION for PROJECT shall not exceed a total of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260); and

T. CITY agrees to fund and secure all remaining costs of PROJECT that exceeds DISTRICT CONTRIBUTION, as set forth herein; and

U. CITY desires DISTRICT to ultimately accept ownership and responsibility for operation and maintenance of DISTRICT FACILITIES. Therefore, DISTRICT must review and approve CITY's plans and specifications for DISTRICT FACILITIES and subsequently inspect the construction of DISTRICT FACILITIES; and

V. DISTRICT desire CITY to accept ownership and responsibility for the operation and maintenance of CITY APPURTENANCES, and if applicable WATER CONSERVATION FEATURES; and

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

X. 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 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 PHASE 1 ("PH1 PLANS"), in accordance with the applicable DISTRICT standards, CITY standards and City of Yucaipa standards and submit to DISTRICT (Attention: Special Projects Section) for review and approval prior to advertising PHASE 1 for construction bids.
3. Prepare or cause to be prepared the necessary plans and specifications for PHASE 2 ("PH2 PLANS"), in accordance with the applicable DISTRICT standards and CITY standards, and, if applicable, City of Yucaipa standards and submit to DISTRICT (Attention: Special Projects Section) for review and approval prior to advertising PHASE 2 for construction bids. PH1 PLANS and PH2 PLANS may be referred to individually or collectively as ("IMPROVEMENT PLANS").
4. Make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS.
5. Keep an accurate accounting of all PROJECT costs associated with the DISTRICT CONTRIBUTION as set forth in RECITAL R and provide this accounting along with future invoices to DISTRICT. The final accounting of PROJECT costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, conservation easements, appraisal reports, purchase and sales agreements and other such documents as may be necessary to establish the actual costs obtaining the necessary environmental permits and mitigation, the right

of way acquisition, rights of entry and temporary construction easements and the actual cost of construction and the contract administration cost associated with PROJECT, as set forth in Sections I.15., I.18., I.22., I.25., I.45 and I.46.

6. Prior to advertising PROJECT for public works construction contract, secure all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT. Such documents, hereinafter called ("REGULATORY PERMITS") may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority. All applications for REGULATORY PERMITS ("APPLICATIONS") and all REGULATORY PERMITS must be provided to DISTRICT in accordance with Sections I.9 and I.11.

7. Prepare, or cause to be prepared, all rights of way and easements documents, legal and plats, aerial topography, and survey control, including any requests for waivers and variances from policies, deemed necessary for the construction, operation, and maintenance of DISTRICT FACILITIES and submit to DISTRICT (Attention: Real Estate Services) for its review and approval.

8. Prior to advertising PROJECT for public works construction contract, secure 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 ("ROW DOCUMENTS") and consult with DISTRICT, and, if applicable, with City of Yucaipa regarding existing dedications, proposed legal descriptions, plat maps basemap and survey controls. All ROW DOCUMENTS must be provided to DISTRICT in accordance with Section I.11.

9. Provide DISTRICT with an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS APPLICATIONS prior to submitting to the applicable regulatory agencies.

10. Comply with all mitigation measures including all applicable provisions of CEQA, MSHCP and any CITY established conditions of approval for PROJECT.

11. Prior to advertising each PHASE for public works construction contract, provide DISTRICT with an opportunity to review, comment on, and approve all (i) REGULATORY PERMITS for the applicable PHASE and (ii) ROW DOCUMENTS for the applicable PHASE, including any existing dedications, proposed legal descriptions and plat maps, basemap, and survey controls. DISTRICT approval of any such document(s) or IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT FACILITIES.

12. Implement or cause to be implemented, all environmental mitigation required in association with the construction, operation and maintenance of PROJECT, including payment of the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan as set forth in Section I.26.

13. Ensure that REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for DISTRICT FACILITIES, as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within PROJECT's right of way.

14. Assume sole responsibility for compliance with the requirements of all REGULATORY PERMITS, including any amendments thereto, pertaining to the construction, operation and maintenance of PROJECT.

15. Invoice DISTRICT (Attention: Special Projects Section) for ENVIRONMENTAL CONTRIBUTION upon submission of all REGULATORY PERMITS to DISTRICT as set forth in Sections I.9, and I.11, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for the PROJECT. The invoice shall include an accounting of all costs associated with obtaining environmental permits and mitigation required specifically for PROJECT as set forth in Section I.5.

16. At the time of providing IMPROVEMENT PLANS pursuant to Section I.20 and prior to soliciting of bids for the construction of PROJECT pursuant to Section I.19., ensure DISTRICT is provided, with duly executed easement(s) to the public for flood control and drainage purposes, including ingress and egress, or grant deed(s) of fee title where appropriate, for the rights of way deemed necessary by DISTRICT for the construction, inspection, 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 described in the easement(s) or grant deed(s).

17. At the time of recordation of the conveyance document(s) as set forth in Section I.16., 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 fee 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), except those which, in the sole discretion of DISTRICT, are deemed acceptable.

18. Invoice DISTRICT (Attention: Special Projects Section) for ROW CONTRIBUTION once all ROW DOCUMENTS have been obtained and submitted to DISTRICT as set forth in Section I.8, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT. The invoice shall include an accounting of all costs associated with the right of way acquisition, rights of entry and temporary construction easements as set forth in Section I.5.

19. For each PHASE, prior to awarding a public works construction contract, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of the applicable PHASE. DISTRICT may only reject bids found by DISTRICT to be unreasonably high.

20. Advertise, award and administer a public works construction contract for each PHASE pursuant to the applicable provisions of the California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a copy of IMPROVEMENT PLANS and any subsequent addenda thereto.

21. Provide both DISTRICT (Attention: Special Projects Section and Construction Management Section) with written notice that CITY has awarded a public works construction contract for PHASE 1. The written notice shall include the Contractor's actual bid amounts for PHASE 1, setting forth herein PH 1 CONSTRUCTION CONTRIBUTION.

22. At the time of providing written notice of the award of a construction contract for PHASE 1, as set forth in Section I.21, invoice DISTRICT (Attention: Special Projects Section) for PH 1 CONSTRUCTION CONTRIBUTION, subject to and provided that DISTRICT

CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for the PROJECT. Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION. PH 1 CONSTRUCTION CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PHASE 1.

23. At the time of providing written notice of the award of a construction contract for PHASE 1, as set forth in Section I.21, provide DISTRICT with copy of YUCAIPA AGREEMENT pursuant to RECITAL M.

24. Provide both DISTRICT (Attention: Special Projects Section and Construction Management Section) with written notice that CITY has awarded a public works construction contract for PHASE 2. The written notice shall include the Contractor's actual bid amounts for PHASE 2, setting forth herein PH 2 CONSTRUCTION CONTRIBUTION.

25. At the time of providing written notice of the award of a construction contract for PHASE 2, as set forth in Section I.24, if applicable, invoice DISTRICT (Attention: Special Projects Section) for PH 2 CONSTRUCTION CONTRIBUTION, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT. Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION. PH 2 CONSTRUCTION CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PHASE 2.

26. Within thirty (30) days of awarding each PHASE, pay the Western Riverside County Regional Conservation Agency the mitigation fee for the applicable PHASE per the 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan.

27. Prior to commencing construction of each PHASE, furnish DISTRICT with final mylar plans for the applicable PHASE and assign ownership of said plans to DISTRICT.

28. Not permit any change to, or modification of, IMPROVEMENT PLANS approved by DISTRICT, and CITY without prior written permission and consent from DISTRICT. Failure to do so shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable to: a) perform its obligations under this Agreement, and b) to accept responsibility for ownership, operation and maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this Agreement.

29. Prior to commencing construction for each PHASE, schedule and conduct a mandatory pre-construction meeting for the applicable PHASE between CITY, CITY's construction manager, CITY's construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT (Attention: Construction Management Section) in writing at least twenty (20) days prior to conducting the pre-construction meeting.

30. For each PHASE, furnish DISTRICT (Attention: Construction Management Section), at the time of providing written notice of the pre-construction meeting for the applicable PHASE as set forth in Section I.29, with:

- A. A construction schedule for the applicable PHASE which shall show the order and dates in which CITY or CITY's contractor proposes to carry on the various parts of work, including estimated start and completion dates, and
- B. A confined space procedure specific to the applicable PHASE. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5156 et seq. and DISTRICT's

Confined Space Procedures, Chapter 18 of the Safety and Operations Manual (SOM-18). The procedure shall be reviewed and approved by DISTRICT prior to the start of construction of the applicable PHASE.

31. 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.

32. Order the relocation of all utilities that conflict with the construction of PROJECT, which may include coordinating with *the City of Yucaipa to order the relocation of all utilities within the City of Yucaipa rights of way that conflict with PROJECT.*

33. Prior to commencing construction of PROJECT, procure or caused to be procured insurance coverages during the term of this Agreement. CITY shall require its construction contractor(s) for each PHASE 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 any PHASE, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

34. Construct, or cause to be constructed, each PHASE pursuant to a CITY administered public works construction contract, in accordance with the applicable IMPROVEMENT PLANS approved by DISTRICT and CITY, and pay all costs associated therewith.

35. If PHASE 1 construction is completed before PHASE 2 construction, plug, seal, and prevent operation of all PHASE 1 inlets and catch basins, since PHASE 2 includes the outlet for PHASE 1.

36. Inspect construction of each PHASE or cause each PHASE's construction to be inspected by its construction manager and pay all costs associated therewith. In the event CITY would like to utilize one or more of DISTRICT's construction services for a PHASE (i.e., construction inspection, materials testing, or construction survey), CITY shall provide DISTRICT with written notice (Attn: Special Projects) requesting such services. If DISTRICT agrees to provide one or more of the requested construction services, CITY will continue to serve as construction contract manager.

37. Perform all survey and construction staking work as needed for PROJECT as specified herein.

38. Furnish or cause its construction manager to furnish all construction survey and materials testing services necessary to ensure construction of each PHASE is accomplished in accordance with the applicable IMPROVEMENT PLANS approved by DISTRICT, and CITY.

39. Grant DISTRICT, by execution of this Agreement, the right to inspect PROJECT and subsequently operate and maintain DISTRICT FACILITIES within CITY-rights of way.

40. Within two (2) weeks of completing construction of PHASE 1, provide DISTRICT (Attention: Construction Management with written notice that PHASE 1 construction is substantially complete and requesting that DISTRICT conduct a final inspection of STAGE 3.

41. Within two (2) weeks of completing construction of PHASE 2, provide DISTRICT (Attention: Construction Management) with written notice that PHASE 2 construction

is substantially complete and requesting that DISTRICT conduct a final inspection of STAGE 4 and BASIN.

42. Upon completion of PROJECT construction, accept ownership and sole responsibility for the operation and maintenance of PROJECT upon (i) CITY inspection of PROJECT in accordance with Section I.36., (ii) CITY acceptance of PROJECT construction as being complete, (iii) DISTRICT acceptance of DISTRICT FACILITIES construction as being complete, (iv) CITY receipt of stamped and signed record drawings for the applicable PHASE as set forth in Section II.11., and until such time as (i) DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES as set forth herein, and (ii) either DISTRICT or CITY accepts ownership and responsibility for the operation and maintenance of EXISTING STORM DRAIN.

43. Continue to own, operate and maintain CITY APPURTENANCES.

44. If applicable, operate and maintain WATER CONSERVATION FEATURES until such time that YUCAIPA AGREEMENT is fully executed.

45. Upon completion of construction for each PHASE, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with a copy of CITY's recorded Notice of Completion for the applicable PHASE. Each recorded Notice of Completion *provided to DISTRICT* shall be accompanied by a final accounting of all construction costs for the applicable PHASE as set forth in Sections I.5. The final accounting of construction costs shall include, but not limited to, payment vouchers, and other such construction contract documents as may be necessary to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS.

46. At the time of providing a Notice of Completion as set forth in Section I.45, and if applicable, issue a fourth invoice to DISTRICT (Attention: Special Projects Section) for PH

1 CONSTRUCTION ADMINISTRATION CONTRIBUTION and if applicable, PH 2
CONSTRUCTION ADMINISTRATION CONTRIBUTION, subject to and provided that
DISTRICT CONTRIBUTION shall not exceed Eleven Million Four Hundred Forty-Seven
Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT.

47. Upon completion of construction of each PHASE, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with appropriate engineering documentation necessary to establish that the applicable portion of DISTRICT FACILITIES was constructed in accordance with DISTRICT-approved, CITY-approved IMPROVEMENT PLANS for the applicable PHASE. Said appropriate engineering documentation shall include, but is not limited to, (i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer and (ii) concrete testing report(s) – stamped and wet signed by the civil engineer of record.

48. Upon completion of construction of the last PHASE, but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, CITY shall convey, or cause to be conveyed, to DISTRICT the flood control easement(s), or grant deed(s) of fee title where appropriate, as deemed necessary by DISTRICT for the 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).

49. Upon completion of construction of each PHASE, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT (Attention: Construction Management Section) with redlined "record drawings" of the plans for the applicable PHASE. After DISTRICT approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT a time to transfer the

redlined changes into DISTRICT's original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign mylars "record drawings."

50. Upon DISTRICT acceptance of construction of each PHASE as being complete, accept sole responsibility for the adjustment of all associated PROJECT manhole rings and covers located within CITY-held easements or rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

51. If necessary, remove the plugs or seals from all PHASE 1 inlets and catch basins upon completion of PHASE 2 construction.

52. Refund to DISTRICT, at the time of providing a Notice of Completion for the last PHASE as set forth in Section I.45, any unexpended portions of DISTRICT CONTRIBUTION.

SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.

2. Review IMPROVEMENT PLANS for each PHASE and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT, prior to CITY's advertising the applicable PHASE for construction bids.

3. Prior to CITY advertising any PHASE for bids, at its sole cost and expense, review, comment, approve and make a determination on, as appropriate, all (i) REGULATORY PERMITS and APPLICATIONS for the applicable PHASE and (ii) ROW DOCUMENTS for the applicable PHASE, including any existing dedications, proposed legal description and plat maps,

basemap, and survey controls. Said REGULATORY PERMITS and ROW DOCUMENTS shall not unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain DISTRICT FACILITIES. DISTRICT may withhold approval of any such document(s) or IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT FACILITIES.

4. Record, or cause to be recorded, the easement(s) or grant deed(s) provided by CITY pursuant to Section I.16.

5. Within forty-five (45) business days of receiving CITY's appropriate invoices, pay CITY for the following, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT:

- A. ENVIRONMENTAL CONTRIBUTION as set forth in Section I.15.
- B. ROW CONTRIBUTION as set forth in Sections I.18.
- C. PH 1 CONSTRUCTION CONTRIBUTION as set forth in Section I.22.
- D. PH 2 CONSTRUCTION CONTRIBUTION as set forth in Section I.24.
- E. PH 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION as set forth in Section I.46.
- F. PH 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION as set forth in Section I.46.

6. Within seven (7) calendar days following CITY's public works construction bid opening, review and approve or reject bids for construction of the applicable PHASE. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold approval of contract.

7. Conduct periodic inspections of the applicable portion(s) of DISTRICT FACILITIES construction for quality control purposes at its sole cost and provide any comments to CITY's designated construction inspector for the applicable PHASE.

8. In the event CITY would like to utilize one or more of DISTRICT's construction services for a PHASE (i.e., construction inspection, materials testing or construction survey), and CITY provides DISTRICT with a written request for such services, DISTRICT shall provide a timely response as to whether or not they have the resources to perform such services. If DISTRICT agrees to provide one or more of the requested construction services, DISTRICT shall provide said construction service(s) for the applicable PHASE and assist CITY as needed with the administration of PROJECT's construction contract. DISTRICT hereby agrees to pay all DISTRICT costs associated with the construction service(s) that it agrees to provide, as set forth herein.

9. For PHASE 1, upon receipt of CITY's written notice that construction of PHASE 1 is substantially complete as set forth in Section I.40, conduct a final inspection of STAGE 3.

10. For PHASE 2, upon receipt of CITY's written notice that construction of PHASE 2 is substantially complete as set forth in Section I.41, conduct a final inspection of STAGE 4 and BASIN.

11. Provide CITY with a reproducible duplicate copy of "record drawings" of the plans for the applicable PHASE within twenty (20) days of receipt.

12. Accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES upon (i) DISTRICT inspection of (a) STAGE 3 in accordance with Sections I.40 and II.9 and (b) STAGE 4 and BASIN in accordance with Sections I.41 and II.10, (ii) DISTRICT acceptance of DISTRICT FACILITIES construction as being complete, (iii) DISTRICT receipt of CITY's recorded Notices of Completion for both PHASES as set forth in Section I.45, (iv) DISTRICT receipt of appropriate engineering documentation as set forth in Section I.47, (v) DISTRICT receipt of stamped and signed "record drawings" of the plans for both PHASES as set forth in Section I.49, (vi) DISTRICT's acceptance of all necessary rights of way, easements, or grant deeds as set forth in Section I.48, (vii) DISTRICT's receipt of policies of title insurance for the rights of way, easements, or grant deeds as set forth in Section I.18, (viii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition, (ix) if necessary, CITY removes the plugs or seals from all PHASE 1 inlets and catch basins, and (x) acceptance by either DISTRICT or CITY of ownership and responsibility for the operation and maintenance of EXISTING STORM DRAIN.

13. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES is not in an acceptable condition, corrections shall be made at sole expense of CITY.

SECTION III

EXISTING STORM DRAIN:

1. EXISTING STORM DRAIN shall be accepted for ownership, operation and maintenance by either CITY or DISTRICT prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES.

2. In the event CITY would like DISTRICT to accept ownership and responsibility for the operation and maintenance of EXISTING STORM DRAIN, CITY shall:

- A. Select a Licensed Civil Engineer, duly registered in the State of California, to serve as the civil engineer of record ("EoR") for EXISTING STORM DRAIN.
- B. Provide DISTRICT (Attention: Special Projects Section) with the following documents for review and approval: as-built plans for EXISTING STORM DRAIN, inspection reports for EXISTING STORM DRAIN, and any other appropriate engineering documentation related to EXISTING STORM DRAIN deemed necessary.
- C. Submit or cause to be submitted a survey of EXISTING STORM DRAIN's horizontal and vertical alignment to DISTRICT (Attention: Special Projects Section) for review and approval.
- D. Schedule and conduct a closed-circuit television ("CCTV") inspection of EXISTING STORM DRAIN, including, but not limited to, the inside of all pipes, manholes, and other facilities installed in the construction of EXISTING STORM DRAIN. CITY shall notify DISTRICT (Attention: Special Projects Section and Construction Management Section) in writing at least twenty (20) days prior to conducting said CCTV inspection of EXISTING STORM DRAIN. Said CCTV inspection shall also be recorded in such a manner that allows EoR to prepare and submit the report and letter required by Section III.2.E.

- E. Submit the following to DISTRICT (Attention: Special Projects Section) for review and approval:
 - i. A report of said CCTV inspection that is prepared by EoR, including all necessary photographs and/or videos.
 - ii. A letter from EoR certifying pipe condition of EXISTING STORM DRAIN.

- F. If applicable, conduct or cause to be conducted additional testing of EXISTING STORM DRAIN as needed, including, but not limited to, non-destructive testing methods such as Windsor Probe or approved equivalent. CITY shall submit the results or reports from said additional testing to DISTRICT (Attention: Special Projects Section) for review and approval

- G. Obtain all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation, maintenance, repair, and rehabilitation of EXISTING STORM DRAIN at its sole cost and expense. Such documents, hereinafter called ("SD PERMITS"), may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority. All applications for SD PERMITS and all SD PERMITS must be provided to DISTRICT in accordance with Sections III.2.H and III.2.J.

- H. Provide DISTRICT (Attention: Special Projects Section) with an opportunity to review, comment on and approve, as appropriate, all applications for SD PERMITS prior to submitting said applications for SD PERMITS to the applicable federal, state or local resource or regulatory agencies.
- I. 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, maintain, repair, and rehabilitate EXISTING STORM DRAIN ("SD R/W DOCS") at its sole cost and expense. CITY shall consult with DISTRICT regarding existing dedications, proposed legal descriptions, plat maps basemap and survey controls. All SD R/W DOCS must be provided to DISTRICT in accordance with Section III.2.J.
- J. Provide DISTRICT (Attention: Special Projects Section) an opportunity to review, comment on, and approve all (i) SD PERMITS and (ii) SD R/W DOCS, including any existing dedications, proposed legal descriptions and plat maps, basemap, and survey controls. DISTRICT approval of any such document(s) or DISTRICT's acceptance of EXISTING STORM DRAIN for ownership, operation and maintenance may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to

- operate and maintain EXISTING STORM DRAIN or DISTRICT FACILITIES.
- K. Implement or cause to be implemented all environmental mitigation required in association with the construction, operation, maintenance, repair, and rehabilitation of EXISTING STORM DRAIN at its sole cost and expense.
- L. Ensure that SD PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for EXISTING STORM DRAIN and DISTRICT FACILITIES, as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within EXISTING STORM DRAIN's right of way.
- M. Assume sole responsibility for compliance with the requirements of all SD PERMITS, including any amendments thereto, pertaining to the construction, operation, maintenance, repair and rehabilitation of EXISTING STORM DRAIN.
- N. Prior to DISTRICT acceptance of EXISTING STORM DRAIN for ownership, operation and maintenance, CITY shall convey, or cause to be conveyed, to DISTRICT the flood control easement(s), or grant deed(s) of fee title where appropriate, as deemed necessary by DISTRICT for the operation and maintenance of EXISTING STORM DRAIN. 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).
- O. At the time of recordation of the conveyance document(s) as set forth in Section II1.2.N, 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.
- P. Provide or cause EoR to provide DISTRICT (Attention: Construction Management Section) with "record drawings" of EXISTING STORM DRAIN plans for review and approval:
- i. If as-built plans for EXISTING STORM DRAIN are found and submitted to DISTRICT in accordance with Section III.2.B, EoR shall provide DISTRICT with a redlined "record drawings" copy of EXISTING STORM DRAIN plans for review and approval. After DISTRICT approval of the redlined "record drawings", EoR shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office, after which said EoR shall review, stamp

and sign the original EXISTING STORM DRAIN plans "record drawings."

- ii. If as-built plans for EXISTING STORM DRAIN are not found, EoR shall prepare and submit draft "record drawings" of EXISTING STORM DRAIN plans to DISTRICT for review and approval. After DISTRICT approval of the draft "record drawings", EoR shall review, stamp and sign the original EXISTING STORM DRAIN plans "record drawings."

3. If, in the sole discretion of DISTRICT, EXISTING STORM DRAIN is not in an acceptable condition, corrections shall be made at sole expense of CITY.

4. CITY and DISTRICT hereby agree that acceptance of EXISTING STORM DRAIN by DISTRICT for ownership, operation and maintenance is not guaranteed. The decision by DISTRICT to accept EXISTING STORM DRAIN for ownership, operation and maintenance shall be made by DISTRICT in its sole discretion.

5. Alternatively, CITY may accept ownership and sole responsibility for the operation and maintenance of EXISTING STORM DRAIN. In the event CITY accepts ownership and sole responsibility for the operation and maintenance of EXISTING STORM DRAIN, CITY shall provide DISTRICT (Attention: Special Projects Section) with documentation demonstrating CITY's acceptance of EXISTING STORM DRAIN for ownership, operation and maintenance.

SECTION IV

Indemnification:

1. CITY shall indemnify, defend and hold harmless and require CITY's construction contractor(s) to indemnify, defend 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 and 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 elected and appointed officials*, officers, employees, consultants, *contractors*, 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 to the extent arising from the performance of CITY or CITY's construction contractor(s) (including *their elected and appointed officials*, officers, employees, consultants, *contractors*, subcontractors, agents or representatives) 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.

2. 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 may adjust, settle, or compromise any such action or 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 or CITY's construction contractor(s) indemnification to the Indemnitees as set forth herein.

3. CITY 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 and YUCAIPA from any liability for the action or claim involved.

4. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CITY's or CITY's construction contractor(s) obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

5. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve CITY or CITY's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

6. DISTRICT shall indemnify, defend, save and hold harmless CITY (including their officers, 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 DISTRICT's performance of this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. DISTRICT shall defend, at its sole expense, CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors), 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 relating to DISTRICT's performance of this Agreement.

SECTION VI

It is further mutually agreed:

1. Notwithstanding any other provision herein this Agreement DISTRICT CONTRIBUTION shall not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT and shall be used by CITY solely for the purpose of obtaining the environmental permits and mitigation, acquiring the rights

of way, and constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

2. CITY shall endeavor to award the public works construction contracts for both PHASES and begin construction on both PHASES within twenty-four (24) months of execution of this Agreement.

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

4. In the event CITY's construction contractor(s) does not complete the construction of any PHASE in accordance with DISTRICT standards, CITY shall complete the applicable PHASE utilizing the bonds and insurances secured for the applicable PHASE as set forth in this Agreement.

5. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT, and CITY, or CITY's construction manager, but shall not be deemed complete until DISTRICT and CITY, mutually agree that construction is completed in accordance with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS. CITY shall not request DISTRICT to accept DISTRICT FACILITIES, or any portion thereof, for ownership, operation or maintenance until the requirements set forth in Section II.12 are satisfied.

6. DISTRICT personnel may observe and inspect all work being done on PROJECT but shall provide any comments to CITY personnel, or its construction manager, who shall be solely responsible for all communications with CITY's construction contractor(s).

7. In the event CITY would like to utilize one or more of DISTRICT's construction services for a PHASE (i.e., construction inspection, materials testing or construction

survey), CITY shall provide DISTRICT with written notice (Attn: Special Projects Section) requesting such services as set forth in Sections I.36 and II.8.

8. DISTRICT, the County of Riverside, the State of California, or any of their duly authorized representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. CITY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. CITY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

9. 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.

10. This Agreement is to be construed in accordance with the laws of the State of California.

11. 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: Special Projects Section

To CITY: CITY OF CALIMESA
908 Park Avenue
Calimesa, CA 92320
Attn: City Manager

12. 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.

13. 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.

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

15. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other Parties. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

16. 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.

17. 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.

18. DISTRICT and CITY, each pledge to cooperate in regard to the operation and maintenance of their respective facility(ies), if any, 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 other Parties' facility(ies).

19. Time is of the essence in prosecuting the work contemplated under this Agreement. At any time during the term of this Agreement, DISTRICT may terminate this Agreement for cause, including, but not limited to, CITY's failure to prosecute the work in a timely manner, upon providing CITY thirty (30) days written notice stating the extent and effective date of termination.

20. The obligation(s) 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 forthcoming 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.

21. 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 and written, in connection therewith. This Agreement may be amended, changed or modified only upon the written consent of the Parties hereto.

22. 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.

//

//


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

4/09/2024

(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
Board of Supervisors, Riverside County
Flood Control and Water Conservation
District

APPROVED AS TO FORM:

MINH C. TRAN
County Counsel

ATTEST:

KIMBERLY RECTOR
Clerk of the Board

By 
RYAN YABKO
Deputy County Counsel

By 
Deputy

Cooperative Funding Agreement with the City of Calimesa
Calimesa Channel, Stages 3 and 4
Calimesa Detention Basin
Project Nos. 5-0-00160 and 5-0-00141
Miscellaneous No. 183
AMR:blj
03/13/24

CITY OF CALIMESA

By _____
WILLIAM DAVIS
Mayor

APPROVED AS TO FORM:

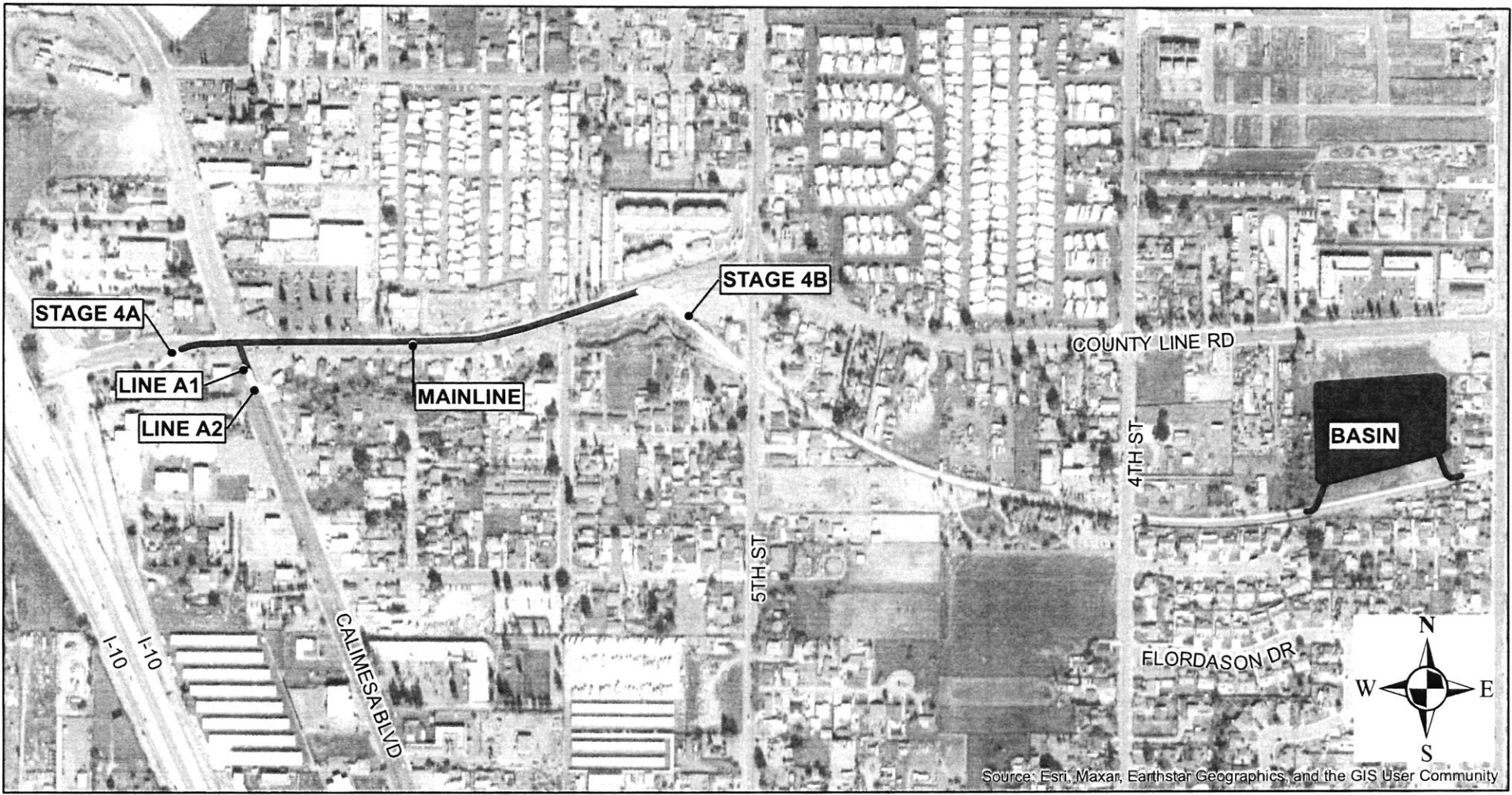
ATTEST:

By _____
QUINN BARROW
City Attorney

By _____
DARLENE GERDES
City Clerk

(SEAL)

Cooperative Funding Agreement with the City of Calimesa
Calimesa Channel, Stages 3 and 4
Calimesa Detention Basin
Project Nos. 5-0-00160 and 5-0-00141
Miscellaneous No. 183
AMR:blj
03/13/24



COOPERATIVE AGREEMENT

Calimesa Channel, Stage 3
 Project No. 5-0-10160-03
 MS207

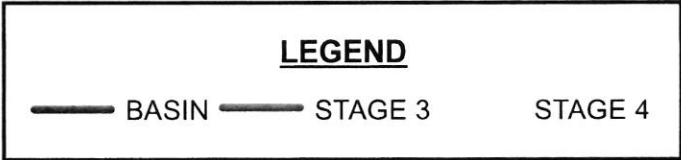


EXHIBIT A

Exhibit B

DISTRICT's Insurance Requirements is as follows:

1. CITY's construction contractor(s) shall not commence operations until DISTRICT has been furnished with 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 as required in this Exhibit.

2. Without limiting or diminishing CITY's and CITY's construction contractor(s) obligation to indemnify or hold DISTRICT harmless, CITY construction contractor(s) shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the 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 Insureds.

A. Workers' Compensation:

If CITY's construction contractor(s) has employees as defined by the State of California, CITY's construction contractor(s) shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CITY's construction contractor(s) performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

Exhibit B

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY's construction contractor(s) shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

D. Professional Liability:

CITY shall cause any architect or engineer retained by CITY in connection with the performance of CITY's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. CITY shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

E. General Insurance Provisions – All Lines:

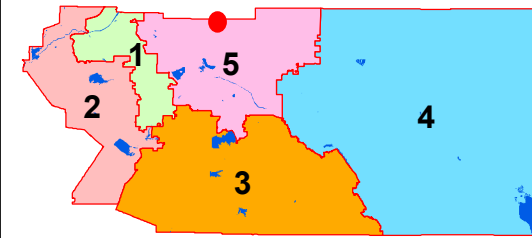
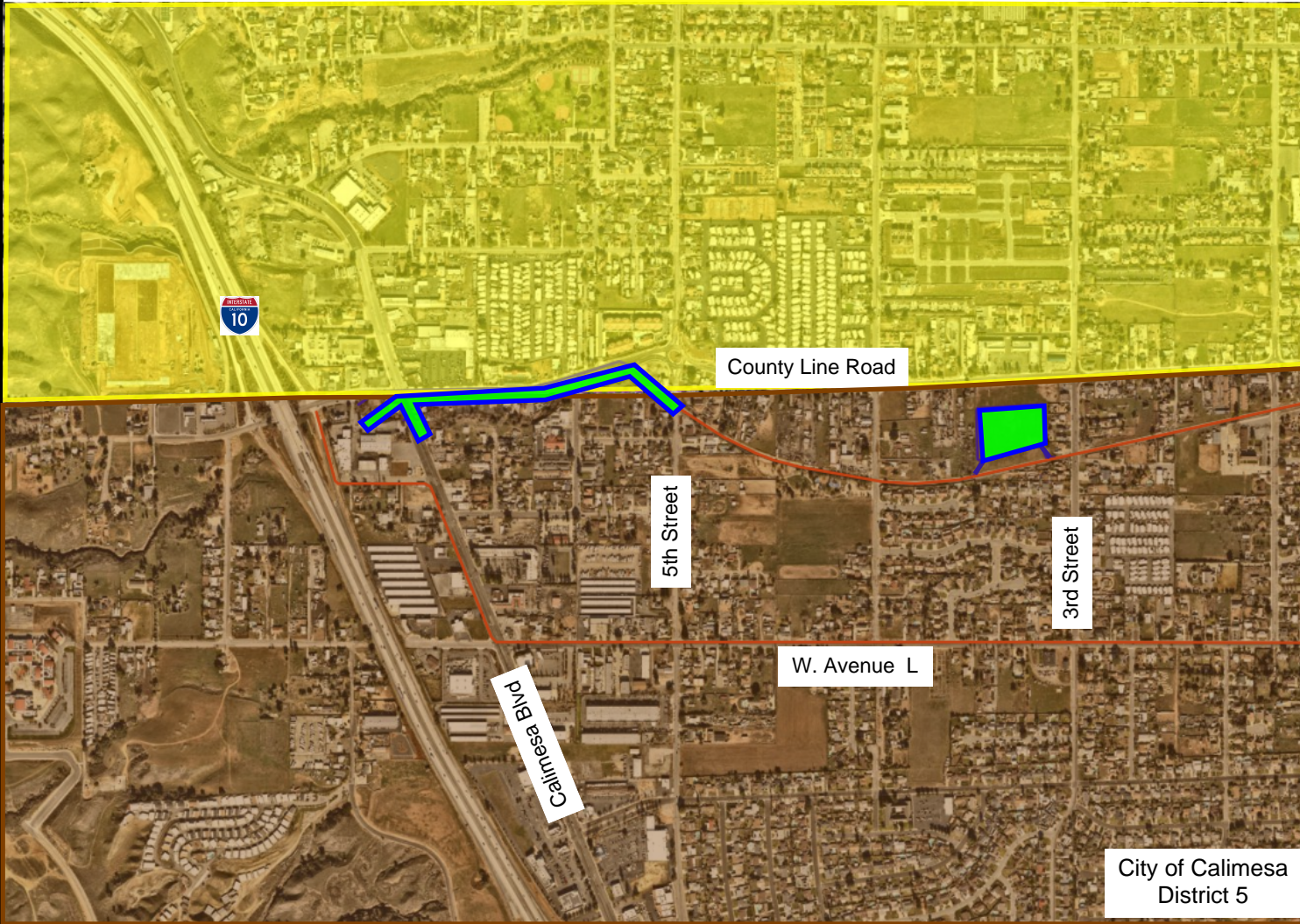
- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

Exhibit B






- b. CITY's construction contractor(s) must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, CITY's construction contractor(s) carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- c. CITY's construction contractor(s) shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY's construction contractor(s) insurance carrier(s) policies do not meet the minimum notice requirement found herein, CITY's construction contractor(s) shall cause CITY's construction contractor(s) insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

Exhibit B

- e. It is understood and agreed by the parties hereto that CITY's construction contractor(s) insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY's construction contractor(s) has become inadequate.
- g. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. CITY's construction contractor(s) agrees to 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.



Legend

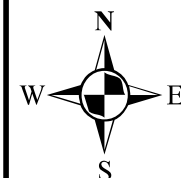
-  Project Vicinity
-  Existing Facilities
-  Supervisorial District
-  City of Yucaipa
-  City of Calimesa

Description

Calimesa Channel, Stage 3
 Calimesa Channel, Stage 4
 Calimesa Detention Basin
 Project Nos. 5-0-00160 and 5-0-00141
 Miscellaneous No. 183



VICINITY MAP



COOPERATIVE FUNDING AGREEMENT

Calimesa Channel, Stage 3
Calimesa Channel, Stage 4
Calimesa Detention Basin
Project Nos. 5-0-00160 and 5-0-00141
Miscellaneous No. 183

This Cooperative Funding Agreement ("Agreement"), dated as of April 09, 2024, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), and the City of Calimesa, a California municipal corporation ("CITY"). DISTRICT and CITY may be referred to collectively as the "Parties" and individually as a "Party." The Parties hereto agree as follows:

RECITALS

A. DISTRICT and CITY wish to work collaboratively to expedite the construction of certain flood control facilities to provide the necessary flood control and drainage improvements for County Line Road, Park Avenue, Calimesa Boulevard and the immediate adjacent areas within the cities of Calimesa and Yucaipa; and

B. These flood control facilities include Calimesa Channel, Stage 3, Calimesa Channel, Stage 4 and Calimesa Detention Basin; and

C. Calimesa Channel, Stage 3 ("STAGE 3"), as shown on DISTRICT's Drawing No. 5-0230 and in concept in magenta on Exhibit "A", attached hereto and made a part hereof, includes the construction of:

- i. ("MAINLINE"), which is comprised of approximately 2,200 lineal feet of underground storm drain system, which is to be constructed within County Line Road. At its upstream terminus, MAINLINE will terminate with a concrete bulkhead for future extension. At its downstream terminus, MAINLINE will terminate with a concrete bulkhead for future extension; and

- ii. ("LINE A1"), which is comprised of approximately 200 lineal feet of underground storm drain system, which is to be constructed within County Line Road and Calimesa Boulevard. At its upstream terminus, LINE A1 will terminate with a concrete bulkhead for future extension. At its downstream terminus, LINE A1 will connect to MAINLINE; and

D. Associated with the construction of STAGE 3 is the construction of:

- i. Certain catch basins, inlets, connector pipes and storm drains that are 36 inches or less in diameter located within CITY-held easements or rights of way ("CALIMESA PH 1"); and
- ii. Certain catch basins, inlets, manholes, connector pipes and storm drains that are 36 inches or less in diameter located within the City of Yucaipa-held easements or rights of way ("YUCAIPA APPURTENANCES"); and

E. Calimesa Channel, Stage 4 ("STAGE 4") and Calimesa Detention Basin ("BASIN"), as shown on DISTRICT's Drawing No. 5-0238, include the construction of:

- i. STAGE 4, which is comprised of three flood control facilities that total to approximately 770 lineal feet described in subparagraphs (a) through (c) below. STAGE 4 is shown in concept in yellow on Exhibit "A":
 - a. "STG 4A" is comprised of approximately 120 lineal feet of underground storm drain system. At its upstream terminus, STG 4A will connect to MAINLINE. At its downstream terminus,

STG 4A will connect to an existing 78-inch storm drain ("EXISTING STORM DRAIN"); and

- b. "STG 4B" is comprised of approximately 440 lineal feet of underground storm drain system and approximately 70 lineal feet of box culvert warped wingwalls. To construct STG 4B, CITY must remove a certain portion of DISTRICT's existing Calimesa Channel, Stage 1 ("STAGE 1"), as shown on DISTRICT's Drawing No. 5-0139. At its upstream terminus, STG 4B will connect to the remaining STAGE 1. At its downstream terminus, STG 4B will connect to MAINLINE; and

- c. LINE A2 is comprised of approximately 210 lineal feet of underground storm drain system. At its upstream terminus, LINE A2 will connect to an existing 6' x 6' reinforced concrete box storm drain. At its downstream terminus, LINE A2 will connect to LINE A1; and

- ii. BASIN, as shown in concept in blue on Exhibit "A", which is comprised of an approximately 53-acre-foot detention basin and the associated inlet, outlet, maintenance access road, access ramp, fencing, lines and grades, rectangular channel, and spillway; and

F. Associated with the construction of STAGE 4 is the construction of:

- i. Certain catch basins, inlets, connector pipes and storm drains that are 36 inches or less in diameter that will need to be constructed within CITY-held easements or rights of way are hereinafter called ("CALIMESA PH 2"); and

ii. A low flow diversion storm drain that will need to be constructed within CITY-held easements or rights of way are hereinafter called ("CALIMESA LINE B"). CALIMESA LINE B is comprised of a junction structure, an outlet structure with grouted riprap, and a storm drain that is 36 inches or less in diameter; and

G. Altogether, STAGE 3, STAGE 4 and BASIN are hereinafter called ("DISTRICT FACILITIES"); and

H. Altogether, CALIMESA PH 1, CALIMESA PH 2 and CALIMESA LINE B are hereinafter called ("CITY APPURTENANCES"); and

I. DISTRICT FACILITIES, CITY APPURTENANCES and YUCAIPA APPURTENANCES are hereinafter altogether called ("PROJECT"); and

J. CITY wishes to incorporate water conservation features within BASIN ("WATER CONSERVATION FEATURES"). CITY and/or the South Mesa Water District shall be responsible for the operation and maintenance of such WATER CONSERVATION FEATURES pursuant to a separate agreement or similar legal instrument ("SEPARATE AGREEMENT"). CITY is willing to be responsible for the operation and maintenance of WATER CONSERVATION FEATURES until such time that SEPARATE AGREEMENT is fully executed, provided CITY agrees that such WATER CONSERVATION FEATURES shall not interfere with PROJECT as per of this Agreement; and

K. CITY anticipates advertising and constructing PROJECT in two phases:

i. "PHASE 1", which is defined as STAGE 3, CALIMESA PH 1, and YUCAIPA APPURTENANCES; and

- ii. "PHASE 2", which is defined as STAGE 4, BASIN, CALIMESA PH 2, and CALIMESA LINE B. PHASE 1 and PHASE 2 may be referred to individually as a "PHASE" or collectively as the "PHASES"; and

L. Since PHASE 2 includes the outlet for PHASE 1, if construction of PHASE 1 is completed prior to the completion of PHASE 2 construction, CITY is willing to:

- i. Plug, seal, and prevent operation of all PHASE 1 inlets and catch basins; and
- ii. Upon completion of construction of PHASE 1:
 - a. Own, operate, and maintain STAGE 3 until DISTRICT accepts DISTRICT FACILITIES for ownership, operation, and maintenance; and
 - b. Own, operate, and maintain CALIMESA PH 1; and
 - c. Accept YUCAIPA APPURTENANCES for ownership, operation and maintenance; and

M. City of Yucaipa is willing to be responsible for the operations and maintenance of YUCAIPA APPURTENANCES. CITY intends to enter into a separate agreement or legal similar instrument with the City of Yucaipa setting forth the operation and maintenance responsibilities for YUCAIPA APPURTENANCES ("YUCAIPA AGREEMENT").

N. DISTRICT will not accept DISTRICT FACILITIES for ownership, operation, and maintenance until: (i) construction of PHASE 1 and PHASE 2 are completed pursuant to this Agreement and (ii) EXISTING STORM DRAIN is accepted by either DISTRICT or CITY for ownership, operation, and maintenance in accordance with Section III; and

O. CITY is willing to assume the lead role for PROJECT and, therefore, will provide the administrative, technical, managerial and support services necessary to plan, design and construct PROJECT; and

P. CITY desires that DISTRICT include certain unavoidable utility relocations as part of the 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

Q. Due to the Parties' mutual interest in PROJECT, DISTRICT wishes to support CITY's efforts by providing a financial contribution to implement PROJECT; and

R. DISTRICT is willing to provide a financial contribution toward PROJECT and shall be as follows, subject to the not to exceed amount provided in Recital S below:

i. "ENVIRONMENTAL CONTRIBUTION", defined as
One hundred percent (100%) of CITY's actual, reasonable cost of obtaining environmental permits and mitigation required specifically for PROJECT, or portions thereof. However, ENVIRONMENTAL CONTRIBUTION shall not include the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and

ii. ("ROW CONTRIBUTION"), defined as
One hundred percent (100%) of the actual costs (not to exceed appraised value and/or administrative settlement costs and estimated escrow and

closing costs) for right of way acquisition, rights of entry and temporary construction easements for PROJECT; and

- iii. ("PH 1 CONSTRUCTION CONTRIBUTION"), defined as
Up to one hundred percent (100%) of the lowest responsible and responsive bid contract price for construction of PHASE 1 and the costs associated with UTILITY RELOCATIONS. In addition, any remaining funds may be used for PHASE 2 as defined below; and
- iv. ("PH 2 CONSTRUCTION CONTRIBUTION"), defined as
Up to one hundred percent (100%) of the lowest responsible and responsive bid contract price for construction of PHASE 2 and the costs associated with UTILITY RELOCATIONS, PH 2 CONSTRUCTION CONTRIBUTION; and
- v. Up to an additional fifteen percent (15%) of PH 1 CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration and other typical ancillary costs related to the delivery of PROJECT ("PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and
- vi. Up to an additional fifteen percent (15%) of PH 2 CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration and other typical ancillary costs related to the delivery of PROJECT ("PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and

S. Altogether, ENVIRONMENTAL CONTRIBUTION, ROW CONTRIBUTION, PH 1 CONSTRUCTION CONTRIBUTION, PH 2 CONSTRUCTION

CONTRIBUTION, PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION and PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION are hereinafter called ("DISTRICT CONTRIBUTION"). DISTRICT CONTRIBUTION for PROJECT shall not exceed a total of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260); and

T. CITY agrees to fund and secure all remaining costs of PROJECT that exceeds DISTRICT CONTRIBUTION, as set forth herein; and

U. CITY desires DISTRICT to ultimately accept ownership and responsibility for operation and maintenance of DISTRICT FACILITIES. Therefore, DISTRICT must review and approve CITY's plans and specifications for DISTRICT FACILITIES and subsequently inspect the construction of DISTRICT FACILITIES; and

V. DISTRICT desire CITY to accept ownership and responsibility for the operation and maintenance of CITY APPURTENANCES, and if applicable WATER CONSERVATION FEATURES; and

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

X. 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 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 PHASE 1 ("PH1 PLANS"), in accordance with the applicable DISTRICT standards, CITY standards and City of Yucaipa standards and submit to DISTRICT (Attention: Special Projects Section) for review and approval prior to advertising PHASE 1 for construction bids.

3. Prepare or cause to be prepared the necessary plans and specifications for PHASE 2 ("PH2 PLANS"), in accordance with the applicable DISTRICT standards and CITY standards, and, if applicable, City of Yucaipa standards and submit to DISTRICT (Attention: Special Projects Section) for review and approval prior to advertising PHASE 2 for construction bids. PH1 PLANS and PH2 PLANS may be referred to individually or collectively as ("IMPROVEMENT PLANS").

4. Make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS.

5. Keep an accurate accounting of all PROJECT costs associated with the DISTRICT CONTRIBUTION as set forth in RECITAL R and provide this accounting along with future invoices to DISTRICT. The final accounting of PROJECT costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, conservation easements, appraisal reports, purchase and sales agreements and other such documents as may be necessary to establish the actual costs obtaining the necessary environmental permits and mitigation, the right

of way acquisition, rights of entry and temporary construction easements and the actual cost of construction and the contract administration cost associated with PROJECT, as set forth in Sections I.15., I.18., I.22., I.25., I.45 and I.46.

6. Prior to advertising PROJECT for public works construction contract, secure all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT. Such documents, hereinafter called ("REGULATORY PERMITS") may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority. All applications for REGULATORY PERMITS ("APPLICATIONS") and all REGULATORY PERMITS must be provided to DISTRICT in accordance with Sections I.9 and I.11.

7. Prepare, or cause to be prepared, all rights of way and easements documents, legal and plats, aerial topography, and survey control, including any requests for waivers and variances from policies, deemed necessary for the construction, operation, and maintenance of DISTRICT FACILITIES and submit to DISTRICT (Attention: Real Estate Services) for its review and approval.

8. Prior to advertising PROJECT for public works construction contract, secure 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 ("ROW DOCUMENTS") and consult with DISTRICT, and, if applicable, with City of Yucaipa regarding existing dedications, proposed legal descriptions, plat maps basemap and survey controls. All ROW DOCUMENTS must be provided to DISTRICT in accordance with Section I.11.

9. Provide DISTRICT with an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS APPLICATIONS prior to submitting to the applicable regulatory agencies.

10. Comply with all mitigation measures including all applicable provisions of CEQA, MSHCP and any CITY established conditions of approval for PROJECT.

11. Prior to advertising each PHASE for public works construction contract, provide DISTRICT with an opportunity to review, comment on, and approve all (i) REGULATORY PERMITS for the applicable PHASE and (ii) ROW DOCUMENTS for the applicable PHASE, including any existing dedications, proposed legal descriptions and plat maps, basemap, and survey controls. DISTRICT approval of any such document(s) or IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT FACILITIES.

12. Implement or cause to be implemented, all environmental mitigation required in association with the construction, operation and maintenance of PROJECT, including payment of the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan as set forth in Section I.26.

13. Ensure that REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for DISTRICT FACILITIES, as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within PROJECT's right of way.

14. Assume sole responsibility for compliance with the requirements of all REGULATORY PERMITS, including any amendments thereto, pertaining to the construction, operation and maintenance of PROJECT.

15. Invoice DISTRICT (Attention: Special Projects Section) for ENVIRONMENTAL CONTRIBUTION upon submission of all REGULATORY PERMITS to DISTRICT as set forth in Sections I.9, and I.11, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for the PROJECT. The invoice shall include an accounting of all costs associated with obtaining environmental permits and mitigation required specifically for PROJECT as set forth in Section I.5.

16. At the time of providing IMPROVEMENT PLANS pursuant to Section I.20 and prior to soliciting of bids for the construction of PROJECT pursuant to Section I.19., ensure DISTRICT is provided, with duly executed easement(s) to the public for flood control and drainage purposes, including ingress and egress, or grant deed(s) of fee title where appropriate, for the rights of way deemed necessary by DISTRICT for the construction, inspection, 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 described in the easement(s) or grant deed(s).

17. At the time of recordation of the conveyance document(s) as set forth in Section I.16., 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 fee 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), except those which, in the sole discretion of DISTRICT, are deemed acceptable.

18. Invoice DISTRICT (Attention: Special Projects Section) for ROW CONTRIBUTION once all ROW DOCUMENTS have been obtained and submitted to DISTRICT as set forth in Section I.8, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT. The invoice shall include an accounting of all costs associated with the right of way acquisition, rights of entry and temporary construction easements as set forth in Section I.5.

19. For each PHASE, prior to awarding a public works construction contract, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of the applicable PHASE. DISTRICT may only reject bids found by DISTRICT to be unreasonably high.

20. Advertise, award and administer a public works construction contract for each PHASE pursuant to the applicable provisions of the California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a copy of IMPROVEMENT PLANS and any subsequent addenda thereto.

21. Provide both DISTRICT (Attention: Special Projects Section and Construction Management Section) with written notice that CITY has awarded a public works construction contract for PHASE 1. The written notice shall include the Contractor's actual bid amounts for PHASE 1, setting forth herein PH 1 CONSTRUCTION CONTRIBUTION.

22. At the time of providing written notice of the award of a construction contract for PHASE 1, as set forth in Section I.21, invoice DISTRICT (Attention: Special Projects Section) for PH 1 CONSTRUCTION CONTRIBUTION, subject to and provided that DISTRICT

CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for the PROJECT. Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION. PH 1 CONSTRUCTION CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PHASE 1.

23. At the time of providing written notice of the award of a construction contract for PHASE 1, as set forth in Section I.21, provide DISTRICT with copy of YUCAIPA AGREEMENT pursuant to RECITAL M.

24. Provide both DISTRICT (Attention: Special Projects Section and Construction Management Section) with written notice that CITY has awarded a public works construction contract for PHASE 2. The written notice shall include the Contractor's actual bid amounts for PHASE 2, setting forth herein PH 2 CONSTRUCTION CONTRIBUTION.

25. At the time of providing written notice of the award of a construction contract for PHASE 2, as set forth in Section I.24, if applicable, invoice DISTRICT (Attention: Special Projects Section) for PH 2 CONSTRUCTION CONTRIBUTION, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT. Furthermore, CITY shall be responsible to pay any amounts in excess of DISTRICT CONTRIBUTION. PH 2 CONSTRUCTION CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PHASE 2.

26. Within thirty (30) days of awarding each PHASE, pay the Western Riverside County Regional Conservation Agency the mitigation fee for the applicable PHASE per the 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan.

27. Prior to commencing construction of each PHASE, furnish DISTRICT with final mylar plans for the applicable PHASE and assign ownership of said plans to DISTRICT.

28. Not permit any change to, or modification of, IMPROVEMENT PLANS approved by DISTRICT, and CITY without prior written permission and consent from DISTRICT. Failure to do so shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable to: a) perform its obligations under this Agreement, and b) to accept responsibility for ownership, operation and maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this Agreement.

29. Prior to commencing construction for each PHASE, schedule and conduct a mandatory pre-construction meeting for the applicable PHASE between CITY, CITY's construction manager, CITY's construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT (Attention: Construction Management Section) in writing at least twenty (20) days prior to conducting the pre-construction meeting.

30. For each PHASE, furnish DISTRICT (Attention: Construction Management Section), at the time of providing written notice of the pre-construction meeting for the applicable PHASE as set forth in Section I.29, with:

- A. A construction schedule for the applicable PHASE which shall show the order and dates in which CITY or CITY's contractor proposes to carry on the various parts of work, including estimated start and completion dates, and
- B. A confined space procedure specific to the applicable PHASE. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5156 et seq. and DISTRICT's

Confined Space Procedures, Chapter 18 of the Safety and Operations Manual (SOM-18). The procedure shall be reviewed and approved by DISTRICT prior to the start of construction of the applicable PHASE.

31. 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.

32. Order the relocation of all utilities that conflict with the construction of PROJECT, which may include coordinating with *the City of Yucaipa to order the relocation of all utilities within the City of Yucaipa rights of way that conflict with PROJECT.*

33. Prior to commencing construction of PROJECT, procure or caused to be procured insurance coverages during the term of this Agreement. CITY shall require its construction contractor(s) for each PHASE 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 any PHASE, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

34. Construct, or cause to be constructed, each PHASE pursuant to a CITY administered public works construction contract, in accordance with the applicable IMPROVEMENT PLANS approved by DISTRICT and CITY, and pay all costs associated therewith.

35. If PHASE 1 construction is completed before PHASE 2 construction, plug, seal, and prevent operation of all PHASE 1 inlets and catch basins, since PHASE 2 includes the outlet for PHASE 1.

36. Inspect construction of each PHASE or cause each PHASE's construction to be inspected by its construction manager and pay all costs associated therewith. In the event CITY would like to utilize one or more of DISTRICT's construction services for a PHASE (i.e., construction inspection, materials testing, or construction survey), CITY shall provide DISTRICT with written notice (Attn: Special Projects) requesting such services. If DISTRICT agrees to provide one or more of the requested construction services, CITY will continue to serve as construction contract manager.

37. Perform all survey and construction staking work as needed for PROJECT as specified herein.

38. Furnish or cause its construction manager to furnish all construction survey and materials testing services necessary to ensure construction of each PHASE is accomplished in accordance with the applicable IMPROVEMENT PLANS approved by DISTRICT, and CITY.

39. Grant DISTRICT, by execution of this Agreement, the right to inspect PROJECT and subsequently operate and maintain DISTRICT FACILITIES within CITY-rights of way.

40. Within two (2) weeks of completing construction of PHASE 1, provide DISTRICT (Attention: Construction Management with written notice that PHASE 1 construction is substantially complete and requesting that DISTRICT conduct a final inspection of STAGE 3.

41. Within two (2) weeks of completing construction of PHASE 2, provide DISTRICT (Attention: Construction Management) with written notice that PHASE 2 construction

is substantially complete and requesting that DISTRICT conduct a final inspection of STAGE 4 and BASIN.

42. Upon completion of PROJECT construction, accept ownership and sole responsibility for the operation and maintenance of PROJECT upon (i) CITY inspection of PROJECT in accordance with Section I.36., (ii) CITY acceptance of PROJECT construction as being complete, (iii) DISTRICT acceptance of DISTRICT FACILITIES construction as being complete, (iv) CITY receipt of stamped and signed record drawings for the applicable PHASE as set forth in Section II.11., and until such time as (i) DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES as set forth herein, and (ii) either DISTRICT or CITY accepts ownership and responsibility for the operation and maintenance of EXISTING STORM DRAIN.

43. Continue to own, operate and maintain CITY APPURTENANCES.

44. If applicable, operate and maintain WATER CONSERVATION FEATURES until such time that YUCAIPA AGREEMENT is fully executed.

45. Upon completion of construction for each PHASE, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with a copy of CITY's recorded Notice of Completion for the applicable PHASE. Each recorded Notice of Completion *provided to DISTRICT* shall be accompanied by a final accounting of all construction costs for the applicable PHASE as set forth in Sections I.5. The final accounting of construction costs shall include, but not limited to, payment vouchers, and other such construction contract documents as may be necessary to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS.

46. At the time of providing a Notice of Completion as set forth in Section I.45, and if applicable, issue a fourth invoice to DISTRICT (Attention: Special Projects Section) for PH

1 CONSTRUCTION ADMINISTRATION CONTRIBUTION and if applicable, PH 2
CONSTRUCTION ADMINISTRATION CONTRIBUTION, subject to and provided that
DISTRICT CONTRIBUTION shall not exceed Eleven Million Four Hundred Forty-Seven
Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT.

47. Upon completion of construction of each PHASE, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with appropriate engineering documentation necessary to establish that the applicable portion of DISTRICT FACILITIES was constructed in accordance with DISTRICT-approved, CITY-approved IMPROVEMENT PLANS for the applicable PHASE. Said appropriate engineering documentation shall include, but is not limited to, (i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer and (ii) concrete testing report(s) – stamped and wet signed by the civil engineer of record.

48. Upon completion of construction of the last PHASE, but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, CITY shall convey, or cause to be conveyed, to DISTRICT the flood control easement(s), or grant deed(s) of fee title where appropriate, as deemed necessary by DISTRICT for the 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).

49. Upon completion of construction of each PHASE, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT (Attention: Construction Management Section) with redlined "record drawings" of the plans for the applicable PHASE. After DISTRICT approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT a time to transfer the

redlined changes into DISTRICT's original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign mylars "record drawings."

50. Upon DISTRICT acceptance of construction of each PHASE as being complete, accept sole responsibility for the adjustment of all associated PROJECT manhole rings and covers located within CITY-held easements or rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

51. If necessary, remove the plugs or seals from all PHASE 1 inlets and catch basins upon completion of PHASE 2 construction.

52. Refund to DISTRICT, at the time of providing a Notice of Completion for the last PHASE as set forth in Section I.45, any unexpended portions of DISTRICT CONTRIBUTION.

SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review IMPROVEMENT PLANS for each PHASE and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT, prior to CITY's advertising the applicable PHASE for construction bids.
3. Prior to CITY advertising any PHASE for bids, at its sole cost and expense, review, comment, approve and make a determination on, as appropriate, all (i) REGULATORY PERMITS and APPLICATIONS for the applicable PHASE and (ii) ROW DOCUMENTS for the applicable PHASE, including any existing dedications, proposed legal description and plat maps,

basemap, and survey controls. Said REGULATORY PERMITS and ROW DOCUMENTS shall not unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain DISTRICT FACILITIES. DISTRICT may withhold approval of any such document(s) or IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT FACILITIES.

4. Record, or cause to be recorded, the easement(s) or grant deed(s) provided by CITY pursuant to Section I.16.

5. Within forty-five (45) business days of receiving CITY's appropriate invoices, pay CITY for the following, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT:

- A. ENVIRONMENTAL CONTRIBUTION as set forth in Section I.15.
- B. ROW CONTRIBUTION as set forth in Sections I.18.
- C. PH 1 CONSTRUCTION CONTRIBUTION as set forth in Section I.22.
- D. PH 2 CONSTRUCTION CONTRIBUTION as set forth in Section I.24.
- E. PH 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION as set forth in Section I.46.
- F. PH 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION as set forth in Section I.46.

6. Within seven (7) calendar days following CITY's public works construction bid opening, review and approve or reject bids for construction of the applicable PHASE. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold approval of contract.

7. Conduct periodic inspections of the applicable portion(s) of DISTRICT FACILITIES construction for quality control purposes at its sole cost and provide any comments to CITY's designated construction inspector for the applicable PHASE.

8. In the event CITY would like to utilize one or more of DISTRICT's construction services for a PHASE (i.e., construction inspection, materials testing or construction survey), and CITY provides DISTRICT with a written request for such services, DISTRICT shall provide a timely response as to whether or not they have the resources to perform such services. If DISTRICT agrees to provide one or more of the requested construction services, DISTRICT shall provide said construction service(s) for the applicable PHASE and assist CITY as needed with the administration of PROJECT's construction contract. DISTRICT hereby agrees to pay all DISTRICT costs associated with the construction service(s) that it agrees to provide, as set forth herein.

9. For PHASE 1, upon receipt of CITY's written notice that construction of PHASE 1 is substantially complete as set forth in Section I.40, conduct a final inspection of STAGE 3.

10. For PHASE 2, upon receipt of CITY's written notice that construction of PHASE 2 is substantially complete as set forth in Section I.41, conduct a final inspection of STAGE 4 and BASIN.

11. Provide CITY with a reproducible duplicate copy of "record drawings" of the plans for the applicable PHASE within twenty (20) days of receipt.

12. Accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES upon (i) DISTRICT inspection of (a) STAGE 3 in accordance with Sections I.40 and II.9 and (b) STAGE 4 and BASIN in accordance with Sections I.41 and II.10, (ii) DISTRICT acceptance of DISTRICT FACILITIES construction as being complete, (iii) DISTRICT receipt of CITY's recorded Notices of Completion for both PHASES as set forth in Section I.45, (iv) DISTRICT receipt of appropriate engineering documentation as set forth in Section I.47, (v) DISTRICT receipt of stamped and signed "record drawings" of the plans for both PHASES as set forth in Section I.49, (vi) DISTRICT's acceptance of all necessary rights of way, easements, or grant deeds as set forth in Section I.48, (vii) DISTRICT's receipt of policies of title insurance for the rights of way, easements, or grant deeds as set forth in Section I.18, (viii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition, (ix) if necessary, CITY removes the plugs or seals from all PHASE 1 inlets and catch basins, and (x) acceptance by either DISTRICT or CITY of ownership and responsibility for the operation and maintenance of EXISTING STORM DRAIN.

13. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES is not in an acceptable condition, corrections shall be made at sole expense of CITY.

SECTION III

EXISTING STORM DRAIN:

1. EXISTING STORM DRAIN shall be accepted for ownership, operation and maintenance by either CITY or DISTRICT prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES.

2. In the event CITY would like DISTRICT to accept ownership and responsibility for the operation and maintenance of EXISTING STORM DRAIN, CITY shall:

- A. Select a Licensed Civil Engineer, duly registered in the State of California, to serve as the civil engineer of record ("EoR") for EXISTING STORM DRAIN.
- B. Provide DISTRICT (Attention: Special Projects Section) with the following documents for review and approval: as-built plans for EXISTING STORM DRAIN, inspection reports for EXISTING STORM DRAIN, and any other appropriate engineering documentation related to EXISTING STORM DRAIN deemed necessary.
- C. Submit or cause to be submitted a survey of EXISTING STORM DRAIN's horizontal and vertical alignment to DISTRICT (Attention: Special Projects Section) for review and approval.
- D. Schedule and conduct a closed-circuit television ("CCTV") inspection of EXISTING STORM DRAIN, including, but not limited to, the inside of all pipes, manholes, and other facilities installed in the construction of EXISTING STORM DRAIN. CITY shall notify DISTRICT (Attention: Special Projects Section and Construction Management Section) in writing at least twenty (20) days prior to conducting said CCTV inspection of EXISTING STORM DRAIN. Said CCTV inspection shall also be recorded in such a manner that allows EoR to prepare and submit the report and letter required by Section III.2.E.

- E. Submit the following to DISTRICT (Attention: Special Projects Section) for review and approval:
- i. A report of said CCTV inspection that is prepared by EoR, including all necessary photographs and/or videos.
 - ii. A letter from EoR certifying pipe condition of EXISTING STORM DRAIN.
- F. If applicable, conduct or cause to be conducted additional testing of EXISTING STORM DRAIN as needed, including, but not limited to, non-destructive testing methods such as Windsor Probe or approved equivalent. CITY shall submit the results or reports from said additional testing to DISTRICT (Attention: Special Projects Section) for review and approval
- G. Obtain all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation, maintenance, repair, and rehabilitation of EXISTING STORM DRAIN at its sole cost and expense. Such documents, hereinafter called ("SD PERMITS"), may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority. All applications for SD PERMITS and all SD PERMITS must be provided to DISTRICT in accordance with Sections III.2.H and III.2.J.

- H. Provide DISTRICT (Attention: Special Projects Section) with an opportunity to review, comment on and approve, as appropriate, all applications for SD PERMITS prior to submitting said applications for SD PERMITS to the applicable federal, state or local resource or regulatory agencies.
- I. 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, maintain, repair, and rehabilitate EXISTING STORM DRAIN ("SD R/W DOCS") at its sole cost and expense. CITY shall consult with DISTRICT regarding existing dedications, proposed legal descriptions, plat maps basemap and survey controls. All SD R/W DOCS must be provided to DISTRICT in accordance with Section III.2.J.
- J. Provide DISTRICT (Attention: Special Projects Section) an opportunity to review, comment on, and approve all (i) SD PERMITS and (ii) SD R/W DOCS, including any existing dedications, proposed legal descriptions and plat maps, basemap, and survey controls. DISTRICT approval of any such document(s) or DISTRICT's acceptance of EXISTING STORM DRAIN for ownership, operation and maintenance may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to

operate and maintain EXISTING STORM DRAIN or DISTRICT FACILITIES.

- K. Implement or cause to be implemented all environmental mitigation required in association with the construction, operation, maintenance, repair, and rehabilitation of EXISTING STORM DRAIN at its sole cost and expense.
- L. Ensure that SD PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for EXISTING STORM DRAIN and DISTRICT FACILITIES, as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within EXISTING STORM DRAIN's right of way.
- M. Assume sole responsibility for compliance with the requirements of all SD PERMITS, including any amendments thereto, pertaining to the construction, operation, maintenance, repair and rehabilitation of EXISTING STORM DRAIN.
- N. Prior to DISTRICT acceptance of EXISTING STORM DRAIN for ownership, operation and maintenance, CITY shall convey, or cause to be conveyed, to DISTRICT the flood control easement(s), or grant deed(s) of fee title where appropriate, as deemed necessary by DISTRICT for the operation and maintenance of EXISTING STORM DRAIN. 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).

- O. At the time of recordation of the conveyance document(s) as set forth in Section I11.2.N, 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.
- P. Provide or cause EoR to provide DISTRICT (Attention: Construction Management Section) with "record drawings" of EXISTING STORM DRAIN plans for review and approval:
- i. If as-built plans for EXISTING STORM DRAIN are found and submitted to DISTRICT in accordance with Section III.2.B, EoR shall provide DISTRICT with a redlined "record drawings" copy of EXISTING STORM DRAIN plans for review and approval. After DISTRICT approval of the redlined "record drawings", EoR shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office, after which said EoR shall review, stamp

and sign the original EXISTING STORM DRAIN plans "record drawings."

- ii. If as-built plans for EXISTING STORM DRAIN are not found, EoR shall prepare and submit draft "record drawings" of EXISTING STORM DRAIN plans to DISTRICT for review and approval. After DISTRICT approval of the draft "record drawings", EoR shall review, stamp and sign the original EXISTING STORM DRAIN plans "record drawings."

3. If, in the sole discretion of DISTRICT, EXISTING STORM DRAIN is not in an acceptable condition, corrections shall be made at sole expense of CITY.

4. CITY and DISTRICT hereby agree that acceptance of EXISTING STORM DRAIN by DISTRICT for ownership, operation and maintenance is not guaranteed. The decision by DISTRICT to accept EXISTING STORM DRAIN for ownership, operation and maintenance shall be made by DISTRICT in its sole discretion.

5. Alternatively, CITY may accept ownership and sole responsibility for the operation and maintenance of EXISTING STORM DRAIN. In the event CITY accepts ownership and sole responsibility for the operation and maintenance of EXISTING STORM DRAIN, CITY shall provide DISTRICT (Attention: Special Projects Section) with documentation demonstrating CITY's acceptance of EXISTING STORM DRAIN for ownership, operation and maintenance.

SECTION IV

Indemnification:

1. CITY shall indemnify, defend and hold harmless and require CITY's construction contractor(s) to indemnify, defend 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 and 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 elected and appointed officials*, officers, employees, consultants, *contractors*, 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 to the extent arising from the performance of CITY or CITY's construction contractor(s) (including *their elected and appointed officials*, officers, employees, consultants, *contractors*, subcontractors, agents or representatives) 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.

2. 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 may adjust, settle, or compromise any such action or 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 or CITY's construction contractor(s) indemnification to the Indemnitees as set forth herein.

3. CITY 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 and YUCAIPA from any liability for the action or claim involved.

4. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CITY's or CITY's construction contractor(s) obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

5. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve CITY or CITY's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

6. DISTRICT shall indemnify, defend, save and hold harmless CITY (including their officers, 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 DISTRICT's performance of this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. DISTRICT shall defend, at its sole expense, CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors), 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 relating to DISTRICT's performance of this Agreement.

SECTION VI

It is further mutually agreed:

1. Notwithstanding any other provision herein this Agreement DISTRICT CONTRIBUTION shall not exceed a total sum of Eleven Million Four Hundred Forty-Seven Thousand Two Hundred Sixty Dollars (\$11,447,260) for PROJECT and shall be used by CITY solely for the purpose of obtaining the environmental permits and mitigation, acquiring the rights

of way, and constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

2. CITY shall endeavor to award the public works construction contracts for both PHASES and begin construction on both PHASES within twenty-four (24) months of execution of this Agreement.

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

4. In the event CITY's construction contractor(s) does not complete the construction of any PHASE in accordance with DISTRICT standards, CITY shall complete the applicable PHASE utilizing the bonds and insurances secured for the applicable PHASE as set forth in this Agreement.

5. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT, and CITY, or CITY's construction manager, but shall not be deemed complete until DISTRICT and CITY, mutually agree that construction is completed in accordance with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS. CITY shall not request DISTRICT to accept DISTRICT FACILITIES, or any portion thereof, for ownership, operation or maintenance until the requirements set forth in Section II.12 are satisfied.

6. DISTRICT personnel may observe and inspect all work being done on PROJECT but shall provide any comments to CITY personnel, or its construction manager, who shall be solely responsible for all communications with CITY's construction contractor(s).

7. In the event CITY would like to utilize one or more of DISTRICT's construction services for a PHASE (i.e., construction inspection, materials testing or construction

survey), CITY shall provide DISTRICT with written notice (Attn: Special Projects Section) requesting such services as set forth in Sections I.36 and II.8.

8. DISTRICT, the County of Riverside, the State of California, or any of their duly authorized representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. CITY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. CITY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

9. 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.

10. This Agreement is to be construed in accordance with the laws of the State of California.

11. 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: Special Projects Section

To CITY: CITY OF CALIMESA
908 Park Avenue
Calimesa, CA 92320
Attn: City Manager

12. 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.

13. 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.

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

15. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other Parties. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

16. 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.

17. 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.

18. DISTRICT and CITY, each pledge to cooperate in regard to the operation and maintenance of their respective facility(ies), if any, 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 other Parties' facility(ies).

19. Time is of the essence in prosecuting the work contemplated under this Agreement. At any time during the term of this Agreement, DISTRICT may terminate this Agreement for cause, including, but not limited to, CITY's failure to prosecute the work in a timely manner, upon providing CITY thirty (30) days written notice stating the extent and effective date of termination.

20. The obligation(s) 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 forthcoming 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.

21. 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 and written, in connection therewith. This Agreement may be amended, changed or modified only upon the written consent of the Parties hereto.

22. 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.

//

//

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


4/09/2024

(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
Board of Supervisors, Riverside County
Flood Control and Water Conservation
District


APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
RYAN YABKO
Deputy County Counsel

By 
Deputy

Cooperative Funding Agreement with the City of Calimesa
Calimesa Channel, Stages 3 and 4
Calimesa Detention Basin
Project Nos. 5-0-00160 and 5-0-00141
Miscellaneous No. 183
AMR:bjj
03/13/24

CITY OF CALIMESA

By William Davis
WILLIAM DAVIS
Mayor

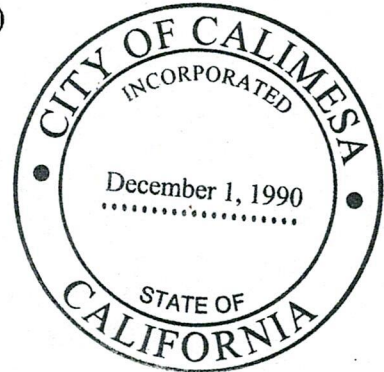
APPROVED AS TO FORM:

By Quinn Barrow
QUINN BARROW
City Attorney

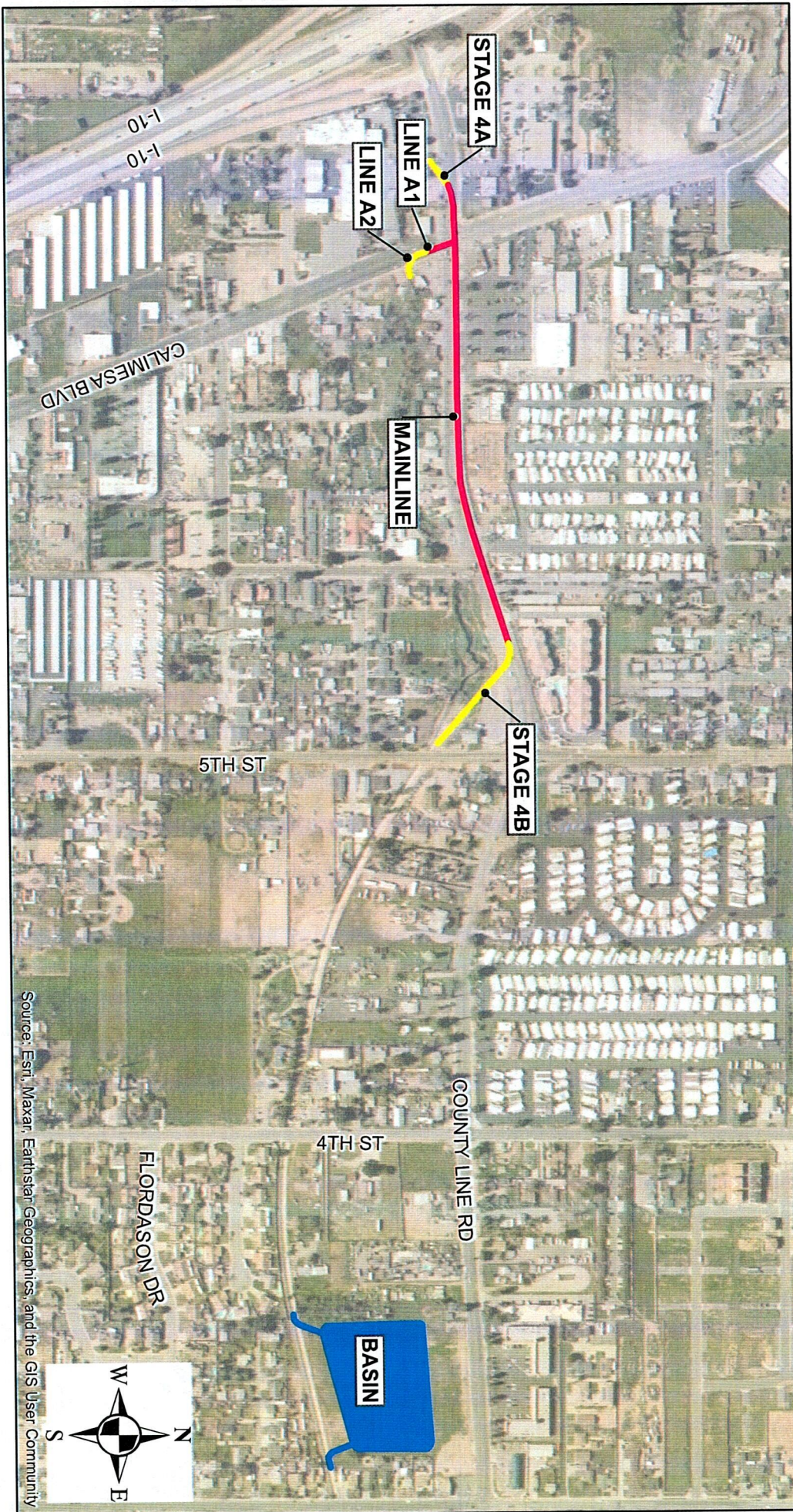
ATTEST:

By Darlene Gerdes
DARLENE GERDES
City Clerk

(SEAL)



Cooperative Funding Agreement with the City of Calimesa
Calimesa Channel, Stages 3 and 4
Calimesa Detention Basin
Project Nos. 5-0-00160 and 5-0-00141
Miscellaneous No. 183
AMR:blj
03/13/24



COOPERATIVE AGREEMENT

Calimesa Channel, Stage 3

Project No. 5-0-10160-03

MS207

LEGEND

- BASIN
- STAGE 3
- STAGE 4

EXHIBIT A

Exhibit B

DISTRICT's Insurance Requirements is as follows:

1. CITY's construction contractor(s) shall not commence operations until DISTRICT has been furnished with 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 as required in this Exhibit.

2. Without limiting or diminishing CITY's and CITY's construction contractor(s) obligation to indemnify or hold DISTRICT harmless, CITY construction contractor(s) shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the 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 Insureds.

A. Workers' Compensation:

If CITY's construction contractor(s) has employees as defined by the State of California, CITY's construction contractor(s) shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CITY's construction contractor(s) performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

Exhibit B

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY's construction contractor(s) shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

D. Professional Liability:

CITY shall cause any architect or engineer retained by CITY in connection with the performance of CITY's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. CITY shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

E. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

Exhibit B

- b. CITY's construction contractor(s) must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, CITY's construction contractor(s) carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- c. CITY's construction contractor(s) shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY's construction contractor(s) insurance carrier(s) policies do not meet the minimum notice requirement found herein, CITY's construction contractor(s) shall cause CITY's construction contractor(s) insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

Exhibit B

- e. It is understood and agreed by the parties hereto that CITY's construction contractor(s) insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY's construction contractor(s) has become inadequate.
- g. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. CITY's construction contractor(s) agrees to 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.