

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.6
(ID # 19227)**

MEETING DATE:

Tuesday, December 03, 2024

FROM : EXECUTIVE OFFICE

SUBJECT: EXECUTIVE OFFICE: Approval of Infrastructure Funding and Acquisition Agreement Between the Riverside County Flood Control and Water Conservation District, County of Riverside and the City of Temecula for AD 159-Butterfield Stage Road Storm Drain-Line A, Stage 2, Project No. 7-0-00116, CEQA Exempt per State CEQA Guidelines Section 15061(b)(3), District 3. [Not-to-exceed \$4,008,270 – AD 159 Funds 100%] (Companion Item MT 26413)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Infrastructure Funding and Acquisition Agreement ("Agreement") is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3);
2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District ("District"), County of Riverside ("County"), and the City of Temecula ("City");
3. Authorize the Chair of the Board of Supervisors to execute the Agreement documents on behalf of the County; and
4. Direct the Clerk of the Board to return two (2) copies of the executed Agreement to the County.

ACTION:Policy


Don Kent, Chief Finance Officer 11/20/2024

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Gutierrez seconded by Supervisor Spiegel 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: December 3, 2024
xc: E.O., Flood

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

(Companion Item 11.4)

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 4,008,270	\$ 4,008,270	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: AD 159 Funds 100%			Budget Adjustment:	No
			For Fiscal Year:	24/25- 28/29

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement ("Agreement") sets forth the terms and conditions by which the County will contribute funding to the City for the design and construction of flood control facility, AD 159-Butterfield Stage Road Storm Drain-Line A, Stage 2 ("Project"), as part of a City administered public works construction contract to provide the necessary flood control and drainage improvements for the immediate adjacent areas within the city of Temecula.

The Project is eligible for funds from the County administered Assessment District No. 159. The County will provide the Project funding up to \$4,008,270. The funds within the Assessment District are not sufficient to cover the entire cost of the Project. Therefore, the District will provide the remaining Project funding up to \$3,000,000.

Once constructed, the District will assume ownership, operation and maintenance of the AD 159-Butterfield Stage Road Storm Drain-Line A, Stage 2. The City will assume ownership, operation and maintenance of catch basins, street inlets and connector pipes located within the City's right of way, and storm drain portions that are 36 inches or less in diameter.

County Counsel has approved the Agreement as to legal form, and the City executed the Agreement on its November 12th, 2024 meeting agenda. The City's executed Agreement is forthcoming.

Environmental Findings

The Agreement is exempt from CEQA pursuant to the CEQA Guidelines Section 15061(b)(3), which provides, "The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Agreement does not authorize to any extent whatsoever actual physical development of the underlining property. Such development, if it occurs at all, will be the result of subsequent actions subject to CEQA review by the City prior to construction. The Agreement merely establishes the terms by which the County and the District will contribute funding to the City, and the District will assume ownership and responsibility for operation and maintenance of completed facilities that are greater than 36 inches in diameter. Therefore, it can be seen with

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

certainty that there is no possibility the Agreement will have a significant effect on the environment.

Impact on Residents and Businesses

The County's financial contribution toward the City's project was funded by ad valorem property tax revenue and entails no new fees, taxes nor bonded indebtedness to residents and businesses. Upon construction completion, the project will alleviate ongoing flooding problems and reduce sediment and debris, which will benefit the homes and businesses in the area.

Additional Fiscal Information

Total Project Cost is estimated to be \$7,000,000. County will provide the funds up to \$4,008,270 from Assessment District 159 and the District will provide the remaining funds up to \$3,000,000 in funding to the City. Sufficient funding will be included in the District's Zone 7 proposed budget in future years as appropriate and necessary. Future operation and maintenance costs associated with mainline system will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Agreement

 _____ Dave Rogers, Chief Administrative Officer	 _____ Michael C. Thomas	11/25/2024	11/22/2024
---	--	------------	------------

 _____ Aaron Gettis, Chief of Deputy County Counsel	11/22/2024
--	------------

WHEN DOCUMENT IS FULLY EXECUTED RETURN
CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

**INFRASTRUCTURE FUNDING
AND ACQUISITION AGREEMENT**
(AD 159-Butterfield Stage Road Storm Drain- Line A, Stage 2)

by and among

COUNTY OF RIVERSIDE,
(on behalf of itself and Assessment District No. 159 (Rancho Villages) and
Assessment District No. 159 Supplemental (Rancho Villages) of the County of Riverside)

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

and

CITY OF TEMECULA

Dated as of December 3, 2024

**Assessment District No. 159 (Rancho Villages) and
Assessment District No. 159 Supplemental (Rancho Villages)
of the County of Riverside**

AD No. 159 - Agreement for AD 159-Butterfield Stage Road Storm Drain, Stage 2

DEC 03 2024

3.6 / 11.4

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions4

**ARTICLE II
PAYMENTS TO BE MADE FOR THE CONSTRUCTION OF THE
FLOOD CONTROL STORM DRAIN**

Section 2.1. City to Take Lead Responsibility for the Construction of the Flood Control Channel and is to Receive Flood Control District Funds and Assessment Districts Funds7
Section 2.2. Acceptance of Flood Control Channel8
Section 2.3. Dedication of Property and Easements to the Flood Control District9

**ARTICLE III
CONSTRUCTION OF THE FLOOD CONTROL STORM DRAIN**

Section 3.1. Preparation and Approval of Plans11
Section 3.2. Duty of City to Construct11
Section 3.3. Bid and Construction Requirements11
Section 3.4. Licenses and Regulatory Permits.....13
Section 3.5. NPDES Compliance13
Section 3.6. Cal/OSHA, Confined Space Entry14
Section 3.7. Notice of Intent to Commence Construction14
Section 3.8. Additional Conditions to be Satisfied during Construction.....15
Section 3.9. Inspection, Completion of Construction15
Section 3.10. Maintenance of Facilities; Warranties16
Section 3.11. Insurance Requirements.....16
Section 3.12. Ownership of the Facilities18

**ARTICLE IV
REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION**

Section 4.1. Representations, Warranties and Covenants of the City20
Section 4.2. Representations, Warranties and Covenants of the County21
Section 4.3. Representations, Warranties and Covenants of the Flood Control District.....22
Section 4.4. [Reserved].....22
Section 4.5. [Reserved].....22
Section 4.6. City Indemnification22

**ARTICLE V
MISCELLANEOUS**

Section 5.1. City as Independent Contractor24
Section 5.2. Other Agreements24

Section 5.3.	Binding on Successors and Assigns	24
Section 5.4.	Amendments.....	24
Section 5.5.	Waivers	25
Section 5.6.	No Third Party Beneficiaries	25
Section 5.7.	Notices	25
Section 5.8.	Jurisdiction and Venue	26
Section 5.9.	Attorney's Fees.....	26
Section 5.10.	Governing Law	26
Section 5.11.	Usage of Words	26
Section 5.12.	Counterparts.....	26
Section 5.13.	Interpretation.....	26
Section 5.14.	Designation of Party Representative	26
Exhibit A	Diagram of The Flood Control Storm Drain.....	A-1
Exhibit B	Flood Control Storm Drain Description.....	B-1
Exhibit C	Easements to be Conveyed To Flood Control District.....	C-1

INFRASTRUCTURE FUNDING AND ACQUISITION AGREEMENT

THIS INFRASTRUCTURE FUNDING AND ACQUISITION AGREEMENT (hereinafter, the "Infrastructure Agreement") is made and entered into as of the 3rd day of December, 2024, by and between the County of Riverside, a political subdivision of the State of California (hereinafter the "County"), on behalf of itself and Assessment District No. 159 (Rancho Villages) of the County and Assessment District No. 159 Supplemental (Rancho Villages) of the County, Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code (hereinafter, the "Flood Control District") and the City of Temecula, a municipal corporation (hereinafter the "City").

RECITALS

WHEREAS, the Board of Supervisors (the "Board of Supervisors") of the County pursuant to the provisions of the Municipal Improvement Act of 1913, being Division 12 (commencing with Section 10000) of the Streets and Highways Code of the State of California (respectively, the "1913 Act" and the "Code"), established Assessment District No. 159 (Rancho Villages) of the County of Riverside (the "Original District") and directed pursuant to Section 3114 of the Code that a Notice of Assessment Lien be recorded against all parcels within the boundaries of the Original District in the amount of \$77,535,514.82 (the "Original Assessment Lien") and said Notice was recorded on July 17, 1988; and

WHEREAS, the Board of Supervisors by Resolution No. 2003-253 ordered changes in the work to be financed under the Original Assessment Lien and reduced the assessment liens on identified parcels in an aggregate amount of \$5,936,101.93 and an Amended Notice of Assessment Lien was recorded on August 27, 2003; and

WHEREAS, the Board of Supervisors pursuant to the provisions of the 1913 Act established Assessment District No. 159 Supplemental (Rancho Villages) of the County of Riverside (the "Supplemental District", and collectively with the Original District, the "Assessment Districts") and directed pursuant to Section 3114 of the Code that a Notice of Assessment Lien be recorded against all parcels within the boundaries of the Supplemental District in the amount of \$79,316,598.52 (the "Supplemental Assessment Lien") and the lien was recorded on November 18, 1991; and

WHEREAS, the Board of Supervisors by Resolution No. 2003-254 ordered changes in the work to be financed under the Supplemental Assessment Lien and reduced the reduced the assessment liens on identified parcels in an aggregate amount of \$36,535,441.07 and an Amended Notice of Assessment Lien was recorded on August 27, 2003; and

WHEREAS, the boundaries of the Original District and the Supplemental District are coterminous; and

WHEREAS, all bonds issued to fund the Assessment Districts have been repaid, and no bond or other indebtedness currently exists with respect to the Assessment Districts; and

WHEREAS, \$4,008,270.19 of unused funds remain in the Assessment Districts; and

WHEREAS, Butterfield Stage Road Line A, Stage 2 is required to address remaining drainage tributary to Butterfield Stage Road (the "Flood Control Storm Drain"); as shown on Exhibit A and described in Exhibit B, which are attached hereto, and by this reference are incorporated herein; and

WHEREAS, the entire Flood Control Storm Drain is located within the jurisdictional boundaries of the City; and

WHEREAS, the County, on behalf of itself and the Assessment Districts, the City, and the Flood Control District, intend to enter into an Infrastructure Agreement for the construction of the Flood Control Storm Drain; and

WHEREAS, the entire Flood Control Storm Drain is located within the boundaries of the Assessment Districts; and

WHEREAS, the Flood Control Storm Drain is the last drainage infrastructure identified within the Assessment Districts and therefore eligible to receive the unused funds remaining in the Assessment Districts; and

WHEREAS, the estimated cost to construct Flood Control Storm Drain is greater than the fund balance that remains in the Assessment Districts; and

WHEREAS, the Flood Control District has budgeted to contribute the additional construction costs in an amount not-to-exceed \$3,000,000 to the City toward the construction of the Flood Control Storm Drain; and

WHEREAS, Section 10010 of the California Streets and Highways Code provides that public improvements and works that have been ordered to be constructed may also be acquired if the public improvement or work was not in existence at the time the resolution of intention was adopted, the improvement has been constructed as if it had been constructed under the direction and supervision or under the authority of the receiving public entity, and the public improvement or work has not been accepted by the receiving public entity into its maintained system; and

WHEREAS, the parties to this Agreement desire to specify the conditions under which the City is to cause the Flood Control Storm Drain to be constructed, is to receive reimbursement for the costs it, or its contractors, incur, and the conditions under which the Flood Control District will accept the Flood Control Storm Drain into its maintained system.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the Parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall have the meaning herein specified when used in this Infrastructure Agreement:

"Acceptable Title" means title to land, or an easement therein, delivered free and clear of all liens, special taxes, assessments, leases, easements and encumbrances, whether any such item is recorded or unrecorded, except those non-monetary items which are determined by the Flood Control District, at its sole discretion, not to interfere with the intended use of such land or easement and therefore are not required to be cleared from title.

"Acceptance Date" means the date that the Flood Control District accepts the Flood Control Storm Drain into maintained system consistent with the terms of this Infrastructure Agreement.

"Administrator" means the County Executive Officer, or his/her designee.

"Assessments" mean the special assessment levied on all parcels within the Assessment Districts pursuant to the 1913 Act and the annual assessment installments enrolled each fiscal year pursuant to the 1915 Act to pay the debt service on the Bonds.

"Assessment Districts" means, collectively, the Original District and the Supplemental District.

"Assessment Districts Funds" means the fund balance remaining in the Assessment Districts.

"Bid Procedures" means those procedures specified in Article III to this Infrastructure Agreement.

"Board of Supervisors" means the Board of Supervisors of the County.

"Business Day" has the same meaning as defined in Section 9 of the California Civil Code.

"CEQA" means the California Environmental Quality Act (CEQA), constituting Sections 21000 *et seq.* of the California Public Resources Code, as amended.

"City" means the City of Temecula, a municipal corporation.

"City Engineer" means the Director of Public Works of the City (or any successor to the responsibilities thereof if such office is no longer in existence), and any designee of said Director of Public Works.

"Code" means the California Government Code.

"Construction Site" means the site on which the Flood Control Storm Drain is to be constructed, including off site staging areas and material storage areas.

"County" means the County of Riverside, a political subdivision of the State, and its successors.

"County Executive Officer" means the County Executive Officer of the County (or any successor to the responsibilities thereof if such office is no longer in existence), and any designee of said County Executive Officer.

"Flood Control District" means the Riverside County Flood Control and Water Conservation District, and its successors.

"Flood Control District Funds" means the contribution from the Flood Control District toward the construction of the Flood Control Storm Drain in an amount not-to-exceed \$3,000,000.

"Flood Engineer" means the General Manager-Chief Engineer of the Flood Control District (or any successor to the responsibilities thereof if such office is no longer in existence), and any designee of said General Manager-Chief Engineer.

"Flood Control Storm Drain" means Butterfield Stage Road Line A, Stage 2 as shown and described on Exhibits A and B to this Infrastructure Agreement and detailed in Flood Control District's Drawing No. 7-0554.

"Infrastructure Agreement" means this Infrastructure Funding and Acquisition Agreement, dated as of December 3, 2024, by and among the County, the Flood Control District, and the City, as originally executed or as the same may be amended from time to time in accordance with its terms.

"General Prevailing Wage Rates" means those rates as determined by the Director of the Department of Industrial Relations of the State to be applicable to the site of the Assessment Districts.

"Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (a) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321), (b) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903), (c) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., (d) petroleum, or (e) asbestos.

"Original District" means Assessment District No. 159 (Rancho Villages) of the County of Riverside.

"Party" or "Parties" means, individually or collectively, each of the signatories to this Infrastructure Agreement.

"Plans" means the plans and specifications for the Flood Control Storm Drain prepared or to be prepared at the direction of the City pursuant to Section 3.1 hereof.

"Property" means all of the territory within the boundaries of the Community Facilities District.

"Regulatory Permits" means all necessary permits, approvals or agreements required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of Flood Control Storm Drain. Such documents may include, but are not limited to, a Section 404 Permit issued by the U.S. Army Corps of Engineers, a Section 401 Water Quality Certification issued by the California Regional Water Quality Control Board ("CRWQCB"), a Section 1602 Streambed Alteration Agreement issued by the California Department of Fish and Wildlife, a National Pollutant Discharge Elimination System Permit issued by the State Water Resources Control Board or CRWQCB and Western Riverside County Regional Conservation Authority.

"State" means the State of California.

"Supplemental District" means Assessment District No. 159 Supplemental (Rancho Villages) of the County of Riverside.

"1913 Act" means the Municipal Improvement Act of 1913, being Division 12 (commencing with Section 10000) of the Code.

"1915 Act" means the Improvement Bond Act of 1915, being Division 10 (commencing with Section 8500) of the Code.

ARTICLE II

PAYMENTS TO BE MADE THE CONSTRUCTION OF THE FLOOD CONTROL STORM DRAIN

Section 2.1. City to Take Lead Responsibility for the Construction of the Flood Control Storm Drain and is to Receive Flood Control District Funds and Assessment Districts Funds. The City will be the Lead Agency for CEQA and assume lead responsibility for the construction of the Flood Control Storm Drain. The City shall obtain and grant rights to the Flood Control District to enter the properties to inspect the construction of the Flood Control Storm Drain. Prior to commencing construction, the City shall exercise its land use authority pursuant to the Subdivision Map Act to obtain Plans, Regulatory Permits and all rights of way. In the event the Developer cannot obtain required rights of way, including easements and temporary construction easements necessary to inspect, construct, operate and maintain the Flood Control Storm Drain, the City agrees to consider in good faith the acquisition of such property rights pursuant to Government Code Section 66462.5 and applicable law. Developer shall waive the time limits for such acquisitions set forth in Government Code Section 66462.5 and the costs of such proceedings and acquisition shall be the responsibility of the Developer and shall be recoverable from the Assessment District Funds to the extent permitted by the formative documents of the Assessment Districts, by bond requirements and by other applicable law. This Agreement is neither a commitment nor the announcement of an intent by City to acquire any or all of the property required for the City Facilities. The Flood Control District shall review Plans, Regulatory Permits and the right of way documents to ensure that the Flood Control Storm Drain is constructed per Flood Control District standards and can be adequately operated and maintained by the Flood Control District.

The County shall pay the Assessment District Funds to the City within 30 days after the receipt of the following from the City: (i) an invoice in the amount not to exceed the Assessment District Funds, (ii) the City's intent to award notice of the Flood Control Storm Drain construction to the lowest responsible bidder, and (iii) the package submitted by the lowest responsible bidder showing the actual low bid amounts. The City shall reimburse any unexpended balance of the Assessment Districts Funds upon the completion of construction of the Flood Control Storm Drain.

The Flood Control District shall inspect the Flood Control Storm Drain and pay the Flood Control District Funds to the City within 30 days after the receipt of the following from the City: (i) an invoice in the amount not to exceed the Flood Control District Funds, (ii) the City's intent to award notice of the Flood Control Storm Drain construction to the lowest responsible bidder, and (iii) the package submitted by the lowest responsible bidder showing the actual low bid amounts. The City shall reimburse any unexpended balance of Flood Control District Funds upon the completion of construction of the Flood Control Storm Drain.

Notwithstanding anything to the contrary contain herein, in the event the costs of administration, construction management, design, environmental compliance, NPDES compliance, regulatory permits and the estimated construction cost of the Flood Control Storm

Drain to be incurred by the City exceed the available Flood Control District Funds, available Assessment District Funds, and the contributions of the Developer of Tract 36483 the City may stop work on the Flood Control Storm Drain until such time as sufficient funds are available for the Flood Control Storm Drain. City shall not be require to contribute its own funds to the Flood Control Storm Drain.

Section 2.2. Acceptance of Flood Control Storm Drain.

The City shall be responsible to operate and maintain the Flood Control Storm Drain until the Flood Control District accepts the Flood Control Storm Drain for operation and maintenance. In order for the Flood Engineer to accept the Flood Control Channel into the Flood Control District's maintained system, the City shall deliver or cause to be delivered to or deposited with the Flood Engineer:

- (a) Documents conveying or which previously conveyed to the Flood Control District Acceptable Title to the real property on, in or over which the Flood Control Storm Drain is located, as described in Section 2.3 hereof.
- (b) Final lien releases addressed to the County, the Flood Control District, and the City must be received by the Flood Engineer prior to the Flood Control District accepting the Flood Control Storm Drain for operation and maintenance; and
- (c) A copy of the letter issued by Flood Engineer that the construction of the Flood Control Storm Drain was completed in accordance with the Flood Control District and/or City approved Plans and a copy of the Notice of Completion for the Flood Control Storm Drain that will be filed in accordance with Section 3093 of the California Civil Code, if applicable; and
- (d) Copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the operation and maintenance of the Flood Control Storm Drain. Such documents include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority; and
- (e) The City's civil engineer of record or construction civil engineer of record duly registered in the State shall provide to the Flood Control District (i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer, (ii) concrete testing report(s) – stamped and wet signed by the civil engineer of record, and (iii) redlined "as-built" plans and profile sheets for the Flood Control Storm Drain. After the Flood Control District's approval of the redlined "as-built" drawings, the City's engineer shall schedule with the Flood Control District a time to transfer the redlines onto the Flood Control District's original mylars at the Flood Control District's office, after which, said engineer shall review, stamp and sign the original mylars "As-Built"; and

Notwithstanding anything to the contrary contained herein, acceptance of the Flood Control Storm Drain shall not be made unless the Flood Control District has, by written notice to the County and the City Engineer, stated that the Flood Control District is willing to accept

ownership of the Flood Control Storm Drain as constructed consistent with Section 3.9, below, and to include it as part of its maintained system as of the Acceptance Date. It is understood that the City shall not commence the construction of the Flood Control Storm Drain until items (a), (b), (c) and (d) have been addressed.

Section 2.3. Dedication of Property and Easements to Flood Control District.

Acceptable Title to all property not presently held by the Flood Control District on, in or over which the Flood Control Storm Drain will be located shall be deeded over to Flood Control District by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such easement is approved by the Flood Control District as being a sufficient interest therein to permit Flood Control District to properly own, operate and maintain such Flood Control Storm Drain located therein, thereon or thereover, and to permit the Flood Control District and the City to perform their respective obligations as set forth in this Infrastructure Agreement.

The written notice accepting the Flood Control Storm Drain required by Section 2.2, above, will not be provided until the City has provided or caused to be provided to the Flood Control District:

- (a) Documents by which specified property owners have conveyed to the Flood Control District an easement, including ingress and egress, in a form approved by the Flood Control District, for the rights of way shown in concept in cross hatched blue in Exhibit C, and policies of title insurance, in an amount not less than fifty percent (50%) of the estimated fee value, as determined by the Flood Control District, for each parcel so conveyed, guaranteeing Flood Control 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 Flood Control District are acceptable.

The City shall furnish to the Flood Control District a title report for such property not previously dedicated or otherwise conveyed to the Flood Control District for review and approval at least thirty (30) Business Days prior to the notice required by Section 3.7 hereof. The Flood Control District shall approve the title report unless it reveals a matter that, in the sole judgement of the Flood Control District, could materially affect the Flood Control District's use and enjoyment of any part of the property or easement covered by the title report in the event the Flood Control District does not approve such title report, the Flood Control District shall notify the County and City in writing and the Flood Control District shall not be obligated to accept title to said Flood Control Storm Drain..

Consistent with the preceding paragraph, the City shall obtain and provide, or cause to be obtained or provided, to the Flood Control District duly executed irrevocable offers of dedication to the public for flood control purposes, including ingress and egress, for rights of way deemed necessary by the Flood Control District for the construction, inspection, operation and maintenance of the Flood Control Facilities as shown in concept in Exhibit C which is attached hereto and by this referenced incorporated herein. The irrevocable offer(s) of dedication shall be in a form approved by the Flood Control District and shall be executed by all legal and equitable owners in the offer.

ARTICLE III

CONSTRUCTION OF THE FLOOD CONTROL STORM DRAIN

Section 3.1. Preparation and Approval of Plans. Subject to the provisions of this Agreement, including without limitation, Section 2, and to the extent that the City has not already done so, the City shall cause Plans to be prepared for the Flood Control Storm Drain. The City shall obtain the written approval of their Plans from the Flood Engineer, as appropriate. The City shall provide a copy of all such Plans to the Flood Engineer, as appropriate. Once the Plans have been approved, no changes are to be made thereto without prior written consent of the Flood Control District, as appropriate.

Section 3.2. Duty of the City to Construct. Subject to the provisions of this Agreement, including without limitation, Section 2, the City shall construct or cause to be constructed the Flood Control Storm Drain, in accordance with the Plans approved by the Flood Engineer and/or City Engineer. The City shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Flood Control Storm Drain in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken.

Section 3.3. Bid and Construction Requirements.

The City is to conduct the construction of the Flood Control Storm Drain as a public works project, with the advertisement, solicitation of bids, and the award of the construction contract consistent with the applicable provisions of law, including but not limited to the California Public Contracts Code, the California Labor Code, the California Civil Code and the California Government Code.

(a) Prior to soliciting bids for the Flood Control Storm Drain, or any portion thereof, the City shall submit a bid packet for review and approval to the Flood Engineer. The contract for construction of Flood Control Storm Drain, or any portion thereof, is to be awarded to the responsible bidder submitting the lowest responsive bid after notice inviting sealed bids consistent with the applicable provisions the Public Contract Code. The Flood Engineer is to be provided with copies of all bids received.

(c) The City shall require, and the Plans, bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on the Flood Control Storm Drain, or any portion thereof, to pay not less than General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the California Labor Code, the California Government Code and the California Public Contracts Code relating to General Prevailing Wage Rates as required by the specifications approved by the Flood Engineer.

(d) The City shall require each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such individual or entity is engaged to perform work on the Flood Control Storm Drain, or any portion thereof, to provide proof of insurance coverage satisfying the requirements of Section 3.11 hereof throughout the term of the construction of the Flood Control Storm Drain.

(e) The principal contractors engaged to perform work on the Flood Control Storm Drain, or any portion thereof, shall be required to furnish to the City (i) labor and material payment bonds, and (ii) contract performance bonds, each in an amount equal to 100% of the contract price, naming the County, the Flood Control District, and the City as obligees, and issued by a California admitted surety having a current A.M. Best A:VIII (A:8) rating or an admitted surety insurer which complies with the provisions of Section 995.660 of the California Code of Civil Procedure. All such bonds shall be in a form as prescribed by the Flood Control District. The bonds tendered pursuant to this sub-section are to be accepted and held by the City Engineer.

(f) The City shall comply, and shall cause each of its contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individual or entity is engaged to perform work on the Flood Control Storm Drain, or a portion thereof, to comply, with such other requirements relating to the construction of Flood Control Storm Drain as the Flood Control District or the County may impose by written notification delivered to the City, to the extent legally required as a result of changes in applicable federal, state or county laws, rules or procedures.

(g) The City shall require and the Plans and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on the Flood Control Storm Drain, or portion thereof, to submit certified weekly payroll records or other proof of payment of General Prevailing Wage Rates to the City, for inspection by the City Engineer.

(h) All change orders shall be reviewed and approved by the Flood Engineer for the purpose of ensuring that they comply with Flood Control District standards, as appropriate, which review and approval shall not be unreasonably withheld. Change orders need not be submitted to the Flood Engineer for review and approval prior to execution and commencement or continuation of work.

(i) The City shall provide proof to the Flood Engineer, at such intervals and in such form as the Flood Engineer may require, that the foregoing requirements have been satisfied as to Flood Control Storm Drain or any portion thereof.

(j) The Flood Control District has waived reimbursement of its costs for the review and approval of the Plans for the Flood Control Storm Drain and the review and approval of right of way and conveyance documents.

(k) The Flood Control District has agreed to waive reimbursement of its cost of providing construction inspection for the Flood Control Storm Drain.

Section 3.4. Licenses, and Regulatory Permits. Prior to commencement of construction of Flood Control Storm Drain, the City shall secure all necessary licenses, agreements, permits, rights of entry and temporary construction easements (collectively "Licenses") that may be needed for the construction, inspection, operation and maintenance of the Flood Control Storm Drain. As part of providing conditions of approval for the entitlement of the proposed Tract 36483, located within the boundaries of the Assessment Districts, the City shall condition the developer of proposed Tract 36483, to secure all Regulatory Permits, approvals or agreements, if any, required by the various Federal and State resource and/or regulatory agencies to construct, operate and maintain the Flood Control Storm Drain. The Flood Control District shall review all Licenses and Regulatory Permits.

Section 3.5. NPDES Compliance. The City shall prepare and implement or cause to be prepared and implemented, a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirement of the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activity (SWRCB Order No. 99-08 DWQ) and any amendments thereto (the "General Permit"). The General Permit regulates both stormwater and non-stormwater discharges associated with construction activities required by this Infrastructure Agreement.

The SWPPP shall identify site specific "Best Management Practices" ("BMPs") to be implemented during and after construction to control pollution of Stormwater runoff and receiving waters. The identified BMPs shall include, but not be limited to, "good housekeeping" practices for the Construction Site such as establishing stabilized construction access points, providing adequate sanitary/septic waste management, designating vehicle and equipment cleaning/maintenance areas, employing proper material handling and storage practices, maintaining adequate soil stabilization and erosion control practices to control the discharge of pollutants from the Construction Site and any activities thereon. The SWPPP shall also stipulate to an ongoing program for monitoring and maintenance of all BMPs.

The City shall be solely responsible throughout the duration of constructing the Flood Control Storm Drain for placing, installing, constructing, inspecting and maintaining all BMPs identified in the SWPPP and amendments thereto and for removing and disposing of temporary BMPs.

The City shall become fully informed of and comply with the applicable provisions of the General Permit, federal, state and local regulations that govern the City's activities and operation pertaining to both stormwater and non-stormwater discharges from the Construction Site of the Flood Control Storm Drain and any area of disturbance outside the said Construction Site. The City shall, at all times, keep copies of the General Permit, the SWPPP and all amendments at the Construction Site. The SWPPP shall be made available upon request of a representative of the SWRCB, San Diego Regional Water Quality Control Board or the United States Environmental Protection Agency. The City shall, at reasonable times, allow authorized agents of the above referenced agencies, upon the presentation of credentials, to: (i) enter upon the Construction Site; (ii) have access to and copy any records required to be kept as specified in the General Permit, (iii) inspect the Construction Site, including any offsite staging areas or material storage areas and determine whether related soil stabilization and sediment control

BMP's have been implemented and maintained, and (iv) sample or monitor stormwater or non-stormwater runoff for purposes of ensuring compliance with the General Permit.

The City shall be solely and exclusively responsible for any arrangements made between the City and adjacent property owners or entities that result in disturbance of land at the Construction Site.

The City shall be responsible for all costs and for any liability imposed by law as a result of the City's failure to comply with the requirements set forth in this Section, including but not limited to, compliance with the applicable provisions of the General Permit and federal, state and local regulations. For the purpose of this Section, costs and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the County, the Flood Control District, or the City, including those levied under the Federal Clean Water Act and the State's Porter-Cologne Water Quality Act.

Section 3.6. Cal/OSHA, Confined Space Entry. At all times during the construction of the Flood Control Storm Drain, the City shall require all contractors to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintenance of a safe working environment for the Flood Control District, the City and their respective employees on the site. This will include the preparation of a confined space procedure specific for the Flood Control Storm Drain. The procedure shall comply with requirements contained in Sections 5156, 5157 and 5158 of Title 8 of the California Code of Regulations and the Flood Control District's "Confined Space Procedure, Safety Operation Manual (SOM)-18". The confined space procedure is to be reviewed and approved by the Flood Engineer before proceeding with construction of the Flood Control Storm Drain.

Section 3.7. Notice of Intent to Commence Construction. Not less than twenty (20) Business Days prior to the date on which it intends to commence construction on the Flood Control Storm Drain, the City is to provide written "Notice of Intent" to the Flood Engineer. Construction of the Flood Control Storm Drain may not proceed until the Flood Engineer issues a "Notice to Proceed" to the City. The "Notice of Intent" is to include the following documents:

- (a) Copies of all Licenses and Regulatory Permits secured pursuant to Sections 3.4 and 3.5, above, including a copy of the Notice of Intent ("NOI") and waste discharge identification number ("WDID No.") received from the SWRCB pursuant to Section 3.5, above.
- (b) Copies of the bonds required by Section 3.3(e), above.
- (c) [Reserved.]
- (d) Duly executed irrevocable offer(s) of dedication to the public for flood control purposes, including ingress and egress, for the rights of way deemed necessary by the Flood Control District and the City for the construction, inspection, operation and maintenance of the Flood Control Storm Drain as required by Section 2.3, above.

- (e) Preliminary reports of title dated not more than thirty (30) days prior to date of submission for all property described in the irrevocable offer(s) of dedication.
- (f) A complete list of all contractors and subcontractors to be performing work on the Flood Control Storm Drain, including the corresponding license number and license classification of each. On said list, the City shall also identify its designated superintendent for construction of the Flood Control Storm Drain.
- (g) A construction schedule which shall show the order and dates in which the City and the City's contractor proposes to carry on the various parts of work, including estimated start and completion dates.
- (h) The final mylar plan and profile sheets for the Flood Control Storm Drain and assign their ownership to the Flood Control District prior to the start of construction of the Flood Control Storm Drain.
- (i) Certificates of insurance and endorsements as required by Section 3.11, below.
- (j) The confined space procedure as required by Section 3.6, above.

Section 3.8. Additional Conditions to be Satisfied during Construction.

(a) The City shall endeavor to complete construction of the Flood Control Storm Drain within twenty-four (24) consecutive months after commencing work on the Flood Control Storm Drain.

(b) Construction of the Flood Control Storm Drain shall be on a five (5) day, forty (40) hour workweek with no work on Saturday, Sundays or days designated by the Flood Control District as legal holidays, unless otherwise approved by the Flood Control District. If the City feels it is necessary to work more than normal forty (40) hour workweek or on holidays, the City shall make a written request for permission from the Flood Control District to work the additional hours. The request shall be submitted to the Flood Engineer at least 72 hours prior to the request date for additional work hours and state the reasons for the overtime and the specific time frames required. The decision granting permission for overtime work shall be made by the Flood Control District at its sole discretion and shall be final. The Flood Control District agrees that night work will be required for the installation of the Flood Control Storm Drain across Temecula Parkway and shall accommodate the City's request for such night work.

Section 3.9. Inspection; Completion of Construction. The City shall have primary responsibility for providing inspection of the work of construction of the Flood Control Storm Drain to insure that the work of construction is accomplished in accordance with the Plans approved by the Flood Engineer. The Flood Control District's staff shall have access to the Construction Site at all reasonable times for the purpose of accomplishing such inspection.

Upon completion of construction of a Flood Control Storm Drain, the City is to provide the Flood Control District with written notice that it considers construction of the Flood

Control Storm Drain to have been completed consistent with the Plans and, upon receipt of said notice, the Flood Control District's staff will provide written confirmation that construction of the Flood Control Storm Drain is complete consistent with the approved Plans and the provisions of this Infrastructure Agreement.

Upon receipt of both written notices, the Flood Engineer will in a timely manner notify the City that the Flood Control Storm Drain has been satisfactorily completed and that the City is to proceed with the recording of a Notice of Completion with respect to such construction pursuant to Chapter 2 of Title 1 of Part 6 of Division 4 (commencing with Section 8100) of the California Civil Code. The City is to provide a duplicate copy of the recorded Notice of Completion to both the Flood Engineer. Within a reasonable time following receipt of the duplicate copy of the recorded Notice of Completion and the City's compliance with other provisions of Section 2.2 hereof, the Flood Engineer will issue the written notice required by said Section 2.2 that the Flood Control District will accept the Flood Control Storm Drain into its maintained system.

Section 3.10. Maintenance of Facilities; Warranties. The City shall maintain the Flood Control Storm Drain in good and safe condition until the Acceptance Date of the Flood Control Storm Drain. Prior to the Acceptance Date, the City shall be solely responsible for maintaining the Flood Control Storm Drain in proper operating condition and shall perform such maintenance on the Flood Control Storm Drain as the Flood Engineer reasonably determines to be necessary. As of the Acceptance Date, the performance bond provided by the City for the Flood Control Storm Drain pursuant to Section 3.3(e) hereof shall be reduced to an amount equal to 10% of the original amount thereof and shall serve as a warranty bond to guarantee that the Flood Control Storm Drain will be free from defects due to faulty workmanship or materials for a period of 12 months from the Acceptance Date or the City may elect to provide a new warranty bond or cash in such an amount and said warranty bond will be discharged from the Acceptance Date. At the conclusion of the 12 month period, the City shall assign to the Flood Control District all of the City's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to the Flood Control Facilities.

Section 3.11. Insurance Requirements. Without limiting or diminishing the City's obligation to indemnify and hold the County and the Flood Control District harmless pursuant to Section 5.6, hereof, the City shall procure and maintain or cause to be maintained, at its sole cost and expense the following insurance coverages, or alternate coverages acceptable to the County's Risk Manager, during the term of this Infrastructure Agreement and shall require each consultant or contractor working on the Flood Control Storm Drain project to procure and maintain such insurance:

(a) *Commercial General Liability:* Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations, explosion, collages, use of cranes, and other heavy equipment and underground hazards, personal and advertising injury covering claims which may arise from or out of the City's performance of its obligations hereunder. Policy shall name by endorsement the County, the Flood Control District, the City, their respective directors, officers, Board of Supervisors, elected officials, employees,

agents or representatives as "Additional Insureds." The policy's limit of liability shall not be less than \$5,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Infrastructure Agreement or be no less than two (2) times the occurrence limit.

(b) *Vehicle Liability:* The City shall maintain liability insurance for all owned, non-owned or hired vehicles 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 Infrastructure Agreement or be no less than two (2) times the occurrence limit. Policy shall name by endorsement the County, the Flood Control District, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as Additional Insureds.

(c) *Workers' Compensation Insurance:* The City shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State. Said policy shall include Employers' Liability (Coverage B) including Occupation Disease with limits not less than \$1,000,000 per person per accident. Said policy shall be endorsed to waive subrogation in favor of the County and the Flood Control District; and if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

General Insurance Provisions - all lines:

(i) 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 County's Risk Manager.

(ii) The City's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the County's Risk Manager before the commencement of operations under this Infrastructure Agreement. Upon notification of deductibles or self-insured retentions which are deemed unacceptable to the County and the Flood Control District, at the election of the County's Risk Manager, the City's carriers shall either: (i) reduce or eliminate such deductibles or self-insured retentions as respects this Infrastructure Agreement with the County and the Flood Control District, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

(iii) The City shall cause its insurance carrier(s) to furnish the County and the Flood Control District with (i) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; or (ii) evidence of coverage acceptable to the County's Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect.

(iv) ***The City shall not commence construction of the Flood Control Storm Drain until the Flood Control District and the County have been furnished either original certificate(s) of insurance and certified original copies of endorsements, policies of***

insurance including all endorsements and any and all other attachments as required in this Section, or other evidence of coverage acceptable to the County's Risk Manager.

(v) Further, said certificate(s) and endorsements to policies of insurance shall contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the County and the Flood Control District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation or coverage for the City, this Infrastructure Agreement, as regards the City, as appropriate, shall terminate forthwith, unless the County and the Flood Control District receive, 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 and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

(vi) It is understood and agreed by the City and its respective insurance company(s) that the certificate(s) of insurance and policies shall so covenant and shall be construed as primary insurance, and the County's and Flood Control District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

(vii) The City and its contractors shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Infrastructure Agreement and will require all such subcontractors to name on their insurance policies by endorsement the County, the Flood Control District, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as "Additional Insureds". Copies of such certificates and endorsements shall be provided to the County and the Flood Control District. The minimum limits of liability required of all tiers of subcontractors is \$1,000,000 Combined Single Limit for Commercial General Liability and \$1,000,000 Combined Single Limit for Vehicle Liability Insurance.

Section 3.12. Ownership of Flood Control Storm Drain.

(a) Notwithstanding the fact that a substantial portion of the Flood Control Storm Drain will be constructed within dedicated street rights of way or on property which has been or will be dedicated to the Flood Control District or the City, the Flood Control Storm Drain shall be and remain the property of the City until Acceptable Title to parcels not owned by the Flood Control District is conveyed to the Flood Control District as provided herein. Ownership of said parcels by the property owners and/or developers, the City or any third parties shall likewise not be affected by any agreement that either developers or the City may have entered into or may enter into pursuant to the provisions of the Subdivision Map Act, Section 66410 *et seq.* of the Code, and the provisions of this Section shall control. The Flood Control District will not be obligated to accept ownership of the Flood Control Storm Drain until all of the conditions set forth in this Infrastructure Agreement have been satisfied.

(b) The City is to own, maintain and operate those catch basins, storm drain pipes under, connector pipes and laterals within those City street rights-of-way in which the Flood Control

Storm Drain is located. The City, by execution of this Infrastructure Agreement, grants to the Flood Control District all rights necessary to inspect, construct, reconstruct, operate and maintain those portions of the Flood Control Storm Drain located within City rights-of-way.

(c) Prior to the Flood Control District taking ownership of the Flood Control Storm Drain, all of the conditions set forth in Sections 2.2 and 2.3, above, must be satisfied.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

Section 4.1. Representations, Warranties and Covenants of the City. The City makes the following representations, warranties and covenants for the benefit of the Flood Control District and the County, as of the date hereof:

(a) Authority. The City represents and warrants that it has the power and authority to enter into this Infrastructure Agreement, and has taken all action necessary to cause this Infrastructure Agreement to be executed and delivered.

(b) Binding Obligation. The City represents and warrants that this Infrastructure Agreement is a valid and binding obligation of the City and is enforceable against the City in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Completion of the Flood Control Storm Drain. The City covenants that it will use its reasonable and diligent efforts to do all things that may be lawfully required of it in order to cause the Flood Control Storm Drain to be completed in accordance with this Infrastructure Agreement.

(d) Compliance with Laws. The City covenants that for the period that the Flood Control Storm Drain is owned by the City or required pursuant to this Infrastructure Agreement to be maintained by the City, it will not commit, suffer or permit any of its agents, employees or contractors to commit any act to be done in, upon or to the Flood Control Storm Drain in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Flood Control Storm Drain.

(e) Payment Requests. The City represents and warrants that (i) it will not request payment from either the Assessment Districts or the Flood Control District under this Infrastructure Agreement for the acquisition of any improvements that are not part of a Flood Control Storm Drain, and (ii) it will diligently follow all procedures set forth in this Infrastructure Agreement.

(g) Financial Records. Until the Acceptance Date of the Flood Control Storm Drain, the City covenants to maintain proper books of record and account for the costs incurred in the design, engineering and construction of the Flood Control Storm Drain. The City covenants that such accounting books will be maintained in

accordance with generally accepted accounting principles, and will be available for inspection by the Flood Engineer and/or the Administrator at any reasonable time during regular business hours on two Business Days' prior written notice.

(h) Hazardous Wastes. The City represents and warrants that neither the City, nor any contractor, subcontractor, agent or employee thereof will use, generate, manufacture, procure, store, release, discharge or dispose of any Hazardous Material on, under or about the Construction Site or transport any Hazardous Material to or from the Construction site in violation of any federal state or local law, ordinance, regulation, rule, decision or policy statement regulating Hazardous Material.

(i) Permits. The City covenants that it will pursue in a commercially reasonable manner any governmental or other permits or licenses required to proceed with the construction of the Flood Control Storm Drain.. The City represents and warrants that to the best of its knowledge, as of the date hereof, there is no material legal impediment to its proceeding with the construction of the Flood Control Storm Drain.

(j) Environmental Matters. The City represents and warrants that it has taken all actions necessary under CEQA to allow for the construction of the Flood Control Storm Drain.

(h) Availability of Funds. The City acknowledges that the payment of any costs the City incurs with respect to the Flood Control Storm Drain under this agreement is entirely limited to the amount of funds that are actually and legally available for disbursement by the Assessment Districts and the Flood Control District to fund the construction of the Flood Control Storm Drain. The City further acknowledges that, in the event the City's costs exceed the amount of funds that are actually and legally available for disbursement by the Flood Control District and Assessment Districts to fund the Flood Control Storm Drain, the City shall not be entitled to any further reimbursement of costs by the Flood Control District, the Assessment Districts, or the County. Notwithstanding anything to the contrary contain herein, in the event the costs of administration, construction management, design, environmental compliance, NPDES compliance, regulatory permits and the estimated construction cost of the Flood Control Storm Drain to be incurred by the City exceed the available Flood Control District Funds, available Assessment District Funds, and the contributions of the Developer of Tract 36483 the City may stop work on the Flood Control Storm Drain until such time as sufficient funds are available for the Flood Control Storm Drain. City shall not be require to contribute its own funds to the Flood Control Storm Drain

Section 4.2. Representations, Warranties and Covenants of the County. The County makes the following representations, warranties and covenants for the benefit of the City, and The Flood Control District:

(a) Authority. The County represents and warrants that it has the power and authority to enter into this Infrastructure Agreement, and has taken all actions

necessary to cause this Infrastructure Agreement to be executed and delivered, and this Infrastructure Agreement has been duly and validly executed and delivered on behalf of the County.

(b) Binding Obligation. The County represents and warrants that this Infrastructure Agreement is a valid and binding obligation of the County and is enforceable against the County in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Payment Requests. The County represents and warrants that it will timely follow all procedures set forth in the Infrastructure Agreement.

(d) Available Funds. The County represents that \$4,008,270.19 is currently available for the construction of the Flood Control Storm Drain.

Section 4.3. Representations, Warranties and Covenants of the Flood Control District. The Flood Control District makes the following representations, warranties and covenants for the benefit of the City and the County:

(a) Authority. The Flood Control District represents and warrants that it has the power and authority to enter into this Infrastructure Agreement, and has taken all actions necessary to cause this Infrastructure Agreement to be executed and delivered, and this Infrastructure Agreement has been duly and validly executed and delivered on behalf of the Flood Control District.

(b) Binding Obligation. The Flood Control District represents and warrants that this Infrastructure Agreement is a valid and binding obligation of the Flood Control District and is enforceable against the Flood Control District in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Completion of Flood Control Storm Drain. The Flood Control District covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required of it in issuing permits, processing and approving Plans and inspecting the Flood Control Storm Drain in accordance with this Infrastructure Agreement.

(d) Available Funds. The Flood Control District represents that \$3,000,000 is currently available for the construction of the Flood Control Storm Drain.

Section 4.4. [Reserved.]

Section 4.5. [Reserved.]

Section 4.6. City Indemnification. City shall indemnify, defend and hold harmless and require City's construction contractor(s) to indemnify, defend and hold

harmless Flood Control District and 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 officers, employees, subcontractors, agents or representatives ("Indemnitors") arising out of or in any way relating to this Agreement, including, but not limited to, property damage, bodily injury or death, or any other element of any kind or nature whatsoever arising from the performance of City or City's construction contractor(s) (including their officers, employees, 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.

(a) 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 Flood Control District and the County of Riverside. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe City's or City's construction contractor(s) indemnification to Indemnitees as set forth herein.

(b) City's and City's construction contractor(s) obligation hereunder shall be satisfied when City or City's construction contractor(s) has provided to Flood Control District and the County of Riverside the appropriate form of dismissal relieving Flood Control District and the County of Riverside from any liability for the action or claim involved.

(c) 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.

(d) 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.

The provisions of this Section shall survive the discharge or other termination of this Infrastructure Agreement.

ARTICLE V

MISCELLANEOUS

Section 5.1. The City as Independent Contractor. In performing under this Infrastructure Agreement, it is mutually understood that the City is acting as independent contractor, and not as an agent of the County or the Flood Control District. Neither the County nor the Flood Control District shall have any responsibility for payment to any contractor, subcontractor or supplier of the City.

Section 5.2. Other Agreements. Nothing contained herein shall be construed as affecting the County, the Flood Control District, or the City's, respective duty to perform their respective obligations under other agreements, land use regulations or subdivision requirements relating to the providing conditions of approval to the developments adjacent to Flood Control Storm Drain, which obligations are and shall remain independent of any Party's rights and obligations under this Infrastructure Agreement; provided, however, each Party shall use its reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the construction and installation of the Flood Control Storm Drain.

Section 5.3. Binding on Successors and Assigns. Neither this Infrastructure Agreement nor the duties and obligations of Parties hereunder may be assigned to any person or legal entity other than an affiliate of a Party without the written consent of the remaining Parties, which consent shall not be unreasonably withheld or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the Parties hereto.

Section 5.4. Amendments.

(a) Amendment. This Infrastructure Agreement can only be amended by an instrument in writing executed and delivered by the Parties. Notwithstanding the foregoing, Exhibit B may be supplemented consistent with Section 2 above.

(b) Operating Memoranda. The parties acknowledge that refinements and further development of the Flood Control Storm Drain project may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when County, District and City mutually agree that changes, adjustments or clarifications are appropriate to further the intended purposes of this Agreement, they may, effectuate such changes, adjustments or clarifications without amendment to this Agreement through one or more operating memoranda mutually approved and signed by the parties. The Operating Memoranda may be approved on behalf of County by the Chief Executive Officer, on behalf of the District by the General Manager-Chief Engineer, and on behalf of the City by the City Manager, or such persons designated in writing by these officers. After execution of an Operating Memoranda, it shall be attached hereto as an addendum and become a part

hereof. Unless otherwise required by law or by this Agreement, no such changes, adjustments, or clarifications shall require prior notice or hearing, public or otherwise.

Section 5.5. Waivers. No waiver of, or consent with respect to, any provision of this Infrastructure Agreement by any Party hereto shall in any event be effective unless the same shall be in writing and signed by the affected Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 5.6. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof (except the Assessment Districts), and nothing in this Infrastructure Agreement (either express or implied) is intended to confer upon any person or entity, other than the Parties (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Infrastructure Agreement.

Section 5.7 Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the Party entitled thereto at its address set forth below, or at such other address as such Party may provide to the other party in writing from time to time, namely:

County: County Executive Office
County of Riverside
Attn: Special Districts Administrator
4080 Lemon Street, 4th Floor
Riverside, California 92501
Telephone: 909.955.1100
Fax: 909.955.1105

Flood Control District: Riverside County Flood Control and
Water Conservation District
Attn: Chief of Planning Division
1995 Market Street
Riverside, California 92501
Telephone: 909.955.1200
Fax: 909.788.9965

City: Director of Public Works
City of Temecula
43200 Business Park Drive
Temecula, California 92590
Telephone: 909.694.6411
Fax: 909.694.6475

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the Party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, upon the sender's receipt of a document confirming satisfactory

transmission, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 5.8. Jurisdiction and Venue. Each of the Parties (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Infrastructure Agreement shall be brought in state or local court in the County of Riverside or in the Courts of the United States of America in the district in which said County is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the Parties agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 5.9. Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Infrastructure Agreement, the Parties prevailing in such action shall be entitled to recover from the other Parties thereto reasonable attorneys' fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

Section 5.10. Governing Law. This Infrastructure Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State.

Section 5.11. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 5.12. Counterparts. This Infrastructure Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 5.13. Interpretation. The Parties to this Infrastructure Agreement and their counsel have reviewed and revised this Infrastructure Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting Parties shall not be employed in the interpretation of this Infrastructure Agreement.

Section 5.14. Designation of Party's Representative. Each Party is to prepare a certificate designating the person or persons that are to serve as the liaison between the remaining Parties regarding design, engineering and construction of the Flood Control Storm Drain. The certificate is to contain an original and specimen of each designated person. The certificates are to be exchanged between the parties within thirty days of the effective date of this Infrastructure Agreement.

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Infrastructure Agreement as of the day and year first hereinabove written.

RECOMMENDED FOR APPROVAL: COUNTY OF RIVERSIDE

By _____
JEFFREY A. VAN WAGENEN JR.
County Executive Officer

By 
CHUCK WASHINGTON, Chair
Board of Supervisors


APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
MICHAEL THOMAS
Deputy County Counsel

By 
Deputy
(SEAL)


[Signature Lines Continued on Next Page]

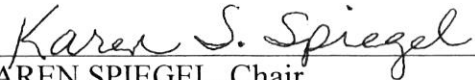
Assessment District No. 159 (Rancho Villages) and
Assessment District No. 159 Supplemental (Rancho Villages) of the County of Riverside
AMR/RSM:blj
07/02/24

DEC 03 2024 3.6 / 11.4

RECOMMEND FOR APPROVAL:

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

By 
JASON E. UHLEY
General Manager-Chief Engineer

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


APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
KRISTINE BELL-VALDEZ
Superivsing Deputy County Counsel

By 
Deputy
(SEAL)

Assessment District No. 159 (Rancho Villages) and
Assessment District No. 159 Supplemental (Rancho Villages) of the County of Riverside
AMR/RSM:blj
07/02/24

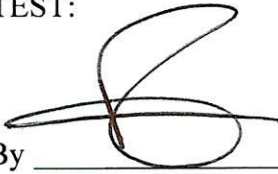
CITY OF TEMECULA

By 
AARON ADAMS
City Manager

APPROVED AS TO FORM:

By 
PETER THORSON
City Attorney

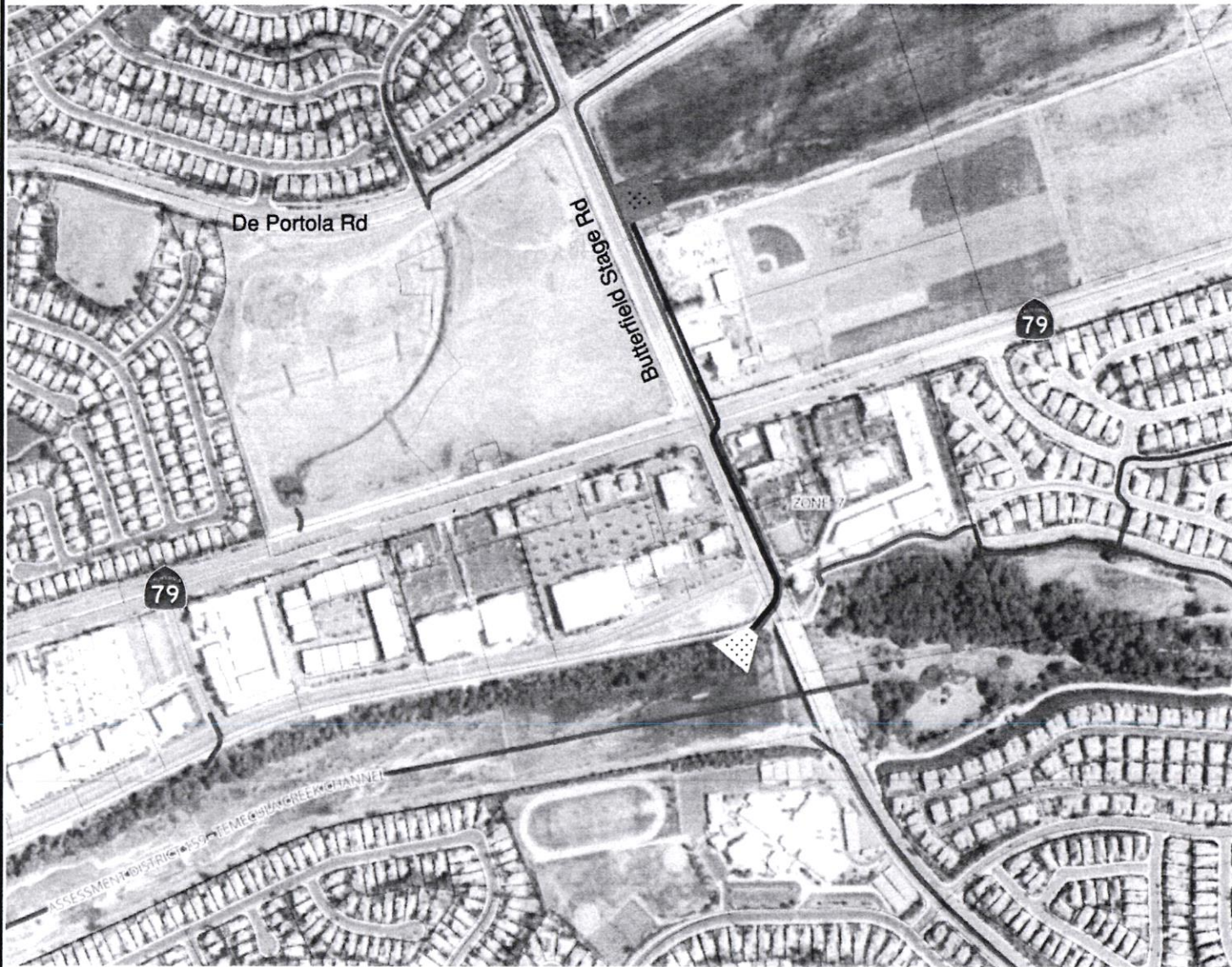
ATTEST:

By 
RANDI JOHL
City Clerk





Assessment District No. 159 (Rancho Villages) and
Assessment District No. 159 Supplemental (Rancho Villages) of the County of Riverside
AMR/RSM:blj
07/02/24

EXHIBIT A

DIAGRAM OF THE FLOOD CONTROL STORM DRAIN



LEGEND:

-  Existing Facilities
-  Proposed storm drain
-  Proposed Inlet
-  Proposed Outlet

Official Project Name:

AD 159 - Butterfield Stage Road Storm Drain, Stage 2

Official Project No.:

7-0-00116



EXHIBIT A



**EXHIBIT B
FLOOD CONTROL STORM DRAIN**

Stage 2: (Sta. 9+50.00 to Sta. 27+50)

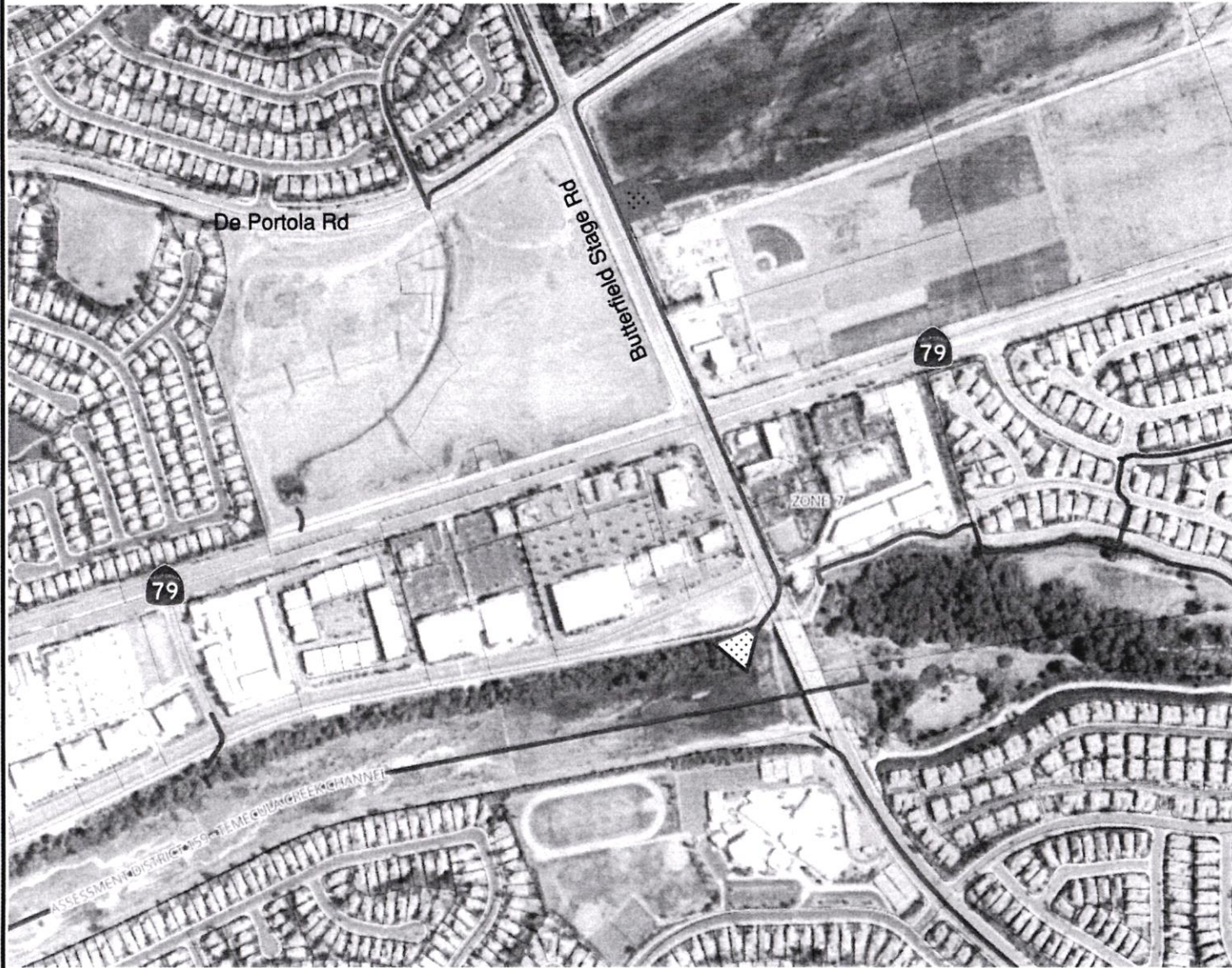
A 1,800'+ long 120 inch diameter reinforced concrete pipes ("RCP") with adjoining inlet and outlet structures running parallel to the dual 120 inch diameter pipe – AD 159 De Portola Road Storm Drain (Flood Control District Drawing No. 7-0183) draining into Flood Control District's existing AD 159 – Temecula Creek Channel (Drawing No. 7-0208). Portions of the existing dual 120 inch diameter will be replaced as shown in Flood Control District Drawing No. 7-0554. At the upstream terminus, there is an interim concrete inlet structure with dual 12' wide by 8' high reinforced box culverts along with an associated maintenance access road and maintenance vehicular turnaround area. The outlet drains into Temecula Creek.

TOTAL	Estimated Cost	\$ 7,000,000.00
--------------	-----------------------	-----------------

The work required to complete the Flood Control Storm Drain will include, but is not limited to, all necessary clearing and grubbing, temporary bypass Storm Drain construction and removal, dewatering, temporary shoring, grading, excavation, backfill, construction of any necessary appurtenances including catch basins, junction structures, manholes, storm drain pipe, access roads, right-of-way fencing, and any necessary road work or utility relocation costs required to facilitate the completion of the Flood Control Storm Drain. If the City elects to include any road improvements within the vicinity of Flood Control Storm Drain, including but not limited to, paving outside of the travel lane of Flood Control Storm Drain trench, curb and gutter construction or replacement not immediately adjacent to Flood Control Storm Drain trench, etc., such incremental costs will be paid for by the City.

EXHIBIT C

EASEMENTS TO BE CONVEYED TO THE FLOOD CONTROL DISTRICT



LEGEND:

— Existing Facilities

Proposed Easements:

■ Proposed Inlet

□ Proposed Outlet

Official Project Name:

AD 159 - Butterfield Stage Road Storm Drain, Stage 2

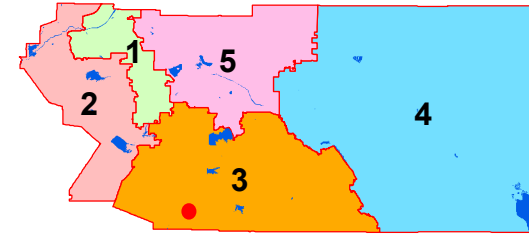
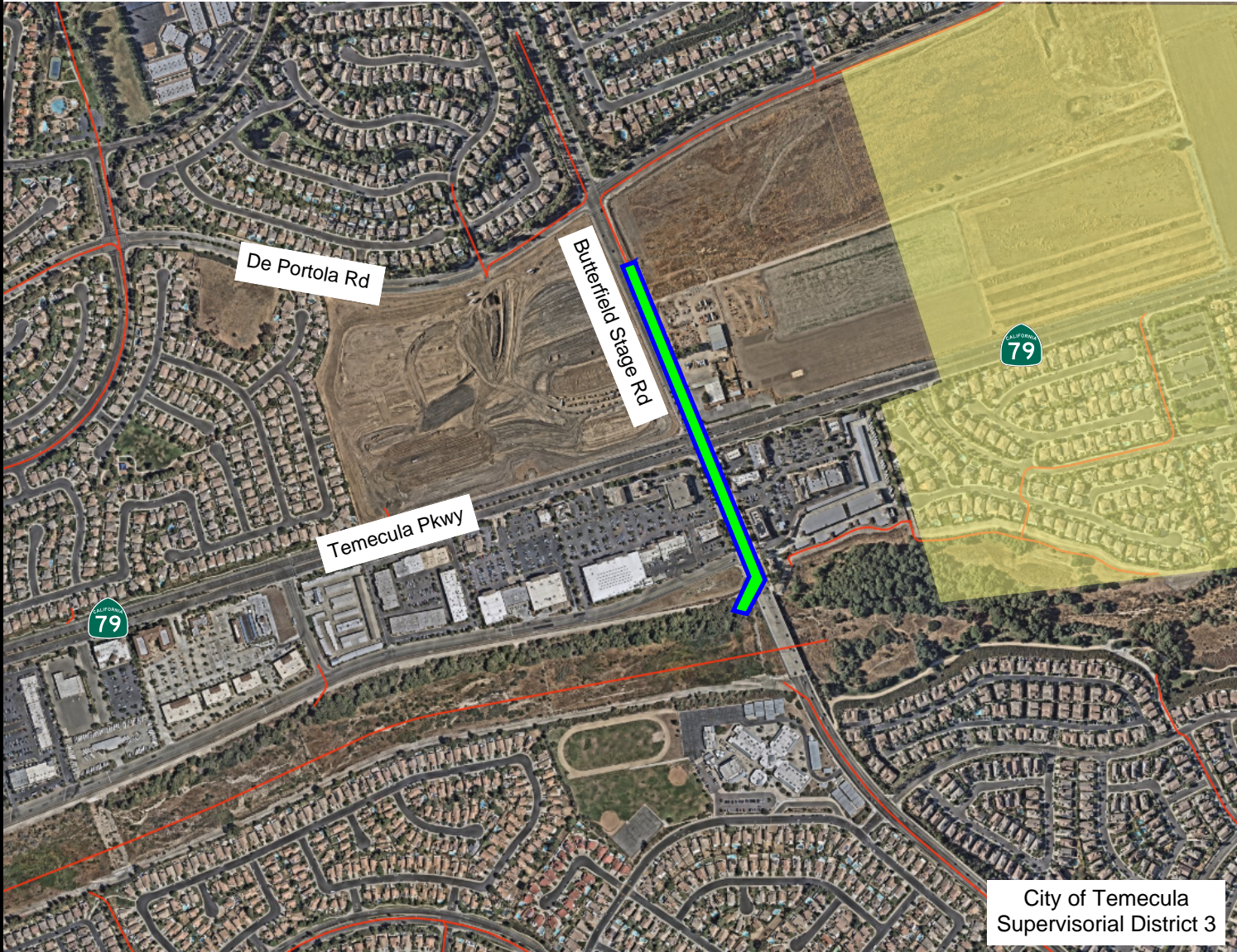
Official Project No.:

7-0-00116



EXHIBIT C





Legend

- Supervisorial District
- Project Vicinity
- Existing Facilities
- County of Riverside

Description

AD 159-Butterfield Stage Road
 Storm Drain - Line A, Stage 2
 Project No. 7-0-00116



VICINITY MAP

