

FUNDING AGREEMENT
 University Wash Improvements
 Project No. 1-0-10005

This Funding Agreement ("Agreement"), dated as of _____, 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 RIVERSIDE, a municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". Parties hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for, and CITY has prepared plans and specifications ("IMPROVEMENT PLANS") for the construction, operation, and maintenance of University Wash Channel ("UNIVERSITY WASH"); and

B. These IMPROVEMENT PLANS generally consist of the following:

1. UNIVERSITY WASH: to improve approximately 900 linear feet channel at existing University Wash Channel outlet downstream of Market Street between Market Street and Fairmount Park. The project will improve drainage from University Wash Channel, while improving the ability for the CITY to maintain the area, control sediment, and minimize impacts to existing park and trails. The improvement will also increase capacity and provide adequate capacity for low flows, as shown in blue on Exhibit "A" attached hereto and made a part hereof; and
2. Certain inlets, catch basin and connector pipes associated with UNIVERSITY WASH within CITY-held easements or rights of way ("APPURTENANCES"); and

C. Together, UNIVERSITY WASH and APPURTENANCES are hereinafter called "PROJECT"; and

D. CITY plans to advertise, award, and administer a public works construction contract for PROJECT during Fiscal Year 2024/2025; and

E. CITY desires that DISTRICT include certain unavoidable utility relocations as part of DISTRICT's financial contribution to construct PROJECT. "UTILITY RELOCATIONS" is defined as 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; and

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

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

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

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

1. One hundred percent (100%) of the design proposal cost to offset CITY's costs associated with the engineering design; hydrology and hydraulics; geotechnical analysis; potholing required to complete the design of PROJECT; California Environmental Quality Act ("CEQA") determination; preparation, application and acquisition of the environmental clearance, regulatory permits, and mitigation if required for PROJECT and other typical ancillary costs related to the preparation of improvement plans are hereinafter called ("DESIGN

CONTRIBUTION"). However, DESIGN CONTRIBUTION shall not include the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and

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

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

K. TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of Two Million Dollars (\$2,000,000). DISTRICT will only fund portions of the project directly related to reducing sediment and eliminating ponding of low flows; and

L. CITY will be responsible for funding all other aspects of the project including, but not limited to, pedestrian circulation analysis not related to eliminating the ponding impact to DISTRICT's existing University Wash Channel, Stage 4 facility (District Drawing No. 1-0610) such as landscaping, irrigation, and pedestrian paths hereinafter called "CITY BETTERMENTS"; and

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

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

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

SECTION I

CITY shall:

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

2. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement. TOTAL DISTRICT

CONTRIBUTION shall not exceed a total sum of Two Million Dollars (\$2,000,000) for PROJECT.

3. Prepare or cause to be prepared IMPROVEMENT PLANS, in accordance with the applicable CITY standards. CITY shall make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS and provide DISTRICT the opportunity to review and plan check the project plans and specifications.

4. Secure all necessary permits, approvals or agreements required by any federal, state, and local resource or regulatory agencies pertaining to PROJECT. Such documents may include, but 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"), and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

5. 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.

6. Be responsible for any and all additional regulatory, mitigation and/or litigation costs, and/or mitigation measures to PROJECT resulting from this Agreement and/or REGULATORY PERMITS.

7. Secure all necessary rights of way, rights of entry encroachment permits, construction easements, and acquire all parcels necessary to construct, inspect, operate and maintain PROJECT.

8. Keep an accurate accounting of all PROJECT costs associated to TOTAL DISTRICT CONTRIBUTION as set forth in Recital K and provide this accounting along with future invoices to DISTRICT. The final accounting shall include a detailed breakdown of all

costs, including, but not limited to, payment vouchers, approved change orders and other such contract documents as may be necessary, to establish the actual cost of each contribution item associated with the PROJECT and will be included when invoicing DISTRICT as described in Recital K.

9. Following the signing of IMPROVEMENT PLANS, invoice DISTRICT (Attention: Special Projects Section) for the (i) remainder of DESIGN CONTRIBUTION and (ii) DESIGN ADMIN and TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Two Million Dollars (\$2,000,000) for PROJECT.

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

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

12. Prior to award of public works construction contract(s) for PROJECT, provide DISTRICT with the opportunity to review all construction bids for PROJECT.

13. Within thirty (30) days of CITY awarding PROJECT construction contract, pay the Western Riverside County Regional Conservation Authority the CITY's contribution percentage, which is the CITY's portion of the mitigation fee per 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP").

14. Provide DISTRICT with written notice (Attention: Special Projects Section) that CITY has awarded a public works construction contract for PROJECT. The written notice

shall include the Contractor's actual bid amounts for PROJECT, setting forth the lowest responsible bid contract amount.

15. At the time of providing written notice of the award of a construction contract for PROJECT, invoice DISTRICT (Attention: Special Projects Section) for BID PRICE, subject to and provided that TOTAL DISTRICT CONTRIBUTION does not exceed a total sum of Two Million Dollars (\$2,000,000) for PROJECT. BID PRICE shall be supported by a copy of CITY's bid abstracts for PROJECT.

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

17. 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.

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

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

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

21. If applicable, provide District the opportunity to review and approve construction change order for PROJECT.

22. Keep an accurate accounting of all PROJECT costs along with CITY's CONTRACT ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION. The final accounting of construction costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, CITY approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction for DISTRICT and CITY approved IMPROVEMENT PLANS and will be included when invoicing DISTRICT.

23. At the time of providing a Notice of Completion, invoice DISTRICT (Attention: Special Projects Section) for CONTRACT ADMINISTRATION CONTRIBUTION and if applicable, CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided TOTAL DISTRICT CONTRIBUTION shall not exceed, Two Million Dollars (\$2,000,000) for DISTRICT review.

24. Be responsible to pay any amounts in excess of TOTAL DISTRICT CONTRIBUTION.

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

SECTION II

DISTRICT shall:

1. Within thirty (30) days after receipt of CITY's invoices (i) pay all approved CITY invoices and (ii) review and approve associated documents as described in the RECITALS and SECTION I herein this Agreement, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed, Two Million Dollars (\$2,000,000) for PROJECT.

2. Not be responsible to pay any amounts that exceed TOTAL DISTRICT CONTRIBUTION for PROJECT to the CITY. DISTRICT will only fund portions of the project directly related to reducing sediment and eliminating ponding of low flows.

SECTION III

It is further mutually agreed:

1. All Recitals set forth above are hereby incorporated herein by reference as if set forth fully in the body of this Agreement.

2. Notwithstanding any other provision herein this Agreement, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Two Million Dollars (\$2,000,000) and shall be used by CITY solely for the purpose of designing and constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions, or repairs.

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

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

5. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of Riverside (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees,

agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontract) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including, but not limited to (a) property damage; (b) bodily injury or death; (c) payment of attorney fees; or (d) any other element of any kind or nature whatsoever. This Section shall survive any termination of this Agreement until the statute of limitations period has run for any claims that could be asserted under this Agreement.

6. 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.

7. This Agreement is to be construed in accordance with the laws of the State of California. Any action at law or in equity brought by any of Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other Party.

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

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street

CITY OF RIVERSIDE
6927 Magnolia Avenue
Riverside, CA. 92506

Riverside, CA 92501
Attn: Planning Division

Attn: Pamela Galera

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

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

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

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

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

15. 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.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. Parties further agree that the electronic signatures of Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to CUETA as amended from time to time. CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

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

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By _____
JASON E. UHLEY
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By _____
NAME
Deputy County Counsel

By _____
Deputy

(SEAL)

Funding Agreement with City of Riverside
University Wash Improvements
Project No. 1-0-10005
01/14/25
MER:blj

RECOMMENDED FOR APPROVAL:

CITY OF RIVERSIDE

By _____
MIKE FUTRELL
City Manager

APPROVED AS TO FORM:

ATTEST:

By *Anthony Beaumon*
ANTHONY L. BEAUMON
Sr. Deputy City Attorney

By _____
DONESIA GAUSE, MMC
City Clerk

(SEAL)

CERTIFIED AS TO FUNDS
AVAILABILITY

By _____
Chief Financial Officer

Funding Agreement with City of Riverside
University Wash Improvements
Project No. 1-0-10005
01/14/25
MER:bj