

AMENDED AND RESTATED COOPERATIVE FUNDING AGREEMENT

Box Springs MDP Line D, Stage 1

Project No. 1-0-00089

Miscellaneous No. 202

This Amended and Restated Cooperative Funding Agreement ("Agreement"), dated as of \_\_\_\_\_, is entered into by 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". The Parties hereto agree as follows:

RECITALS

A. DISTRICT and CITY previously entered into that certain Cooperative Funding Agreement, executed on March 8, 2022 (DISTRICT's Board Agenda Item No. 11.3), hereinafter called "ORIGINAL AGREEMENT", providing for DISTRICT to contribute funding toward the construction of Box Springs MDP Line D, Stage 1, and for DISTRICT and CITY to operate and maintain said facility; and

B. Box Springs MDP Line D, Stage 1, hereinafter called "STAGE 1", as identified in DISTRICT's Box Springs Master Drainage Plan ("MDP") and as shown on DISTRICT's Drawing No. 1-0745, consists of approximately 4,300 lineal feet of underground storm drain system to be constructed from Kansas Avenue and Third Street to Mission Avenue and Commerce Street, as shown in concept in blue and red on Exhibit "A", attached hereto and made a part hereof. STAGE 1 will collect and convey flows to DISTRICT's existing Box Springs Storm Drain, Stage 3 facility, as shown on DISTRICT's Drawing No. 1-0304; and

C. Associated with the construction of STAGE 1, is the construction of certain inlets, connector pipes, and storm drain laterals that are thirty-six inches (36") or less in diameter within CITY-held rights of way, hereinafter called "APPURTENANCES"; and

D. Together, STAGE 1 and APPURTENANCES are hereinafter called "PROJECT"; and

E. Pursuant to ORIGINAL AGREEMENT, DISTRICT desired to contribute an amount not to exceed Three Million Five Hundred Fifty-Five Thousand Dollars (\$3,555,000) to CITY toward PROJECT's construction costs; and

F. Subsequent to the execution of ORIGINAL AGREEMENT and due to a conflict with a concrete-encased AT&T conduit near the intersection of Commerce Street and Sixth Street, DISTRICT and CITY, recognize the original estimates of costs will exceed DISTRICT's contribution described in ORIGINAL AGREEMENT; and

G. To expedite PROJECT, DISTRICT and CITY desire to proceed with a phased construction approach to accommodate the necessary utility relocation and ultimately deliver a fully operational storm drain system. Each phase of PROJECT is hereinafter defined as:

- i. Construction of the ultimate facility around the conflict area from STA 100+20 to STA 100+93 and STA 104+31 to STA 142+47; and the interim storm drain facility from STA 100+93 to STA 104+31 to avoid conflict with the AT&T conduit facility, as shown in red and blue on Exhibit "A" ("PHASE 1"); and
- ii. Removal of the interim storm drain facility from STA 100+93 to STA 104+31 to accommodate the AT&T conduit relocation. Upon relocation of this facility, reconstruct the ultimate storm drain near the intersection of Commerce Street and Sixth Street, as shown in blue on Exhibit "A" ("PHASE 2"). PHASE 1 and PHASE 2 may be referred to individually as "PHASE" or collectively as the "PHASES"; and

H. DISTRICT and CITY wish to work collaboratively to expedite the construction of PROJECT; and

I. CITY desires that DISTRICT contribute additional funding for the construction of PROJECT which benefits the zone in which PROJECT is located; and

J. Due to mutual interests in this PROJECT, DISTRICT has allocated and appropriated the additional requested funds toward the construction of PROJECT; and

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

L. 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. These certain unavoidable UTILITY RELOCATIONS shall be included in the public works construction contract for PROJECT; and

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

- i. Up to one hundred percent (100%) of the lowest responsible and responsive contract price for construction of PHASE 1 and the costs associated with UTILITY RELOCATIONS ("PHASE 1 CONSTRUCTION CONTRIBUTION"). In addition, any remaining funds may be used for PHASE 2 as defined below; and
- ii. Up to one hundred percent (100%) of the lowest responsible and responsive contract price for construction of PHASE 2 and the

costs associated with UTILITY RELOCATION ("PHASE 2 CONSTRUCTION CONTRIBUTION"); and

- iii. Up to an additional ten percent (10%) of PHASE 1 CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration, and other typical ancillary costs related to the delivery of PROJECT ("PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and
- iv. Up to an additional ten percent (10%) of PHASE 2 CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration, and other typical ancillary costs related to the delivery of PROJECT ("PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION"); and
- v. Up to an additional ten percent (10%) of the lowest responsible bid contract amount for construction contract change orders of PHASE 1 ("PHASE 1 CONSTRUCTION CHANGE ORDERS CONTRIBUTION"); and
- vi. Up to an additional ten percent (10%) of the lowest responsible bid contract amount for construction contract change orders of PHASE 2 ("PHASE 2 CONSTRUCTION CHANGE ORDERS CONTRIBUTION"); and

N. PHASE 1 CONSTRUCTION CONTRIBUTION, PHASE 2 CONSTRUCTION CONTRIBUTION, PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION, PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION,

PHASE 1 CONSTRUCTION CHANGE ORDERS CONTRIBUTION, and PHASE 2 CONSTRUCTION CHANGE ORDERS CONTRIBUTION are hereinafter called "TOTAL DISTRICT CONTRIBUTION". TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056); and

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

P. CITY is willing to assume ownership, operation, and maintenance responsibilities of PROJECT on an interim basis until AT&T has completed the relocation of its conduit facility, with the recognition and understanding that the actual acceptance of STAGE 1 for ownership, operation and maintenance by DISTRICT is entirely dependent upon: (i) construction of PHASE 1 and PHASE 2 are completed pursuant to this Agreement, (ii) STAGE 1 being constructed in accordance with plans and specifications approved by DISTRICT and as set forth herein, (iii) DISTRICT's acceptance of ownership and responsibility for the operation and maintenance of STAGE 1, (iv) DISTRICT's sole determination that STAGE 1 is in a satisfactorily maintained condition and (v) STAGE 1 is a fully functioning flood control drainage system as solely determined by DISTRICT; and

Q. CITY desires DISTRICT to ultimately accept ownership and responsibility for operation and maintenance of STAGE 1. Therefore, DISTRICT must review and approve CITY's plans and specifications for STAGE 1 and subsequently inspect the construction of STAGE 1; and

R. CITY plans to advertise, award, and administer a public works construction contract for PHASE 1 during Fiscal Year 2025/2026 and for PHASE 2 during Fiscal Year 2027/2028; and

S. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

T. DISTRICT and CITY now wish to amend and restate their respective understandings, roles, and responsibilities pertaining to PROJECT as set forth herein. Furthermore, DISTRICT and CITY mutually agree that the provisions of this Agreement shall supersede all provisions of ORIGINAL AGREEMENT; and

U. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and DISTRICT with respect to the design, construction, inspection, 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, the Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

#### SECTION I

CITY shall:

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

2. Prepare or cause to be prepared the necessary plans, bid documents, and specifications for PHASE 1 ("PHASE 1 PLANS"), in accordance with the applicable DISTRICT and CITY standards, and submit to DISTRICT (Attn: Special Projects Section) for its review, comment, and approval prior to advertising PHASE 1 for construction bids.

3. Prepare or cause to be prepared the necessary plans, bid documents and specifications for PHASE 2 ("PHASE 2 PLANS"), in accordance with the applicable DISTRICT

and CITY standards and submit to DISTRICT (Attn: Special Projects Section) for its review, comment, and approval prior to advertising PHASE 2 for construction bids. PHASE 1 PLANS and PHASE 2 PLANS may be referred to individually or collectively as ("IMPROVEMENT PLANS").

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

5. Keep an accurate accounting of all PROJECT costs associated with the TOTAL DISTRICT CONTRIBUTION as set forth in Recital N and provide this accounting along with future invoices to DISTRICT. The final accounting of construction costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, approved change orders and other such construction contract documents to establish the actual costs associated with PROJECT and will be included when invoicing DISTRICT.

6. Prior to advertising PROJECT for public works construction contract, secure 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 PROJECT. 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 Streambed Alteration Agreement issued by the California Department of Fish and Wildlife and a National Pollutant Discharge Elimination System Permit issued by the State Water Resources Control Board or CRWQCB and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS"). CITY shall also provide DISTRICT an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS prior to submitting the application to the applicable regulatory agencies.

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

8. 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.

9. At its sole cost and expense, prepare or cause to be prepared, all rights of way and easements documents, legals and plats, aerial topography and survey control, including any requests for waivers and variances from policies ("RIGHTS OF WAY"), deemed necessary for the construction, operation and maintenance of PROJECT.

10. Prior to advertising each PHASE for public works construction contract, secure at its sole cost and expense, all necessary permits, licenses, agreements, approvals, RIGHTS OF WAY, rights of entry and construction easements, necessary to construct, inspect, operate and maintain each PHASE.

11. Prior to advertising of each PHASE for public works construction contract, provide DISTRICT an opportunity to make a determination on all REGULATORY PERMITS for PROJECT. DISTRICT approval of IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, REGULATORY PERMITS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 1.

12. At the time of providing IMPROVEMENT PLANS as set forth in Sections I.2 and I.3, and prior to soliciting of bids for the construction of each PHASE pursuant to Section I.15, ensure DISTRICT is provided, with duly executed easement(s) to the public for flood control and drainage purposes, including ingress and egress, or grant deed(s) of fee title where



appropriate for the rights of way deemed necessary by DISTRICT for the construction, inspection, operation and maintenance of each PHASE. The easement(s) or grant deed(s) shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

13. At the time of recordation of the conveyance document(s) as set forth in Section I.42, furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each easement parcel to be conveyed to DISTRICT or (ii) one hundred percent (100%) of the estimated fee value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT's interest in said property as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are deemed acceptable.

14. Prior to awarding a public works construction contract for each PHASE, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of each PHASE. CITY shall follow State law and its Municipal Code related to public works contracts.

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

16. Provide DISTRICT with written notice (Attention: Special Projects Section) that CITY has awarded a public works construction contract for PHASE 1. The written notice shall include CITY contractor's actual bid amounts for PHASE 1, setting forth the lowest responsible bid contract amount for PHASE 1 CONSTRUCTION CONTRIBUTION.

17. At the time of providing written notice of the award of a construction contract for PHASE 1, as set forth in Section I.16, invoice DISTRICT (Attention: Special Projects Section) for the payment of PHASE 1 CONSTRUCTION CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

18. Provide DISTRICT with written notice (Attention: Special Projects Section) that CITY has awarded a public works construction contract for PHASE 2. The written notice shall include CITY contractor's actual bid amounts for PHASE 2, setting forth the lowest responsible bid contract amount for PHASE 2 CONSTRUCTION CONTRIBUTION.

19. At the time of providing written notice of the award of a construction contract for PHASE 2, as set forth in Section I.18, invoice DISTRICT (Attention: Special Projects Section) for the payment of PHASE 2 CONSTRUCTION CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

20. Prior to commencing construction of each PHASE, procure or cause to be procured, insurance coverage 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 each PHASE, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

21. Prior to commencing construction of each PHASE, schedule and conduct a mandatory pre-construction meeting between CITY, CITY's construction manager, CITY's

construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT (Attention: Special Project Section) in writing at least twenty (20) days prior to conducting the pre-construction meeting.

22. Prior to commencing construction of each PHASE, furnish DISTRICT with final mylar of IMPROVEMENT PLANS and assign ownership of the IMPROVEMENT PLANS to DISTRICT.

23. For each PHASE, furnish DISTRICT, at the time of providing written notice of intent to start construction as set forth in Sections I.16 and I.18, with a construction schedule which shall show the order and dates in which CITY or CITY's contractor proposes to carry on the various parts of work, including estimated start and completion dates.

24. For each PHASE, require its construction contractor(s) to furnish DISTRICT (Attention: Contract Management Section) with a confined space procedure specific to each PHASE. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and District confined Space Procedures, SOM-18. The procedure shall be provided to DISTRICT no less than twenty (20) days prior to requesting that DISTRICT perform a final inspection for acceptance of each PHASE. The procedure shall be reviewed and approved by DISTRICT prior to conducting the final inspection.

25. Not permit any change to, or modification of, DISTRICT and CITY approved IMPROVEMENT PLANS that would result in a change of functionality or maintainability of PROJECT without DISTRICT's prior written permission and consent. Failure to do so shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable to a) perform its obligations hereunder and b) to accept responsibility for ownership,

operation and maintenance of STAGE 1 due, either in whole or in part, to said breach of this Agreement.

26. Construct or cause to be constructed each PHASE pursuant to a CITY administered public works contract in accordance with IMPROVEMENT PLANS approved by DISTRICT and CITY.

27. 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.

28. Relocate or cause to be relocated, at its sole cost and expense, all conflicting CITY owned utilities. CITY shall also order the relocation of all other utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT.

29. Inspect each PHASE's construction or cause each PHASE's construction to be inspected by its construction manager, and pay all costs associated therewith. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing, and construction survey services for a PHASE, CITY shall provide DISTRICT with a written request (Attn: Special Projects) for such services. However, CITY will continue to serve as construction contract manager.

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

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

32. Grant DISTRICT, by execution of this Agreement, the right to enter upon property owned or controlled by CITY where necessary and convenient for the purpose of gaining access to, and performing inspection service for, the construction of PROJECT.

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

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

35. Upon completion of each PHASE's construction, accept ownership and sole responsibility for the operation and maintenance of each PHASE upon (i) CITY inspection of each PHASE in accordance with Section I.29, (ii) CITY acceptance of each PHASE construction as being complete, (iii) DISTRICT acceptance of each PHASE construction as being complete and (iv) CITY receipt of stamped and signed record drawings for each PHASE as set forth in Section II.18.

36. Accept sole ownership and responsibility for the operation and maintenance of STAGE 1 until such time as (i) the construction of PHASE 1 and PHASE 2 are completed, (ii) DISTRICT accepts ownership and responsibility for the operation and maintenance of STAGE 1, (iii) STAGE 1 drains freely and fully functioning as a flood control drainage system as solely determined by DISTRICT and (iv) STAGE 1 is formally accepted by DISTRICT for ownership, operation and maintenance.

37. Following CITY's acceptance of each PHASE for ownership, operation and maintenance and prior to DISTRICT's acceptance of ownership and responsibility for the operation and maintenance of PROJECT pursuant to Section II.17, each PHASE shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the

inspection and, in the sole discretion of DISTRICT, PROJECT is not in an acceptable condition, corrections shall be made at CITY's sole expense.

38. Upon completion of construction for each PHASE, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with a copy of CITY's Recorded Notice of Completion for the applicable PHASE. Each recorded Notice of Completion provided to DISTRICT shall be accompanied by the final accounting of all PROJECT construction costs as set forth in Section I.5. The final accounting of construction costs shall include, but not limited to, payment vouchers, 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.

39. At the time of providing a Notice of Completion as set forth in Section I.33, and if applicable, issue an invoice to DISTRICT (Attention: Special Projects Section) for PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION and PHASE 1 CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

40. At the time of providing a Notice of Completion as set forth in Section I.34, and if applicable, issue an invoice to DISTRICT (Attention: Special Projects Section) for PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION and PHASE 2 CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

41. Upon completion of each PHASE construction but prior to DISTRICT's acceptance of PROJECT for ownership, operation, and maintenance, provide DISTRICT (Attention: Construction Management Section) with (i) soil compaction report(s) – stamped and

wet signed by the geotechnical engineer, and ii) concrete testing report(s) – stamped and wet signed by a civil engineer registered in the State of California, necessary to establish that each PHASE was constructed in accordance with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS.

42. Upon completion of PHASE 2 construction, but prior to DISTRICT acceptance of PROJECT for ownership, operation, and maintenance, CITY shall convey or cause to be conveyed to DISTRICT the flood control easement(s) or grant deed(s) of fee title, where appropriate, as deemed necessary by DISTRICT for the operation and maintenance of each PHASE. The easement(s) or grant deed(s) shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property(ies) described in the easement(s) or grant deed(s).

43. Upon completion of each PHASE construction but prior to DISTRICT's acceptance of PROJECT for ownership, operation, and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT and CITY with redlined "record drawings" of IMPROVEMENT PLANS. After DISTRICT and CITY approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT and CITY a time to transfer the redlined changes into DISTRICT's original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign mylars "record drawings".

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

45. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Sections I.33 and I.34, any unexpected portions of TOTAL DISTRICT CONTRIBUTION.

## SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA for PROJECT.
2. Review IMPROVEMENT PLANS for each PHASE in accordance with the applicable DISTRICT and CITY standards and approve IMPROVEMENT PLANS for each PHASE prior to CITY's advertising PROJECT for construction bids as set forth in Sections I.2 and I.3.
3. At its sole cost and expense, review, comment, and make a determination, as appropriate, on all applications for REGULATORY PERMITS prior to CITY submitting the applications to the applicable regulatory agencies as set forth in Section I.6 DISTRICT may withhold approval of IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, REGULATORY PERMITS unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain PROJECT.
4. Record or cause to be recorded, the easement(s) or grant deed(s) provided by CITY pursuant to Section I.12.
5. Within seven (7) calendar days following CITY's public works construction bid opening, review, and approve or reject bids for construction of each PHASE. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold approval of contract.
6. Within thirty (30) business days of CITY awarding a construction contract for each PHASE, pay, at its sole cost and expense, the costs associated with the MSHCP for each



PHASE, which is either the lesser of (i) three percent (3%) of the lowest responsible bid price, or (ii) three percent (3%) of lowest responsible bid price less the value of applicable project-specific mitigation.

7. Within thirty (30) business days of receiving CITY's invoice to DISTRICT, pay CITY for PHASE 1 CONSTRUCTION CONTRIBUTION as set forth in Section I.17 subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

8. Within thirty (30) business days of receiving CITY's invoice to DISTRICT, pay CITY for PHASE 2 CONSTRUCTION CONTRIBUTION as set forth in Section I.19 subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

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

10. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing and construction survey services a PHASE, and CITY provides DISTRICT with a written request for such services, DISTRICT shall provide a timely response whether or not they have the resources to perform such services. If DISTRICT wishes to provide such services, DISTRICT shall provide all necessary construction inspection, materials testing and construction survey services for the applicable PHASE and assist CITY as needed with the administration of each PHASES's construction contract. DISTRICT hereby agrees to pay all DISTRICT costs associated with the construction service(s) that it agrees to provide, as set forth herein.

11. Upon receipt of CITY's written notice that construction of PHASE 1 is substantially complete as set forth in Section I.33, conduct a final inspection of PHASE 1.

12. Pay CITY, within thirty (30) business days after receipt of CITY's invoice to DISTRICT, for PHASE 1 CONSTRUCTION ADMINISTRATION CONTRIBUTION and PHASE 1 CONSTRUCTION CHANGE ORDERS CONTRIBUTION as set forth in Section I.39 subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

13. Upon receipt of CITY's written notice that construction of PHASE 2 is substantially complete as set forth in Section I.34, conduct a final inspection of PHASE 2.

14. Pay CITY, withing thirty (30) business days after receipt of CITY's invoice to DISTRICT, for PHASE 2 CONSTRUCTION ADMINISTRATION CONTRIBUTION and PHASE 2 CONSTRUCTION CHANGE ORDERS CONTRIBUTION as set forth in Section I.40 subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT.

15. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of STAGE 1, STAGE 1 shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, STAGE 1 is not in an acceptable condition, corrections shall be made at sole expense of CITY.

16. Accept ownership and responsibility for the operation and maintenance of STAGE 1 from CITY once all of the following takes place: (i) the completion of PHASE 2 construction, (ii) DISTRICT acceptance of STAGE 1 for ownership, operation, and maintenance, (iii) DISTRICT's inspection of each PHASE in accordance with Section II.10., (iv) DISTRICT's acceptance of PROJECT construction as being complete, (v) DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT plans as set forth in Section I.43., (vi)

DISTRICT's receipt of CITY's recorded Notice of Completion for both PHASES as set forth in Sections I.33 and I.34, (vii) DISTRICT's receipt of appropriate engineering documentation as set forth in Section I.41, (viii) DISTRICT's acceptance of all necessary rights of way, easements, or grant deeds as set forth in Section I.12, and (ix) DISTRICT's receipt of policies of title insurance for the rights of way, easements, or grant deeds as set forth in Section I.13.

17. Provide CITY with a reproducible duplicate copy of "record drawings" of IMPROVEMENT PLANS upon; (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS as set forth in Section I.43.

### 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 Eight Million Six Hundred Sixty-Nine Thousand Fifty-Six Dollars (\$8,669,056) for PROJECT and shall be used by CITY solely for the purpose of constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

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

4. In the event CITY's construction contractor does not complete the construction of PROJECT in accordance with DISTRICT standards, CITY shall complete PROJECT utilizing the bonds and insurances secured for PROJECT.

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

6. CITY shall indemnify, defend and hold harmless, and require its construction contractor(s) to indemnify, defend and hold harmless the Riverside County Flood Control and Water Conservation District, County of Riverside, its 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 or CITY's construction contractor(s), its officers, employees, subcontractors, agents or representatives 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), their officers, employees, subcontractors, agents or representatives ("Indemnitors") 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.

7. With respect to any action or claim subject to indemnification herein by CITY, CITY shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent

of DISTRICT and the County of Riverside; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CITY's indemnification to Indemnitees as set forth herein.

8. CITY's obligation hereunder shall be satisfied when CITY has provided to DISTRICT and the County of Riverside the appropriate form of dismissal relieving DISTRICT and the County of Riverside from any liability for the action or claim involved.

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

10. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) 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's fees or (d) any other element of any kind or nature whatsoever.

11. 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 from indemnifying the Indemnitees to the fullest extent allowed by law.

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

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

14. Any action at law or in equity brought by any of the Parties hereto for the purpose of enforcing a right or rights provided for by the Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

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

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

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

RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
1995 Market Street  
Riverside, CA 92501  
Attn: Contracts Services Section

CITY OF RIVERSIDE  
3900 Main Street, 4<sup>th</sup> Floor  
Riverside, CA 92501  
Attn: Sweta Patel  
Principal Civil Engineer

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

19. 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 stopping DISTRICT or CITY from enforcing this Agreement.

20. 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 that such funds are not forth coming for any reason, DISTRICT shall immediately notify CITY in writing. Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

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

22. 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.

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

24. 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. The Parties further agree that the electronic signatures of the Parties included in this Agreement are

intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to CUETA as amended from time to time. CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

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IN WITNESS WHEREOF, the Parties hereto have executed this Cooperative 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 H. TRAN  
County Counsel

KIMBERLY RECTOR  
Clerk of the Board

By \_\_\_\_\_  
KRISTINE BELL-VALDEZ  
Deputy County Counsel

By \_\_\_\_\_  
Deputy

(SEAL)

Amended and Restated Cooperative Funding Agreement  
Box Springs MDP Line D, Stage 1  
Project No. 1-0-00089  
Miscellaneous No. 202  
05/13/25  
JC:blj

RECOMMENDED FOR APPROVAL

**CITY OF RIVERSIDE**

By \_\_\_\_\_  
MIKE FUTRELL  
City Manager

APPROVED AS TO FORM:

ATTEST:

By \_\_\_\_\_  
TARREN A. TORRES  
Deputy City Attorney

By \_\_\_\_\_  
DONESIA GAUSE, MMC  
City Clerk

(SEAL)

Amended and Restated Cooperative Funding Agreement  
Box Springs MDP Line D, Stage 1  
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By \_\_\_\_\_  
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**CITY OF RIVERSIDE**

By \_\_\_\_\_  
MIKE FUTRELL  
City Manager

APPROVED AS TO FORM:

ATTEST:

By \_\_\_\_\_  
TARREN A. TORRES  
Deputy City Attorney

By \_\_\_\_\_  
DONESIA GAUSE, MMC  
City Clerk

(SEAL)



Amended and Restated Cooperative Funding Agreement  
Box Springs MDP Line D, Stage 1  
Project No. 1-0-00089  
Miscellaneous No. 202  
05/13/25  
JC:blj

## Exhibit A

BOX SPRINGS MDP Line D, STAGE 1  
PROJECT NO. 1-8-00089-01  
MS 202



## Legend

-  Phase 2 - Ultimate Facility
-  Phase 1 - Facility and Interim Facility