

COOPERATIVE FUNDING AGREEMENT

Box Springs MDP Line D, Stage 1

Project No. 1-0-00089

(Miscellaneous No. 202)

This Cooperative Funding Agreement ("Agreement"), dated as of \_\_\_\_\_, is entered into by the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the City of Riverside, a California charter city and 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 wish to work collaboratively to expedite the construction of Box Springs MDP Line D, Stage 1 to provide the necessary flood control and drainage improvements for the immediate adjacent areas within the city of Riverside; and

B. Box Springs MDP Line D, Stage 1, hereinafter called "STAGE 1", as identified in the 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 mostly from Kansas Avenue and Third Street to Mission Inn Avenue and Commerce Street, as shown in concept in blue on Exhibit "A", attached hereto and made a part hereof. STAGE 1 will connect and convey flows to the existing Box Spring 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 lateral storm drains that are thirty-six inches (36") or less in diameter, various catch basins, inlets and connector pipes located within CITY rights of way ("APPURTENANCES").

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

E. DISTRICT and CITY wish to work collaboratively to expedite the construction of PROJECT and, therefore, desire to have one agency take a lead role in the development and implementation of PROJECT; and

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

G. Due to mutual interests in this PROJECT, DISTRICT wishes to support CITY's efforts by providing a financial contribution to construct PROJECT; and

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

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

J. DISTRICT's financial contribution to the PROJECT shall be as follows, subject to the not to exceed amount provided herein: One hundred percent (100%) of the lowest responsible bid contract price for construction of the PROJECT and the costs associated with UTILITY RELOCATIONS ("DISTRICT TOTAL CONTRIBUTION"). DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Three Million Five Hundred Fifty-Five Thousand Dollars (\$3,555,000); and

K. Should the PROJECT require additional funding, CITY will have the option to see additional funding from DISTRICT for the construction of the PROJECT contingent upon the availability of DISTRICT funds and DISTRICT budgetary approval; and

L. CITY desires DISTRICT to ultimately accept ownership and responsibility for operation and maintenance of STAGE 1. Therefore, DISTRICT must review and approve IMPROVEMENT PLANS and subsequently inspect the construction of STAGE 1; and

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

N. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to funding, design, construction, inspection, ownership, operation and maintenance of the PROJECT and the DISTRICT TOTAL 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. Endeavor to award a public works construction contract for PROJECT and begin construction within thirty-six (36) months of execution of this Agreement.

3. At is sole cost and expense, prepare or cause to be prepared the necessary plans and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable DISTRICT and CITY standards, and submit to DISTRICT (Attention: Special Projects Section) for its review and approval prior to advertising PROJECT for construction bids. CITY shall not permit any change to or modification of DISTRICT and CITY approved IMPROVEMENT PLANS without DISTRICT's prior written permission and consent. CITY shall make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS.

4. Prior to advertising PROJECT for public works construction contract, at its sole cost and expense, obtain and comply with 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 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 ("REGULATORY PERMITS"). CITY shall also provide DISTRICT an opportunity to review, comment on and approve all REGULATORY PERMITS applications prior to submitting the applications to the applicable regulatory agencies.

5. Ensure that REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for STAGE 1 as determined by DISTRICT; or (ii)

include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within the STAGE 1 right of way.

6. 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.

7. Prior to advertising PROJECT for public works construction contract, at CITY's sole cost and expense, obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry and construction easements as may be needed to inspect, construct, operate and maintain PROJECT ("ROW DOCUMENTS") and consult with DISTRICT regarding existing dedications, proposed legal descriptions and plat maps, basemaps and survey controls, including any requests for waivers and variances from DISTRICT's policies.

8. Prior to advertising PROJECT for public works construction contract, provide DISTRICT an opportunity to review and make a determination on all REGULATORY PERMITS, ROW DOCUMENTS and any existing dedications, proposed legal descriptions and plat maps, basemaps and survey controls. DISTRICT approval of IMPROVEMENT PLANS may be withheld when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, the REGULATORY PERMITS or ROW DOCUMENTS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 1.

9. Prior to awarding a public works construction contract for PROJECT, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by DISTRICT to be unreasonably high.

10. Advertise, award and administer a public works construction contract for PROJECT, at its sole cost and expense, 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.

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

12. At the time of providing written notice of the award of a construction contract as set forth in Section I.11, issue an invoice to DISTRICT (Attention: Special Projects Section) for the payment of DISTRICT TOTAL CONTRIBUTION, subject to and provided that DISTRICT TOTAL CONTRIBUTION shall not exceed the total amount of Three Million Five Hundred Fifty-Five Thousand Dollars (\$3,555,000). DISTRICT TOTAL CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PROJECT.

13. Prior to commencing PROJECT construction, procure or caused 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. At minimum, the procured insurance coverages should adhere to the DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

14. Prior to commencing PROJECT construction, furnish DISTRICT with final mylar PROJECT plans and assign ownership of PROJECT plans to DISTRICT.

15. Prior to commencing PROJECT construction, 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 Projects Section and Construction Management Section) in writing at least twenty (20) days prior to conducting the pre-construction meeting.

16. Furnish DISTRICT (Attention: Special Projects Section and Construction Management Section), at the time of providing written notice of the pre-construction meeting as set forth in Section I.14, 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 of the PROJECT, including estimated start and completion dates.

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

18. Inspect or cause to be inspected construction of PROJECT, and pay all costs associated therewith. In the event CITY would like to utilize the DISTRICT's construction services (i.e., construction inspection, materials testing and construction survey services), CITY shall provide DISTRICT with a written request (Attn: Special Projects Section) for such services. However, CITY will continue to serve as construction contract manager.

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

20. 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 on the PROJECT and operation and maintenance of STAGE 1.

21. 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 non-CITY owned utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT and which could be relocated at the utility company's expense.

22. Not permit any change to or modification of the 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.

23. 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.

24. Require its construction contractor(s) to furnish DISTRICT (Attention: Contract Management Section) with a confined space procedure specific to PROJECT. 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, Chapter 18 of the Safety and Operations Manual (SOM-18). The procedure shall be reviewed and approved by DISTRICT prior to the start of PROJECT construction.

25. Assume ownership and sole responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for the operation

and maintenance of STAGE 1. CITY shall continue to own, operate, maintain and accept responsibility for the operation and maintenance of APPURTENANCES.

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

27. Upon completion of PROJECT construction and settlement of any outstanding claims, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with a copy of CITY's recorded Notice of Completion. The recorded Notice of Completion shall be accompanied by the final accounting of all PROJECT construction costs as set forth in Section I.12.

28. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of STAGE 1 for ownership, operation and maintenance, provide or cause its construction manager to provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with appropriate engineering documentation necessary to establish that STAGE 1 was constructed in accordance with the DISTRICT and CITY approved IMPROVEMENT PLANS.

29. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of STAGE 1 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 with redlined "record drawings" of PROJECT plans. After DISTRICT approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT a time to transfer the redlined changes into DISTRICT's original mylars at

DISTRICT's office, after which the engineer shall review, stamp and sign mylars "record drawings".

30. Upon completion of PROJECT construction but prior to DISTRICT acceptance of STAGE 1 for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT all rights of way and easements deemed necessary by DISTRICT for the operation and maintenance of STAGE 1. The easement(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). The interest conveyed to DISTRICT shall be free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which, in the sole discretion of DISTRICT, are acceptable.

31. At the time of recordation of the conveyance document(s) as set forth in Section I.30, furnish DISTRICT with policies of title insurance, each in the amount of not less than fifty percent (50%) of the estimated fee value as determined by DISTRICT for each easement parcel to be conveyed to DISTRICT.

32. 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.

33. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Section I.27., any unexpended 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.
2. Provide CITY with the backup hydrology study for the Box Springs Master Drainage Plan.
3. At its sole cost and expense, review, comment and approve IMPROVEMENT PLANS prior to CITY's advertising PROJECT for construction bids as set forth in Section I.3.
4. At its sole cost and expense, review and comment on proposed legal descriptions and plat maps, existing dedications, including the review of basemaps and survey controls, and any requests for waivers and variances from DISTRICT policies, all of which will be provided by CITY as set forth in Section I.8.
5. At its sole cost and expense, review, comment and make a determination on, as appropriate, all necessary (i) REGULATORY PERMITS and applications for REGULATORY PERMITS prior to CITY submitting to the resource agencies; and (ii) ROW DOCUMENTS prior to CITY advertising PROJECT for bids as set forth in Section I.4 through Section I.8. DISTRICT may withhold approval of IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager-Chief Engineer, the REGULATORY PERMITS or ROW DOCUMENTS unreasonably constrain, inhibit or impair DISTRICT's ability to operate and maintain STAGE 1.
6. Within seven (7) calendar days following CITY's public works construction bid opening, review and approve or reject bids for construction of PROJECT as set forth in Section I.9. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. DISTRICT shall not unreasonably withhold approval of contract.

7. Pay CITY, within thirty (30) business days after receipt of CITY's invoice for DISTRICT TOTAL CONTRIBUTION as set forth in Section I.12, subject to and provided that DISTRICT TOTAL CONTRIBUTION shall not exceed the total amount of Three Million Five Hundred Fifty-Five Thousand Dollars (\$3,555,000).

8. Within thirty (30) days of CITY awarding PROJECT construction contract, pay Riverside Conservation Agency ("RCA") the costs associated with the Multiple Species Habitat Conservation Plan ("MSHCP"), which is the lesser of (i) three percent (3%) of the lowest responsible bid; or ii) three (3%) of the lowest responsible bid contract price, less the value of any applicable project specific mitigation.

9. Conduct periodic inspections of STAGE 1 construction for quality control purposes at its sole cost and provide any comments to CITY's designated PROJECT construction inspector.

10. In the event CITY would like to utilize one or more of the DISTRICT's construction services (i.e., construction inspection, materials testing and construction survey services), and the CITY provides DISTRICT with a written request for such services as set forth in Section I.18, DISTRICT shall provide a timely response whether or not they have the resources to perform such services. If the DISTRICT would like to provide such services, DISTRICT shall provide the agreed upon construction inspection, materials testing and construction survey services for PROJECT and assist CITY as needed with the administration of PROJECT's construction contract. DISTRICT hereby agrees to pay all its costs associated with the agreed upon construction service(s), as set forth herein.

11. Upon receipt of CITY's written notice that PROJECT construction is substantially complete, conduct a final inspection of STAGE 1.

12. Accept ownership and responsibility for the operation and maintenance of STAGE 1 upon (i) DISTRICT inspection of STAGE 1 in accordance with Section I.26; (ii) DISTRICT acceptance of STAGE 1 as being complete; (iii) DISTRICT receipt of CITY's recorded Notice of Completion as set forth in Section I.27; (iv) DISTRICT receipt of appropriate engineering documentation as set forth in Section I.28; (v) DISTRICT receipt of stamped and signed "record drawing" of PROJECT plans as set forth in Section I.29; (vi) DISTRICT's acceptance of all necessary rights of way and/or easements and related policies of title insurance as set forth in Sections I.30 and I.31; and (vii) DISTRICT's sole determination that STAGE 1 is in a satisfactorily maintained condition.

### SECTION III

It is further mutually agreed:

1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of Three Million Five Hundred Fifty-Five Thousand Dollars (\$3,555,000) and shall be used by CITY solely for the purpose of constructing the PROJECT as set forth herein. Should the PROJECT require additional funding, CITY will have the option to see additional funding from DISTRICT for the construction of the PROJECT contingent upon the availability of DISTRICT funds and DISTRICT budgetary approval.

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

3. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by CITY or its construction manager, and shall not be deemed complete until DISTRICT and CITY mutually agree that construction is completed in accordance

with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS. CITY shall not request DISTRICT to accept any portion of PROJECT for ownership, operation or maintenance until PROJECT construction is deemed fully complete and all necessary easements/rights of way have been conveyed as set forth herein.

4. 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, in the sole discretion of DISTRICT, STAGE 1 is not in an acceptable condition, corrections will be made at sole expense of CITY.

5. 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 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.

6. With respect to any action or claim subject to indemnification herein by CITY or CITY's construction contractor(s), 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.

7. 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.

8. 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.

9. 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 the CITY from indemnifying the Indemnitees to the fullest extent allowed by law.

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. 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.

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

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

14. 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: Special Projects Section

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

15. 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.

16. 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.

17. 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 or action based upon the provisions of this Agreement.

18. 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.

19. 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.

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

21. The obligation(s) of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution towards the PROJECT as set forth herein. In the event that such funds are not forthcoming 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.

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

23. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The Parties further agree that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The 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 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:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER  
Clerk of the Board

By \_\_\_\_\_  
SARAH K. MOORE  
Deputy County Counsel

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

(SEAL)

Cooperative Funding Agreement: City of Riverside  
Box Springs MDP Line D, Stage 1  
Project No. 1-0-00089  
(Miscellaneous No. 202)  
11/10/2021  
AMR:rlp

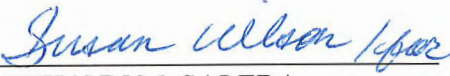
RECOMMENDED FOR APPROVAL:

CITY OF RIVERSIDE

By \_\_\_\_\_  
AL ZELINKA  
City Manager

APPROVED AS TO FORM:

ATTEST:

By   
RUTHANN M. SALERA  
Deputy City Attorney

By \_\_\_\_\_  
DONESIA GAUSE  
City Clerk

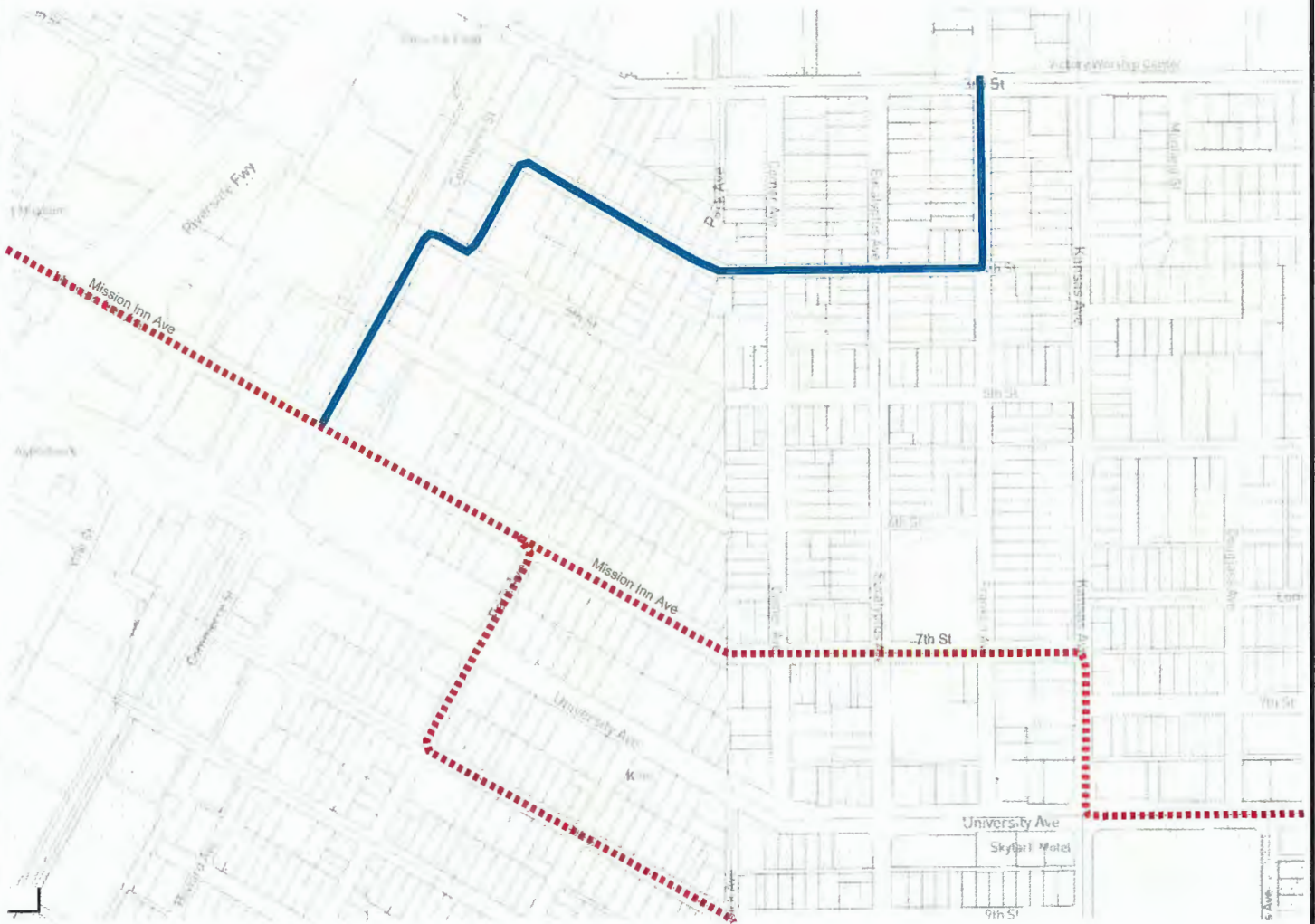
(SEAL)

CERTIFIED AS TO FUNDS AVAILABILITY:

By:   
Chief Financial Officer/ City Treasurer

Cooperative Funding Agreement: City of Riverside  
Box Springs MDP Line D, Stage 1  
Project No. 1-0-00089  
(Miscellaneous No. 202)  
11/10/2021  
AMR:rlp

# EXHIBIT A



## LEGEND

- EXISTING BOX SPRINGS STORM DRAIN, STAGE 3
- PROPOSED BOX SPRINGS STORM DRAIN, LINE - D

## COOPERATIVE AGREEMENT

Box Springs MDP Line D, Stage 1

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## **EXHIBIT B**

### **DISTRICT's Insurance Requirements are as follows:**

CITY's construction contractor(s) shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

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

A. **Workers' Compensation:**

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

B. **Commercial General Liability:**

Commercial General Liability insurance coverage, including, but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CITY's construction contractor(s) performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000

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## **EXHIBIT B**

per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

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

D. Pollution and Asbestos Liability:

CITY's construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering CITY's construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the CITY's construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

CITY's construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy

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shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the DISTRICT for review and approval. If CITY's construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by CITY's construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

In the event, CITY's construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, CITY's construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT and CITY, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT and CITY.

CITY's construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

E. Professional Liability:

CITY's construction contractor(s) shall cause any architect or engineer retained by CITY's construction contractor(s) in connection with the performance of CITY's construction contractor(s) obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CITY's

## **EXHIBIT B**

construction contractor(s) shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as the law allows.

F. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. The CITY's construction contractor(s) must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, CITY's construction contractor(s) carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a

## **EXHIBIT B**

bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- c. CITY's construction contractor(s) shall cause their insurance carrier(s) to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY's construction contractor(s) insurance carrier(s) policies does not meet the minimum notice requirement found herein, CITY's construction contractor(s) shall cause CITY's construction contractor(s) insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

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