

COOPERATIVE FUNDING AGREEMENT
Southwest Riverside MDP Line E-1, Stage 1
Project No. 1-0-00306
MS 192

This Cooperative Funding Agreement ("Agreement"), dated as of _____, 2022, is entered into by and between 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 Southwest Riverside MDP Line E-1, Stage 1 ("STAGE 1"). Upon construction completion, STAGE 1 will provide the necessary flood control and drainage improvements for Dufferin Avenue, John Street, and Victoria Avenue as well as for the properties located downstream of the area, all of which are located within the City of Riverside; and

B. STAGE 1, as shown on District Drawing No. 1-0744 and as shown in concept in red on Exhibit "A", attached hereto and made a part hereof, includes the construction of approximately 4,200 lineal feet of underground storm drain system. STAGE 1 will be constructed within Dufferin Avenue, John Street, and Victoria Avenue, starting from the existing arroyo just south of Dufferin Avenue between John Street and Harrison Street and extending southwesterly along Dufferin Avenue, northwesterly along John Street, and northeasterly along Victoria Avenue. STAGE 1 will outlet to CITY's existing Harrison Dam Outlet, Stage 1; and

C. The portions of STAGE 1 that are labeled as "MAINTAINED BY RCFC&WCD" on District Drawing No. 1-0744 (e.g., portions of the facility that are greater than 36" in diameter), are hereinafter called "DISTRICT FACILITIES"; and

D. In addition to the construction of DISTRICT FACILITIES, the remaining portions of STAGE 1, including, but not limited to, certain catch basins, inlets, connector pipes and storm drains that are thirty-six inches (36") or less in diameter will need to be constructed within CITY rights of way ("APPURTENANCES"); and

E. DISTRICT FACILITIES and APPURTENANCES are hereinafter altogether called "PROJECT"; and

F. CITY desires that DISTRICT contribute funding for the design and construction of PROJECT; and

G. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution towards PROJECT's design and construction costs as set forth herein; and

H. "DESIGN PROPOSAL COST" is defined as DISTRICT-approved engineering design proposal cost for PROJECT from CITY's selected engineering consulting firm; and

I. "IMPROVEMENT PLANS" is defined as the necessary plans and specifications for PROJECT; and

J. "UTILITY RELOCATIONS" is defined as (i) the relocation of CITY owned utilities that conflict with the construction of PROJECT; or (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

K. UTILITY RELOCATIONS shall be included in the public works construction contract for PROJECT. DISTRICT's contribution towards the costs for bid items associated with UTILITY RELOCATIONS shall be included as a part of "CONSTRUCTION CONTRIBUTION", as defined below. DISTRICT's contribution towards the costs for construction contract change orders associated with UTILITY RELOCATIONS shall be included as a part of "CHANGE ORDERS CONTRIBUTION", as defined below; and

L. "ORIGINAL BID" is defined as the lowest responsible bid contract price for PROJECT construction; and

M. DISTRICT's contribution to CITY for PROJECT shall be as follows, subject to the not to exceed amount provided in Recital N below:

(i) "DESIGN CONTRIBUTION", defined as

One hundred percent (100%) of DESIGN PROPOSAL COST to offset CITY's costs associated with 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 and permits if required for PROJECT; and other typical ancillary costs related to the preparation of IMPROVEMENT PLANS. However, DESIGN CONTRIBUTION shall not include the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") in accordance with Sections

I.9 and II.11 below; and

(ii) "DESIGN ADMIN", defined as

In the event that CITY chooses to hire an engineering consulting firm to prepare the necessary plans and specifications to construct PROJECT, DISTRICT is also willing to contribute an additional twenty percent (20%) of DESIGN PROPOSAL COST to offset CITY's administrative costs associated with design contract administration; and

(iii) "CONSTRUCTION CONTRIBUTION", defined as

One hundred percent (100%) of ORIGINAL BID, which includes bid items associated with UTILITY RELOCATIONS; and

(iv) "CONSTRUCTION ADMIN", defined as

An additional ten percent (10%) of ORIGINAL BID to offset CITY's administrative costs associated with construction contract administration and other typical ancillary costs related to the delivery of a flood control facility; and

(v) "CHANGE ORDERS CONTRIBUTION", defined as

Up to an additional ten percent (10%) of ORIGINAL BID to offset any construction contract change orders, which may include, but is not limited to, construction contract change orders associated with UTILITY RELOCATIONS; and

N. Altogether, DESIGN CONTRIBUTION, DESIGN ADMIN, CONSTRUCTION CONTRIBUTION, CONSTRUCTION ADMIN, and CHANGE

ORDERS CONTRIBUTION are hereinafter called "DISTRICT CONTRIBUTION". DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00); and

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

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

Q. DISTRICT desires CITY accept ownership and responsibility for the operation and maintenance of APPURTENANCES; and

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

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

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

SECTION I

CITY shall:

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

2. Endeavor to award a public works construction contract for PROJECT and begin construction within twenty-four (24) months of execution of this Agreement.

3. Provide DISTRICT an opportunity to review and approve the engineering design cost proposal and associated design schedule for PROJECT.

4. Keep an accurate accounting of the following costs for PROJECT:

A. All design costs associated with the preparation of plans and specifications for PROJECT, in conformance with DISTRICT-approved engineering design cost proposal and associated design schedule, as set forth in Section I.3. CITY shall include this accounting when invoicing DISTRICT for (i) the final payment of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMIN, as set forth in Section I.14. The final accounting of design costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers, change orders and other such contract documents as may be necessary to establish the actual cost of design and, if applicable, the associated design contract administration cost

for PROJECT. This includes all costs invoiced as a part of DESIGN CONTRIBUTION and, if applicable, DESIGN ADMIN.

- B. All PROJECT construction costs, including the costs associated with UTILITY RELOCATIONS. CITY shall provide this accounting to DISTRICT with CITY's Notice of Completion, as set forth in Section I.32. This final accounting of construction costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers, change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction and the associated contract administration cost for DISTRICT-approved and CITY-approved IMPROVEMENT PLANS. This includes all costs invoiced as a part of CONSTRUCTION CONTRIBUTION, CONSTRUCTION ADMIN and, if applicable, CHANGE ORDERS CONTRIBUTION.

5. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement or upon DISTRICT's approval of CITY's engineering design cost proposal as set forth in Section I.3, whichever occurs later. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT.

6. Prior to commencing PROJECT design, provide DISTRICT an opportunity to review and approve the geotechnical report for PROJECT.

7. Prepare or cause to be prepared 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 make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS.

8. Prior to advertising PROJECT for public works construction contract, obtain all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT. Such documents, hereinafter called "REGULATORY PERMITS", may include, but are not limited to, those issued by the following regulatory agencies: U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority. CITY shall also provide DISTRICT with an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS prior to submitting the applications to the applicable regulatory agencies.

9. Implement, or cause to be implemented, all environmental mitigation required in association with the construction, operation and maintenance of PROJECT, except for the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), which will be paid by DISTRICT as set forth in Section II.11.

10. Prior to advertising PROJECT for public works construction contract, obtain, at its sole cost and expense, all necessary permits, licenses, agreements,

approvals, rights of way, rights of entry, encroachment permits, and temporary construction easements as may be needed to construct, operate and maintain PROJECT ("ROW DOCUMENTS") and consult with DISTRICT regarding existing dedications, proposed legal descriptions and plat maps.

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

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

13. 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.

14. Following the signing of IMPROVEMENT PLANS by all Parties, invoice DISTRICT (Attention: Special Projects Section) for (i) the remainder of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMIN. The invoice shall include

DISTRICT.

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

21. 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.

22. 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.21, with:

- A. 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, and
- B. A confined space procedure specific to PROJECT. The procedure shall comply with requirements contained in

California Code of Regulations, Title 8, Section 5156 et seq. and DISTRICT's Confined Space Procedures, Chapter 18 of the Safety and Operations Manual (SOM-18). The confined space procedure shall be reviewed and approved by DISTRICT prior to the start of PROJECT construction.

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. Relocate or cause to be relocated all conflicting CITY owned utilities. CITY shall also order the relocation of all other non-CITY owned utilities within CITY rights of way which conflict with the construction of PROJECT.

25. 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 DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

26. 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.

27. Inspect PROJECT construction or cause PROJECT's construction

accompanied by the final accounting of all PROJECT construction costs as set forth in Section I.4.B.

33. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide DISTRICT (Attention: Special Projects Section and Construction Management Section) with appropriate engineering documentation necessary to establish that DISTRICT FACILITIES were constructed in accordance with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS.

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

35. At the time of recordation of the conveyance document(s) as set forth in Section I.34., furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value as determined by DISTRICT for each easement parcel to be conveyed to DISTRICT; or (ii) one hundred percent (100%) of the estimated value as determined by DISTRICT for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT's interest in each fee parcel as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which in the sole discretion of DISTRICT are

acceptable.

36. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of DISTRICT FACILITIES 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".

37. Upon DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, invoice DISTRICT (Attention: Special Projects Section) for CHANGE ORDERS CONTRIBUTION, if applicable, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT.

38. 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.

39. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Section I.32., any unexpended portions of DISTRICT CONTRIBUTION.

SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review and make a determination on CITY's engineering design cost proposal and associated design schedule for PROJECT.
3. Prepare, or cause to be prepared, aerial topography and survey control, deemed necessary for the construction, operation and maintenance of PROJECT, and provide to CITY.
4. Review and make a determination on CITY's geotechnical report prior to CITY commencing PROJECT design.
5. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.5. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT.
6. Review, comment on, and make a determination on, as appropriate, all applications for REGULATORY PERMITS prior to CITY submitting the applications to the applicable regulatory agencies.
7. Prior to CITY advertising PROJECT for bids, review and make a determination on, as appropriate, all (i) REGULATORY PERMITS and (ii) ROW DOCUMENTS, including any existing dedications, proposed legal descriptions and plat maps and survey controls. Said REGULATORY PERMITS and ROW DOCUMENTS shall not unreasonably constrain, inhibit or impair DISTRICT's ability to operate and

maintain DISTRICT FACILITIES. DISTRICT may withhold approval of any such document(s) or IMPROVEMENT PLANS when, in the sole judgment of DISTRICT's General Manager – Chief Engineer, the said document(s) unreasonably constrains, inhibits or impairs DISTRICT's ability to operate and maintain DISTRICT FACILITIES.

8. Review and approve IMPROVEMENT PLANS prior to CITY's advertising PROJECT for construction bids.

9. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice for (i) remainder of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMIN as set forth in Sections I.4.A and I.14. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT.

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

11. Within thirty (30) days of CITY awarding PROJECT construction contract, pay the Western Riverside County Regional Conservation Agency the mitigation fee for PROJECT per the 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), which is either the lesser of (i) three percent (3%) of the lowest responsible bid price; or ii) three percent (3%) of the lowest responsible bid price, less the value of any applicable project-specific mitigation.

12. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice for CONSTRUCTION CONTRIBUTION and CONSTRUCTION

ADMIN as set forth in Section I.18, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT.

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

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

15. Upon receipt of CITY's written notice that PROJECT construction is substantially complete as set forth in Section I.30., conduct a final inspection of DISTRICT FACILITIES.

16. Accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES once all of the following takes place: (i) DISTRICT's inspection of DISTRICT FACILITIES in accordance with Sections I.30 and II.15, (ii) DISTRICT's acceptance of DISTRICT FACILITIES construction as being complete, (iii) DISTRICT's receipt of CITY's recorded Notice of Completion as set forth in Sections I.32 and I.4.B, (iv) DISTRICT's receipt of appropriate engineering

documentation as set forth in Section I.33, (v) DISTRICT's receipt of stamped and signed "record drawings" of PROJECT plans as set forth in Section I.36, (vi) DISTRICT's acceptance of all necessary rights of way, easements, or grant deeds as set forth in Section I.34, (vii) DISTRICT's receipt of policies of title insurance for the rights of way, easements, or grant deeds as set forth in Section I.35, and (viii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition as set forth in Section IV.6.

17. Pay CITY, within forty-five (45) days after receipt of CITY's appropriate invoice, for CHANGE ORDERS CONTRIBUTION, as set forth in Section I.37, subject to and provided that DISTRICT CONTRIBUTION does not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT.

SECTION III

Indemnification:

1. CITY shall indemnify, defend and hold harmless, and require CITY's 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 and CITY's construction contractor(s), CITY's 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), CITY's 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.

2. With respect to any action or claim subject to indemnification herein by CITY or CITY's construction contractor(s), CITY or CITY's construction contractor(s) shall, at their sole cost, have the right to use counsel of their own choice and 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 or CITY's construction contractor(s) indemnification to Indemnitees as set forth herein.

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

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

5. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such

interpretation shall not relieve CITY or CITY's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

6. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) sole negligence or willful misconduct related to DISTRICT's performance under this Agreement, or failure to comply with the requirements of this Agreement.

SECTION IV

It is further mutually agreed:

1. DISTRICT CONTRIBUTION shall not exceed a total sum of Five Million Four Hundred Eighty-Five Thousand Five Hundred Seventy-Three Dollars (\$5,485,573.00) for PROJECT and shall be used by CITY solely for the purpose of designing and constructing PROJECT as set forth in this Agreement.

2. 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.

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

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

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

5. In the event CITY would like to utilize one or more of DISTRICT's construction services for PROJECT (i.e., construction inspection, materials testing or construction survey), CITY shall provide DISTRICT with written notice (Attn: Special Projects Section) requesting such services as set forth in Sections I.27 and II.14.

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

7. 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.

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

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

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

To DISTRICT: RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Special Projects Section

To CITY: CITY OF RIVERSIDE
3900 Main Street, 4th Floor
Riverside, CA 92522
Attn: Public Works Director

11. 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.

12. 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.

13. 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.

14. 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 force or effect.

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. 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.

17. DISTRICT and CITY each pledge to cooperate in regard to the operation and maintenance of their respective facility as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facility.

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

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

reason, DISTRICT shall immediately notify CITY in writing. The Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

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

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

"electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

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

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA R. HARPER
Clerk of the Board

By _____
Deputy County Counsel

By _____
Deputy

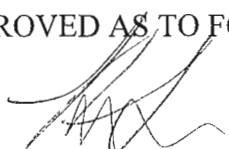
Cooperative Funding Agreement with the City of Riverside
Southwest Riverside MDP Line E-1, Stage 1
Project No. 1-0-00306
02/03/22
RMI:blm

CITY OF RIVERSIDE

By _____
AL ZELINKA
City Manager

APPROVED AS TO FORM:

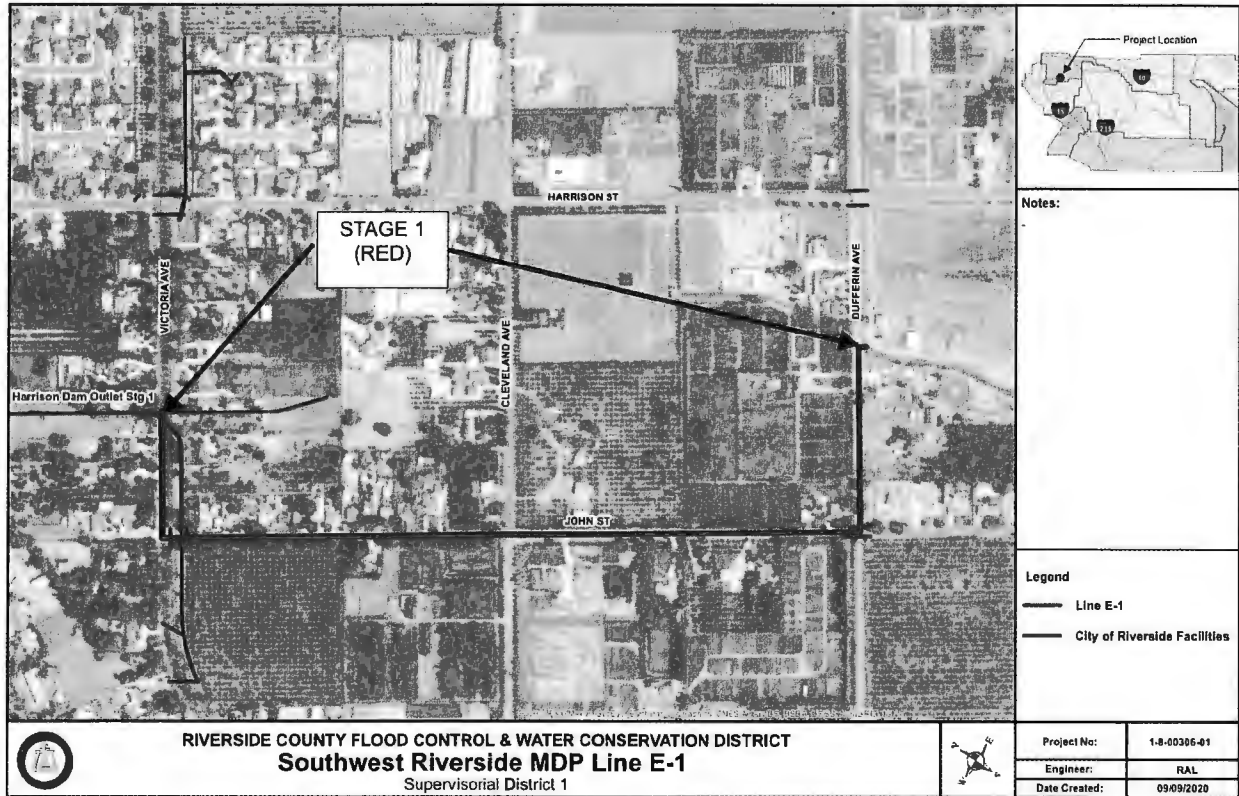
ATTEST:

By _____

RUTHANN M. SALERA
Deputy City Attorney

By _____
DONESIA GAUSE
City Clerk

Cooperative Funding Agreement with the City of Riverside
Southwest Riverside MDP Line E-1, Stage 1
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EXHIBIT A



COOPERATIVE FUNDING AGREEMENT

Southwest Riverside MDP Line E-1, Stage 1

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EXHIBIT B

DISTRICT's Required Insurance is as follows:

1. CITY's construction contractor(s) shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Exhibit.
2. Without limiting or diminishing CITY's and CITY's construction contractor(s) obligation to indemnify or hold DISTRICT harmless, CITY's construction contractor(s) shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement. As respects to the insurance section only, "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 DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

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

D. Professional Liability:

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

COOPERATIVE FUNDING AGREEMENT

Southwest Riverside MDP Line E-1, Stage 1

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EXHIBIT B

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 his 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.

E. General Insurance Provisions – All Lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an AM Best rating of not less than an A: VIII (A:8) unless such requirements are waived, in writing, by DISTRICT's Risk Manager. If 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.
- ii. 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 DISTRICT's Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of DISTRICT's Risk Manager, CITY's construction contractor(s) carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- iii. 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 DISTRICT's Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. 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 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.
- iv. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT

COOPERATIVE FUNDING AGREEMENT

Southwest Riverside MDP Line E-1, Stage 1

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EXHIBIT B

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.

- v. 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.
- vi. 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; or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if, in DISTRICT's Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY's construction contractor(s) has become inadequate.
- vii. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- viii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- ix. 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.