

COOPERATIVE FUNDING AGREEMENT – PAVING SERVICES

The City of Lake Elsinore ("CITY"), and the Elsinore Valley Municipal Water District ("EVMWD"), which are collectively referred to herein as "Parties" and individually as "Party," hereby agree as follows:

RECITALS

- A. EVMWD initiated a Capital Improvement Project which included the upsizing of existing sewer mains on and around Pottery Street ("Pottery Street Project"); and
- B. EVMWD initiated a Capital Improvement Project which included the upsizing of existing water mains within the Country Club Heights area ("Country Club Heights Project"); and
- C. As part of the Pottery Street and Country Club Heights Projects, EVMWD was required by the CITY to repair the paving on a portion of the streets effected by the Capital Improvement Project; and
- D. CITY desired to improve and enhance the roadway pavement on the same locations; and
- E. CITY and EVMWD determined that it is more economical to combine the repair and improvement of the pavement project and jointly fund the cost of the project; and
- H. The paving cost for the Pottery Street Project totals \$216,500, inclusive of the enhanced paving improvement on Pottery, Granite, Lookout, and Ellis Streets desired by the CITY in the amount of \$133,961.69; and
- I. The paving cost for the Country Club Heights Project totals \$124,317.74, inclusive of the enhanced paving improvement on Dryden, McPherson & Gunder, Lash, and Rose & Robertson Streets desired by the CITY in the amount of \$43,700.24; and
- K. CITY agrees to (i) provide a financial contribution in the amount of \$177,661.93, towards total project costs, representing the cost of enhanced paving improvements, hereinafter known as "CITY CONTRIBUTION"; and
- L. CITY and EVMWD acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

M. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and EVMWD with respect to funding and construction of PROJECT.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

SECTION I

EVMWD shall:

1. Manage and oversee the paving project to its completion.
2. Award and administer the construction of the project, including the administration of contracts for the project.
3. Keep an accurate accounting of all project costs and include this final accounting when invoicing DISTRICT and CITY for payment. The final accounting of costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers and other such contract documents as may be necessary to establish the actual costs of project.
4. Upon receiving invoices for project costs, invoice CITY for CITY CONTRIBUTION.
5. Ensure that all work performed pursuant to this Agreement by EVMWD, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to, all applicable provisions of the Labor Code, Business and Professions Code and Water Code.

SECTION II

CITY shall:

1. Inspect and approve project construction
2. Pay EVMWD within thirty (30) days after receipt of EVMWD's appropriate invoice for CITY CONTRIBUTION.

SECTION III

It is further mutually agreed:

1. CITY CONTRIBUTION shall not exceed a total sum of one hundred seventy seven thousand six hundred sixty one Dollars and ninety-three Cents (\$177,661.93) without written amendment to this Agreement and shall be used by EVMWD solely for the PROJECT as set forth herein.

2. EVMWD shall indemnify, defend, save and hold harmless CITY (including their respective directors, 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 EVMWD's (including its officers, 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.

3. CITY shall indemnify, defend, save and hold harmless EVMWD (including their respective officers, Board of Directors, appointed or elected officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and 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.

4. In the event that any dispute between the Parties arises under this Agreement, the Parties shall first attempt to resolve such dispute at the management level. If the dispute is not resolved at this

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level within a mutually acceptable period of time (not to exceed 60 calendar days from the date written notice of such dispute is delivered by either Party), the Parties shall attempt to resolve the dispute at the senior management level. If this process and the involvement of senior management do not result in resolution of the dispute within 60 calendar days from the date of referral to upper management, then the dispute shall be referred to and finally resolved through arbitration or legal proceedings. The use of the foregoing procedure is a condition precedent to the commencement of any legal proceedings hereunder. Neither the pendency of a dispute nor its consideration by arbitration shall excuse EVMWD from full and timely performance of PROJECT, as set forth in this Agreement.

5. 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.

6. 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:

CITY OF LAKE ELSINORE
130 South Main Street
Lake Elsinore, CA 92530
Attn: City Manager

ELSINORE VALLEY
MUNICIPAL WATER DISTRICT
31315 Chaney Street
Lake Elsinore, CA 92530
Attn: General Manager

7. 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.

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

9. The parties hereto shall not assign this Agreement without the written consent of the other parties.

10. 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.

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

12. 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.

13. This Agreement may be executed and delivered in any number of counterparts or copies, hereinafter called "COUNTERPART", by the parties hereto. When each party has signed and delivered at least one COUNTERPART to the other parties hereto, each COUNTERPART shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the parties hereto.

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CITY OF LAKE ELSINORE

By _____
GRANT YATES
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
Barbara Leibold
City Attorney

By _____
Susan M. Domen, MMC
City Clerk

(SEAL)

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ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By _____
JOHN VEGA
General Manager

APPROVED AS TO FORM:

ATTEST:

By _____
JOHN E. BROWN
General Counsel

By _____
TERESE QUINTANAR
District Secretary

(SEAL)

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