

FUNDING AGREEMENT

Temescal Wash Improvement, Stage 1
Temescal Canyon Bridge Replacement
Project No. 2-0-00264

This Funding Agreement ("Agreement"), dated as of _____, 2018, is entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body politic ("DISTRICT"), and the CITY OF LAKE ELSINORE, a municipal corporation ("CITY") who agree as follows:

RECITALS

A. CITY has budgeted for and plans to design, prepare plans and specifications, construct and subsequently operate and maintain: Temescal Wash Improvements – Temescal Canyon Bridge Replacement ("BRIDGE"). BRIDGE is comprised of a section of Temescal Canyon Road as it traverses Temescal Wash, approximately three hundred (300') feet south of Interstate-15 and 0.22 miles west of Lake Street located in the city of Lake Elsinore. Upon construction completion, BRIDGE will be able to convey storm flows and Temescal Canyon Road westerly of Lake Street will be better protected from flooding and road closures; and

B. In its current state, BRIDGE is only sixty four (64') feet long with less than five (5') feet of clearance. BRIDGE has been rated as "Functionally Obsolete," with a low Sufficiency rating by Caltrans. BRIDGE is severely undersized to convey storm flows. As a result, Temescal Canyon Road westerly of Lake Street is subject to constant flooding and road closures. In this area, Temescal Canyon Road is the only viable alternate route to Interstate-15; and

C. The proposed BRIDGE is a new 4-lane, three hundred seventy five (375') foot long bridge, with a fifteen (15') foot clearance over Temescal Wash as shown in concept in blue on Exhibit "A" attached hereto and made a part hereof; and

D. BRIDGE is hereinafter called "PROJECT"; and

E. CITY desires that DISTRICT contribute funding for the design, right of way acquisition, construction, mitigation and monitoring of PROJECT; and

F. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution towards PROJECT's design, right of way acquisition, construction, mitigation and monitoring costs as set forth herein; and

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

(i) Fifteen percent (15%) of CITY's engineering design proposal cost, not to exceed two hundred forty thousand dollars (\$240,000) to offset CITY's costs associated with mapping, surveying, engineering, and other typical ancillary costs related to the preparation of the necessary plans and specifications to construct PROJECT, hereinafter called ("DESIGN CONTRIBUTION"); and

(ii) Fifteen percent (15%) of the actual cost, not to exceed three hundred fifty two thousand three hundred fifty dollars (\$352,350) for right of way acquisition, right of entry and temporary construction easements, hereinafter called ("ACQUISITION CONTRIBUTION"); and

(iii) Fifteen percent (15%) of the lowest responsible bid contract price for PROJECT construction, not to exceed two million five hundred eighty seven thousand three hundred fifty dollars (\$2,587,350), hereinafter called ("CONSTRUCTION CONTRIBUTION"); and

(iv) Twenty percent (20%) of the actual cost, not to exceed one hundred ninety thousand dollars (\$190,000) for monitoring and mitigation, hereinafter called ("MONITORING CONTRIBUTION"); and

H. Altogether, DESIGN CONTRIBUTION, ACQUISITION CONTRIBUTION, CONSTRUCTION CONTRIBUTION and MONITORING CONTRIBUTION are hereinafter called "TOTAL DISTRICT CONTRIBUTION". TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of three million three hundred sixty nine thousand seven hundred dollars (\$3,369,700); and

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

J. The purpose of this AGREEMENT is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to funding, design, acquisition, construction, inspection, ownership, operation and maintenance and monitoring and mitigation 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

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 AGREEMENT.

3. Prepare or cause to be prepared, all the necessary plans and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable CITY standards.

4. Prior to commencing construction, obtain, at its sole cost and expense, 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 may include, but are not limited to, a Section 404 permit issued by the U.S. Army Corps of Engineers, a Section 401 Water Quality Certification issued by the California Regional Water Quality Control Board (CRWQCB), a Streambed Alteration Agreement issued by the California Department of Fish and Wildlife, and a National Pollutant Discharge Elimination System Permit issued by the State Water Resources Control Board or CRWQCB and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

5. Keep an accurate accounting of all acquisition costs associated with the right of way acquisition, rights of entry and temporary construction easements for PROJECT and include this accounting when invoicing DISTRICT for ACQUISITION CONTRIBUTION.

6. Invoice DISTRICT for (Attention: Planning Section) DESIGN CONTRIBUTION within thirty (30) days of execution of this Agreement.

7. Within thirty (30) days of awarding PROJECT construction contract, pay the Western Riverside County Multiple Species Habitat Conservation Plan fees to Riverside Conservation Agency.

8. Obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry and temporary construction easements as may be needed to construct, operate and maintain PROJECT.

9. Invoice DISTRICT (Attention: Planning Section) for ACQUISITION CONTRIBUTION at the time all necessary rights of way have been obtained as set forth in Section I.8.

10. Advertise, award and administer a public works construction contract for PROJECT at its sole cost and expense. Advertise PROJECT for bids pursuant to the applicable provisions of the California Public Contract Code.

11. Provide DISTRICT with written notice (Attention: Planning Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the Contractor's actual bid amounts for PROJECT, setting forth the successful lowest responsible bid contract price for PROJECT construction as set forth herein.

12. Invoice DISTRICT (Attention: Planning Section) for CONSTRUCTION CONTRIBUTION and MONITORING CONTRIBUTION at the time of providing written notice of the award of a construction contract as set forth in Section I.11.

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

14. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager, and pay all costs associated therewith. .

15. Furnish or cause its construction manager to furnish, all construction survey and materials testing services necessary to ensure PROJECT construction is accomplished in accordance with CITY approved IMPROVEMENT PLANS.

16. Order the relocation of all other utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT and which must be relocated at the utility company's expense.

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

officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, 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.

18. Without limiting or diminishing CITY's obligation to indemnify or hold DISTRICT harmless, CITY shall require its construction contractor(s) to procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of AGREEMENT:

A. Workers' Compensation:

In accordance with CITY's Agreement for Public Works Construction
Section 9(a) Insurance Requirements - Insurance paragraph (i).

B. Commercial General Liability:

In accordance with CITY's Agreement for Public Works Construction
Section 9(a) Insurance Requirements - Insurance paragraph (ii).

C. Vehicle Liability:

In accordance with CITY's Agreement for Public Works Construction
Section 9(a) Insurance Requirements - Insurance paragraph (iii).

D. Professional Liability:

In accordance with CITY's Agreement for Public Works Construction
Section 9(a) Insurance Requirements – Insurance paragraph (v).

E. General Insurance Provisions – All Lines:

In accordance with CITY's Agreement for Public Works Construction Section 9(b) Insurance Requirements – Endorsements all paragraphs, Section 9(c) Insurance Requirements – Deductibles and Self-Insured Retentions and Section (9d) Insurance Requirements – Certificates of Insurance.

19. CITY shall 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.

20. Assume ownership and sole responsibility for the operation and maintenance of PROJECT.

SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.

2. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice for DESIGN CONTRIBUTION as set forth in Section I.6.

3. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice, ACQUISITION CONTRIBUTION, as set forth in Section I.9.

4. Pay CITY, within thirty (30) days after receipt of CITY's appropriate invoice CONSTRUCTION CONTRIBUTION and MONITORING CONTRIBUTION as set forth in Section I.12.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein this Agreement, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of three million three hundred sixty nine thousand seven hundred dollars (\$3,369,700) and shall be used by CITY solely for the purpose of designing constructing, acquisition for, mitigation and monitoring for PROJECT as set forth herein.

2. 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.

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

4. 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: Planning Section

CITY OF LAKE ELSINORE
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Engineer

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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.

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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 _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By _____
LEILA MOSHREF-DANESH
Deputy County Counsel

By _____
Deputy

(SEAL)

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Project No. 2-0-00264
09/12/18
TRI:blm

RECOMMENDED FOR APPROVAL:

CITY OF LAKE ELSINORE

By _____
GRANT YATES
City Manager

By _____
GRANT YATES
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
BARBARA LEIBOLD
City Attorney

By _____
SUSAN DOMEN
City Clerk

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ATTEST:

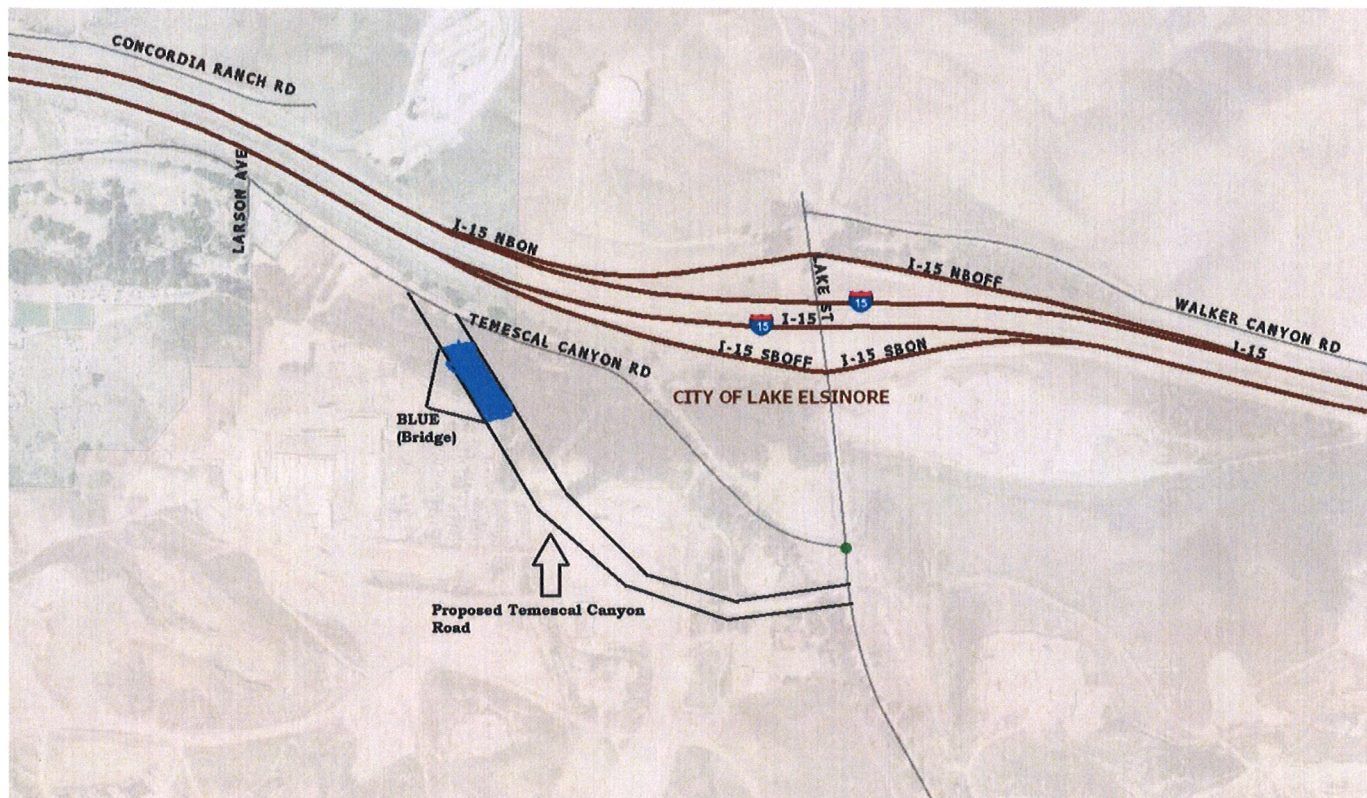
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Exhibit A



FUNDING AGREEMENT

Temescal Wash Improvement, Stage 1 -
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