

COOPERATIVE FUNDING AGREEMENT

Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel

The Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Lake Elsinore, a municipal corporation ("CITY"), and the Elsinore Valley Municipal Water District, a municipal water district ("EVMWD"), which are collectively referred to herein as "Parties" and individually as "Party," hereby enter into this Cooperative Funding Agreement ("Agreement") and agree as follows:

RECITALS

- A. DISTRICT currently owns and maintains the Lake Elsinore Outlet Channel (DISTRICT Project No. 3-0-00040), hereinafter called "CHANNEL", located within the City of Lake Elsinore; and
- B. CHANNEL's primary purpose is that of a flood control facility; and
- C. EVMWD currently owns and operates the Regional Water Reclamation Facility, hereinafter known as "EVMWD FACILITIES", and discharges recycled water from EVMWD FACILITIES, hereinafter called "DISCHARGES", that currently outflow through CHANNEL to Lake Elsinore; and
- D. Current DISCHARGES through CHANNEL have caused the growth of vegetation and other organic matter in CHANNEL, causing maintenance costs to substantially increase for DISTRICT; and
- E. Said vegetation and other organic matter attributed to the DISCHARGES, reduce through evapotranspiration the volume of reclaimed water that reaches Lake Elsinore; and
- F. DISTRICT has determined that removal of outflow of DISCHARGES through CHANNEL will substantially reduce the cost of maintenance operations and increase the volume of DISCHARGES reaching Lake Elsinore; and

G. DISTRICT, CITY, and EVMWD jointly funded the design of the facilities needed to convey DISCHARGES directly to Lake Elsinore via the improvement, repurposing and extending an already existing agricultural irrigation pipeline, hereinafter known as "PIPELINE"; and

H. DISTRICT, CITY, and EVMWD desire to jointly fund the rehabilitation, improvement, and construction of the PIPELINE; and

I. The improvement of PIPELINE, as shown in concept in green on Exhibit "A" attached hereto and made a part hereof, will include the rehabilitation and repair of 5,000 lineal feet of existing 36-inch pipeline, and the connection to PIPELINE of a segment of approximately 650 lineal feet of underground pipe with outflow to Lake Elsinore, hereinafter called "EXTENSION", as shown in concept in blue on Exhibit "A", as well as the construction of a new discharge flow dissipater, hereinafter called "DISSIPATER", as shown in concept in red on Exhibit "A". Mitigation measures with known and identifiable costs are hereinafter called "MITIGATION MEASURES". Together, PIPELINE, EXTENSION, DISSIPATER, and MITIGATION MEASURES, are hereinafter known as "PROJECT"; and

J. DISTRICT and CITY wish to support EVMWD's efforts to construct PROJECT by providing financial contributions toward the following:

- (i) Approved cost of construction bid amount for PROJECT by lowest responsive and responsible bidder ("BID AMOUNT"); and
- (ii) Approved costs associated with cultural monitoring, conservation easement acquisition, environmental permitting, surveying, contract administration and other typical ancillary costs related to the delivery of the facility ("CONTRACT ADMINISTRATION"); and
- (iii) Change orders ("CHANGE ORDERS") approved by the EVMWD and DISTRICT for PROJECT in an amount not to exceed the contingency; and

(iv) Altogether, BID AMOUNT, CONTRACT ADMINISTRATION, and CHANGE ORDERS are hereinafter called "TOTAL PROJECT COSTS".

K. EVMWD agrees to (i) provide a financial contribution comprised of one-third (1/3) of TOTAL PROJECT COSTS, not to exceed \$550,000, (ii) advertise for bids, award, and administer the construction of PROJECT, including the administration of a construction contract for PROJECT, and (iii) inspect PROJECT construction; and

L. DISTRICT agrees to provide a financial contribution comprised of up to one-third (1/3) of TOTAL PROJECT COSTS, not to exceed a total sum of \$550,000, hereinafter known as "DISTRICT CONTRIBUTION"; and

M. CITY agrees to (i) provide a financial contribution comprised of one-third (1/3) of TOTAL PROJECT COSTS, not to exceed \$550,000, hereinafter known as "CITY CONTRIBUTION"; (ii) issue a no fee Encroachment Permit and a right of entry for construction related activities over and upon City right of way and property; (iii) upon PROJECT completion, grant EVMWD an easement within CITY's right-of-way necessary and over CITY's property for the operation and maintenance of PROJECT; and (iv) grant Pechanga Band of Luseno Indians an easement for repatriation of artifacts over City property Assessor's Parcel Number 374-271-007; and

N. DISTRICT, 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

O. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT, 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. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead Agency, assume responsibility for the circulation and adoption of all necessary and appropriate CEQA documents, and implement the adopted mitigation measures pertaining to the construction, operation and maintenance of PROJECT.
2. Pursuant to an EVMWD administered Request for Proposals and resulting construction contract, construct, or cause to be constructed, PROJECT.
3. Provide DISTRICT (Attn: Chief of Operations and Maintenance Division) with written notice that EVMWD has awarded a construction contract for PROJECT. The written notice to DISTRICT shall include the Contractor's actual bid amounts, setting forth BID AMOUNT for PROJECT construction as set forth herein.
4. Invoice DISTRICT (Attention: Chief of Operations and Maintenance Division) for seventy-five percent (75%) of DISTRICT CONTRIBUTION, hereinafter called "INITIAL CONTRIBUTION" at the time of providing written notice of the award of a construction contract as set forth in Section I.3.
5. Submit all proposed CHANGE ORDERS for PROJECT to DISTRICT (Attn: Chief of Operations and Maintenance Division) via letter and email. DISTRICT shall review change order proposal(s) as soon as possible. DISTRICT shall not unreasonably withhold its approval of a change order. If DISTRICT does not object to a change order within five (5) working days of receipt of letter, it shall be deemed approved by DISTRICT.
6. Keep an accurate accounting of all PROJECT construction and associated construction contract administration costs and include this final accounting when invoicing (i) DISTRICT for the remainder payment, hereinafter called "FINAL CONTRIBUTION", and (ii) CITY for payment. The final accounting of construction and construction contract administration costs shall include a detailed breakdown of all costs, including but not limited to, the Contractor's actual BID AMOUNT,

EVMWD's costs associated with administering the construction contract, payment vouchers, CHANGE ORDERS and other such construction contract documents as may be necessary to establish DISTRICT's and CITY's share of the actual costs of PROJECT construction and construction contract administration.

7. Require its construction contractor(s) for PROJECT to include EVMWD, DISTRICT, CITY and the County of Riverside as additional insureds under the liability insurance coverage for PROJECT.

8. On a monthly basis, invoice CITY (Attn: Shannon Buckley, Finance Manager) for CITY CONTRIBUTION.

9. Upon completion of PROJECT construction, provide DISTRICT and CITY with a copy of EVMWD's Notice of Completion.

10. Upon completion of PROJECT construction, conduct a final accounting of TOTAL PROJECT COSTS. If DISTRICT's share of actual PROJECT construction and construction contract administration costs, as established in Section I.5., is greater than INITIAL CONTRIBUTION, invoice DISTRICT (Attention: Chief of Operations and Maintenance Division) for FINAL CONTRIBUTION, provided that DISTRICT TOTAL CONTRIBUTION does not exceed the lower of (i) a total sum of five hundred fifty thousand dollars (\$550,000) or (ii) one-third (1/3) of TOTAL PROJECT COSTS.

11. Accept ownership and sole responsibility for the operation and maintenance of PROJECT.

12. 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. EVMWD shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II

DISTRICT shall:

1. Pursuant to CEQA, act as a Responsible Agency under CEQA and take all necessary and appropriate action to comply with CEQA.
2. Grant EVMWD, its agents or contractors, by execution of this Agreement, the right to enter upon DISTRICT's property for the purpose of constructing and performing inspection service for PROJECT as set forth herein.
3. Review change order proposal(s) as soon as possible. DISTRICT shall not unreasonably withhold its approval of a change order. If DISTRICT does not object to a change order within five (5) working days of receipt of email, it shall be deemed approved by DISTRICT.
4. Notify EVMWD of any objections to FINAL CONTRIBUTION or CHANGE ORDERS within thirty (30) days of submission of the invoice to DISTRICT. In the event EVMWD determines that a charge was billed incorrectly, an addendum to the invoice in question shall be provided and DISTRICT shall be reimbursed or credited for the amount incorrectly charged.
5. Pay EVMWD within forty-five (45) days after receipt of EVMWD's appropriate invoices for INITIAL CONTRIBUTION and FINAL CONTRIBUTION as set forth in Sections I.4. and I.9.

SECTION III

CITY shall:

1. Pursuant to CEQA, act as a Responsible Agency under CEQA and take all necessary and appropriate action to comply with CEQA.
2. Grant EVMWD, its agents or contractors, by execution of this Agreement, the right to enter upon CITY's property for the purpose of constructing and performing inspection service for PROJECT as set forth herein.

3. Pay EVMWD within thirty (30) days after receipt of EVMWD's appropriate invoice for CITY CONTRIBUTION.

4. Convey or cause to be conveyed to EVMWD the easement(s), including ingress and egress, for the rights-of-way deemed necessary by EVMWD for the operation and maintenance of PROJECT.

SECTION IV

It is further mutually agreed:

1. Election Not to Proceed with Construction.

(a) DISTRICT Election. If upon review of the aforementioned bids, DISTRICT, by written notice to EVMWD, elects not to proceed with the PROJECT without due cause, thereby causing EVMWD to reject all bids, DISTRICT agrees to pay EVMWD for all costs related to termination of the PROJECT incurred by EVMWD, including all legal costs and damages resulting from rejection of all bids for the construction contract for the PROJECT.

(b) CITY Election. If upon review of the aforementioned bids, CITY, by written notice to EVMWD, elects not to proceed with the PROJECT without due cause, thereby rejecting all bids, CITY agrees to pay EVMWD for all costs related to termination of the PROJECT incurred by EVMWD, including all legal costs and damages resulting from rejection of all bids for the construction contract for the PROJECT.

(c) Mutual Election. If, upon opening bids for the construction contract for the PROJECT, it is found that the lowest responsible bid exceeds the Total Estimated Cost of PROJECT, as shown on Exhibit "B" entitled "Estimated Project Cost", attached hereto and made a part hereof, the Parties will consult upon a course of action. If, after twenty-one (21) days, a course of action is not agreed upon, this Agreement shall be deemed to be terminated by mutual consent, and each Party shall bear one hundred percent (100%) of their respective costs.

2. PROJECT shall, at all times, remain sole ownership and exclusive responsibility of EVMWD. Nothing herein shall be construed as creating any obligation or responsibility on the part of DISTRICT or CITY to operate, maintain or warranty PROJECT.
3. EVMWD, CITY, and DISTRICT contemplate that certain PROJECT changes may be requested by either Party for that Party's sole benefit. In the event that there are construction changes that exclusively benefits one Party, that do not disrupt the Project's intended purpose, that benefited Party shall solely bear all expenses for design and construction of the changes, which expenses shall be paid by the requesting Party at the time such expenses are incurred.
4. In the event actual PROJECT construction and construction contract administration costs for PROJECT is less than DISTRICT'S INITIAL CONTRIBUTION, EVMWD shall refund the difference to DISTRICT within thirty (30) days of filing the Notice of Completion for PROJECT.
5. DISTRICT CONTRIBUTION shall not exceed the lower of: (i) a total sum of five hundred fifty thousand dollars (\$550,000) or (ii) one-third (1/3) of TOTAL PROJECT COSTS without written amendment to this Agreement and shall be used by EVMWD solely for the purpose of constructing PROJECT as set forth herein.
6. DISTRICT shall not pay interest or finance charges on any outstanding balance(s).
7. CITY CONTRIBUTION shall not exceed a total sum of five hundred fifty thousand dollars (\$550,000) without written amendment to this Agreement and shall be used by EVMWD solely for the purpose of constructing PROJECT as set forth herein.
8. DISTRICT, the County of Riverside, 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, with the exception of any privileged and/or work product documentation between each PARTY and their legal counsel. EVMWD agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. EVMWD 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.

9. The Parties recognize that this Agreement is subject to the provisions of Section 895 *et seq.* of the Government Code. Pursuant to Section 895.4 of the Government Code, the Parties as part of this Agreement will provide for contribution or indemnification upon any liability arising out of the performance of this Agreement.

(a) EVMWD shall indemnify, defend, save and hold harmless at its own expense, including attorneys' fees, DISTRICT, CITY, and the County of Riverside (including their Agencies, 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, claims, damages, proceedings or actions, causes of actions, demands, suits, orders, judgments, payments, losses, costs and expenses (including reasonable attorneys', consultants' or experts' fees and costs), and any request for relief of any character whatsoever, legal or equitable, known or unknown, developed or undeveloped, anticipated or unanticipated, present or future, caused by, based upon, arising out of or in any way relating to EVMWD's (including its directors, elected officials, officers, employees, agents, representatives, independent contractors and subcontractors) actual or alleged negligent acts, errors or omissions, or willful misconduct of EVMWD (including its directors, elected officials, officers, employees, agents, representatives, independent contractors and subcontractors) acting under 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 attorneys' fees; or (d) any other element of any kind or nature whatsoever.

(b) DISTRICT shall indemnify, defend, save and hold harmless at its own expense, including attorneys' fees, EVMWD and CITY (including their respective directors, officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claims, damages, proceedings or actions, causes of actions, demands, suits, orders, judgments, payments, losses, costs and expenses (including reasonable attorneys', consultants' or experts' fees and costs), and any request for relief of any character whatsoever, legal or equitable, known or unknown, developed or undeveloped, anticipated or unanticipated, present or future, caused by, based upon, arising out of or in any way relating to DISTRICT's (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged negligent acts, errors or omissions, or willful misconduct of DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) acting under 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 attorneys' fees; or (d) any other element of any kind or nature whatsoever.

(c) CITY shall indemnify, defend, save and hold harmless at its own expense, including attorneys' fees, EVMWD, DISTRICT, and the County of Riverside (including their Agencies, 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, claims, damages, proceedings or actions, causes of actions, demands, suits, orders, judgments, payments, losses, costs and expenses (including reasonable attorneys', consultants' or experts' fees and costs), and any request for relief of any character whatsoever, legal or equitable, known or unknown, developed or

undeveloped, anticipated or unanticipated, present or future, caused by, based upon, arising out of or in any way relating to CITY's (including its directors, officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged negligent acts, errors or omissions, or willful misconduct of CITY (including its directors, officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) acting under 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 attorneys' fees; or (d) any other element of any kind or nature whatsoever.

(d) This indemnification provision shall survive termination or expiration of this Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this Agreement.

10. The obligation(s) of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution towards the Agreement as set forth herein. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify EVMWD in writing. AGREEMENT shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by EVMWD.

11. 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.

12. 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

ELSINORE VALLEY
MUNICIPAL WATER DISTRICT
31315 Chaney Street

Riverside, CA 92501
Attn: Chief of Operations and Maintenance Division
Email: HOlivo@rivco.org

Lake Elsinore, CA 92530
Attn: General Manager

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

Courtesy copies of any notices may be sent by electronic mail in addition to the notice sent by first class mail.

13. 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.

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

15. 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.

16. The Parties hereto shall not assign this Agreement without the written consent of the other Parties.

17. 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.

18. This Agreement is the result of negotiations between the Parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this

Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

19. Any waiver by DISTRICT, CITY or EVMWD, of any breach by any other Party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other provision hereof. Failure on the part of DISTRICT, 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 DISTRICT, CITY or EVMWD from enforcing this Agreement.

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 changed or modified only upon the written consent of the parties hereto.

21. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and no oral understanding or agreement not incorporated herein shall be binding on the Parties hereto.

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

23. 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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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 _____
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By _____
Deputy
(SEAL)

Cooperative Funding Agreement with the City of Lake Elsinore and EVMWD
Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel
:

CITY OF LAKE ELSINORE

By _____
GRANT YATES
City Manager

By _____
NATASHA JOHNSON
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
BARBARA LEIBOLD
City Attorney

By _____
SUSAN DOMEN
City Clerk

(SEAL)

Cooperative Funding Agreement with the City of Lake Elsinore and EVMWD
Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel
:

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By _____
JOHN D. VEGA
General Manager

APPROVED AS TO FORM:

ATTEST:

By _____
JOHN E. BROWN
General Counsel

By _____
TERESE QUINTANAR
District Secretary

Cooperative Funding Agreement with the City of Lake Elsinore and EVMWD
Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel
:

Exhibit A
Cooperative Funding Agreement
Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel
EVMWD Project # 75926
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Exhibit A
Cooperative Funding Agreement
Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel
EVMWD Project # 75926
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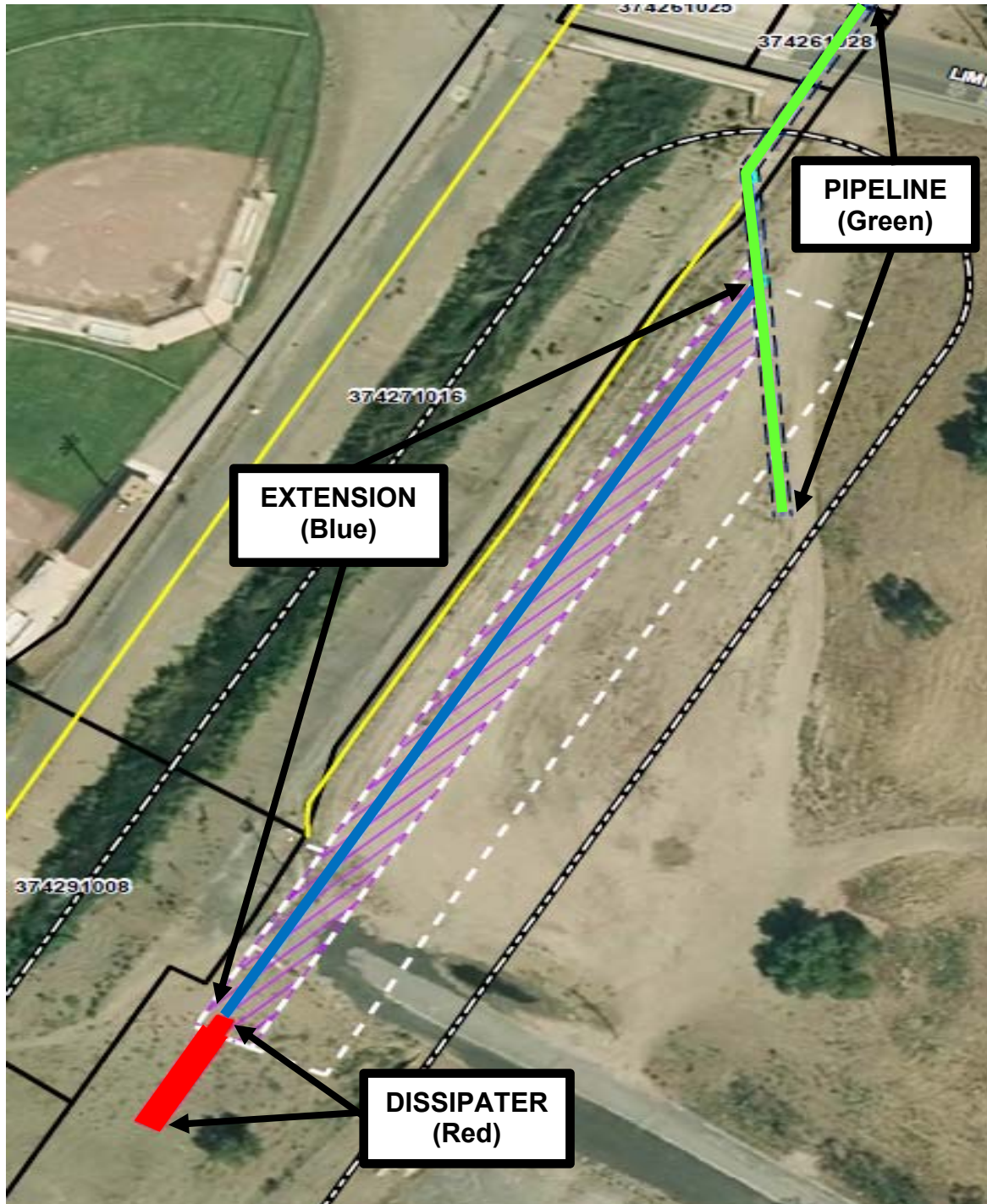


Exhibit B - Estimated Project Cost
 Cooperative Funding Agreement
 Regional Agricultural Pipeline Conversion Project
 Lake Elsinore Outlet Channel
 EVMWD Project # 75926

Description	Units	Unit Cost	Estimated Cost (\$)
Rehabilitation of Existing Pipeline & Dissipation Structure			\$ 764,500
New pipeline from Current Line to Dissipation Structure	650 LF of 36" Pipe	\$360/LF	234,000
Construction Management & Inspection			147,600
Engineering Support Services During Construction			49,200
Native American Monitoring Inspection for Pechanga & Soboba Tribes	160 Hours	\$75/Hour	12,000
Conservation Easement Acquisition			7,500
Project Management (EVMWD & Consultant)			49,200
Cost Incurred to Date (Net of Design Contribution)			175,101
Overhead			71,955
Contingency			138,944
Total Estimated Cost			<u><u>\$ 1,650,000</u></u>