

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 historically flowed through CHANNEL to Lake Elsinore; and
- D. Said DISCHARGES through CHANNEL 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, reduced through evapotranspiration the volume of reclaimed water that reached Lake Elsinore; and
- F. DISTRICT determined that removal of outflow of DISCHARGES through CHANNEL would 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 and construction 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 "PROJECT", with EVMWD acting as Lead Agency; and

H. As part of the Mitigation Monitoring and Reporting Program ("MMRP") required in compliance of CEQA for the construction of the PROJECT, several ongoing mitigation measures were identified hereinafter called "MITIGATION MEASURES"; and

I. DISTRICT and CITY wish to support EVMWD's efforts to comply with the MITIGATION MEASURES by providing financial contributions toward the following:

- (i) Approved cost for ongoing MITIGATED MEASURES outlined in the MMRP, specifically: Downstream Riparian Monitoring (MM-BIO-3 in MMRP) and Habitat Enhancement (MM-BIO-5) for a minimum period of five years; and

- (ii) Approved costs associated with administration Professional Service Agreement ("PSA") ("CONTRACT ADMINISTRATION") for the implementation of the MITIGATION MEASURES; 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, MITIGATION MEASURES, CONTRACT ADMINISTRATION, and CHANGE ORDERS are hereinafter called "TOTAL PROJECT COSTS".

J. EVMWD agrees to (i) provide a financial contribution comprised of one-third (1/3) of TOTAL PROJECT COSTS, not to exceed \$45,000, (ii) award and administer the performance of MITIGATION MEASURES, including the administration of a Professional Service Agreement ("PSA"); and

K. 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 \$45,000, hereinafter known as "DISTRICT CONTRIBUTION"; and

L. CITY agrees to (i) provide a financial contribution comprised of one-third (1/3) of TOTAL PROJECT COSTS, not to exceed \$45,000, hereinafter known as "CITY CONTRIBUTION"; and

M. DISTRICT, CITY and EVMWD acknowledge it is in the best interest of the public to proceed with the implementation of MITIGATION MEASURES; and

N. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT, CITY and EVMWD with respect to the MITIGATION MEASURES.

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. Assume responsibility for the implementation of the adopted MITIGATION MEASURES.
2. Invoice DISTRICT (Attention: Chief of Regulatory Division) for fifty percent (50%) of DISTRICT CONTRIBUTION, hereinafter called "INITIAL CONTRIBUTION" within thirty days of execution of this agreement.
3. Submit all proposed CHANGE ORDERS to DISTRICT (Attn: Chief of Regulatory 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 ten (10) working days of receipt of letter, it shall be deemed approved by DISTRICT.
4. Keep an accurate accounting of MITIGATION MEASURES and associated 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 MITIGATION MEASURES and CONTRACT ADMINISTRATION costs shall include a detailed breakdown of all costs, including but not limited to, the consultant's actual proposal, EVMWD's costs associated with administering the contract, payment vouchers, CHANGE ORDERS and other such contract documents as may be necessary to establish DISTRICT's and CITY's share of the actual costs of TOTAL PROJECT COST.

5. Require its consultants(s) to include EVMWD, DISTRICT, CITY and the County of Riverside as additional insureds under the liability insurance coverage for MITIGATION MEASURES.

6. Upon completion of required MITIGATION MEASURES, conduct a final accounting of TOTAL PROJECT COSTS. If DISTRICT's share of actual TOTAL PROJECT COST, as established in Section I.4 is greater than INITIAL CONTRIBUTION, invoice DISTRICT (Attention: Chief of Regulatory Division) for FINAL CONTRIBUTION, provided that DISTRICT TOTAL CONTRIBUTION does not exceed the lower of (i) a total sum of forty-five thousand dollars (\$45,000) or (ii) one-third (1/3) of TOTAL PROJECT COSTS.

7. Ensure that all work performed pursuant to this Agreement by EVMWD, its agents or consultants 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

DISTRICT shall:

1. Grant EVMWD, its agents or consultants, by execution of this Agreement, the right to enter upon DISTRICT's property for the purpose of performing MITIGATION MEASURES.

2. 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 ten (10) working days of receipt of email, it shall be deemed approved by DISTRICT.
3. 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.
4. 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.2. and I.6.

SECTION III

CITY shall:

1. Grant EVMWD, its agents or contractors, by execution of this Agreement, the right to enter upon CITY's property for the purpose of performing MITIGATION MEASURES.
2. Pay EVMWD within forty-five (45) days after receipt of EVMWD's appropriate invoice for CITY CONTRIBUTION.

SECTION IV

It is further mutually agreed:

1. 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.
2. In the event actual TOTAL PROJECT COST is less than DISTRICT'S INITIAL CONTRIBUTION, EVMWD shall refund the difference to DISTRICT within thirty (30) days of completion for PROJECT.

3. DISTRICT CONTRIBUTION shall not exceed the lower of: (i) a total sum of forty-five thousand dollars (\$45,000) 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 completing the required MITIGATION MEASURES as set forth herein.
4. DISTRICT shall not pay interest or finance charges on any outstanding balance(s).
5. CITY CONTRIBUTION shall not exceed a total sum of forty-five thousand dollars (\$45,000) 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 completing the required MITIGATION MEASURES as set forth herein.
6. CITY shall not pay interest or finance charges on any outstanding balance(s).
7. 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.
8. 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.

9. 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.

10. 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.

11. 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: Chief of Regulatory
Email: jvalle@rivco.org

ELSINORE VALLEY
MUNICIPAL WATER DISTRICT
31315 Chaney Street
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.

12. 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.

13. This Agreement is to be construed in accordance with the laws of the State of California.
14. 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.
15. The Parties hereto shall not assign this Agreement without the written consent of the other Parties.
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. 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.
18. 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.
19. 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.

20. 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.

21. 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.

22. 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 _____
BRIAN TISDALE
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
BARBARA LEIBOLD
City Attorney

By _____
CANDICE ALVAREZ
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 _____
GREG THOMAS
General Manager

APPROVED AS TO FORM:

ATTEST:

By _____
STEVE ANDERSON
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 - Estimated Project Cost
Cooperative Funding Agreement
Compliance of Mitigation Measures for
Regional Agricultural Pipeline Conversion Project
Lake Elsinore Outlet Channel

<u>Description</u>	<u>Estimated Cost (\$)</u>
Compliance with Monitoring Program	\$ 115,767
Contract Administration (EVMWD)	4,000
Overhead	2,233
Contingency	13,000
Total Estimated Cost	<u><u>\$ 135,000</u></u>