

COOPERATIVE AGREEMENT
Sunnymead MDP Line H-1A, Stage 3
Project No. 4-0-00731

The Riverside County Flood Control and Water Conservation District ("DISTRICT"), and the City of Moreno Valley ("CITY"), hereby agree as follows:

RECITALS

A. CITY has budgeted for and plans to design and construct the Sunnymead MDP Line H-1A, Stage 3 ("STAGE 3"). Upon construction completion, STAGE 3 will provide necessary flood control and drainage improvements for the immediate adjacent areas located in the City of Moreno Valley; and

B. STAGE 3 as identified in DISTRICT'S Sunnymead Master Drainage Plan ("MDP") consists of approximately 1,790 lineal feet of underground storm drain system to be constructed mostly within Hubbard Street between Ironwood Avenue to Nightfall Way, as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

C. Associated with the construction of STAGE 3 is the construction of certain lateral storm drains that are thirty-six inches (36") or less in diameter, various catch basins, inlets and connector pipes located within CITY rights of way ("APPURTENANCES"). STAGE 3 and APPURTENANCES are hereinafter altogether called "PROJECT"; and

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

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

F. DISTRICT'S contributions shall be as follows:

- (i) One hundred percent (100%) of DISTRICT approved CITY'S engineering design proposal cost 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 ("DESIGN CONTRIBUTION"). In the event that

1 CITY chooses to hire an engineering consulting firm to prepare the
2 necessary plans and specifications to construct PROJECT, DISTRICT
3 is also willing to contribute an additional twenty percent (20%) of the
4 DESIGN CONTRIBUTION to offset CITY'S administrative costs
5 associated with contract administration ("DESIGN
6 ADMINISTRATION CONTRIBUTION"). Together, DESIGN
7 CONTRIBUTION and DESIGN ADMINISTRATION
8 CONTRIBUTION are hereinafter called "TOTAL DESIGN
9 CONTRIBUTION";

- 10 (ii) The lowest responsible bid contract price for PROJECT construction
11 ("ORIGINAL BID"). DISTRICT is willing to contribute one hundred
12 percent (100%) of ORIGINAL BID ("INITIAL CONSTRUCTION
13 CONTRIBUTION"), plus an additional ten percent (10%) of the
14 ORIGINAL BID to offset CITY'S administrative costs associated with
15 construction contract administration and other typical ancillary costs
16 related to the delivery of a flood control facility ("CONTRACT
17 ADMINISTRATION CONTRIBUTION"), and up to another
18 additional ten percent (10%) of the ORIGINAL BID to offset any
19 construction contract change orders ("CONSTRUCTION CHANGE
20 ORDERS CONTRIBUTION"). Together, INITIAL
21 CONSTRUCTION CONTRIBUTION, CONTRACT
22 ADMINISTRATION CONTRIBUTION and CONSTRUCTION
23 CHANGE ORDERS CONTRIBUTION are hereinafter called
24 "TOTAL CONSTRUCTION CONTRIBUTION"; and

25 G. Altogether, TOTAL DESIGN CONTRIBUTION and TOTAL
26 CONSTRUCTION CONTRIBUTION are hereinafter called "DISTRICT TOTAL
27 CONTRIBUTION". DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of one
28 million four hundred fifty seven thousand four hundred dollars (\$1,457,400); and

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

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

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

8 SECTION I

9 CITY shall:

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

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

16 3. Provide DISTRICT an opportunity to review and approve PROJECT
17 engineering design cost proposal and associated design schedule. As PROJECT design
18 progresses, CITY shall update said design schedule as requested by DISTRICT.

19 4. Prepare or cause to be prepared, the necessary plans and specifications for
20 PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable
21 DISTRICT and CITY standards, and submit to DISTRICT for its review and approval prior to
22 advertising PROJECT for construction bids.

23 5. Prior to commencing construction, obtain, at its sole cost and expense, all
24 necessary permits, approvals or agreements as may be required by any Federal, State and local
25 resource or regulatory agencies pertaining to the construction, operation and maintenance of
26 PROJECT. Such documents may include, but are not limited to, a Section 404 permit issued by
27 the U.S. Army Corps of Engineers, a Section 401 Water Quality Certification issued by the
28 California Regional Water Quality Control Board (CRWQCB), a Streambed Alteration

1 Agreement issued by the California Department of Fish and Wildlife, and a National Pollutant
2 Discharge Elimination System Permit issued by the State Water Resources Control Board or
3 CRWQCB and Western Riverside County Regional Conservation Authority ("REGULATORY
4 PERMITS").

5 6. Keep an accurate accounting of all design costs associated with the
6 preparation of plans and specifications for PROJECT, in conformance with DISTRICT approved
7 CITY'S engineering design cost proposal and schedule as set forth in Section I.3, and include this
8 accounting when invoicing DISTRICT for final payment of DESIGN CONTRIBUTION and, if
9 applicable, DESIGN ADMINISTRATION CONTRIBUTION, as set forth in Section I.9.

10 7. Invoice DISTRICT (Attention: Special Projects) for fifty percent (50%) of
11 DESIGN CONTRIBUTION upon execution of this Agreement or upon DISTRICT'S approval of
12 CITY'S engineering design cost proposal and schedule as set forth in Section I.3, whichever is
13 later.

14 8. Prior to commencing PROJECT design, provide DISTRICT an opportunity
15 to review and approve the geotechnical report.

16 9. Invoice DISTRICT (Attention: Special Projects) for remainder of DESIGN
17 CONTRIBUTION and if applicable, DESIGN ADMINISTRATION CONTRIBUTION,
18 following signing of IMPROVEMENT PLANS by all parties.

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

22 11. Prior to advertising PROJECT for public works construction contract,
23 provide DISTRICT an opportunity to review and approve all REGULATORY PERMITS and
24 rights of way documents. DISTRICT approval of any such document(s) may be withheld when,
25 in the sole judgment of DISTRICT'S General Manager-Chief Engineer, the said document(s)
26 unreasonably constrains, inhibits or impairs DISTRICT'S ability to operate and maintain STAGE
27 3.
28

1 12. Prior to awarding a public works construction contract for PROJECT,
2 provide DISTRICT seven (7) calendar days following construction bid opening to review and
3 approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by
4 DISTRICT to be unreasonably high.

5 13. Advertise, award and administer a public works construction contract for
6 PROJECT at its sole cost and expense.

7 14. Provide DISTRICT with written notice (Attention: Contract Administration
8 Section) that CITY has awarded a public works construction contract for PROJECT. The written
9 notice shall include the Contractor's actual bid amounts for PROJECT, setting forth herein
10 ORIGINAL BID amount.

11 15. Prior to commencing PROJECT construction, furnish DISTRICT with final
12 mylar PROJECT plans and assign ownership of PROJECT plans to DISTRICT.

13 16. Invoice DISTRICT (Attention: Special Projects) for the payment of
14 INITIAL CONSTRUCTION CONTRIBUTION at the time of providing written notice of the
15 award of a construction contract as set forth in Section I.14.

16 17. Prior to commencing PROJECT construction, schedule and conduct a
17 mandatory pre-construction meeting between CITY, CITY'S construction manager, CITY'S
18 construction contractor(s), DISTRICT and other affected entities. CITY shall notify DISTRICT
19 (Attention: Special Permits) in writing at least twenty (20) days prior to conducting the pre-
20 construction meeting.

21 18. Furnish DISTRICT, at the time of providing written notice of intent to start
22 construction as set forth in Section I.17, with a construction schedule which shall show the order
23 and dates in which CITY or CITY'S contractor proposes to carry on the various parts of work,
24 including estimated start and completion dates.

25 19. Construct or cause to be constructed, PROJECT pursuant to a CITY
26 administered public works construction contract, in accordance with IMPROVEMENT PLANS
27 approved by DISTRICT and CITY, and pay all costs associated therewith.
28

1 20. Inspect PROJECT construction or cause PROJECT'S construction to be
2 inspected by its construction manager and pay all costs associated therewith. In the event CITY
3 wishes to utilize DISTRICT's construction inspection, materials testing and construction survey
4 services, CITY shall provide DISTRICT with written notice (Attn: Special Projects) requesting
5 such services. However, CITY will continue to serve as construction contract manager.

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

9 22. Grant DISTRICT, by execution of this Agreement, the right to enter upon
10 property owned or controlled by CITY where necessary and convenient for the purpose of gaining
11 access to, and performing inspection service for, the construction of PROJECT.

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

15 24. Not permit any change to, or modification of, DISTRICT and CITY
16 approved IMPROVEMENT PLANS that would result in a change of functionality or
17 maintainability of PROJECT without DISTRICT'S prior written permission and consent. Failure
18 to do so shall be deemed a material breach of this Agreement and shall authorize and constitute
19 authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT
20 is unable to: a) perform its obligations hereunder, and b) to accept responsibility for ownership,
21 operation and maintenance of STAGE 3 due, either in whole or in part, to said breach of this
22 Agreement.

23 25. CITY'S construction contractor(s) shall not commence operations until
24 DISTRICT has been furnished with original certificate(s) of insurance and original certified
25 copies of endorsements and if requested, certified original policies of insurance including all
26 endorsements and any and all other attachments as required in this Section.

27 Without limiting or diminishing CITY'S construction contractor(s)
28 obligation to indemnify or hold DISTRICT harmless, CITY'S construction contractor(s) shall

1 procure and maintain or cause to be maintained, at its sole cost and expense, the following
2 insurance coverage's during the term of this Agreement:

3 A. Workers' Compensation:

4 If CITY'S construction contractor(s) has employees as defined by the
5 State of California, CITY'S construction contractor(s) shall maintain
6 statutory Workers' Compensation Insurance (Coverage A) as prescribed
7 by the laws of the State of California. Policy shall include Employers'
8 Liability (Coverage B) including Occupational Disease with limits not
9 less than \$1,000,000 per person per accident. Policy shall be endorsed
10 to waive subrogation in favor of DISTRICT and the County of
11 Riverside.

12 B. Commercial General Liability:

13 Commercial General Liability insurance coverage, including but not
14 limited to, premises liability, unmodified contractual liability, products
15 and completed operations liability, personal and advertising injury, and
16 cross liability coverage, covering claims which may arise from or out of
17 CITY'S construction contractor(s) performance of its obligations
18 hereunder. Policy shall name DISTRICT, the County of Riverside, its
19 agencies, districts, special districts, and departments, their respective
20 directors, officers, Board of Supervisors, employees, elected or
21 appointed officials, agents or representatives as additional insureds.
22 Policy's limit of liability shall not be less than \$2,000,000 per occurrence
23 combined single limit. If such insurance contains a general aggregate
24 limit, it shall apply separately to this Agreement or be no less than two
25 (2) times the occurrence limit.

26 C. Vehicle Liability:

27 If CITY'S construction contractor(s) vehicles or mobile equipment are
28 used in the performance of the obligations under this Agreement, then

1 CITY'S construction contractor(s) shall maintain liability insurance for
2 all owned, non-owned or hired vehicles so used in an amount not less
3 than \$1,000,000 per occurrence combined single limit. If such insurance
4 contains a general aggregate limit, it shall apply separately to this
5 Agreement or be no less than two (2) times the occurrence limit. Policy
6 shall name DISTRICT, the County of Riverside, its agencies, districts,
7 special districts, and departments, their respective directors, officers,
8 Board of Supervisors, employees, elected or appointed officials, agents
9 or representatives as additional insureds.

10 D. Professional Liability:

11 CITY'S construction contractor(s) shall maintain Professional Liability
12 Insurance providing coverage for CITY'S construction contractor(s)
13 performance of work included within this Agreement, with a limit of
14 liability of not less than \$2,000,000 per occurrence and \$4,000,000
15 annual aggregate. If CITY'S construction contractor(s) Professional
16 Liability Insurance is written on a claims made basis rather than an
17 occurrence basis, such insurance shall continue through the term of this
18 Agreement and CITY'S construction contractor(s) shall purchase at his
19 sole expense either 1) an Extended Reporting Endorsement (also known
20 as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with
21 a retroactive date back to the date of, or prior to, the inception of this
22 Agreement; or 3) demonstrate through Certificates of Insurance that
23 CITY'S construction contractor has maintained continuous coverage
24 with the same or original insurer. Coverage provided under items: 1),
25 2) or 3) will continue as long as the law allows.

26 E. General Insurance Provisions – All Lines:

- 27 i. Any insurance carrier providing insurance coverage hereunder
28 shall be admitted to the State of California and have an A.M.

1 BEST rating of not less than an A: VIII (A: 8) unless such
2 requirements are waived, in writing, by the County Risk
3 Manager. If the County Risk Manager waives a requirement for
4 a particular insurer such waiver is only valid for that specific
5 insurer and only for one policy term.

6 ii. CITY'S construction contractor(s) must declare its insurance self-
7 insured retention for each coverage required herein. If any such
8 self-insured retention exceeds \$500,000 per occurrence each such
9 retention shall have the prior written consent of the County Risk
10 Manager before the commencement of operations under this
11 Agreement. Upon notification of self-insured retention deemed
12 unacceptable to DISTRICT, and at the election of the County
13 Risk Manager, CITY'S construction contractor(s) carriers shall
14 either: 1) reduce or eliminate such self-insured retention with
15 respect to this Agreement with DISTRICT, or 2) procure a bond
16 which guarantees payment of losses and related investigations,
17 claims administration, and defense costs and expenses.

18 iii. CITY'S construction contractor(s) shall cause their insurance
19 carrier(s) to furnish DISTRICT with 1) a properly executed
20 original certificate(s) of insurance and certified original copies of
21 endorsements effecting coverage as required herein; and 2) if
22 requested to do so orally or in writing by the County Risk
23 Manager, provide original certified copies of policies including
24 all endorsements and all attachments thereto, showing such
25 insurance is in full force and effect. Further, said certificate(s)
26 and policies of insurance shall contain the covenant of the
27 insurance carrier(s) that a minimum of thirty (30) days written
28 notice shall be given to DISTRICT prior to any material

1 modification, cancellation, expiration or reduction in coverage of
2 such insurance. If CITY'S construction contractor(s) insurance
3 carrier(s) policies does not meet the minimum notice requirement
4 found herein, CITY'S construction contractor(s) shall cause
5 CITY'S construction contractor(s) insurance carrier(s) to furnish
6 a 30 day Notice of Cancellation Endorsement. In the event of a
7 material modification, cancellation, expiration or reduction in
8 coverage, this Agreement shall terminate forthwith, unless
9 DISTRICT receives, prior to such effective date, another properly
10 executed original certificate of insurance and original copies of
11 endorsements or certified original policies, including all
12 endorsements and attachments thereto, evidencing coverages set
13 forth herein and the insurance required herein is in full force and
14 effect. An individual authorized by the insurance carrier to do so
15 on its behalf shall sign the original endorsements for each policy
16 and the certificate of insurance.

17 iv. It is understood and agreed by the parties hereto that CITY'S
18 construction contractor(s) insurance shall be construed as primary
19 insurance, and DISTRICT'S insurance and/or deductibles and/or
20 self-insured retentions or self-insured programs shall not be
21 construed as contributory.

22 v. If, during the term of this Agreement or any extension thereof,
23 there is a material change in the scope of services or there is a
24 material change in the equipment to be used in the performance
25 of the scope of work which will add additional exposures (such
26 as the use of aircraft, watercraft, cranes, etc.); or the term of this
27 Agreement, including any extensions thereof, exceeds five (5)
28 years, DISTRICT reserves the right to adjust the types of

1 insurance required under this Agreement and the monetary limits
2 of liability for the insurance coverages currently required herein,
3 if, in the County Risk Manager's reasonable judgment, the
4 amount or type of insurance carried by CITY'S construction
5 contractor(s) has become inadequate.

6 vi. CITY'S construction contractor(s) shall pass down the insurance
7 obligations contained herein to all tiers of subcontractors working
8 under this Agreement.

9 vii. The insurance requirements contained in this Agreement may be
10 met with a program(s) of self-insurance acceptable to DISTRICT.

11 viii. CITY'S construction contractor(s) agrees to notify DISTRICT of
12 any claim by a third party or any incident or event that may give
13 rise to a claim arising from the performance of this Agreement.

14 Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to
15 begin construction of PROJECT, an original certificate of insurance evidencing the required
16 insurance coverage shall be provided to DISTRICT.

17 26. Require its construction contractor(s) to comply with all Cal/OSHA safety
18 regulations including regulations concerning confined space and maintain a safe working
19 environment for all CITY and DISTRICT employees on the site.

20 27. Require its construction contractor(s) to furnish DISTRICT (Attention:
21 Contract Administration Section) with a confined space procedure specific to PROJECT. The
22 procedure shall comply with requirements contained in California Code of Regulations, Title 8,
23 Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space
24 and District confined Space Procedures, SOM-18. The procedure shall be provided to DISTRICT
25 no less than twenty (20) days prior to requesting that DISTRICT perform a final inspection for
26 acceptance of PROJECT. The procedure shall be reviewed and approved by DISTRICT prior to
27 conducting the final inspection.
28

1 28. Assume ownership and sole responsibility for the operation and maintenance
2 of PROJECT until such time as DISTRICT accepts ownership and responsibility for the operation
3 and maintenance of STAGE 3 and CITY continues to accept ownership and sole responsibility
4 for the operation and maintenance of APPURTENANCES as set forth herein.

5 29. Within two (2) weeks of completing PROJECT construction, provide
6 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
7 construction is substantially complete and requesting that DISTRICT conduct a final inspection
8 of STAGE 3.

9 30. Upon completion of PROJECT construction and settlement of any
10 outstanding claims, provide DISTRICT with a copy of CITY'S recorded Notice of Completion.

11 31. Upon completion of PROJECT construction but prior to DISTRICT'S
12 acceptance of STAGE 3 for ownership, operation and maintenance, provide or cause its
13 construction manager to provide DISTRICT with appropriate engineering documentation
14 necessary to establish that STAGE 3 was constructed in accordance with DISTRICT and CITY
15 approved IMPROVEMENT PLANS.

16 32. Upon completion of PROJECT construction but prior to DISTRICT'S
17 acceptance of STAGE 3 for ownership, operation and maintenance, provide or cause its civil
18 engineer of record or construction civil engineer of record, duly registered in the State of
19 California, to provide DISTRICT with redlined "record drawings" of PROJECT plans. After
20 DISTRICT approval of the redlined "record drawings", CITY'S engineer shall schedule with
21 DISTRICT a time to transfer the redlined changes into DISTRICT'S original mylars at
22 DISTRICT'S office, after which the engineer shall review, stamp and sign mylars "record
23 drawings".

24 33. Keep an accurate accounting of all PROJECT construction costs and include
25 this final accounting when invoicing DISTRICT for CONTRACT ADMINISTRATION
26 CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION as set forth
27 in Section I.35. The final accounting of construction costs shall include a detailed breakdown of
28 all costs, including but not limited to CITY'S costs associated with administering the construction

1 contract, payment vouchers, DISTRICT approved change orders and other such construction
2 contract documents as may be necessary, to establish the actual cost of construction and its
3 associated CITY'S contract administration cost for DISTRICT and CITY approved
4 IMPROVEMENT PLANS.

5 34. Upon completion of PROJECT construction but prior to DISTRICT
6 acceptance of STAGE 3 for ownership, operation and maintenance, convey, or cause to be
7 conveyed, to DISTRICT all rights of way and easements deemed necessary by DISTRICT for the
8 operation and maintenance of STAGE 3.

9 35. Upon DISTRICT acceptance of STAGE 3 for ownership, operation and
10 maintenance, invoice DISTRICT (Attention: Special Projects) for the remainder payment of
11 TOTAL CONSTRUCTION CONTRIBUTION as follows: i) ten percent (10%) of ORIGINAL
12 BID as set forth in Section I.14 for CONTRACT ADMINISTRATION CONTRIBUTION, and
13 ii) up to another additional ten percent (10%) of ORIGINAL BID for CONSTRUCTION
14 CHANGE ORDERS CONTRIBUTION provided, however, that DISTRICT TOTAL
15 CONTRIBUTION shall not exceed one million four hundred fifty seven thousand four hundred
16 dollars (\$1,457,400).

17 36. Upon DISTRICT acceptance of PROJECT construction as being complete,
18 accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located
19 within CITY rights of way which must be performed at such time(s) that the finished grade along
20 and above the underground portions of PROJECT are improved, repaired, replaced or changed.
21 It being further understood and agreed that any such adjustments shall be performed at no cost to
22 DISTRICT.

23 SECTION II

24 DISTRICT shall:

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

27 2. Review and approve CITY'S PROJECT engineering design cost proposal
28 and associated design schedule.

1 3. Review and approve CITY'S geotechnical report prior to CITY commencing
2 PROJECT design.

3 4. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate invoice
4 for DESIGN CONTRIBUTION as set forth in Section I.7.

5 5. Review and approve IMPROVEMENT PLANS prior to CITY'S advertising
6 PROJECT for construction bids.

7 6. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
8 invoice, for remainder of DESIGN CONTRIBUTION and if applicable, DESIGN
9 ADMINISTRATION CONTRIBUTION, as set forth in Sections I.6 and I.9.

10 7. Review and approve, as appropriate, all necessary REGULATORY
11 PERMITS and rights of way documents prior to CITY advertising PROJECT for bids.
12 DISTRICT may withhold approval of any such document(s) when, in the sole judgment of
13 DISTRICT'S General Manager – Chief Engineer, the said document(s) unreasonably constrains,
14 inhibits or impairs DISTRICT'S ability to operate and maintain STAGE 3.

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

19 9. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate invoice
20 for INITIAL CONSTRUCTION CONTRIBUTION as set forth in Section I.16.

21 10. Within thirty (30) days of CITY awarding PROJECT construction contract,
22 pay Riverside Conservation Agency (RCA) the costs associated with the Multi Species Habitat
23 Conservation Plan ("MSHCP"), which is either the lesser of three percent (3%) of the lowest BID
24 PRICE or three percent (3%) of the contract BID PRICE, less the value of the applicable project
25 specific mitigation.

26 11. Conduct periodic inspections of STAGE 3 construction for quality control
27 purposes at its sole cost and provide any comments to CITY'S designated PROJECT construction
28 inspector.

1 12. At the written request by CITY, DISTRICT shall provide all necessary
2 construction inspection, materials testing and construction survey services for PROJECT and
3 assist CITY as needed with the administration of PROJECT'S construction contract. DISTRICT
4 hereby agrees to pay all DISTRICT costs associated with the inspection of PROJECT
5 construction, as set forth herein.

6 13. Upon receipt of CITY'S written notice that PROJECT construction is
7 substantially complete, conduct a final inspection of STAGE 3.

8 14. Accept ownership and responsibility for the operation and maintenance of
9 STAGE 3 upon (i) DISTRICT inspection of STAGE in accordance with Section I.29, (ii)
10 DISTRICT acceptance of STAGE 3 as being complete, (iii) DISTRICT receipt of CITY'S
11 recorded Notice of Completion as set forth in Section I.30, (iv) DISTRICT receipt of appropriate
12 engineering documentation as set forth in Section I.31, (v) DISTRICT receipt of stamped and
13 signed "record drawing" of PROJECT plans as set forth in Section I.32, (vi) DISTRICT'S
14 acceptance of all necessary rights of way and/or easements as set forth in Section I.34, and (vii)
15 DISTRICT'S sole determination that STAGE 3 is in a satisfactorily maintained condition.

16 15. Pay CITY, within thirty (30) days after receipt of CITY'S appropriate
17 invoice, for remainder of TOTAL CONSTRUCTION CONTRIBUTION as set forth in Sections
18 I.33 and I.35, provided, however, that DISTRICT TOTAL CONTRIBUTION shall not exceed a
19 total sum of one million four hundred fifty seven thousand four hundred dollars (\$1,457,400).

20 SECTION III

21 It is further mutually agreed:

22 1. DISTRICT TOTAL CONTRIBUTION shall not exceed a total sum of one
23 million four hundred fifty seven thousand four hundred dollars (\$1,457,400) and shall be used by
24 CITY solely for the purpose of designing and constructing PROJECT as set forth herein.

25 2. Except as otherwise provided herein, all construction work involved with
26 PROJECT shall be inspected by CITY, or its construction manager, but shall not be deemed
27 complete until DISTRICT and CITY mutually agree that construction is completed in accordance
28 with DISTRICT and CITY approved IMPROVEMENT PLANS. CITY shall not request

1 DISTRICT to accept any portion of PROJECT for ownership, operation or maintenance until
2 PROJECT construction is deemed fully complete and all necessary rights of way have been
3 conveyed as set forth herein.

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

7 4. Prior to DISTRICT acceptance of ownership and responsibility for the
8 operation and maintenance of STAGE 3, STAGE 3 shall be in a satisfactorily maintained
9 condition as solely determined by DISTRICT. If, in the sole discretion of DISTRICT, STAGE 3
10 is not in an acceptable condition, corrections will be made at sole expense of CITY.

11 5. CITY shall indemnify, defend, save and hold harmless DISTRICT and
12 County of Riverside (including their respective officers, districts, special districts and
13 departments, their respective directors, officers, Board of Supervisors, elected and appointed
14 officials, employees, agents, representatives, independent contractors, and subcontractors) from
15 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
16 or in any way relating to CITY'S (including its officers, employees, agents, representatives,
17 independent contractors, and subcontractors) actual or alleged acts or omissions related to this
18 Agreement, performance under this Agreement, or failure to comply with the requirements of this
19 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c)
20 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

21 6. DISTRICT shall indemnify, defend, save and hold harmless CITY (including
22 its officers, employees, agents, representatives, independent contractors, and subcontractors) from
23 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
24 or in any way relating to DISTRICT'S (including its officers, Board of Supervisors, elected and
25 appointed officials, employees, agents, representatives, independent contractors, and
26 subcontractors) actual or alleged acts or omissions related to this Agreement, performance under
27 this Agreement, or failure to comply with the requirements of this Agreement, including but not
28

1 limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees; or (d)
2 any other element of any kind or nature whatsoever.

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

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

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

13 RIVERSIDE COUNTY FLOOD CONTROL
14 AND WATER CONSERVATION DISTRICT
15 1995 Market Street
16 Riverside, CA 92501
Attn: Special Projects Section

CITY OF MORENO VALLEY
14177 Frederick Street
Moreno Valley, CA 92552
Attn: Henry Ngo
Public Works Department

17 10. If any provision in this Agreement is held by a court of competent
18 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
19 continue in full force without being impaired or invalidated in any way.

20 11. This Agreement is the result of negotiations between the parties hereto, and
21 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
22 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
23 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
24 prepared this Agreement in its final form.

25 12. This Agreement is made and entered into for the sole protection and benefit
26 of the parties hereto. No other person or entity shall have any right or action based upon the
27 provisions of this Agreement.

28 13. 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

1 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
2 waive all provisions of law providing for a change of venue in such proceedings to any other
3 county.

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

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

13 16. The obligation(s) of DISTRICT are limited by and contingent upon the
14 availability of DISTRICT funds for DISTRICT'S financial contribution towards the PROJECT
15 as set forth herein. In the event that such funds are not forthcoming for any reason, DISTRICT
16 shall immediately notify CITY in writing.

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

22 //

23 //

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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 _____
NEAL R. KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement: City of Moreno Valley
Sunnymead MDP Line H-1A, Stage 3
Project No. 4-0-00731
02/01/17
AMR:blm

1 RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

2
3 By _____
4 AHMAD R. ANSARI
Public Works Director/City Engineer

By _____
MICHELLE DAWSON
City Manager

5
6 APPROVED AS TO FORM:
7 MARTIN D. KOCZANOWICZ
City Attorney

ATTEST:

8
9 By _____
10 PAUL EARLY
Assistant City Attorney

By _____
MARIE MACIAS
Interim City Clerk

11 (SEAL)
12
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21 Cooperative Agreement: City of Moreno Valley
22 Sunnymead MDP Line H-1A, Stage 3
23 Project No. 4-0-00731
02/01/17
24 AMR:blm
25
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27
28

Exhibit A

