

**COOPERATIVE/ FUNDING AGREEMENT**

Sunnymead MDP Line B-16A, Stage 2

Project No. 4-0-00614

This Cooperative/Funding Agreement (“Agreement”), dated as of \_\_\_\_\_, 2020, is entered into by and between, the Riverside County Flood Control and Water Conservation District, a body politic, (“DISTRICT”) and the City Of Moreno Valley, a municipal corporation, (“CITY”). DISTRICT and CITY are individually referred to herein as “party” and collectively referred to herein as “parties”. The parties hereto hereby agree as follows:

**RECITALS**

A. DISTRICT has budgeted for and CITY has plans to design, construct, operate and maintain Sunnymead MDP Line B-16A, Stage 2 (“LINE B-16A”). Upon construction completion, LINE B-16A will provide 10-year flood protection for the residents of Kitching Street in the City of Moreno Valley; and

B. LINE B-16A, as identified in the DISTRICT’s Sunnymead Master Drainage Plan (“MDP”), consists of approximately 3,100 lineal feet of storm drain of various sized storm drain pipe less-than or equal to thirty-six (36”) inches in diameter as shown in concept in blue on Exhibit "A" attached hereto and made a part hereof. At the upstream terminus, LINE B-16A will collect runoff from Kalmia Avenue and convey it southerly along Kitching Street. At the downstream terminus, LINE B-16A will connect to an existing storm drain at Kitching Street, as shown on DISTRICT’s Drawing No. 4-0601; and

C. To eliminate backwater effects, a catch basin and a connector pipe will be added to existing Sunnymead MDP Line B-16A, as shown on DISTRICT’s Drawing No. 4-0422 on Ironwood Avenue (“ADDITIONAL FACILITY”) as shown in concept in green circle of Exhibit “A”; and

D. To improve the runoff of collection at the upstream terminus, a catch basin and associated connector pipe may be added to existing Sunnymead MDP Line B-13, as shown on DISTRICT's Drawing No. 4-0459 ("OPTIONAL CATCH BASIN") located northwest of LINE B-16A as shown in concept in cyan circle on Exhibit "A".

E. LINE B-16A, ADDITIONAL FACILITY, OPTIONAL CATCH BASIN and associated pavement replacements are hereinafter called "CITY's FACILITIES"; and

F. Associated with the construction of CITY's FACILITIES is the installation of catch basins, connector pipes and associated pavement replacements hereinafter called "CITY APPURTENANCES"; and

G. Together, CITY's FACILITIES and CITY APPURTENANCES are hereinafter called "PROJECT"; and

H. Associated with the construction of PROJECT are the street improvements including, but not limited to, the construction of sidewalks, curbs and gutters within and adjacent to the PROJECT limits, and additional paving of the streets outside of PROJECT limits hereinafter called "CITY BETTERMENTS"; and

I. CITY plans to advertise, award and administer a public works construction contract for PROJECT during Fiscal Year 2021/2022; and

J. DISTRICT is willing to review and inspect any CITY's proposed storm drain connections to the DISTRICT maintained facilities; and

K. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution toward PROJECT's design, construction, environmental clearance and right of way acquisition along with the associated administrative costs; and

L. DISTRICT's contributions shall be as follows subject to the not to exceed amount provided in Recital M below:

i. One hundred percent (100%) of CITY's selected consultant's design proposal cost to offset CITY's costs associated with engineering design, hydrology & hydraulics, geo-tech analysis, potholing for conflicting utilities and CEQA determination to construct PROJECT ("DESIGN CONTRIBUTION"), plus an additional fifteen percent (15%) of the CITY's administrative costs associated with design administration ("DESIGN ADMINISTRATION CONTRIBUTION"). Together, DESIGN CONTRIBUTION and DESIGN ADMINISTRATION CONTRIBUTION are hereinafter called ("TOTAL DESIGN CONTRIBUTION"); and

ii. One hundred percent (100%) of all costs associated with the preparation, application and obtaining the environmental clearance and permits if required for PROJECT, hereinafter called ("REGULATORY PERMITS COST"); and

iii. One hundred percent (100%) of the actual costs (not to exceed appraised value and estimated escrow and closing costs as determined by the DISTRICT) for right of way acquisition, and rights of entry for the PROJECT, hereinafter called ("ACQUISITION COST"); and

iv. One hundred percent (100%) of the lowest responsible bid contract price, less the bid price of CITY BETTERMENTS ("CONSTRUCTION CONTRIBUTION"), plus an additional five percent (5%) of the lowest responsible bid price to offset CITY's administrative costs associated with construction contract administration and other typical ancillary costs related to the delivery of PROJECT ("CONTRACT ADMINISTRATION CONTRIBUTION"), plus an additional ten percent (10%) for construction contract change orders ("CONSTRUCTION CHANGE ORDERS CONTRIBUTION"). Together, CONSTRUCTION CONTRIBUTION, CONTRACT ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDER CONTRIBUTION are hereinafter called ("TOTAL CONSTRUCTION CONTRIBUTION"); and

v. One hundred percent (100%) of the costs associated with the unavoidable relocations of the conflicting utilities within the PROJECT that cannot be relocated by others under CITY's franchise authority ("NON-FRANCHISE UTILITY COSTS"); and

M. Altogether, TOTAL DESIGN CONTRIBUTION, REGULATORY PERMITS COST, ACQUISITION COST, TOTAL CONSTRUCTION CONTRIBUTION, and NON-FRANCHISE UTILITY COSTS are hereinafter called ("TOTAL DISTRICT CONTRIBUTION"). TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total of One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000). Should the PROJECT require additional funding, DISTRICT is willing to pay the excess amounts by amending this Agreement contingent upon the availability of DISTRICT funds and budgetary approval if (i) the actual appraisal costs exceed the estimated ACQUISITION COST, and (ii) the actual CONSTRUCTION CONTRIBUTION, CONTRACT ADMINISTRATION CONTRIBUTION and DISTRICT approved CONSTRUCTION CHANGE ORDERS CONTRIBUTION exceed the estimated TOTAL CONSTRUCTION CONTRIBUTION; and

N. DISTRICT wishes to provide only financial assistance to CITY and have no other role;

O. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and DISTRICT with respect to the construction, ownership, operation and maintenance of PROJECT and the payment of TOTAL DISTRICT CONTRIBUTION.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and 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. Prior to commencing construction of PROJECT for any connections to DISTRICT facilities as set forth in Recitals B, C, and D, obtain a no fee encroachment permit from DISTRICT, pursuant to its rules and regulations and comply with all provisions set forth therein.

3. Keep an accurate accounting of (i) costs associated with the preparation of plans and specifications for PROJECT, in conformance with DISTRICT approved TOTAL DESIGN CONTRIBUTION, as set forth in Sections I.4 and I.8, (ii) costs associated with obtaining all rights of way to construct, operate and maintain PROJECT, as set forth in Section I.9, (iii) costs associated with PROJECT construction with and if applicable, with obtaining REGULATORY PERMITS, as set forth in Sections I.12, (iv) costs associated with CONTRACT ADMINISTRATION CONTRIBUTION and if applicable, CONSTRUCTION CHANGE ORDERS CONTRIBUTION and NON-FRANCHISE UTILITY COSTS as set forth in Section I.22. The accounting shall be provided when invoicing the DISTRICT and shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, change orders and other such contract documents as may be necessary, to establish the actual cost of each contribution item as described in Recital L.

4. Issue a first invoice to DISTRICT (Attn: Contract Services Section) for fifty percent (50%) of the TOTAL DESIGN CONTRIBUTION upon execution of this Agreement or upon CITY's award of the design contract to its selected consultant, as set forth herein.

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

DISTRICT and CITY standards, and submit to DISTRICT for its review and approval prior to advertising PROJECT for construction bids.

6. Prior to commencing construction, secure all necessary permits, approvals or agreements required by any federal, state and local resource or regulatory agencies pertaining to 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").

7. Prior to commencing construction, secure all necessary rights of way, rights of entry and permanent construction easements necessary to construct, inspect, operate and maintain PROJECT.

8. Issue a second invoice to DISTRICT (Attention: Contract Services Section) for the remaining fifty percent (50%) of TOTAL DESIGN CONTRIBUTION following signing of IMPROVEMENT PLANS of all parties.

9. Issue a third invoice to DISTRICT (Attention: Contract Services Section) for ACQUISITION COST following submittal of proof of ownership or easement documents and appraisal report to the DISTRICT. The total amount invoiced to DISTRICT for ACQUISITION COST shall not exceed one hundred percent (100%) of the appraised values for all acquired parcels plus customary escrow and closing costs for the PROJECT only.

- a. CITY shall be responsible for all costs associated with right of way acquisition of the CITY BETTERMENTS and shall separately delineate the boundaries of the PROJECT and CITY

BETTERMENTS when preparing legal descriptions and plats as applicable for right of way acquisition.

10. Advertise, award, and administer a Public Works construction contract of the bids for PROJECT pursuant to the applicable provisions of the California Public Contract Code. At the time of advertising for bids, provide DISTRICT with a copy of PROJECT plans, specifications, bid documents and any subsequent addenda thereto. Should the bid documents include items associated with CITY BETTERMENTS, CITY shall separate such bid items.

11. Provide DISTRICT with written notice (Attention: Contracts Services 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 lowest responsible bid contract amount.

12. Issue a fourth invoice to DISTRICT (Attention: Contract Services Section) for the payment of CONSTRUCTION CONTRIBUTION, and if applicable, REGULATORY PERMIT COSTS at the time of providing written notice of the award of a construction contract as set forth in Section I.11, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000). Furthermore, CITY shall be responsible to pay any amounts associated with CITY BETTERMENTS.

13. Construct or cause to be constructed PROJECT pursuant to a CITY administered public works contract in accordance with IMPROVEMENT PLANS.

14. Relocate or cause to be relocated, at its sole cost and expense, all conflicting CITY owned utilities. CITY shall also order the relocation of all other utilities installed under CITY's permit or franchise authority within CITY rights of way which conflict with the construction of PROJECT. CITY shall make reasonable efforts during preparation of the

IMPROVEMENT PLANS to avoid utility conflicts associated with NON-FRANCHISE UTILITY COSTS.

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

16. Grant DISTRICT, by execution of this Agreement, the right to enter upon property owned or controlled by CITY where necessary and convenient for the purpose of gaining access to and performing inspection service for any CITY's proposed storm drain connections to the DISTRICT maintained facilities.

17. Procure or caused to be procured insurance coverages during the term of this Agreement. CITY shall require its PROJECT construction contractor(s) to furnish original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments. Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to the DISTRICT's required insurance provided in EXHIBIT "B", attached hereto and made a part hereof.

18. 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.

19. Upon completion of PROJECT construction and CITY's acceptance thereof, accept ownership and sole responsibility for the design, operation and maintenance of PROJECT.

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



21. Keep an accurate accounting of all PROJECT costs separate from CITY BETTERMENTS and provide this accounting to DISTRICT with CITY's Notice of Completion, as set forth in Section I.20. The final accounting of construction costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, CITY approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction for the DISTRICT and CITY approved IMPROVEMENT PLANS.

22. Upon Notice of Completion, issue a fifth invoice to DISTRICT for the CONTRACT ADMINISTRATION CONTRIBUTION and if applicable, CONSTRUCTION CHANGE ORDERS CONTRIBUTION and NON-FRANCHISE UTILITY COSTS, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000).

23. Perform, or cause to be performed, all work associated with CITY BETTERMENTS at its sole cost and expense.

## SECTION II

DISTRICT shall:

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

2. Issue a no fee encroachment permit ("Encroachment Permit") for the construction of PROJECT facilities as set forth in Recitals B, C, and D, in accordance with the approved IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT's Encroachment Permit.

3. Within thirty (30) days of receiving of CITY's first invoice to DISTRICT, pay CITY for fifty percent (50%) of the TOTAL DESIGN CONTRIBUTION, as set forth in Section I.4.

4. Review the IMPROVEMENT PLANS in accordance with the applicable DISTRICT and CITY standards.

5. Within thirty (30) days of receiving of CITY's second invoice to DISTRICT, pay CITY for the remaining fifty percent (50%) of the TOTAL DESIGN CONTRIBUTION following the signing of IMPROVEMENT PLANS of all parties, as set forth in Section I.8, subject to and provided that TOTAL DESIGN CONTRIBUTION shall not exceed the total amount of CITY's selected consultant design cost proposal and associated DESIGN ADMINISTRATION CONTRIBUTION.

6. Within thirty (30) days of receiving CITY's third invoice to DISTRICT, pay CITY for the ACQUISITION COST incurred by CITY following the submittal of proof of ownership or easement documents and appraisal report to the DISTRICT, as set forth in Section I.9, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000).

7. Within thirty (30) days of CITY awarding PROJECT construction contract, pay the Western Riverside County Regional Conservation Authority the costs associated with the Multiple Species Habitat Conservation Plan ("MSHCP"), which is either the lesser of (i) three percent (3%) of the lowest responsible bid price, or (ii) three percent (3%) of lowest responsible bid price less the value of applicable project-specific mitigation.

8. Within thirty (30) days of receiving CITY's fourth invoice to DISTRICT, pay CITY for the CONSTRUCTION CONTRIBUTION and CONTRACT ADMINISTRATION CONTRIBUTION, as set forth in Section I.12, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000).

9. Conduct periodic inspections if the proposed storm drain connects into DISTRICT maintained facilities.

10. Reimburse the CITY within thirty (30) days of receiving the fifth invoice to DISTRICT for CONTRACT ADMINISTRATION CONTRIBUTION, and if applicable pay for CONSTRUCTION CHANGE ORDERS CONTRIBUTION and NON-FRANCHISE UTILITY COST as set forth in Section I.22, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000).

### 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 One Million Nine Hundred Thirty Thousand Dollars (\$1,930,000); and shall be used by CITY solely for the purpose of the design and construction of said PROJECT as set forth herein. CITY shall pay for all costs associated with CITY BETTERMENTS.

2. In the event the actual construction cost for PROJECT is less than the CONSTRUCTION CONTRIBUTION, CITY shall refund the difference to DISTRICT within thirty (30) days of filing the Notice of Completion for PROJECT.

3. Under the provisions of this Agreement, DISTRICT shall bear no responsibility whatsoever for the design, construction, ownership, operation or maintenance of PROJECT.

4. CITY shall indemnify, defend, save and hold harmless 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, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, elected and appointed officials, employees, agents,

representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement, including, but not limited to, (a) property damage; (b) bodily injury or death; (c) payment of attorney fees; or (d) any other element of any kind or nature whatsoever. This section shall survive any termination of this Agreement until the statute of limitations period has run for any claims that could be asserted under this Agreement.

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 to be construed in accordance with the laws of the State of California. 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 this 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. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other party.

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 of action based upon the provisions of this Agreement.

8. 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: Contracts Services Section

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

9. 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.

10. Any waiver by DISTRICT or CITY 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 or CITY 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 or CITY from enforcing this Agreement.

11. The obligations 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 forth coming for any reason, DISTRICT shall immediately notify CITY in writing. AGREEMENT shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

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 or written, in connection therewith. This Agreement may be amended, changed or modified only upon the written consent of the parties hereto.

13. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties and no oral understanding or agreement not incorporated herein shall be binding on either party hereto.

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

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Cooperative/Funding 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 \_\_\_\_\_  
KAREN SPIEGEL, Chairwoman  
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER  
Clerk of the Board

By \_\_\_\_\_  
SYNTHIA M. GUNZEL  
Chief Deputy County Counsel

By \_\_\_\_\_  
Deputy

(SEAL)

Cooperative/Funding Agreement: City of Moreno Valley  
Sunnymead MDP Line B-16A, Stage 2  
08/31/2020  
AK:blm

RECOMMENDED FOR APPROVAL:

**CITY OF MORENO VALLEY**

By \_\_\_\_\_  
MIKE LEE  
City Manager

APPROVED AS TO FORM:

ATTEST:

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
PAT JACQUEZ-NARES  
City Clerk

(SEAL)







# EXHIBIT "A"

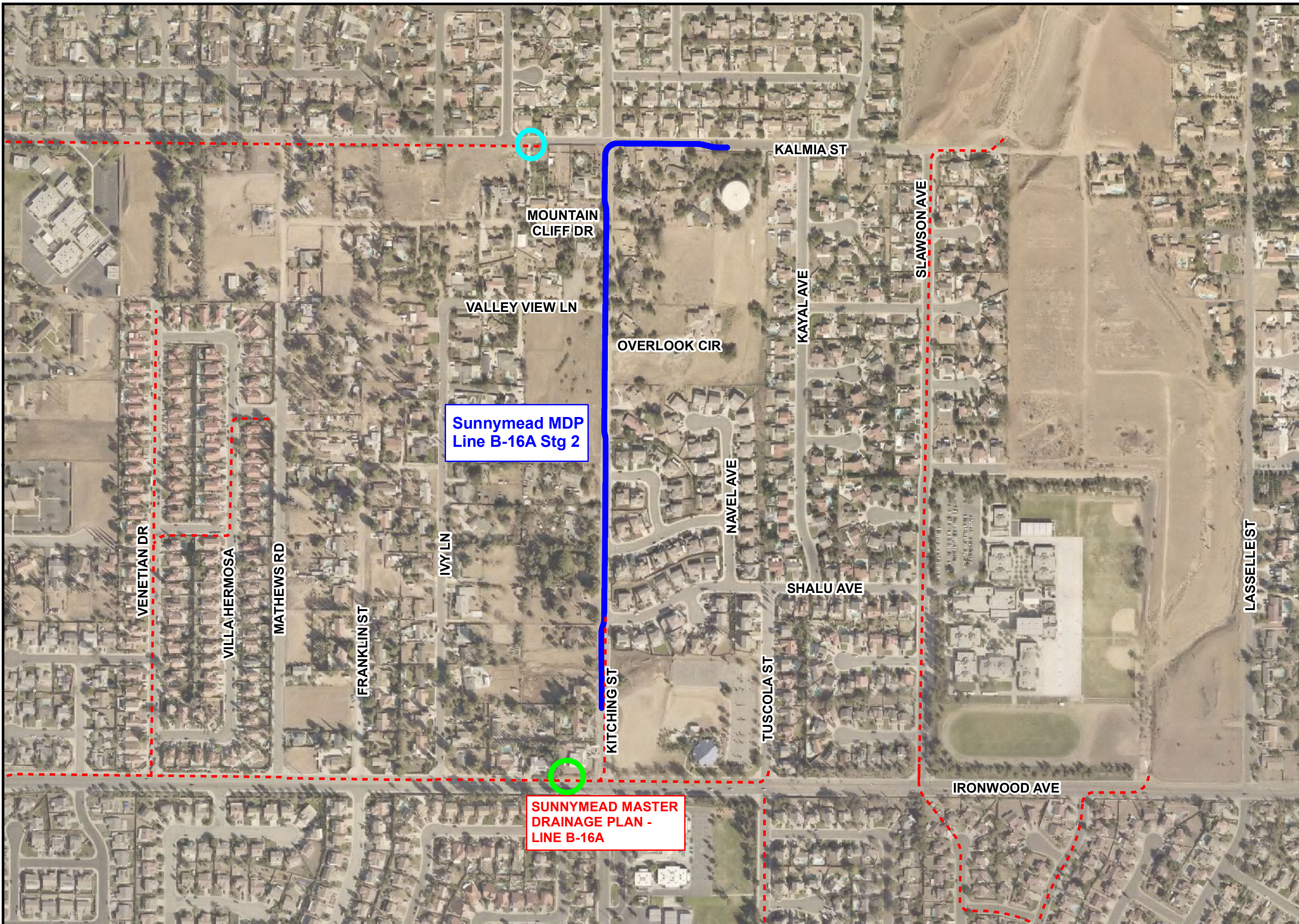
## Description:

**PROJECT NAME:**  
SUNNYMEAD MDP B-16A,  
STAGE 2

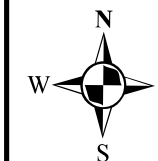
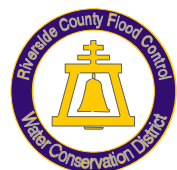
**PROJECT NO.:**  
PROJECT NO. 4-0-00614-02

## Legend:

-  Existing Below Ground Facility
-  CITY FACILITY
-  OPTIONAL CATCH BASIN
-  ADDITIONAL FACILITY



RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT  
**Sunnymead MDP Line B-16A Stg 2**  
Supervisorial District 5





## EXHIBIT “B”

DISTRICT's Insurance Requirements is as follows:

Without limiting or diminishing CITY's obligation to indemnify or hold DISTRICT harmless, CITY shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If CITY has employees as defined by the State of California, CITY shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CITY's performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

D. Professional Liability:

CITY shall cause any architect or engineer retained by CITY in connection with the performance of CITY's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. CITY shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of

## EXHIBIT “B”

this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

### E. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. The CITY must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, CITY's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- c. CITY shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY insurance carrier(s) policies does not meet the minimum notice requirement found herein, CITY shall cause CITY's insurance carrier(s) to furnish a 30-day Notice of Cancellation Endorsement.

## EXHIBIT "B"

- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
- e. It is understood and agreed by the parties hereto that CITY's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY has become inadequate.
- g. CITY shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. CITY agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.