

COOPERATIVE AGREEMENT

Romoland MDP Line A-3, Stage 4

Romoland MDP Line A-3, Stage 5

Romoland MDP Line A-3a

Romoland MDP Line A-3d

Project Nos. 4-0-00431, 4-0-00466 and 4-0-00470

This Cooperative Agreement ("Agreement"), dated as of February 6, 2024, is entered into by the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT") and the City of Menifee, a California municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". The Parties hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design, construct and subsequently operate and maintain certain flood control facilities to collect and convey stormwater runoff from the area to Romoland MDP Line A and the San Jacinto River, provide flood protection for residents, business owners and future development and reduce the Federal Emergency Management Agency ("FEMA") floodplain limits along the mainline storm drain; and

B. These certain flood control facilities are identified in DISTRICT's Romoland Master Drainage Plan ("MDP"), as shown in concept in red on Exhibit "A" attached hereto and made a part hereof, and as shown on DISTRICT's Drawing No. 4-1192, generally consisting of the following segments DISTRICT proposes to construct:

i. Romoland MDP Line A-3, Stage 4 ("STAGE 4") – approximately 3,919 lineal feet of underground reinforced concrete box and open channel from Palomar to Cumming Avenue;

ii. Romoland MDP Line A-3, Stage 5 ("STAGE 5") – approximately 2,583

lineal feet of underground reinforced concrete box and open channel from Cumming Avenue to Malone Avenue;

iii. Romoland MDP Line A-3a ("LINE A-3A") – approximately 1,331 lineal feet of underground reinforced concrete pipe on Menifee Road from Varela Lane to Watson Road;

iv. Romoland MDP Line A-3d ("LINE A-3D") – approx. 1,466 lineal feet of underground reinforced concrete box and reinforced concrete pipe on Malone Avenue from Varela Lane to Watson Road; and

v. STAGE 4, STAGE 5, LINE A-3A and LINE A-3D are called LINE A-3 STAGES 4 and 5. At its downstream terminus, LINE A-3 STAGES 4 and 5 will connect to DISTRICT's Romoland MDP Line A-3, Stage 3 facility as shown on DISTRICT's Drawing No. 4-1119; and

C. Associated with the construction of LINE A-3 STAGES 4 and 5 is the construction of various catch basins, drop inlets, connector pipes, earthen swales and storm drains that are thirty-six inches (36") or less in diameter located within CITY rights of way, and as shown on DISTRICT's Drawing No. 4-1192 (the "APPURTENANCES"); and

D. Together, LINE A-3 STAGES 4 and 5 and APPURTENANCES are hereinafter called "PROJECT"; and

E. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

F. The purpose of this Agreement is to memorialize the mutual understandings and obligations by and between DISTRICT and CITY with respect to design, construction, inspection, ownership, and operation and maintenance 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

DISTRICT 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. Prepare, or cause to be prepared, plans and specifications for PROJECT ("IMPROVEMENT PLANS"), in accordance with applicable DISTRICT and CITY standards.
3. At its sole cost and expense, prepare, or cause to be prepared, all rights of way and easements documents, legal and plats, aerial topography and survey control, including any requests for waivers and variances from policies ("RIGHTS OF WAY"), deemed necessary for the construction, operation and maintenance of LINE A-3 STAGES 4 and 5.
4. Prior to advertising PROJECT for public works construction contract bids, submit IMPROVEMENT PLANS to CITY for its review and approval.
5. 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.
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, temporary and permanent construction easements necessary to construct, inspect PROJECT and the subsequent operation and maintenance of LINE A-3 STAGES 4 and 5.

8. Within thirty (30) days of 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.

9. Be responsible for any and all additional regulatory, mitigation and/or litigation costs, and/or mitigation measures to PROJECT resulting from this Agreement and/or Permits.

10. Assume sole responsibility for compliance with the requirements of all REGULATORY PERMITS, including any amendments thereto, pertaining to the construction, operation and maintenance of PROJECT.

11. Provide CITY, within a reasonable timeframe, with written notice that DISTRICT has awarded a construction contract for PROJECT.

12. Prior to commencing PROJECT construction, schedule and conduct a pre-construction meeting between DISTRICT, CITY and other affected entities. DISTRICT shall notify CITY at least twenty (20) calendar days prior to conducting the pre-construction meeting.

13. Furnish CITY, at the time of providing written notice for the pre-construction meeting as set forth in Section I.12., with a construction schedule which shall show

the order and dates in which DISTRICT or DISTRICT's contractor proposes to carry on the various parts of work, including estimated start and completion dates.

14. 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 DISTRICT and CITY employees and/or agents on the site.

15. Require its construction contractor(s) to include CITY as an additional insured under the liability insurance coverage for PROJECT, and also require its construction contractor(s) to include CITY as a third-party beneficiary of any and all warranties of the contractor's work with regard to the APPURTENANCES.

16. Construct, or cause to be constructed, PROJECT pursuant to a DISTRICT administered Public Works construction contract, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

17. Inspect, or cause to be inspected, construction of PROJECT.

18. Within two (2) weeks of completing PROJECT construction, provide CITY with written notice that PROJECT construction is substantially complete and requesting that (i) CITY conduct a final inspection of APPURTENANCES, at CITY's sole cost and expense, and (ii) subsequently assume ownership and responsibility for operation and maintenance of APPURTENANCES.

19. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with a copy of DISTRICT's Notice of Completion.

20. Upon CITY's acceptance of APPURTENANCES for ownership, operation and maintenance, provide CITY with a reproducible duplicate set of "record drawings" of PROJECT plans.

21. Accept ownership and sole responsibility for the operation and maintenance of LINE A-3 STAGES 4 & 5.

22. Ensure that all work performed pursuant to this Agreement by DISTRICT, 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. DISTRICT shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II

CITY shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review and approve, as appropriate, IMPROVEMENT PLANS prior to DISTRICT's advertising PROJECT for construction bids and pay all costs associated therewith.
3. Grant DISTRICT, by execution of this Agreement, all rights necessary to (i) access, construct and inspect PROJECT, and (ii) operate and maintain any portions of LINE A-3 STAGES 4 & 5 within CITY rights of way or easements.
4. Issue, at no cost to DISTRICT or DISTRICT's contractor, the necessary encroachment permit(s) required to construct PROJECT, in CITY's reasonable discretion.
5. As authorized by law, order the relocation of all utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT and which must be relocated at the utility owner's expense.
6. Order the relocation of all CITY owned utilities within CITY rights of way that conflict with the construction of PROJECT, which shall be relocated at CITY's expense, if any.

7. CITY personnel may observe and inspect all work being done on PROJECT construction for quality control purposes at its sole cost, and will provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DISTRICT's contractor(s) during the construction of PROJECT.

8. Upon receipt of DISTRICT's written notice that PROJECT construction is substantially complete as set forth in Section I.18, conduct a final inspection of APPURTENANCES.

9. Accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES upon: (i) receipt of DISTRICT's Notice of Completion as set forth in Section I.19; (ii) receipt of a reproducible duplicate set of "record drawings" of PROJECT plans as set forth in Section I.20; and (iii) CITY's review and approval of the APPURTENANCES; such approval can be given in CITY's sole and absolute discretion.

10. Upon CITY's receipt of Notice of Completion, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way and jurisdiction which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION III

It is further mutually agreed:

1. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT and CITY and shall not be deemed complete until approved and accepted as complete by DISTRICT and CITY.

2. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, 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 DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) 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 reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

3. CITY shall indemnify, defend, save and hold harmless DISTRICT (including its 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) 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 reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

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

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

6. 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: Design III Section

CITY OF MENIFEE
29844 Haun Road
Menifee, CA 92586
Attn: Nicolas Fidler
Public Works Director

7. 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.

8. This Agreement is the result of negotiations between the Parties hereto, and the advice and assistance of their respective counsel. The authorship of this Agreement 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.

9. 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.

10. 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.

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

12. DISTRICT and CITY shall not assign this Agreement without the written consent of the other Party.

13. 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.

14. 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. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The Parties further agree that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to CUETA as amended from time to time. CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

February 6, 2024

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

MINH C. TRAN
County Counsel

By Ryan Yabko
RYAN YABKO
Deputy County Counsel

ATTEST:

KIMBERLY RECTOR
Clerk of the Board

By Naomy Li
Deputy

(SEAL)

Cooperative Agreement with City of Menifee
Romoland MDP Line A-3, Stage 4
Romoland MDP Line A-3, Stage 5
Romoland MDP Line A-3a
Romoland MDP Line A-3d
Project Nos. 4-0-00431, 4-0-00466 and 4-0-00470
10/02/23
AMR:blm

RECOMMENDED FOR APPROVAL: **CITY OF MENIFEE**

By _____

NICOLAS FIDLER
Public Works Director

By _____

ARMANDO G. VILLA
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____

JEFFREY T. MELCHING
City Attorney

By _____

SARAH MANWARING
City Clerk

(SEAL)

Cooperative Agreement with City of Meniffee
Romoland MDP Line A-3, Stage 4
Romoland MDP Line A-3, Stage 5
Romoland MDP Line A-3a
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Project Nos. 4-0-00431, 4-0-00466 and 4-0-00470
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AMR:blm

ROMOLAND MDP LINE A-3, STAGES 4 AND 5



COOPERATIVE AGREEMENT
PROJECT NOS. 4-0-00431,
4-0-00466 and 4-0-00470

EXHIBIT A