

FUNDING AGREEMENT
 Romoland MDP Lateral A-8a
 Project No. 4-0-10004

This Funding Agreement ("Agreement"), dated as of _____, 2024, is entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body politic ("DISTRICT"), and the CITY OF MENIFEE, a 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 CITY is preparing plans and specifications ("IMPROVEMENT PLANS") for the construction, operation, and maintenance of Romoland MDP Lateral A-8a ("LATERAL A-8A"); and

B. These IMPROVEMENT PLANS generally consist of the following:

1. LATERAL A-8A: A storm drain to reduce street and community flooding within McLaughlin and Evans Road. The proposed underground storm drain consists of approximately 615 lineal feet of 2' x 4' underground reinforced concrete box to collect flows from an existing water quality basin and convey east along McLaughlin Road into the existing Romoland MDP Line A-8 system, as shown in blue in concept on Exhibit "A" attached hereto and made a part hereof; and
2. Certain inlets, catch basin, connector pipes associated with LATERAL A-8A which will be constructed to adequately collect and convey local flows within CITY-held easements or right of way ("APPURTENANCES"); and

C. Together, LATERAL A-8A and APPURTENANCES are hereinafter called "PROJECT"; and

D. CITY plans to advertise, award and administer a public works construction contract for PROJECT during Fiscal Years 2025/2026; and

E. CITY desires that DISTRICT include certain unavoidable utility relocations as part of DISTRICT's financial contribution to construct PROJECT. "UTILITY RELOCATIONS" is defined as (i) the relocation of CITY owned utilities that conflict with the construction of PROJECT; and (ii) the unavoidable relocation of utilities not owned by CITY that (a) conflict with the construction of PROJECT; (b) cannot be relocated by others under CITY's franchise authority, and (c) which CITY has authority to require to be relocated.

F. UTILITY RELOCATIONS shall be included in the public works construction contract for PROJECT; and

G. CITY desires that DISTRICT contribute funding toward the design and construction of PROJECT; and

H. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution toward PROJECT's construction along with associated administrative and ancillary costs subject to the not to exceed amount set forth in RECITAL K; and

I. DISTRICT's financial contributions shall be as follows:

1. One hundred percent (100%) of design proposal cost to offset CITY's costs associated with engineering design; hydrology and hydraulics; geotechnical analysis; potholing required to complete the design of PROJECT; California Environmental Quality Act ("CEQA") determination; preparation, application, and acquisition of the environmental clearance and permits if required for PROJECT; and other typical ancillary costs related to the preparation of improvement plans ("DESIGN CONTRIBUTION"). However, DESIGN

CONTRIBUTION shall not include the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and

2. In the event that CITY chooses to hire an engineering consulting firm to prepare IMPROVEMENT PLANS, DISTRICT is also willing to contribute an additional ten percent (10%) of design proposal cost to offset CITY's administrative costs associated with design contract administration ("DESIGN ADMIN"); and
3. Up to one hundred percent (100%) of the lowest responsive and responsible bid contract amount for the construction of PROJECT, and the costs associated with UTILITY RELOCATIONS ("BID PRICE"); and
4. Up to an additional ten percent (10%) of BID PRICE to offset CITY's administrative cost associated with construction contract administration and other typical ancillary costs related to the delivery of the facility ("CONTRACT ADMINISTRATION CONTRIBUTION"); and
5. Up to an additional ten percent (10%) of BID PRICE for construction contract change orders ("CONSTRUCTION CHANGE ORDERS CONTRIBUTION"); and

J. Altogether, DESIGN CONTRIBUTION, DESIGN ADMIN, BID PRICE, CONTRACT ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION are hereinafter called "TOTAL DISTRICT CONTRIBUTION"; and

K. TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of Four Hundred Thousand Dollars (\$400,000); and

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

M. 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 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. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement, subject to TOTAL DISTRICT CONTRIBUTION limit.

3. Prepare or cause to be prepared IMPROVEMENT PLANS, in accordance with the applicable CITY standards. CITY shall make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS.

4. Following the signing of IMPROVEMENT PLANS, invoice DISTRICT (Attention: Special Projects Section) for the (i) remaining fifty percent (50%) of DESIGN

CONTRIBUTION and (ii) DESIGN ADMIN, both subject to TOTAL DISTRICT CONTRIBUTION limit.

5. Prior to advertising PROJECT for public works construction contract, obtain all necessary permits, licenses, agreements, approvals, right of way, rights of entry, encroachment permits, and temporary construction easements as may be needed to construct, operate and maintain PROJECT.

6. Upon execution of this Agreement, advertise, award and administer 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 IMPROVEMENT PLANS, specifications, bid documents and any subsequent addenda thereto.

7. Provide DISTRICT with written notice (Attention: Special Projects 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 responsive, responsible bid contract amount.

8. Order UTILITY RELOCATIONS determined by CITY to be necessary for PROJECT.

9. At the time of providing written notice of the award of a construction contract for PROJECT, invoice DISTRICT (Attention: Special Projects Section) for BID PRICE, subject to TOTAL DISTRICT CONTRIBUTION limit BID PRICE shall be supported by a copy of CITY's bid abstracts for PROJECT.

10. 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. The procured insurance coverages shall name DISTRICT, 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 Insured. CITY shall 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.

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

12. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager.

13. 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 employees on the site.

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

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

16. Keep an accurate accounting of all PROJECT costs along with CONTRACT ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION. 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 PROJECT.

17. At the time of providing a Notice of Completion, and invoice DISTRICT (Attention: Special Projects Section) for CONTRACT ADMINISTRATION CONTRIBUTION and if applicable, CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided TOTAL DISTRICT CONTRIBUTION limit shall not exceed, Four Hundred Thousand Dollars (\$400,000) for DISTRICT review.

SECTION II

DISTRICT shall:

1. Within thirty (30) days after receipt of CITY's invoices (i) pay all approved CITY's invoices and (ii) review and approve associated documents as described in RECITALS and SECTION I herein this Agreement, subject to TOTAL DISTRICT CONTRIBUTION shall not exceed Four Hundred Thousand Dollars (\$400,000) for PROJECT.

2. Within thirty (30) days of CITY awarding PROJECT, pay the Western Riverside County Regional Conservation Authority the mitigation fee for PROJECT per the 2004 Implementing Agreement for MSHCP, which is either the lesser of (i) three percent (3%) of the lowest responsible bid; or (ii) three percent (3%) of lowest responsible bid contract price, less the value of any applicable project specific mitigation.

3. Not be responsible to pay any amounts that exceed TOTAL DISTRICT CONTRIBUTION for PROJECT.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein, TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of Four Hundred Thousand Dollars (\$400,000) as referenced in Recitals K and shall be used by CITY solely for the purpose of designing and constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

2. In the event the actual construction cost for PROJECT is less than BID PRICE and less than TOTAL DISTRICT 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 (with counsel selected by CITY), 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 subcontract) 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 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: Planning Division

CITY OF MENIFEE
29844 Haun Road
Menifee, CA 92586
Attn: Carlos Geronimo

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 importance 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 toward PROJECT as set forth herein. In the event 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 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. 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 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, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By _____
Kristine Bell-Valdez
Deputy County Counsel

By _____
Deputy

(SEAL)

Funding Agreement with City of Menifee
Romoland MDP Lateral A-8a
Project No. 4-0-10004
06/25/24
AGR:blj

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

By _____
ARMANDO G. VILLA
City Manager

APPROVED AS TO FORM:

ATTEST:

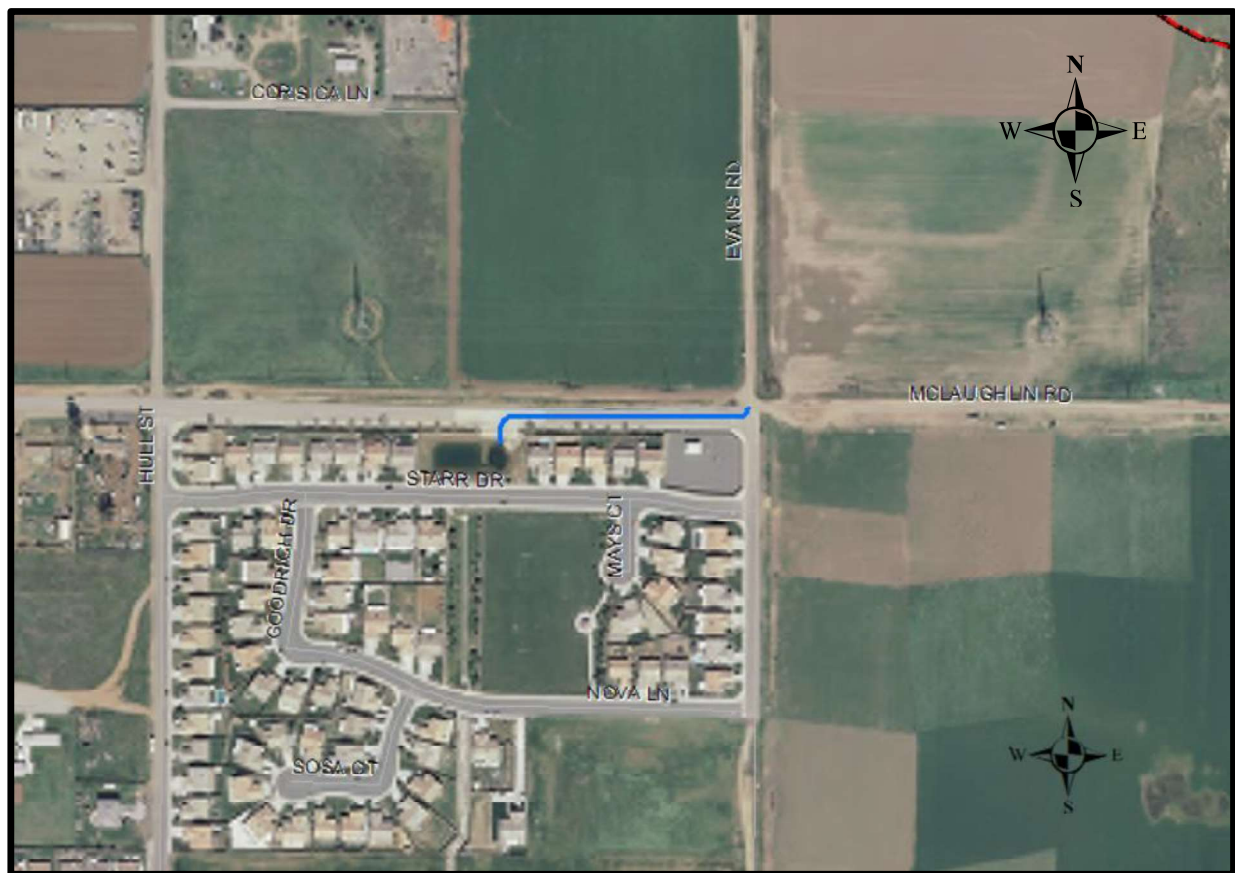
By _____
JEFF MELCHING
City Attorney

By _____
SARAH MANWARING
City Clerk

(SEAL)

Funding Agreement with City of Menifee
Romoland MDP Lateral A-8a
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Exhibit "A"



LEGEND

 Romoland MDP Lateral A-8a