

FUNDING AGREEMENT
Murrieta and Garbani Undercrossing
Project No. 4-0-10003

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 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, inspect, own, operate and maintain Murrieta and Garbani Undercrossing located within Garbani Road. Upon construction completion, Murrieta and Garbani Undercrossing will provide the necessary flood control and drainage improvements and reduce flooding in the area near Menifee Valley Middle School in the city of Menifee; and

B. Murrieta and Garbani Undercrossing consists of the construction to approximately 200 lineal feet of undercrossing within Garbani Road near Murrieta Road, hereinafter called "PROJECT", as shown in concept in blue on Exhibit "A", attached hereto and made a part hereto; and

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

D. CITY desires DISTRICT to contribute funding toward the lowest responsive and responsible bid contract price as set forth herein; and

E. DISTRICT wishes to support CITY's efforts to construct PROJECT by providing a financial contribution toward PROJECT's construction costs as set forth herein and have no other role; and

F. DISTRICT's contributions to PROJECT shall be as follows, subject to the not to exceed amount provided herein. Up to sixty percent (60%) of all costs associated with the lowest responsive and responsible bid contract price for construction of PROJECT ("CONSTRUCTION CONTRIBUTION"). CONSTRUCTION CONTRIBUTION for PROJECT shall not exceed a total of Six Hundred Seventy-Four Thousand Dollars (\$674,000); and

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

3. Prior to advertising PROJECT for public works construction contract, 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").

4. Implement or cause to be implemented all environmental mitigation required in association with the construction, operation and maintenance of PROJECT.

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 awarding a public works construction contract for PROJECT, provide DISTRICT seven (7) calendar days following construction bid opening to review and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids found by DISTRICT to be unreasonably high. In no event shall CITY be required to select other than the lowest responsive and responsible bidder in compliance with local and state laws.

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 responsible bid contract amount.

8. At the time of providing written notice of the award of a construction contract for PROJECT, as set forth in Section I.7, issue an invoice to DISTRICT (Attention: Special Projects Section) for the payment of CONSTRUCTION CONTRIBUTION, subject to and provided that CONSTRUCTION CONTRIBUTION shall not exceed a total sum amount of Six Hundred Seventy-Four Thousand Dollars (\$674,000). The lowest responsive and responsible bid contract amount shall be supported by a copy of CITY's bid abstracts for PROJECT.

9. Within thirty (30) days of awarding PROJECT, pay the Western Riverside County Regional Agency ("RCA") the mitigation fee for PROJECT per the 2004 Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), which is either the lesser of i) three percent (3%) of the lowest responsive and responsible bid contract price; or ii) three percent (3%) of the lowest responsive and responsible bid contract price, less the value of the applicable project specific mitigation. Provide DISTRICT with supporting documentation that payment has been made to RCA for the MSHCP mitigation fee.

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

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

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

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.

SECTION II

DISTRICT shall:

1. Within thirty (30) days of receiving of CITY's invoice, pay CONSTRUCTION CONTRIBUTION to CITY, as set forth in Section I.8, subject to and provided that CONSTRUCTION CONTRIBUTION does not exceed the total sum of amount of Six Hundred Seventy-Four Thousand Dollars (\$674,000).

2. Not be responsible to pay any amounts that exceed CONSTRUCTION CONTRIBUTION for PROJECT.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein, CONSTRUCTION CONTRIBUTION shall not exceed a total sum of Six Hundred Seventy-Four Thousand Dollars (\$674,000) and shall be used by CITY solely for the purpose of construction of PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

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

3. CITY shall indemnify, defend and hold harmless and require its construction contractor(s) to indemnify, defend and hold harmless DISTRICT and the County of Riverside (its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives) (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any acts, omissions or services of CITY and CITY's construction contractor(s), (including their officers, employees, subcontractors, agents or representatives) (individually and collectively hereinafter referred to as "Indemnitors") arising out of or in any way relating to this Agreement, including, but not limited to, property damage, bodily injury or death, or any other element of any kind or nature whatsoever arising from the performance of Indemnitors of this Agreement. CITY or CITY's construction contractor(s) shall defend, at its sole expense, all costs and fees, including, but not limited to attorney fees, cost of investigation, defense, and settlements or awards, of the Indemnitees in any claim or action based upon such alleged acts or omissions.

4. 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.

5. 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 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.

6. 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.

7. 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 MENIFEE
29844 Haun Road
Menifee, CA 92586
Attn: Carlos Geronimo

8. 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.

9. 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.

10. 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 forthcoming for any reason, DISTRICT shall immediately notify CITY in writing. This Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

11. No alteration 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.

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

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 or written, in connection therewith. This Agreement may be amended, 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 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
Supervising Deputy County Counsel

By _____
Deputy

(SEAL)

Funding Agreement: City of Menifee
Murrieta and Garbani Undercrossing
Project No. 4-0-10003
02/21/24
MM:blm

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

BY _____
NICK FIDLER
Director of Public Works

By _____
ARMANDO G. VILLA
City Manager

APPROVED AS TO FORM:

ATTEST:

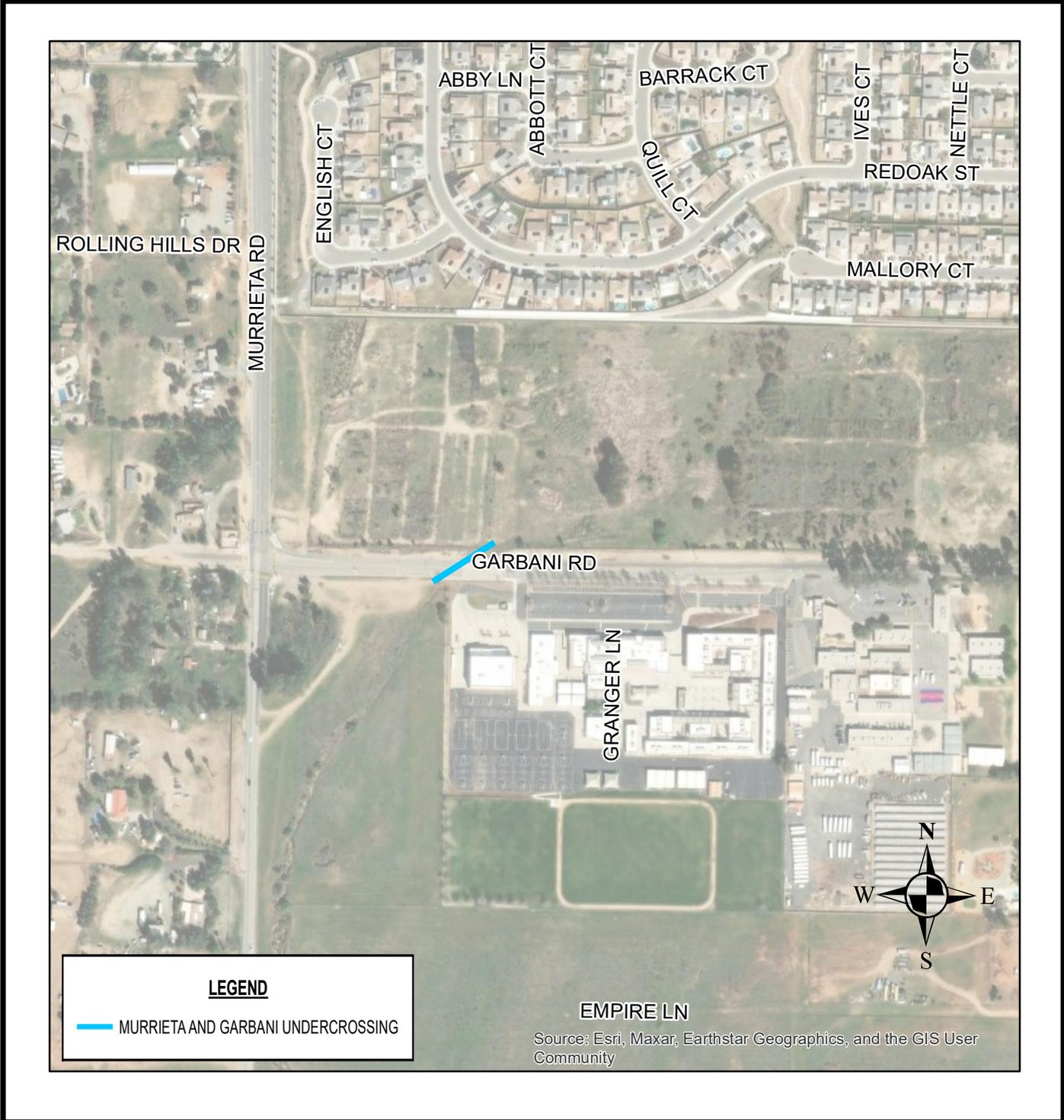
By _____
JEFFREY T. MELCHING
City Attorney

By _____
SARAH MANWARING
City Clerk

(SEAL)

Funding Agreement: City of Menifee
Murrieta and Garbani Undercrossing
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MM:blm

Exhibit A



FUNDING AGREEMENT Murrieta and Garbani Undercrossing Project No. 4-0-10003