

FUNDING/COOPERATIVE AGREEMENT

Sunnymead MDP Line H, Stage 3
Project No. 4-0-00670

This Funding/Cooperative Agreement ("Agreement"), dated as of _____, is entered into by the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), and the City of Moreno Valley, a municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". The Parties hereto agree as follows:

RECITALS

A. DISTRICT has budgeted for and CITY has plans to design and construct Sunnymead MDP Line H, Stage 3 ("SUNNYMEAD LINE H"). Upon construction completion, SUNNYMEAD LINE H will reduce street flooding, control debris and provide flood protection to the area and may clean up an existing Federal Emergency Management Agency floodplain located along the project alignment;

B. SUNNYMEAD LINE H as shown in concept in blue on Exhibit "A", attached hereto and made a part hereof, consists of (i) a concrete open channel to collect flows from existing culvert under the 60 Freeway just west of Indian Street and convey them southeasterly to the existing DISTRICT's Pigeon Pass Channel near the intersection of Sunnymead Boulevard and Indian Street and (ii) replacing existing box culvert under Sunnymead Boulevard and Indian Street that connects to DISTRICT's Pigeon Pass Channel;

C. Associated with the construction of SUNNYMEAD LINE H are certain inlets, connector pipes and storm drains that are 36 inches or less in diameter within CITY-held rights of way, hereinafter called "APPURTENANCES";

D. SUNNYMEAD LINE H and APPURTENANCES are hereinafter called "PROJECT";

E. CITY is willing to assume the lead role for PROJECT and, therefore, will provide the administrative, technical, managerial and support services necessary to plan, design and construct PROJECT;

F. CITY desires that DISTRICT include certain unavoidable utility relocations as part of DISTRICT's financial contribution to construct PROJECT. "UTILITY RELOCATIONS" is defined as the unavoidable relocation of utilities not owned by CITY that (a) conflict with the construction of PROJECT and (b) cannot be relocated by others under CITY's franchise authority. These certain unavoidable UTILITY RELOCATIONS shall be included in the public works construction contract for PROJECT;

G. Due to the Parties' mutual interest in PROJECT, DISTRICT wishes to support CITY's efforts by providing a financial contribution to implement PROJECT;

H. DISTRICT is willing to provide a financial contribution toward PROJECT and shall be as follows, subject not to exceed amount provided in Recital J below;

- I. DISTRICT's financial contributions to PROJECT shall be as follows:
- i. Thirty three percent (33%) of costs associated with engineering design, hydrology and hydraulics, geo-technical analysis and potholing required to complete the design of PROJECT; California Environmental Quality Act ("CEQA") determination; preparation, application, and acquisition of the environmental clearance, permits and mitigation 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");

- ii. In the event that CITY chooses to hire an engineering consulting firm to prepare IMPROVEMENT PLANS (defined in Section I.4.), DISTRICT is also willing to contribute an additional ten percent (10%) of DESIGN CONTRIBUTION to offset CITY's administrative costs associated with design contract administration ("DESIGN ADMIN");
- iii. Forty percent (40%) of the actual costs associated with the preparation of right of way acquisition and rights of entry documents for PROJECT ("ROW PREP COST");
- iv. Forty percent (40%) of the actual costs not to exceed appraised value and estimated escrow and closing costs (as determined by DISTRICT) for right of way acquisition and rights of entry for PROJECT ("ROW ACQUISITION COST");
- v. Forty percent (40%) of the lowest responsible bid contract price for construction of PROJECT and the costs associated with UTILITY RELOCATIONS ("CONSTRUCTION CONTRIBUTION"); and
- vi. Up to an additional ten percent (10%) of CONSTRUCTION CONTRIBUTION to offset CITY's administrative costs associated with construction, contract administration and other typical ancillary costs related to the delivery of PROJECT ("CONSTRUCTION ADMINISTRATION CONTRIBUTION");
- vii. Up to an additional ten percent (10%) of CONSTRUCTION CONTRIBUTION for construction contract change orders ("CONSTRUCTION CHANGE ORDERS CONTRIBUTION");

J. Altogether, DESIGN CONTRIBUTION, DESIGN ADMIN, ROW PREP COST, ROW ACQUISITION COST, CONSTRUCTION CONTRIBUTION, CONSTRUCTION ADMINISTRATION CONTRIBUTION, and CONSTRUCTION CHANGE ORDERS CONTRIBUTION are hereinafter called "TOTAL DISTRICT CONTRIBUTION". TOTAL DISTRICT CONTRIBUTION for PROJECT shall not exceed a total of One Million Six Hundred Thousand Dollars (\$1,600,000);

K. CITY agrees to fund and secure all remaining costs of PROJECT that exceeds TOTAL DISTRICT CONTRIBUTION, as set forth herein;

L. 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

M. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and DISTRICT with respect to the design, construction, inspection, 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 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. Upon execution of this Agreement, issue a first invoice to DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION,

subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

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

4. Prepare or cause to be prepared the necessary plans, bid documents and specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with the applicable DISTRICT and CITY standards, and submit to DISTRICT (Attention: Special Projects Section) for its review, comment and approval prior to advertising PROJECT for construction bids. CITY shall not permit any change to or modification of DISTRICT approved and CITY approved IMPROVEMENT PLANS without DISTRICT's prior written permission and consent.

5. Make reasonable efforts during the preparation of IMPROVEMENT PLANS to avoid utility conflicts associated with UTILITY RELOCATIONS.

6. Keep an accurate accounting of all PROJECT costs associated with TOTAL DISTRICT CONTRIBUTION as set forth in Recital J and provide this accounting along with future invoices to DISTRICT. The final accounting of construction costs shall include a detailed breakdown of all costs, including, but not limited to, payment vouchers, approved change orders and other such construction contract documents to establish the actual costs associated with PROJECT and will be included when invoicing DISTRICT.

7. 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"). CITY shall also provide DISTRICT an opportunity to review, comment on and approve, as appropriate, all applications for REGULATORY PERMITS prior to submitting the application to the applicable regulatory agencies.

8. Ensure REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for SUNNYMEAD LINE H, as determined by DISTRICT or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within PROJECT's right of way.

9. 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.

10. Comply with all mitigation measures including applicable provisions of CEQA, MSHCP and any CITY established conditions of approval for PROJECT.

11. Be responsible for any and all additional regulation, mitigation and/or litigation costs, and/or mitigation measures to PROJECT resulting from this Agreement and/or permits.

12. At its sole cost and expense, prepare, or cause to be prepared, all rights of way, rights of entry, encroachment permits, construction easements and acquire all parcels ("ROW DOCUMENTS"), deemed necessary for the construction, operation and maintenance of SUNNYMEAD LINE H and submit to DISTRICT (Attention: Real Estate Services) for its review and approval.

13. Secure all necessary appraisals (not to exceed appraised value and estimated escrow and closing costs as determined by DISTRICT) for rights of way acquisition and rights of entry documents ("ROW ACQUISITION") for PROJECT and provide DISTRICT the opportunity to review and approve ROW ACQUISITION documents prior to CITY's formal offer.

14. Following the signing of improvement plans by all Parties, issue a second invoice to DISTRICT (Attention: Special Projects Section) for (i) the remainder of DESIGN CONTRIBUTION and, if applicable, (ii) DESIGN ADMIN. The invoice shall include an accounting of all design costs associated with the preparation of plans and specifications for PROJECT, a copy of the signed improvement plans, including, and if applicable, the associated design contract administration cost. TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

15. Prior to advertising PROJECT for public works construction contract, secure all necessary ROW DOCUMENTS and ROW ACQUISITION documents necessary to construct, inspect, operate and maintain PROJECT.

16. Prior to advertising PROJECT for public works construction contract, provide DISTRICT an opportunity to make a determination on all ROW DOCUMENTS and ROW ACQUISITION. DISTRICT approval of IMPROVEMENT PLANS may be withheld when, in sole judgement of DISTRICT's General Manager - Chief Engineer, the ROW DOCUMENTS and ROW ACQUISITION unreasonable constrain, inhibit or impair DISTRICT's ability to operate and maintain SUNNYMEAD LINE H.

17. Upon DISTRICT's review and approval of ROW DOCUMENTS and ROW ACQUISITION, pursuant to Section I.16, issue a third invoice to DISTRICT (Attention: Special Projects Section) for ROW PREP COST and ROW ACQUISITION COST, subject to and

provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

18. 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.

19. Advertise, award and administer a public works construction contract for PROJECT of the bids 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 and any subsequent addenda thereto.

20. 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 CITY contractor's actual bid amounts for PROJECT, setting forth the lowest responsible bid contract amount.

21. At the time of providing written notice of the award of a construction contract as set forth in Section I.20, issue a fourth invoice to DISTRICT (Attention: Special Projects Section) for the payment of CONSTRUCTION CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

22. Within thirty (30) days of CITY awarding PROJECT construction contract, pay the Western Riverside County Regional Conservation Authority CITY's portion of the mitigation fee per 2004 Implementing Agreement for MSHCP.

23. Prior to commencing construction of PROJECT, 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 DISTRICT's required insurance provided in Exhibit "B", attached hereto and made a part hereof.

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

25. Prior to commencing construction of PROJECT, furnish DISTRICT with final mylar of IMPROVEMENT PLANS and assign ownership of IMPROVEMENT PLANS to DISTRICT.

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

27. Not permit any change to, or modification of DISTRICT and CITY approved IMPROVEMENT PLANS that would result in a change of functionality or maintainability of PROJECT without DISTRICT's prior written permission and consent, such consent not to be unreasonably withheld or delayed. Failure to do so shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to CITY that DISTRICT is unable to: a) perform its obligations hereunder and b) to accept responsibility for ownership, operation and maintenance of SUNNYMEAD LINE H due, either in whole or in part, to said breach of this Agreement.

28. Construct or cause to be constructed PROJECT pursuant to a CITY administered public works contract in accordance with IMPROVEMENT PLANS approved by DISTRICT and CITY.

29. 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.

30. 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 by permit or franchise within CITY rights of way which conflict with the construction of PROJECT.

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

32. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager, and pay all costs associated therewith, provided that such costs will be included within CONSTRUCTION ADMINISTRATION CONTRIBUTION. In the event CITY wishes to utilize DISTRICT's construction inspection, materials testing and construction survey services, CITY shall provide DISTRICT with a written request (Attention: Special Projects) for such services. However, CITY will continue to serve as construction contract manager.

33. Perform all survey and construction staking work as needed for PROJECT as specified herein.
34. Furnish, or cause its construction manager to furnish, all construction survey and materials testing services necessary to ensure PROJECT construction is accomplished in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.
35. 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, the construction of PROJECT.
36. Within two (2) weeks of completing PROJECT construction, provide DISTRICT with written notice (Attention: Construction Management Section) that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of SUNNYMEAD LINE H.
37. Upon completion of PROJECT construction, accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES and SUNNYMEAD LINE H upon (i) CITY inspection of PROJECT in accordance with Section I.32., (ii) CITY acceptance of PROJECT construction as being complete, (iii) DISTRICT acceptance of SUNNYMEAD LINE H construction as being complete and (iv) CITY receipt of stamped and signed record drawings of SUNNYMEAD LINE H plans as set forth in Section II.16.
38. Following CITY's acceptance of SUNNYMEAD LINE H for ownership, operation and maintenance and prior to DISTRICT's acceptance of ownership and responsibility for the operation and maintenance of SUNNYMEAD LINE H pursuant to Section II.15., SUNNYMEAD LINE H shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, if in DISTRICT's reasonable judgement, SUNNYMEAD LINE H is not in an acceptable condition, corrections shall be made at CITY's sole expense.

39. Upon completion of PROJECT construction, provide DISTRICT with a copy of CITY's Recorded Notice of Completion. The recorded Notice of Completion shall be accompanied by the final accounting of all PROJECT construction costs as set forth in Section I.6. The final accounting of construction costs shall include, but not limited to, payment vouchers, approved change orders and other such construction contract documents as may be necessary to establish the actual cost of construction for PROJECT.

40. At the time of providing a Notice of Completion as set forth in Section I.39., and if applicable, issue a fifth invoice to DISTRICT (Attention: Special Projects Section) for CONSTRUCTION ADMINISTRATION CONTRIBUTION and CONSTRUCTION CHANGE ORDERS CONTRIBUTION, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

41. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of SUNNYMEAD LINE H for ownership, operation and maintenance, provide DISTRICT (Attention: Construction Management Section) with (i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer and (ii) concrete testing report(s) – stamped and wet signed by a civil engineer registered in the State of California, necessary to establish that SUNNYMEAD LINE H was constructed in accordance with DISTRICT-approved and CITY-approved IMPROVEMENT PLANS.

42. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of SUNNYMEAD LINE H for ownership, operation and maintenance, CITY shall convey or cause to be conveyed to DISTRICT the flood control easement(s) or grant deed(s) of fee title, where appropriate, as deemed necessary by DISTRICT for the operation and maintenance of SUNNYMEAD LINE H. The easement(s) or grant deed(s) shall be in a form

approved by DISTRICT and shall be executed by all legal and equitable owners of the property(ies) described in the easement(s) or grant deed(s).

43. At the time of recordation of the conveyance document(s) as set forth in Section I.42, furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value as determined by DISTRICT for each easement parcel to be conveyed to DISTRICT or (ii) one hundred percent (100%) of the estimated value as determined by DISTRICT for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT's interest in each fee parcel as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which in the sole discretion of DISTRICT are acceptable.

44. Upon completion of PROJECT construction but prior to CITY's acceptance of SUNNYMEAD LINE H and APPURTENANCES for ownership, operation and maintenance pursuant to Section I.37., provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT and CITY with redlined "record drawings" of IMPROVEMENT PLANS. After DISTRICT and CITY approval of the redlined "record drawings", CITY's engineer shall schedule with DISTRICT and CITY a time to transfer the redlined changes into DISTRICT's original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign mylars "record drawings".

45. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way 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.

46. Refund to DISTRICT, at the time of providing a Notice of Completion as set forth in Section I.39, any unexpected portions of TOTAL DISTRICT CONTRIBUTION.

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. Within thirty (30) business days of receiving CITY's first invoice to DISTRICT, pay CITY for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.2, subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

3. At its sole cost and expense, review, comment and make a determination on CITY's PROJECT engineering design cost proposal and associated design schedule as set forth in Section I.3.

4. Review IMPROVEMENT PLANS in accordance with the applicable DISTRICT and CITY standards and approve IMPROVEMENT PLANS prior to advertising PROJECT for construction bids as set forth in Section I.4.

5. At its sole cost and expense, prepare, or cause to be prepared, aerial topography and survey control, including any requests for waivers and variances from policies. DISTRICT agrees to provide the necessary right of way mapping to CITY in connection with PROJECT. Such mapping shall include, but not limited to, all relevant data, diagrams, and spatial information required to delineate and identify the boundaries and extents of the right of ways. DISTRICT agrees to also provide a 100-year hydrology study for the ultimate condition of PROJECT area.

6. Review, comment, and approve, as appropriate, all ROW DOCUMENTS and ROW ACQUISITION necessary for the construction, operation and maintenance of PROJECT pursuant to Sections I.12 and I.13.

7. Within thirty (30) business days of receiving CITY's second invoice to DISTRICT, pay CITY for the remaining fifty percent (50%) of DESIGN CONTRIBUTION following the signing of IMPROVEMENT PLANS as set forth in Section I.14., subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

8. Within thirty (30) business days of receiving CITY's third invoice to DISTRICT, pay CITY for the ROW PREP COST and ROW ACQUISITION COST as set forth in Section I.17., subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

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

10. Within thirty (30) business days of receiving CITY's fourth invoice to DISTRICT, pay CITY for CONSTRUCTION CONTRIBUTION as set forth in Section I.21., subject to and provided that TOTAL DISTRICT CONTRIBUTION shall not exceed the total amount of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

11. Inspect construction of SUNNYMEAD LINE H.

12. Upon receipt of CITY's Notice of Completion that PROJECT construction is substantially complete, conduct a final inspection of SUNNYMEAD LINE H.

13. Pay CITY, within thirty (30) business days after receipt of CITY's fifth invoice, for CONSTRUCTION ADMINISTRATION CONTRIBUTION and if applicable, CONSTRUCTION CHANGE ORDERS CONTRIBUTION, as set forth in Section I.40., subject to and provided that TOTAL DISTRICT CONTRIBUTION does not exceed a total sum of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT.

14. Record, or cause to be recorded, the easement(s) or grant deed(s) provided by CITY pursuant to Section I.42.

15. Accept ownership and responsibility for the operation and maintenance of SUNNYMEAD LINE H from CITY once all of the following takes place: (i) DISTRICT's inspection of SUNNYMEAD LINE H in accordance with Section II.12., (ii) DISTRICT's acceptance of SUNNYMEAD LINE H construction as being complete, (iii) DISTRICT's receipt of CITY's recorded Notice of Completion as set forth in Section I.39., (iv) DISTRICT's receipt of appropriate engineering documentation as set forth in Section I.41., (v) DISTRICT's acceptance of all necessary rights of way, easements or grant deeds as set forth in Section I.42., and (vi) DISTRICT's receipt of policies of title insurance for the rights of way, easements or grant deeds as set forth in Section I.43.

16. Provide CITY with a reproducible duplicate copy of "record drawings" of IMPROVEMENT PLANS upon; (i) DISTRICT acceptance of PROJECT construction as being complete and (ii) DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS as set forth in Section I.44.

17. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of SUNNYMEAD LINE H, SUNNYMEAD LINE H shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, SUNNYMEAD LINE H is not in an acceptable condition, corrections shall be made at sole expense of CITY.

SECTION III

It is further mutually agreed:

1. All Recitals set forth above are hereby incorporated herein by reference as if set forth fully in the body of this Agreement.
2. Notwithstanding any other provision herein this Agreement TOTAL DISTRICT CONTRIBUTION shall not exceed a total sum of One Million Six Hundred Thousand Dollars (\$1,600,000) for PROJECT and shall be used by CITY solely for the purpose of the design and construction of said PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.
3. In the event the actual construction cost for PROJECT is less than CONSTRUCTION CONTRIBUTION, CITY shall refund the difference to DISTRICT within thirty (30) days of filing the Notice of Completion for PROJECT.
4. In the event CITY's construction contractor does not complete the construction of PROJECT in accordance with DISTRICT standards, CITY shall complete PROJECT utilizing the bonds and insurances secured for PROJECT.
5. DISTRICT, the County of Riverside, the State of California or any of their duly authorized representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. CITY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. CITY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.
6. CITY shall indemnify, defend and hold harmless, and require its construction contractor(s) to indemnify, defend and hold harmless, the Riverside County Flood

Control and Water Conservation District, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any acts, omissions or services of CITY or CITY's construction contractor(s), its officers, employees, subcontractors, agents or representatives 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 CITY or CITY's construction contractor(s), their officers, employees, subcontractors, agents or representatives ("Indemnitors") from 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, the Indemnitees in any claim or action based upon such alleged acts or omissions.

7. 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.

8. With respect to any action or claim subject to indemnification herein by CITY, CITY shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent of DISTRICT and the County of Riverside; provided, however, that any such adjustment,

settlement or compromise in no manner whatsoever limits or circumscribes CITY's indemnification to Indemnitees as set forth herein.

9. CITY's obligation hereunder shall be satisfied when CITY has provided to DISTRICT and the County of Riverside the appropriate form of dismissal relieving DISTRICT and the County of Riverside from any liability for the action or claim involved.

10. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CITY's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

11. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve CITY from indemnifying the Indemnitees to the fullest extent allowed by law.

12. 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.

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

14. 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.

15. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other Party. Any attempt to delegate or assign any interest herein shall be deemed void and of no effect.

16. 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.

17. 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: Manny Ruiz

18. 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.

19. 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 stopping DISTRICT or CITY from enforcing this Agreement.

20. 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 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.

21. 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.

22. 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.

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

24. 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

(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 H. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By _____
NAME
Deputy County Counsel

By _____
Deputy

(SEAL)

Funding/Cooperative Agreement with City of Moreno Valley
Sunnymead MDP Line H, Stage 3
Project No. 4-0-00670
2/4/25
MER:blj

RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

By _____
BRIAN MOHAN
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
STEVE QUINTANILA
City Attorney

By _____
M. PATRICIA RODRIGUEZ
City Clerk

(SEAL)

Funding/Cooperative Agreement with City of Moreno Valley
Sunnymead MDP Line H, Stage 3
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