

AMENDED AND RESTATED FUNDING AGREEMENT

WRCRWA - Bluff Street Reclaimed Water Pipeline

Project No. 2-6-10005

This Amended and Restated Cooperative Agreement ("Agreement"), dated as of _____, is entered into by the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT") and the City of Corona, 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 and CITY previously entered into that certain Funding Agreement, executed on April 11, 2017 [DISTRICT's Board Agenda Item No. 11.3], hereinafter called ("ORIGINAL AGREEMENT"), providing for DISTRICT to contribute funding toward the design and construction of The Western Riverside County Regional Wastewater Authority ("WRCRWA") - Bluff Street Reclaimed Water Pipeline; and

B. WRCRWA - Bluff Street Reclaimed Water Pipeline consists of approximately 5,100 lineal feet of reclaimed water pipeline system to be constructed between WRCRWA Wastewater Treatment Plant and an existing 20-inch reclaimed water pipeline located in River Road at Bluff Street ("PROJECT"), as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

C. Pursuant to ORIGINAL AGREEMENT, DISTRICT desired to contribute an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) toward PROJECT's design and construction costs; and

D. Subsequent to the execution of ORIGINAL AGREEMENT, DISTRICT and CITY, recognize the original estimates of costs will exceed DISTRICT's contribution described in ORIGINAL AGREEMENT. Therefore, due to mutual interests in this PROJECT, DISTRICT

and CITY agree to revise the amount of DISTRICT's financial contribution toward PROJECT's design and construction costs, place a limit on DISTRICT's financial contribution and establish deliverables required of CITY for reimbursement of PROJECT costs; and

E. DISTRICT and CITY now wish to amend and restate their respective understandings, roles and responsibilities pertaining to PROJECT as set forth herein. Furthermore, DISTRICT and CITY mutually agree that the provisions of this Agreement shall supersede all provisions of ORIGINAL AGREEMENT; and

F. DISTRICT and CITY wish to work collaboratively to expedite the construction of PROJECT to provide access to reclaimed water for the immediate adjacent areas within the city of Corona; and

G. CITY plans to advertise, award and administer a public works construction contract for PROJECT during Fiscal Year 2022/2023; and

H. Due to mutual interests in this PROJECT, DISTRICT has allocated and appropriated the additional requested funds toward the design and construction of PROJECT; and

I. CITY desires that DISTRICT, pursuant to California Water Code Appendix 48-1 et seq., contribute additional funding for the construction of PROJECT which benefits the zone in which PROJECT is located; and

J. DISTRICT's financial contribution to CITY for PROJECT shall be as follows, subject not to exceed amount provided in Recitals 'K' below:

- (i) Fifty percent (50%) of design proposal cost to offset CITY's costs associated with engineering design; hydrology and hydraulics; geotechnical analysis; potholing and other typical ancillary costs related to the preparation of improvement plans required to complete the design of PROJECT ("DESIGN CONTRIBUTION");

- (ii) Seventy five percent (75%) of the lowest responsible bid contract amount for PROJECT ("CONSTRUCTION CONTRIBUTION");
- (iii) Seventy five percent (75%) of construction management, construction inspection, and material testing costs ("CONSTRUCTION MANAGEMENT");
- (vi) Seventy five percent (75%) of construction contract change orders so long as change orders do not exceed ten percent (10%) of CONSTRUCTION CONTRIBUTION ("CHANGE ORDERS CONTRIBUTION"); and

K. Altogether, DESIGN CONTRIBUTION, CONSTRUCTION CONTRIBUTION, CONSTRUCTION MANAGEMENT and CHANGE ORDERS CONTRIBUTION are hereinafter called ("DISTRICT CONTRIBUTION"). DISTRICT CONTRIBUTION for PROJECT shall not exceed a total sum of Four Million Two Hundred Thirty-One Thousand Seven Hundred Eighty-One Dollars (\$4,231,781.00); and

L. DISTRICT desires to only provide financial assistance to CITY and have no other role related to PROJECT; and

M. In addition to DISTRICT CONTRIBUTION, under Title XVI - Water Reclamation and Reuse Program, CITY has received commitment for funding from the Bureau of Reclamation for twenty five percent (25%) of PROJECT costs; and

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

O. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to funding, design, construction, inspection,

ownership, operation and maintenance of PROJECT and the payment of DISTRICT CONTRIBUTION to CITY.

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. Provide DISTRICT an opportunity to review and approve the engineering design cost proposal and associated design schedule for PROJECT.

3. Keep an accurate accounting of the following costs for PROJECT:

A. All design costs associated with the preparation of plans and specifications for PROJECT, in conformance with DISTRICT-approved engineering design cost proposal and associated design schedule, as set forth in Section I.2. Upon request of DISTRICT, CITY shall include this accounting when invoicing DISTRICT for (i) the final payment of DESIGN CONTRIBUTION as set forth in Section I.9. The final accounting of design costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers, change orders and other such contract documents as may be necessary to establish the actual cost of design and, if applicable,

the associated design contract administration cost for PROJECT.

This includes all costs invoiced as a part of DESIGN CONTRIBUTION.

- B. All PROJECT construction costs. This final accounting of construction costs shall include a detailed breakdown of all costs, including but not limited to, payment vouchers, change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction and the associated contract administration cost for CITY-approved improvement plans. Upon request of DISTRICT, include all PROJECT construction costs invoiced as a part of CONSTRUCTION CONTRIBUTION, CONSTRUCTION MANAGEMENT and, if applicable, CHANGE ORDERS CONTRIBUTION.

4. Invoice DISTRICT (Attention: Special Projects Section) for fifty percent (50%) of DESIGN CONTRIBUTION upon execution of this Agreement or upon DISTRICT's approval of CITY's engineering design cost proposal as set forth in Section I.2, whichever occurs later.

5. Prepare or cause to be prepared improvement plans, in accordance with the applicable CITY standards.

6. Prior to advertising PROJECT for public works construction contract, obtain all necessary permits, approvals, or agreements as may be required by any federal, state and local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT. Such documents, hereinafter called ("REGULATORY PERMITS"), may include, but are not limited to, those issued by the following regulatory agencies: U.S. Army Corps of

Engineers, California Regional Water Quality Control Board, California Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority.

7. Implement, or cause to be implemented, all environmental mitigation required in association with the construction, operation and maintenance of PROJECT, including the fees associated with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), which will be paid by CITY as set forth in Section I.15.

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

9. Following the signing of improvement plans by all Parties, invoice DISTRICT (Attention: Special Projects Section) for (i) the remaining fifty percent (50%) of DESIGN CONTRIBUTION. Upon request of DISTRICT, provide DISTRICT with a copy of the signed improvement plans, including a copy of the CITY's approved request for proposal and a detailed breakdown of the contract amount, and if applicable, the associated design contract administration cost.

10. After complying with Sections I.1 through I.9, advertise a public works construction contract for PROJECT pursuant to the applicable provisions of the California Public Contract Code.

11. 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.

12. Following DISTRICT's review period set forth in Section I.11, if DISTRICT has not rejected the bids for construction of PROJECT, 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 PROJECT plans, specifications, bid documents and any subsequent addenda thereto. CITY shall endeavor to award a public works construction contract for PROJECT and begin construction within thirty-six (36) months of execution of this Agreement

13. Provide DISTRICT with written notice (Attention: Special Projects Section and Construction Management Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the CITY contractor's actual bid amounts for PROJECT, setting forth the lowest responsible bid contract amount.

14. At the time of providing written notice of the award of a construction contract for PROJECT, as set forth in Section I.13, invoice DISTRICT (Attention: Special Projects Section) for CONSTRUCTION CONTRIBUTION. CONSTRUCTION CONTRIBUTION shall be supported by a copy of CITY's bid abstracts for PROJECT.

15. Within thirty (30) days of CITY awarding PROJECT, pay the Western Riverside County Regional Conservation Authority ("RCA") the mitigation fee for PROJECT, per the 2004 Implementing Agreement for the Western Riverside County MSHCP.

16. Construct or cause to be constructed PROJECT, pursuant to a CITY administered public works construction contract, in accordance with improvement plans.

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

18. Procure or cause 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.

19. 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.

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

21. Upon completion of PROJECT construction, provide DISTRICT (Attention: Special Projects Section) with a copy of CITY's recorded Notice of Completion. The recorded Notice of Completion, final accounting of all PROJECT construction costs as set forth in Section I.3.C shall be provided upon request of DISTRICT.

22. Keep an accurate accounting of all PROJECT costs along with CITY's CONSTRUCTION CHANGE ORDERS. 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 CITY approved improvement plans.

23. Upon Notice of Completion, invoice DISTRICT for CONSTRUCTION MANAGEMENT and, if applicable, CHANGE ORDERS CONTRIBUTION for DISTRICT review. Notwithstanding, DISTRICT CONTRIBUTION shall not exceed a total sum of Four

Million Two Hundred Thirty-One Thousand Seven Hundred Eighty-One Dollars (\$4,231,781.00) for PROJECT.

SECTION II

DISTRICT shall:

1. Pay CITY, within thirty (30) calendar days after receipt of CITY's invoice for fifty percent (50%) of DESIGN CONTRIBUTION as set forth in Section I.4.
2. Pay CITY, within thirty (30) calendar days after receipt of CITY's invoice for (i) remainder of DESIGN CONTRIBUTION as set forth in Sections I.3.A and I.9.
3. 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.
4. Pay CITY, within thirty (30) calendar days after receipt of CITY's invoice for CONSTRUCTION CONTRIBUTION as set forth in Section I.14.
5. Upon receipt of CITY's recorded Notice of Completion as set forth in Section I.21, pay CITY, within thirty (30) calendar days after receipt of CITY's invoice, for CONSTRUCTION MANAGEMENT and CHANGE ORDERS CONTRIBUTION, as set forth in Section I.23.
6. DISTRICT CONTRIBUTION shall not exceed a total sum of Four Million Two Hundred Thirty-One Thousand Seven Hundred Eighty-One Dollars (\$4,231,781.00) for PROJECT.

SECTION III

Indemnification:

1. CITY shall indemnify, defend and hold harmless, and require CITY's construction contractor(s) to indemnify, defend and hold harmless, DISTRICT, and County of Riverside (including their, 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 and CITY's construction contractor(s), CITY's officers, employees, subcontractors, agents or representatives ("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 CITY and CITY's construction contractor(s), CITY's 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.

2. With respect to any action or claim subject to indemnification herein by CITY or CITY's construction contractor(s), CITY or CITY's construction contractor(s) 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 only with prior consent of DISTRICT and the County of Riverside. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe CITY or CITY's construction contractor(s)

indemnification to Indemnitees as set forth herein.

3. CITY and CITY's construction contractor(s) obligation hereunder shall be satisfied when CITY or CITY's construction contractor(s) 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.

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

5. 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 or CITY's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

6. 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, ("Claims") 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) negligence or willful misconduct related to DISTRICT's performance under or failure to comply with this Agreement, but only in proportion and to the extent that the Claims were caused by DISTRICT.

SECTION IV

It is further mutually agreed:

1. Notwithstanding any other provision herein this agreement DISTRICT CONTRIBUTION shall not exceed a total sum of Four Million Two Hundred Thirty-One

Thousand Seven Hundred Eighty-One Dollars (\$4,231,781.00) 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. Should PROJECT require additional funding, CITY will have the option to seek and receive additional funding from DISTRICT for the construction of PROJECT contingent upon the availability of DISTRICT funds and DISTRICT budgetary approval.

2. In the event the actual construction cost for PROJECT is less than the lowest responsible bid contract amount, 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. 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.

5. Any waiver by DISTRICT or by CITY of any breach by the other Party 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 from the other Party exact, full and complete compliance with any

terms of this Agreement shall not be construed as in any manner changing the terms hereof or stopping DISTRICT or CITY from enforcement hereof.

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

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: Special Projects Section

CITY OF CORONA
755 Public Safety Way
Corona, CA 92878
Attn: Erin Kunkle
Business Supervisor
Utilities Department

8. 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.

9. This Agreement is the result of negotiations between the Parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

10. 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.

11. No Party shall assign this Agreement without the written consent of all other Parties. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

12. 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.

13. 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.

14. The obligation(s) 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 forthcoming 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. If CITY has executed any third party contracts for PROJECT prior to DISTRICT terminating this Agreement pursuant to this provision, DISTRICT shall compensate CITY for any work executed prior to DISTRICT terminating this Agreement.

15. 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.

16. 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.

17. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one 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 the CUETA as amended from time to time. The 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.

//

//

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:

COUNTY COUNSEL

KECIA HARPER
Clerk of the Board

By _____
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

By _____
Deputy

(SEAL)

Amended and Restated Funding Agreement: City of Corona
WRCRWA - Bluff Street Reclaimed Water Pipeline
Project No. 2-6-00993
08/31/22
AMR:blm

RECOMMENDED FOR APPROVAL**CITY OF CORONA**

By _____
TOM MOODY
 Director of Utilities

By _____
JACOB ELLIS
 City Manager

By _____
SAVAT KHAMPHOU
 Public Works Director

APPROVED AS TO FORM:**ATTEST:**

By _____
DEAN DERLETH
 City Attorney

By _____
SYLVIA EDWARDS
 City Clerk

(SEAL)

Amended and Restated Funding Agreement: City of Corona
 WRCRWA - Bluff Street Reclaimed Water Pipeline
 Project No. 2-6-00993
 08/31/22
 AMR:blm

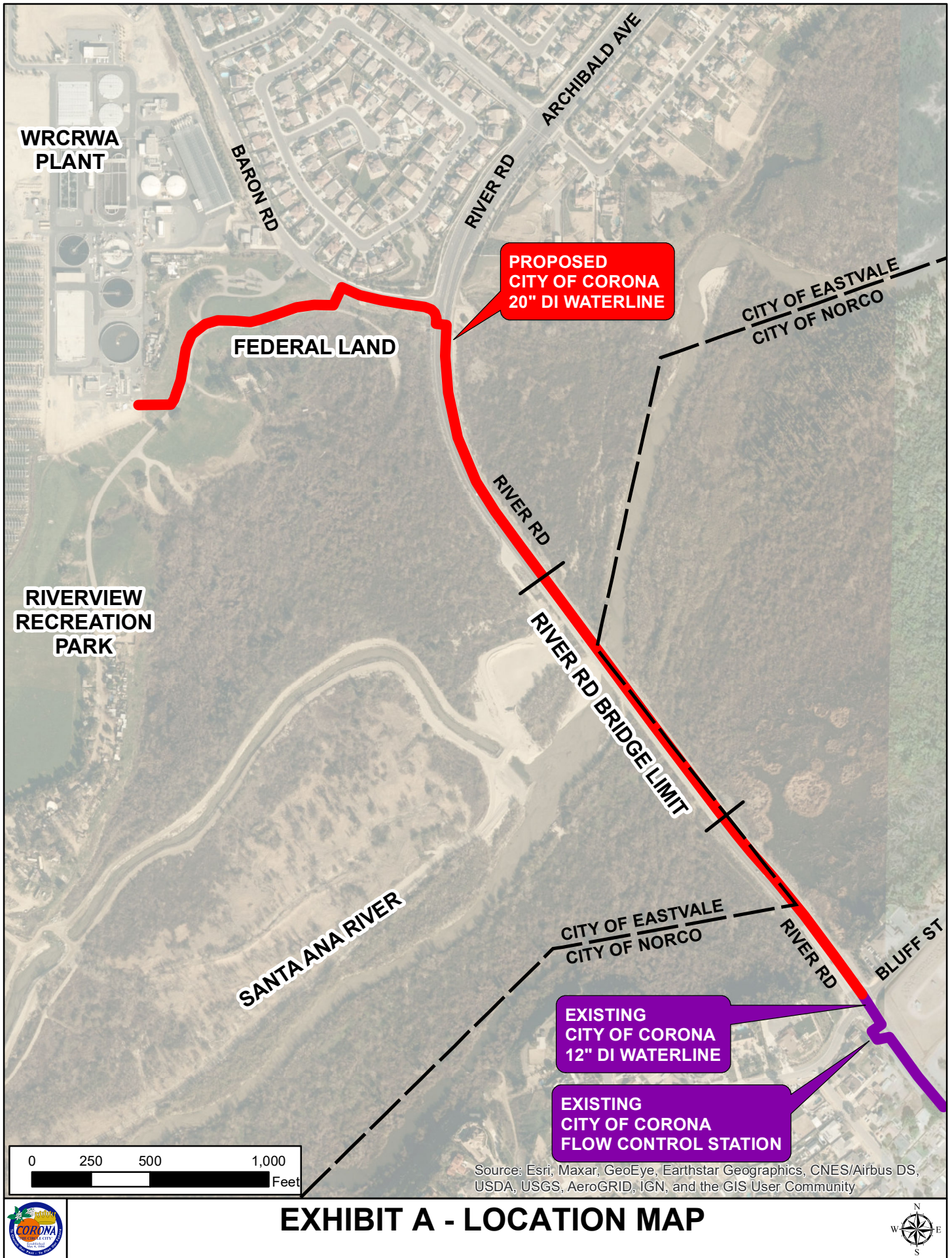


EXHIBIT B

DISTRICT's Insurance Requirements are as follows:

CITY's construction contractor(s) shall not commence operations until DISTRICT has been furnished with 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 as required in this Section.

Without limiting or diminishing CITY's construction contractor(s) obligation to indemnify or hold DISTRICT harmless, CITY's construction contractor(s) shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, 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:

A. Workers' Compensation:

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

B. Commercial General Liability:

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

C. Vehicle Liability:

If CITY's construction contractor(s) vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY's construction contractor(s) shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined

EXHIBIT B

single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insured.

D. Pollution and Asbestos Liability:

CITY's construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering CITY's construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the CITY's construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

CITY's construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the DISTRICT for review and approval. If CITY's construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by CITY's construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

In the event, CITY's construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, CITY's construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT and CITY, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated

EXHIBIT B

biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT and CITY.

CITY's construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

E. **Professional Liability:**

CITY's construction contractor(s) shall cause any architect or engineer retained by CITY's construction contractor(s) in connection with the performance of CITY's construction contractor(s) obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CITY's construction contractor(s) shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as the law allows.

F. **General Insurance Provisions – All Lines:**

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. The CITY's construction contractor(s) must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, CITY's construction

EXHIBIT B

contractor(s) carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- c. CITY's construction contractor(s) shall cause their insurance carrier(s) to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If CITY's construction contractor(s) insurance carrier(s) policies does not meet the minimum notice requirement found herein, CITY's construction contractor(s) shall cause CITY's construction contractor(s) insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
- e. It is understood and agreed by the parties hereto that CITY's construction contractor(s) insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will

EXHIBIT B

add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by CITY's construction contractor(s) has become inadequate.

- g. CITY's construction contractor(s) shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. CITY's construction contractor(s) agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.