



Contract Number

SAP Number

San Bernardino County

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|---|---|
| Department Contract Representative | <u>Noel Castillo</u> |
| Telephone Number | <u>(909) 387-7906</u> |
| Contractor | <u>San Bernardino County Flood Control District</u> |
| Contractor Representative | <u>Noel Castillo</u> |
| Telephone Number | <u>(909) 387-7906</u> |
| Contract Term | <u>06/25/24 – 06/30/27</u> |
| Original Contract Amount | <u>\$6,000,000</u> |
| Amendment Amount | <u> </u> |
| Total Contract Amount | <u>\$6,000,000</u> |
| Cost Center | <u>1930002526</u> |

IT IS HEREBY AGREED AS FOLLOWS:

LOAN AGREEMENT

THIS AGREEMENT, dated as of June 25, 2024 (“Effective Date”), is by and between San Bernardino County (“County”) and the San Bernardino County Flood Control District (“District”), for the purpose of providing a loan to the District to assist with financing construction costs for the Elder Creek Channel Improvement Project (“Project”) in the City of Highland. The County and the District are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City of Highland has faced significant challenges with flooding north of Greenspot Road, particularly during more intense storm events, including the December 2010 storm event. During this storm, box culverts at Merris Street and Abbey Way became plugged with mud flows due to elevated water levels at the Elder Creek outlet. This resulted in debris buildup in the channel causing Elder Creek flows to shift westward. The property damage south of Greenspot Road was severe, with debris flows reaching depths of approximately 3 feet. The primary concerns identified were backflow and ponding, requiring urgent attention. In response, the District proposed the Project to improve the existing drainage facility to handle runoff from a 100-year storm event within District jurisdiction south of Greenspot Road.

- B. An increased cost estimate for the Project, increased maintenance expenses in District Zone 3 (Zone 3), the addition of new emergency projects in Zone 3, and increased costs to other projects in Zone 3 has led to a delay in the Project's timeline and funding allocation.
- C. In order to proceed with this priority Project in a timely manner, the District requires financial assistance from the County.
- D. Through this Agreement, and subject to the terms and conditions herein, the County desires to provide financial assistance to the District to assist with Project construction costs in the form of a loan in the amount of Six Million Dollars (\$6,000,000).

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

SECTION 1. FINANCING

1.1. The County hereby agrees to loan from its funds, and District hereby agrees to borrow, the amount of Six Million Dollars (\$6,000,000) (referenced herein as "County Loan") for Project construction costs, subject to the terms and conditions set forth in this Agreement.

1.2 The District's obligation to repay the County Loan shall be evidenced by the unsecured Promissory Note attached hereto as **Exhibit A**.

1.3 The County Loan shall bear interest at the rate earned by the County's pooled investments as determined by the Treasurer-Tax Collector. Simple Interest shall commence from the date of the disbursement of any amounts pursuant to this Agreement.

SECTION 2. PAYMENT

2.1 Any outstanding balance plus interest under the County Loan shall be paid with any available source of funds from the District including but not limited to property tax revenue, grant revenue, revenue received from fees and services, and available reserve funds.

2.2 In the event that the District has not repaid the loan by June 30, 2027, the County shall have the right to cause all indebtedness of the District to the County under this Agreement to become immediately due and payable. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code. The District shall be liable to pay the County on demand all expenses, costs and fees (including reasonable attorneys' fees) paid in connection with the collection of the County Loan.

SECTION 3. INSURANCE AND INDEMNIFICATION

3.1 County and District warrant each is a self-insured public entity under a State approved program of self-insurance.

3.2 County agrees to indemnify, defend (with counsel approved by District) and hold harmless the District and its officers, employees, agents and volunteer from any and all claims, actions, losses, damages and/or liability arising out of the County's obligations under this Agreement.

3.3 District agrees to indemnify, defend (with counsel approved by County) and hold harmless the County and the District's officers, employees, agents and volunteer from any and all claims, actions, losses, damages and/or liability arising out of its obligations under this Agreement.

3.4 In the event that the County and/or District are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, each shall indemnify the other to the extent of its comparative fault.

SECTION 4. GENERAL PROVISIONS

4.1 The District irrevocably appoints, designates, and authorizes the County as its agent (said agency being coupled with an interest) to file for record any notices that the County deems necessary or desirable to protect its interest hereunder and under the County Loan.

4.2 The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties or liabilities of the parties hereunder, or the disbursements of any proceeds of the County Loan.

4.3 This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

4.4 Where an approval or submission is required under this Agreement, such approval, or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of either party, such approval may be given by the Chief Executive Officer or his or her designee who may, in his or her sole discretion, submit such approval or consent for consideration by County Counsel.

4.5 This Agreement may not be changed orally, but only by agreement in writing signed by the parties to this Agreement.

4.6 The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

4.7 This Agreement, including recitals, constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this Agreement, and this Agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

4.8 This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

SAN BERNARDINO COUNTY

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT



Dawn Rowe, Chair, Board of Supervisors

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____

By _____

Deputy

Deputy

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by District



Sophie A. Curtis, Deputy County Counsel



Andy Silao, P.E.



Noel Castillo, Chief Flood Control Engineer

Date _____

Date _____

Date _____

EXHIBIT "A"

Promissory Note Secured by Deed of Trust

On June 25, 2024 for value received, the undersigned San Bernardino County Flood Control District (the "Borrower") promises to pay to San Bernardino County (the "Holder"), on or before June 30, 2027, the principal sum of Six Million (\$6,000,000) with interest on the unpaid principal balance from June 25, 2024, until paid, at the rate earned by the Holder's pooled investments as determined by the Treasurer-Tax Collector quarterly.

All payments hereunder shall be made in lawful money of the United States of America. The undersigned may repay this Note, in whole or in part, principal or interest at any time without penalty.

If the Holder of this Note prevails in a lawsuit to collect on it, the Borrower agrees to pay the Holder's attorney fees in an amount the court finds to be just and reasonable.

Borrower and Holder agree that until such time as the principal and interest owed under this Note are paid in full, the Note shall be secured by a Deed of Trust to real property commonly known as existing Elder Creek Channel [Assessor's Parcel Nos. 121021102, 121020133, 121020134, 121020136, 121020139, 121020140, 121020141, and 121020142] to San Bernardino County.

BORROWER:
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

HOLDER:
SAN BERNARDINO COUNTY:
