



Contract Number

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	Michael Fam
Telephone Number	909-387-8120
Contractor	City of Twentynine Palms
Contractor Representative	Larry Bowden, Interim City Manager
Telephone Number	(760) 367-6799
Contract Term	8/20/2024– 8/20/2027
Original Contract Amount	\$4,700,000
Amendment Amount	0
Total Contract Amount	\$4,700,000
Cost Center	1960002540 – F02879 – Zone 6
Grant Number (if applicable)	

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH

WHEREAS, the San Bernardino County Flood Control District, (**DISTRICT**) and the City of Twentynine Palms (**CITY**), are signatories to this **AGREEMENT**, and may hereinafter be individually referred to as a “**PARTY**” and, collectively referred to as the “**PARTIES**”; and

WHEREAS, the **PARTIES** desire to cooperate and facilitate the construction of their respective proposed projects that include **CITY**’s improvements to the Split Rock Avenue Bridge (**BRIDGE PROJECT**) across the **DISTRICT**’s Twentynine Palms Channel and the construction of drainage improvements to the Twentynine Palms Channel (**CHANNEL PROJECT**), and may hereinafter be collectively referred to as “**PROJECTS**”; and

WHEREAS, the **CHANNEL PROJECT** is the construction of a trapezoidal rock-lined channel from the centerline of Split Rock Avenue, extending approximately from the Donnell Basin outlet west and 287 feet east along the Twentynine Palms Channel; and

WHEREAS, the **DISTRICT** owns and operates Donnell Basin and the Twentynine Palms Channel, both of which facilities serve as a major drainage course and flood control system for the area; and

WHEREAS, the **DISTRICT** is developing, funding, and constructing a regional drainage facility, generally referred to as the Donnell Basin Improvement Project, located within the incorporated area of the **CITY**, north of Twentynine Palms Highway between Mesquite Springs Road and Split Rock Avenue; and

WHEREAS, the **CHANNEL PROJECT** has been recognized as a regional Flood Protection Facility, and the funding was recommended as part of the **DISTRICT's** Zone 6 Priority Project List and Ten-Year Construction Funding Program per the **CITY** request; and

WHEREAS, the **CITY** shall serve as lead agency to process all necessary environmental documents and obtain all requisite environmental clearances and mitigation, at the **CITY's** cost. Notwithstanding anything to the contrary herein, the commencement of construction of the **CHANNEL PROJECT** is contingent on the **CITY's** completion of CEQA, the **CITY's** satisfaction of any and all regulatory requirements, including mitigation, and the **DISTRICT** Board of Supervisors' responsible agency findings. **CITY** shall not proceed with construction of the **CHANNEL PROJECT** until the **DISTRICT** Board of Supervisors has made the requisite responsible agency findings under CEQA and authorized the **CHANNEL PROJECT** to proceed; and

WHEREAS, the **DISTRICT** agrees to reimburse **CITY** for estimated **CHANNEL PROJECT** costs associated with the construction of a trapezoidal rock-lined channel from the centerline of Split Rock Avenue, extending approximately from the Donnell Basin outlet to the west and 287 feet to the east along the Twentynine Palms Channel; and

WHEREAS, **DISTRICT** estimates that the **CHANNEL PROJECT** shall cost approximately \$3,760,000 to construct; and

WHEREAS, the **PARTIES** agree that the **DISTRICT** will fund the estimated **CHANNEL PROJECT** construction costs by reimbursing the **CITY** the estimated **CHANNEL PROJECT** cost, in an amount not to exceed Three Million Seven Hundred and Sixty Thousand Dollars (\$3,760,000), plus an additional amount, not to exceed 25% of the **DISTRICT's** estimated **CHANNEL PROJECT** cost towards pre-approved contingency costs (\$940,000); and

WHEREAS, **CITY** is willing to advance the cost of constructing the **CHANNEL PROJECT**, subject to reimbursement by **DISTRICT** as set forth herein; and

WHEREAS, the **BRIDGE PROJECT** is delineated on the plan set on file with the **DISTRICT** under Permit Number P-62018034; and

WHEREAS, Split Rock Avenue is a **CITY**-maintained road providing public access; and

WHEREAS, the **PARTIES** desire to set forth their respective responsibilities and obligations regarding construction of the **PROJECTS**.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION I

1.0 CITY AGREES TO:

- 1.1 Act as the Lead Agency to process all necessary environmental documents, including but not limited to compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The **CITY** shall be solely responsible for the cost of obtaining all necessary environmental clearances and environmental permits, including any and all mitigation required by the regulatory agencies, for the construction of the **PROJECTS**, including the **CHANNEL PROJECT**. Notwithstanding anything to the contrary herein, the commencement of construction of the **CHANNEL PROJECT** is contingent on the **CITY's** completion of CEQA, the **CITY's** satisfaction of any and all regulatory requirements, including mitigation, the **DISTRICT** Board of Supervisors' (**BOARD**) responsible agency findings, and the **BOARD's** authorization to move the **CHANNEL PROJECT** forward. **CITY** shall not proceed with construction of the **CHANNEL PROJECT** until the **BOARD** has made the requisite responsible agency findings under **CEQA** and authorized the **CHANNEL PROJECT** to proceed.
- 1.2 (1) Prepare engineering plans, specifications, engineer's estimates, and right-of-way related documents and (2) conduct all construction administration, including advertisements for bids, bid reviews, contract awards, construction, and all other needed inspections of the **PROJECTS**.
- 1.3 Submit to **DISTRICT** engineering plans, specifications, engineer's cost estimate, invoices and progress reports regarding the portion of the **PROJECTS** which are within **DISTRICT's** right-of-way for review and approval. **CITY** shall not commence advertising for the **BRIDGE PROJECT** contract bids until **DISTRICT** has reviewed and approved the engineering plans, specifications, and engineer's cost estimate for the portion of the **BRIDGE PROJECT** which is within **DISTRICT's** right-of-way in writing. **CITY** shall not commence advertising for the **CHANNEL PROJECT** contract bids until the satisfaction of the preconditions set forth in Section 1.1 and the **DISTRICT** has reviewed and

approved the engineering plans, specifications, and engineer's cost estimate for the **CHANNEL PROJECT** in writing.

- 1.4 Provide notification to the **DISTRICT** of any meetings related to the **PROJECTS** and schedule project development meetings periodically before and during construction to ensure that **DISTRICT** has the opportunity to be represented.
- 1.5 Provide **DISTRICT** with copies of all reports and other technical documents related to the **PROJECTS** and allow **DISTRICT** to comment prior to accepting or finalizing such report or document.
- 1.6 Construct the **CHANNEL PROJECT** from the centerline of Split Rock Avenue, extending approximately from the Donnell Basin outlet to the west and 287 feet to the east along the Twentynine Palms Channel.
- 1.7 Construct the **BRIDGE PROJECT** and related road improvements at the **CITY's** sole cost.
- 1.8 Arrange for relocation of any utilities that may interfere with construction of the **PROJECTS** within the **PROJECTS'** sites.
- 1.9 Ensure **PROJECTS** are constructed in accordance with the plans and specifications approved by the **DISTRICT**.
- 1.10 Enter into construction contract(s) with contractor(s) for the **PROJECTS**.
- 1.11 Advertise, award, administer, and fund construction of the **PROJECTS** in accordance with the applicable provisions of the California Public Contract Code and all other applicable State laws, including, but not limited to, the California Civil and Labor Codes.
- 1.12 Perform inspections of all items of work performed under the construction contract(s) with the **CITY's** contractor or subcontractors for the **PROJECTS** and maintain adequate records of inspection and materials testing made available for review to **DISTRICT**. The **CITY** shall provide copies of all records of inspection including inspection notes and materials testing to **DISTRICT** within ten (10) business days of the **CITY's** receipt of written request from the **DISTRICT** for such records.
- 1.13 Submit quarterly progress reports to accompany or precede the quarterly invoices to meet the **DISTRICT's** requirement for reimbursement of funds. The progress reports shall be sent via email to the **DISTRICT's** Engineering Manager. The progress reports shall provide a brief description of the work performed during the reporting period including activities, milestones achieved, major accomplishments, and any problems encountered in the construction of the **CHANNEL PROJECT**.
- 1.14 Submit quarterly invoices to the **DISTRICT** for costs incurred on the **CHANNEL PROJECT**, which invoices shall include, at minimum, the following information:

- a. Costs incurred for work performed in implementing the **CHANNEL PROJECT** during the period identified in the particular invoice.
- b. Invoices submitted shall meet the following format requirements:
 1. Cover letter with signature from the responsible **CITY** official.
 2. Invoice must contain date of invoice, time period covered by the invoice, and the total amount due.
 3. A cost breakdown in table format with Vendor (Contractor, Invoices, and Staff Time), description of costs, total costs for each line item and the **DISTRICT's** cost share for every invoice.
 4. Invoices must be itemized.
 5. Sufficient backup documentation (e.g. receipts, copies of checks, time sheets, labor reports, cost accounting reports) as determined by the **DISTRICT** must be provided to support all charges and all costs included in the invoice. Additional cost share shall be accounted for separately in the progress reports.
- c. Cost incurred for the relocation of any utility associated with **CHANNEL PROJECT** (i.e. outside of the Split Rock Avenue Bridge footprint) before or during construction.
- d. Invoices shall be issued with a net sixty (60) calendar day payment term with the corresponding Agreement number stated on the invoice.
- e. Submit the original, signed, invoice to the following address:

Michael Fam, Engineering Manager
San Bernardino County Flood Control District
825 East Third Street, Room 122
San Bernardino, CA 92415-0835

- 1.15 Complete the **PROJECTS** no later than August 20, 2027, barring delays due to force majeure events. This date is established as the reasonable end date for the timely completion of the **PROJECTS**.
- 1.16 Upon completion of the **BRIDGE PROJECT**, **CITY** shall own, operate and maintain the local drainage improvements, including all catch basins and all manhole covers and appurtenances for the **PROJECTS**, and shall indemnify **DISTRICT** pursuant to Section 3.3.1.
- 1.17 Except in instances of emergencies, issue a no-fee permit to **DISTRICT** when the **DISTRICT** submits to the **CITY** Engineer, at least sixty (60) days in advance, plans for any proposed construction and/or maintenance of the **CHANNEL PROJECT** which requires a **CITY** road closure.
- 1.18 In instances of emergencies, **DISTRICT** may perform work on the **CHANNEL PROJECT** during the construction of the **PROJECTS** and shall notify the **CITY** of emergency work.

- 1.19 Except in instances of emergencies, the **CITY** agrees to obtain a no-fee permit from the **DISTRICT** by submitting to the **DISTRICT** at least sixty (60) days in advance, plans for any proposed construction and/or maintenance of the street, lateral connections to the **CHANNEL PROJECT** and manhole covers and appurtenances within the **CHANNEL PROJECT** area.
- 1.20 In instances of emergencies, the **CITY** may perform work on the streets, and manhole covers and appurtenances, but shall immediately notify the **DISTRICT** of the emergency work.
- 1.21 Obtain a no-cost encroachment permit from **DISTRICT** for all construction work for the **PROJECTS** within **DISTRICT**-owned land, **DISTRICT** right-of-way.
- 1.22 Require all contractors and vendors working on the **PROJECTS** to have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the San Bernardino County Flood Control District (**DISTRICT**) and San Bernardino County (**COUNTY**) and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsement shall not limit the scope of coverage for the **DISTRICT** and **COUNTY** to vicarious liability but shall allow coverage for the **DISTRICT** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2020.11 85. If not self-insured, the CITY shall require the carriers of required coverage to waive all rights of subrogation against the **DISTRICT**, **COUNTY**, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CITY and its employees or agents from waiving the right of subrogation prior to a loss or claim. The CITY hereby waives all rights of subrogation against the **DISTRICT** and/or **COUNTY**.
- 1.23 **CITY** shall include the following in all **PROJECTS** contracts:

The Contractor agrees to indemnify, defend (with counsel reasonably approved by San Bernardino County Flood Control District (**DISTRICT**)) and hold harmless the **DISTRICT**, San Bernardino County and their authorized officers, employees, agents and volunteers (the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "active" as well

as “passive” negligence but does not apply to the Indemnitee’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

- 1.24 Bid and Contract Documents. **CITY** shall (1) name the **DISTRICT** as an express third-party beneficiary in all of the construction contracts relating to the **PROJECTS**, (2) require the contractor(s) to provide Performance and Payment Bonds for each phase of the **PROJECTS** in an amount not less than 100% of the amount of that particular phase of the **PROJECTS** which bonds shall name the **DISTRICT** as an obligee, and (3) include the **DISTRICT** and San Bernardino County as an additional insured on all insurance provided by the contractor(s) for the **PROJECTS**, as set forth in Section 1.22 above. The Performance Bond obtained for the **PROJECTS** shall be in a form approved by the **DISTRICT** if the **CITY** does not utilize the **DISTRICT’s** standard Performance Bond form. **CITY** shall provide **DISTRICT** the proposed bid and contract documents for the **PROJECTS**, including the proposed bond forms, for the **DISTRICT’s** review and approval no less than ten (10) business days prior to the proposed day for the publication of the notice inviting bids. The Payment and Performance Bonds shall be delivered to **DISTRICT** prior to the commencement of any work on **PROJECTS**.
- 1.25 Provide to the **DISTRICT**, upon completion of **PROJECTS**, one (1) electronic set of “Record Drawings” of the **PROJECTS**.
- 1.26 Provide to **DISTRICT**, upon completion and written acceptance by the **DISTRICT** of the **PROJECTS**, a final accounting of actual total **PROJECTS** costs incurred.
- 1.27 Retain or cause to be retained for audit by **DISTRICT** or other government auditors for a period of three (3) years from the date of the final payment, all records and accounts relating to the **PROJECTS**.
- 1.28 Maintain all current and future Split Rock Avenue Road and bridge improvements, including, but not limited to, keeping the area free of weeds, trash, graffiti, unauthorized encroachments and trespassers, within the public road right of way and below the Split Rock Avenue Bridge that lies below the deck of the road.

SECTION II

2.0 **DISTRICT AGREES TO:**

- 2.1 Pay to the **CITY** the estimated **CHANNEL PROJECT** construction cost, based on the quarterly invoices identified in Section 1.14, in an amount not to exceed \$3,760,000, plus an additional amount for pre-approved contingency costs, not to exceed 25% of the estimated **CHANNEL PROJECT** cost (\$940,000). The **DISTRICT’s** total funding participation under this **AGREEMENT** shall not exceed 125% of \$3,760,000, or \$4,700,000, which includes pre-approved contingency funds.

- 2.2 Pay the progress payments to the **CITY** on a quarterly basis. All progress payments will be subject to review and approval by the **DISTRICT**, as identified in Section 1.14.
- 2.3 Payment to **CITY** shall be within sixty (60) calendar days of invoicing. All payments shall be made via electronic funds transfer (EFT) directly deposited into **CITY'S** designated checking or another bank account. **DISTRICT** shall promptly comply with directions and accurately complete forms provided to process EFT payments
- 2.4 Prior to construction, the **DISTRICT** shall review and provide written comments or approval of the plans for construction of the **CHANNEL PROJECT** within (15) business days from the receipt thereof from the **CITY**. In the event that the **DISTRICT** provides the **CITY** with comments to the plans, the **DISTRICT** shall review any resubmittals from the **CITY** within ten (10) business days of resubmittals by the **CITY** and either provide further comments or written approval to the **CITY**. The **DISTRICT** shall review and approve (or provide written comments) any bid package and/or contract documents within ten (10) business days of being provided with the documents by **CITY** staff.
- 2.5 Prior to the commencement of construction, the **DISTRICT** shall issue no-cost construction or encroachment permits to the **CITY** as necessary for all work for the **PROJECTS** within **DISTRICT**-owned land, **DISTRICT** right-of-way.
- 2.6 The **DISTRICT's** Chief Flood Control Engineer or his or her designee, is authorized to review and approve the documents identified in Section 2.4.
- 2.7 The **DISTRICT** shall designate an inspector for the **CHANNEL PROJECT**. The **CITY** shall ensure that the **DISTRICT's** inspector has site access, is included in **CHANNEL PROJECT** meetings, and is timely provided with construction documentation, including materials testing results, and any other documentation as may requested by the **DISTRICT** inspector.
- 2.8 Maintain the **CHANNEL PROJECT** upon completion and written acceptance of the **CHANNEL PROJECT** by the **DISTRICT**.
- 2.9 Notwithstanding anything to the contrary herein, under no circumstances shall the **DISTRICT** be responsible for the cost of obtaining the necessary environmental clearances and environmental permits, including any and all mitigation required by the regulatory agencies, for the construction of the **PROJECTS**, including the **CHANNEL PROJECT**. Notwithstanding anything to the contrary herein, the commencement of construction of the **CHANNEL PROJECT** and **DISTRICT's** payment obligations for such construction are contingent on the **CITY's** completion of CEQA, the **CITY's**

satisfaction of any and all regulatory requirements, including mitigation, the **BOARD's** responsible agency findings, and the **BOARD's** authorization to move the **CHANNEL PROJECT** forward.

SECTION III

3.0 IT IS FURTHER UNDERSTOOD AND AGREED:

The Effective Date of the **AGREEMENT** shall be the first date upon which both the **BOARD** and **CITY's** Council have approved the **AGREEMENT**.

3.2 Except with respect to the **PARTIES'** operation, maintenance, and indemnification obligations contained herein, which shall survive the termination of this **AGREEMENT**, this **AGREEMENT** shall terminate on August 20, 2027, unless otherwise earlier terminated as set forth herein.

3.3 Indemnification and Insurance

3.3.1 The **CITY** agrees to indemnify, defend (with counsel reasonably approved by the **DISTRICT**) and hold harmless the **DISTRICT, COUNTY** and their authorized officers, employees, agents, consultants and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this **AGREEMENT** and construction of the **PROJECTS** from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the **DISTRICT** and/or the **COUNTY** on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The **CITY's** indemnification obligation applies to the **DISTRICT's** and **COUNTY'S** "active" as well as "passive" negligence but does not apply to the **DISTRICT's** and/or **COUNTY'S** "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

3.3.2 The **DISTRICT** agrees to indemnify, defend (with counsel reasonably approved by the **CITY**) and hold harmless the **CITY** and it authorized officers, employees, agents, consultants and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this **AGREEMENT** and construction of the **PROJECTS** from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the **CITY** on account of any claim except where such indemnification is prohibited by law. This indemnification provisions shall apply regardless of the existence or degree of fault of indemnitees. The **DISTRICT's** indemnification obligation apply to **CITY's** "active" as well as "passive" negligence but does not apply to **CITY's** "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

3.3.3 Comparative Fault – In the event the **DISTRICT** and/or the **CITY** is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this **AGREEMENT**, the **DISTRICT** and the **CITY** shall indemnify the other to the extent of this comparative fault.

3.3.4 Self-Insurance – The **PARTIES** are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Worker’s Compensation and warrant that, through their respective programs of self-insurance and/or excess liability coverage, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this **AGREEMENT**.

3.4 Default Provisions

3.4.1 The **CITY** will be in default under this **AGREEMENT** if any of the following occur:

- a. Material breaches of the **AGREEMENT**, or any supplement or amendment to it.
- b. Making any false warranty, representation, or statement with respect to this **AGREEMENT**.
- c. Failure to make any remittance required by this **AGREEMENT**.
- d. Failure to submit timely progress reports.
- e. Failure to routinely invoice the **DISTRICT**.

Should an event of default occur, the **DISTRICT** shall provide written notice of default to the **CITY** and shall give the **CITY** at least thirty (30) calendar days to cure the default from the date the notice is sent via first-class mail to the **CITY**; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within the thirty (30) day period, the **CITY** shall not be deemed in default if it diligently commences such cure within such period and thereafter diligently proceed to rectify and cure said default as soon as possible. If the **CITY** fails to cure the default within the time prescribed by the **DISTRICT**, the **DISTRICT** may do any of the following:

- a. Terminate this **AGREEMENT**.
- b. Take any other action that it deems necessary to protect its interest.

If the **AGREEMENT** is terminated due to **CITY** default, the **DISTRICT** shall review all funds already spent by the **CITY**. The **CITY** shall provide a detailed accounting of expenditures to date. The **DISTRICT** may require the **CITY** to reimburse any funds that were spent on aspects of the **CHANNEL PROJECT** for which construction was not completed or do not contribute to the completion of the **CHANNEL PROJECT**. Any reimbursement requirements will be determined based on a review of the detailed accounting and the specific circumstances of the default.

- 3.4.2 The **DISTRICT** will be in default under this **AGREEMENT** if any of the following occur:
- a. Material breaches of this **AGREEMENT**, or any supplement or amendment to it.
 - b. Making any false warranty, representation, or statement with respect to this **AGREEMENT**.

Should an event of default occur, the **CITY** shall provide written notice of default to the **DISTRICT** and shall give the **DISTRICT** at least thirty (30) calendar days to cure the default from the date the notice is sent via first-class mail to the **DISTRICT**; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within the thirty (30) day period, the **DISTRICT** shall not be deemed in default if it diligently commences such cure within such period and thereafter diligently proceed to rectify and cure said default as soon as possible. If the **DISTRICT** fails to cure the default within the time prescribed by the **CITY**, the **CITY** may do the following:

- a. Terminate this **AGREEMENT**.
- b. Take any other action that it deems necessary to protect its interest.

3.5 Since the **PARTIES** or their agents have participated fully in the preparation of this **AGREEMENT**, the language of this **AGREEMENT** shall be construed simply; according to its fair meaning, and not strictly for any or against any **PARTY**. Any term referencing time, days or period for performance shall be deemed workdays. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this **AGREEMENT**.

3.6 No supplement, modification, or amendment of this **AGREEMENT** shall be binding unless executed in writing and signed by all **PARTIES**.

3.7 All notices, approvals, contents or other documents required or permitted under this **AGREEMENT** shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three days after deposit in the United States mail, certified, with first class postage fully prepaid, addressed as follows:

City of Twentynine Palms
6136 Adobe Road
Twentynine Palms, CA 92277
Attn: Larry Bowden, Interim City
Manager

San Bernardino County
Flood Control District
825 East Third Street, Room 122
San Bernardino, CA 92415-0835
Attn: Michael Fam, Engineering Manager

3.8 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a **PARTY** shall give the other **PARTY** any contractual rights by custom, estoppel, or otherwise.

3.9 This **AGREEMENT** shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this **AGREEMENT** invalid, illegal, or otherwise unenforceable. The remaining provisions shall continue in full force and effect, unless the purpose of this **AGREEMENT** is frustrated. Any dispute or action to enforce any obligation under this **AGREEMENT** shall be filed and resolved in the appropriate Superior Court in the County of San Bernardino, California. In the event of litigation arising from this **AGREEMENT**, each **PARTY** to the **AGREEMENT** shall bear its own costs, including attorney's fees. This provision concerning costs shall not apply to costs or attorney's fees relative to Section 3.3 of this **AGREEMENT**.

3.10 This **AGREEMENT** contains the entire **AGREEMENT** of the **PARTIES** with respect to the subject matter hereof, and supersedes all other prior negotiations, understandings, or contracts regarding the same. This **AGREEMENT** may only be modified in writing, signed by all **PARTIES**.

3.11 Time is of the essence for each and every provision of this **AGREEMENT**.

3.12 This **AGREEMENT** may be cancelled upon thirty (30) days prior written notice of any **PARTY**, provided however, that no **PARTY** may cancel this **AGREEMENT** without cause after **CITY** awards contract(s) to construct the **BRIDGE PROJECT** and/or the **CHANNEL PROJECT**.

3.13 The Recitals preceding the terms of this **AGREEMENT** are incorporated into the terms hereof by this reference and constitute constructive terms of this **AGREEMENT**.

3.14 This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of the **PARTIES**.

3.15 This **AGREEMENT** may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the **DISTRICT** and the **CITY** by their duly authorized officers, effective as of the date hereunder written.

**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

City of Twentynine Palms

(Print or type name of corporation, company, contractor, etc.)

► _____
Dawn Rowe, Chair

By ► _____
(Authorized signature - sign in blue ink)

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

Name Stone James

(Print or type name of person signing contract)

Title City Manager

(Print or Type)

By _____
Deputy

Dated: _____
Address 6136 Adobe Road
Twentynine Palms, CA 92277

FOR COUNTY USE ONLY

Approved as to Legal Form
► _____
Sophie A. Curtis, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
► _____
Andy Silao, P.E.
Date _____

Reviewed/Approved by District
► _____
Noel Castillo, Chief Flood Control Engineer
Date _____