

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

8623



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
September 1, 2009

**SUBJECT:** Perris Valley MDP – Lateral B-1, Stage 2  
Perris Valley MDP – Lateral B-1.2  
Project Nos. 4-0-00486-02 and 4-0-00483  
Parcel Map 35859; PA 07-0166 and PA 07-0167 (Moreno Valley)  
Cooperative Agreement

**RECOMMENDED MOTION:**

Approve the Cooperative Agreement between the District, the City of Moreno Valley and First Industrial, L.P. (Developer); and authorize the Chairman to execute the Agreement documents on behalf of the District.

**BACKGROUND:**

The Agreement sets forth the terms and conditions by which certain flood control facilities, required as a condition for approval of Parcel Map 35859, are to be constructed by the Developer and inspected, operated and maintained by the District.

Continued on Page 2

JPS:bjj

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

|                       |                             |     |                         |     |
|-----------------------|-----------------------------|-----|-------------------------|-----|
| <b>FINANCIAL DATA</b> | Current F.Y. District Cost: | N/A | In Current Year Budget: | N/A |
|                       | Current F.Y. County Cost:   | N/A | Budget Adjustment:      | N/A |
|                       | Annual Net District Cost:   | N/A | For Fiscal Year:        | N/A |

|                             |   |                          |
|-----------------------------|---|--------------------------|
| <b>SOURCE OF FUNDS:</b> N/A | <b>Positions To Be Deleted Per A-30</b> | <input type="checkbox"/> |
|                             | <b>Requires 4/5 Vote</b>                | <input type="checkbox"/> |

**C.E.O. RECOMMENDATION:** APPROVE

BY:   
Michael R. Shetler

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY:   
NEAL R. KIPNIS  
DATE

- Dept't Recomm.:  Consent  Policy
- Per Exec. Ofc.:  Consent  Policy

Prev. Agn. Ref.:

District: 5<sup>th</sup>

Agenda Number:

11.2

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBJECT:** Perris Valley MDP – Lateral B-1, Stage 2  
Perris Valley MDP – Lateral B-1.2  
Project Nos. 4-04-0-00486-02 and 4-0-00483  
Parcel Map 35859; PA 07-0166 and PA 07-0167 (Moreno Valley)  
Cooperative Agreement

**SUBMITTAL DATE:** September 1, 2009  
**Page 2**

**BACKGROUND (continued):**

The Agreement is necessary to provide for District construction inspection of the referenced facilities associated with Parcel Map 35859. Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the mainline storm drains. The City will assume ownership, operation and maintenance of the associated catch basins, laterals and connector pipes located within its rights of way.

County Counsel has approved the Agreement as to legal form and both the City and the Developer have executed the Agreement.

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs will accrue to the District.

JPS:blj

COOPERATIVE AGREEMENT

Perris Valley MDP – Lateral B-1, Stage 2

Perris Valley MDP – Lateral B-1.2

(Project Nos. 4-0-00486-02 and 4-0-00483)

(Parcel Map 35859) (PA 07-0166 and PA 07-0167)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MORENO VALLEY, hereinafter called "CITY", and FIRST INDUSTRIAL, L. P., a Delaware limited partnership, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Parcel Map 35859 (CITY Case Nos. PA 07-0166 and PA 07-0167) in the city of Moreno Valley and as a condition for approval DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The required flood control facilities, as shown on DISTRICT Drawing No. 4-954, include construction of (i) approximately 1,345 lineal feet of underground storm drain system, hereinafter called "LATERAL B-1, STAGE 2", as shown in concept in red on Exhibit "A", and (ii) approximately 1,330 lineal feet of underground storm drain system, hereinafter called "LATERAL B-1.2", as shown in concept in blue on Exhibit "A". Together, LATERAL B-1, STAGE 2 and LATERAL B-1.2 are hereinafter called "DISTRICT DRAINAGE FACILITIES". At its downstream terminus, LATERAL B-1, STAGE 2 connects to DISTRICT'S Perris Valley Master Drainage Plan (MDP) LATERAL B-1, STAGE 1, as shown in DISTRICT Drawing No. 4-838. At its downstream terminus, LATERAL B-1.2 connects to LATERAL B-1, STAGE 2. LATERAL B-1, STAGE 2 and LATERAL B-1.2 are recognized

1 components of DISTRICT'S Perris Valley MDP and drain into DISTRICT'S Perris Valley MDP  
2 Line B; and

3 C. LATERAL B-1, STAGE 2 and LATERAL B-1.2 are among the identified  
4 drainage improvements that are proposed to be financed through Community Facilities District  
5 No. 7 of the City of Moreno Valley, formed by CITY on June 24, 2008, under the authority of  
6 the Mello-Roos Community Facilities Act of 1982 to provide, among other things, a means of  
7 financing the construction of the subject drainage facilities; and  
8

9 D. Prior to the issuance of the first series of bonds for Community Facilities  
10 District No. 7 of the City of Moreno Valley, DISTRICT, CITY and DEVELOPER, together  
11 with additional parties that are not parties to this Agreement, anticipate entering into a separate  
12 Joint Community Facilities Agreement, hereinafter called the "CFD No. 7 JCFA", whereby the  
13 Community Facilities District No. 7 of the City of Moreno Valley will attempt to sell bonds for  
14 the purpose of reimbursing DEVELOPER for costs associated with the construction of  
15 DISTRICT DRAINAGE FACILITIES; and  
16

17 E. It is the intent of DISTRICT, CITY and DEVELOPER that this Agreement  
18 shall principally address matters pertaining to the design, construction and inspection of  
19 DISTRICT DRAINAGE FACILITIES and DISTRICT'S acceptance thereof for ownership,  
20 operation and maintenance. It is the intent of DISTRICT, CITY and DEVELOPER that CFD  
21 No. 7 JCFA shall principally address matters pertaining to formation of Community Facilities  
22 District No. 7 of the City of Moreno Valley and the procedures DEVELOPER must follow to  
23 obtain reimbursement from Community Facilities District No. 7 of the City of Moreno Valley  
24 for constructing DISTRICT DRAINAGE FACILITIES including, but not limited to, "public  
25 works" contracting requirements; and  
26  
27  
28

1 F. Associated with the construction of DISTRICT DRAINAGE FACILITIES  
2 is the construction of certain catch basins, inlets, laterals and connector pipes located within  
3 CITY held easements or rights of way, hereinafter called "APPURTENANCES". Together,  
4 DISTRICT DRAINAGE FACILITIES and APPURTENANCES are hereinafter called  
5 "PROJECT"; and

6 G. DEVELOPER and CITY desire DISTRICT to accept ownership and  
7 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.  
8 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications, and  
9 subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES; and  
10

11 H. DEVELOPER and DISTRICT desire CITY to accept ownership and  
12 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY  
13 must review and approve DEVELOPER'S plans, specifications and subsequently inspect the  
14 construction of PROJECT; and  
15

16 I. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and  
17 specifications for PROJECT, (ii) inspect the construction of DISTRICT DRAINAGE  
18 FACILITIES, and (iii) acquire ownership and assume responsibility for the operation and  
19 maintenance of DISTRICT DRAINAGE FACILITIES in accordance with the provisions of the  
20 anticipated CFD No. 7 JCFA, provided DEVELOPER (i) complies with this Agreement, (ii)  
21 pays DISTRICT the amounts specified herein to cover DISTRICT'S plan review and  
22 construction inspection costs, (iii) constructs PROJECT in accordance with plans and  
23 specifications approved by DISTRICT and CITY, (iv) obtains all necessary permits, regulatory  
24 permits, licenses and rights of entry as set forth herein, and (v) accepts ownership and  
25 responsibility for the operation and maintenance of PROJECT following completion of  
26 PROJECT construction until such time as DISTRICT accepts ownership and responsibility for  
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1 the operation and maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts  
2 ownership and responsibility for the operation and maintenance of APPURTENANCES; and

3 J. CITY is willing to (i) review and approve plans and specifications prepared  
4 by DEVELOPER for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold  
5 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT  
6 DRAINAGE FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain  
7 DISTRICT DRAINAGE FACILITIES within CITY rights of way, and (v) accept ownership  
8 and responsibility for the operation and maintenance of APPURTENANCES, provided  
9 PROJECT is constructed in accordance with plans and specifications approved by DISTRICT  
10 and CITY; and

11  
12 K. Additionally, in accordance with the provisions of the anticipated CFD No.  
13 7 JCFA, CITY is willing to (i) review and approve DEVELOPER'S bid documents prior to  
14 DEVELOPER'S award of a construction contract for PROJECT, and (ii) monitor  
15 DEVELOPER'S bidding and contract procedures for conformance with the applicable  
16 provisions of the Public Contract Code which apply to DISTRICT.  
17

18 NOW, THEREFORE, the parties hereto mutually agree as follows:

19 SECTION I

20 DEVELOPER shall:

21 1. Prepare PROJECT plans and specifications, as shown on District Drawing  
22 No. 4-954, hereinafter called "IMPROVEMENT PLANS", in accordance with DISTRICT and  
23 CITY standards, and submit to DISTRICT and CITY for their review and approval.  
24

25 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic  
26 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by  
27 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS  
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1 and with the processing and administration of this Agreement. Additionally, deposit with  
2 CITY, any and all such amounts as are deemed reasonably necessary by CITY to cover CITY'S  
3 costs associated with the review of IMPROVEMENT PLANS and with the processing and  
4 administration of this Agreement.

5           3. Deposit with DISTRICT (Attention: Business Office – Accounts  
6 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT  
7 DRAINAGE FACILITIES construction as set forth in Section I.8. herein, the estimated cost of  
8 providing construction inspection for DISTRICT DRAINAGE FACILITIES in an amount as  
9 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the  
10 County of Riverside, including any amendments thereto, based upon the bonded value of  
11 DISTRICT DRAINAGE FACILITIES to be inspected, operated and maintained by DISTRICT.  
12 Additionally, deposit with CITY (Attention: Public Works/Land Development), at the time of  
13 providing written notice to DISTRICT of the start of PROJECT construction as set forth in  
14 Section I.8., the estimated cost of providing construction inspection in an amount as determined  
15 and approved by CITY in accordance with the most recent City Code and Fee Resolution of  
16 CITY, including any amendments thereto.

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18  
19           4. [This Section Intentionally Left Blank.]

20           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
21 permits and rights of entry as may be needed for the construction, inspection, operation and  
22 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish  
23 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as  
24 set forth in Section I.8., with sufficient evidence of DEVELOPER having secured such  
25 necessary licenses, agreements, permits and rights of entry, as determined and approved by  
26 DISTRICT.  
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1           6.    Furnish DISTRICT with copies of all permits, approvals or agreements  
2 required by any Federal or State resource and/or regulatory agency for the construction,  
3 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include  
4 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional  
5 Water Quality Control Board, California State Department of Fish and Game, and State Water  
6 Resources Control Board.

7  
8           7.    Provide CITY, prior to providing written notice to DISTRICT of the start  
9 of construction as set forth in Section I.8., with a faithful performance bond in the amount of  
10 one hundred percent (100%) of the estimated cost for construction of DISTRICT DRAINAGE  
11 FACILITIES as determined by DISTRICT and a material and labor bond in the amount of fifty  
12 percent (50%) of the estimated cost for construction of DISTRICT DRAINAGE FACILITIES  
13 as determined by DISTRICT. The surety, amount and form of the bonds shall be subject to the  
14 approval of DISTRICT and CITY. The bonds shall remain in full force and effect until  
15 DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete; at which time  
16 the faithful performance bond amount may be reduced to ten percent (10%) for a period of one  
17 year to guarantee against any defective work, labor or materials.

18  
19           8.    Notify DISTRICT in writing (Attention: Administrative Services Section)  
20 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE  
21 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE  
22 FACILITIES for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written  
23 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT  
24 DRAINAGE FACILITIES.

25  
26           9.    Grant DISTRICT, by execution of this Agreement, the right to enter upon  
27 DEVELOPER'S property where necessary and convenient for the purpose of gaining access to,  
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1 and performing inspection service for, the construction of DISTRICT DRAINAGE  
2 FACILITIES as set forth herein.

3 10. [This Section Intentionally Left Blank.]

4 11. [This Section Intentionally Left Blank.]

5 12. No less than thirty (30) days prior to advertising for bids for construction of  
6 PROJECT, provide CITY with a copy of DEVELOPER'S bid solicitation documents for review  
7 and approval in conformance with the applicable provisions of the Public Contract Code which  
8 apply to DISTRICT.  
9

10 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
11 the start of construction as set forth in Section I.8., with a complete list of all contractors and  
12 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the  
13 corresponding license number and license classification of each. At such time, DEVELOPER  
14 shall further identify in writing its designated superintendent for DISTRICT DRAINAGE  
15 FACILITIES construction.  
16

17 14. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
18 the start of construction as set forth in Section I.8., a construction schedule which shall show the  
19 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry on the  
20 various parts of work, including estimated start and completion dates. As construction of  
21 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction  
22 schedule as requested by DISTRICT.  
23

24 15. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign  
25 their ownership to DISTRICT prior to the start of DISTRICT DRAINAGE FACILITIES  
26 construction.  
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1           16. Not permit any change to or modification of IMPROVEMENT PLANS  
2 without the prior written permission and consent of DISTRICT.

3           17. Comply with all Cal/OSHA safety regulations including regulations  
4 concerning confined space and maintain a safe working environment for DEVELOPER and  
5 DISTRICT employees on the site.

6           18. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
7 the start of construction as set forth in Section I.8., a confined space entry procedure specific to  
8 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements  
9 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space  
10 Operations, Section 5157, Permit Required Confined Space and DISTRICT Confined Space  
11 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the  
12 issuance of a Notice to Proceed.  
13

14           19. Commencing on the date notice is given pursuant to Section I.8. and  
15 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and  
16 maintenance, DEVELOPER shall furnish or cause to be furnished, original certificates of  
17 insurance and policy endorsements naming DISTRICT, the County of Riverside (COUNTY)  
18 and CITY as additional insureds with respect to this Agreement and the obligations of  
19 DEVELOPER as set forth herein. Without limiting or diminishing DEVELOPER'S obligation  
20 to indemnify or hold DISTRICT and CITY harmless pursuant to Section IV.7 hereof,  
21 DEVELOPER shall procure and maintain or cause to be procured and maintained, at its sole  
22 cost and expense the following insurance coverage or alternate coverage acceptable to  
23 COUNTY'S Risk Manager:  
24  
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26           (a) *Commercial General Liability:* Commercial General Liability  
27 insurance coverage, including but not limited to, premises liability,  
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1 contractual liability, products and completed operations, explosion,  
2 collapse, use of cranes, and other heavy equipment and underground  
3 hazards, personal and advertising injury covering claims which may  
4 arise from or out of DEVELOPER'S performance of its obligations  
5 hereunder. The policy shall name by endorsement DISTRICT,  
6 COUNTY and CITY, their respective directors, officers, Board of  
7 Supervisors, elected officials, employees, agents or representatives as  
8 Additional Insureds. Policy's limit of liability shall not be less than  
9 \$2,000,000 per occurrence combined single limit. If such insurance  
10 contains a general aggregate limit, it shall apply separately to this  
11 Agreement or be no less than two (2) times the occurrence limit.  
12

13  
14 (b) *Vehicle Liability*: Vehicle Liability insurance for all owned, non-  
15 owned or hired vehicles in an amount not less than \$1,000,000 per  
16 occurrence combined single limit. If such insurance contains a general  
17 aggregate limit, it shall apply separately to this Agreement or be no  
18 less than two (2) times the occurrence limit. Policy shall name by  
19 endorsement DISTRICT, COUNTY and CITY, their respective  
20 directors, officers, Board of Supervisors, elected officials, employees,  
21 agents or representatives as Additional Insureds.  
22

23  
24 (c) *Worker's Compensation Insurance*: Workers' Compensation Insurance  
25 (Coverage A) as prescribed by the laws of the State of California.  
26 Policy shall include Employers' Liability (Coverage B) including  
27 Occupational Disease with limits not less than \$1,000,000 per person  
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1 per accident. Policy shall be endorsed to waive subrogation in favor of  
2 DISTRICT and CITY, and if applicable, to provide a Borrowed  
3 Servant/Alternate Employer Endorsement.  
4

5 General Insurance Provisions - all lines:

6 (i) Any insurance carrier providing insurance coverage hereunder shall  
7 be admitted to the State of California and have a current A.M. Best rating of not less  
8 than an A:VIII (A:8), unless such requirements are waived, in writing, by COUNTY'S  
9 Risk Manager.

10 (ii) DEVELOPER'S insurance carrier(s) must declare all applicable  
11 insurance deductibles or self-insured retentions. If such deductibles or self-insured  
12 retentions exceed \$500,000 per occurrence, such deductibles and/or retentions shall have  
13 the prior written consent of COUNTY'S Risk Manager before the commencement of  
14 operations under this Agreement. Upon notification of deductibles or self-insured  
15 retentions which are deemed unacceptable to COUNTY'S Risk Manager,  
16 DEVELOPER'S carriers shall either: (i) reduce or eliminate such deductibles or self-  
17 insured retentions with respect to this Agreement, or (ii) procure a bond which  
18 guarantees payment of losses and related investigations, claims administration, defense  
19 costs and expenses; as approved by COUNTY'S Risk Manager.

20 (iii) DEVELOPER shall cause its insurance carrier(s) to furnish  
21 DISTRICT and CITY with (i) original certificate(s) of insurance and certified original  
22 copies of all applicable endorsements effecting coverage as required herein, or (ii)  
23 evidence of coverage acceptable to COUNTY'S Risk Manager that may include original  
24 certified copies of policies, including all necessary policy endorsements and all  
25 attachments thereto, showing such insurance is in full force and effect.

26 (iv) All Certificates of Insurance and Endorsements furnished pursuant  
27 to this Agreement shall be signed by a duly authorized representative of the insurance  
28 carrier.

1 (v) Further, said certificate(s) and endorsements to policies of insurance  
2 shall contain the covenant of the insurance carrier(s) that it shall provide no less than  
3 sixty (60) days written notice be given to DISTRICT and CITY prior to any material  
4 modification or cancellation of such insurance. In the event of a material modification  
5 or cancellation of coverage, DEVELOPER shall immediately suspend all construction  
6 activity authorized by this Agreement, unless DISTRICT and CITY receive, prior to  
7 such effective date, another properly executed original certificate of insurance and  
8 original copies of endorsements or certified original policies, including all endorsements  
9 and attachments thereto evidencing coverage and the insurance required herein is in full  
10 force and effect.

11 (vi) DEVELOPER shall not commence construction of DISTRICT  
12 DRAINAGE FACILITIES until DISTRICT and CITY have been furnished either  
13 original certificate(s) of insurance and certified original copies of endorsements, policies  
14 of insurance including all endorsements and any and all other attachments as required in  
15 this Section, or other evidence of coverage acceptable to COUNTY'S Risk Manager.

16 (vii) It is understood and agreed by the parties hereto and  
17 DEVELOPER'S insurance company(s) that the certificate(s) of insurance and policies  
18 shall so covenant and shall be construed as primary insurance, and DISTRICT'S and  
19 CITY'S insurance and/or deductibles and/or self-insured retentions or self-insured  
20 programs shall not be construed as contributory.

21 (viii) DEVELOPER may pass down their insurance obligations set forth  
22 herein to their principal contractor(s) provided that DISTRICT, COUNTY and CITY,  
23 their respective directors, officers, Board of Supervisors, elected officials, employees,  
24 agents or representatives are named, by endorsement, as Additional Insureds. Original  
25 copies of the applicable certificates and endorsements shall be provided to DISTRICT  
26 and CITY as set forth above.

27 Failure to maintain the insurance required by this paragraph shall be  
28 deemed a material breach of this Agreement and shall authorize and constitute authority for

1 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section  
2 IV.3.

3 20. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole  
4 cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT  
5 PLANS.

6 21. Within two (2) weeks of completing PROJECT construction, provide  
7 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT  
8 construction is substantially complete and requesting that DISTRICT conduct a final inspection  
9 of DISTRICT DRAINAGE FACILITIES.  
10

11 22. [This Section Intentionally Left Blank.]

12 23. [This Section Intentionally Left Blank.]

13 24. Accept ownership and sole responsibility for the operation and maintenance  
14 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation  
15 and maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts ownership and  
16 responsibility for operation and maintenance of APPURTENANCES. Further, it is mutually  
17 understood by the parties hereto that prior to DISTRICT acceptance of ownership and  
18 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,  
19 PROJECT shall be in a satisfactorily maintained condition as solely determined by DISTRICT.  
20

21 25. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
22 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and  
23 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all  
24 such costs, expenses and fees shall be computed as costs and included in any judgment  
25 rendered.  
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1           6.    Keep an accurate accounting of all DISTRICT costs associated with the  
2 review and approval of IMPROVEMENT PLANS and the processing and administration of this  
3 Agreement.

4           7.    Keep an accurate accounting of all DISTRICT construction inspection  
5 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE  
6 FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit,  
7 as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPER the  
8 excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE  
9 FACILITIES as being complete. If at any time the costs exceed the deposit or are anticipated  
10 by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as  
11 deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE  
12 FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.  
13

14           8.    Accept ownership and sole responsibility for the operation and maintenance  
15 of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of PROJECT  
16 construction as being complete, (ii) acceptance by CITY of all necessary street rights of way as  
17 deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT,  
18 and (iii) receipt of Notices of Completion for DISTRICT DRAINAGE FACILITIES in  
19 accordance with the terms of CFD No. 7 JCFA.  
20

21           9.    Provide CITY with a reproducible duplicate copy of "as-built"  
22 IMPROVEMENT PLANS upon DISTRICT acceptance of DISTRICT DRAINAGE  
23 FACILITIES as being complete.  
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SECTION III

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CITY shall:

1. Review and approve DEVELOPER'S bid solicitation documents for conformance with the applicable provisions of the Public Contract Code which apply to DISTRICT prior to DEVELOPER'S advertisement for construction bids for PROJECT.
2. Monitor DEVELOPER'S bidding and contract procedures for conformance with the applicable provisions of the Public Contract Code which apply to DISTRICT.
3. Review and approve IMPROVEMENT PLANS prior to the start of PROJECT construction.
4. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as provided herein.
5. Inspect construction of APPURTENANCES.
6. [This Section Intentionally Left Blank.]
7. [This Section Intentionally Left Blank.]
8. Grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.
9. Accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES upon completion of construction and DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete.

SECTION IV

It is further mutually agreed:

1. All work involved with DISTRICT DRAINAGE FACILITIES shall be inspected by DISTRICT and shall not be deemed complete until approved and accepted in writing as complete by DISTRICT.

2. CITY and DEVELOPER personnel may observe and inspect all work being done on DISTRICT DRAINAGE FACILITIES but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE FACILITIES.

3. DEVELOPER shall complete construction of DISTRICT DRAINAGE FACILITIES within twelve (12) consecutive months after execution of this Agreement and within one hundred twenty (120) consecutive calendar days after commencing work on DISTRICT DRAINAGE FACILITIES. It is expressly understood that since time is of the essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In which case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

4. DEVELOPER shall not request DISTRICT to accept any portion or portions of DISTRICT DRAINAGE FACILITIES or CITY to accept any portion or portions of APPURTENANCES prior to the completion of PROJECT construction.

5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff availability.

1 In the event DEVELOPER wishes to expedite issuance of a Notice to  
2 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
3 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation  
4 of the individual's credentials and experience to DISTRICT for review and, if appropriate,  
5 approval. DISTRICT shall review the individual's qualifications and experience and, upon  
6 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be  
7 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES  
8 construction and quality control matters. If DEVELOPER'S initial construction inspection  
9 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000.00), DISTRICT  
10 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection  
11 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;  
12 however, a minimum balance of ten thousand dollars (\$10,000.00) shall be retained on account.  
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15 6. DISTRICT DRAINAGE FACILITIES construction work shall be on a five  
16 (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT  
17 designated legal holidays, unless otherwise approved in writing by DISTRICT. If  
18 DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or  
19 on holidays, DEVELOPER shall make a written request for permission from DISTRICT to  
20 work the additional hours. The request shall be submitted to DISTRICT at least seventy-two  
21 (72) hours prior to the requested additional work hours and state the reasons for the overtime  
22 and the specific time frames required. The decision of granting permission for overtime work  
23 shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by  
24 DISTRICT, DEVELOPER will be charged the cost incurred at the overtime rates for additional  
25 inspection time required in connection with the overtime work in accordance with Ordinance  
26 Nos. 671 and 749, including any amendments thereto, of the County of Riverside.  
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1           7. DEVELOPER shall indemnify and hold harmless DISTRICT and CITY  
2 (including their agencies, districts, special districts and departments, their respective directors,  
3 officers, Board of Supervisors, elected and appointed officials, employees, agents and  
4 representatives) from any liability, claim, damage, proceeding or action, present or future, based  
5 upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees,  
6 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,  
7 performance under this Agreement, or failure to comply with the requirements of this  
8 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)  
9 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth  
10 Amendment of the United States Constitution or any other law, ordinance or regulation caused  
11 by the diversion of waters from the natural drainage patterns or the discharge of drainage within  
12 or from PROJECT; or (d) any other element of any kind or nature whatsoever.  
13

14           DEVELOPER shall defend, at its sole expense, including all costs and fees  
15 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
16 awards), DISTRICT and CITY (including their agencies, districts, special districts and  
17 departments, their respective directors, officers, Board of Supervisors, elected and appointed  
18 officials, employees, agents and representatives) in any claim, proceeding or action for which  
19 indemnification is required.  
20

21           With respect to any of DEVELOPER'S indemnification requirements,  
22 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall  
23 have the right to adjust, settle or compromise any such claim, proceeding or action without the  
24 prior consent of DISTRICT and CITY; provided, however, that any such adjustment, settlement  
25 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S  
26 indemnification obligations to DISTRICT or CITY.  
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1 DEVELOPER'S indemnification obligations shall be satisfied when  
2 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal relieving  
3 DISTRICT or CITY from any liability for the claim, proceeding or action involved.

4 The specified insurance limits required in this Agreement shall in no way  
5 limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT  
6 and CITY from third party claims.

7  
8 In the event there is conflict between this section and California Civil Code  
9 Section 2782, this section shall be interpreted to comply with Civil Code 2782. Such  
10 interpretation shall not relieve DEVELOPER from indemnifying DISTRICT or CITY to the  
11 fullest extent allowed by law.

12 8. Any waiver by DISTRICT or by CITY of any breach of any one or more of  
13 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
14 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
15 require exact, full and complete compliance with any terms of this Agreement shall not be  
16 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from  
17 enforcement hereof.

18  
19 9. DISTRICT and CITY each pledge to cooperate in regard to the operation  
20 and maintenance of their respective facilities as set forth herein and to discharge their respective  
21 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any  
22 nuisance condition or undue maintenance impact upon the others' facilities.

23  
24 10. This Agreement is to be construed in accordance with the laws of the State  
25 of California.

26 11. Any and all notices sent or required to be sent to the parties of this  
27 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:  
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RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
1995 Market Street  
Riverside, CA 92501

CITY OF MORENO VALLEY  
Post Office Box 88005  
Moreno Valley, CA 92552-0805  
Attn: Chris A. Vogt

FIRST INDUSTRIAL, L.P.  
c/o FIRST INDUSTRIAL REALTY TRUST, INC.  
114 Pacifica Court, Suite 220  
Irvine, CA 92618  
Attn: Phil Bowman

12. 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.

13. 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.

14. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

15. DEVELOPER shall not assign or otherwise transfer any of its rights, duties or obligations hereunder to any person or entity without the written consent of the other parties hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties contained in this Agreement.

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16. The individual(s) executing this Agreement on behalf of DEVELOPER hereby certify that they have the authority within their respective company(ies) to enter into and execute this Agreement, and have been authorized to do so by any and all boards of directors, legal counsel, and or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering this Agreement.

17. 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.

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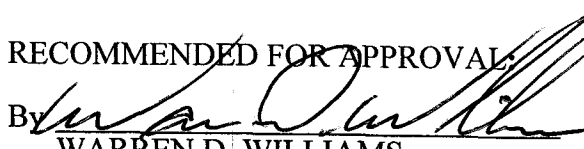
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

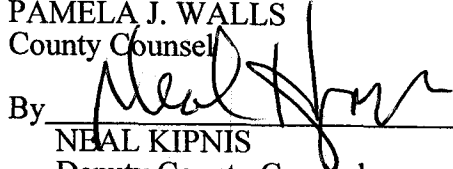
**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS  
County Counsel  
By   
NEAL KIPNIS  
Deputy County Counsel

NANCY ROMERO  
Clerk of the Board  
By \_\_\_\_\_  
Deputy

(SEAL)

Cooperative Agreement: Parcel Map 35859; PA 07-0166 and PA 07-0167  
JPS:blj  
3/16/09

RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

By *Chris A. VOGT*  
CHRIS A. VOGT, P.E.  
Public Works Director/City Engineer

By *Richard A. Stewart*  
RICHARD A. STEWART  
Mayor

APPROVED AS TO FORM:

ATTEST:

By *Robert D. Herrick*  
ROBERT D. HERRICK  
City Attorney

JANE HALSTEAD  
City Clerk  
By *Jane Halstead*

ROBERT HANSEN, INTERIM CITY ATTORNEY

(SEAL)


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Cooperative Agreement: Parcel Map 35859; PA 07-0166 and PA 07-0167  
JPS:blj  
3/16/09

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**FIRST INDUSTRIAL, L.P.,**  
a Delaware limited partnership

By: **FIRST INDUSTRIAL REALTY TRUST, INC.,**  
a Maryland corporation,  
Its Sole General Partner

By   
PHIL BOWMAN  
Senior Vice President - Development

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

Cooperative Agreement: Parcel Map 35859; PA 07-0166 and PA 07-0167  
JPS:blj  
3/16/09

STATE OF CALIFORNIA

COUNTY OF ORANGE

On March 01, 2009 before me, Tiffany Benz, a Notary Public, personally appeared Phil Bowman, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~(is)~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity~~(ies)~~, and that by ~~his~~/her/their signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tiffany Benz

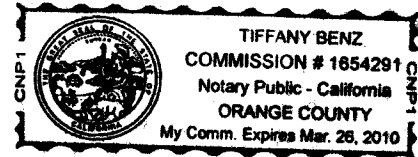




Exhibit A

