

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



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

MAY 18, 2010

SUBJECT: Central Riverside MDP Line C-4
Project No. 1-0-00195
MS 127 (Riverside)
Cooperative Agreement

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the City of Riverside and Westminster Arlington LLC (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 MS 127, are to be constructed by the Developer and inspected, operated and maintained by the District and City.

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	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

SOURCE OF FUNDS: N/A

**Positions To Be
Deleted Per A-30** ☐

Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY:

Alex Gann

County Executive Office Signature

Dep't Recomm.:

☐ Consent

☐ Policy

Per Exec. Ofc.:

☐ Consent

☐ Policy

Prev. Agn. Ref.:

District: 1st

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.2

FORM APPROVED/COUNTY COUNSEL

BY: NEAL R. KIPNIS DATE

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

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Page 2

BACKGROUND (continued):

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the referenced facilities associated with MS 127. Upon completion of the facilities' construction, the City will assume interim ownership, operation and maintenance of the mainline storm drain. The City will transfer ownership, operation and maintenance of the mainline storm drain to the District at some future date following completion of construction of additional downstream facilities by others and District acceptance of such downstream facilities for ownership, operation and maintenance.

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:seb

1 COOPERATIVE AGREEMENT
2 Central Riverside MDP Line C-4
3 (Project No. 1-0-00195)
4 (MS 127; APN 225-330-050)

5 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
6 CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF RIVERSIDE,
7 hereinafter called "CITY", and WESTMINSTER ARLINGTON LLC, a California limited
8 liability company, hereinafter called "DEVELOPER", hereby agree as follows:

9 RECITALS

10 A. DEVELOPER has submitted for approval MS 127 located at 3439
11 Arlington Avenue in the city of Riverside, commonly referred to as "Arlington Retail Center"
12 and as a condition for approval DEVELOPER must construct certain flood control facilities in
13 order to provide flood protection and drainage for DEVELOPER'S planned development; and
14

15 B. The required flood control facilities, as shown on DISTRICT Drawing No.
16 1-679, include construction of approximately 250 lineal feet of underground storm drain system,
17 hereinafter called "LINE C-4" and also called "DISTRICT DRAINAGE FACILITIES", as
18 shown in concept in red on Exhibit "A" attached hereto and made a part hereof. LINE C-4 is a
19 recognized component of DISTRICT'S Central Riverside Master Drainage Plan. At its
20 downstream terminus, LINE C-4 is proposed to connect to a future storm drain, hereinafter
21 called "FUTURE DRAIN", to be constructed by the California Department of Transportation,
22 hereinafter called "CALTRANS", which is to be constructed pursuant to a separate Cooperative
23 Agreement, hereinafter called the "CALTRANS AGREEMENT", between DISTRICT,
24 CALTRANS and possible additional parties yet to be identified; and
25

26 C. Construction of DISTRICT DRAINAGE FACILITIES has commenced
27 prior to execution of this Agreement pursuant to the terms of a Right of Entry and Inspection
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1 Agreement, hereinafter called "INSPECTION AGREEMENT", executed July 31, 2009,
2 between DISTRICT and DEVELOPER; and

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

9 E. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
10 specifications for DISTRICT DRAINAGE FACILITIES, (ii) inspect the construction of
11 DISTRICT DRAINAGE FACILITIES, and (iii) accept ownership and responsibility for the
12 operation and maintenance of DISTRICT DRAINAGE FACILITIES upon CALTRANS'
13 completion and DISTRICT acceptance of FUTURE DRAIN pursuant to the terms of
14 CALTRANS AGREEMENT, provided DEVELOPER (i) complies with this Agreement, (ii)
15 pays DISTRICT the amounts specified herein to cover DISTRICT'S plan review and
16 construction inspection costs, (iii) constructs DISTRICT DRAINAGE FACILITIES in
17 accordance with plans and specifications approved by DISTRICT, (iv) obtains all necessary
18 permits, regulatory permits, licenses and rights of entry as set forth herein, (v) accepts
19 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE
20 FACILITIES following completion of DISTRICT DRAINAGE FACILITIES construction until
21 such time as CITY accepts interim ownership and responsibility for the operation and
22 maintenance of DISTRICT DRAINAGE FACILITIES pending CALTRANS' completion and
23 DISTRICT acceptance of FUTURE DRAIN pursuant to the terms of the future CALTRANS
24 AGREEMENT, and (vi) obtains and conveys to CITY the necessary rights of way for the
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1 interim inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES as set
2 forth herein; and

3 F. CITY is willing to (i) accept and hold faithful performance and payment
4 bonds submitted by DEVELOPER for DISTRICT DRAINAGE FACILITIES, (ii) grant
5 DISTRICT the right to inspect, operate and maintain DISTRICT DRAINAGE FACILITIES
6 within CITY rights of way, (iii) consent to the recordation and conveyance of Irrevocable
7 Offer(s) of Dedication furnished by DEVELOPER as provided herein, (iv) provide DISTRICT
8 with certification that development of MS 127 (Arlington Retail Center) is in compliance with
9 the Western Riverside County Multiple Species Habitat Conservation Plan, and (v) accept
10 interim ownership and responsibility for the operation and maintenance of DISTRICT
11 DRAINAGE FACILITIES pending CALTRANS' completion and DISTRICT acceptance of
12 FUTURE DRAIN pursuant to the terms of the future CALTRANS AGREEMENT, provided
13 DISTRICT DRAINAGE FACILITIES are constructed in accordance with plans and
14 specifications approved by DISTRICT, and (vi) convey ownership and responsibility for the
15 operation and maintenance of DISTRICT DRAINAGE FACILITIES and the necessary rights of
16 way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES to
17 DISTRICT upon CALTRANS' completion of construction and DISTRICT acceptance of
18 FUTURE DRAIN pursuant to the terms of the future CALTRANS AGREEMENT.
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21 NOW, THEREFORE, the parties hereto mutually agree as follows:
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23 SECTION I

24 DEVELOPER shall:

25 1. Prepare PROJECT plans and specifications, as shown on District Drawing
26 No. 1-679, hereinafter called "IMPROVEMENT PLANS", in accordance with DISTRICT
27 standards, and submit to DISTRICT for their review and approval.
28

1 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
2 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
3 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT
4 PLANS, review and approval of right of way and conveyance documents, and with the
5 processing and administration of this Agreement.

6 3. Deposit with DISTRICT (Attention: Business Office – Accounts
7 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
8 DRAINAGE FACILITIES construction as set forth in Section I.8. herein, the estimated cost of
9 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
10 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the
11 County of Riverside, including any amendments thereto, based upon the bonded value of
12 DISTRICT DRAINAGE FACILITIES.

13 4. [This Section Intentionally Left Blank.]

14 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
15 permits and rights of entry as may be needed for the construction, inspection, operation and
16 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish
17 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
18 set forth in Section I.8., with sufficient evidence of DEVELOPER having secured such
19 necessary licenses, agreements, permits and rights of entry, as determined and approved by
20 DISTRICT.

21 6. Furnish DISTRICT with copies of all permits, approvals or agreements
22 required by any Federal or State resource and/or regulatory agency for the construction,
23 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include
24 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional
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1 Water Quality Control Board, California State Department of Fish and Game, and State Water
2 Resources Control Board.

3 7. Provide CITY, at the time of providing written notice to DISTRICT of the
4 start of construction as set forth in Section I.8., with faithful performance and payment bonds,
5 each in the amount of 100% of the estimated cost for construction of DISTRICT DRAINAGE
6 FACILITIES as determined by DISTRICT. The surety, amount and form of the bonds shall be
7 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect
8 until DISTRICT DRAINAGE FACILITIES are approved by DISTRICT as complete and
9 accepted by CITY for interim ownership and maintenance responsibilities; at which time the
10 bond amount may be reduced to 10% to guarantee against any defective work, labor or
11 materials. The remaining bonds shall remain in full force and effect for a period of one (1) year
12 following acceptance of DISTRICT DRAINAGE FACILITIES by CITY for interim ownership
13 and maintenance as set forth herein.
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16 8. Notify DISTRICT in writing (Attention: Administrative Services Section),
17 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE
18 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE
19 FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written
20 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT
21 DRAINAGE FACILITIES.
22

23 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
24 DEVELOPER'S property where necessary and convenient for the purpose of gaining access to,
25 and performing inspection service for, the construction of DISTRICT DRAINAGE
26 FACILITIES as set forth herein.
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1 10. Obtain and provide DISTRICT, at the time of providing written notice to
2 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in
3 Section I.8., with duly executed Irrevocable Offers(s) of Dedication to the public for flood
4 control and drainage purposes, including ingress and egress, for the rights of way deemed
5 necessary by DISTRICT for the construction, inspection, operation and maintenance of
6 DISTRICT DRAINAGE FACILITIES, as shown in concept cross-hatched in blue, red or green
7 on Exhibit "B" attached hereto and made a part hereof. The Irrevocable Offer(s) of Dedication
8 shall be in a form approved by DISTRICT and shall be executed by all legal and equitable
9 owners of the property described in the offer(s).
10

11 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
12 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
13 thirty (30) days prior to date of submission of all the property described in the Irrevocable
14 Offer(s) of Dedication.
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16 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
17 the start of construction as set forth in Section I.8., with a complete list of all contractors and
18 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the
19 corresponding license number and license classification of each. At such time, DEVELOPER
20 shall further identify in writing its designated superintendent for DISTRICT DRAINAGE
21 FACILITIES construction.
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23 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
24 the start of construction as set forth in Section I.8., a construction schedule which shall show the
25 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry on the
26 various parts of work, including estimated start and completion dates. As construction of
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1 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction
2 schedule as requested by DISTRICT.

3 14. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign
4 their ownership to DISTRICT at the time DISTRICT approves and signs said final mylar
5 IMPROVEMENT PLANS, and prior to the start of DISTRICT DRAINAGE FACILITIES
6 construction.

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8 15. Not permit any change to or modification of IMPROVEMENT PLANS
9 without the prior written permission and consent of DISTRICT.

10 16. Comply with all Cal/OSHA safety regulations including regulations
11 concerning confined space and maintain a safe working environment for DEVELOPER and
12 DISTRICT employees on the site.

13 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
14 the start of construction as set forth in Section I.8., a confined space entry procedure specific to
15 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements
16 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space
17 Operations, Section 5157, Permit Required Confined Space and DISTRICT Confined Space
18 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the
19 issuance of a Notice to Proceed.
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21 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
22 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
23 insurance policy shall be provided to DISTRICT, the County of Riverside and CITY at the time
24 of providing written notice pursuant to Section I.8.
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1 19. Commencing on the date notice is given pursuant to Section I.8. and
2 continuing until CITY accepts DISTRICT DRAINAGE FACILITIES for interim ownership,
3 operation and maintenance:

4 (a) Provide and maintain or cause its contractor(s) to provide and
5 maintain comprehensive liability insurance coverage which shall
6 protect DEVELOPER from claim from damages for personal injury,
7 including accidental and wrongful death, as well as from claims for
8 property damage which may arise from DEVELOPER'S construction
9 of DISTRICT DRAINAGE FACILITIES or the performance of its
10 obligations hereunder, whether such construction or performance be
11 by DEVELOPER, by any of its contractors, subcontractors, or by
12 anyone employed directly or indirectly by any of them. Such
13 insurance shall name DISTRICT, the County of Riverside and CITY
14 as additional insureds with respect to this Agreement and the
15 obligations of DEVELOPER hereunder. Such insurance shall
16 provide for limits of not less than two million dollars (\$2,000,000)
17 per occurrence.

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19
20 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
21 who shall be authorized by the California Department of Insurance to
22 transact the business of insurance in the State of California, to
23 furnish DISTRICT, the County of Riverside and CITY at the time of
24 providing written notice to DISTRICT of the start of construction as
25 set forth in Section I.8., with certificate(s) of insurance and
26 applicable policy endorsements showing that such insurance is in full
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1 force and effect and that DISTRICT, the County of Riverside and
2 CITY are named as additional insureds with respect to this
3 Agreement and the obligations of DEVELOPER hereunder. Further,
4 said certificate(s) shall state that the issuing company shall give
5 DISTRICT, the County of Riverside and CITY sixty (60) days
6 written notice in the event of any cancellation, termination, non-
7 renewal or reduction in coverage of the policies evidenced by the
8 certificate(s). In the event of any such cancellation, termination,
9 non-renewal or reduction in coverage, DEVELOPER shall,
10 forthwith, secure replacement insurance meeting the provisions of
11 this paragraph.
12

13 Failure to maintain the insurance required by this paragraph shall be
14 deemed a material breach of this Agreement and shall authorize and constitute authority for
15 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
16 IV.3.
17

18 20. Construct or cause to be constructed, DISTRICT DRAINAGE
19 FACILITIES at DEVELOPER'S sole cost and expense in accordance with DISTRICT approved
20 IMPROVEMENT PLANS.
21

22 21. Within two (2) weeks of completing DISTRICT DRAINAGE FACILITIES
23 construction, provide DISTRICT with written notice (Attention: Contract Administration
24 Section) that DISTRICT DRAINAGE FACILITIES construction is substantially complete and
25 requesting that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES.
26

27 22. Upon completion of DISTRICT DRAINAGE FACILITIES construction,
28 and upon acceptance by CITY of all street rights of way deemed necessary by DISTRICT and

1 CITY for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, but prior to
2 CITY acceptance of DISTRICT DRAINAGE FACILITIES for interim ownership, operation
3 and maintenance, convey, or cause to be conveyed to CITY flood control easement(s), including
4 ingress and egress, in a form approved by DISTRICT, for the rights of way as shown in concept
5 cross-hatched in blue, red or green on Exhibit "B".
6

7 23. At the time of recordation of the conveyance document(s) as set forth in
8 Section I.22., furnish DISTRICT with policies of title insurance, each in the amount of not less
9 than fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
10 easement parcel to be conveyed to CITY, guaranteeing CITY'S interest in said property as being
11 free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or
12 unrecorded), except those which, in the sole discretion of DISTRICT, are deemed acceptable.
13

14 24. [This Section Intentionally Left Blank.]
15

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

23 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
24 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and
25 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all
26 such costs, expenses and fees shall be computed as costs and included in any judgment
27 rendered.
28

27. Upon completion of construction of DISTRICT DRAINAGE FACILITIES, but prior to CITY acceptance of DISTRICT DRAINAGE FACILITIES for interim ownership, operation and maintenance, DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered in the State of California, shall provide DISTRICT a redlined "RECORD DRAWING" copy of IMPROVEMENT PLANS. After DISTRICT approval of the redlined "RECORD DRAWING" IMPROVEMENT PLANS, DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign the original IMPROVEMENT PLANS "RECORD DRAWING".

28. Ensure that all work performed pursuant to this Agreement by DEVELOPER, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to all applicable provisions of the Labor Code, Business and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II

DISTRICT shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of DISTRICT DRAINAGE FACILITIES construction.

2. Upon execution of this Agreement, record or cause to be recorded, a copy of this Agreement in the Official Records of the Riverside County Recorder.

3. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPER pursuant to Section I.10.

4. Inspect DISTRICT DRAINAGE FACILITIES construction.

1 5. Keep an accurate accounting of all DISTRICT costs associated with the
2 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
3 conveyance documents and the processing and administration of this Agreement.

4 6. 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 construction as being complete, submit a final cost statement to DEVELOPER. If
7 the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse
8 DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of
9 DISTRICT DRAINAGE FACILITIES construction as being complete. If at any time the costs
10 exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall
11 pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete
12 inspection of DISTRICT DRAINAGE FACILITIES, within thirty (30) days after receipt of
13 billing from DISTRICT.
14

15 7. Accept ownership and sole responsibility for the operation and maintenance
16 of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of DISTRICT
17 DRAINAGE FACILITIES construction as being complete, (ii) recordation of all conveyance
18 documents described in Section I.22., (iii) acceptance by CITY of all necessary street rights of
19 way as deemed necessary by DISTRICT and CITY for the operation and maintenance of
20 PROJECT, (iv) conveyance by CITY to DISTRICT of all flood control and ingress/egress
21 easements in a form approved by DISTRICT, for the rights of way as shown in concept cross-
22 hatched in blue, red or green on Exhibit "B", (v) DISTRICT determination that DISTRICT
23 DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely determined
24 by DISTRICT, (vi) DISTRICT determination that others have made any necessary grading and
25 manhole adjustments within DISTRICT easements to meet DISTRICT standards, and (vii)
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1 CALTRANS' completion and DISTRICT acceptance of FUTURE DRAIN pursuant to the terms
2 of CALTRANS AGREEMENT.

3 8. Provide CITY with a reproducible duplicate copy of "RECORD
4 DRAWING" IMPROVEMENT PLANS upon DISTRICT acceptance of DISTRICT
5 DRAINAGE FACILITIES construction as being complete.
6

7 SECTION III

8 CITY shall:

9 1. Accept CITY and DISTRICT approved faithful performance and payment
10 bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as provided
11 herein.

12 2. Provide DISTRICT with certification that development of MS 127
13 (Arlington Retail Center) is in compliance with the Western Riverside County Multiple Species
14 Habitat Conservation Plan.
15

16 3. Consent, by execution of this Agreement, to the recording of any
17 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

18 4. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
19 as set forth herein, and any other outstanding offers of dedication necessary for the construction,
20 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and, prior to
21 CITY'S conveyance of ownership of DISTRICT DRAINAGE FACILITIES to DISTRICT,
22 convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate
23 and maintain DISTRICT DRAINAGE FACILITIES.
24

25 5. Grant DISTRICT, by execution of this Agreement, the right to construct,
26 inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.
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6. Accept interim ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES construction as being complete.

7. Upon DISTRICT determination that others have made any necessary grading and manhole adjustments within DISTRICT easements to meet DISTRICT standards and DISTRICT acceptance of FUTURE DRAIN pursuant to the terms of the future CALTRANS AGREEMENT, convey ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES to DISTRICT.

8. Not grant any occupancy permits for any units within any portion of MS 127 (Arlington Retail Center), or any phase thereof, until (i) this Agreement has been executed by all parties and recorded by DISTRICT, (ii) construction of DISTRICT DRAINAGE FACILITIES is complete, (iii) DISTRICT has recorded all Irrevocable Offers of Dedication provided by DEVELOPER as set forth in Section I.10., and (iv) CITY has accepted all Irrevocable Offers of Dedication as requested by DISTRICT, unless otherwise approved in writing by DISTRICT.

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 the DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE FACILITIES.

1 3. DEVELOPER shall complete construction of DISTRICT DRAINAGE
2 FACILITIES within twelve (12) consecutive months after execution of this Agreement and
3 within sixty (60) consecutive calendar days after commencing work on DISTRICT DRAINAGE
4 FACILITIES. It is expressly understood that since time is of the essence in this Agreement,
5 failure of DEVELOPER to perform the work within the agreed upon time shall constitute
6 authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to
7 pay to CITY the penal sum of any and all bonds. In which case, CITY shall subsequently
8 reimburse DISTRICT for DISTRICT costs incurred.
9

10 4. DEVELOPER shall not request DISTRICT or CITY to accept any portion
11 or portions of DISTRICT DRAINAGE FACILITIES prior to the completion of DISTRICT
12 DRAINAGE FACILITIES construction.
13

14 5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed
15 within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in
16 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the
17 issuance of a Notice to Proceed is subject to staff availability.
18

19 In the event DEVELOPER wishes to expedite issuance of a Notice to
20 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
21 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
22 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
23 approval. DISTRICT shall review the individual's qualifications and experience and, upon
24 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be
25 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
26 construction and quality control matters. If DEVELOPER'S initial construction inspection
27 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000.00), DISTRICT
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1 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection
2 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
3 however, a minimum balance of ten thousand dollars (\$10,000.00) shall be retained on account.

4 6. DISTRICT DRAINAGE FACILITIES construction work shall be on a five
5 (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT
6 designated legal holidays, unless otherwise approved in writing by DISTRICT. If
7 DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or
8 on holidays, DEVELOPER shall make a written request for permission from DISTRICT to
9 work the additional hours. The request shall be submitted to DISTRICT at least seventy-two
10 (72) hours prior to the requested additional work hours and state the reasons for the overtime
11 and the specific time frames required. The decision of granting permission for overtime work
12 shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by
13 DISTRICT, DEVELOPER will be charged the cost incurred at the overtime rates for additional
14 inspection time required in connection with the overtime work in accordance with Ordinance
15 Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

16 7. DEVELOPER shall indemnify and hold harmless DISTRICT and CITY
17 (including their agencies, districts, special districts and departments, their respective directors,
18 officers, Board of Supervisors, elected and appointed officials, employees, agents and
19 representatives) from any liability, claim, damage, proceeding or action, present or future, based
20 upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees,
21 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,
22 performance under this Agreement, or failure to comply with the requirements of this
23 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
24 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth
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1 Amendment of the United States Constitution or any other law, ordinance or regulation caused
2 by the diversion of waters from the natural drainage patterns or the discharge of drainage within
3 or from DISTRICT DRAINAGE FACILITIES; or (d) any other element of any kind or nature
4 whatsoever.

5 DEVELOPER shall defend, at its sole expense, including all costs and fees
6 (including but not limited to attorney fees, cost of investigation, defense and settlements or
7 awards), DISTRICT and CITY (including their agencies, districts, special districts and
8 departments, their respective directors, officers, Board of Supervisors, elected and appointed
9 officials, employees, agents and representatives) in any claim, proceeding or action for which
10 indemnification is required.
11

12 With respect to any of DEVELOPER'S indemnification requirements,
13 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall
14 have the right to adjust, settle or compromise any such claim, proceeding or action without the
15 prior consent of DISTRICT and CITY; provided, however, that any such adjustment, settlement
16 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S
17 indemnification obligations to DISTRICT or CITY.
18

19 DEVELOPER'S indemnification obligations shall be satisfied when
20 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal relieving
21 DISTRICT or CITY from any liability for the claim, proceeding or action involved.
22

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

26 In the event there is conflict between this section and California Civil Code
27 Section 2782, this section shall be interpreted to comply with Civil Code 2782. Such
28

1 interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT or CITY to the
2 fullest extent allowed by law.

3 8. Any waiver by DISTRICT or by CITY of any breach of any one or more of
4 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
5 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
6 require exact, full and complete compliance with any terms of this Agreement shall not be
7 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
8 enforcement hereof.
9

10 9. [This Section Intentionally Left Blank.]

11 10. This Agreement is to be construed in accordance with the laws of the State
12 of California.

13 11. Any and all notices sent or required to be sent to the parties of this
14 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:
15

16 RIVERSIDE COUNTY FLOOD CONTROL
17 AND WATER CONSERVATION DISTRICT
18 1995 Market Street
Riverside, CA 92501

CITY OF RIVERSIDE
Public Works - 4th Floor
3900 Main Street
Riverside, CA 92522
Attn: Siobhan Foster

19 WESTMINSTER ARLINGTON LLC
20 270 Westminster Road, Suite 300
Lake Forest, IL 60045
Attn: Legal Department
21

22 12. Any action at law or in equity brought by any of the parties hereto for the
23 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
24 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
25 waive all provisions of law providing for a change of venue in such proceedings to any other
26 county.
27
28

1 13. This Agreement is the result of negotiations between the parties hereto, and
2 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
3 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
4 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
5 prepared this Agreement in its final form.
6

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

9 15. DEVELOPER shall not assign or otherwise transfer any of its rights, duties
10 or obligations hereunder to any person or entity without the written consent of the other parties
11 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER
12 expressly understands and agrees that it shall remain liable with respect to any and all of the
13 obligations and duties contained in this Agreement.
14

15 16. The individual(s) executing this Agreement on behalf of DEVELOPER
16 hereby certify that they have the authority within their respective company(ies) to enter into and
17 execute this Agreement, and have been authorized to do so by any and all boards of directors,
18 legal counsel, and or any other board, committee or other entity within their respective
19 company(ies) which have the authority to authorize or deny entering this Agreement.
20

21 17. This Agreement is intended by the parties hereto as a final expression of
22 their understanding with respect to the subject matter hereof and as a complete and exclusive
23 statement of the terms and conditions thereof and supersedes any and all prior and
24 contemporaneous agreements and understandings, oral or written, in connection therewith. This
25 Agreement may be changed or modified only upon the written consent of the parties hereto.

26 //

27 //

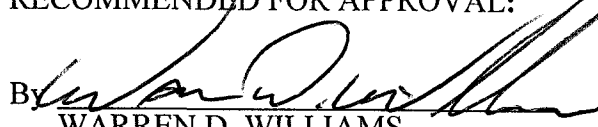
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By


WARREN D. WILLIAMS
General Manager-Chief Engineer

By

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

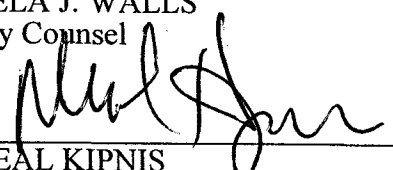
APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By


NEAL KIPNIS
Deputy County Counsel

By

Deputy

(SEAL)

Cooperative Agreement: MS 127
JPS
8/19/09

CITY OF RIVERSIDE

By Belinda J. Graham 4/28/2010
(Print Name) Belinda J. Graham
Title Assistant City Manager

APPROVED AS TO FORM:

By Kristi J. Smith
KRISTI J. SMITH
Supervising Deputy City Attorney

ATTEST:

By Colleen J. Nicol
COLLEEN J. NICOL
City Clerk

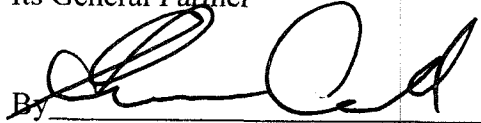
(SEAL)

Cooperative Agreement: MS 127
JPS:blj
8/19/09

1
2 **WESTMINSTER ARLINGTON LLC,**
3 a California limited liability company

4 By: WESTMINSTER FUND V L P ,
5 an Illinois limited partnership
6 Its Member

7 By: WESTMINSTER ADVISORS V LLC,
8 an Illinois limited liability company
9 Its General Partner

10 
11 By _____

12 GEORGE W. CARROLL
13 Manager and Authorized Agent

14
15 (ATTACH NOTARY WITH
16 CAPACITY STATEMENT)
17
18
19
20

21 Cooperative Agreement: MS 127
22 JPS
23 8/19/09
24
25
26
27
28

ACKNOWLEDGMENT

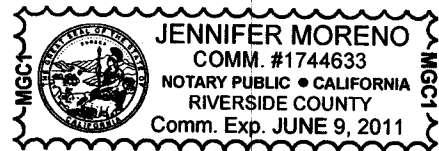
State of California
County of Riverside

On November 6, 2009 before me, Jennifer Moreno, Notary Public
(insert name and title of the officer)

personally appeared George W. Carroll
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 Jennifer Moreno (Seal)

Exhibit A

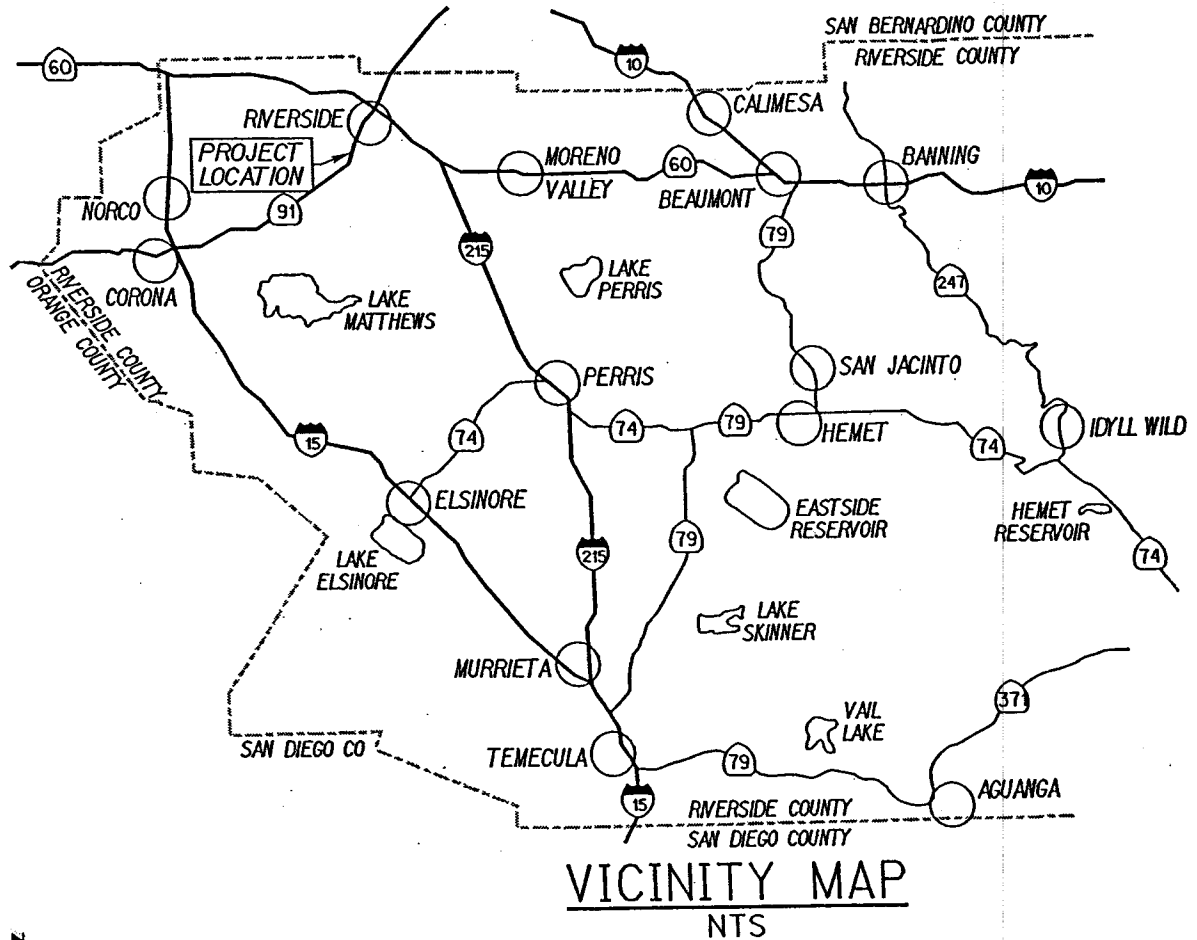


Exhibit A

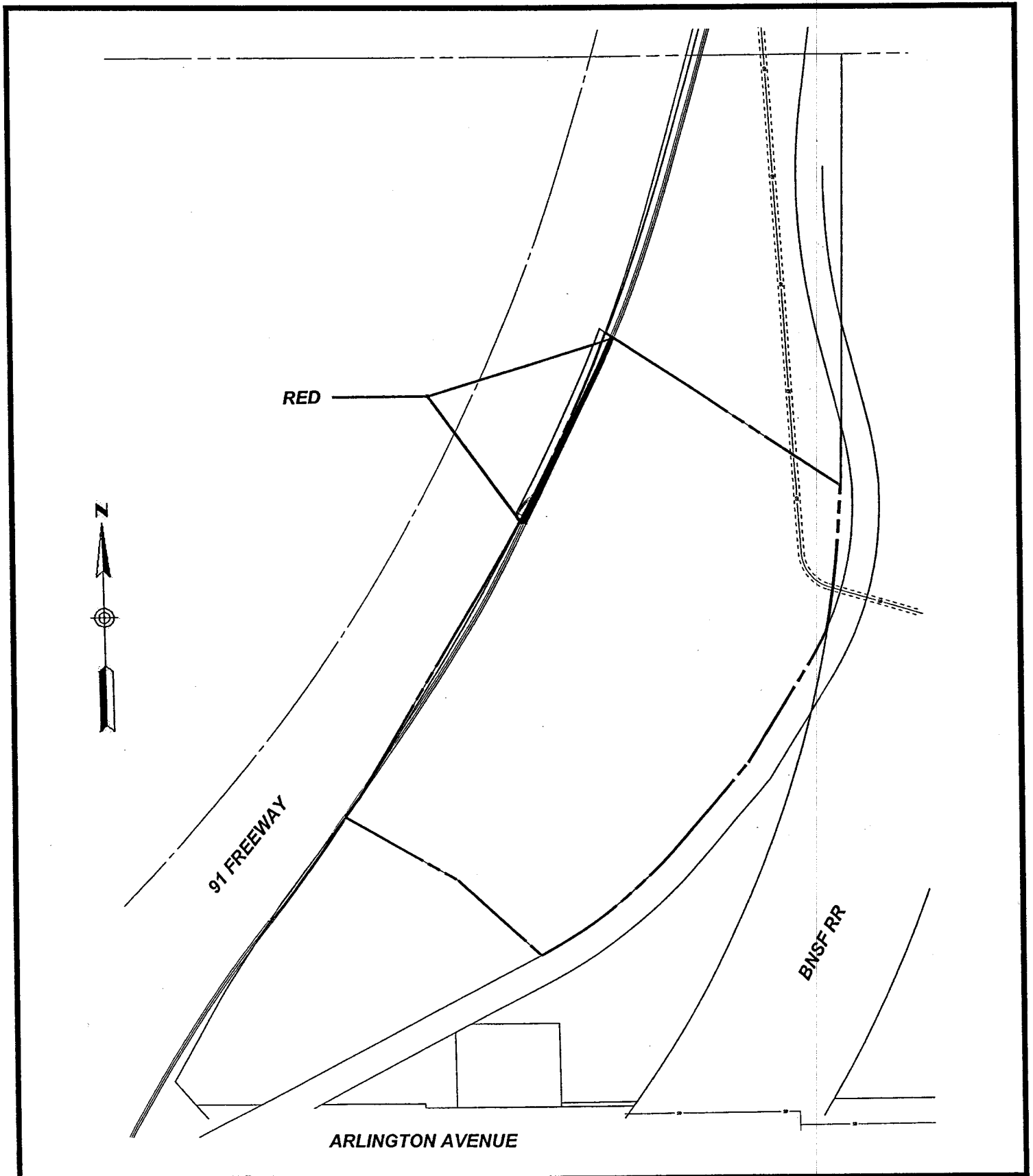
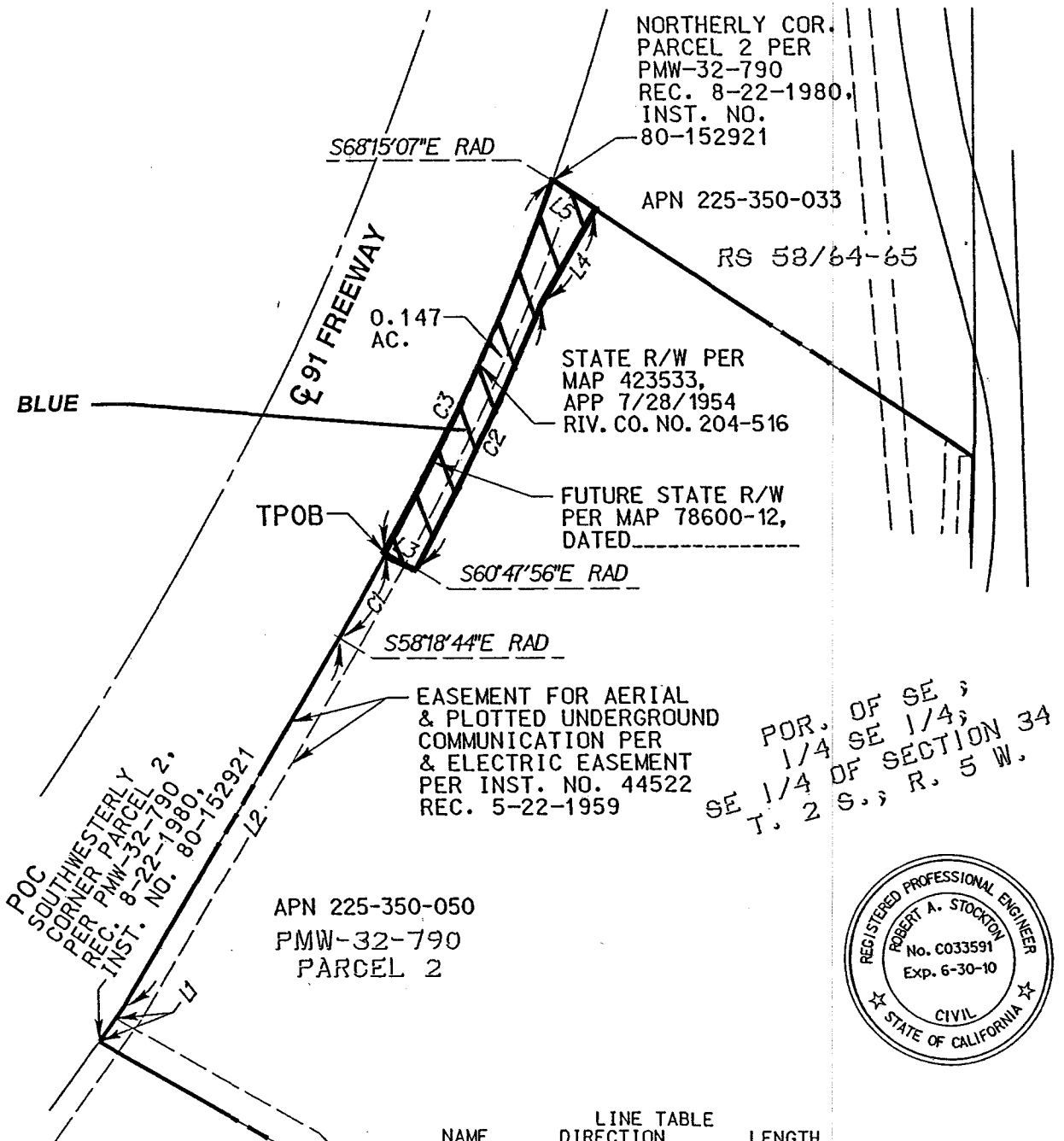


Exhibit B



NAME	LINE TABLE	
	DIRECTION	LENGTH
L1	N 37°53'39" E	29.64
L2	N 31°42'33" E	295.19
L3	N 63°29'49" W	21.97
L4	N 31°48'20" E	74.16
L5	N 56°13'54" W	33.40

NAME	CURVE TABLE		ARC
	DELTA	RADIUS	
C1	1°52'53"	2000.00	65.68
C2	4°58'32"	2338.00	203.04
C3	8°03'30"	2000.00	281.29

N.T.S.

Cooperative Agreement
Arlington Retail Center

Exhibit B

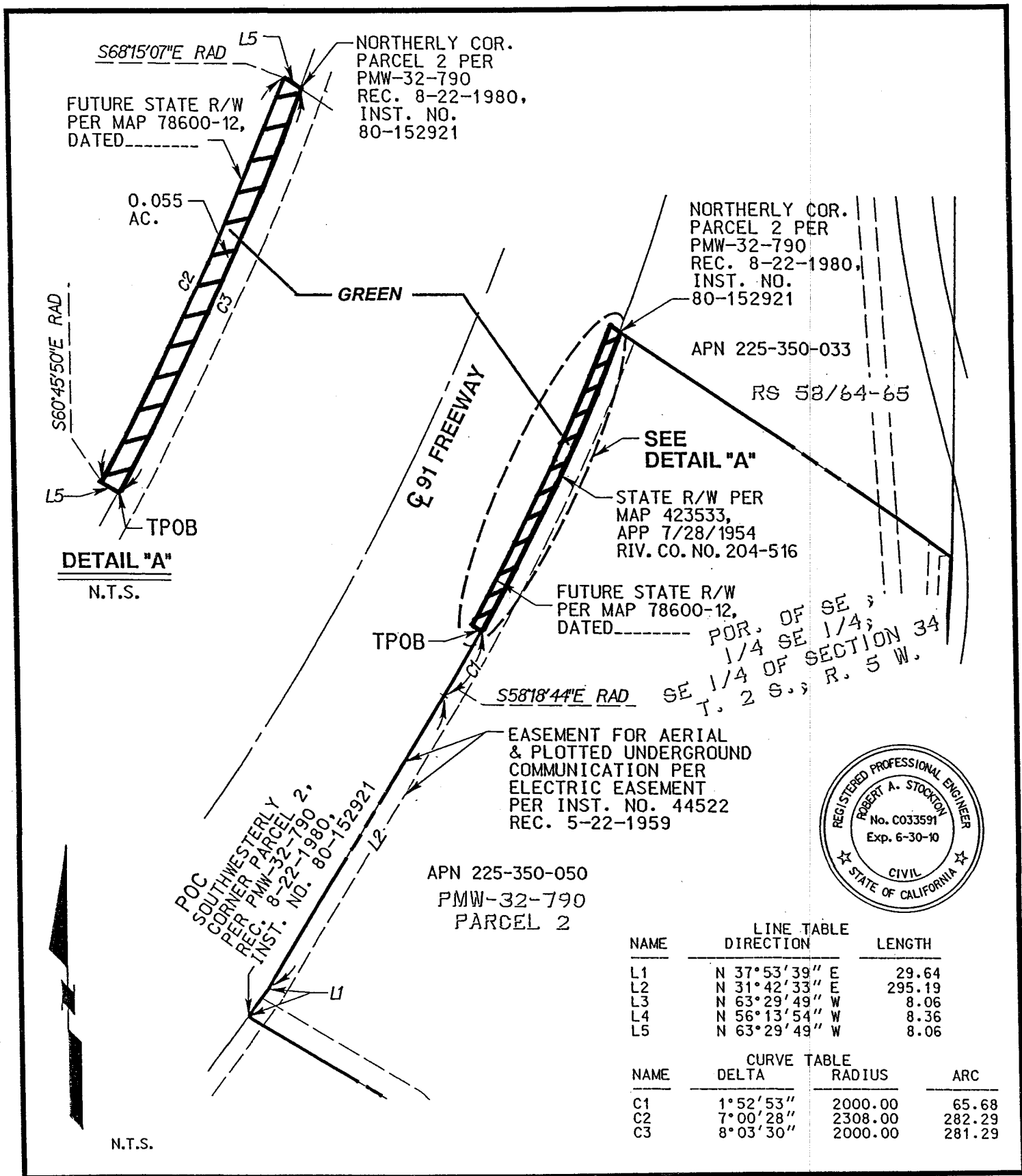
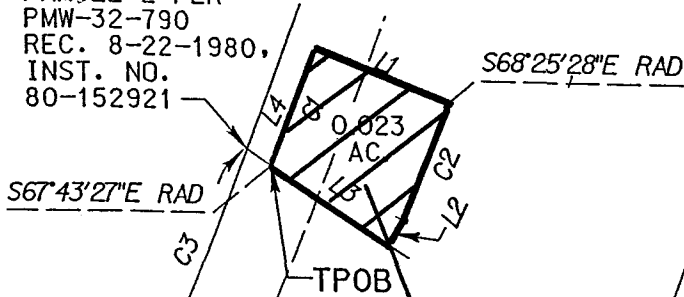


Exhibit B

NORTHERLY COR.
PARCEL 2 PER
PMW-32-790
REC. 8-22-1980,
INST. NO.
80-152921



DETAIL "A"

N.T.S.

RED

SEE
DETAIL "A"

APN 225-350-033

RS 58/64-65

STATE R/W PER
MAP 423533,
APP 7/28/1954
RIV. CO. NO. 204-516

EASEMENT FOR AERIAL
& PLOTTED UNDERGROUND
COMMUNICATION
& ELECTRIC EASEMENT
PER INST. NO. 44522
REC. 5-22-1959

POR. OF SE;
1/4 SE 1/4;
SE 1/4 OF SECTION 34
T. 2 S.; R. 5 W.

S58°18'44"E RAD

POC
SOUTHWESTERLY
CORNER PARCEL 2,
PER PMW-32-790,
REC. 8-22-1980,
INST. NO. 80-152921

APN 225-350-050
PMW-32-790
PARCEL 2



N.T.S.

NAME	LINE TABLE DIRECTION	LENGTH
L1	N 68°25'28" W	32.00
L2	N 31°48'20" E	6.50
L3	N 56°13'54" W	31.56
L4	N 56°13'54" W	1.84
L5	N 31°42'33" E	295.19
L6	N 37°53'39" E	29.64

NAME	CURVE DELTA	TABLE RADIUS	ARC
C1	0°42'11"	2318.00	28.45
C2	0°42'01"	2350.00	28.72
C3	9°56'23"	2000.00	346.96

Cooperative Agreement
Arlington Retail Center