

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

706 B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
May 24, 2011

SUBJECT: Menifee Valley – Evans Road Channel, - Quilt Way Storm Drain, - Reed Court Storm Drain and - Wickerd and Garbani Roads Storm Drain Lateral
Project Nos. 4-0-00395, 4-0-00398, 4-0-00399 and 4-0-00389
Tract No. 30142-1 (Menifee)
Amended and Restated Cooperative Agreement

RECOMMENDED MOTION:

Approve the Amended and Restated Cooperative Agreement between the District, the City of Menifee, the County of Riverside Transportation Department (Transportation), the County of Riverside Economic Development Agency (Agency) and KB Home Coastal, Inc. (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 Tract No. 30142-1, 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	<input type="checkbox"/>
	Requires 4/5 Vote	<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:

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

Prev. Agn. Ref.:

ATTACHED **DISCUSS** FILED
WITH THE CLERK OF THE BOARD
Agenda Number:

11.3

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

SUBJECT: Menifee Valley – Evans Road Channel, - Quilt Way Storm Drain, - Reed Court Storm Drain and - Wickerd and Garbani Roads Storm Drain Lateral
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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 Tract No. 30142-1. The Agreement is also necessary to formalize the release of Transportation and Agency from their obligations established in a prior Agreement dated June 19, 2007, between District, Transportation, Agency and Developer concerning Tract No. 30142-1.

Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the flood control facilities. The City will assume ownership, operation and maintenance of the road culverts, catch basins, laterals and connector pipes located within its rights of way. The City will also assume responsibility for operation and maintenance of certain water quality features within District's channel.

County Counsel has approved the Agreement as to legal form and both the City and the Developer have executed the Agreement. This matter is also on the County's Board Agenda for approval this same date.

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

JPS:bjj

AMENDED AND RESTATED COOPERATIVE AGREEMENT

Menifee Valley – Evans Road Channel
Menifee Valley – Quilt Way Storm Drain
Menifee Valley – Reed Court Storm Drain
Menifee Valley – Wickerd and Garbani Roads Strom Drain Lateral
(Project Nos.4-0-00395, 4-0-00398, 4-0-00399 and 4-0-00389)
(Tract No. 30142-1)

Contract No. 11-04-012
Riverside Co. Transportation

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE, hereinafter called "CITY", the COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT, hereinafter called "TRANSPORTATION", the COUNTY OF RIVERSIDE ECONOMIC DEVELOPMENT AGENCY, hereinafter called "AGENCY", and KB HOME COASTAL, INC., a California corporation, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract No. 30142-1 in the City of Menifee 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 facilities, all as shown in District Drawing Nos. 4-942 and 4-1005, include:

(i) approximately 2,100 lineal feet of earthen trapezoidal channel, hereinafter called "CHANNEL" as shown in concept in purple on Exhibit "A" attached hereto and made a part hereof;

(ii) four (4) underground storm drains, hereinafter altogether called "STORM DRAINS", as shown in concept in red on Exhibit "A". Included among STORM DRAINS are (a) approximately 205 lineal feet of reinforced concrete box identified as "QUILT WAY STORM DRAIN", (b) approximately 320 lineal feet of underground storm drain

1 identified as "REED COURT STORM DRAIN", (c) approximately 850 lineal feet of reinforced
2 concrete box and an associated inlet structure, all identified as "WICKERD AND GARBANI
3 ROADS STORM DRAIN LATERAL", and (d) approximately 150 feet of underground storm
4 drain lateral identified as "LINE A"; and

5 (iii) approximately 600 lineal feet of irregular earthen channel, hereinafter
6 called "OUTLET CHANNEL", as shown in concept in green on Exhibit "A". Together,
7 CHANNEL, STORM DRAINS and OUTLET CHANNEL are hereinafter called "DISTRICT
8 DRAINAGE FACILITIES"; and

9
10 C. Associated with the construction of CHANNEL is the construction of three
11 roadway culverts including (i) a six-cell culvert located at Craig Avenue, (ii) a ten-cell culvert
12 located at Quilt Way; and (iii) a six-cell culvert located at Yeoman Place, together hereinafter
13 called "ROAD CULVERTS", as shown in concept in blue on Exhibit "A"; and

14 D. Associated with the construction of CHANNEL, ROAD CULVERTS and
15 STORM DRAINS is the construction of certain catch basins, connector pipes and laterals
16 located within CITY held easements or rights of way, hereinafter called "APPURTENANCES".
17 Together, ROAD CULVERTS and APPURTENANCES are hereinafter called "CITY
18 DRAINAGE FACILITIES". Together, CITY DRAINAGE FACILITIES and DISTRICT
19 DRAINAGE FACILITIES, are hereinafter called "PROJECT"; and

20
21 E. Construction of PROJECT has commenced prior to execution of this
22 Agreement pursuant to the terms of a Right of Entry and Inspection Agreement, hereinafter
23 called "INSPECTION AGREEMENT", executed January 22, 2010, between DISTRICT and
24 DEVELOPER; and

25
26 F. DEVELOPER and CITY desire DISTRICT to accept ownership and
27 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
28 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for

PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;
and

G. DEVELOPER and DISTRICT desire CITY to accept ownership and responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES and to accept responsibility for performing "routine" day to day maintenance activities within CHANNEL right of way. Therefore, CITY must review and approve DEVELOPER'S plans and specifications for PROJECT and subsequently inspect the construction of CITY DRAINAGE FACILITIES; and

H. DEVELOPER wishes to construct CHANNEL as a "green-belt" facility that will utilize a bio-swale to treat runoff water for water quality purposes within DISTRICT'S future CHANNEL right of way. DISTRICT is willing to allow CITY access and use of said right of way for water quality and maintenance purposes provided CITY is willing to (i) accept certain maintenance responsibilities within DISTRICT'S CHANNEL right of way as set forth herein; and (ii) indemnify and hold DISTRICT harmless from any claims arising from CITY'S use of DISTRICT'S future CHANNEL right of way; and

I. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and specifications for PROJECT, (ii) inspect the construction of DISTRICT DRAINAGE FACILITIES, and (iii) accept ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, provided DEVELOPER (i) complies with this Agreement, (ii) pays DISTRICT the amount specified herein to cover DISTRICT'S plan review and construction inspection costs, (iii) constructs PROJECT in accordance with plans and specifications approved by DISTRICT and CITY, (iv) obtains all necessary permits, regulatory permits, licenses and rights of entry as set forth herein, (v) obtains and conveys to DISTRICT the necessary rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES as set forth herein, and (vi) accepts ownership and responsibility for

1 the operation and maintenance of PROJECT following completion of PROJECT construction
2 until such time as DISTRICT accepts ownership and responsibility for the operation and
3 maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts ownership and
4 responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES; and

5 J. CITY is willing to (i) review and approve DEVELOPER'S plans and
6 specifications for PROJECT, (ii) accept and hold faithful performance and payment bonds
7 submitted by DEVELOPER for DISTRICT DRAINAGE FACILITIES, (iii) consent to the
8 recordation and conveyance of the Irrevocable Offer(s) of Dedication furnished by
9 DEVELOPER as provided herein, (iv) grant DISTRICT the right to inspect, operate and
10 maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way, (v) inspect
11 construction of CITY DRAINAGE FACILITIES and CHANNEL, (vi) accept ownership and
12 responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES, (vii)
13 accept responsibility for the performance of routine maintenance of CHANNEL, (viii) accept
14 sole responsibility for the operation and maintenance of CHANNEL'S water quality features
15 following DEVELOPER'S completion of its responsibilities under the California Regional
16 Water Control Board's 401 Certification letter dated May 5, 2005, and (ix) indemnify and hold
17 DISTRICT harmless from any claims arising from CITY'S use of the proposed CHANNEL
18 right of way as set forth herein provided PROJECT is constructed in accordance with plans and
19 specifications approved by DISTRICT and CITY; and

22 K. On June 19, 2007, DISTRICT, TRANSPORTATION, AGENCY and
23 DEVELOPER entered into a previous Agreement which was recorded July 25, 2007, as
24 Document No. 2007-0481879 in the Official Records of Riverside County, hereinafter called
25 "PREVIOUS AGREEMENT", pertaining to Tract No. 30142-1 and the construction, inspection
26 and acceptance of DISTRICT DRAINAGE FACILITIES, COUNTY DRAINAGE FACILITIES
27 and proposed public access and recreational amenities associated with PROJECT. However,
28

1 DEVELOPER has not commenced construction of PROJECT under the terms of PREVIOUS
2 AGREEMENT. Consequently, DISTRICT has not accepted DISTRICT DRAINAGE
3 FACILITIES for ownership, operation and maintenance, TRANSPORTATION has not
4 accepted COUNTY DRAINAGE FACILITIES for ownership, operation and maintenance, and
5 AGENCY has not accepted responsibility for public access and amenities as set forth in
6 PREVIOUS AGREEMENT; and

7 L. CITY was incorporated on October 1, 2008, and has subsequently assumed
8 many of the responsibilities formerly performed by TRANSPORTATION and/or AGENCY;
9 and

10 M. DISTRICT, CITY, TRANSPORTATION, AGENCY and DEVELOPER
11 mutually desire and agree that the provisions of this Agreement shall supersede all provisions of
12 PREVIOUS AGREEMENT.
13

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

15
16 SECTION I

17 DEVELOPER shall:

18 1. Prepare plans and specifications for PROJECT, as shown on District
19 Drawing Nos. 4-942 and 4-1005, hereinafter called "IMPROVEMENT PLANS", in accordance
20 with DISTRICT and CITY standards, and submit them to DISTRICT and CITY for their review
21 and approval.
22

23 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
24 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
25 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT
26 PLANS, review and approval of right of way and conveyance documents, and with the
27 processing and administration of this Agreement.
28

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

8 4. Develop a design and implementation plan for the proposed bio swale as
9 required by the California Regional Water Control Board's 401 Certification letter dated May 5,
10 2005. DEVELOPER shall be responsible for meeting all final and intermediate success criteria
11 for establishment of the bio swale for a minimum period of five (5) years, or as needed to meet
12 the success criteria, following completion of PROJECT including, but not limited to, planting,
13 maintenance, monitoring and reporting. DEVELOPER shall be responsible for all costs
14 incurred under the 401 Certification during this period.
15

16 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
17 permits and rights of entry as may be needed for the construction, inspection, operation and
18 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish
19 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
20 set forth in Section I.8. or not less than twenty (20) days prior to recordation of the final map for
21 Tract No. 30142-1 or any phase thereof, whichever occurs first, with sufficient evidence of
22 DEVELOPER having secured such necessary licenses, agreements, permits and rights of entry,
23 as determined and approved by DISTRICT.
24

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

4 7. Provide CITY, at the time of providing written notification to DISTRICT
5 of the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
6 recordation of the final map for Tract No. 30142-1, whichever comes first, with faithful
7 performance and payment bonds, each in the amount of one hundred percent (100%) of the
8 estimated cost for construction of DISTRICT DRAINAGE FACILITIES as determined by
9 DISTRICT and CITY. The surety, amount and form of the bonds shall be subject to the
10 approval of DISTRICT and CITY. The bonds shall remain in full force and effect until
11 DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete; at which time
12 the bond amount may be reduced to 10% for a period of one year to guarantee against any
13 defective work, labor or materials.
14

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

21 9. Grant DISTRICT and CITY, by execution of this Agreement, the right to
22 enter upon DEVELOPER'S property where necessary and convenient for the purpose of gaining
23 access to, and performing inspection service for the construction of PROJECT as set forth
24 herein.
25

26 10. Obtain and provide DISTRICT, at the time of providing written
27 notification to DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES
28 as set forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final

1 map for Tract No. 30142-1 or any phase thereof, whichever occurs first, with duly executed
2 Irrevocable Offer(s) of Dedication to the public for flood control and drainage purposes,
3 including ingress and egress, for the rights of way deemed necessary by DISTRICT for the
4 construction, inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES,
5 as shown in concept highlighted in purple and cross-hatched in red on Exhibit "B" attached
6 hereto and made a part hereof. The Irrevocable Offer(s) of Dedication shall be in a form
7 approved by DISTRICT and shall be executed by all legal and equitable owners of the property
8 described in the offer(s).

9
10 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
11 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
12 thirty (30) days prior to date of submission of all the property described in the Irrevocable
13 Offer(s) of Dedication.

14 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT
15 of the start of construction as set forth in Section I.8. with a complete list of all contractors and
16 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the
17 corresponding license number and license classification of each. At such time, DEVELOPER
18 shall further identify in writing its designated superintendent for DISTRICT DRAINAGE
19 FACILITIES construction.
20

21 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT
22 of the start of construction as set forth in Section I.8., a construction schedule which shall show
23 the order and dates in which the DEVELOPER or DEVELOPER'S contractor proposes to carry
24 on the various parts of work, including estimated start and completion dates. As construction of
25 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction
26 schedule as requested by DISTRICT.
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1 14. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign
2 their ownership to DISTRICT at the time DISTRICT approves and signs said final mylar
3 IMPROVEMENT PLANS, and prior to the start of DISTRICT DRAINAGE FACILITIES
4 construction.

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

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

10 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT
11 of the start of construction as set forth in Section I.8. a confined space procedure specific to
12 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements
13 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space
14 Operations, Section 5157, Permit Required Confined Space and DISTRICT Confined Space
15 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the
16 issuance of a Notice to Proceed.
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19 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
20 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
21 insurance policy shall be provided to DISTRICT, the County of Riverside and CITY at the time
22 of providing written notice pursuant to Section I.8.

23 19. Commencing on the date notice is given pursuant to Section I.8. and
24 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for ownership,
25 operation and maintenance:
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27 (a) Provide and maintain or cause its contractor(s) to provide and
28 maintain comprehensive liability insurance coverage which shall

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protect DEVELOPER from claim from damages for personal injury, including accidental and wrongful death, as well as from claims for property damage which may arise from DEVELOPER'S construction of PROJECT or the performance of its obligations hereunder, whether such construction or performance be by DEVELOPER, by any of its contractors, subcontractors, or by anyone employed directly or indirectly by any of them. Such insurance shall name DISTRICT, the County of Riverside and CITY as additional insureds with respect to this Agreement and the obligations of DEVELOPER hereunder. Such insurance shall provide for limits of not less than two million dollars (\$2,000,000) per occurrence.

(b) Cause its insurance carrier(s) or its contractor's insurance carrier(s), who shall be authorized by the California Department of Insurance to transact the business of insurance in the State of California, to furnish DISTRICT, the County of Riverside and CITY at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8. with certificate(s) of insurance and applicable policy endorsements showing that such insurance is in full force and effect and that DISTRICT, the County of Riverside and CITY are named as additional insureds with respect to this Agreement and the obligations of DEVELOPER hereunder. Further, said certificate(s) shall state that the issuing company shall give DISTRICT, the County of Riverside and CITY sixty (60) days written notice in the event of any cancellation,

1 termination, non-renewal or reduction in coverage of the policies
2 evidenced by the certificate(s). In the event of any such
3 cancellation, termination, non-renewal or reduction in coverage,
4 DEVELOPER shall, forthwith, secure replacement insurance
5 meeting the provisions of this paragraph.

6 Failure to maintain the insurance required by this paragraph shall be
7 deemed a material breach of this Agreement and shall authorize and constitute authority for
8 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
9 VI.3.

10
11 20. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole
12 cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT
13 PLANS.

14 21. Within two weeks of completing PROJECT construction, provide
15 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
16 construction is substantially complete and requesting that DISTRICT conduct a final inspection
17 of DISTRICT DRAINAGE FACILITIES.

18
19 22. Upon completion of PROJECT construction and upon acceptance by CITY
20 of all street rights of way deemed necessary by DISTRICT and CITY for the operation and
21 maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE
22 FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to
23 DISTRICT fee simple title, in a form approved by DISTRICT, to the rights of way as shown in
24 concept shaded in purple and cross-hatched in red in Exhibit "B".

25
26 23. At the time of recordation of the conveyance document(s) as set forth in
27 Section I.22., furnish DISTRICT with policies of title insurance, each in the amount of not less
28 than one hundred percent (100%) of the estimated fee value, as determined by DISTRICT, for

1 each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said
2 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and
3 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are
4 deemed acceptable.

5 24. Accept ownership and sole responsibility for the operation and
6 maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility
7 for operation and maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts
8 ownership and responsibility for operation and maintenance of CITY DRAINAGE
9 FACILITIES. Further, it is mutually understood by the parties hereto that prior to DISTRICT
10 acceptance of ownership and responsibility for the operation and maintenance of DISTRICT
11 DRAINAGE FACILITIES, PROJECT shall be in a satisfactorily maintained condition as solely
12 determined by DISTRICT.
13

14 25. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
15 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and
16 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all
17 such costs, expenses and fees shall be computed as costs and included in any judgment
18 rendered.
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20 26. Upon completion of construction of PROJECT but prior to DISTRICT
21 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
22 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered
23 in the State of California, shall provide DISTRICT a redlined "record drawing" copy of
24 IMPROVEMENT PLANS. After DISTRICT approval of the redlined "record drawing",
25 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
26 onto DISTRICT'S original mylars at DISTRICT'S office, after which, the engineer shall review,
27 stamp and sign the original IMPROVEMENT PLANS "RECORD DRAWING."
28

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

6 SECTION II

7 DISTRICT shall:

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

10 2. Provide CITY an opportunity to review and approve IMPROVEMENT
11 PLANS prior to DISTRICT'S final approval.

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

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

16 5. Inspect DISTRICT DRAINAGE FACILITIES construction.

17 6. Keep an accurate accounting of all DISTRICT costs associated with the
18 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
19 conveyance documents and the processing and administration of this Agreement.

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

4 8. Accept ownership and responsibility for the operation and maintenance of
5 DISTRICT DRAINAGE FACILITIES, upon (i) DISTRICT acceptance of PROJECT
6 construction as being complete, (ii) recordation of all conveyance documents described in
7 Section I.22., and (iii) acceptance by CITY of all necessary street rights of way as deemed
8 necessary by DISTRICT and CITY for the operation and maintenance of PROJECT.

9
10 9. By execution of this Agreement, grant CITY the necessary rights to
11 inspect, operate and maintain those portions of ROAD CULVERTS, if any, located within
12 DISTRICT'S CHANNEL right of way.

13 10. By execution of this Agreement, grant CITY and DEVELOPER, their
14 agents and contractors, the necessary rights to enter upon DISTRICT'S CHANNEL right of way
15 for the purpose of performing their maintenance responsibilities as set forth herein.

16
17 11. Accept sole responsibility for maintaining CHANNEL'S line, grade and
18 appurtenant structures such that CHANNEL functions as a flood control facility at its design
19 level.

20 12. Provide CITY with a reproducible duplicate copy of "record drawing"
21 IMPROVEMENT PLANS upon DISTRICT acceptance of DISTRICT DRAINAGE
22 FACILITIES as being complete.

23 SECTION III

24 TRANSPORTATION shall:

25
26 1. Not have any responsibilities under this Agreement and shall be relieved of
27 all responsibilities set forth in PREVIOUS AGREEMENT.

SECTION IV

AGENCY shall:

- 1. Not have any responsibilities under this Agreement and shall be relieved of all responsibilities set forth in PREVIOUS AGREEMENT.

SECTION V

CITY shall:

- 1. Review and approve IMPROVEMENT PLANS prior to the start of PROJECT construction.

- 2. 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.

- 3. Inspect construction of CITY DRAINAGE FACILITIES and CHANNEL.

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

- 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication as set forth herein, and any other outstanding offers of dedication necessary for the construction, inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES.

- 6. Grant DISTRICT, by execution of this Agreement the right to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.

- 7. Accept ownership and sole responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete.

1 8. Upon DISTRICT acceptance of CHANNEL for ownership, operation and
2 maintenance, accept sole responsibility for routine day to day maintenance of CHANNEL
3 including but not limited to, removal of trash and debris, performing graffiti removal and
4 vegetation control including any necessary mowing, cutting and weed abatement associated
5 therewith.

6 9. Upon DISTRICT acceptance of CHANNEL for ownership, operation and
7 maintenance, accept sole responsibility, with the exception of DEVELOPER'S 401 Certification
8 bio swale responsibilities set forth in Section I.4., for maintenance of any water quality features
9 located within DISTRICT'S CHANNEL right of way, including but not limited to, repairing
10 and/or replacing pathways, access roads, landscaping and the routine removal of accumulated
11 litter, trash and debris associated with CITY'S use of CHANNEL right of way.

12 10. Not construct any structures or improvements or cause any change to or
13 modification within DISTRICT'S CHANNEL right of way without obtaining the prior written
14 permission and consent of DISTRICT.

15 11. Remove any unauthorized structures or improvements or cease any
16 interfering use upon receipt of a written notification from DISTRICT in the event DISTRICT'S
17 General Manager-Chief Engineer determines that such structures or improvements or use of
18 DISTRICT'S CHANNEL right of way in any way interfere with CHANNEL'S primary purpose
19 and function.

20 12. Recognize that CHANNEL is an active watercourse and, hence,
21 DISTRICT'S CHANNEL right of way will be subject to periodic flooding, flood hazards and
22 possible flood damage.

23 13. Assume all liability in conjunction with the CITY'S use of DISTRICT'S
24 CHANNEL right of way including claims of third persons for injury or death or damage to
25 property. Said obligation shall not include any inverse condemnation liability of CITY by
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1 reason of location of CHANNEL or DISTRICT'S improvements thereto unless such liability is
2 the result of use of the property pursuant to CITY'S actual or tacit consent.

3 14. Upon DISTRICT acceptance of CHANNEL for ownership, operation and
4 maintenance, accept sole responsibility for providing public security and safety in conjunction
5 with the CITY'S use of DISTRICT'S CHANNEL right of way.

6 15. Ensure the safety of all persons who may use CHANNEL right of way by
7 conducting regular safety inspections and promptly repairing any damage to DISTRICT'S
8 CHANNEL right of way that may be necessary to ensure the safety of the public.

9 16. Repair any damage to CHANNEL right of way resulting from CITY'S use
10 thereof.

11 SECTION VI

12 It is further mutually agreed:

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

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

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

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

8 In the event DEVELOPER wishes to expedite issuance of a Notice to
9 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
10 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
11 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
12 approval. DISTRICT shall review the individual's qualifications and experience and, upon
13 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be
14 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
15 construction and quality control matters. If DEVELOPER'S initial construction inspection
16 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT
17 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection
18 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
19 however, a minimum balance of ten thousand dollars (\$10,000) shall be retained on account.

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

7 6. DEVELOPER shall not request DISTRICT to accept any portion or
8 portions of DISTRICT DRAINAGE FACILITIES or CITY to accept any portion or portions of
9 CITY DRAINAGE FACILITIES prior to completion of PROJECT construction.

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

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

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

DEVELOPER'S indemnification obligations shall be satisfied when DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal (or equivalent document) relieving DISTRICT and/or CITY from any liability for the claim, proceeding or action involved.

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

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

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

1 9. If any provision in this Agreement is held by a court of competent
2 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless
3 continue in full force without being impaired or invalidated in any way.

4 10. DISTRICT and CITY each pledge to cooperate in regard to the operation
5 and maintenance of their respective facilities as set forth herein, and to discharge their
6 respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of
7 any nuisance condition or undue maintenance impact upon the others' facilities.

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

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

13 RIVERSIDE COUNTY FLOOD CONTROL
14 AND WATER CONSERVATION DISTRICT
15 1995 Market Street
16 Riverside, CA 92501
17 Attn: Contract Administration Section

CITY OF MENIFEE
Attn: City Manager
29714 Haun Road
Menifee, CA 92586

16 KB HOME COASTAL, INC.
17 36310 Inland Valley Drive
18 Wildomar, CA 92595
19 Attn: Tim Roberts

COUNTY SERVICE AREA 145
Post Office Box 1180
Riverside, CA 92502-1180
Attn: Bill Brown

18 COUNTY OF RIVERSIDE
19 Attn: Transportation Department
20 Post Office Box 1090
Riverside, CA 92502-1090

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

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

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

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

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

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

22 //

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*
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 R. Kipnis*
NEAL R. KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By *Juan C. Perez*
JUAN C. PEREZ
Director of Transportation

By _____
BOB BUSTER, Chairman
County of Riverside Board of Supervisors

ATTEST:

RECOMMENDED FOR APPROVAL:

KECIA HARPER-IHEM
Clerk of the Board

By *Rob Field*
ROB FIELD
Assistant County Executive Officer/EDA

By _____
Deputy

(SEAL)

FORM APPROVED COUNTY COUNSEL
BY: *Marshall Victor* DATE: 4/29/11
MARSHALL VICTOR

Amended and Restated Cooperative Agreement: Tract No. 30142-1
JPS:bjj
3/31/10

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

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By *[Signature]*
STEVE HARDING
City Manager

By *[Signature]*
WALLACE W. EDGERTON
Mayor

APPROVED AS TO FORM:

ATTEST:

By *[Signature]*
Karen Feld
City Attorney

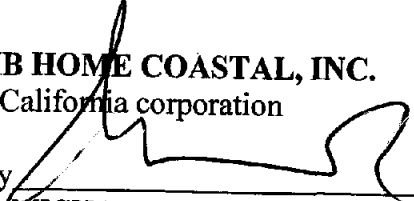
KATHY BENNETT
City Clerk
By *[Signature]*

(SEAL)

Amended and Restated Cooperative Agreement: Tract No. 30142-1
JPS:blj
3/31/10

KB HOME COASTAL, INC.
a California corporation

By



MICHAEL H. FREEMAN, JR.
Vice President, Land and Forward Planning

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

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Amended and Restated Cooperative Agreement: Tract No. 30142-1
JPS:blj
3/31/10

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

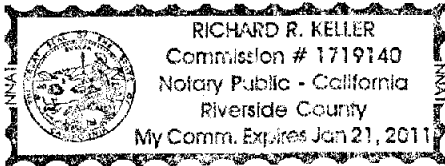
State of California

County of Riverside

On July 21, 2010 before me, Richard R. Keller, Notary Public, personally appeared Michael H. Freeman, Jr., 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.



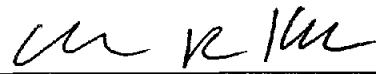
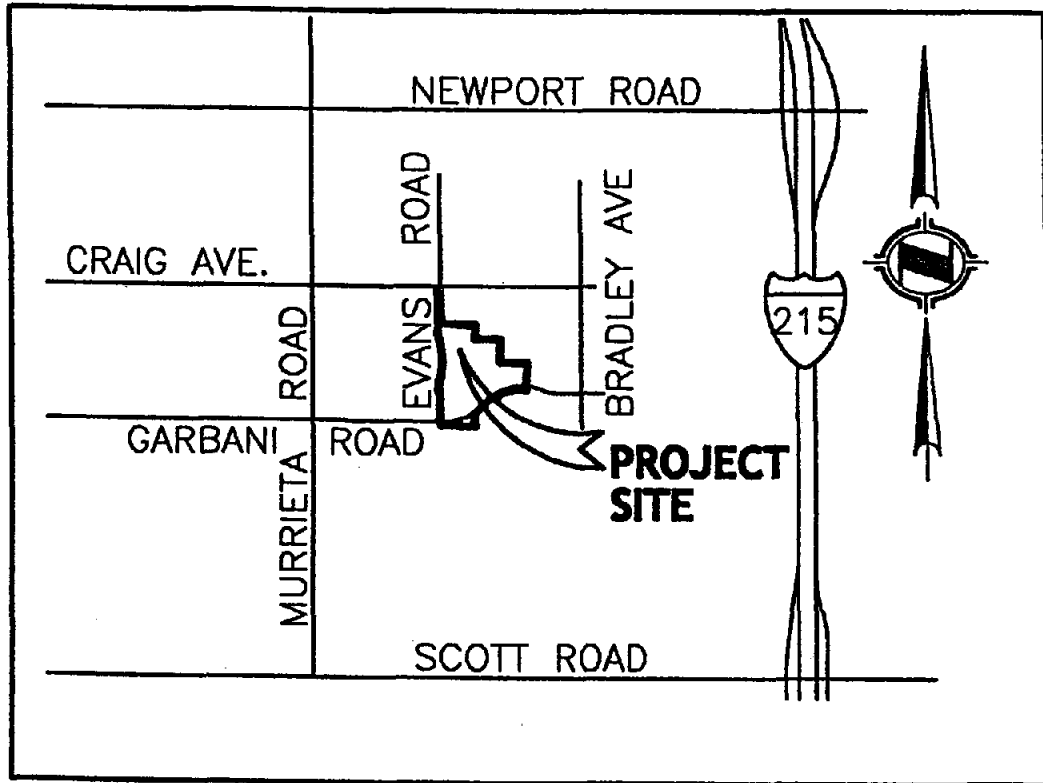

Richard R. Keller

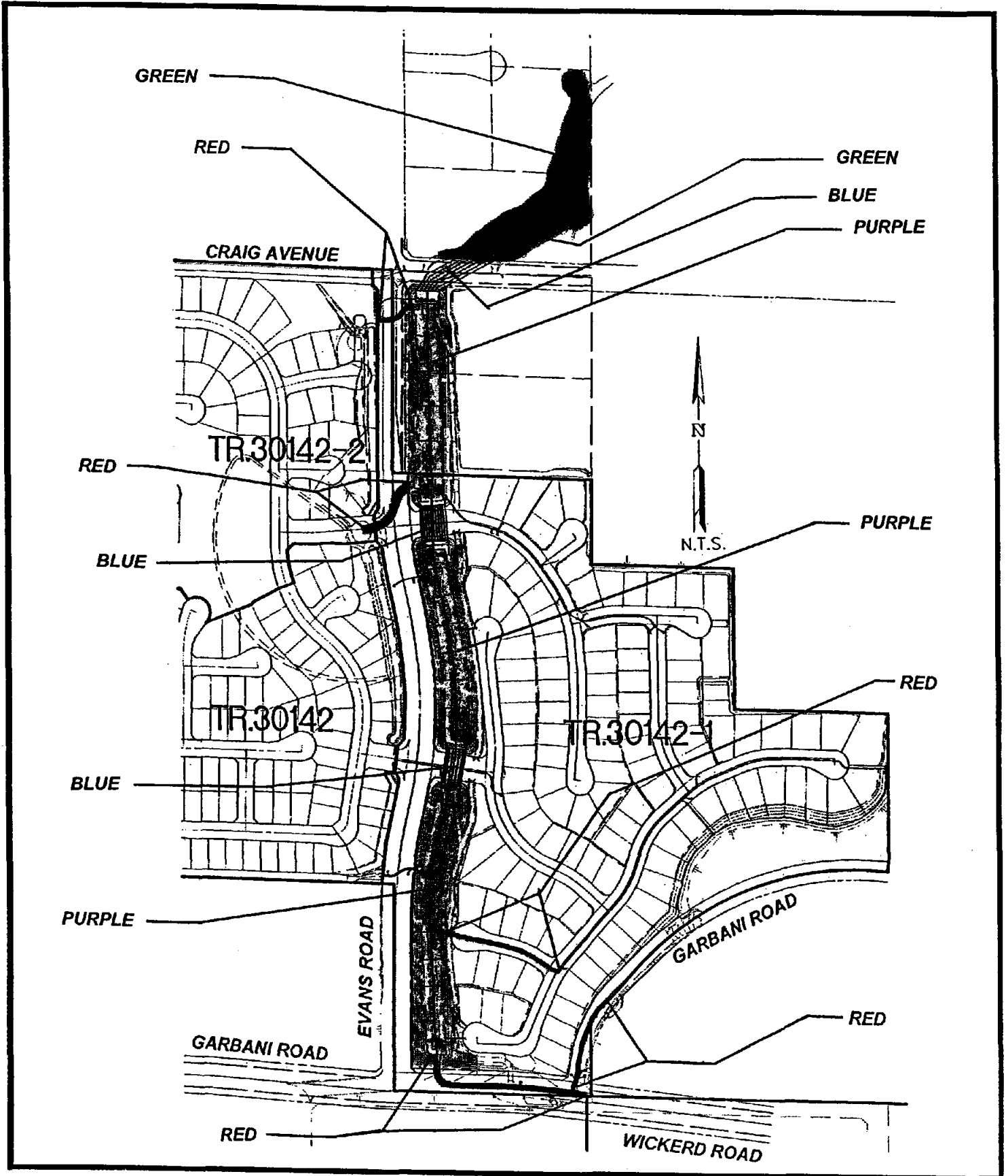
Exhibit A



VICINITY MAP

N.T.S.

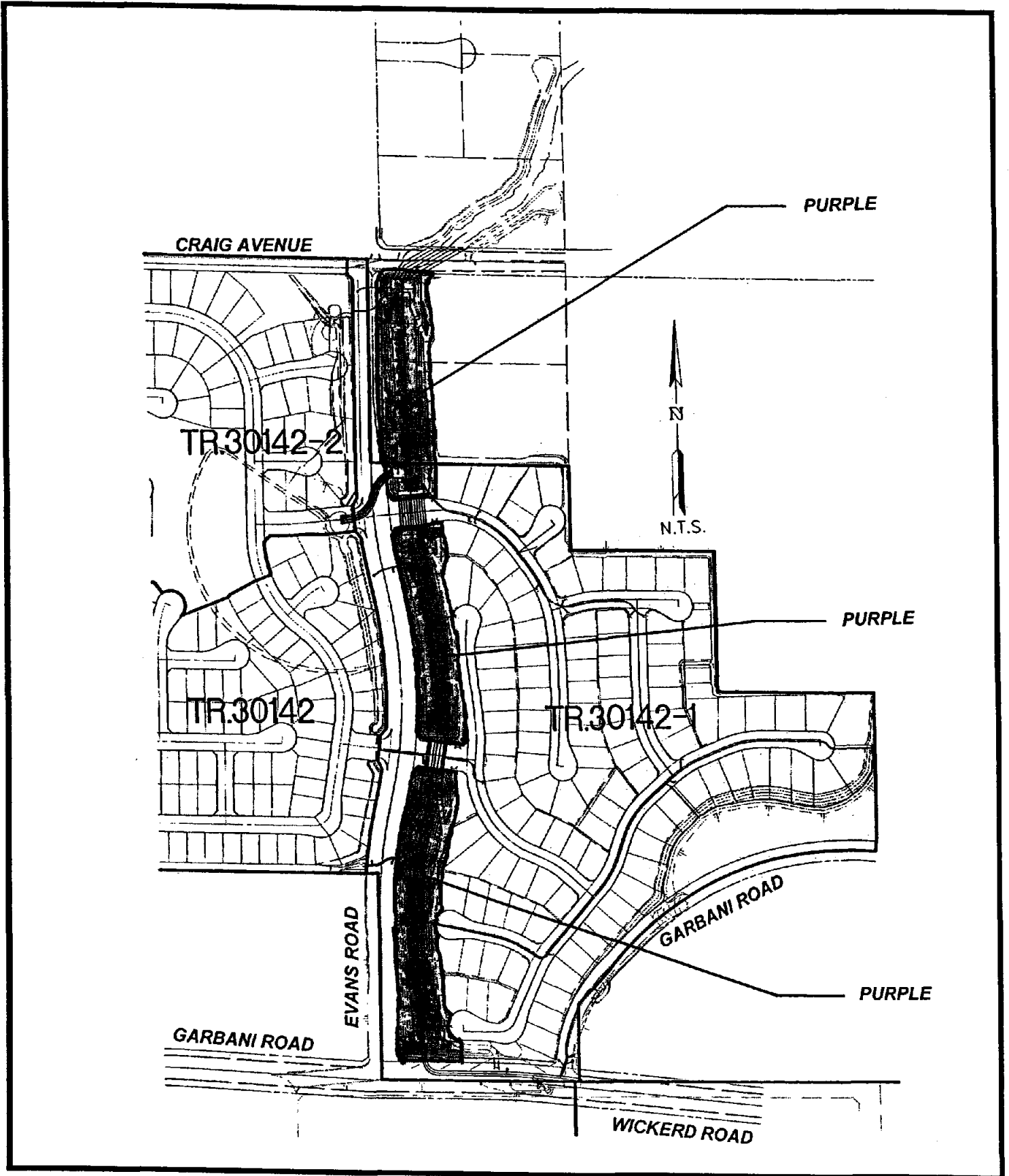
Exhibit A



Cooperative Agreement

Tract No. 30142-1

Exhibit B



Cooperative Agreement

Tract No. 30142-1

1/2

Exhibit B

