

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

902B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

June 14, 2011

SUBJECT: Cooperative Agreement
Temescal Creek-Nichols Road Storm Drain, Line B-Stage 1
(Project No. 3-0-00042)
Tract 28214 (Lake Elsinore)

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the City of Lake Elsinore (City), and Castle & Cooke Alberhill Ranch, 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 stormwater drainage facilities, required as a condition for approval of Tract 28214, 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:
Michael R. Shetler

County Executive Office Signature

☐ Policy
☐ Policy
☐ Consent
☐ Consent

Dep't Recomm.:
 Per Exec. Ofc.:

Prev. Ag. ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

District: 1st

Agenda Number:

11.4

FORM APPROVED COUNTY COUNSEL
BY: DATE: 2/2/11
NEAL R. KIPNIS

Departmental Concurrence

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

SUBJECT: Cooperative Agreement
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Page 2

BACKGROUND: (continued)

The Agreement is necessary to provide for District construction inspection of the referenced facilities.

Upon completion of the facilities' construction, City will assume the interim operation and maintenance of the flood control facilities. Upon construction and acceptance of contiguous upstream and downstream flood facilities the District will assume ownership, operation and maintenance of the completed flood control facilities.

In addition to the interim assumption of the flood control facilities (above) City will assume ownership, operation and maintenance of the catch basins, connector pipes and laterals located within their rights of way.

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

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

KEC:blj

COOPERATIVE AGREEMENT

Temescal Creek-Nichols Road Storm Drain, Line B-Stage 1
(Project No. 3-0-00042)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF LAKE ELSINORE, hereinafter called "CITY", and CASTLE & COOKE ALBERHILL RANCH LLC, a California limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract No. 28214 in the city of Lake Elsinore 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. 3-198, include construction of approximately 1026 lineal feet of underground storm drain system, hereinafter called "DISTRICT DRAINAGE FACILITIES", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof. At its upstream terminus, DISTRICT DRAINAGE FACILITIES will connect to a future storm drain facility within the proposed Pioneer Lane. At its downstream terminus, DISTRICT DRAINAGE FACILITIES are proposed to connect to a future storm drain facility within Nichols Road. The future connections, hereinafter called "FUTURE DRAINS", are to be constructed pursuant to one or more separate Cooperative Agreements, hereinafter called "FUTURE AGREEMENTS", between DISTRICT, CITY and possible additional parties yet to be identified; and

C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of a certain outlet structure, certain catch basins, connector pipes and laterals,

1 hereinafter called "APPURTENANCES". Together DISTRICT DRAINAGE FACILITIES and
2 APPURTENANCES are hereinafter called "PROJECT"; and

3 D. DEVELOPER and CITY desire DISTRICT to ultimately accept ownership
4 and 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 and DEVELOPER desire CITY to accept ownership and sole
10 responsibility for APPURTENANCES. Additionally, it is mutually understood and agreed that
11 CITY shall assume ownership and sole responsibility for the operation and maintenance of
12 PROJECT until such time as DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT
13 as set forth herein; and

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

3 G. 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, and (iii) accept interim ownership and responsibility for the
7 operation and maintenance of DISTRICT DRAINAGE FACILITIES pending completion of
8 construction and DISTRICT acceptance of FUTURE DRAINS pursuant to the terms of any
9 FUTURE AGREEMENTS
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11 NOW, THEREFORE, the parties hereto mutually agree as follows:

12 SECTION I

13 DEVELOPER shall:

14 1. Prepare plans and specifications for PROJECT, as shown on District
15 Drawing No. 3-198, hereinafter called "IMPROVEMENT PLANS", in accordance with
16 DISTRICT standards, and submit to DISTRICT for review and approval.
17

18 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
19 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
20 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS
21 and with the processing and administration of this Agreement.

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

3 4. [This Section Intentionally Left Blank.]

4 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
5 permits and rights of entry as may be needed for the construction, inspection, operation and
6 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish
7 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
8 set forth in Section I.8., with sufficient evidence of DEVELOPER having secured such
9 necessary licenses, agreements, permits and rights of entry, as determined and approved by
10 DISTRICT.
11

12 6. Furnish DISTRICT with copies of all permits, approvals or agreements as
13 may be required by any Federal or State resource and/or regulatory agency for the construction,
14 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include
15 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional
16 Water Quality Control Board, California State Department of Fish and Game, and State Water
17 Resources Control Board.
18

19 7. Provide CITY, at the time of providing written notice to DISTRICT of the
20 start of construction as set forth in Section I.8., with faithful performance and payment bonds,
21 each in the amount of (100%) of the estimated cost for construction of DISTRICT DRAINAGE
22 FACILITIES as determined by DISTRICT. The surety, amount and form of the bonds shall be
23 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect
24 until DISTRICT DRAINAGE FACILITIES are approved by DISTRICT as complete and
25 accepted by CITY for interim ownership and maintenance responsibilities; at which time the
26 bond amount may be reduced to ten percent (10%) to guarantee against any defective work,
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1 labor or materials. The remaining bonds shall remain in full force and effect for a period of one
2 (1) year following acceptance of DISTRICT DRAINAGE FACILITIES by CITY for interim
3 ownership and maintenance as set forth herein.

4 8. Notify DISTRICT in writing (Attention: Administrative Services Section),
5 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE
6 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE
7 FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written
8 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT
9 DRAINAGE FACILITIES.
10

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

15 10. [This Section Intentionally Left Blank.]
16

17 11. [This Section Intentionally Left Blank.]
18

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

25 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
26 the start of construction as set forth in Section I.8., a construction schedule which shall show the
27 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry on the
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1 various parts of work, including estimated start and completion dates. As construction of
2 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction
3 schedule as requested by DISTRICT.

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

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.

20 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
21 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
22 insurance policy shall be provided to DISTRICT, the County of Riverside and CITY at the time
23 of providing written notice pursuant to Section I.8.
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19. Commencing on the date notice is given pursuant to Section I.8. and continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance:

(a) Provide and maintain or cause its contractor(s) to provide and maintain comprehensive liability insurance coverage which shall 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 DISTRICT DRAINAGE FACILITIES 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

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 thirty (30) 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.
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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 21. Within two (2) weeks of completing DISTRICT DRAINAGE FACILITIES
22 construction, provide DISTRICT with written notice (Attention: Contract Administration
23 Section) that DISTRICT DRAINAGE FACILITIES construction is substantially complete and
24 requesting that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES.
25

26 22. [This Section Intentionally Left Blank.]

27 23. [This Section Intentionally Left Blank.]
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1 24. [This Section Intentionally Left Blank.]

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

10 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
11 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and
12 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all
13 such costs, expenses and fees shall be computed as costs and included in any judgment
14 rendered.
15

16 27. Upon completion of construction of DISTRICT DRAINAGE FACILITIES,
17 but prior to CITY acceptance of DISTRICT DRAINAGE FACILITIES for interim ownership,
18 operation and maintenance, DEVELOPER'S civil engineer of record or construction civil
19 engineer of record, duly registered in the State of California, shall provide DISTRICT with a
20 redlined "RECORD DRAWING" copy of plans for DISTRICT DRAINAGE FACILITIES.
21 After DISTRICT approval of the redlined "RECORD DRAWING" plans, DEVELOPER'S
22 engineer shall schedule with DISTRICT a time to transfer the redlined changes onto
23 DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
24 stamp and sign the original "RECORD DRAWING".
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26 28. Ensure that all work performed pursuant to this Agreement by
27 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
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1 regulations, including but not limited to all applicable provisions of the Labor Code, Business
2 and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs
3 associated with compliance with applicable laws and regulations.

4 SECTION II

5 DISTRICT shall:

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

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

10 3. [This Section Intentionally Left Blank.]

11 4. Inspect DISTRICT DRAINAGE FACILITIES construction.

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

15 6. Keep an accurate accounting of all DISTRICT construction inspection
16 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE
17 FACILITIES construction as being complete, submit a final cost statement to DEVELOPER. If
18 the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse
19 DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of
20 DISTRICT DRAINAGE FACILITIES construction as being complete. If at any time the costs
21 exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall
22 pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete
23 inspection of DISTRICT DRAINAGE FACILITIES, within thirty (30) days after receipt of
24 billing from DISTRICT.
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7. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES construction as being complete, (ii) acceptance by CITY of all necessary street rights of way as deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT, (iii) DISTRICT determination that DISTRICT DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT, (iv) DISTRICT determination that others have made any necessary grading and manhole adjustments within DISTRICT easements to meet DISTRICT standards, and (v) DISTRICT acceptance of FUTURE DRAINS pursuant to the terms of any FUTURE AGREEMENTS.

8. Provide CITY with a reproducible duplicate copy of "RECORD DRAWING" plans upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES construction as being complete.

SECTION III

CITY shall:

1. 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.

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

3. [This Section Intentionally Left Blank.]

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

6. Convey ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES to DISTRICT upon (i) DISTRICT determination that others have made any necessary grading and manhole adjustments within DISTRICT easements to meet DISTRICT standards and (ii) DISTRICT acceptance of FUTURE DRAINS pursuant to the terms of any FUTURE AGREEMENTS..

SECTION IV

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.

3. DEVELOPER shall complete construction of DISTRICT DRAINAGE FACILITIES within twelve (12) consecutive months after execution of this Agreement and within one hundred sixty (160) consecutive calendar days after commencing work on

1 DISTRICT DRAINAGE FACILITIES. It is expressly understood that since time is of the
2 essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon
3 time shall constitute authority for DISTRICT to perform the remaining work and require
4 DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In which case,
5 CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

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

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

13 In the event DEVELOPER wishes to expedite issuance of a Notice to
14 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
15 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
16 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
17 approval. DISTRICT shall review the individual's qualifications and experience and, upon
18 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be
19 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
20 construction and quality control matters. If DEVELOPER'S initial construction inspection
21 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT
22 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection
23 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
24 however, a minimum balance of ten thousand dollars (\$10,000) shall be retained on account.
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1 6. DISTRICT DRAINAGE FACILITIES construction work shall be on a five
2 (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT
3 designated legal holidays, unless otherwise approved in writing by DISTRICT. If
4 DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or
5 on holidays, DEVELOPER shall make a written request for permission from DISTRICT to
6 work the additional hours. The request shall be submitted to DISTRICT at least seventy-two
7 (72) hours prior to the requested additional work hours and state the reasons for the overtime
8 and the specific time frames required. The decision of granting permission for overtime work
9 shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by
10 DISTRICT, DEVELOPER will be charged the cost incurred at the overtime rates for additional
11 inspection time required in connection with the overtime work in accordance with Ordinance
12 Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

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

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

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

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

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

24 In the event there is conflict between this section and California Civil Code
25 Section 2782, this section shall be interpreted to comply with Civil Code Section 2782. Such
26 interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT or CITY to the
27 fullest extent allowed by law.
28

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

7 9. [This Section Intentionally Left Blank.]

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

10 11. 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:

12
13 RIVERSIDE COUNTY FLOOD CONTROL
14 AND WATER CONSERVATION DISTRICT
15 1995 Market Street
Riverside, CA 92501

CITY OF LAKE ELSINORE
130 South Main Street
Lake Elsinore, CA 92530
Attn: Ken Seumalo
Director of Public Works

16 CASTLE & COOKE ALBERHILL RANCH, LLC
17 4113 Pearl Street
18 Lake Elsinore, CA 92530
Attn: Tom Tomlinson

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

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

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

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

11 16. 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 this Agreement.
16

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

23 //


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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

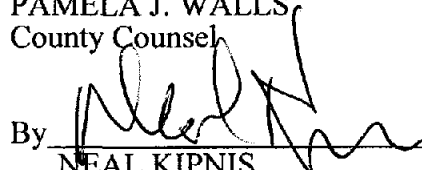
By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

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

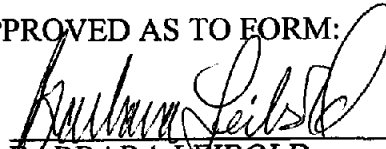
(SEAL)

Cooperative Agreement: TR 28214
KEC:blj
2/1/11


APPROVED AS TO FORM:

CITY OF LAKE ELSINORE

By


BARBARA LEIBOLD
City Attorney

By


AMY BHUTTA
Mayor

RECOMMENDED FOR APPROVAL:

ATTEST:

By


KEN SEUMALO
Director of Public Works


By


VIRGINIA J. BLOOM
City Clerk

(SEAL)

Cooperative Agreement: TR 28214
KEC:blj
2/1/11

CASTLE & COOKE ALBERHILL RANCH, LLC
a California limited liability company

By 
M.J. TOMLINSON
Vice President

[pending receipt of signature authority requested]

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: TR 28214
KEC:blj
2/1/11

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of *Riverside*

On *May 20, 2011* before me, *LaJoe Howard*, Notary Public
personally appeared *M.J. Tomlinson* _____

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.

LaJoe Howard

Signature of Notary

Exhibit A

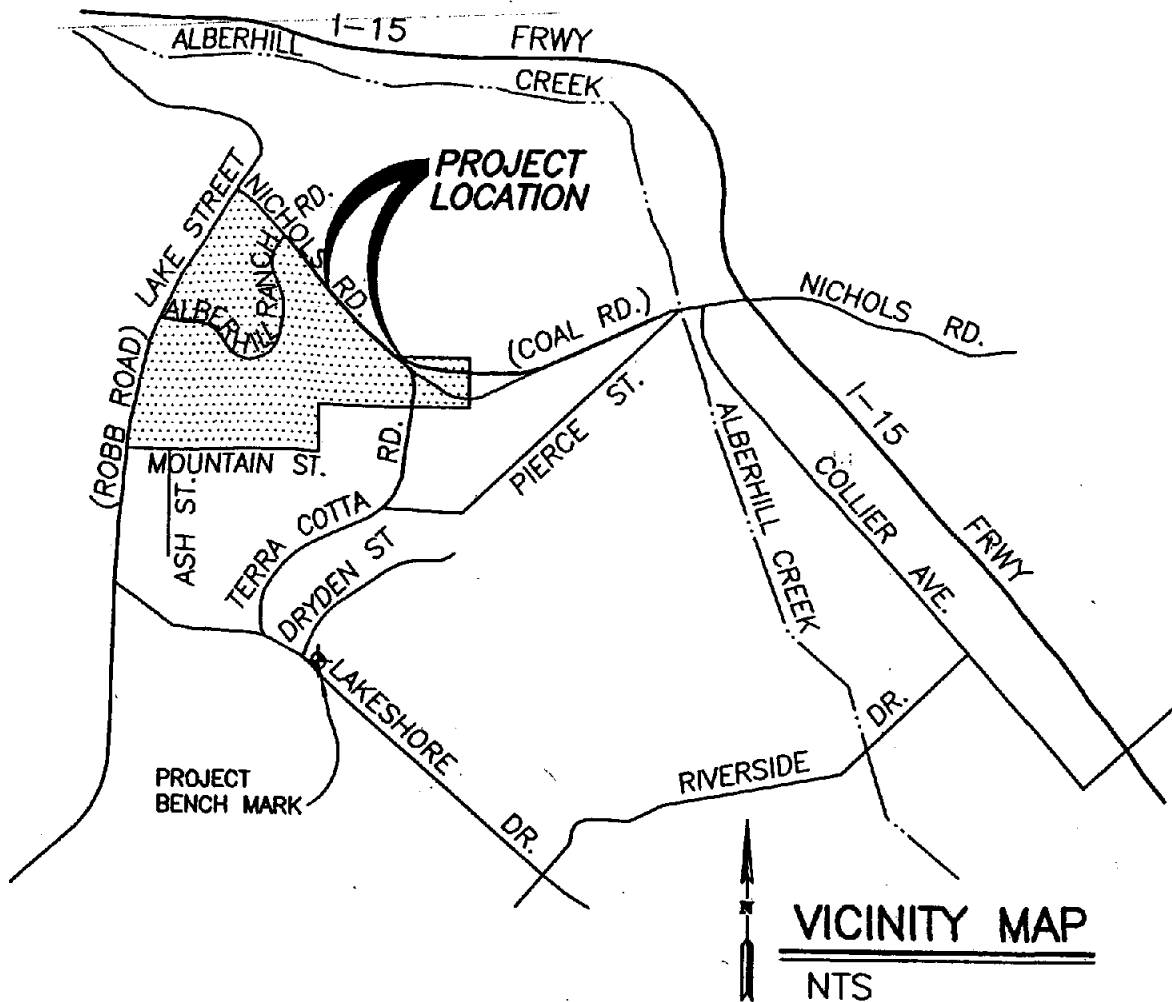


Exhibit A

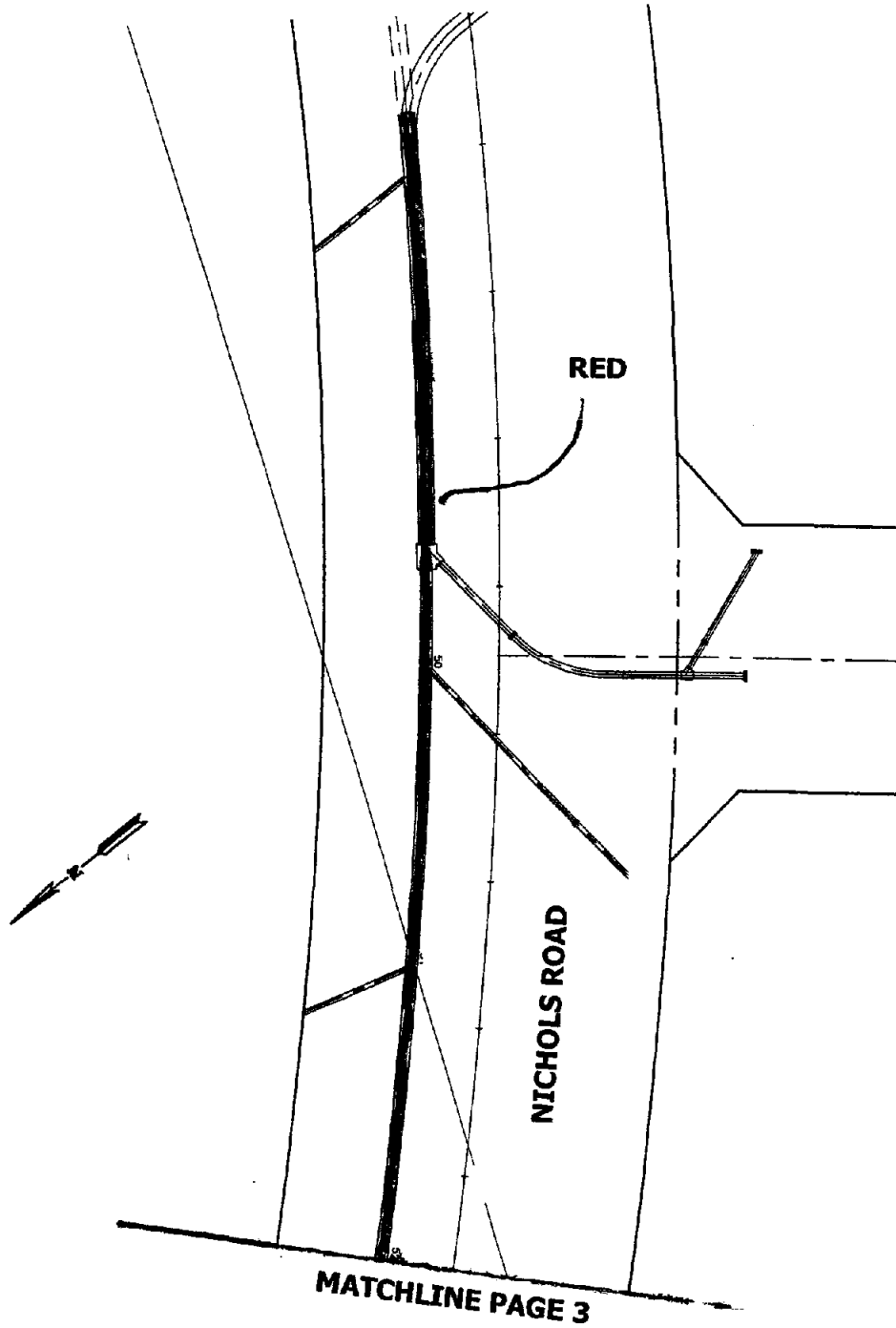


Exhibit A

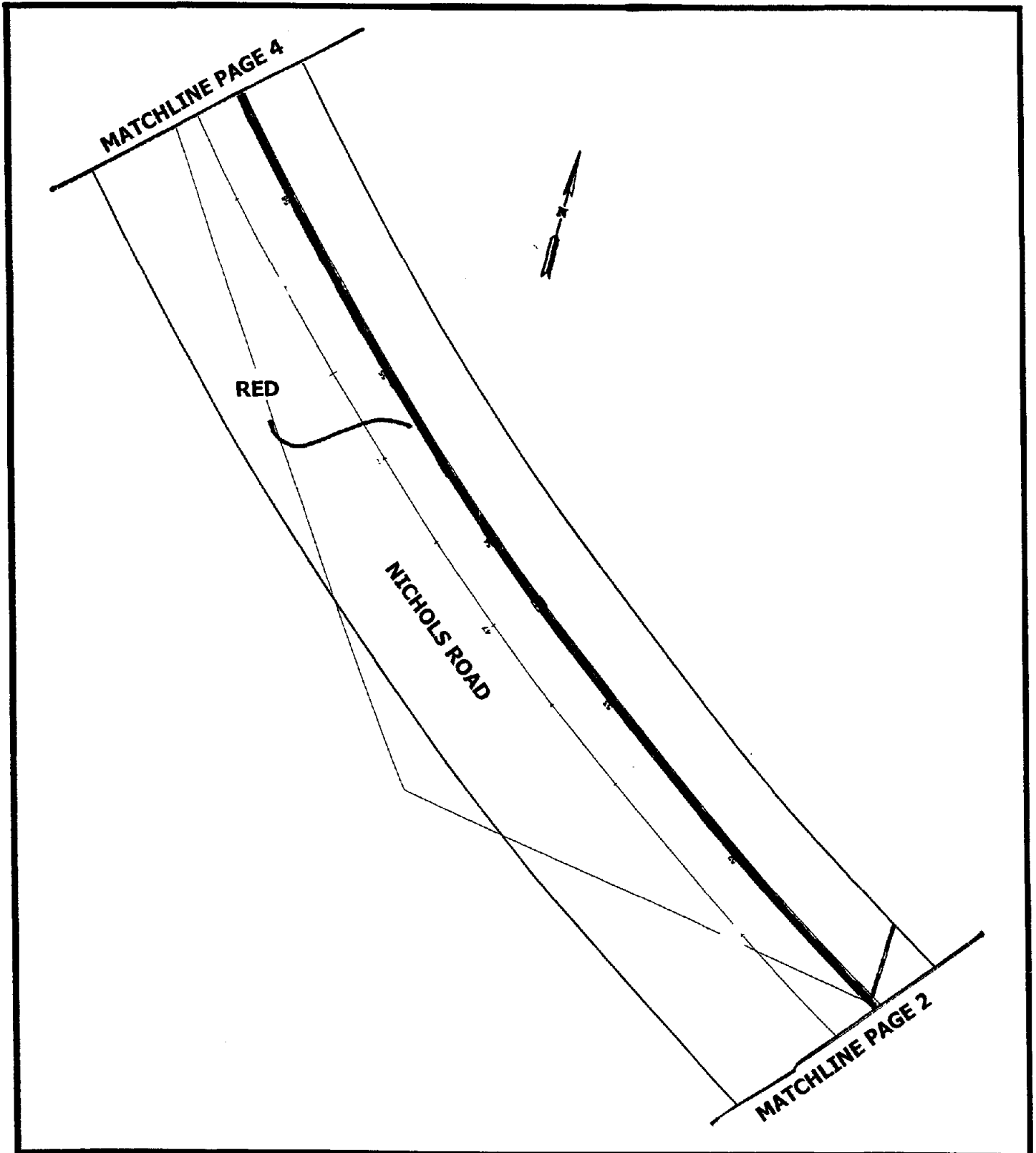
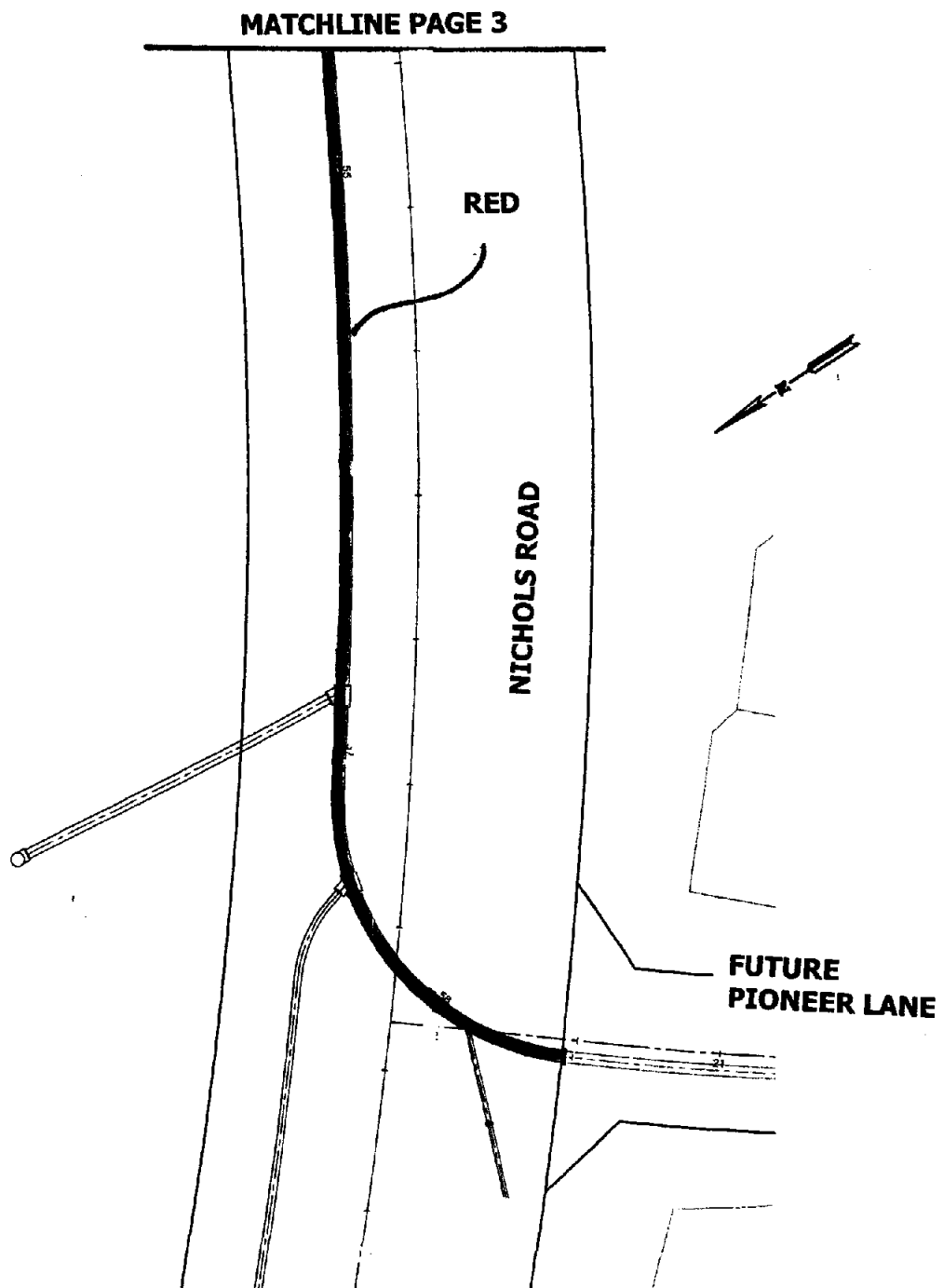


Exhibit A



**CERTIFICATE OF SECRETARY
OF
CASTLE & COOKE ALBERHILL RANCH, LLC**

The undersigned, Mary J. Garnett, Vice President and Secretary of Castle & Cooke Alberhill Ranch, LLC, a California limited liability company (the "Company"), hereby certifies on behalf of the Company as follows:

1. I am the duly elected, qualified and acting Vice President and Secretary of the Company.
2. The Operating Agreement for the Company dated as of November 30, 2004 (as amended, "Operating Agreement") provides that the Company shall be managed by Castle & Cooke Alberhill Home Building, Inc. ("Managing Member").
3. The Operating Agreement provides that the Managing Member may, at its discretion, appoint one or more officers of the Company.
4. Attached as Exhibit A is a true and complete list, as of the date hereof, of the duly elected, qualified and acting officers of the Company, holding the offices set forth opposite their respective names.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of the 26th day of September, 2007.

By: 

Name: Mary J. Garnett

Title: Vice President and Secretary