

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

111B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
June 12, 2012

SUBJECT: Salt Creek – Audie Murphy Line M1 (Tract No. 31391-1)
Project No. 4-0-00295
Cooperative Agreement
District 3/District 5

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement (Agreement) between the District, the City of Menifee (City) and Sutter Mitland 01 LLC (Developer); and
2. 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 improvements, required as a condition for approval of Tract No. 31391-1, are to be constructed by the Developer. The Agreement is necessary to provide for District and City inspection of the flood control improvements.

Continued on page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

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

SOURCE OF FUNDS:	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

FORWARDED TO COUNTY COUNSEL
 BY:
 DATE: 6/12/12

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

Prev. Agn. Ref.:

District: 3rd/5th

Agenda Number:

11.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

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Page 2

BACKGROUND (continued):

Upon completion of construction, the Developer will continue to own, operate and maintain said improvements until such time as District and City assume their respective ownership and responsibilities for operation and maintenance of improvements pursuant to the terms and conditions of the Agreement.

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

FINANCIAL:

The Developer is funding all costs associated with the construction and inspection of said improvements. Future operation and maintenance costs will accrue to the District.

TT:blj
P8/145215

COOPERATIVE AGREEMENT
Salt Creek – Audie Murphy Line M1
(Tract No. 31391-1)
Project No. 4-0-00295

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE, hereinafter called "CITY", and SUTTER MITLAND 01 LLC, a Delaware limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER owns certain real property within tentative Tract No. 31391-1 located in the City of Menifee; and

B. Tract No. 31391-1 is an integral part of Tract Nos. 31391, 31391-2, 31391-3 and 31391-4. Together, Tract Nos. 31391, 31391-1, 31391-2, 31391-3 and 31391-4 are hereinafter called "PROPERTY". The initial processing of land-use entitlements and associated improvement plans for said PROPERTY commenced under the authority of the County of Riverside. Following CITY'S incorporation in October 2008, the processing of these land-use entitlements and associated improvement plans was assumed by CITY. Final subdivision maps for the subject PROPERTY were approved by CITY on or about June 8, 2011 and recorded by the Office of the Riverside County Clerk-Recorder on or about June 16, 2011; and

C. Pursuant to the conditions for approval for the subdivision and subsequent development of PROPERTY, DEVELOPER and/or others have constructed or caused to be constructed certain improvements including flood control and drainage facilities without seeking DISTRICT inspection of such construction; and

1 D. Pursuant to the conditions for approval for Tract No. 31391-1,
2 DEVELOPER must construct certain flood control facilities in order to provide flood protection
3 and drainage for DEVELOPER'S planned development; and

4 E. The required flood control facilities include construction of (i)
5 approximately 1,700 lineal feet of underground storm drain system, hereinafter called "LINE
6 M1", as shown on District Drawing No. 4-0945 (Sheets 7-11; approved April 2007), and (ii)
7 associated catch basins, laterals and connector pipes, hereinafter called "APPURTENANCES".
8 Together LINE M1 and APPURTENANCES are hereinafter called "PROJECT"; and

9 F. DEVELOPER has proceeded with construction of a segment of LINE M1
10 without entering into a cooperative agreement with DISTRICT and without seeking DISTRICT
11 inspection of such construction. The constructed segment of LINE M1 is hereinafter called
12 "LINE M1-STAGE 1"; and

14 G. It is the intent of DISTRICT, CITY and DEVELOPER that this Agreement
15 shall principally address matters pertaining to the design, construction, inspection, and operation
16 and maintenance of PROJECT only; and

18 H. DEVELOPER and DISTRICT desire CITY to accept ownership and
19 responsibility for the operation and maintenance of APPURTENANCES and segments of LINE
20 M1 that are 36-inch or smaller in diameter, hereinafter together called "CITY DRAINAGE
21 FACILITIES"; and

22 I. DEVELOPER and CITY desire DISTRICT to accept ownership and
23 responsibility for the operation and maintenance of segments of LINE M1 that are larger than
24 36-inch in diameter, hereinafter called "DISTRICT DRAINAGE FACILITY"; and

26 J. DISTRICT is willing to (i) review and approve, if appropriate,
27 DEVELOPER'S submittals required under the terms of this Agreement, (ii) inspect the
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1 construction of PROJECT, (iii) inspect the constructed LINE M1-STAGE 1 to the extent
2 possible under existing conditions, and (iv) accept ownership and responsibility for the
3 operation and maintenance of DISTRICT DRAINAGE FACILITY in accordance with the
4 provisions of this Agreement, provided DEVELOPER (i) complies with this Agreement, (ii)
5 pays DISTRICT the amounts specified herein to cover DISTRICT'S review of all items required
6 under the terms of this Agreement and construction inspection and administrative costs, (iii)
7 satisfactorily submits all items required under the terms of this Agreement, (iv) constructs
8 PROJECT in accordance with plans and specifications approved by DISTRICT and the
9 Riverside County Transportation Department, (v) obtains all necessary permits, regulatory
10 permits, licenses and rights of entry as set forth herein, and (vi) accepts ownership and
11 responsibility for the operation and maintenance of PROJECT following completion of
12 PROJECT construction until such time as (a) CITY accepts ownership and responsibility for the
13 operation and maintenance of CITY DRAINAGE FACILITIES, (b) CITY obtains and conveys
14 to DISTRICT the necessary rights of way for the inspection, operation and maintenance of
15 DISTRICT DRAINAGE FACILITY as set forth herein, and (c) DISTRICT and CITY accept
16 respective ownership and responsibility for the operation and maintenance of certain flood
17 control and drainage facilities previously constructed by DEVELOPER and/or others in
18 association with PROPERTY under the terms of a separate Cooperative Agreement; and
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21 K. CITY is willing to (i) review and approve DEVELOPER'S submittals
22 required under the terms of this Agreement, (ii) inspect PROJECT construction, (iii) accept and
23 hold faithful performance and payment bonds submitted by DEVELOPER for PROJECT, (iv)
24 accept the Irrevocable Offers furnished by DEVELOPER and, as requested by DISTRICT, grant
25 DISTRICT all rights necessary to inspect, operate and maintain DISTRICT DRAINAGE
26 FACILITY within CITY rights of way, and (v) accept ownership and responsibility for the
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1 operation and maintenance of CITY DRAINAGE FACILITIES upon DISTRICT acceptance of
2 DISTRICT DRAINAGE FACILITY, provided PROJECT is constructed in accordance with
3 plans and specifications approved by DISTRICT and the Riverside County Transportation
4 Department.

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

6 SECTION I

7 DEVELOPER shall:

8 1. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
9 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
10 DISTRICT to cover DISTRICT'S costs associated with (i) the review and implementation of
11 DEVELOPER'S submittals furnished pursuant to the terms of this Agreement, (ii) the review
12 and approval of right of way and conveyance documents, and (iii) the processing and
13 administration of this Agreement (the "Administrative Account").
14

15 2. Deposit with DISTRICT (Attention: Business Office – Accounts
16 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
17 construction as set forth in Section I.6. herein, the estimated cost of providing construction
18 inspection for PROJECT, in an amount as determined and approved by DISTRICT in
19 accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any
20 amendments thereto, based upon the bonded value of PROJECT. DISTRICT construction
21 inspection services shall be performed on a fee for service basis. If at any time the cost of
22 providing inspection services exceeds the deposit, or is anticipated by DISTRICT to exceed the
23 amount deposited, DEVELOPER shall pay such additional amount(s), as deemed reasonably
24 necessary by DISTRICT to complete inspection of PROJECT, within thirty (30) days after
25 receipt of billing from DISTRICT.
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1 3. Secure, at their sole cost and expense, all necessary licenses, agreements,
2 permits, rights of entry, easements and rights of way as may be needed for the construction,
3 inspection, operation and maintenance of PROJECT. DEVELOPER shall furnish DISTRICT,
4 at the time of providing written notice to DISTRICT of the start of construction as set forth in
5 Section I.6. with sufficient evidence of DEVELOPER having secured such necessary licenses,
6 agreements, permits, rights of entry, easements and rights of way, as determined and approved
7 by DISTRICT.

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

14 5. Provide CITY, at the time of providing written notice to DISTRICT of the
15 start of construction as set forth in Section I.6., with faithful performance and payment bonds,
16 each in the amount of one hundred percent (100%) of the estimated cost for construction of
17 PROJECT as determined by DISTRICT. The surety, amount and form of the bonds shall be
18 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect
19 until PROJECT is accepted by DISTRICT and CITY as complete; at which time the bond
20 amount may be reduced to ten percent (10%) for a period of one year to guarantee against any
21 defective work, labor or materials.
22

23 6. Notify DISTRICT in writing (Attention: Administrative Services Section),
24 at least twenty (20) days prior to the start of construction of PROJECT. Construction shall not
25 begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has issued to
26 DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence
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1 construction of PROJECT. DEVELOPER'S failure to comply with this paragraph, shall be
2 deemed a material breach of this Agreement and shall authorize and constitute authority for
3 DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is
4 unable to perform its obligations hereunder, nor to accept responsibility for ownership,
5 operation and maintenance of DISTRICT DRAINAGE FACILITY due, either in whole or in
6 part, to said breach of this Agreement.

7 7. Furnish all technical and construction related documentation including but
8 not limited to contract documents, pipe certification reports, soil compaction reports,
9 construction inspection records, and insurance documentation for LINE M1-STAGE 1 required
10 under the terms of this Agreement and shall submit to DISTRICT for its review and approval.
11

12 8. Furnish DISTRICT, as early as possible but prior to requesting any final
13 inspection of PROJECT, with a complete tabulation of all contractors and subcontractors
14 (including the corresponding license number and license classification of each) who performed
15 work on LINE M1-STAGE 1 and further identify any discrete LINE M1-STAGE 1 components
16 which each contractor or subcontractor constructed.
17

18 9. Furnish DISTRICT, as early as possibly but prior to requesting any final
19 inspection of PROJECT, a construction schedule which shall show the order and dates in which
20 DEVELOPER'S contractor(s) constructed LINE M1-STAGE 1, including actual start and
21 completion dates.

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

26 11. Obtain and provide DISTRICT, at the time of providing written notice to
27 DISTRICT of the start of construction of PROJECT as set forth in Section I.6., with duly
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1 executed Irrevocable Offers(s) of Dedication to the public for flood control and drainage
2 purposes, including ingress and egress, for the rights of way deemed necessary by DISTRICT
3 for the construction, inspection, operation and maintenance of DISTRICT DRAINAGE
4 FACILITY, as shown in concept on Exhibit "A" attached hereto and made a part hereof. The
5 Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and CITY and
6 shall be executed by all legal and equitable owners of the property described in the offer(s).

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

12 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
13 the start of construction as set forth in Section I.6., with a complete list of all contractors and
14 subcontractors to be performing work on PROJECT, including the corresponding license
15 number and license classification of each. At such time, DEVELOPER shall further identify in
16 writing its designated superintendent for PROJECT construction.
17

18 14. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
19 the start of construction as set forth in Section I.6., a construction schedule which shall show the
20 order and dates in which DEVELOPER'S contractor proposes to carry on the various parts of
21 work, including estimated start and completion dates. As construction of PROJECT progresses,
22 DEVELOPER shall update said construction schedule as requested by DISTRICT.
23

24 15. [This Section Intentionally Left Blank].

25 16. [This Section Intentionally Left Blank].
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1 17. Comply with all Cal/OSHA safety regulations including regulations
2 concerning confined space and maintain a safe working environment for DEVELOPER,
3 DISTRICT and CITY employees on the site.

4 18. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
5 the start of construction as set forth in Section I.6., a confined space entry procedure specific to
6 PROJECT. The procedure shall comply with requirements contained in California Code of
7 Regulations, Title 8 Section 5158, Other Confined Space Operations, Section 5157, Permit
8 Required Confined Space and District Confined Space Procedures, SOM-18. The procedure
9 shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed.
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11 19. Commencing on the date notice is given pursuant to Section I.6. and
12 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITY and CITY accepts
13 CITY DRAINAGE FACILITIES for ownership, operation and maintenance:

- 14
15 (a) Provide and maintain or cause its contractor(s) to provide and
16 maintain comprehensive liability insurance coverage which shall
17 protect DEVELOPER from claim for damages for personal injury,
18 including accidental and wrongful death, as well as from claims for
19 property damage which may arise from DEVELOPER'S construction
20 of PROJECT or the performance of its obligations hereunder, whether
21 such construction or performance be by DEVELOPER, by any of its
22 contractors, subcontractors, or by anyone employed directly or
23 indirectly by any of them. Such insurance shall name DISTRICT and
24 CITY as additional insureds with respect to this Agreement and the
25 obligations of DEVELOPER hereunder. Such insurance shall provide
26 for limits of not less than two million dollars (\$2,000,000) per
27 occurrence.
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1 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
2 who shall be authorized by the California Department of Insurance to
3 transact the business of insurance in the State of California, to furnish
4 DISTRICT and CITY at the time of providing written notice to
5 DISTRICT of the start of construction as set forth in Section I.6., with
6 certificate(s) of insurance and applicable policy endorsements
7 showing that such insurance is in full force and effect and that
8 DISTRICT and CITY are named as additional insureds with respect
9 to this Agreement and the obligations of DEVELOPER hereunder.
10 Further, said certificate(s) shall state that the issuing company shall
11 give DISTRICT and CITY sixty (60) days written notice in the event
12 of any cancellation, termination, non-renewal or reduction in
13 coverage of the policies evidenced by the certificate(s). In the event
14 of any such cancellation, termination, non-renewal or reduction in
15 coverage, DEVELOPER shall, forthwith, secure replacement
16 insurance meeting the provisions of this paragraph.

17 Failure to maintain the insurance required by this paragraph shall be
18 deemed a material breach of this Agreement and shall authorize and constitute authority for
19 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
20 IV.4

21 20. [This Section Intentionally Left Blank.]

22 21. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole
23 cost and expense in accordance with plans and specifications approved by DISTRICT and the
24 Riverside County Transportation Department.

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

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

12 24. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
13 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable
14 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees
15 shall be computed as costs and included in any judgment rendered.
16

17 25. Upon completion of construction of PROJECT but prior to DISTRICT
18 acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance,
19 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered
20 in the State of California, shall provide DISTRICT a redlined "RECORD DRAWING" copy of
21 PROJECT plans. After DISTRICT approval of the redlined RECORD DRAWING,
22 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
23 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
24 stamp and sign the original PROJECT plans "RECORD DRAWING".
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26 26. 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. Upon execution of this Agreement, record or cause to be recorded, a copy
7 of this Agreement in the Official Records of the Riverside County Recorder.
- 8 2. Review and, as it deems appropriate, approve the submittals furnished by
9 DEVELOPER pursuant to the terms of this Agreement prior to commencing any final
10 inspection of LINE M1-STAGE 1.
- 11 3. Provide CITY an opportunity to review and, as appropriate, approve
12 submittals furnished by DEVELOPER pursuant to the terms of this Agreement prior to
13 DISTRICT'S final approval.
- 14 4. To the extent possible under the prevailing conditions, inspect LINE M1-
15 STAGE 1 as deemed necessary and appropriate by DISTRICT.
- 16 5. Inspect DISTRICT DRAINAGE FACILITY construction.
- 17 6. Keep an accurate accounting of all DISTRICT costs associated with (i) the
18 review and implementation of DEVELOPER'S submittals furnished pursuant to the terms of
19 this Agreement, (ii) the review and approval of right of way and conveyance documents, and
20 (iii) the processing and administration of this Agreement (the "Administrative Account").
- 21 7. Keep an accurate accounting of all DISTRICT construction inspection
22 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE
23 FACILITY as being complete, submit a final cost statement to DEVELOPER. If the aggregate
24 of DEVELOPER'S deposits submitted pursuant to Section I.2. of this Agreement exceeds such
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1 costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after
2 DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as being complete.

3 8. Accept ownership and sole responsibility for the operation and maintenance
4 of DISTRICT DRAINAGE FACILITY upon (i) DISTRICT and CITY acceptance of PROJECT
5 construction as being complete, (ii) DISTRICT determination, through its review of all
6 submittals for LINE M1-STAGE 1 required under the terms of this Agreement and its
7 inspection of LINE M1-STAGE 1 as appropriate, that LINE M1-STAGE 1 has been constructed
8 in substantial conformance with the plans and specifications approved by DISTRICT and the
9 Riverside County Transportation Department, (iii) DISTRICT determination that no defects in
10 workmanship or materials are known to exist within LINE M1-STAGE 1 or that any known
11 defects have been corrected at the sole cost and expense of DEVELOPER, (iv) DISTRICT
12 receipt of stamped and signed RECORD DRAWING as set forth in Section I.25., (v)
13 DISTRICT'S sole determination that DISTRICT DRAINAGE FACILITY is in a satisfactorily
14 maintained condition, (vi) all rights of way and easements necessary for the operation and
15 maintenance of DISTRICT DRAINAGE FACILITY are conveyed to DISTRICT, (vii) CITY
16 acceptance of CITY DRAINAGE FACILITIES for ownership, operation and maintenance, and
17 (viii) both DISTRICT and CITY acceptance of their respective ownership and responsibility for
18 the operation and maintenance of certain flood control and drainage facilities previously
19 constructed by DEVELOPER and/or others in association with PROPERTY under the terms of
20 a separate Cooperative Agreement.
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22 9. Provide CITY with a reproducible duplicate copy of RECORD DRAWING
23 PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as being
24 complete.
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SECTION III

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CITY shall:

1. Review and, as appropriate, approve submittals furnished by DEVELOPER pursuant to the terms of this Agreement.
2. Accept the faithful performance and payment bonds submitted by DEVELOPER as set forth in Section I.5. of this Agreement and hold said bonds as provided therein.
3. Accept, as requested by DISTRICT, the Irrevocable Offers of Dedication furnished by DEVELOPER pursuant to this Agreement.
4. Grant DISTRICT, by execution of this Agreement, the necessary rights to operate and maintain DISTRICT DRAINAGE FACILITY within CITY held rights of way and easements.
5. Inspect construction of CITY DRAINAGE FACILITIES.
6. Accept ownership and sole responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES upon (i) DISTRICT and CITY acceptance of PROJECT construction as being complete, (ii) DISTRICT acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance, and (iii) both DISTRICT and CITY acceptance of their respective ownership and responsibility for the operation and maintenance of certain flood control and drainage facilities previously constructed by DEVELOPER and/or others in association with PROPERTY under the terms of a separate Cooperative Agreement.
7. Not grant any occupancy permits for any units within any portion of Tract No. 31391-1, or any phase thereof, until construction of PROJECT is complete, unless otherwise approved in writing by DISTRICT.

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

5 5. Prior to DISTRICT acceptance of ownership and responsibility for the
6 operation and maintenance of DISTRICT DRAINAGE FACILITY, DISTRICT DRAINAGE
7 FACILITY shall be in a satisfactorily maintained condition as solely determined by DISTRICT.
8 If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITY is not in an
9 acceptable condition, corrections will be made at sole expense of DEVELOPER.
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11 6. PROJECT construction work shall be on a five (5) day, forty (40) hour
12 work week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless
13 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work
14 more than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a
15 written request for permission from DISTRICT to work the additional hours. The request shall
16 be submitted to DISTRICT at least seventy-two (72) hours prior to the requested additional
17 work hours and state the reasons for the overtime and the specific time frames required. The
18 decision of granting permission for overtime work shall be made by DISTRICT at its sole
19 discretion and shall be final. If permission is granted by DISTRICT, DEVELOPER will be
20 charged the cost incurred at the overtime rates for additional inspection time required in
21 connection with the overtime work in accordance with Ordinance Nos. 671 and 749, including
22 any amendments thereto, of the County of Riverside.
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24 7. DEVELOPER shall indemnify and hold harmless DISTRICT and CITY
25 (including their agencies, districts, special districts and departments, their respective directors,
26 officers, Board of Supervisors, elected and appointed officials, employees, agents and
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1 representatives) from any liability, claim, damage, proceeding or action, present or future, based
2 upon, arising out of or in any way relating to DEVELOPER'S (including their officers,
3 employees, subcontractors and agents) actual or alleged acts or omissions related to this
4 Agreement, performance under this Agreement, or failure to comply with the requirements of
5 this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
6 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth
7 Amendment of the United States Constitution or any other law, ordinance or regulation caused
8 by the diversion of waters from the natural drainage patterns or the discharge of drainage within
9 or from PROJECT; or (d) any other element of any kind or nature whatsoever.

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

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

24
25 DEVELOPER'S indemnification obligations shall be satisfied when
26 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal (or
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1 similar document) relieving DISTRICT or CITY from any liability for the claim, proceeding or
2 action involved.

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

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

10
11 8. Any waiver by DISTRICT or by CITY of any breach of any one or more of
12 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
13 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
14 require exact, full and complete compliance with any terms of this Agreement shall not be
15 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
16 enforcement hereof.

17
18 9. This Agreement is to be construed in accordance with the laws of the State
19 of California.

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

22 RIVERSIDE COUNTY FLOOD CONTROL
23 AND WATER CONSERVATION DISTRICT
24 1995 Market Street
Riverside, CA 92501

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

25 SUTTER MITLAND 01, LLC
26 3090 Bristol Street, Suite 220
Costa Mesa, CA 92626
Attn: Dennis J. Chapman

1 11. Any action at law or in equity brought by any of the parties hereto for the
2 purpose of enforcing a right or rights provided for by this Agreement, shall be tried in a court of
3 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
4 waive all provisions of law providing for a change of venue in such proceedings to any other
5 county.

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

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

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

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

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

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

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

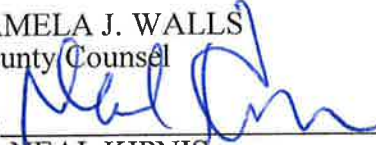
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

By _____
NEAL KIPNIS
Deputy County Counsel


KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy


(SEAL)

Cooperative Agreement: TR 31391-1
TT:blj
3/6/12

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

By 
DON ALLISON
Director of Public Works

By 
JOHN DENVER
Mayor

ATTEST:

KATHY BENNETT
City Clerk

By 
JOE FLETCHER
City Attorney

By 

(SEAL)

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Cooperative Agreement: TR 31391-1
TT:blj
3/6/12

SUTTER MITLAND 01 LLC,
a Delaware limited liability company

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By  _____
RICHARD T. WHITNEY
President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

By  _____
DENNIS J. CHAPMAN
Vice President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: TR 31391-1
TT:blj
3/6/12

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of ORANGE

On March 29, 2012 before me, Catherine L. Marsh, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Dennis J. Chapman and Rick T. Whitney
Name(s) of Signer(s)

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: [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer -- Title(s): _____
- Individual
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer -- Title(s): _____
- Individual
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT A

