

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

347A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
June 14, 2012

SUBJECT: Cooperative Agreement between the County of Riverside (County), the County Flood Control and Water Conservation District (District), and Bellacap, LLC (Developer) for the Warm Springs Valley-French Creek Channel.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Consider the environmental effects of Warm Springs Valley-French Creek Channel Project No. 7-0-00205 as shown in the Mitigated Negative Declaration adopted by Riverside County Flood Control and Water Conservation District on this date.
2. Approve the attached Cooperative Agreement between the County, the District and the Developer, and;



Juan C. Perez
Director of Transportation and Land Management Agency

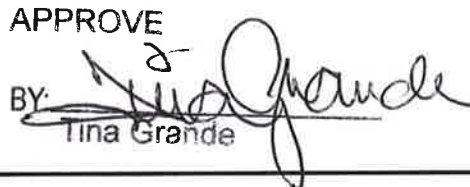
Patricia Romo
Deputy Director of Transportation

FK:rf
(Continued On Attached Pages)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

SOURCE OF FUNDS: Developer - 100%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Funds used in this project.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY: 
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:  MARSHALA L. VICTOR
DATE: 6/18/12

Departmental Concurrence

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
District: 3rd / 3rd Agenda Number:

3.29

The Honorable Board of Supervisors

RE: Cooperative Agreement between the County of Riverside (County), the County Flood Control and Water Conservation District (District), and Bellacap, LLC (Developer) for the Warm Springs Valley-French Creek Channel.

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3. Authorize the Chairman of the Board to execute the Agreement documents on behalf of the County.

BACKGROUND: The Warm Springs Valley-French Valley Channel Slope Protection at Skyview Road and the Water Supply Crossing project is part of approved developments, Bella Sol and Capistrano (Tracts 32049 and 29114, respectively), which have been declared in conformity with the Quinta do Lago Specific Plan No. 284. Originally, the extension of Skyview Road across French Valley Channel was planned as secondary access, as well as a platform for a water supply line. The road, to have been located within the Riverside County Transportation Department (RCTD) right of way, would also have provided slope protection through construction of concrete abutments. Since that time, the Riverside County Board of Supervisors modified and substituted certain improvements in an effort to accomplish construction of needed work, to obtain funding for other transportation and planning efforts and to provide flexibility in the timing of delivery of the improvements.

While the original California Environmental Quality Act (CEQA) documents prepared for Tract Nos. 29114 and 32049 covered certain infrastructure improvements; additional infrastructure improvements are now necessary, because of the modification and substitution of certain improvements. Therefore, further environmental review is necessary to address the changes and new infrastructure improvements associated with the aforementioned Tracts. The District assumes CEQA lead agency role and responsibility for those portions of the project that were not previously addressed in the original CEQA documents.

The proposed Project in place of the Skyview Road improvements involves the installation of slope protection measures within the floodplain of French Valley Channel in compliance with District requirements, and the installation of a redundant waterline across the floodplain required by Eastern Municipal Water District. The District will be responsible for long-term maintenance of the flood control facilities, which have a total system length of approximately 500 linear feet.

This Agreement sets forth the terms and conditions by which certain flood control improvements associated with the Tracts' original COA and additional flood control improvements necessary due to the County approved modifications to the improvements to be constructed by the Developer.

This Agreement is necessary to provide for District and County construction inspection of their respective portions of the referenced facilities.

Upon completion of project construction, the District will assume ownership, operation and maintenance of the certain concrete and riprap slope protection, maintenance access roads and turnarounds. The County will assume ownership, operation and maintenance of the certain drop inlet, outlet structure, and connector pipe located within County's rights of way.

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

The Honorable Board of Supervisors

RE: Cooperative Agreement between the County of Riverside (County), the County Flood Control and Water Conservation District (District), and Bellacap, LLC (Developer) for the Warm Springs Valley-French Creek Channel.

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County Counsel has approved the Agreement as to legal form and the Developer has executed the Agreement. A companion item appears on the Flood Control and Water Conservation District Board's agenda this same date.

COPY

COOPERATIVE AGREEMENT
Warm Springs Valley-French Creek Channel
Tract Nos. 29114 and 32049
Project No. 7-0-00205

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The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE, on behalf of its Transportation Department, hereinafter called "COUNTY", and BELLACAP, LLC, a California limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER is the fee owner of that certain real property located in the County of Riverside, California, consisting of approximately 74 acres, hereinafter called "PROPERTY", as more particularly described in Exhibit "A" attached hereto and made a part hereof; and

B. DEVELOPER is also the fee owner of certain real property located in the County of Riverside identified as Tract No. 32049; and

C. PROPERTY is subject to Tract No. 29114, a recorded final map permitting the development of 259 single-family residential units on PROPERTY; and

D. Pursuant to the terms of a separate agreement between DEVELOPER and COUNTY executed on January 31, 2012, hereinafter called "IMPROVEMENT AGREEMENT", DEVELOPER has agreed to complete certain infrastructure improvements and to furnish COUNTY with cash deposits in lieu of posting payment and performance bonds; and

E. Included as part of the required infrastructure improvements is the completion of certain flood control improvements, as shown in concept outlined in purple on Exhibit "B" attached hereto and made a part hereof. The flood control improvements consist of

1 the construction of certain concrete and riprap slope protection, maintenance access roads, and
2 turnarounds, hereinafter collectively called "DISTRICT DRAINAGE FACILITIES", as shown
3 on District Drawing Nos. 7-485 and 7-486; and

4 F. Associated with the construction of DISTRICT DRAINAGE FACILITIES
5 is the construction of a certain outlet structure, a certain drop inlet and connector pipe,
6 hereinafter called "APPURTENANCES". Together DISTRICT DRAINAGE FACILITIES and
7 APPURTENANCES are hereinafter called "PROJECT"; and

8 G. While the original California Environmental Quality Act (CEQA)
9 documents prepared for Tract Nos. 29114 and 32049 covered certain infrastructure
10 improvements, additional infrastructure improvements are now necessary due to COUNTY
11 approved changes to the Tracts' original Conditions of Approval. Therefore, further
12 environmental review is necessary to address the changes and new infrastructure improvements
13 associated with the aforementioned Tracts. DISTRICT is willing to assume CEQA lead agency
14 role and responsibility for those portions of PROJECT that were not previously addressed in the
15 original CEQA documents; and

16 H. DEVELOPER and COUNTY desire DISTRICT to accept ownership and
17 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
18 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for
19 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;
20 and

21 I. DEVELOPER and DISTRICT desire COUNTY to accept ownership and
22 responsibility for the operation and maintenance of APPURTENANCES. Therefore, COUNTY
23 must review and approve DEVELOPER'S plans and specifications for PROJECT and
24 subsequently inspect the construction of APPURTENANCES; and
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1 J. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
 2 specifications for DISTRICT DRAINAGE FACILITIES, (ii) inspect the construction of
 3 DISTRICT DRAINAGE FACILITIES, and (iii) accept ownership and responsibility for the
 4 operation and maintenance of DISTRICT DRAINAGE FACILITIES upon completion provided
 5 DEVELOPER (i) complies with this Agreement, (ii) pays DISTRICT the amounts specified
 6 herein to cover DISTRICT'S plan review and construction inspection costs, (iii) constructs
 7 DISTRICT DRAINAGE FACILITIES in accordance with plans and specifications approved by
 8 DISTRICT, (iv) obtains all necessary permits, regulatory permits, licenses and rights of entry as
 9 set forth herein, and (v) accepts ownership and responsibility for the operation and maintenance
 10 of DISTRICT DRAINAGE FACILITIES following completion of construction until such time
 11 as COUNTY accepts ownership and responsibility for the operation and maintenance of
 12 APPURTENANCES; and

14 K. COUNTY is willing to (i) grant DISTRICT the right to inspect, operate and
 15 maintain DISTRICT DRAINAGE FACILITIES within COUNTY rights of way, (ii) hold cash
 16 deposits in lieu of payment and performance bonds, and (iii) accept ownership and
 17 responsibility for the operation and maintenance of APPURTENANCES upon completion of
 18 APPURTENANCES construction and DISTRICT acceptance of DISTRICT DRAINAGE
 19 FACILITIES.

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

22 SECTION I

23 DEVELOPER shall:

- 24 1. Prepare plans and specifications for PROJECT, as shown on District
 25 Drawing Nos. 7-485 and 7-486, hereinafter called "IMPROVEMENT PLANS", in accordance
 26 with DISTRICT standards, and submit to DISTRICT for review and approval.
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1 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
2 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
3 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS
4 and with the processing and administration of this Agreement.

5 3. Deposit with DISTRICT (Attention: Business Office - Accounts
6 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
7 DRAINAGE FACILITIES construction as set forth in Section 1.8. herein, the estimated cost of
8 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
9 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the
10 County of Riverside, including any amendments thereto, based upon Engineer's Cost Estimate
11 of DISTRICT DRAINAGE FACILITIES
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13 4. [THIS SECTION INTENTIONALLY LEFT BLANK]

14 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
15 permits and rights of entry as may be needed for the construction, inspection, operation and
16 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish
17 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
18 set forth in Section 1.8., with sufficient evidence of DEVELOPER having secured such
19 necessary licenses, agreements, permits and rights of entry, as determined and approved by
20 DISTRICT.
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22 6. Furnish DISTRICT with copies of all permits, approvals or agreements as
23 may be required by any Federal or State resource and/or regulatory agency for the construction,
24 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include
25 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional
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1 Water Quality Control Board, California State Department of Fish and Game, and State Water
2 Resources Control Board.

3 7. In accordance with the terms and conditions of IMPROVEMENT
4 AGREEMENT, establish a security account with COUNTY, hereinafter called
5 "IMPROVEMENT ACCOUNT", and deposit cash in lieu of posting payment and performance
6 bonds. The amount and form of IMPROVEMENT ACCOUNT has been approved by
7 COUNTY. IMPROVEMENT ACCOUNT shall be administered by COUNTY and shall remain
8 in full force and effect until such time as DISTRICT accepts ownership and responsibility for
9 DISTRICT DRAINAGE FACILITIES set forth herein.
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11 8. Notify DISTRICT in writing (Attention: Administrative Services Section),
12 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE
13 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE
14 FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written
15 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT
16 DRAINAGE FACILITIES.
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18 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
19 DEVELOPER'S property where necessary and convenient for the purpose of gaining access to,
20 and performing inspection service for, the construction of DISTRICT DRAINAGE
21 FACILITIES as set forth herein.

22 10. [THIS SECTION INTENTIONALLY LEFT BLANK]

23 11. [THIS SECTION INTENTIONALLY LEFT BLANK]

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

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

15 15. Not permit any change to or modification of IMPROVEMENT PLANS
16 without the prior written permission and consent of DISTRICT.
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18 16. Comply with all Cal/OSHA safety regulations including regulations
19 concerning an Illness Prevention Plan (IIP) and maintain a safe working environment for
20 DEVELOPER, COUNTY and DISTRICT employees on the site.

21 17. [THIS SECTION INTENTIONALLY LEFT BLANK].

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

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

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19 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
20 who shall be authorized by the California Department of Insurance to
21 transact the business of insurance in the State of California, to
22 furnish DISTRICT and the County of Riverside at the time of
23 providing written notice to DISTRICT of the start of construction as
24 set forth in Section I.8., with certificate(s) of insurance and
25 applicable policy endorsements showing that such insurance is in full
26 force and effect and that DISTRICT and the County of Riverside are
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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 and the County of Riverside thirty (30) days written notice in the event of any cancellation, termination, non-renewal or reduction in coverage of the policies evidenced by the certificate(s). In the event of any such cancellation, termination, non-renewal or reduction in coverage, DEVELOPER shall, forthwith, secure replacement insurance meeting the provisions of this paragraph.

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

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

21. Within two (2) weeks of completing DISTRICT DRAINAGE FACILITIES construction, provide DISTRICT (Attention: Contract Administration Section) construction is substantially complete and requesting that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES.

22. [THIS SECTION INTENTIONALLY LEFT BLANK]

23. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT DRAINAGE FACILITIES and COUNTY accepts ownership

1 and responsibility for operation and maintenance of APPURTENANCES. Further, it is
2 mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership and
3 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,
4 DISTRICT DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely
5 determined by DISTRICT.

6 24. Pay, if suit is brought upon this Agreement or upon IMPROVEMENT
7 AGREEMENT, the completion of DISTRICT DRAINAGE FACILITIES, all costs and
8 reasonable expenses and fees, including reasonable attorneys' fees, and acknowledge that, upon
9 entry of judgment, all such costs, expenses and fees shall be computed as costs and included in
10 any judgment rendered.
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12 25. Upon completion of construction but prior to DISTRICT acceptance of
13 DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, provide, or
14 cause its civil engineer of record or construction civil engineer of record, duly registered in the
15 State of California to provide, DISTRICT with a redlined "RECORD DRAWING" copy of
16 plans for DISTRICT DRAINAGE FACILITIES. After DISTRICT approval of the redlined
17 "RECORD DRAWING" plans, DEVELOPER'S engineer shall schedule with DISTRICT a time
18 to transfer the redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after
19 which the engineer shall review, stamp and sign the original mylars "RECORD DRAWING".
20

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

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DISTRICT shall:

1. Pursuant to CEQA, assume lead agency role and responsibility for preparation, circulation, and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.

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

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

4. Inspect DISTRICT DRAINAGE FACILITIES construction.

5. Acknowledge, by execution of this agreement, receipt of Zone 7-Maintenance Trust Fund fee as paid in full by the prior owner of Tract Nos. 29114 and 32049 under terms of the respective cooperative agreements.

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

7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES construction as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional

1 amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT
2 DRAINAGE FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.

3 8. Accept ownership and sole responsibility for the operation and maintenance
4 of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of DISTRICT
5 DRAINAGE FACILITIES construction as being complete, (ii) DISTRICT receipt of stamped
6 and signed RECORD DRAWINGS of plans as set forth in Section I.25, (iii) acceptance by
7 COUNTY of all necessary street rights of way as deemed necessary by DISTRICT and
8 COUNTY for the operation and maintenance of PROJECT, (iv) COUNTY acceptance of
9 APPURTENANCES for ownership, operation and maintenance, and (v) DISTRICT'S sole
10 determination that DISTRICT DRAINAGE FACILITIES are in a satisfactorily maintained
11 condition.
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13 9. Provide COUNTY with a reproducible duplicate copy of "RECORD
14 DRAWING" plans upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
15 construction as being complete.
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17 SECTION III

18 COUNTY shall:

19 1. Act as a Responsible Agency under CEQA, and take all necessary and
20 appropriate action to comply with CEQA.

21 2. Under the terms and conditions of IMPROVEMENT AGREEMENT,
22 accept and hold deposits from DEVELOPER in an amount sufficient to insure the satisfactory
23 completion of PROJECT.
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25 3. Agree to retain, for a period of one year from DISTRICT acceptance of
26 DISTRICT DRAINAGE FACILITIES for operation and maintenance, an amount equal to ten
27 percent of the deposit posted for completion of DISTRICT DRAINAGE FACILITIES. The
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1 retained deposit will be released to DEVELOPER after one year except upon written notice
2 from DISTRICT to retain deposit.

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

5 5. Inspect construction of APPURTENANCES.

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

9 7. Accept ownership and sole responsibility for the operation and maintenance
10 of APPURTENANCES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
11 as being complete.
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13 SECTION IV

14 It is further mutually agreed:

15 1. All work involved with DISTRICT DRAINAGE FACILITIES shall be
16 inspected by DISTRICT and shall not be deemed complete until approved and accepted in
17 writing as complete by DISTRICT.
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19 2. COUNTY and DEVELOPER personnel may observe and inspect all work
20 being done on DISTRICT DRAINAGE FACILITIES, but shall provide any comments to
21 DISTRICT personnel who shall be solely responsible for all quality control communications
22 with the DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE
23 FACILITIES.
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25 3. DEVELOPER shall complete construction of DISTRICT DRAINAGE
26 FACILITIES within twelve (12) consecutive months after execution of this Agreement and
27 within one hundred sixty (160) consecutive calendar days after commencing work on
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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 COUNTY to subsequently reimburse DISTRICT from deposits required in IMPROVEMENT
5 AGREEMENT for DISTRICT costs incurred.

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

9 5. DEVELOPER and DISTRICT knowingly and voluntarily waive the
10 provisions of Government Code Section 65913.8, relating to fees and charges. Such waiver is
11 accomplished with the understanding that DISTRICT is voluntarily undertaking the obligation
12 to accept ownership and responsibility for the operation and maintenance of DISTRICT
13 DRAINAGE FACILITIES, and DEVELOPER is not required by DISTRICT to enter into this
14 Agreement.

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

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

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

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

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

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

22
23 DEVELOPER'S indemnification obligations shall be satisfied when
24 DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal
25 relieving DISTRICT or COUNTY from any liability for the claim, proceeding or action
26 involved.

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

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

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

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16 11. If any provision in this Agreement (with the exception of Section IV.5.) is
17 held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining
18 provisions will nevertheless continue in full force without being impaired or invalidated in any
19 way. Should it be held by a court of competent jurisdiction that any portion of Section IV.5. is
20 invalid, void, or unenforceable, the provisions of Government Code 65913.8(b) shall apply. It
21 shall, therefore, be determined that this fee is extended for a period of ten years, commencing
22 upon DISTRICT'S acceptance of DISTRICT DRAINAGE FACILITIES for ownership,
23 operation and maintenance.

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

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

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

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

BELLACAP, LLC
3470 Wilshire Boulevard
Los Angeles, CA 90010
Attn: Joseph Rivani

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

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

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

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

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

6 17. This Agreement is intended by the parties hereto as a final expression of
7 their understanding with respect to the subject matter hereof and as a complete and exclusive
8 statement of the terms and conditions thereof and supersedes any and all prior and
9 contemporaneous agreements and understandings, oral or written, in connection therewith. This
10 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

(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)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By JUAN C. PEREZ
Director of Transportation

By JOHN F. TAVAGLIONE, Chairman
County of Riverside Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By MARSHA L. VICTOR @1/18/12
Principal Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement: Warm Springs Valley - French Creek Channel
4/23/12
KEC:blj

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BELLACAP, LLC
a California limited liability company

By 
JOSEPH RIVANI
President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: Warm Springs Valley - French Creek Channel
4/23/12
KEC:bjj

Exhibit A

Description of the Property

Real property in the unincorporated areas of the County of Riverside, State of California, described as follows:

CAPISTRANO PROPERTY.

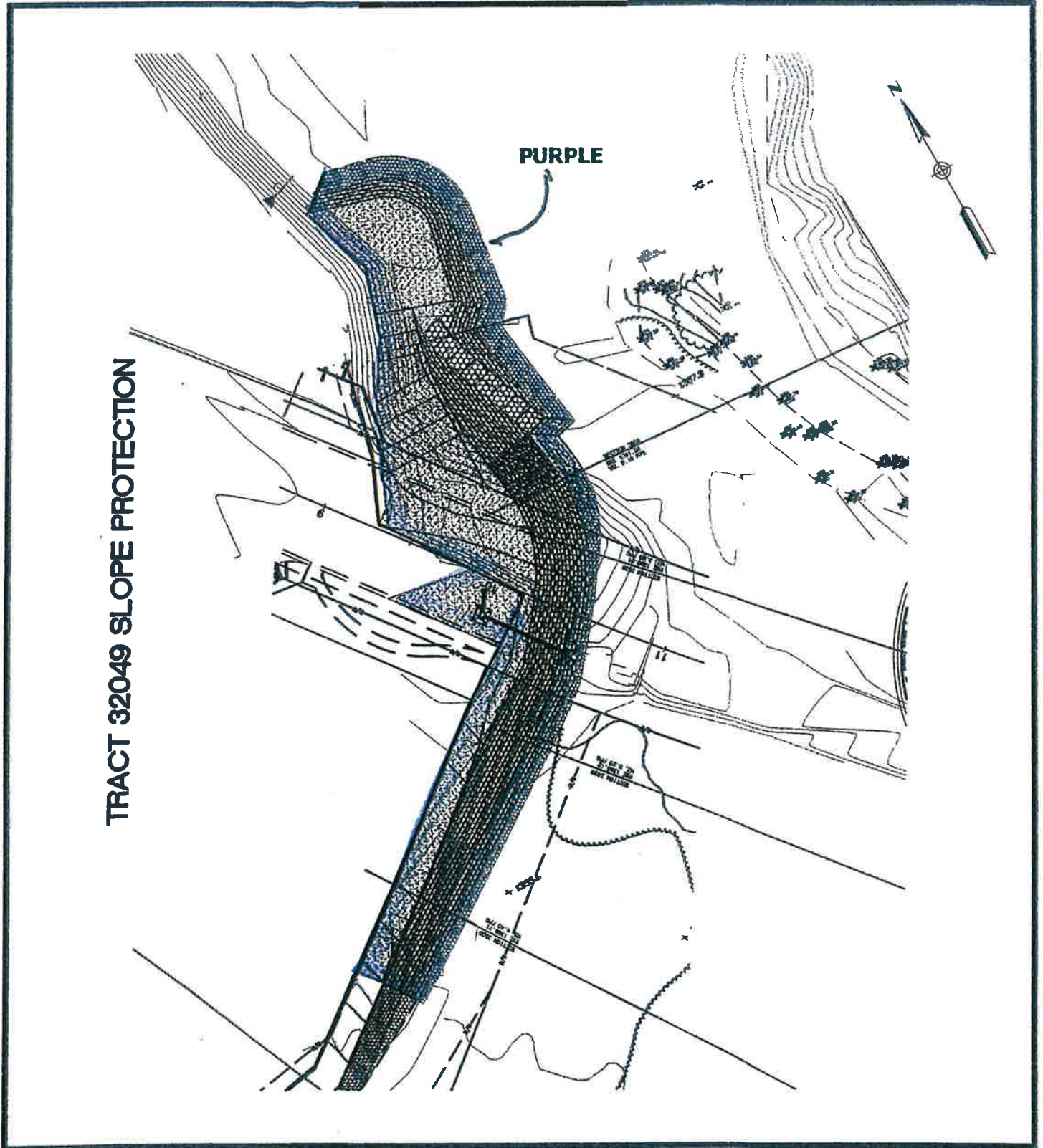
PARCEL 1: (APN'S: 480-260-3 THROUGH 480-260-016-7, 480-550-001-9 THROUGH 480-550-039-4 AND 480-551-001-2 THROUGH 480-551-013-3)

LOTS 11 THROUGH 64, INCLUSIVE OF TRACT NO. 29114, AS SHOWN BY MAP ON FILE IN BOOK 418, PAGES 30 THROUGH 36 OF MAPS, RECORDS OF RIVERSIDE COUNTY.

PARCEL 2: (APN'S: 480-281-012-8, 480-281-013-9 AND 480-281-019-5 THROUGH 480-281-022-7)

LOTS 13, 14 AND 20 THROUGH 23, INCLUSIVE OF TRACT NO. 29114-1, AS SHOWN BY MAP ON FILE IN BOOK 346, PAGES 36 THROUGH 43 OF MAPS, RECORDS OF RIVERSIDE COUNTY.

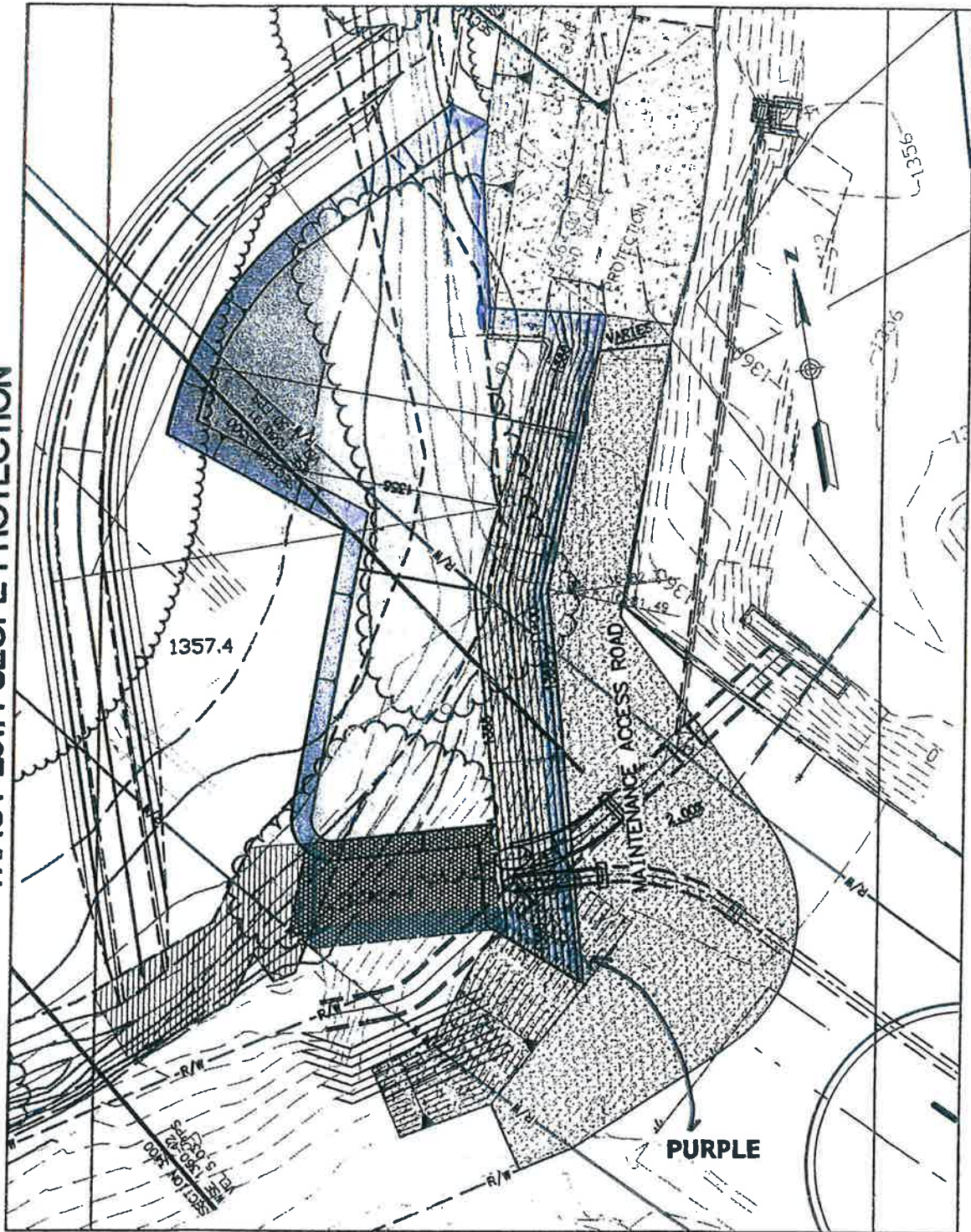
Exhibit B



Cooperative Agreement
Warm Springs Valley-French Creek Channel
Project No. 7-0-00205-05, Tract Nos. 29114, 32049

Exhibit B

TRACT 29114 SLOPE PROTECTION



Cooperative Agreement
Warm Springs Valley-French Creek Channel
Project No. 7-0-00205-05, Tract Nos. 29114, 32049