

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



407B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
February 26, 2013

SUBJECT: Perris Valley MDP - Line B, Laterals B-8 and B-9, Perris Valley – Lateral B-8A
Project Nos. 4-0-00457, 4-0-00458, 4-0-00459 (Parcel Map No. 33942, PP No. 20699R1)
Cooperative Agreement
District One/District One

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the County of Riverside, and Knox Logistics, LLC (Developer) and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which certain flood control facilities required as a condition of approval for Parcel Map No. 33942 (PP No. 20699R1) are to be constructed by the Developer and inspected, operated and maintained by the District and the County.

Continued on Page 2

TT:blj

Steve Thomas
FOR **WARREN D. WILLIAMS**
General Manager-Chief Engineer

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

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *NEAL R. KIPNIS*
DATE: *2/26/13*

Departmental Concurrence

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

Prev. Agn. Ref.:

District: 1st/1st

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11-3

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

SUBJECT: Perris Valley MDP - Line B, Laterals B-8 and B-9, Perris Valley – Lateral B-8A
Project Nos. 4-0-00457, 4-0-00458, 4-0-00459 (Parcel Map No. 33942, PP No. 20699R1)
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Page 2

BACKGROUND (continued):

This Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the Perris Valley MDP - Line B, Laterals B-8 and B-9, and Perris Valley Lateral B-8A. Upon completion of the project construction, the District will assume ownership, operation and maintenance of the referenced flood control facilities excluding catch basins, laterals, connector pipes and a culvert crossing at Harvill Avenue located within County rights of way, which are to be maintained by the County.

County Counsel has approved the Agreement as to legal form. The County and the Developer have executed the Agreement. A companion item appears on the Riverside County Transportation Department's Agenda this same date.

FINANCIAL:

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs associated with the mainline flood control facilities will accrue to the District.

TT:bjj

1 COOPERATIVE AGREEMENT

2 Perris Valley MDP Lateral B-8

3 Perris Valley – Lateral B-8A

4 Perris Valley MDP Line B and

5 Perris Valley MDP Lateral B-9

6 (Parcel Map No. 33942 and Plot Plan No. 20699R1)

7 Project Nos. 4-0-00457, 4-0-00458 and 4-0-00459

8 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
9 CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF
10 RIVERSIDE, hereinafter called "COUNTY", and KNOX LOGISTICS, LLC, a Delaware
11 limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

12 RECITALS

13 A. DEVELOPER plans to develop Parcel Map No. 33942 and Plot Plan No.
14 20699R1 both located in the unincorporated Mead Valley area of Riverside County, west of
15 Interstate 215. As a condition of approval for Plot Plan No. 20699R1 and Parcel Map No.
16 33942, DEVELOPER must construct certain flood control facilities in order to provide flood
17 protection and drainage for DEVELOPER'S planned development; and

18 B. The required flood control facilities include construction of (i)
19 approximately 1,100 lineal feet of underground storm drain system, hereinafter called
20 "LATERAL B-8", as shown in concept in blue on Exhibit "A" attached hereto and made a part
21 hereof; (ii) approximately 570 lineal feet of underground storm drain system, hereinafter called
22 "LATERAL B-8A", as shown in concept in yellow on Exhibit "A"; (iii) approximately 1,250
23 lineal feet of a combination of open channel and reinforced concrete pipe system, hereinafter
24 called "LINE B", as shown in concept in red on Exhibit "A"; and (iv) approximately 720 lineal
25 feet of underground storm drain system, hereinafter called "LATERAL B-9", as shown in
26 concept in green on Exhibit "A". Together, LATERAL B-8, LATERAL B-8A, LINE B and
27 LATERAL B-9 are hereinafter called "DISTRICT DRAINAGE FACILITIES". At its
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1 downstream terminus, LINE B connects to an existing double 54-inch reinforced concrete pipe
2 that belongs to the State of California Department of Transportation (Caltrans). LATERAL B-
3 8A connects to LATERAL B-8 and LATERAL B-9 connects to LINE B; and

4 C. Associated with the construction of LINE B is the construction of
5 approximately 150 lineal feet of reinforced concrete box at Harvill Avenue, hereinafter called
6 "HARVILL CULVERT", as shown in concept in orange on Exhibit "A". Also associated with
7 the construction of DISTRICT DRAINAGE FACILITIES is the construction of certain catch
8 basins, laterals and connector pipes located within COUNTY held rights of way, hereinafter
9 called "APPURTENANCES". Together HARVILL CULVERT and APPURTENANCES are
10 hereinafter called "COUNTY FACILITIES"; and

11 D. Also associated with the construction of LINE B is the construction of
12 approximately 60 lineal feet of reinforced concrete box culvert located underneath a private
13 driveway, hereinafter called "PRIVATELY OWNED/MAINTAINED CULVERT", as shown
14 in concept in purple on Exhibit "A"; and

15 E. Together, DISTRICT DRAINAGE FACILITIES, COUNTY
16 FACILITIES and PRIVATELY OWNED/MAINTAINED CULVERT are hereinafter called
17 "PROJECT"; and

18 F. DEVELOPER and COUNTY desire DISTRICT to accept ownership and
19 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
20 Therefore, DISTRICT must review and approve PROJECT plans and specifications and
21 subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES. In addition,
22 DEVELOPER and COUNTY desire DISTRICT to accept responsibility for sediment and
23 debris removal of HARVILL CULVERT and PRIVATELY OWNED/MAINTAINED
24 CULVERT; and

1 G. DEVELOPER and DISTRICT desire COUNTY to accept ownership and
2 responsibility for the operation and maintenance of COUNTY FACILITIES. Therefore,
3 COUNTY must review and approve PROJECT plans and specifications and subsequently
4 inspect the construction of COUNTY FACILITIES.

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

6 SECTION I

7 DEVELOPER shall:

8
9 1. Prepare PROJECT plans and specifications, hereinafter called
10 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and COUNTY
11 standards, and submit to DISTRICT and COUNTY for their review and approval.

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

17
18 3. Deposit with DISTRICT (Attention: Business Office – Accounts
19 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
20 construction as set forth in Section I.8. herein, the estimated cost of providing construction
21 inspection for PROJECT, in an amount as determined and approved by DISTRICT in
22 accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any
23 amendments thereto, based upon the bonded value of PROJECT.

24
25 4. Grant DISTRICT and COUNTY, by execution of this Agreement, the
26 right to enter upon DEVELOPER'S property where necessary and convenient for the purpose
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1 of gaining access to and performing inspection service for the construction of PROJECT as set
2 forth herein.

3 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
4 permits and rights of entry as may be needed for the construction, inspection, operation and
5 maintenance of PROJECT, including, but not limited to, such licenses, agreements, permits,
6 approvals or rights of entry as may be required from Caltrans, COUNTY or DISTRICT.
7 DEVELOPER shall furnish DISTRICT and COUNTY, at the time of providing written notice
8 to DISTRICT of the start of construction as set forth in Section I.8., or not less than twenty
9 (20) days prior to recordation of the final map for Parcel Map No. 33942 or any phase thereof,
10 whichever occurs first, with sufficient evidence of DEVELOPER having secured such
11 necessary licenses, agreements, permits, approvals and rights of entry, as determined and
12 approved by DISTRICT and COUNTY.
13

14 6. Furnish DISTRICT with copies of all permits, approvals or agreements
15 required by any Federal, State or local resource and/or regulatory agency for the construction,
16 operation and maintenance of PROJECT. Such documents include but are not limited to those
17 issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control
18 Board, California State Department of Fish and Wildlife and State Water Resources Control
19 Board.
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21 7. Provide COUNTY, at the time of providing written notice to DISTRICT
22 of the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
23 recordation of the final maps for Parcel Map No. 33942 or any phase thereof, whichever
24 occurs first, with faithful performance and payment bonds, each in the amount of one hundred
25 percent (100%) of the estimated cost for construction of PROJECT as determined by
26 DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of
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1 DISTRICT and COUNTY. The bonds shall remain in full force and effect until PROJECT is
2 accepted by DISTRICT as complete; at which time the bond amount may be reduced to ten
3 percent (10%) for a period of one year to guarantee against any defective work, labor or
4 materials.

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

11 9. [This Section Intentionally Left Blank.]

12 10. Obtain and provide DISTRICT (Attention: Right of Way Acquisition
13 Section), at the time of providing written notice to DISTRICT of the start of construction as set
14 forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final maps
15 for Parcel Map No. 33942 or any phase thereof, whichever occurs first, with duly executed
16 Irrevocable Offers(s) of Dedication to the public for flood control and drainage purposes,
17 including ingress and egress, for the rights of way deemed necessary by DISTRICT for the
18 construction, inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES
19 and for the removal of debris and sediment of PRIVATELY OWNED/MAINTAINED
20 CULVERT, as shown in concept on Exhibit "A". The Irrevocable Offer(s) of Dedication shall
21 be in a form approved by DISTRICT and shall be executed by all legal and equitable owners
22 of the property described in the offer(s).
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25 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
26 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
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1 thirty (30) days prior to date of submission of all the property described in the Irrevocable
2 Offer(s) of Dedication.

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

9 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT
10 of the start of construction as set forth in Section I.8., a construction schedule which shall
11 show the order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to
12 carry on the various parts of work, including estimated start and completion dates. As
13 construction of PROJECT progresses, DEVELOPER shall update said construction schedule
14 as requested by DISTRICT.
15

16 14. Furnish DISTRICT with final mylar plans for PROJECT and assign their
17 ownership to DISTRICT prior to the start of PROJECT construction.

18 15. Not permit any change to, or modification of, DISTRICT and COUNTY
19 approved IMPROVEMENT PLANS without the prior written permission and consent of
20 DISTRICT and COUNTY.
21

22 16. Comply with all Cal/OSHA safety regulations including regulations
23 concerning confined space and maintain a safe working environment for DEVELOPER,
24 COUNTY, and DISTRICT employees on the site.

25 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT
26 of the start of construction as set forth in Section I.8., a confined space entry procedure
27 specific to PROJECT. The procedure shall comply with requirements contained in California
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1 Code of Regulations, Title 8 Section 5158, Other Confined Space Operations, Section 5157,
2 Permit Required Confined Space and District Confined Space Procedures, SOM-18. The
3 procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to
4 Proceed.

5 18. During the construction period of PROJECT, provide Workers'
6 Compensation Insurance in an amount required by law. A certificate of said insurance policy
7 shall be provided to DISTRICT and COUNTY at the time of providing written notice pursuant
8 to Section I.8.

9 19. Commencing on the date notice is given pursuant to Section I.8. and
10 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and
11 maintenance:

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

25 20. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole
26 cost and expense in accordance with DISTRICT and COUNTY approved IMPROVEMENT
27 PLANS.
28

1 21. Within two (2) weeks of completing PROJECT construction, provide
2 DISTRICT (Attention: Contract Administration Section) and COUNTY with written notice
3 that PROJECT construction is substantially complete and requesting that DISTRICT conduct a
4 final inspection of DISTRICT DRAINAGE FACILITIES and COUNTY conduct a final
5 inspection of COUNTY FACILITIES.

6 22. Upon completion of PROJECT construction, and upon acceptance by
7 COUNTY of all street rights of way deemed necessary by DISTRICT and COUNTY for the
8 operation and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT
9 DRAINAGE FACILITIES for ownership, operation and maintenance, convey, or cause to be
10 conveyed to DISTRICT the flood control easement(s) or grant deed(s) of fee title where
11 appropriate, including ingress and egress, for the rights of way as shown in concept cross-
12 hatched in red on Exhibit "B". The easement(s) or grant deed(s) shall be in a form approved
13 by DISTRICT and shall be executed by all legal and equitable owners of the property
14 described in the easement(s) or grant deed(s).
15

16 23. At the time of recordation of the conveyance document(s) as set forth in
17 Section I.22., furnish DISTRICT with policies of title insurance, each in the amount of not less
18 than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
19 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the
20 estimated fee value, as determined by DISTRICT, for each fee parcel to be conveyed to
21 DISTRICT, guaranteeing DISTRICT'S interest in said property as being free and clear of all
22 liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded),
23 except those which, in the sole discretion of DISTRICT, are deemed acceptable.
24

25 24. Accept ownership and sole responsibility for the operation and
26 maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility
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1 for operation and maintenance of DISTRICT DRAINAGE FACILITIES and COUNTY
2 accepts ownership and responsibility for operation and maintenance of COUNTY
3 FACILITIES. DEVELOPER shall continue thereafter to own and have sole responsibility for
4 operating and maintaining the structural integrity of PRIVATELY OWNED/MAINTAINED
5 CULVERT.

6 25. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
7 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable
8 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and
9 fees shall be computed as costs and included in any judgment rendered.

10 26. Upon completion of construction of PROJECT, but prior to DISTRICT
11 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and
12 maintenance, provide or cause its civil engineer of record or construction civil engineer of
13 record, duly registered in the State of California, to provide DISTRICT with a redlined "record
14 drawings" copy of PROJECT plans. After DISTRICT approval of the redlined "record
15 drawings", DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the
16 redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the
17 engineer shall review, stamp and sign the original PROJECT plans "record drawings".

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

23 28. Upon completion of PROJECT construction, and upon acceptance by
24 COUNTY of all street rights of way deemed necessary by DISTRICT and COUNTY for the
25

1 operation and maintenance of PROJECT, but prior to DISTRICT acceptance of responsibility
2 for performing sediment and debris removal for PRIVATELY OWNED/MAINTAINED
3 CULVERT, convey or cause to be conveyed to DISTRICT the necessary rights, in a form
4 approved by DISTRICT, to perform sediment and debris removal for PRIVATELY
5 OWNED/MAINTAINED CULVERT.

6 SECTION II

7 DISTRICT shall:

8
9 1. Review and approve IMPROVEMENT PLANS prior to the start of
10 PROJECT construction.

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

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

15 4. Record, or cause to be recorded, the Irrevocable Offer(s) of Dedication,
16 easement(s), or grant deed(s) provided by DEVELOPER pursuant to Sections I.10 and I. 22.

17 5. Inspect construction of DISTRICT DRAINAGE FACILITIES.

18 6. Keep an accurate accounting of all DISTRICT costs associated with the
19 review and approval of IMPROVEMENT PLANS, the review and approval of right of way
20 and conveyance documents and the processing and administration of this Agreement.
21

22 7. [This Section Intentionally Left Blank.]

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

6
7 9. Accept ownership and sole responsibility for the operation and
8 maintenance of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT inspection of
9 DISTRICT DRAINAGE FACILITIES in accordance with Section I.21., (ii) DISTRICT
10 acceptance of DISTRICT DRAINAGE FACILITIES construction as being complete, (iii)
11 COUNTY acceptance of COUNTY FACILITIES construction as being complete, (iv)
12 DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans as set forth in
13 Section I.26., (v) recordation of all conveyance documents described in Section I.22., (vi)
14 acceptance by COUNTY of all necessary street rights of way as deemed necessary by
15 DISTRICT and COUNTY for the operation and maintenance of PROJECT, (vii) COUNTY
16 acceptance of COUNTY FACILITIES for ownership, operation and maintenance, and (viii)
17 DISTRICT'S sole determination that DISTRICT DRAINAGE FACILITIES are in a
18 satisfactorily maintained condition.

19
20 10. Provide COUNTY with reproducible duplicate copies of "record
21 drawings" PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE
22 FACILITIES as being complete.

23
24 11. Provide sediment and debris removal for HARVILL CULVERT upon (i)
25 COUNTY acceptance of ownership and responsibility for operation and maintenance of the
26 structural integrity of HARVILL CULVERT, and (ii) COUNTY acceptance of
27 APPURTENANCES for ownership, operation and maintenance.

1 12. Provide sediment and debris removal for PRIVATELY
2 OWNED/MAINTAINED CULVERT upon conveyance of all necessary rights to District as
3 set forth in Section I.28.

4 SECTION III

5 COUNTY shall:

6 1. Review and approve IMPROVEMENT PLANS prior to the start of
7 PROJECT construction.
8

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

12 3. Inspect construction of COUNTY FACILITIES.

13 4. Consent, by execution of this Agreement, to the recording of any
14 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.
15

16 5. If requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
17 as set forth herein, and any other outstanding offers of dedication necessary for the
18 construction, inspection, operation and maintenance of PROJECT and, pursuant to the
19 authority granted by County of Riverside Resolution No. 2005-291, convey sufficient rights of
20 way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT
21 DRAINAGE FACILITIES.
22

23 6. Grant DISTRICT, by execution of this Agreement, (i) the right to
24 construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within
25 COUNTY rights of way, and (ii) the necessary rights to perform sediment and debris removal
26 for HARVILL CULVERT within COUNTY rights of way.
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1 7. Accept ownership and sole responsibility for the operation and
2 maintenance of APPURTENANCES upon DISTRICT acceptance of DISTRICT DRAINAGE
3 FACILITIES as being complete.

4 8. Accept ownership and responsibility for operation and maintenance of the
5 structural integrity of HARVILL CULVERT upon DISTRICT acceptance of DISTRICT
6 DRAINAGE FACILITIES as being complete.

7
8 9. Not grant any occupancy permits for any units within any portion of
9 Parcel Map No. 33942, or any phase thereof, until construction of PROJECT is complete,
10 unless otherwise approved in writing by DISTRICT.

11 10. Upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
12 construction as being complete, accept sole responsibility for the adjustment of all PROJECT
13 manhole rings and covers located within COUNTY rights of way which must be performed at
14 such time(s) that the finished grade along and above the underground portions of DISTRICT
15 DRAINAGE FACILITIES are improved, repaired, replaced or changed. It being further
16 understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.
17

18 SECTION IV

19 It is further mutually agreed:

20 1. Prior to DISTRICT'S acceptance of ownership and responsibility for the
21 operation and maintenance of DISTRICT DRAINAGE FACILITIES, DISTRICT
22 DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely
23 determined by DISTRICT.
24

25 2. All work involved with DISTRICT DRAINAGE FACILITIES shall be
26 inspected by DISTRICT and shall not be deemed complete until approved and accepted in
27 writing as complete by DISTRICT.
28

1 3. COUNTY and DEVELOPER personnel may observe and inspect all work
2 being done on DISTRICT DRAINAGE FACILITIES, but shall provide any comments to
3 DISTRICT personnel who shall be solely responsible for all quality control communications
4 with the DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE
5 FACILITIES.

6 4. DEVELOPER shall complete construction of DISTRICT DRAINAGE
7 FACILITIES within nine (9) consecutive months after execution of this Agreement and within
8 ninety (90) consecutive calendar days after commencing work on DISTRICT DRAINAGE
9 FACILITIES. It is expressly understood that since time is of the essence in this Agreement,
10 failure of DEVELOPER to perform the work within the agreed upon time shall constitute
11 authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to
12 pay to COUNTY the penal sum of any and all bonds. In which case, COUNTY shall
13 subsequently reimburse DISTRICT for DISTRICT costs incurred.

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

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

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

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

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

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

21
22 DEVELOPER'S indemnification obligations shall be satisfied when
23 DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal (or
24 similar document) relieving DISTRICT or COUNTY from any liability for the claim,
25 proceeding or action 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
5 Code Section 2782, this section shall be interpreted to comply with California Civil Code
6 Section 2782. Such interpretation shall not relieve the DEVELOPER from indemnifying
7 DISTRICT or COUNTY to the fullest extent allowed by law.

8
9 8. DEVELOPER shall not request DISTRICT to accept any portion or
10 portions of DISTRICT DRAINAGE FACILITIES or COUNTY to accept any portion or
11 portions of COUNTY FACILITIES prior to the completion of PROJECT construction.

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

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

21 11. Any and all notices sent or required to be sent to the parties of this
22 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:
23

24
25 RIVERSIDE COUNTY FLOOD CONTROL
26 AND WATER CONSERVATION DISTRICT
27 1995 Market Street
28 Riverside, CA 92501

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

1 KNOX LOGISTICS, LLC
2 3501 Jamboree Road, Suite 230
3 Newport Beach, CA 92660
4 Attn: David J. Drake

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

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

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

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

22 16. The individual(s) executing this Agreement on behalf of DEVELOPER
23 hereby certify that they have the authority within their respective company(ies) to enter into
24 and execute this Agreement, and have been authorized to do so by any and all boards of
25 directors, legal counsel, and or any other board, committee or other entity within their
26
27
28

1 respective company(ies) which have the authority to authorize or deny entering this
2 Agreement.

3 17. This Agreement is intended by the parties hereto as a final expression of
4 their understanding with respect to the subject matter hereof and as a complete and exclusive
5 statement of the terms and conditions thereof and supersedes any and all prior and
6 contemporaneous agreements and understandings, oral or written, in connection therewith.
7 This Agreement may be changed or modified only upon the written consent of the parties
8 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 Steve Thomas
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 [Signature]
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By [Signature]
JUAN C. PEREZ
Director of Transportation

By _____
JOHN J. BENOIT, Chairman
County of Riverside Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By [Signature] 2/13/13
MARSHA L. VICTOR
Principal Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

Cooperative Agreement
Perris Valley MDP Line B, Laterals B-8 and B-9
Perris Valley – Lateral B-8A (PM 33942, Plot Plan No. 20699R1)
Project Nos. 4-0-00457 to 00459
01/09/2013
P8/150861

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KNOX LOGISTICS, LLC,
a Delaware limited liability company

By: **Lion-TCC Development II, LLC,**
a Delaware limited liability company,
its Managing Member

By: **TC Industrial Associates, Inc.,**
a Delaware corporation,
its Managing Member

By: 

DAVID NAZARYK
Vice President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement
Perris Valley MDP Line B, Laterals B-8 and B-9
Perris Valley – Lateral B-8A (PM 33942, Plot Plan No. 20699R1)
Project Nos. 4-0-00457 to 00459
01/09/2013

ACKNOWLEDGMENT

State of California
County of Orange)

On January 18, 2013 before me, R. Flandez, Notary Public
(insert name and title of the officer)

personally appeared David Nazaryk
who proved to me on the basis of satisfactory evidence to be the pers on~~(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 pers on~~(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 

(Seal)

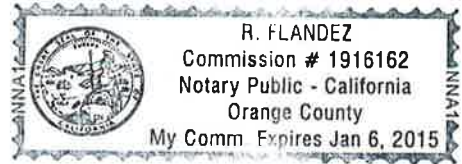
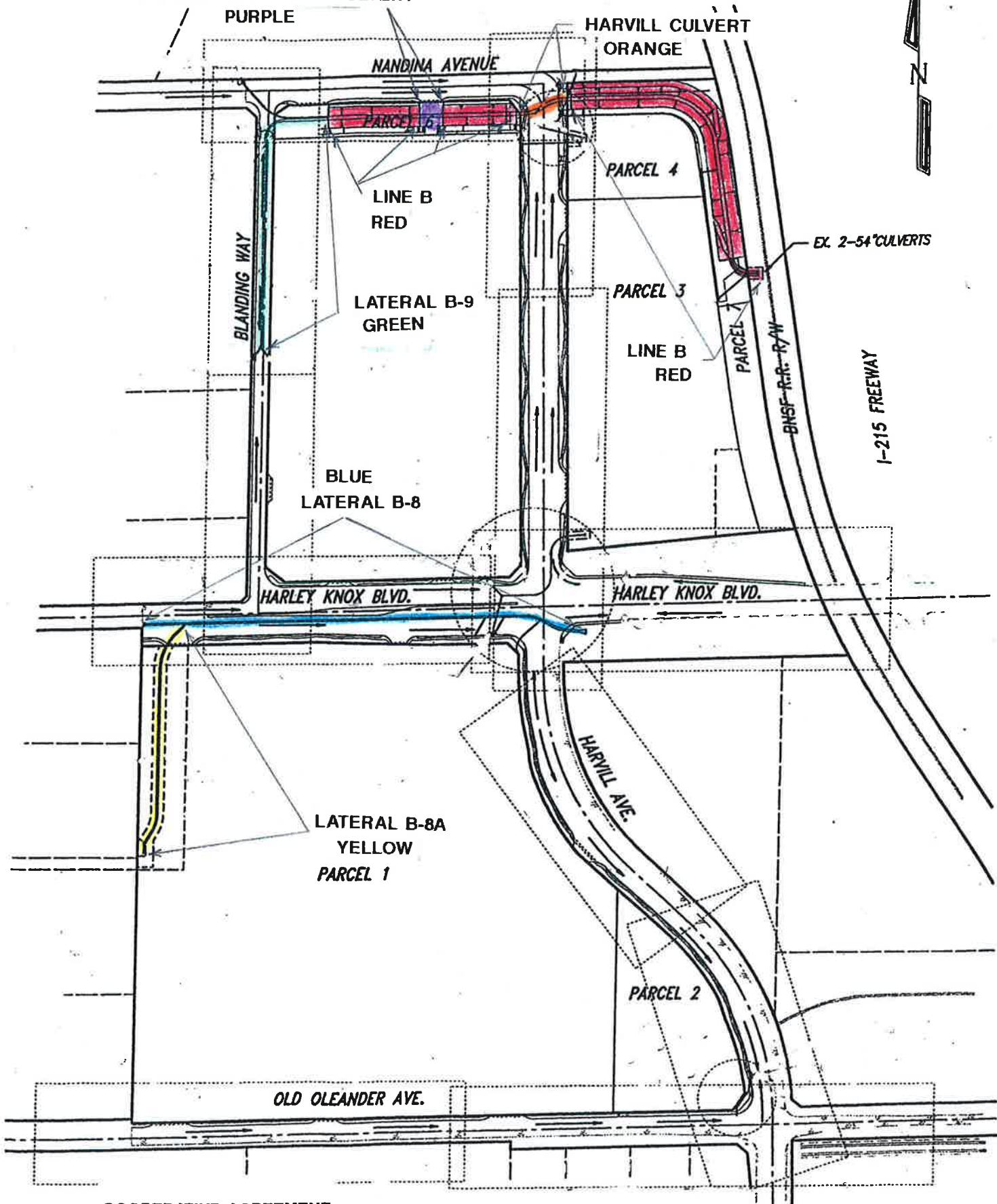


EXHIBIT A

PRIVATELY OWNED/MAINTAINED CULVERT
PURPLE

HARVILL CULVERT
ORANGE



COOPERATIVE AGREEMENT
PV MDP LINE B, LATERALS B-8 AND B-9
PV-LATERAL B-8A
PM33942(PP NO.20699R1)