

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



706B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
December 17, 2013

SUBJECT: Cooperative Agreement for Santa Ana River --
Presidio Road Storm Drain (Tract No. 36382)
Project No. 2-0-00368
District 2/District 2 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:
1. Approve the Cooperative Agreement between the District, the City of Eastvale (City) and Lennar Homes of California, Inc. (Developer); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

Summary

The Cooperative Agreement sets forth the terms and conditions by which certain flood control facilities, required as a condition of approval for Tract No. 36382, are to be constructed by Developer and inspected, operated and maintained by the District and City.

Continued on Page 2

LMD:bad
P8/157202

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	
SOURCE OF FUNDS: Developer is funding all construction and construction inspection costs.				Budget Adjustment: N/A	
				For Fiscal Year: N/A	

C.E.O. RECOMMENDATION:

APPROVE

BY:

Steven C. Horn
Steven C. Horn, MPA

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: 2nd/2nd

Agenda Number:

11-6

Departmental Concurrence

FORWARDED COUNTY COUNSEL
BY: *Neal K. Kipnis* DATE: *12/17/13*

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

FORM 11: Cooperative Agreement for Santa Ana River --
Presidio Road Storm Drain (Tract No. 36382)
Project No. 2-0-00368
District 2/District 2 [\$0]

DATE: December 17, 2013

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the referenced drainage facilities. Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the mainline storm drains that are greater than 36 inches in diameter. City will continue to assume ownership and maintenance of an existing storm drain that is 48 inches in diameter along with the drainage facilities' associated appurtenances such as catch basins, connector pipes, etc., located within its right of way boundaries.

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

Impact on Citizens and Businesses

Developer's planned development will benefit from the storm drain facilities that are to be constructed by the Developer.

SUPPLEMENTAL:

Additional Fiscal Information

Future O&M costs associated with the mainline storm drains that are greater than 36-inches in diameter will accrue to the District.

TT/LMD:bad
P8/157202

1 COOPERATIVE AGREEMENT

2 Santa Ana River -
3 Presidio Road Storm Drain
4 Tract No. 36382
5 Project No. 2-0-00368

6 The Riverside County Flood Control and Water Conservation District,
7 hereinafter called "DISTRICT", the City of Eastvale, hereinafter called "CITY", and Lennar
8 Homes of California, Inc., a California corporation, hereinafter called "DEVELOPER", hereby
9 agree as follows:

10 RECITALS

11 A. DEVELOPER has submitted for approval Tract No. 36382, located within
12 the City of Eastvale. As a condition of approval for Tract No. 36382, DEVELOPER must
13 construct certain flood control facilities in order to provide flood protection and drainage for
14 DEVELOPER'S planned development; and

15 B. The legal description of Tract No. 36382 is provided in Exhibit "A"
16 attached hereto and made a part hereof; and

17 C. The required flood control facilities include construction of (i)
18 approximately 1,400 lineal feet of 48" reinforced concrete pipe, and approximately 10 lineal
19 feet of 60" reinforced concrete pipe and its associated outlet structure, hereinafter called
20 "PRESIDIO ROAD STORM DRAIN", as shown in concept in red on Exhibit "B" attached
21 hereto and made a part hereof, and (ii) a maintenance turnaround and its associated retaining
22 wall, hereinafter called "DISTRICT TURNAROUND", as shown in concept in purple on
23 Exhibit "B" attached hereto and made a part hereof. Together PRESIDIO ROAD STORM
24 DRAIN and DISTRICT TURNAROUND are hereinafter called "DISTRICT FACILITIES";
25
26 and
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1 D. Associated with the construction of DISTRICT FACILITIES is the
2 construction of (i) certain laterals and connector pipes that are 36" or less in diameter and their
3 associated inlets, hereinafter called "DRAINAGE FACILITIES", and (ii) a maintenance access
4 road, hereinafter called "SHARED ACCESS ROAD", that are to be located within privately
5 held easements or rights of way and which are to be initially owned and maintained by
6 DEVELOPER and, subsequently, owned and maintained by the Home Owners' Association
7 for Tract No. 36382. Together DRAINAGE FACILITIES and SHARED ACCESS ROAD are
8 hereinafter called "HOA FACILITIES"; and

10 E. Together, DISTRICT FACILITIES and HOA FACILITIES are
11 hereinafter called "PROJECT"; and

13 F. At its upstream terminus, PRESIDIO ROAD STORM DRAIN connects to
14 CITY'S existing 48" reinforced concrete pipe; and

15 G. PRESIDIO ROAD STORM DRAIN is identified as Line G in proposed
16 Community Facilities District No. 43, hereinafter called "THE PALMS CFD", that may be
17 formed by the Jurupa Community Services District under the authority of the Mello-Roos
18 Community Facilities Act of 1982 to provide, among other things, a means of financing the
19 construction of PRESIDIO ROAD STORM DRAIN; and

21 H. Prior to THE PALMS CFD formation, DISTRICT, Jurupa Community
22 Services District, and DEVELOPER anticipate entering into a separate Joint Community
23 Facilities Agreement, hereinafter called "JCFA", whereby THE PALMS CFD will attempt to
24 sell bonds for the purpose of reimbursing DEVELOPER for costs associated with the
25 construction of PRESIDIO ROAD STORM DRAIN; and

26 I. It is the intent of DISTRICT, CITY, and DEVELOPER that this
27 Agreement shall principally address matters pertaining to the design, construction, and
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1 inspection of PROJECT and DISTRICT'S acceptance of DISTRICT FACILITIES for
2 ownership, operation and maintenance upon completion of PROJECT construction; and

3 J. On or about July 29, 2013, DISTRICT, CITY, and DEVELOPER entered
4 into a Right of Entry and Inspection Agreement that authorizes DEVELOPER to construct a
5 segment of PRESIDIO ROAD STORM DRAIN. Pursuant to the Right of Entry and
6 Inspection Agreement, DEVELOPER has commenced construction of that particular segment
7 of PRESIDIO ROAD STORM DRAIN, which consists of approximately 685 lineal feet of 48"
8 reinforced concrete pipe; and

9
10 K. DEVELOPER and CITY desire DISTRICT to accept ownership and
11 responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore,
12 DISTRICT must review and approve PROJECT plans and specifications and subsequently
13 inspect the construction of PROJECT; and

14
15 L. DISTRICT is willing to (i) review and approve DEVELOPER'S
16 PROJECT plans and specifications, (ii) inspect the construction of DISTRICT FACILITIES,
17 and (iii) assume ownership and responsibility for the operation and maintenance of DISTRICT
18 FACILITIES upon completion of PROJECT construction, provided DEVELOPER (i)
19 complies with this Agreement, (ii) pays DISTRICT the amounts specified herein to cover
20 DISTRICT'S plan review and construction inspection costs, (iii) constructs PROJECT in
21 accordance with the DISTRICT and CITY approved plans and specifications, (iv) accepts
22 ownership and responsibility for the operation and maintenance of PROJECT following
23 completion of PROJECT construction until such time as DISTRICT accepts ownership and
24 responsibility for the operation and maintenance of DISTRICT FACILITIES, (v) obtains and
25 conveys to DISTRICT the necessary rights of way for the inspection, operation and
26 maintenance of DISTRICT FACILITIES as set forth herein, and (vi) indemnifies and holds
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1 DISTRICT harmless against any claims from the public's use of the SHARED ACCESS
2 ROAD; and

3 M. CITY is willing to (i) review and approve PROJECT plans and
4 specifications, (ii) inspect the construction of HOA FACILITIES, (iii) accept and hold faithful
5 performance and payment bonds submitted by DEVELOPER for DISTRICT FACILITIES,
6 and (iv) consent to the recordation and conveyance of Irrevocable Offer(s) of Dedication
7 furnished by DEVELOPER as provided herein.

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

9
10 SECTION I

11 DEVELOPER shall:

12 1. Prepare PROJECT plans and specifications, hereinafter called
13 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards,
14 and submit to DISTRICT and CITY for their review and approval.

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

20 3. Deposit with DISTRICT (Attention: Business Office - Accounts
21 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
22 construction as set forth in Section I.8. herein, the estimated cost of providing construction
23 inspection for DISTRICT FACILITIES, in an amount as determined and approved by
24 DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside,
25 including any amendments thereto, based upon the bonded value of DISTRICT FACILITIES.
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1 4. Grant DISTRICT and CITY, by execution of this Agreement, the right to
2 enter upon DEVELOPER'S property where necessary and convenient for the purpose of
3 gaining access to and performing inspection service for the construction of PROJECT as set
4 forth herein.

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

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

19 7. Provide CITY, at the time of providing written notice to DISTRICT of the
20 start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
21 recordation of the final map for Tract No. 36382, with faithful performance and payment
22 bonds, each in the amount of one hundred percent (100%) of the estimated cost for
23 construction of DISTRICT FACILITIES as determined by DISTRICT. The surety, amount
24 and form of the bonds shall be subject to the approval of DISTRICT and CITY. The bonds
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1 shall remain in full force and effect until DISTRICT FACILITIES are accepted by DISTRICT
2 as complete; at which time the bond amount may be reduced to ten percent (10%) for a period
3 of one year to guarantee against any defective work, labor or materials.

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

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10 9. [This Section Intentionally Left Blank.]

11 10. Obtain and provide DISTRICT (Attention: Right of Way Acquisition
12 Section), at the time of providing written notice to DISTRICT of the start of construction as set
13 forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final map
14 for Tract No. 36382, with duly executed Irrevocable Offers(s) of Dedication to the public for
15 flood control and drainage purposes, including ingress and egress, for the rights of way
16 deemed necessary by DISTRICT for the construction, inspection, operation and maintenance
17 of DISTRICT FACILITIES and SHARED ACCESS ROAD, as shown in concept cross-
18 hatched in blue on Exhibit "C" attached hereto and made a part hereof. The Irrevocable
19 Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all
20 legal and equitable owners of the property described in the offer(s).

21
22 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
23 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
24 thirty (30) days prior to date of submission of all the property described in the Irrevocable
25 Offer(s) of Dedication.
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1 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT
2 of the start of construction as set forth in Section I.8., with a complete list of all contractors
3 and subcontractors to be performing work on DISTRICT FACILITIES, including the
4 corresponding license number and license classification of each. At such time, DEVELOPER
5 shall further identify in writing its designated superintendent for DISTRICT FACILITIES
6 construction.
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8 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT
9 of the start of construction as set forth in Section I.8., a construction schedule which shall
10 show the order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to
11 carry out the various parts of work, including estimated start and completion dates. As
12 construction of DISTRICT FACILITIES progresses, DEVELOPER shall update said
13 construction schedule as requested by DISTRICT.
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15 14. Furnish DISTRICT with final mylar plans for DISTRICT FACILITIES,
16 and assign their ownership to DISTRICT prior to the start of DISTRICT FACILITIES
17 construction.
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19 15. Not permit any change to, or modification of, DISTRICT and CITY
20 approved IMPROVEMENT PLANS without the prior written permission and consent of
21 DISTRICT and CITY.
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23 16. Comply with all Cal/OSHA safety regulations including regulations
24 concerning confined space and maintain a safe working environment for DEVELOPER,
25 DISTRICT and CITY employees on the site.
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27 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT
28 of the start of construction as set forth in Section I.8., a confined space entry procedure
specific to DISTRICT FACILITIES. The procedure shall comply with requirements contained

1 in California Code of Regulations, Title 8 Section 5158, Other Confined Space Operations,
2 Section 5157, Permit Required Confined Space and District Confined Space Procedures,
3 SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the issuance
4 of a Notice to Proceed.

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

10 19. Commencing on the date notice is given pursuant to Section I.8., and
11 continuing until DISTRICT accepts DISTRICT FACILITIES for operation and 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 that 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, County of Riverside and CITY as
22 additional insureds with respect to this Agreement and the
23 obligations of DEVELOPER hereunder. Such insurance shall
24 provide for limits of not less than two million dollars (\$2,000,000)
25 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 CITY 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, County of Riverside and CITY are named as
9 additional insureds with respect to this Agreement and the
10 obligations of DEVELOPER hereunder. Further, said certificate(s)
11 shall state that the issuing company shall give DISTRICT and
12 CITY sixty (60) days written notice in the event of any
13 cancellation, termination, non-renewal or reduction in coverage of
14 the policies evidenced by the certificate(s). In the event of any
15 such cancellation, termination, non-renewal or reduction in
16 coverage, DEVELOPER shall, forthwith, secure replacement
17 insurance meeting the provisions of this paragraph.
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21 Failure to maintain the insurance required by this paragraph shall be deemed a
22 material breach of this Agreement and shall authorize and constitute authority for DISTRICT,
23 at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to
24 perform its obligations hereunder, nor to accept responsibility for ownership, operation and
25 maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this
26 Agreement.
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1 20. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole
2 cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT
3 PLANS.

4 21. Within two (2) weeks of completing PROJECT construction, provide
5 DISTRICT (Attention: Contract Administration Section) and CITY with written notice that
6 PROJECT construction is substantially complete and request that DISTRICT conduct a final
7 inspection of DISTRICT FACILITIES and CITY conduct a final inspection of HOA
8 FACILITIES.

9 22. Upon completion of PROJECT construction, and upon acceptance by
10 CITY of all street rights of way deemed necessary by DISTRICT and CITY for the operation
11 and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT
12 FACILITIES for ownership, operation and maintenance, convey, or cause to be conveyed to
13 DISTRICT the flood control easement(s), including ingress and egress, for the rights of way,
14 as shown in concept cross-hatched in blue on Exhibit "C" attached hereto and made a part
15 hereof. The easement(s) shall be in a form approved by DISTRICT and shall be executed by
16 all legal and equitable owners of the property described in the easement(s).

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

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1 24. Accept ownership and sole responsibility for the operation and
2 maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility
3 for operation and maintenance of DISTRICT FACILITIES, CITY continues to accept
4 ownership and responsibility for operation and maintenance of CITY'S existing 48" reinforced
5 concrete pipe, and the Home Owners' Association for Tract No. 36382 accepts ownership and
6 responsibility for the operation and maintenance of HOA FACILITIES. Further, it is mutually
7 understood by the parties hereto that prior to DISTRICT acceptance of ownership and
8 responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT
9 FACILITIES and SHARED ACCESS ROAD shall be in a satisfactorily maintained condition
10 as solely determined by DISTRICT.
11

12 25. 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
15 fees shall be computed as costs and included in any judgment rendered.
16

17 26. Upon completion of PROJECT construction, but prior to DISTRICT
18 acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or
19 cause its civil engineer of record or construction civil engineer of record, duly registered in the
20 State of California, to provide DISTRICT with a redlined "record drawings" copy of
21 engineering plans for DISTRICT FACILITIES. After DISTRICT approval of the redlined
22 "record drawings", DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer
23 the redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the
24 DEVELOPER'S engineer shall review, stamp and sign the original DISTRICT FACILITIES
25 engineering plans "record drawings".
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1 27. Ensure that all work performed pursuant to this Agreement by
2 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
3 regulations, including but not limited to all applicable provisions of the Labor Code, Business
4 and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs
5 associated with compliance with applicable laws and regulations.
6

7 SECTION II

8 DISTRICT shall:

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

11 2. Provide CITY an opportunity to review and approve IMPROVEMENT
12 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 provided by DEVELOPER pursuant to Section I.10.

17 5. Inspect construction of DISTRICT 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 DISTRICT FACILITIES
25 as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth
26 in Section I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess
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1 amount within sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as
2 being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to
3 exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed reasonably
4 necessary by DISTRICT to complete inspection of DISTRICT FACILITIES, within thirty (30)
5 days after receipt of billing from DISTRICT.
6

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

22 SECTION III

23 CITY shall:

24 1. Review and approve IMPROVEMENT PLANS prior to the start of
25 PROJECT construction.
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1 2. Accept CITY and DISTRICT approved faithful performance and payment
2 bonds submitted by DEVELOPER, as set forth in Section I.7., and hold said bonds as provided
3 herein.

4 3. Inspect construction of HOA FACILITIES.

5 4. Consent, by execution of this Agreement, to the recording of any
6 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.
7

8 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of
9 Dedication, as set forth herein, and any other outstanding offers of dedication necessary for the
10 construction, inspection, operation and maintenance of DISTRICT FACILITIES and
11 SHARED ACCESS ROAD.

12 6. Grant DISTRICT, by execution of this Agreement, the right to construct,
13 inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way.
14

15 7. Continue to accept ownership and sole responsibility for the operation and
16 maintenance of CITY'S existing 48" reinforced concrete pipe upon DISTRICT acceptance of
17 DISTRICT FACILITIES as being complete.

18 8. Not grant any occupancy permits for any units within any portion of Tract
19 No. 36382, or any phase thereof, until construction of PROJECT is complete, unless otherwise
20 approved in writing by DISTRICT.
21

22 9. [This Section Intentionally Left Blank.]

23 10. Upon DISTRICT acceptance of DISTRICT FACILITIES construction as
24 being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings
25 and covers located within CITY rights of way which must be performed at such time(s) that
26 the finished grade along and above the underground portions of DISTRICT FACILITIES are
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1 improved, repaired, replaced or changed. It being further understood and agreed that any such
2 adjustments shall be performed at no cost to DISTRICT.

3 SECTION IV

4 It is further mutually agreed:

5
6 1. Prior to DISTRICT'S acceptance of ownership and responsibility for the
7 operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES and
8 SHARED ACCESS ROAD shall be in a satisfactorily maintained condition as solely
9 determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of
10 DISTRICT, DISTRICT FACILITIES or SHARED ACCESS ROAD is not in an acceptable
11 condition, corrections will be made at the sole expense of DEVELOPER.

12
13 2. All work involved with DISTRICT FACILITIES shall be inspected by
14 DISTRICT and shall not be deemed complete until approved and accepted in writing as
15 complete by DISTRICT.

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

21
22 4. Following DISTRICT'S acceptance of ownership and responsibility for
23 the operation and maintenance of DISTRICT FACILITIES, if at any time the condition of
24 SHARED ACCESS ROAD, as solely determined by DISTRICT, interferes with DISTRICT'S
25 ability to safely operate and maintain DISTRICT FACILITIES, DISTRICT may, at its sole
26 discretion, repair or reconstruct SHARED ACCESS ROAD for the purpose of providing safe
27 conditions for the DISTRICT to operate and maintain DISTRICT FACILITIES. DISTRICT
28 shall assume no responsibility, obligation or liability whatsoever for (i) the design,

1 construction, operation or maintenance of the SHARED ACCESS ROAD, or (ii) any damage
2 caused by DISTRICT'S normal and customary operation and maintenance activities within the
3 SHARED ACCESS ROAD. Furthermore, DEVELOPER, its successors and assigns, shall
4 indemnify and hold DISTRICT harmless against any claims, actions, liabilities or damages
5 related to the public's or a third party's use of the SHARED ACCESS ROAD.
6

7 5. DEVELOPER shall complete construction of DISTRICT FACILITIES
8 within twelve (12) consecutive months after execution of this Agreement and within one
9 hundred twenty (120) consecutive calendar days after commencing work on DISTRICT
10 FACILITIES. It is expressly understood that since time is of the essence in this Agreement,
11 failure of DEVELOPER to perform the work within the agreed upon time shall constitute
12 authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to
13 pay to CITY the penal sum of any and all bonds. In which case, CITY shall subsequently
14 reimburse DISTRICT for DISTRICT costs incurred.
15

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

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

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

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

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

19
20 DEVELOPER'S indemnification obligations shall be satisfied when
21 DEVELOPER has provided to DISTRICT, County of Riverside and CITY the appropriate
22 form of dismissal (or similar document) relieving DISTRICT, County of Riverside or CITY
23 from any liability for the claim, proceeding or action involved.

24
25 The specified insurance limits required in this Agreement shall in no way
26 limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT,
27 County of Riverside and CITY from third party claims.
28

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

5
6 9. DEVELOPER shall not request DISTRICT to accept any portion or
7 portions of DISTRICT FACILITIES prior to the completion of PROJECT construction.

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

15 11. This Agreement is to be construed in accordance with the laws of the
16 State of California. If any provision in this Agreement is held by a court of competent
17 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless
18 continue in full force without being impaired or invalidated in any way.

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

21 RIVERSIDE COUNTY FLOOD CONTROL
22 AND WATER CONSERVATION DISTRICT
23 1995 Market Street
24 Riverside, CA 92501
25 Attn: Administrative Services Section

CITY OF EASTVALE
12363 Limonite Ave. Suite 910
Eastvale, CA 91752
Attn: Joe Indrawan

26 LENNAR HOMES OF CALIFORNIA, INC.
27 980 Montecito Drive, Suite 302
28 Corona, CA 92879
Attn: William Sacriste

1 13. 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 the Agreement, shall be tried in a court
3 of 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

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

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

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

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

1 18. This Agreement is intended by the parties hereto as a final expression of
2 their understanding with respect to the subject matter hereof and as a complete and exclusive
3 statement of the terms and conditions thereof and supersedes any and all prior and
4 contemporaneous agreements and understandings, oral or written, in connection therewith.
5 This Agreement may be changed or modified only upon the written consent of the parties
6 hereto.
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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3 (to be filled in by Clerk of the Board)

4

5

6 RECOMMENDED FOR APPROVAL:

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

7

8 By Steve Thomas
9 *For* WARREN D. WILLIAMS
General Manager-Chief Engineer

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

10

11

12 APPROVED AS TO FORM:

ATTEST:

13 PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

14

15 By [Signature]
16 NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

17

(SEAL)

18

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26 Cooperative Agreement for
Santa Ana River – Presidio Road Storm Drain
27 TR 36382
Project No. 2-0-00368
28 11/18/13

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RECOMMENDED FOR APPROVAL: **CITY OF EASTVALE**

By _____
GEORGE ALVAREZ
City Engineer

By _____
IKE BOOTSMA
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
JOHN CAVANAUGH
City Attorney

By _____
CAROL JACOBS
City Manager

(SEAL)

Cooperative Agreement for
Santa Ana River – Presidio Road Storm Drain
TR 36382
Project No. 2-0-00368
11/18/13

LENNAR HOMES OF CALIFORNIA, INC.
a California corporation

By: 
Jeffrey T. Clemens
Vice President

(ATTACH NOTARY WITH CAPACITY STATEMENT)

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Cooperative Agreement for
Santa Ana River – Presidio Road Storm Drain
TR 36382
Project No. 2-0-00368
11/18/13

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On November 22, 2013, before me, Sherry Alworth, a Notary Public for the State of California, personally appeared Jeffrey T. Clemens, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Sherry Alworth (Seal)

My Commission expires October 23, 2015



Exhibit A

LEGAL DESCRIPTION

Real property in the City of Eastvale, County of Riverside, State of California, described as follows:

PARCEL "A" OF LOT LINE ADJUSTMENT NO. 13-001 RECORDED MAY 28, 2013 AS INSTRUMENT NO. 2013-0314017 OF OFFICIAL RECORDS, IN THE CITY OF EASTVALE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

APN: 152-040-040

COOPERATIVE AGREEMENT

Santa Ana River
– Presidio Road Storm Drain
TR 36382
Project No. 2-0-00368
Page 1 of 1

Exhibit B



COOPERATIVE AGREEMENT

Santa Ana River

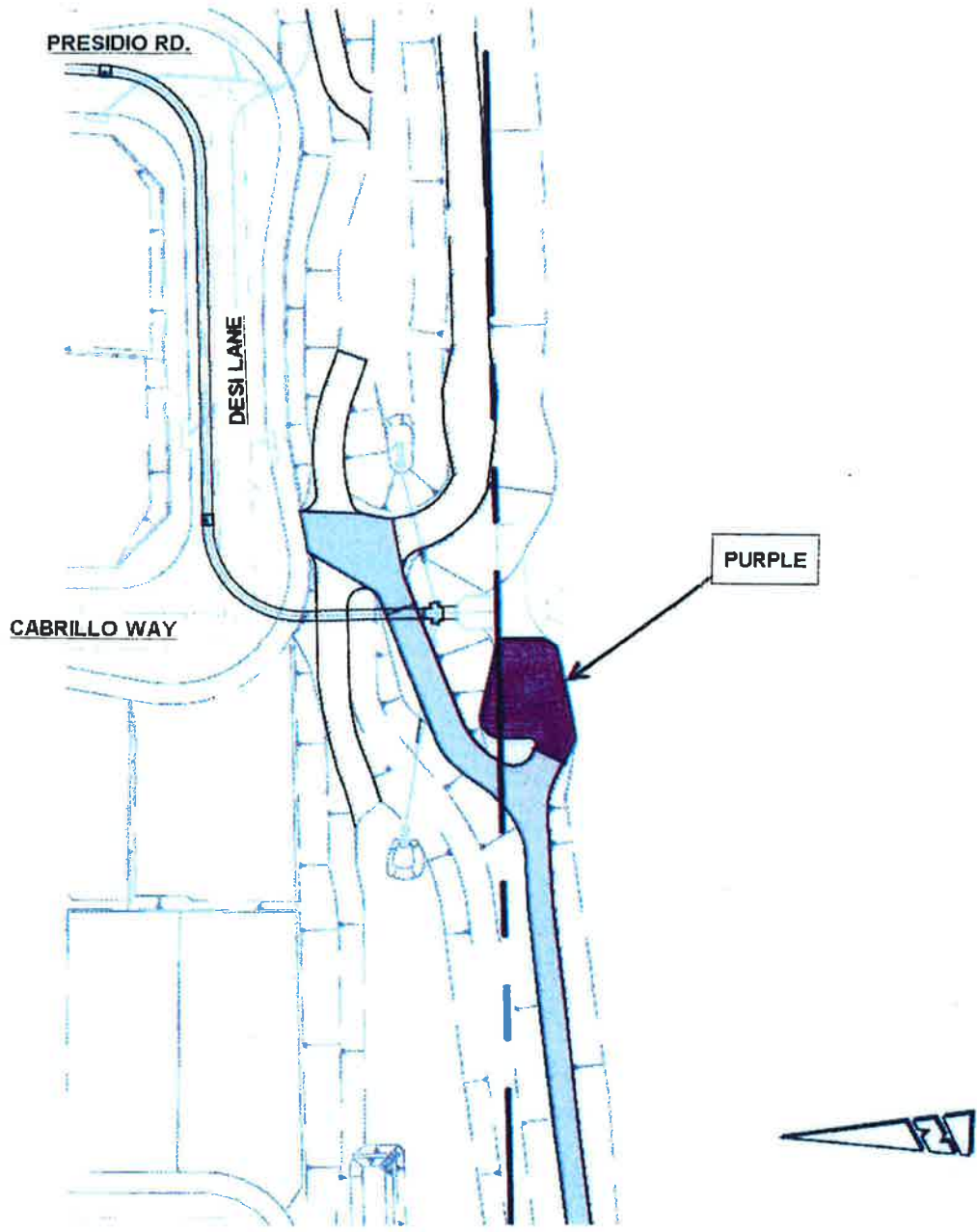
- Presidio Road Storm Drain

TR 36382

Project No. 2-0-00368

Page 1 of 2

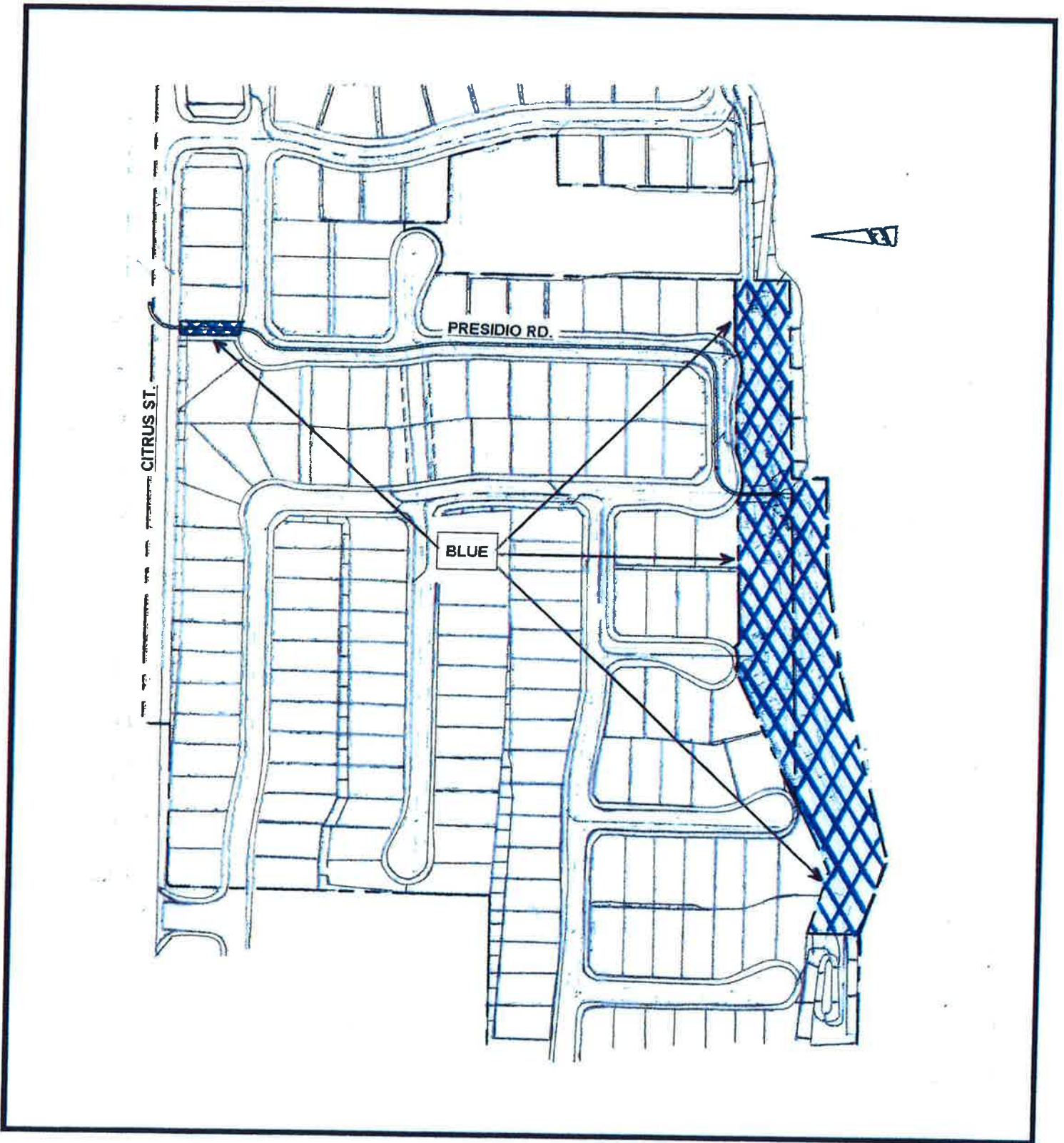
Exhibit B



COOPERATIVE AGREEMENT

Santa Ana River
- Presidio Road Storm Drain
TR 36382
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Exhibit C



COOPERATIVE AGREEMENT

Santa Ana River

- Presidio Road Storm Drain

TR 36382

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