

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE: 11/3/14

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



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 January 6, 2015

SUBJECT: Approve Cooperative Agreement for Perris Valley Master Drainage Plan- Line E, Stage 2 and Lateral E-4, Stage 1 (Parcel Map No. 36010), Project Nos. 4-0-00488 and 4-0-00460; District 5 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District, the City of Perris (City) and O.R.E. Industrial, LLC (Developer); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

Summary

The Cooperative Agreement (Agreement) sets forth the terms and conditions by which certain flood control facilities, required as a condition of approval for Parcel Map No. 36010, are to be constructed by Developer and inspected, operated and maintained by the District, City and Developer.

WARREN D. WILLIAMS
 General Manager-Chief Engineer

AMR:blm
 P8/164895

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:	Budget Adjustment: No
	For Fiscal Year: N/A

C.E.O. RECOMMENDATION: APPROVE
 BY: Imelda Delos Santos
 Imelda Delos Santos
 County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

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COOPERATIVE AGREEMENT
Perris Valley Master Drainage Plan (MDP) - Line E, Stage 2
Perris Valley MDP - Lateral E-4, Stage 1
Project Nos. 4-0-00488 and 4-0-00460
Parcel Map No. 36010

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", the City of Perris, hereinafter called "CITY", and O.R.E. Industrial, LLC, a Delaware limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property, including Parcel Map No. 36010, located within the City of Perris, County of Riverside. DEVELOPER has submitted for approval Parcel Map No. 36010 located in the City of Perris. As a condition of approval for Parcel Map No. 36010, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The legal description of Parcel Map No. 36010 is provided in Exhibit "A" attached hereto and made a part hereof; and

C. The required flood control facilities, all as shown in District Drawing No. 4-1070, include construction of (i) a segment of DISTRICT'S Perris Valley MDP Line E consisting of approximately 1,350 lineal feet of a combination of concrete trapezoidal channel and underground storm drain system with a concrete bulkhead at its upstream terminus, hereinafter called "LINE E-STAGE 2", as shown in concept in blue on Exhibit "B" attached hereto and made a part hereof; (ii) approximately 50 lineal feet of double reinforced concrete box, hereinafter called "LINE 2", as shown in concept in red on Exhibit "B"; (iii) approximately 70 lineal feet of reinforced concrete box, hereinafter called "LINE 3", as shown in concept in

1 green on Exhibit "B"; and (iv) DISTRICT'S Perris Valley MDP Lateral E-4 consisting of
2 approximately 1,740 lineal feet of an underground storm drain system and its associated
3 transition structures, hereinafter called "LAT E-4", as shown in concept in yellow on Exhibit
4 "B". Together, LINE E-STAGE 2, LINE 2, LINE 3 and LAT E-4 are hereinafter called
5 "DISTRICT DRAINAGE FACILITIES"; and
6

7 D. Associated with the construction of DISTRICT DRAINAGE
8 FACILITIES is the construction of (i) certain catch basins, outlets, inlets, connector pipes, and
9 various lateral storm drains that are thirty-six inches (36") or less in diameter that are located
10 within CITY held easements or rights of way, hereinafter called "CITY APPURTENANCES";
11 (ii) approximately 50 lineal feet of emergency spillway structure, hereinafter called "INTERIM
12 SPILLWAY"; (iii) approximately 2,100 lineal feet of offsite gunite low flow channel,
13 hereinafter called "OFFSITE LOW FLOW CHANNEL"; and (iv) approximately 350 lineal feet
14 of underground storm drain system consisting of approximately 300 lineal feet of forty-two inch
15 (42") reinforced concrete pipe and approximately 50 lineal feet of double reinforced concrete
16 box and its associated transition structure, hereinafter called "LINE 1". Together CITY
17 APPURTENANCES, INTERIM SPILLWAY, OFFSITE LOW FLOW CHANNEL, and LINE
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19 are hereinafter called "CITY FACILITIES"; and
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21 E. Additionally, DEVELOPER proposes to construct (i) certain reinforced
22 concrete boxes and gunite trapezoidal channel, hereinafter called "APPURTENANCES"; and
23 (ii) a lift station, hereinafter called "LIFT STATION". APPURTENANCES and LIFT
24 STATION are to be located within privately held easements or rights of way and which are to
25 be maintained by DEVELOPER. Together, APPURTENANCES and LIFT STATION are
26 hereinafter called DEVELOPER FACILITIES; and
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1 F. Together, DISTRICT DRAINAGE FACILITIES, CITY FACILITIES,
2 and DEVELOPER FACILITIES are hereinafter called "PROJECT"; and

3 G. All parties recognize and acknowledge that DISTRICT DRAINAGE
4 FACILITIES will not become a fully functioning flood control drainage system until such time
5 that the future construction of the Perris Valley MDP Line E, for the reach between the
6 downstream terminus of LINE E-STAGE 2 to DISTRICT'S existing Perris Valley Channel, is
7 completed. This reach of Perris Valley MDP Line E between the immediate downstream of
8 LINE E-STAGE 2 to DISTRICT'S existing Perris Valley Channel is hereinafter called
9 "ULTIMATE LINE E"; and
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11 H. CITY is willing to assume ownership, operation and maintenance
12 responsibilities of DISTRICT DRAINAGE FACILITIES on an interim basis as set forth herein,
13 with the recognition and understanding that the actual acceptance of DISTRICT DRAINAGE
14 FACILITIES for ownership, operation and maintenance responsibilities by DISTRICT is
15 entirely dependent upon (i) the construction of ULTIMATE LINE E being complete; (ii)
16 DISTRICT acceptance of ownership and responsibility for the operation and maintenance of
17 ULTIMATE LINE E; (iii) DISTRICT DRAINAGE FACILITIES being constructed in
18 accordance with plans and specifications approved by DISTRICT and as set forth herein; (iv)
19 DISTRICT'S sole determination that DISTRICT DRAINAGE FACILITIES are in a
20 satisfactorily maintained condition, (v) the complete removal of INTERIM SPILLWAY; (vi)
21 the removal of all portions of LIFT STATION that are located within DISTRICT'S easements
22 or right of way; (vii) LINE E-STAGE 2 drains into DISTRICT'S existing Perris Valley Channel
23 via ULTIMATE LINE E; and (viii) DISTRICT DRAINAGE FACILITIES are fully functioning
24 as a flood control drainage system as solely determined by DISTRICT; and
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1 I. CITY and DEVELOPER desire DISTRICT to ultimately accept
2 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE
3 FACILITIES. Therefore, DISTRICT must review and approve DEVELOPER'S plans and
4 specifications for DISTRICT DRAINAGE FACILITIES and subsequently inspect the
5 construction of DISTRICT DRAINAGE FACILITIES; and
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7 J. DISTRICT and DEVELOPER desire CITY to accept ownership and
8 responsibility for the operation and maintenance of CITY FACILITIES. Additionally, it is
9 mutually understood and agreed that CITY shall assume ownership and sole responsibility for
10 the operation and maintenance of DISTRICT DRAINAGE FACILITIES until such time as
11 DISTRICT accepts ownership and responsibility for the operation and maintenance of
12 DISTRICT DRAINAGE FACILITIES as set forth herein. Therefore, CITY must review and
13 approve DEVELOPER'S plans and specifications for PROJECT and subsequently inspect the
14 construction of PROJECT; and
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16 K. DISTRICT is willing to (i) review and approve DEVELOPER'S plans
17 and specifications for DISTRICT DRAINAGE FACILITIES, (ii) inspect the construction of
18 DISTRICT DRAINAGE FACILITIES, and (iii) ultimately assume ownership and responsibility
19 for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, provided that
20 DEVELOPER (i) complies with this Agreement, (ii) pays DISTRICT the amounts specified
21 herein to cover DISTRICT'S plan check review and construction inspection costs for DISTRICT
22 DRAINAGE FACILITIES, (iii) constructs PROJECT in accordance with DISTRICT and CITY
23 approved plans and specifications, (iv) accepts ownership and responsibility for the operation
24 and maintenance of PROJECT following completion of PROJECT construction until such time
25 as CITY accepts ownership and responsibility for the operation and maintenance of both
26 DISTRICT DRAINAGE FACILITIES and CITY FACILITIES, (v) accepts sole ownership and
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1 responsibility of the operation and maintenance of DEVELOPER FACILITIES, and (vi) obtains
2 and conveys to DISTRICT and CITY the necessary rights of way for the inspection, operation
3 and maintenance of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES as set forth
4 herein; and

5
6 L. CITY is willing to (i) review and approve PROJECT plans and
7 specifications, (ii) inspect the construction of PROJECT, (iii) accept and hold faithful
8 performance and payment bonds submitted by DEVELOPER for DISTRICT DRAINAGE
9 FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain portions of
10 DISTRICT DRAINAGE FACILITIES located within CITY rights of way, (v) assume
11 ownership and responsibility for the operation and maintenance of CITY FACILITIES upon
12 completion of PROJECT construction, and (vi) assume ownership and responsibility for the
13 operation and maintenance of DISTRICT DRAINAGE FACILITIES following completion of
14 PROJECT construction until such time as DISTRICT accepts ownership and responsibility for
15 the operation and maintenance of DISTRICT DRAINAGE FACILITIES as set forth herein,
16 provided PROJECT is constructed in accordance with plans and specifications approved by
17 DISTRICT and CITY.

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

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21 SECTION I

22 DEVELOPER shall:

23 1. Prepare PROJECT plans and specifications, hereinafter called
24 "IMPROVEMENT PLANS", including separate plans and specifications for DISTRICT
25 DRAINAGE FACILITIES, in accordance with applicable DISTRICT and CITY standards, and
26 submit to DISTRICT and CITY for their respective 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
4 PLANS, review and approval of right of way and conveyance documents, and with the
5 processing and administration of this Agreement.
6

7 3. Deposit with DISTRICT (Attention: Business Office - Accounts
8 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
9 construction as set forth in Section I.8. herein, the estimated cost of providing construction
10 inspection for DISTRICT DRAINAGE FACILITIES, in an amount as determined and approved
11 by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside,
12 including any amendments thereto, based upon the bonded value of DISTRICT DRAINAGE
13 FACILITIES.
14

15 4. Secure, at its sole cost and expense, all necessary licenses, agreements,
16 permits, approvals, rights of way, rights of entry and temporary construction easements as may
17 be needed for the construction, inspection, operation and maintenance of PROJECT.
18 DEVELOPER shall furnish DISTRICT, at the time of providing written notice to DISTRICT of
19 the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
20 recordation of the final map for Parcel Map No. 36010 or any phase thereof, whichever occurs
21 first, with sufficient evidence of DEVELOPER having secured such necessary licenses,
22 agreements, permits, approvals, rights of way, rights of entry and temporary construction
23 easements as determined and approved by DISTRICT and CITY.
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25 5. Furnish DISTRICT and CITY with copies of all permits, approvals or
26 agreements required by any Federal, State or local resource and/or regulatory agency for the
27 construction, operation and maintenance of PROJECT. Such documents include but are not
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1 limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality
2 Control Board, California State Department of Fish and Wildlife, State Water Resources
3 Control Board and Western Riverside County Regional Conservation Authority.

4 6. Grant DISTRICT and CITY, by execution of this Agreement, the right to
5 enter upon DEVELOPER'S property where necessary and convenient for the purpose of gaining
6 access to and performing inspection service for the construction of PROJECT as set forth
7 herein.

8 7. Provide CITY, at the time of providing written notice to DISTRICT of the
9 start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
10 recordation of the final map for Parcel Map No. 36010 or any phase thereof, whichever occurs
11 first, with faithful performance and payment bonds, each in the amount of one hundred percent
12 (100%) of the estimated cost for construction of DISTRICT DRAINAGE FACILITIES as
13 determined by DISTRICT. The surety, amount and form of the bonds shall be subject to the
14 approval of DISTRICT and CITY. The bonds shall remain in full force and effect until
15 DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT and CITY as complete; at
16 which time the bond amount may be reduced to five percent (5%) for a period of one year to
17 guarantee against any defective work, labor or materials.

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

23 9. Obtain and provide DISTRICT (Attention: Right of Way Acquisition
24 Section), at the time of providing written notice to DISTRICT of the start of construction as set
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1 forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final map
2 for Parcel Map No. 36010 or any phase thereof, whichever occurs first, with duly executed
3 Irrevocable Offer(s) of Dedication to the public for flood control and drainage purposes,
4 including ingress and egress, for the rights of way deemed necessary by DISTRICT for the
5 construction, inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES,
6 as shown in concept in blue on Exhibit "C" attached hereto and made a part hereof. The
7 Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be
8 executed by all legal and equitable owners of the property described in the offer(s).
9

10 10. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
11 Dedication as set forth in Section I.9. with Preliminary Reports on Title dated not more than
12 thirty (30) days prior to date of submission of all the property described in the Irrevocable
13 Offer(s) of Dedication.
14

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

21 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
22 the start of construction as set forth in Section I.8., a construction schedule which shall show the
23 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry out the
24 various parts of work, including estimated start and completion dates. As construction of
25 PROJECT progress, DEVELOPER shall update said construction schedule as requested by
26 DISTRICT.
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1 13. Furnish DISTRICT and CITY each with a set of final mylar plans for
2 DISTRICT DRAINAGE FACILITIES, and assign their ownership to DISTRICT and CITY,
3 respectively, prior to the start of PROJECT construction.

4 14. Not permit any change to, or modification of, DISTRICT and CITY
5 approved IMPROVEMENT PLANS without the prior written permission and consent of
6 DISTRICT and CITY.

7 15. Comply with all Cal/OSHA safety regulations including regulations
8 concerning confined space and maintain a safe working environment for DEVELOPER,
9 DISTRICT and CITY employees on the site.

10 16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
11 the start of construction as set forth in Section I.8., a confined space entry procedure specific to
12 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements
13 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space
14 Operations, Section 5157, Permit Required Confined Space and District Confined Space
15 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the
16 issuance of a Notice to Proceed.

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

21 18. Commencing on the date notice is given pursuant to Section I.8., and
22 continuing until CITY accepts CITY FACILITIES and DISTRICT DRAINAGE FACILITIES
23 for ownership, operation and maintenance:

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

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16 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
17 who shall be authorized by the California Department of Insurance
18 to transact the business of insurance in the State of California, to
19 furnish DISTRICT and CITY at the time of providing written notice
20 to DISTRICT of the start of construction as set forth in Section I.8.,
21 with certificate(s) of insurance and applicable policy endorsements
22 showing that such insurance is in full force and effect and that
23 DISTRICT, County of Riverside and CITY are named as additional
24 insureds with respect to this Agreement and the obligations of
25 DEVELOPER hereunder. Further, said certificate(s) shall state that
26 the issuing company shall give DISTRICT and CITY sixty (60)
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1 days written notice in the event of any cancellation, termination,
2 non-renewal or reduction in coverage of the policies evidenced by
3 the certificate(s). In the event of any such cancellation, termination,
4 non-renewal or reduction in coverage, DEVELOPER shall,
5 forthwith, secure replacement insurance meeting the provisions of
6 this paragraph.
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8 Failure to maintain the insurance required by this paragraph shall be
9 deemed a material breach of this Agreement and shall authorize and constitute authority for
10 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
11 IV.4.

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13 19. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole
14 cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT
15 PLANS.

16 20. Within two (2) weeks of completing PROJECT construction, provide
17 DISTRICT (Attention: Development Review Section) and CITY with written notice that
18 PROJECT construction is substantially complete and request that DISTRICT conduct a final
19 inspection of DISTRICT DRAINAGE FACILITIES and CITY conduct a final inspection of
20 PROJECT. It is mutually understood that, prior to DISTRICT acceptance of ownership and
21 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,
22 DISTRICT DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely
23 determined by DISTRICT and construction of ULTIMATE LINE E shall be completed.
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25 21. Accept ownership and sole responsibility for the operation and maintenance
26 of PROJECT until such time as (i) DISTRICT'S acceptance of DISTRICT DRAINAGE
27 FACILITIES construction as being complete, (ii) CITY accepts ownership and responsibility
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1 for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, and (iii) CITY
2 accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES.

3 22. Upon completion of PROJECT construction but prior to CITY'S
4 acceptance of ownership and responsibility for the operation and maintenance of DISTRICT
5 DRAINAGE FACILITIES, provide or cause its civil engineer of record or construction civil
6 engineer of record, duly registered in the State of California, to provide DISTRICT with
7 redlined "Record Drawings" of DISTRICT DRAINAGE FACILITIES plans. After DISTRICT
8 approval of the redlined "Record Drawings", DEVELOPER'S engineer shall schedule with
9 DISTRICT a time to transfer the redlined changes onto DISTRICT'S original mylars at
10 DISTRICT'S office, after which the engineer shall review, stamp and sign DISTRICT
11 DRAINAGE FACILITIES plans "Record Drawings".

12 23. Upon completion of PROJECT construction, and upon acceptance by CITY
13 of all rights of way deemed necessary by DISTRICT and CITY for the operation and
14 maintenance of PROJECT, but prior to CITY acceptance of DISTRICT DRAINAGE
15 FACILITIES for ownership, operation and maintenance, convey, or cause to be conveyed to
16 CITY the flood control easement(s) or grant deed(s) of fee title where appropriate, for the rights
17 of way as shown in concept cross-hatched in red on Exhibit "C". The easement(s) or grant
18 deed(s) shall be in a form approved by both DISTRICT and CITY and shall be executed by all
19 legal and equitable owners of the property described in the easement(s) or grant deed(s).

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

4 25. Upon CITY'S acceptance of DISTRICT DRAINAGE FACILITIES and
 5 CITY FACILITIES for ownership, operation and maintenance, continue to accept ownership
 6 and sole responsibility for the operation and maintenance of DEVELOPER FACILITIES.
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8 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
 9 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable
 10 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees
 11 shall be computed as costs and included in any judgment rendered.
 12

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

19 SECTION II

20 CITY shall:

21 1. Review and approve PROJECT IMPROVEMENT PLANS prior to the start
 22 of PROJECT construction.

23 2. Accept CITY and DISTRICT approved faithful performance and payment
 24 bonds submitted by DEVELOPER, as set forth in Section I.7., and hold said bonds as provided
 25 herein.
 26

27 3. Inspect PROJECT construction.

28 4. Consent, by execution of this Agreement, to the recording of any

1 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

2 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
3 as set forth herein, and any other outstanding offers of dedication necessary for the construction,
4 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and convey
5 sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and
6 maintain DISTRICT DRAINAGE FACILITIES.
7

8 6. Accept ownership and sole responsibility for the operation and maintenance
9 of CITY FACILITIES and DISTRICT DRAINAGE FACILITIES upon (i) CITY inspection of
10 PROJECT in accordance with Section I.20., (ii) CITY acceptance of PROJECT construction as
11 being complete, (iii) DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
12 construction as being complete, and (iv) CITY receipt of stamped and signed Record Drawings
13 of DISTRICT DRAINAGE FACILITIES plans as set forth in Section III.8.
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15 7. Accept sole ownership and responsibility for the operation and maintenance
16 of DISTRICT DRAINAGE FACILITIES until such time as (i) the construction of ULTIMATE
17 LINE E is completed, (ii) DISTRICT accepts ownership and responsibility for the operation and
18 maintenance of LINE E, (iii) DISTRICT DRAINAGE FACILITIES drain freely into the
19 ULTIMATE LINE E and are fully functioning as a flood control drainage system as solely
20 determined by DISTRICT, and (iv) DISTRICT DRAINAGE FACILITIES are formally
21 accepted by DISTRICT for ownership, operation and maintenance. It is mutually understood
22 that, prior to DISTRICT acceptance of ownership and responsibility for the operation and
23 maintenance of DISTRICT DRAINAGE FACILITIES, DISTRICT DRAINAGE FACILITIES
24 shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If,
25 subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT DRAINAGE
26 FACILITIES are not in an acceptable condition, corrections shall be made at CITY'S sole
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1 expense.

2 8. Accept all liability whatsoever associated with the ownership, operation
3 and maintenance of DISTRICT DRAINAGE FACILITIES until such time as DISTRICT
4 DRAINAGE FACILITIES are formally accepted by DISTRICT for ownership, operation and
5 maintenance.

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

13 10. Following CITY'S acceptance of DISTRICT DRAINAGE FACILITIES for
14 ownership, operation and maintenance, not permit any change to, or modification of, DISTRICT
15 DRAINAGE FACILITIES without the prior written permission and consent of DISTRICT.
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17 11. Upon construction completion of ULTIMATE LINE E but prior to
18 DISTRICT acceptance of ownership and responsibility for the operation and maintenance of
19 DISTRICT DRAINAGE FACILITIES, convey, or cause to be conveyed to DISTRICT the flood
20 control easement(s), including ingress and egress, or grant deed(s) of fee title where appropriate,
21 in a form approved by DISTRICT, for the rights of way as deemed necessary solely by
22 DISTRICT for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
23

24 12. Prior to DISTRICT acceptance of ownership and responsibility for the
25 operation and maintenance of DISTRICT DRAINAGE FACILITIES, (i) completely remove, or
26 cause to be completely removed, the INTERIM SPILLWAY, and (ii) completely remove, or
27 cause to be completely removed, all portions of LIFT STATION that are located within
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1 provided by DEVELOPER pursuant to Section I.9. herein.

2 5. Inspect construction of DISTRICT DRAINAGE FACILITIES.

3 6. Keep an accurate accounting of all DISTRICT costs associated with the
4 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
5 conveyance documents, and the processing and administration of this Agreement.
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7 7. Keep an accurate accounting of all DISTRICT construction inspection
8 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE
9 FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit,
10 as set forth in Section I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the
11 excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE
12 FACILITIES as being complete. If at any time the costs exceed the deposit or are anticipated
13 by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as
14 deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE
15 FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.
16

17 8. Provide CITY with a reproducible duplicate copy of "Record Drawings" of
18 DISTRICT DRAINAGE FACILITIES plans upon (i) DISTRICT acceptance of PROJECT
19 construction as being complete, and (ii) DISTRICT receipt of stamped and signed "Record
20 Drawings" of DISTRICT DRAINAGE FACILITIES plans as set forth in Section I.22.
21

22 9. Accept ownership and sole responsibility for the operation and maintenance
23 of DISTRICT DRAINAGE FACILITIES from CITY upon (i) recordation of all conveyance
24 documents described in Section I.23, (ii) DISTRICT acceptance of DISTRICT DRAINAGE
25 FACILITIES construction as being complete, (iii) DISTRICT receipt of all necessary rights of
26 way as described in Section II.11, (iv) DISTRICT receipt of all appropriate engineering
27 documentation as described in Section II.13, (v) DISTRICT receipt of stamped and signed
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1 "Record Drawings" of the revised DISTRICT DRAINAGE FACILITIES plans as described in
2 Section II.14, (vi) DISTRICT acceptance of ULTIMATE LINE E construction as being
3 complete, (vii) DISTRICT acceptance of ULTIMATE LINE E for ownership, operation and
4 maintenance, (viii) LINE E-STAGE 2 drains into DISTRICT'S existing Perris Valley Channel
5 via ULTIMATE LINE E, (ix) DISTRICT DRAINAGE FACILITIES are fully functioning as a
6 flood control drainage system as solely determined by DISTRICT, and (x) DISTRICT'S sole
7 determination that DISTRICT DRAINAGE FACILITIES are in a satisfactorily maintained
8 condition.
9

10 SECTION IV

11 It is further mutually agreed:

12
13 1. Prior to CITY'S acceptance of ownership and responsibility for the
14 operation and maintenance of DISTRICT DRAINAGE FACILITIES from DEVELOPER,
15 DISTRICT DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely
16 determined by DISTRICT. If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE
17 FACILITIES are not in acceptable condition, corrections shall be at DEVELOPER'S sole
18 expense. Following CITY'S acceptance of DISTRICT DRAINAGE FACILITIES for
19 ownership, operation and maintenance and prior to DISTRICT'S acceptance of ownership and
20 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,
21 DISTRICT DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely
22 determined by DISTRICT. If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE
23 FACILITIES are not in acceptable condition, corrections shall be made at CITY'S sole expense.
24

25
26 2. All construction work involved with PROJECT shall be inspected by CITY
27 but shall not be deemed complete until DISTRICT and CITY mutually agree in writing that
28

1 construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT
2 PLANS.

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

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

14 5. If DEVELOPER fails to commence construction of PROJECT within eight
15 (8) months after execution of this Agreement, then DISTRICT reserves the right to withhold
16 issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at
17 the time DEVELOPER provides written notification to DISTRICT of the start of construction as
18 set forth in Section I.8. In the event of a change in the existing site conditions that materially
19 affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT
20 DRAINAGE FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT
21 PLANS as deemed necessary by DISTRICT. In the event of a change in the existing site
22 conditions that materially affects PROJECT function or CITY'S ability to operate and maintain
23 CITY FACILITIES, CITY may require DEVELOPER to modify IMPROVEMENTS as deemed
24 necessary by CITY.

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

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

19 7. PROJECT construction work shall be on a five (5) day, forty (40) hour
20 work week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless
21 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work
22 more than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a
23 written request for permission from DISTRICT to work the additional hours. The request shall
24 be submitted to DISTRICT at least seventy-two (72) hours prior to the requested additional
25 work hours and shall state the reasons for the overtime and the specific time frames required.
26 The decision of granting permission for overtime work shall be made by DISTRICT at its sole
27
28

1 discretion and shall be final. If permission is granted by DISTRICT, DEVELOPER will be
2 charged the cost incurred at the overtime rates for additional inspection time required in
3 connection with the overtime work in accordance with Ordinance Nos. 671 and 749, including
4 any amendments thereto, of the County of Riverside.
5

6 8. DEVELOPER for itself, its successors and assigns hereby releases
7 DISTRICT and County of Riverside (including their agencies, districts, special districts and
8 departments, their respective directors, officer, Board of Supervisors, elected and appointed
9 officials, employees, agents and representatives) from any and all claims, demands, actions, or
10 suits of any kind arising out of any liability, known or unknown, present or future, including but
11 not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the
12 California Constitution, the Fifth Amendment of the United States Constitution, or any other
13 law or ordinance which seeks to impose any other liability or damage, whatsoever, for damage
14 caused by the discharge of drainage within or from PROJECT. Nothing contained herein shall
15 constitute a release by DEVELOPER of DISTRICT, its officers, agents and employees from any
16 and all claims, demands, actions or suits of any kind arising out of any liability, known or
17 unknown, present or future, for the negligent maintenance of DISTRICT DRAINAGE
18 FACILITIES, after the acceptance of ownership, operation and maintenance of DISTRICT
19 DRAINAGE FACILITIES by DISTRICT.
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22 9. DEVELOPER shall indemnify and hold harmless DISTRICT, County of
23 Riverside, and CITY (including their respective agencies, districts, special districts and
24 departments, their respective directors, officers, Board of Supervisors, elected and appointed
25 officials, employees, agents and representatives) from any liability, claim, damage, proceeding
26 or action, present or future, based upon, arising out of or in any way relating to DEVELOPER'S
27 (including its officers, employees, subcontractors and agents) actual or alleged acts or omissions
28

1 related to this Agreement, performance under this Agreement, or failure to comply with the
2 requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily
3 injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California
4 Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance
5 or regulation caused by the diversion of waters from the natural drainage patterns or the
6 discharge of drainage within or from PROJECT; 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, County of Riverside, and CITY (including their respective agencies,
12 districts, special districts and departments, their respective directors, officers, Board of
13 Supervisors, elected and appointed officials, employees, agents and representatives) in any
14 claim, proceeding or action for which indemnification is required.
15

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, County of Riverside and CITY; provided, however, that any such
20 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
21 DEVELOPER'S indemnification obligations to DISTRICT, County of Riverside, or CITY.
22

23 DEVELOPER'S indemnification obligations shall be satisfied when
24 DEVELOPER has provided to DISTRICT, County of Riverside, and CITY the appropriate form
25 of dismissal (or similar document) relieving DISTRICT, County of Riverside, or CITY from
26 any liability for the claim, proceeding or action involved.
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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 County of Riverside and CITY 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 California Civil Code Section
6 2782. Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT,
7 County of Riverside or CITY to the fullest extent allowed by law.

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

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

18 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF PERRIS
19 AND WATER CONSERVATION DISTRICT	101 North D Street
20 1995 Market Street	Perris, CA 92570
21 Riverside, CA 92501	Attn: Habib Motlagh, City Engineer
Attn: Administration Services Section	

22 O.R.E. INDUSTRIAL, LLC
23 155 North Riverview Drive
24 Anaheim, CA 92808
Attn: Tim Howard

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

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 of
3 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
4 waive all provisions of law providing for a change of venue in such proceedings to any other
5 county.
6

7 14. This Agreement is the result of negotiations between the parties hereto, and
8 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
9 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
10 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
11 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, duties
16 or obligations hereunder to any person or entity without the written consent of the other parties
17 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER
18 expressly understands and agrees that it shall remain liable with respect to any and all of the
19 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 company to enter into and execute this
23 Agreement, and have been authorized to do so by any and all boards of directors, legal counsel,
24 and/or any other board, committee or other entity within their company which have the authority
25 to authorize or deny entering this Agreement.
26

27 18. This Agreement is intended by the parties hereto as a final expression of
28 their understanding with respect to the subject matters hereof and as a complete and exclusive

1 statement of the terms and conditions thereof and supersedes any and all prior and
2 contemporaneous agreements and understandings, oral or written, in connection therewith. This
3 Agreement may be changed or modified only upon the written consent of the parties hereto.

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

(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:

GREGORY P. PRIAMOS
County Counsel

By 
NEAL KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

Cooperative Agreement w/ City of Perris and O.R.E. Industrial, LLC:
Perris Valley MDP Line E, Stage 2 and Lateral E-4, Stage 1
Project Nos. 4-0-00488 and 4-0-00460
(Parcel Map No. 36010)
10/22/2014
TT:AMR:blm


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CITY OF PERRIS

By 
RICHARD BELMUDEZ
City Manager

APPROVED AS TO FORM:

ATTEST:

By 
ERIC DUNN
City Attorney

By 
NANCY SALAZAR
City Clerk

(SEAL)

Cooperative Agreement w/ City of Perris and O.R.E. Industrial, LLC:
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O.R.E. INDUSTRIAL, LLC,
a Delaware limited liability company

By: Oakmont Ramona Expressway, LLC,
a Delaware limited liability company,
its Managing Member

By: PRISA LHC, LLC,
a Delaware limited liability company
its direct sole Member and Manager

By: 
MARK VANDE HEY
Vice President

Cooperative Agreement w/ City of Perris and O.R.E. Industrial, LLC:
Perris Valley MDP Line E, Stage 2 and Lateral E-4, Stage 1
Project Nos. 4-0-00488 and 4-0-00460
(Parcel Map No. 36010)
10/22/2014
TT:AMR:blm

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On November 20, 2014, before me, the undersigned, a notary public in and for said State, personally appeared, Mark Vande Hey, personally known to me 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.

Gloria D. Hawthorne, Notary Public

GLORIA D. HAWTHORNE
Printed Name of Notary Public

My Commission Expires: 02/27/15



Exhibit A

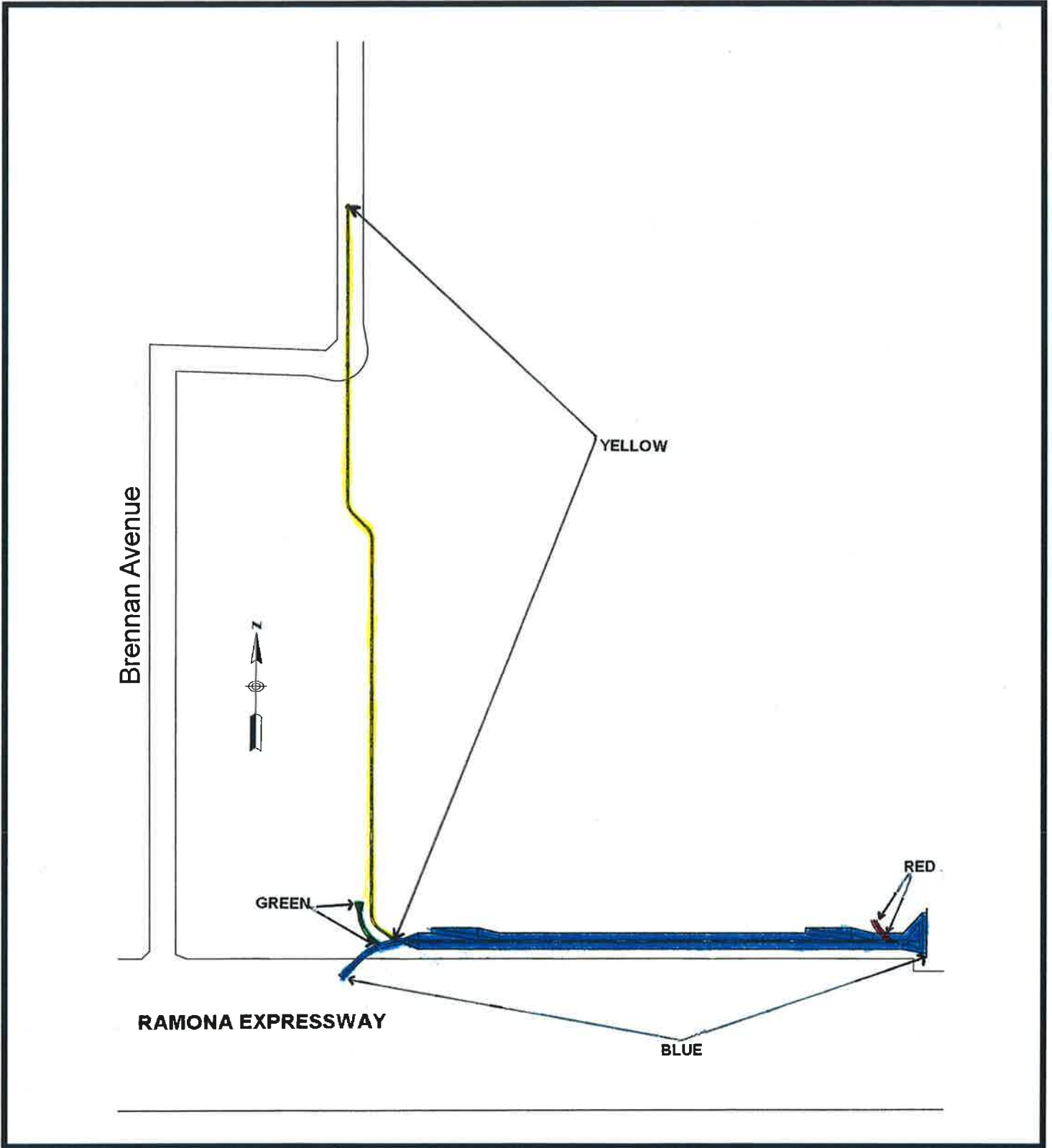
LEGAL DESCRIPTION

Parcel Map No. 36010, in the City of Perris, County of Riverside, as shown by map on file in Book 236 of Parcel Maps at pages 89 through 94, inclusive thereof, Records of said Riverside County, California.

COOPERATIVE AGREEMENT

Perris Valley Master Drainage Plan – Line E, Stage 2
Perris Valley Master Drainage Plan – Lateral E-4, Stage 1
Parcel Map No. 36010
Project Nos. 4-0-00488 and 4-0-00460
Page 1 of 1

Exhibit B



COOPERATIVE AGREEMENT

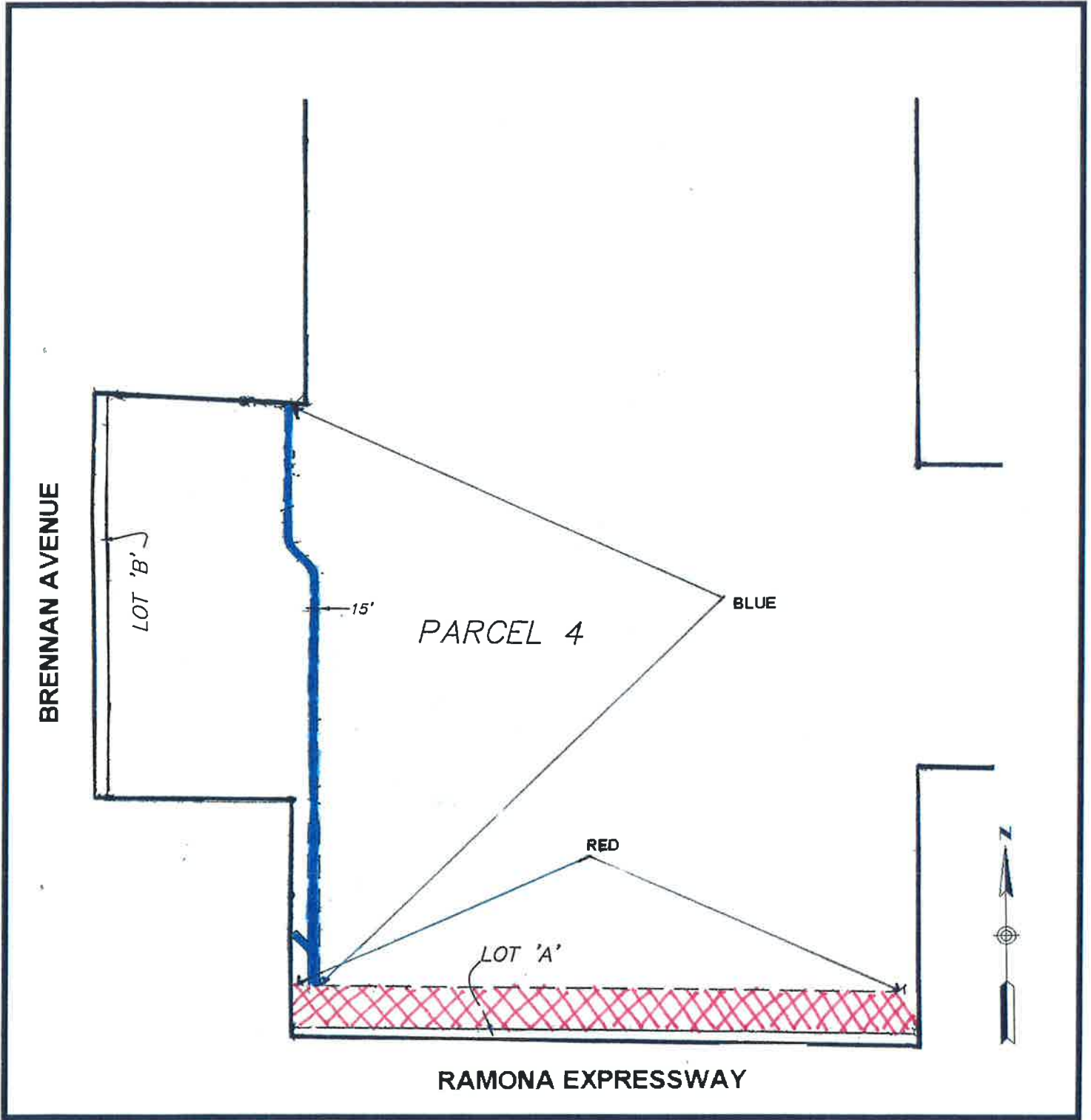
Perris Valley Master Drainage Plan – Line E, Stage 2
Perris Valley Master Drainage Plan – Lateral E-4, Stage 1

Parcel Map No. 36010

Project Nos. 4-0-00488 and 4-0-00460

Page 1 of 1

Exhibit C



COOPERATIVE AGREEMENT

Perris Valley Master Drainage Plan – Line E, Stage 2
Perris Valley Master Drainage Plan – Lateral E-4, Stage 1
Parcel Map No. 36010
Project Nos. 4-0-00488 and 4-0-00460
Page 1 of 1