

FORM APPROVED COUNTY COUNSEL  
 BY: GREGORY P. PRAMOS  
 DATE 3/5/15

Departmental Concurrence

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

714B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
 April 28, 2015

**SUBJECT:** Approval of Cooperative Agreement for Murrieta Valley – Greyhawk Road Storm Drain Stage 2 (Tract No. 32078), Project No. 7-0-00232, 1st District [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District, the City of Wildomar (City) and Rancho Fortunado Inv, LLC (Developer); and
2. Authorize the Chairman to execute the Cooperative 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 Tract No. 32078, are to be constructed by Developer and inspected, operated and maintained by the District and City.

Continued on Page 2

LMD:blm  
 P8/168430

*[Signature]*  
 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: *[Signature]*  
 Steven C. Horn

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

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

Prev. Agn. Ref.:

District: 1<sup>st</sup>

Agenda Number:

11-5

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
FORM 11: Approval of Cooperative Agreement for Murrieta Valley – Greyhawk Road Storm Drain  
Stage 2 (Tract No. 32078), Project No. 7-0-00232, 1st District [\$0]**

**DATE:** April 28, 2015

**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, District will assume ownership, operation and maintenance of the mainline storm drains, a lateral storm drain that is 24-inches in diameter and is located within District's right of way boundaries, channel embankment and associated access road. City will assume ownership and maintenance of all storm drain laterals and connector pipes that are 36-inches or less in diameter and drainage facilities' associated appurtenances such as catch basins, inlets, etc., located within City's right of way boundaries.

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

**Impact on Residents and Businesses**

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

**SUPPLEMENTAL:**

**Additional Fiscal Information**

Developer is funding all construction and construction inspection costs. Future operation and maintenance costs for the mainline storm drains, a certain 24-inch lateral, channel embankment and associated access road will accrue to District.

However, Developer is making a one-time payment to District's Zone 7 Maintenance Trust Fund to defray District's estimated future operation and maintenance costs for these drainage facilities for a period of ten (10) years.

**ATTACHMENTS:**

1. Cooperative Agreement

1 COOPERATIVE AGREEMENT  
2 Murrieta Valley – Greyhawk Road Storm Drain Stage 2  
3 Project No. 7-0-00232  
4 Tract No. 32078

5 The Riverside County Flood Control and Water Conservation District,  
6 hereinafter called "DISTRICT", the City of Wildomar, hereinafter called "CITY", and Rancho  
7 Fortunado Inv, LLC, a Delaware limited liability company, hereinafter called "DEVELOPER",  
8 hereby agree as follows:

9 RECITALS

10 A. DEVELOPER has submitted for approval Tract No. 32078 located in the  
11 City of Wildomar. As a condition of approval for Tract No. 32078, DEVELOPER must  
12 construct certain flood control facilities in order to provide flood protection and drainage for  
13 DEVELOPER'S planned development; and

14 B. The legal description of Tract No. 32078 is provided in Exhibit "A"  
15 attached hereto and made a part hereof; and

16 C. The required flood control facilities, all as shown on District Drawing No.  
17 7-0424, include construction of (i) approximately 1,000 lineal feet of reinforced concrete pipe  
18 and its associated outlet and transition structures, hereinafter called "GREYHAWK ROAD  
19 STORM DRAIN STAGE 2", as shown in concept in red on Exhibit "B" attached hereto and  
20 made a part hereof; (ii) approximately 60 lineal feet of 24-inch reinforced concrete pipe,  
21 hereinafter called "DISTRICT LATERAL", as shown in concept in yellow on Exhibit "B"; (iii)  
22 approximately 200 lineal feet of channel embankment and its associated 15-foot wide  
23 maintenance access road at the top and a 15-foot wide maintenance access ramp with  
24 turnaround at the toe, hereinafter called "ONSITE EMBANKMENT AND ACCESS ROADS",  
25 as shown in concept in blue on Exhibit "B"; and (iv) approximately 120 lineal feet of channel  
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1 embankment and its associated maintenance access road at the top, hereinafter called "OFFSITE  
2 EMBANKMENT AND ACCESS ROAD", as shown in concept in green on Exhibit "B".  
3 Together, GREYHAWK ROAD STORM DRAIN STAGE 2, DISTRICT LATERAL, ONSITE  
4 EMBANKMENT AND ACCESS ROADS, and OFFSITE EMBANKMENT AND ACCESS  
5 ROAD are hereinafter called "DISTRICT DRAINAGE FACILITIES"; and  
6

7           D. Associated with the construction of DISTRICT DRAINAGE FACILITIES  
8 is the construction of a certain underground storm drain lateral and a connector pipe, both of  
9 which are 36-inches or less in diameter, located within CITY held easements or rights of way,  
10 hereinafter called "APPURTENANCES". Together, DISTRICT DRAINAGE FACILITIES and  
11 APPURTENANCES are hereinafter called "PROJECT"; and  
12

13           E. At its downstream terminus, GREYHAWK ROAD STORM DRAIN  
14 STAGE 2 will discharge into DISTRICT'S existing interim Wildomar Channel Stage 3 (District  
15 As-built Drawing No. 7-0094), as shown on District Drawing No. 7-0424 (Sheet No. 5); and  
16

17           F. At its upstream terminus, GREYHAWK ROAD STORM DRAIN  
18 STAGE 2 will connect to the Greyhawk Road Storm Drain Stage 1, hereinafter called "STAGE 1",  
19 which was constructed in conjunction with Tract No. 31353 pursuant to a separate Right of  
20 Entry and Inspection Agreement between DISTRICT and Meritage Homes of California, Inc., a  
21 California corporation. Said Right of Entry and Inspection Agreement is hereinafter called the  
22 "INSPECTION AGREEMENT"; and  
23

24           G. STAGE 1 has not been accepted by DISTRICT for ownership, operation  
25 and maintenance; and  
26

27           H. DEVELOPER and CITY desire DISTRICT to accept ownership and  
28 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.  
Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for

1 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;  
2 and

3 I. DEVELOPER and DISTRICT desire CITY to accept ownership and  
4 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY  
5 must review and approve DEVELOPER'S plans and specifications for PROJECT and  
6 subsequently inspect the construction of PROJECT; and

7  
8 J. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and  
9 specifications for DISTRICT DRAINAGE FACILITIES, (ii) inspect the construction of  
10 DISTRICT DRAINAGE FACILITIES, and (iii) accept ownership and responsibility for the  
11 operation and maintenance of DISTRICT DRAINAGE FACILITIES, provided DEVELOPER  
12 (i) complies with this Agreement, (ii) pays DISTRICT the amount specified herein to cover  
13 DISTRICT'S plan review and construction inspection costs for PROJECT, (iii) pays DISTRICT  
14 the amount specified herein to cover DISTRICT'S estimated cost to operate and maintain  
15 DISTRICT DRAINAGE FACILITIES for a period of ten (10) years commencing upon  
16 DISTRICT'S acceptance of DISTRICT DRAINAGE FACILITIES as complete for ownership,  
17 operation and maintenance, (iv) constructs PROJECT in accordance with DISTRICT and CITY  
18 approved plans and specifications, (v) obtains and conveys to DISTRICT the necessary rights of  
19 way for the operation and maintenance of DISTRICT DRAINAGE FACILITIES as set forth  
20 herein, (vi) accepts ownership and responsibility for the operation and maintenance of  
21 PROJECT following completion of PROJECT construction until such time as (a) DISTRICT  
22 accepts ownership and responsibility for the operation and maintenance of STAGE 1 and  
23 DISTRICT DRAINAGE FACILITIES, and (b) CITY accepts ownership and responsibility for  
24 the operation and maintenance of APPURTENANCES; and  
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1 K. CITY is willing to (i) review and approve DEVELOPER'S plans and  
2 specifications for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold  
3 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT  
4 DRAINAGE FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain  
5 DISTRICT DRAINAGE FACILITIES within CITY rights of way, (v) consent to the  
6 recordation and conveyance of the Irrevocable Offer(s) of Dedication furnished by  
7 DEVELOPER as provided herein, and (vi) accept ownership and responsibility for the operation  
8 and maintenance of APPURTENANCES, provided PROJECT is constructed in accordance with  
9 DISTRICT and CITY approved plans and specifications; and

11 L. Multiple legal actions, hereinafter called "LITIGATION", have been filed  
12 relating to CITY'S environmental review of Tract No. 32078. LITIGATION requests a writ of  
13 mandate requiring CITY to set aside its approvals.

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

16 SECTION I

17 DEVELOPER shall:

18 1. Prepare PROJECT plans and specifications, hereinafter called  
19 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards,  
20 and submit to DISTRICT and CITY for their respective review and approval.

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

1           3. Deposit with DISTRICT (Attention: Business Office – Accounts  
2 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT  
3 construction as set forth in Section I.8. herein, the estimated cost of providing construction  
4 inspection for DISTRICT DRAINAGE FACILITIES, in an amount as determined and approved  
5 by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside,  
6 including any amendments thereto, based upon the bonded value of DISTRICT DRAINAGE  
7 FACILITIES. If at any time the costs exceed the deposit or are anticipated by DISTRICT to  
8 exceed the deposit with DISTRICT, DEVELOPER shall pay such additional amount(s), as  
9 deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE  
10 FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.  
11

12           4. Pay DISTRICT, upon execution of this Agreement, the one-time cash sum  
13 of eleven thousand seven hundred dollars (\$11,700), the amount agreed upon to cover  
14 DISTRICT'S estimated cost to operate and maintain DISTRICT DRAINAGE FACILITIES for  
15 a period of ten (10) years (Zone 7 - Maintenance Trust Fund) commencing upon DISTRICT'S  
16 acceptance of DISTRICT DRAINAGE FACILITIES as complete for ownership, operation and  
17 maintenance.  
18

19           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
20 permits and rights of entry as may be needed for the construction, inspection, operation and  
21 maintenance of PROJECT. DEVELOPER shall furnish DISTRICT, at the time of providing  
22 written notice to DISTRICT of the start of construction as set forth in Section I.8. or not less  
23 than twenty (20) days prior to recordation of the final map for Tract No. 32078 or any phase  
24 thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured such  
25 necessary licenses, agreements, permits and rights of entry, as determined and approved by  
26 DISTRICT.  
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1           6.    Furnish DISTRICT with copies of all permits, approvals or agreements  
2 required by any Federal, State or local resource and/or regulatory agency for the construction,  
3 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include  
4 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional  
5 Water Quality Control Board, California State Department of Fish and Wildlife, State Water  
6 Resources Control Board, and Western Riverside County Regional Conservation Authority.  
7

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 Tract No. 32078 or any phase thereof, whichever occurs first,  
11 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  
14 approval of DISTRICT and CITY. The bonds shall remain in full force and effect until  
15 DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete; at which time  
16 the bond amount may be reduced to five percent (5%) for a period of one year to guarantee  
17 against any defective work, labor or materials.  
18

19           8.    Notify DISTRICT in writing (Attention: Administrative Services Section),  
20 at least twenty (20) days prior to the start of construction of PROJECT. Construction shall not  
21 begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has issued to  
22 DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence  
23 construction of PROJECT.  
24

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

3           10. Obtain and provide DISTRICT, at the time of providing written notice to  
4 DISTRICT of the start of construction of PROJECT as set forth in Section I.8. or not less than  
5 twenty (20) days prior to the recordation of the final map for Tract No. 32078 or any phase  
6 thereof, whichever occurs first, with duly executed Irrevocable Offers(s) of Dedication to the  
7 public for flood control and drainage purposes, including ingress and egress, for the rights of  
8 way deemed necessary by DISTRICT for the construction, inspection, operation and  
9 maintenance of DISTRICT DRAINAGE FACILITIES. The Irrevocable Offer(s) of Dedication  
10 shall be in a form approved by DISTRICT and shall be executed by all legal and equitable  
11 owners of the property described in the offer(s).  
12

13           11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of  
14 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than  
15 thirty (30) days prior to date of submission of all the property described in the Irrevocable  
16 Offer(s) of Dedication.  
17

18           12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
19 the start of construction as set forth in Section I.8., with a complete list of all contractors and  
20 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the  
21 corresponding license number and license classification of each. At such time, DEVELOPER  
22 shall further identify in writing its designated superintendent for PROJECT construction.  
23

24           13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
25 the start of construction as set forth in Section I.8., a construction schedule which shall show the  
26 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry out the  
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1 various parts of work, including estimated start and completion dates. As construction of  
2 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction  
3 schedule as requested by DISTRICT.

4 14. Furnish DISTRICT with final mylar PROJECT plans and assign their  
5 ownership to DISTRICT prior to the start of PROJECT construction.

6 15. Not permit any change to or modification of DISTRICT and CITY  
7 approved IMPROVEMENT PLANS without the prior written permission and consent of  
8 DISTRICT and CITY.

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

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

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

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

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

(b) Cause its insurance carrier(s) or its contractor's insurance carrier(s), who shall be authorized by the California Department of Insurance to transact the business of insurance in the State of California, to furnish DISTRICT and CITY at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with certificate(s) of insurance and applicable policy endorsements showing that such insurance is in full force and effect and that DISTRICT, the County of Riverside and CITY are named as additional insureds with respect to this Agreement and the obligations of DEVELOPER hereunder. Further, said certificate(s) shall state that the issuing company shall give DISTRICT, the County of Riverside and CITY sixty (60) days written notice in the event of any cancellation, termination, non-renewal or reduction in coverage of the

1 policies evidenced by the certificate(s). In the event cancellation,  
2 termination, non-renewal or reduction of coverage, DEVELOPER shall  
3 forthwith, secure replacement insurance meeting the provisions of this  
4 paragraph.

5 Failure to maintain the insurance required by this paragraph shall be deemed a  
6 material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at  
7 its sole discretion, to proceed to perform the remaining work pursuant to Section IV.3.  
8

9 20. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole  
10 cost and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT  
11 PLANS.

12 21. Within two (2) weeks of completing PROJECT construction, provide  
13 DISTRICT with written notice (Attention: Development Review Section) that PROJECT  
14 construction is substantially complete and requesting that DISTRICT conduct a final inspection  
15 of DISTRICT DRAINAGE FACILITIES.  
16

17 22. Upon completion of PROJECT construction, and upon acceptance by CITY  
18 of all rights of way deemed necessary by DISTRICT and CITY for the operation and  
19 maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE  
20 FACILITIES for ownership, operation and maintenance, convey, or cause to be conveyed to  
21 DISTRICT (i) the flood control easement(s) including ingress and egress, in a form approved by  
22 DISTRICT, to the rights of way as shown in concept cross-hatched in orange on Exhibit "C",  
23 and (ii) fee simple title, in a form approved by DISTRICT, to the rights of way as shown in  
24 concept in solid orange on Exhibit "C".  
25

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

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

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15 25. Accept ownership and sole responsibility for the operation and maintenance  
16 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation  
17 and maintenance of STAGE 1 and DISTRICT DRAINAGE FACILITIES and CITY accepts  
18 ownership and responsibility for operation and maintenance of APPURTENANCES. Further, it  
19 is mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership  
20 and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,  
21 PROJECT shall be in a satisfactorily maintained condition as solely determined by DISTRICT.  
22 If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT  
23 DRAINAGE FACILITIES are not in an acceptable condition, corrections shall be made at sole  
24 expense of DEVELOPER.  
25

26 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
27 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable  
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1           4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication  
2 provided by DEVELOPER pursuant to Section I.10.

3           5. Inspect DISTRICT DRAINAGE FACILITIES construction.

4           6. Keep an accurate accounting of all DISTRICT costs associated with the  
5 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and  
6 conveyance documents, and the processing and administration of this Agreement.  
7

8           7. Keep an accurate accounting of all DISTRICT construction inspection  
9 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE  
10 FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit,  
11 as set forth in Section I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the  
12 excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE  
13 FACILITIES as being complete.  
14

15           8. Accept ownership and sole responsibility for the operation and maintenance  
16 of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT inspection of DISTRICT  
17 DRAINAGE FACILITIES in accordance with Section I.21., (ii) DISTRICT acceptance of  
18 DISTRICT DRAINAGE FACILITIES construction as being complete, (iii) DISTRICT receipt  
19 of stamped and signed "record drawings" of PROJECT plans, as set forth in Section I.27., (iv)  
20 recordation of all conveyance documents described in Section I.22., (v) CITY acceptance of all  
21 necessary street rights of way as deemed necessary by DISTRICT and CITY for the operation  
22 and maintenance of PROJECT, (vi) CITY acceptance of APPURTENANCES for ownership,  
23 operation, and maintenance, (vii) DISTRICT'S sole determination that DISTRICT DRAINAGE  
24 FACILITIES are in a satisfactorily maintained condition, and (viii) DISTRICT acceptance of  
25 STAGE 1 for ownership, operation and maintenance.  
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1           4. If DEVELOPER fails to commence construction of PROJECT within nine  
2 (9) months after execution of this Agreement, then DISTRICT reserves the right to withhold  
3 issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at  
4 the time DEVELOPER provides written notification to DISTRICT of the start of construction as  
5 set forth in Section I.8. In the event of a change in the existing site conditions that materially  
6 affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT  
7 DRAINAGE FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT  
8 PLANS as deemed necessary by DISTRICT.

10           5. Prior to DISTRICT'S acceptance of ownership and responsibility for the  
11 operation and maintenance of DISTRICT DRAINAGE FACILITIES, DISTRICT DRAINAGE  
12 FACILITIES shall be in a satisfactorily maintained condition as solely determined by  
13 DISTRICT. If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITIES are  
14 not in acceptable condition, corrections shall be at DEVELOPER'S sole expense.

16           6. DEVELOPER and DISTRICT knowingly and voluntarily, waive the  
17 provisions of Government Code Section 65913.8, relating to fees and charges. Such waiver is  
18 accomplished with the understanding that DISTRICT is voluntarily undertaking the obligation  
19 to accept ownership and responsibility for the operation and maintenance of DISTRICT  
20 DRAINAGE FACILITIES, and DEVELOPER is not required by DISTRICT to enter into this  
21 Agreement.

23           7. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed  
24 within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in  
25 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the  
26 issuance of a Notice to Proceed is subject to staff availability.  
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1           In the event DEVELOPER wishes to expedite issuance of a Notice to  
2 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
3 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation  
4 of the individual's credentials and experience to DISTRICT for review and, if appropriate,  
5 approval. DISTRICT shall review the individual's qualifications and experience, upon approval  
6 thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act  
7 on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES construction and quality  
8 control matters. If DEVELOPER'S initial construction inspection deposit furnished pursuant to  
9 Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER  
10 up to eighty percent (80%) of DEVELOPER'S initial inspection deposit within forty-five (45)  
11 days of DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum balance of ten  
12 thousand dollars (\$10,000) shall be retained on account.

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

1           9. In the event that any claim or legal action is brought against DISTRICT in  
2 connection with this Agreement because of the actual or alleged acts or omissions by  
3 DEVELOPER, including but not limited to design, construction or failure of PROJECT,  
4 DEVELOPER shall defend, indemnify and hold DISTRICT harmless therefrom, without cost to  
5 DISTRICT. Upon DEVELOPER'S failure to do so, DISTRICT shall be entitled to recover from  
6 DEVELOPER all of its costs and expenses, including, but not limited to, reasonable attorneys'  
7 fees.  
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9           10. DEVELOPER shall indemnify and hold harmless DISTRICT, County of  
10 Riverside, and CITY (including their agencies, districts, special districts and departments, their  
11 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,  
12 agents and representatives) from any liability, claim, damage, proceeding or action, present or  
13 future, based upon, arising out of or in any way relating to this Cooperative Agreement,  
14 including but not limited to DEVELOPER'S (including its officers, employees, subcontractors  
15 and agents) actual or alleged acts or omissions related to this Cooperative Agreement,  
16 performance under this Cooperative Agreement, or failure to comply with the requirements of  
17 this Cooperative Agreement, and including but not limited to: (a) property damage; (b) bodily  
18 injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California  
19 Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance  
20 or regulation caused by the diversion of waters from the natural drainage patterns or the  
21 discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature  
22 whatsoever.  
23  
24

25                         DEVELOPER shall defend, at its sole expense, including all costs and fees  
26 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
27 awards), DISTRICT, County of Riverside and CITY (including their agencies, districts, special  
28

1 districts and departments, their respective directors, officers, Board of Supervisors, elected and  
2 appointed officials, employees, agents and representatives) in any claim proceeding or action for  
3 which indemnification is required.

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

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

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

19           In the event there is conflict between this section and California Civil Code  
20 Section 2782, this section shall be interpreted to comply with California Civil Code Section  
21 2782. Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT,  
22 County of Riverside or CITY to the fullest extent allowed by law.

24           11. DEVELOPER for itself, its successors and assigns hereby releases  
25 DISTRICT and CITY, their respective officers, agents, and employees from any and all claims,  
26 demands, actions, or suits of any kind arising out of any liability, known or unknown, present or  
27 future, including, but not limited to any claim or liability, based or asserted, pursuant to Article  
28

1 I, Section 19 of the California Constitution, the Fifth Amendment of the United States  
 2 Constitution, or any other law or ordinance which seeks to impose any other liability or damage,  
 3 whatsoever, for damage caused by the discharge of drainage within or from PROJECT.  
 4 Nothing contained herein shall constitute a release by DEVELOPER of DISTRICT or CITY,  
 5 their officers, agents and employees from any and all claims, demands, actions or suits of any  
 6 kind arising out of any liability, known or unknown, present or future, for the negligent  
 7 maintenance of DISTRICT DRAINAGE FACILITIES and APPURTENANCES, after the  
 8 acceptance of DISTRICT DRAINAGE FACILITIES and APPURTENANCES by DISTRICT  
 9 and CITY, respectively.  
 10

11           12. This Cooperative Agreement shall be null and void in the event the  
 12 LITIGATION results in (i) the issuance of a writ of mandate setting aside CITY'S approvals  
 13 relating to Tract No. 32078, or (ii) court-ordered modifications of the project at issue in the  
 14 LITIGATION that would affect DISTRICT DRAINAGE FACILITIES or APPURTENANCES.  
 15

16           13. Any waiver by DISTRICT or by CITY of any breach of any one or more of  
 17 the terms of this Cooperative Agreement shall not be construed to be a waiver of any subsequent  
 18 or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or  
 19 CITY to require exact, full and complete compliance with any terms of this Cooperative  
 20 Agreement shall not be construed as in any manner changing the terms hereof, or estopping  
 21 DISTRICT or CITY from enforcement hereof.  
 22

23           14. If any provision in this Cooperative Agreement (with the exception of  
 24 Section IV.6.) is held by a court of competent jurisdiction to be invalid, void, or unenforceable,  
 25 the remaining provisions will nevertheless continue in full force without being impaired or  
 26 invalidated in any way. Should it be held by a court of competent jurisdiction that any portion  
 27 of Section IV.6. is invalid, void, or unenforceable, the provisions of Government Code  
 28

1 65913.8(b) shall apply. It shall, therefore, be determined that this fee is extended for a period of  
2 ten years, commencing upon DISTRICT'S acceptance of DISTRICT DRAINAGE FACILITIES  
3 for ownership, operation and maintenance.

4 15. This Cooperative Agreement is to be construed in accordance with the laws  
5 of the State of California.

6 16. Any and all notices sent or required to be sent to the parties of this  
7 Cooperative Agreement will be mailed by first class mail, postage prepaid, to the following  
8 addresses:  
9

10 RIVERSIDE COUNTY FLOOD CONTROL  
11 AND WATER CONSERVATION DISTRICT  
12 1995 Market Street  
13 Riverside, CA 92501  
14 Attn: Administrative Services Section

CITY OF WILDOMAR  
23873 Clinton Keith Road  
Wildomar, CA 92595  
Attn: Public Works Director

13 RANCHO FORTUNADO INV, LLC  
14 3121 Michelson Drive, Suite 150  
15 Irvine, CA 92612  
16 Attn: Adam Smith

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

22 18. This Cooperative Agreement is the result of negotiations between the  
23 parties hereto, and the advice and assistance of their respective counsel. The fact that this  
24 Cooperative Agreement was prepared as a matter of convenience by DISTRICT shall have no  
25 import or significance. Any uncertainty or ambiguity in this Cooperative Agreement shall not  
26 be construed against DISTRICT because DISTRICT prepared this Cooperative Agreement in its  
27 final form.  
28

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

3           20. DEVELOPER shall not assign or otherwise transfer any of its rights, duties  
4 or obligations hereunder to any person or entity without the written consent of the other parties  
5 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER  
6 expressly understands and agrees that it shall remain liable with respect to any and all of the  
7 obligations and duties contained in this Cooperative Agreement.  
8

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

16           22. This Cooperative Agreement is intended by the parties hereto as a final  
17 expression of their understanding with respect to the subject matter hereof and as a complete  
18 and exclusive statement of the terms and conditions thereof and supersedes any and all prior and  
19 contemporaneous agreements and understandings, oral or written, in connection therewith. This  
20 Cooperative Agreement may be changed or modified only upon the written consent of the  
21 parties hereto.  
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IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on \_\_\_\_\_  
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer


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

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By   
NEAL R. KIPNIS  
Deputy County Counsel

By \_\_\_\_\_  
Deputy

(SEAL)

Cooperative Agreement:  
Murrieta Valley – Greyhawk Road Storm Drain Stage 2  
Project No. 7-0-00232  
Tract No. 32078  
02/25/15  
TT:LMD:blm

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RECOMMENDED FOR APPROVAL:


CITY OF WILDOMAR

By   
DAN YORK  
Public Works Director/City Engineer

By   
GARY NORDQUIST  
City Manager

APPROVED AS TO FORM:

ATTEST:

By   
THOMAS D. JEX  
City Attorney

DEBBIE A. LEE  
City Clerk

By 

(SEAL)

Cooperative Agreement:  
Murrieta Valley – Greyhawk Road Storm Drain Stage 2  
Project No. 7-0-00232  
Tract No. 32078  
02/25/15  
TT:LMD:blm

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**RANCHO FORTUNADO INV, LLC**  
a Delaware limited liability company

By Adam Smith  
ADAM SMITH  
Authorized Person

(ATTACH NOTARY WITH CAPACITY  
STATEMENT)

Cooperative Agreement:  
Murrieta Valley – Greyhawk Road Storm Drain Stage 2  
Project No. 7-0-00232  
Tract No. 32078  
02/25/15  
TT:LMD:blm

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Orange }

On March 2, 2015 before me, Athena Bowyer, Notary Public  
Date Here Insert Name and Title of the Officer

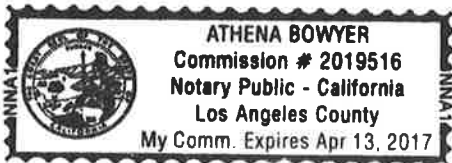
personally appeared Adam Smith  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Athena Bowyer  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

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

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

# Exhibit A

## LEGAL DESCRIPTION

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

PARCEL 1: (APN: 380-140-001-1)

THAT PORTION OF LOT 47 IN BLOCK "L" OF ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED OCTOBER 15, 1885 IN BOOK 4 PAGE 174, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF HAND STREET (VACATED) AS SHOWN ON SAID MAP WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD RIGHT OF WAY AS SHOWN UPON THE MAP OF PARCEL MAP NO. 13471, RECORDED OCTOBER 3, 1979 IN BOOK 70, PAGE 56 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID RIVERSIDE COUNTY;

THENCE NORTH 49° 16' 06" WEST ALONG SAID NORTHEASTERLY LINE 476.67 FEET TO THE MOST WESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO HARRY I. HAGAN, ET UX., RECORDED NOVEMBER 21, 1963 AS INSTRUMENT NO. 123114, IN BOOK 3540, PAGE 202, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, SAID CORNER BEING THE TRUE POINT OF BEGINNING;

THENCE NORTH 37° 07' 15" EAST ALONG THE NORTHWESTERLY LINE OF SAID HAGAN PARCEL 1194.90 FEET TO THE SOUTHWESTERLY LINE OF PALOMAR STREET AS SHOWN ON SAID MAP OF ELSINORE;

THENCE NORTH 49° 19' 27" WEST ALONG SAID SOUTHWESTERLY LINE OF PALOMAR STREET 179-89 FEET TO THE NORTHEASTERLY CORNER OF THE NORTHWESTERLY 33 FEET OF SAID LOT 47, SAID CORNER BEING THE MOST EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO WAYNE O. HUTSON, ET UX., RECORDED JANUARY 25, 1957 AS INSTRUMENT NO. 6272, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY;

THENCE SOUTH 37° 07' 10" WEST PARALLEL WITH THE NORTHWESTERLY LINE OF SAID LOT 47 TO THE SAID NORTHEASTERLY LINE OF SAID RAILROAD RIGHT OF WAY, SAID POINT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN DEED TO ELLSWORTH BRANDENBURG, ET. UX., RECORDED MARCH 23, 1962 AS INSTRUMENT NO. 26774, IN BOOK 3103, PAGE 368 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY. THENCE SOUTH 49° 16' 06" EAST ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE 179.88 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2: (APN: 380-080-009-4)

THE SOUTHEASTERLY 247.82 FEET TO THE NORTHEASTERLY 824.00 FEET OF LOT 46 IN BLOCK "L" OF RANCHO LA LAGUNA, AS SHOWN BY MAP ON FILE IN BOOK 4, PAGE 174, OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, ALSO THE NORTHWESTERLY 33 FEET OF THE NORTHEASTERLY 824.00 FEET OF LOT 47 OF SAID BLOCK "L".

PARCEL 3: (APN: 380-080-008-3)

THAT PORTION OF LOT 46 IN BLOCK "L" OF RANCHO LA LAGUNA AS SHOWN BY CERTIFICATE OF COMPLIANCE NO. 1366, RECORDED DECEMBER 5, 1980 AS INSTRUMENT NO. 228611 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTHWESTERLY 280.82 FEET OF THE SOUTHEASTERLY 528.64 FEET OF THE NORTHEASTERLY 824.00 FEET OF LOT 46 IN BLOCK "L" OF RANCHO LA LAGUNA, AS SHOWN BY MAP ON FILE IN BOOK 4 PAGE 174 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

## COOPERATIVE AGREEMENT

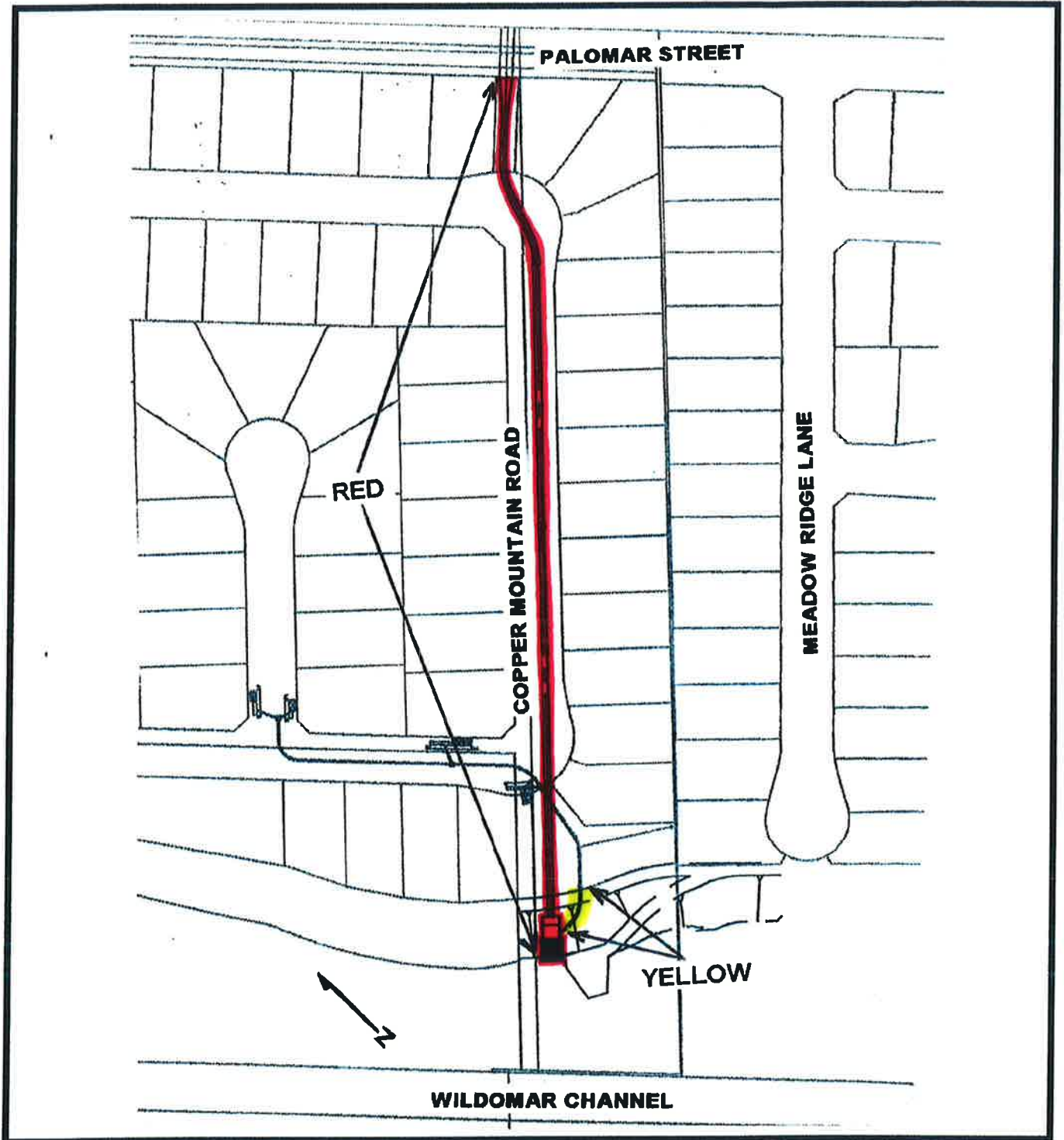
Murrieta Valley – Greyhawk Road Storm Drain Stage 2

Project No. 7-0-00232

Tract No. 32078

Page 1 of 1

# Exhibit B



## COOPERATIVE AGREEMENT

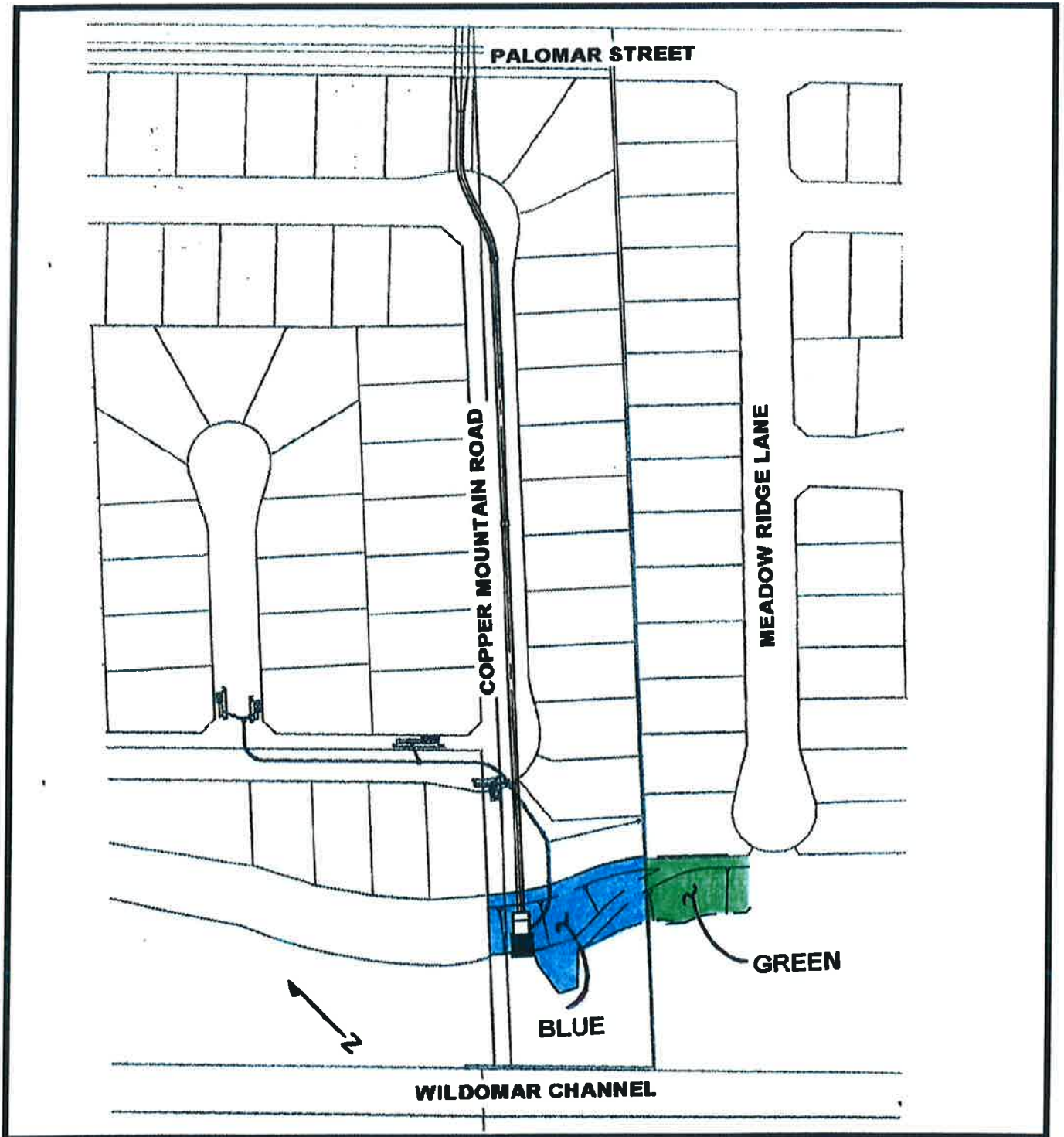
Murrieta Valley - Greyhawk Road Storm Drain Stage 2

TR 32078

Project No. 7-0-00232

Page 1 of 2

# Exhibit B



## COOPERATIVE AGREEMENT

Murrieta Valley – Greyhawk Road Storm Drain Stage 2

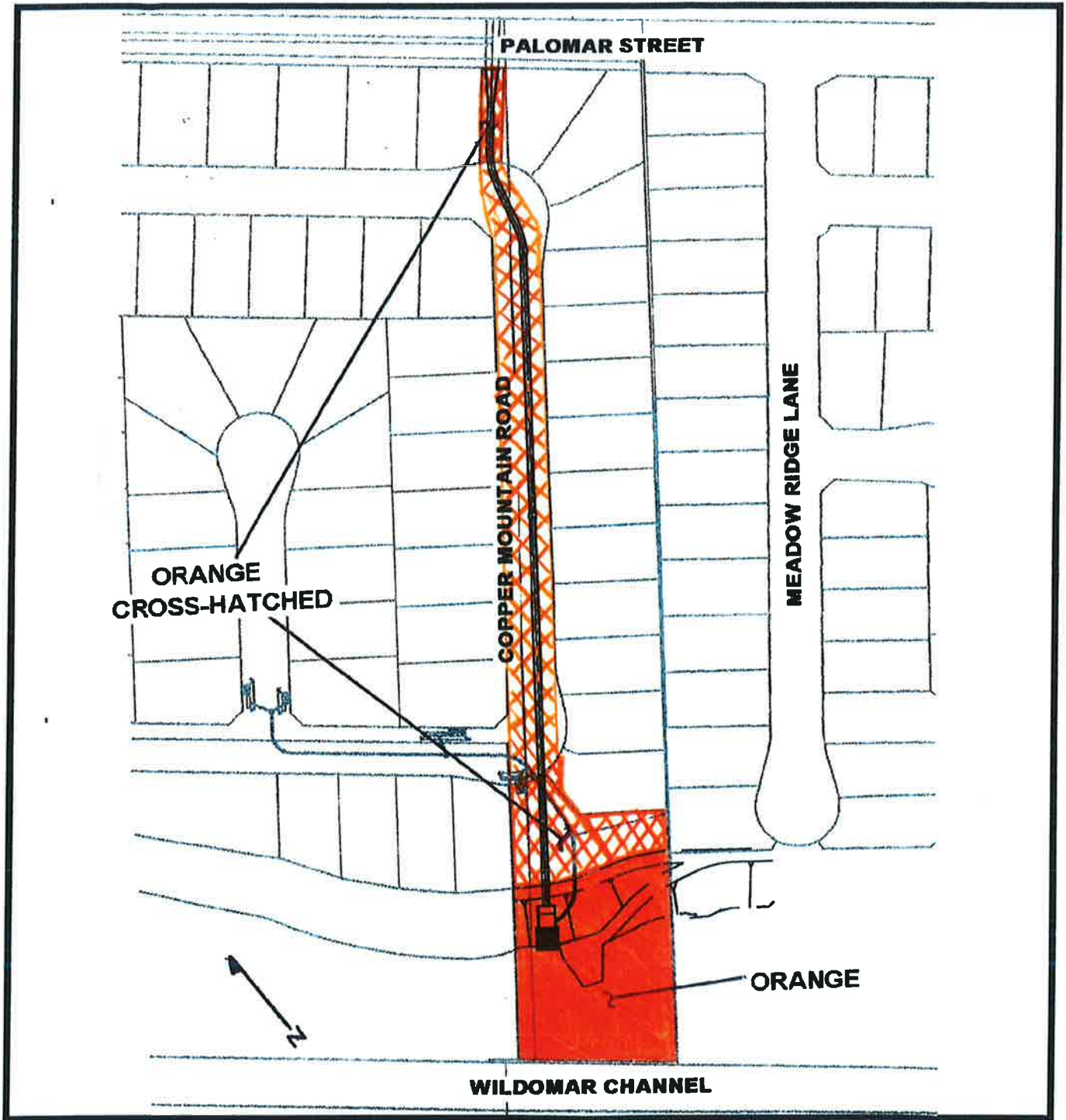
TR 32078

Project No. 7-0-00232

Page 2 of 2



**Exhibit C**



**COOPERATIVE AGREEMENT**

Murrieta Valley – Greyhawk Road Storm Drain Stage 2

TR 32078

Project No. 7-0-00232

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