

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE 3/23/15

Departmental Concurrence

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

715B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 April 28, 2015

SUBJECT: Approve Assignment, Assumption and Amendment Agreement to Cooperative Agreement for Murrieta Valley - George Avenue Storm Drain, Stage 2 (Tract No. 31479), Project No. 7-0-00234, District 1, [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assignment, Assumption and Amendment Agreement to Cooperative Agreement between the District, City of Wildomar (City), Rancon Equity Partners III, LLC (Assignor) and Wildomar Springs, LLC (Assignee); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

Summary

The Assignment, Assumption and Amendment Agreement (Agreement) transfers the rights and responsibilities as established by the original Cooperative Agreement executed on September 10, 2013 (Board Agenda Item No. 11.1) from the Assignor to the Assignee.

Continued on page 2

AMR:blm
 P8/168745

[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:	Budget Adjustment: No
	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
- 4/5 Vote
- Positions Added
- Change Order

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**
**FORM 11: Approve Assignment, Assumption and Amendment Agreement to Cooperative Agreement for
Murrieta Valley - George Avenue Storm Drain, Stage 2 (Tract No. 31479), Project No.
7-0-00234, District 1, [\$0]**

DATE: April 28, 2015

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

Once the Agreement is executed, the Assignee will assume responsibility for the construction of the drainage facility, as originally required as a condition of development for Tract No. 31479. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drain facility.

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

The Assignee is funding all construction and construction inspection costs.

Impact on Residents and Businesses

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

SUPPLEMENTAL:

Additional Fiscal Information

Future operations and maintenance costs associated with said mainline storm drain facility will accrue to the District.

Attachment:

1. Assignment, Assumption and Amendment Agreement

AMR:blm
P8/168745

**ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT
TO COOPERATIVE AGREEMENT**

Murrieta Valley – George Avenue Storm Drain, Stage 2
Project No. 7-0-00234
(Tract No. 31479)

This Assignment, Assumption and Amendment Agreement, hereinafter called "ASSIGNMENT", is made by and between (i) the Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT"; (ii) the City of Wildomar, hereinafter called "CITY"; (iii) Rancon Equity Partners III, LLC, a California limited liability company, hereinafter called "ASSIGNOR"; and (iv) Wildomar Springs, LLC, a Delaware limited liability company, hereinafter called "ASSIGNEE".

RECITALS

A. DISTRICT, CITY and ASSIGNOR have previously entered into that certain Agreement, which was executed on September 10, 2013 and recorded as Document No. 2013 – 0461318 in the Official Records of the County of Riverside and is hereinafter called "AGREEMENT", setting forth the parties' respective rights and obligations concerning ASSIGNOR'S proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract No. 31479 located in the City of Wildomar, State of California (hereinafter, the "PROPERTY"); and

B. Subsequent to the execution of said AGREEMENT, ASSIGNEE has acquired fee title to the PROPERTY; and

C. A true copy of AGREEMENT has been provided to ASSIGNEE and said AGREEMENT describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract No. 31479 are to be designed and constructed by ASSIGNOR and inspected and accepted for operation and maintenance by DISTRICT and CITY; and

D. AGREEMENT stipulates that ASSIGNOR may assign its rights and responsibilities as set forth therein subject to the written consent of the parties thereto; and

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E. The totality of ASSIGNOR'S rights, title, interests, benefits and privileges pursuant to AGREEMENT are hereinafter collectively called "ASSIGNOR RIGHTS" and the totality of ASSIGNOR'S obligations pursuant to AGREEMENT are hereinafter collectively called "ASSIGNOR OBLIGATIONS"; and

F. ASSIGNOR RIGHTS and ASSIGNOR OBLIGATIONS are hereinafter altogether called "RIGHTS AND OBLIGATIONS"; and

G. ASSIGNOR, ASSIGNEE, CITY and DISTRICT intend that, by execution of this ASSIGNMENT, ASSIGNEE shall assume all of ASSIGNOR'S RIGHTS AND OBLIGATIONS; and

H. Concurrently with the assignment and assumption of AGREEMENT, DISTRICT desires to amend Section 1.21 of AGREEMENT in its entirety.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

1. The above Recitals are true and correct.

2. By execution of this ASSIGNMENT, ASSIGNOR hereby assigns all of their RIGHTS AND OBLIGATIONS to ASSIGNEE.

3. For the benefit of CITY and DISTRICT, ASSIGNEE hereby agrees to be bound by the assignment of RIGHTS AND OBLIGATIONS set forth in Paragraph 2 above.

4. AGREEMENT is hereby amended as follows:

Section I.21 is revised to read:

"Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Development Review Section) and CITY with written notice that PROJECT construction is substantially complete and request that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITY and CITY conduct a final inspection of PROJECT."

5. ASSIGNEE agrees to complete construction of DISTRICT DRAINAGE FACILITIES as detailed in AGREEMENT within twelve (12) consecutive months after execution

1 of this Agreement and within one hundred twenty (120) consecutive calendar days after
2 commencing work on DISTRICT DRAINAGE FACILITIES.

3 6. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein,
4 CITY and DISTRICT hereby consent to and hereby agree to be bound by (i) the assignment of
5 RIGHTS AND OBLIGATIONS in favor of ASSIGNEE, and (ii) the assumption by ASSIGNEE
6 of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the parties,
7 ASSIGNEE and ASSIGNOR specifically agree with DISTRICT that access and/or grant of real
8 property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by
9 ASSIGNEE and in regard to all financial obligations, DISTRICT shall invoice ASSIGNEE for all
10 charges incurred pursuant to AGREEMENT.

11 7. The assignment and assumption of RIGHTS AND OBLIGATIONS pursuant to
12 this Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal
13 representatives, heirs and legatees of the respective parties hereto.

14 8. In the event of any arbitration, action or suit brought by either party against the
15 other party by reason of any breach on the part of the other party of any of the covenants and
16 agreements set forth in this ASSIGNMENT or any other dispute concerning this ASSIGNMENT,
17 the prevailing party in any such action or dispute by a final judgment or arbitration award shall be
18 entitled to have and recover from the other party all costs and expenses or claims, including but
19 not limited to, attorney's fees and expert witness fess. This section shall survive any termination
20 of this ASSIGNMENT.

21 9. This ASSIGNMENT is to be construed in accordance with the laws of the State of
22 California.

23 10. Any and all notices sent or required to be sent to ASSIGNOR or ASSIGNEE
24 arising from either this ASSIGNMENT or the obligations contained in AGREEMENT will be
25 mailed by first class mail, postage prepaid, to the following addresses:
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1 RIVERSIDE COUNTY FLOOD CONTROL
2 AND WATER CONSERVATION DISTRICT
3 1995 Market Street
4 Riverside, CA 92501
5 Attn: Administrative Services

CITY OF WILDOMAR
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595
Attn: Dan York
Public Works Director/City
Engineer

6 RANCON EQUITY PARTNERS III, LLC
7 41391 Kalmia Street, Suite 200
8 Murrieta, CA 92562
9 Attn: Will Stout
10 Frank Igo

WILDOMAR SPRINGS, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: Peter Pitassi

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

16 12. The individuals executing this ASSIGNMENT on behalf of ASSIGNOR and
17 ASSIGNEE hereby certify that they have the authority within their respective companies to enter
18 into and execute this ASSIGNMENT and have been authorized to do so by any and all boards of
19 directors, legal counsel and/or any other board, committee or other entity within their respective
20 companies which have the authority to authorize or deny entering into this ASSIGNMENT.

21 13. This ASSIGNMENT may be executed in multiple counterparts, each of which
22 shall be deemed an original, but all of which together shall constitute one and the same
23 instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this ASSIGNMENT

on _____
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

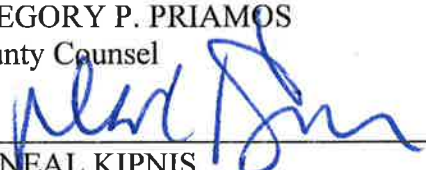
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

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
By 
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

Assignment, Assumption and Amendment Agreement: Tract No. 31479
AMR:blm
03/18/15

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CITY OF WILDOMAR

By 
GARY NORDQUIST
City Manager

APPROVED AS TO FORM:

ATTEST:

By 
THOMAS D. JEX
City Attorney

By 
DEBBIE A. LEE
City Clerk

(SEAL)

Assignment, Assumption and Amendment Agreement: Tract No. 31479
AMR:blm
03/18/15

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ASSIGNOR

RANCON EQUITY PARTNERS III, LLC
a California limited liability company

By 

DANIEL L. STEPHENSON
Manager

PACWEST GROUP, INC.
a California corporation

By 

JEFF COMERCHERO
Vice President

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

Assignment, Assumption and Amendment Agreement: Tract No. 31479
AMR:blm
03/18/15

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of RIVERSIDE)

On MARCH 24, 2015 before me, CINDY R. SMITH, A NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared DANIEL LEE STEPHENSON AND JEFFERY COMERCHEIRO
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 [Signature]
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: _____ Signer's Name: _____
 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____

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ASSIGNEE

WILDOMAR SPRINGS, LLC,
a California limited liability company

By: Diversified Pacific Communities, LLC,
a Delaware limited liability company,
its Manager

By 

MATTHEW A. JORDAN
Co-Managing Member

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

Assignment, Assumption and Amendment Agreement: Tract No. 31479
AMR:blm
03/18/15

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Bernardino)
On March 24, 2015 before me, Simone Basso, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Matthew A. Jordan
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 [Signature]
Signature of Notary Public

Place Notary Seal Above

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Signer's Name: _____

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____