

FORM APPROVED COUNTY COUNSEL
 BY: *Shirley Cole* 6-23-15
 DATE
 ANITA C. WILLIS

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

401B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 July 7, 2015

SUBJECT: Approve Cooperative Agreements for Audie Murphy Ranch Drainage Facilities
 Audie Murphy Ranch Channel, et al (Tract Nos. 31391, -1, -2, -3, and -4)
 Project Nos. 4-0-00292, -00135, -00293 and -00295
 District 5 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District, the City of Menifee (City), Brookfield AMR/FR, LLC; Sutter Mitland 01, LLC; Woodside AMR 91, LLC; and Woodside AMR 107, LLC (Developers); and
2. Approve the Channel Maintenance Responsibilities Agreement between the District and City; and
3. Authorize the Chairman to execute the Agreement documents on behalf of the District.

Departmental Concurrence

MHW:blj
 P8/170926

Warren D. Williams

WARREN D. WILLIAMS
 General Manager-Chief Engineer

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

C.E.O. RECOMMENDATION:

APPROVE
 BY: *Steven C. Horn*
 Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Prev. Agn. Ref.:

District: 5th

Agenda Number:

11 - 1

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**
FORM 11: Approve Cooperative Agreements for Audie Murphy Ranch Drainage Facilities
Audie Murphy Ranch Channel, et al (Tract Nos. 31391, -1, -2, -3, and -4)
Project Nos. 4-0-00292, -00135, -00293 and -00295
District 5 [\$0]

DATE: July 7, 2014

PAGE: Page 2 of 2

BACKGROUND:
Summary

The Cooperative Agreement sets forth the terms and conditions by which certain flood control and drainage facilities that were constructed in conjunction with the development of certain subdivisions located within the Audie Murphy Ranch specific plan are to be inspected by the District and City and, subsequently, accepted for public operation and maintenance.

Currently, the subject flood control and drainage facilities are owned, operated and maintained by the Developers. The Cooperative Agreement establishes the terms and conditions whereby the District and City will accept responsibility for these facilities for ownership, operation and maintenance. As stipulated, the District will assume ownership, operation and maintenance of the storm drains that are greater than 36 inches in diameter while the City will assume ownership and maintenance of the smaller storm drains and associated appurtenances such as catch basins, connector pipes, etc.

The Channel Maintenance Responsibilities Agreement further describes how maintenance responsibilities for the Audie Murphy Ranch Channel are to be divided between the City and District.

County Counsel has approved the Agreement as to legal form, and the City and Developers have each executed their respective Agreements.

Impact on Residents and Businesses

The residents and businesses of Menifee will be the primary beneficiaries of the proposed public maintenance program.

SUPPLEMENTAL:

Additional Fiscal Information

Future O&M costs associated with the Audie Murphy Ranch Channel and the mainline storm drains will accrue to the District. These costs will be paid from future Zone 4 ad valorem tax revenues.

ATTACHMENT:

Vicinity Map – Audie Murphy Ranch Drainage Facilities

MHW:bjj
P8/170926

- LEGEND**
- TO BE MAINTAINED BY RCCFWCD
 - - - TO BE MAINTAINED BY CITY OF MENIFEE
 - TO BE MAINTAINED BY RCCFWCD UNDER SEPARATE AGREEMENT

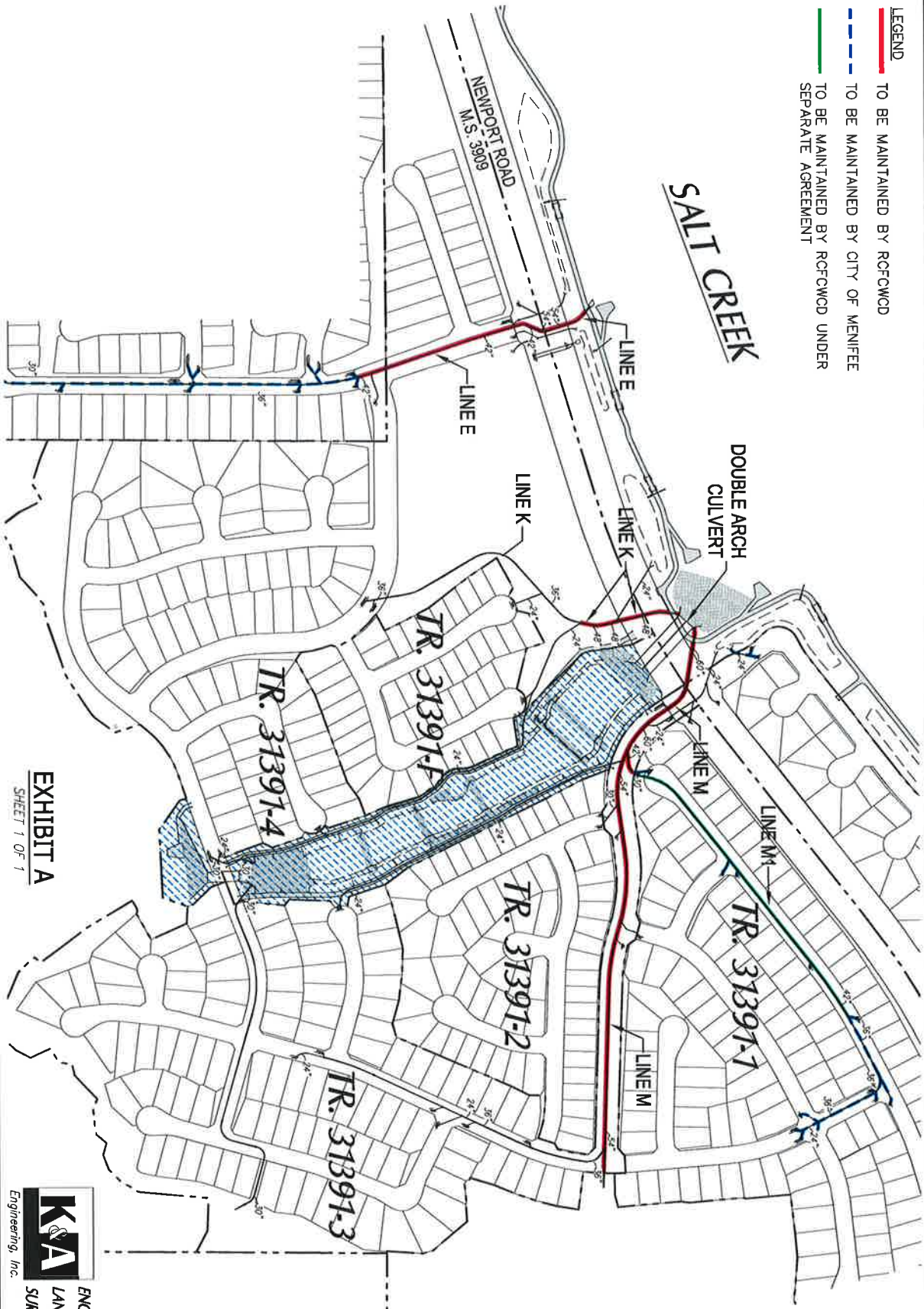


EXHIBIT A
SHEET 1 OF 1

Drawn: R:\23211\EMAN\Drawings\Map, Facilities\Agreement\311 - EN - Road ENRST A-2.dwg Lspool: 11/17/12 Sheet: 10/17/2013 1:40 PM PLOTDATE: 11/15/2013 10:15 AM Plot Scale: 1" = 80' Bf: gpc/ckx

K&A ENGINEERING
LAND PLANNING
SURVEYING
Engineering, Inc.

AGREEMENTSalt Creek - Audie Murphy Ranch Channel
Channel Maintenance Responsibilities

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4 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
5 CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF MENIFEE,
6 hereinafter called "CITY", hereby agree as follows:

RECITALS

7
8 A. WHEREAS, DISTRICT and CITY, together with BROOKFIELD
9 AMR/FR LLC, a Delaware limited liability company, SUTTER MITLAND 01 LLC, a
10 Delaware limited liability company, WOODSIDE AMR 91, LLC., a California limited liability
11 company, and WOODSIDE AMR 107, INC., a California corporation, expect to enter into a
12 certain Cooperative Agreement, hereinafter called the "COOPERATIVE AGREEMENT",
13 pertaining to the design, construction, ownership, operation and maintenance of the Salt Creek
14 - Audie Murphy Ranch Channel (Project No. 4-0-0292; District Drawing No. 4-0936),
15 hereinafter called "CHANNEL", consisting of approximately 1,660 lineal feet of earthen
16 channel and its associated maintenance access roads, rock riprap and drop structures extending
17 from Newport Road southerly to Wild View Road and located within Lot Nos. 92 and 96 of
18 Tract Map. No. 31391-4 in the City of Menifee; and
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21 B. WHEREAS, CHANNEL'S principal purpose is to collect storm and
22 flood waters emanating from the Audie Murphy Ranch Channel watershed and safely convey
23 such waters to Salt Creek, a major watercourse that runs through CITY. Pursuant to the
24 provisions of COOPERATIVE AGREEMENT, DISTRICT is to accept certain responsibilities
25 for the operation and maintenance of CHANNEL upon completion of CHANNEL construction
26 and transfer of the necessary rights of way to CITY; and
27
28

1 C. WHEREAS, CHANNEL is an essential and critical component of the
2 proposed flood protection and drainage infrastructure for Tract Map. No. 31391-4 and
3 surrounding developments; and

4 D. WHEREAS, the flood hazard associated with the Audie Murphy Ranch
5 Channel watershed is sporadic in nature; thus, portions of CHANNEL right of way may be
6 reasonably utilized for passive enjoyment and public recreation uses including walking,
7 jogging, equestrian and bicycling; and
8

9 E. WHEREAS, CITY wishes to enhance the aesthetic and recreational
10 value of CHANNEL by placing certain amenities including landscaping, irrigation systems,
11 decorative fencing, trash receptacles, and pedestrian benches, hereinafter called "CHANNEL
12 AMENITIES", within CHANNEL right of way; and
13

14 F. WHEREAS, DISTRICT and CITY wish to memorialize their respective
15 roles and responsibilities pertaining to the operation and maintenance of CHANNEL and
16 CHANNEL AMENITIES as set forth herein; and

17 G. WHEREAS, DISTRICT is willing to maintain CHANNEL lines and
18 grades, drop structures and associated rock riprap in accordance with DISTRICT approved
19 CHANNEL improvement plans (District Drawing No. 4-0936) provided CITY: i) holds title to
20 CHANNEL right of way in fee; ii) assumes sole responsibility for maintenance of CHANNEL
21 AMENITIES; iii) CITY'S construction, operation and maintenance of CHANNEL
22 AMENITIES does not unduly interfere with DISTRICT'S ability to access CHANNEL and
23 perform all necessary CHANNEL maintenance activities; and iv) is willing to indemnify and
24 hold DISTRICT harmless from any claims arising from public's use of CHANNEL right of
25 way; and
26
27
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1 H. WHEREAS, CITY is willing to: i) accept sole ownership of CHANNEL
 2 right of way and utilize said right of way for flood conveyance, drainage, public open space and
 3 trail purposes; ii) grant DISTRICT the necessary rights to maintain CHANNEL lines, grades
 4 and associated rock riprap structures; iii) assume sole responsibility for maintenance of
 5 CHANNEL AMENITIES; and iv) indemnify and hold DISTRICT harmless against any claims
 6 resulting from the public's use of CHANNEL right of way or CITY'S responsibilities associated
 7 therewith or the condition thereof; and
 8

9 I. The foregoing Recitals are true and correct and it is in the public interest
 10 to proceed with this Agreement.

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

12 SECTION I

13 DISTRICT shall:

14 1. Assume sole responsibility for the maintenance of CHANNEL'S
 15 structural integrity, including design lines and grades and rockriprap structures, in accordance
 16 with DISTRICT'S approved engineering drawings. DISTRICT'S maintenance responsibility
 17 does not include any obligation to maintain or restore any CHANNEL AMENITIES
 18 constructed by CITY or by others.
 19

20 2. Except as set forth in Paragraph I.1., above, assume no further
 21 responsibility, obligation, or liability whatsoever, for the operation and maintenance of
 22 CHANNEL.
 23

24 SECTION II

25 CITY shall:

26 1. Prior to constructing, permitting or allowing any improvements or
 27 modifications within CHANNEL right of way, submit plans and specifications to DISTRICT
 28

1 for review and approval and pay DISTRICT for its cost of reviewing said plans and
2 specifications.

3 2. With regard to CHANNEL AMENITIES placed within CHANNEL right
4 of way, CITY waives any claim it may have against DISTRICT for damages resulting from
5 DISTRICT'S performance of routine CHANNEL maintenance activities within CHANNEL
6 right of way save and except any damages caused by DISTRICT'S sole active negligence or
7 willful misconduct.

8
9 3. Within CHANNEL right of way, assume sole responsibility for ensuring
10 the public's safety and enjoyment thereof, including but not limited to (i) performing all trash
11 removal, landscape irrigation, vegetation maintenance, trail maintenance, and graffiti removal,
12 and (ii) assuming all liability associated with the public's use of CHANNEL right of way,
13 including claims of third persons for injury or death or damage to property.

14
15 4. Within CHANNEL right of way, ensure the safety of the public who
16 may utilize CHANNEL right of way by conducting periodic safety inspections and promptly
17 making such repairs as are necessary to safeguard the public and its use thereof.

18 5. Within CHANNEL right of way, or otherwise associated with this
19 Agreement, indemnify and hold DISTRICT, its Board of Supervisors, officers, agents,
20 employees and independent contractors free and harmless from any liability whatsoever, based
21 or asserted upon any act or omission of CITY, its officers, agents, employees, subcontractors,
22 independent contractors, guests and invitees for property damage, bodily injury or death (CITY
23 employees included) or any other element of damage of any kind or nature, related to or in any
24 manner connected with or arising from CITY'S use and responsibilities in connection therewith
25 of the CHANNEL right of way or the condition thereof, and CITY shall defend, at its expense,
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1 including attorneys' fees, DISTRICT, its Board of Supervisors, officers, agents, employees and
2 independent contractors, in any legal action based upon such alleged acts or omissions.

3 SECTION III

4 It is further mutually agreed:

5 1. The provisions of this Agreement shall not become effective until such
6 time as i) CITY and DISTRICT deem CHANNEL construction to be complete; ii) CITY has
7 accepted ownership of CHANNEL right of way in accordance with the provisions of
8 COOPERATIVE AGREEMENT; and iii) DISTRICT has determined that all regulatory
9 permits necessary to conduct its future CHANNEL maintenance activities have been secured.

11 2. Each party, as to any claim or liability arising out of any act or omission
12 with reference to any work to be performed by or authority delegated to such party as a result
13 of this Agreement, shall save, defend, indemnify and hold harmless the other party, their
14 respective officers and employees from all liability from death or injury to person, or damage to
15 property, or claim therefor.

17 3. DISTRICT reserves the right to terminate its responsibilities under this
18 Agreement for good cause in the event DISTRICT'S General Manager-Chief Engineer
19 determines that i) any use of CHANNEL is in substantial conflict with CHANNEL'S principal
20 function and purpose; ii) DISTRICT'S ability to access CHANNEL right of way for the
21 purposes of performing CHANNEL maintenance activities is unreasonably impaired; iii) the
22 construction of CHANNEL AMENITIES within CHANNEL right of way unduly interferes
23 with DISTRICT'S ability to maintain CHANNEL lines and grades or structures; or iv) any
24 material breach of the terms and conditions set forth in this Agreement or COOPERATIVE
25 AGREEMENT. The foregoing notwithstanding, DISTRICT shall nevertheless provide CITY
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1 no less than 90 days written notice of its intent to terminate this Agreement and the cause(s)
2 therefor and also provide CITY a reasonable opportunity to remedy such cause(s).

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

10 5. If any provision in this Agreement is held by a court of competent
11 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless
12 continue in full force without being impaired or invalidated in any way.

13 6. This Agreement is to be construed in accordance with the laws of the
14 State of California.
15

16 7. Any written notice, statement, demand, consent, approval, authorization,
17 offer, designation, request or other communication to be given hereunder shall be given to the
18 party entitled thereto at its address set forth below, or at such other address as such party may
19 provide to the other party in writing from time to time, namely:
20

21 RIVERSIDE COUNTY FLOOD CONTROL
22 AND WATER CONSERVATION DISTRICT
23 1995 Market Street
24 Riverside, CA 92501
Telephone: 951.955.1200
Fax: 951.788.9965

CITY OF MENIFEE
29714 Haun Road
Menifee, CA 92586
Telephone: 951.672.6777
Fax: 951.679.3843

25 8. Each such notice, statement, demand, consent, approval, authorization,
26 offer, designation, request or other communication hereunder shall be deemed delivered to the
27 party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given
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1 by electronic communication, whether by telex, telegram or telecopier, upon the sender's
2 receipt of a document confirming satisfactory transmission, (c) if given by registered or
3 certified mail, return receipt requested, deposited with the United States mail postage prepaid,
4 72 hours after such notice is deposited with the United States mail, (d) if given by overnight
5 courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if
6 given by any other means, upon delivery at the address specified in this Section.
7

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

14 10. Neither DISTRICT nor CITY shall assign its interest or its performance
15 in this Agreement to any person or entity without first obtaining the other party's written
16 consent.
17

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

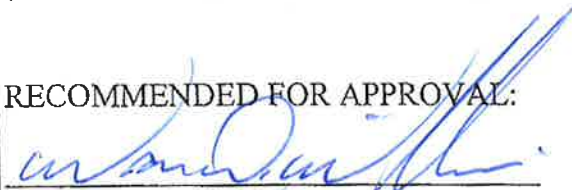
24 12. This Agreement is intended by the parties hereto as a final expression of
25 their understanding with respect to the subject matter hereof and as a complete and exclusive
26 state of the terms and conditions thereof and supersedes any and all prior and contemporaneous
27 agreements and understandings, oral or written, in connection therewith. This Agreement may
28 be changed or modified only upon the written consent of the parties hereto.

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

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:



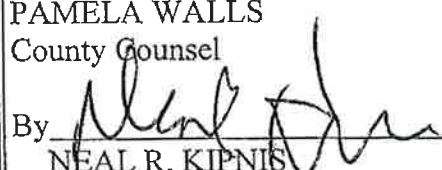
WARREN D. WILLIAMS
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

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

APPROVED AS TO FORM:

PAMELA WALLS
County Counsel



By NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

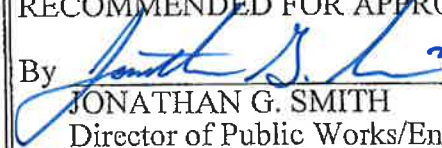
KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

Dated _____

(SEAL)

RECOMMENDED FOR APPROVAL:



JONATHAN G. SMITH
Director of Public Works/Engineering

CITY OF MENIFEE


By SCOTT MANN
Mayor

ATTEST:

KATHY BENNETT
City Clerk



By Jeffery T. Melching, City Attorney

By 

(SEAL)

Agreement: Salt Creek – Audie Murphy Ranch Channel
Channel Maintenance Responsibilities

MHW:blj

LEGEND

- TO BE MAINTAINED BY RFCWCDC
- - - TO BE MAINTAINED BY CITY OF MENIFEE
- TO BE MAINTAINED BY RFCWCDC UNDER SEPARATE AGREEMENT

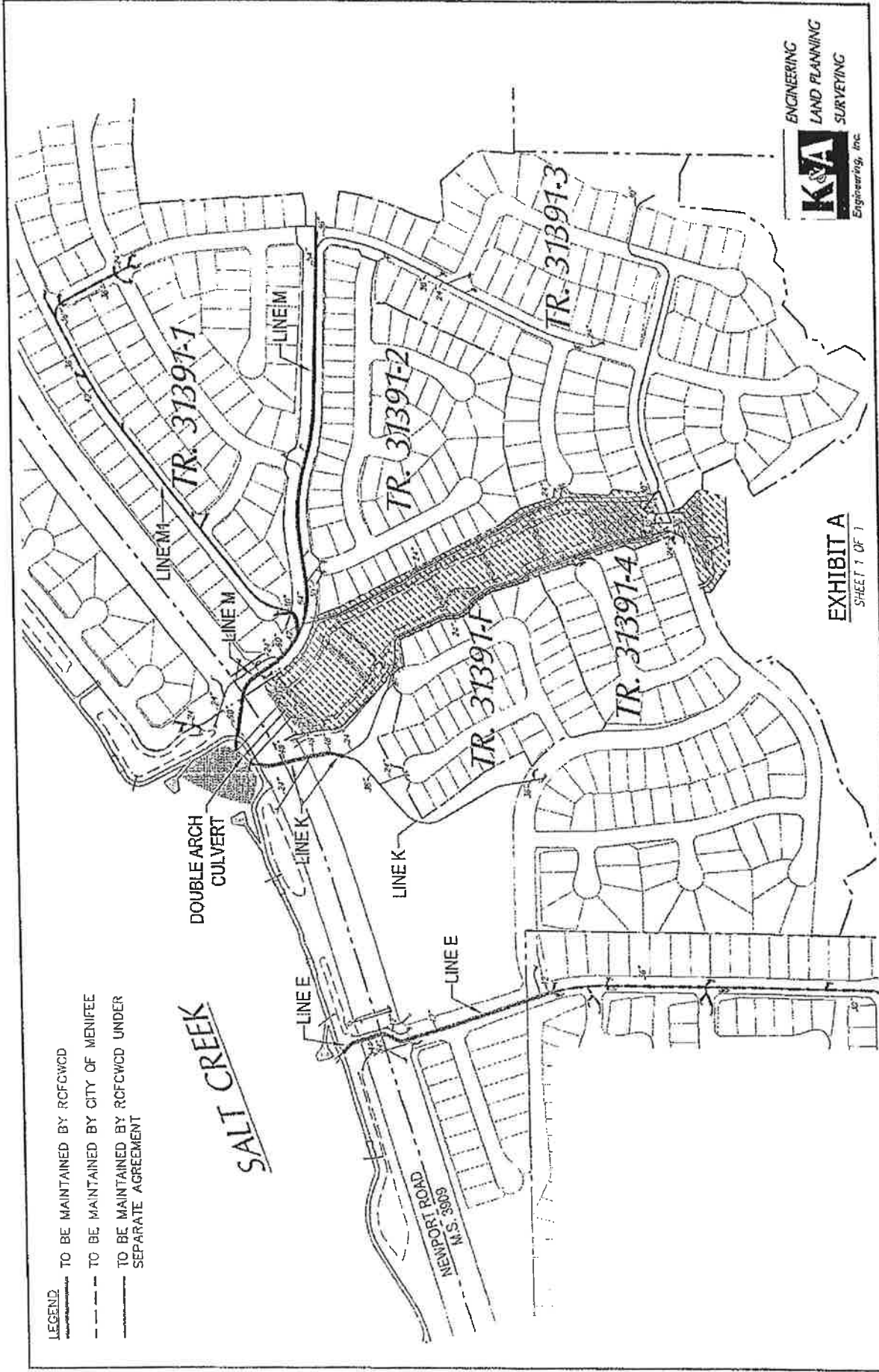
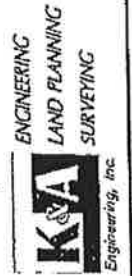


EXHIBIT A
SHEET 1 OF 1



Project: 10272-02 Date: 10/21/2003 Author: 10/21/2003 10:23:44 Plot: 10/21/2003 10:40:19 Scale: 100% (1"=100')