

FORM APPROVED COUNTY COUNSEL
BY: GREGORY P. PRIAMOS DATE: 6/28/16

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

151



FROM: TLMA – Transportation Department

SUBMITTAL DATE:
June 8, 2016

SUBJECT: Approval of the Cooperative Agreement between the County of Riverside, the Riverside County Flood Control and Water Conservation District, and SR Conestoga, L.L.C. for the Winchester Hills Line 2, Stage 1 Project No. 4-0-0057 6 Tract No. 30322. 3rd District; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement (Agreement) between the County of Riverside (County), the Riverside County Flood Control and Water Conservation District (District), and SR Conestoga, L.L.C. (Developer) for the Winchester Hills Line 2, Stage 1 Project No. 4-0-00576 Tract No. 30322; and
2. Authorize the Chairman of the County Board of Supervisors to execute the same.

Patricia Romo
Director of Transportation

| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost: | POLICY/CONSENT (Per Exec. Office) |
|-----------------|----------------------|-------------------|-------------|---------------|---|
| COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/> |
| NET COUNTY COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | |

SOURCE OF FUNDS: N/A

Budget Adjustment: No

For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY:

Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Prev. Agn. Ref.:

District: 3

Agenda Number:

3-44

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Approval of the Cooperative Agreement between the County of Riverside, the Riverside County Flood Control and Water Conservation District, and SR Conestoga, L.L.C. for the Winchester Hills Line 2, Stage 1 Project No. 4-0-00576 Tract No. 30322. 3rd District; [\$0]

DATE: June 8, 2016

PAGE: 2 of 2

BACKGROUND:

Summary

The Agreement sets forth the terms and conditions by which certain flood control facilities, required as a condition of approval for Tract Map No. 30322, are to be constructed by the Developer and inspected, operated and maintained by the County, District and the Developer.

This Agreement is necessary to formalize the transfer of necessary rights of way and to provide for the District construction inspection of the referenced drainage facilities. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drains that are over 36 inches in diameter. The County will assume ownership and responsibility for operation and maintenance of storm drain facilities that are 36 inches or less in diameter and the project's associated appurtenances, such as catch basins and connector pipes located within County right of way boundaries.

County Counsel has approved the Agreement as to legal form. A companion item appears on the Riverside County Flood Control and Water Conservation District Board agenda this same date.

Impact on Residents and Businesses

Residents of the planned development will benefit from the new storm drain facilities, constructed with this project, because the facilities will manage storm flows and help to mitigate flooding.

SUPPLEMENTAL:

Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Maintenance costs for storm drain facilities 36 inches or less in diameter and all associated appurtenances will accrue to the County Transportation Department. The cost to maintain is expected to be minimal and can be absorbed by existing maintenance staff as part of the maintenance of other drainage facilities.

ATTACHMENTS:

Vicinity Map
Agreement

COOPERATIVE AGREEMENT
Winchester Hills Line 2, Stage1
Project No. 4-0-00576
Tract No. 30322

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", the County of Riverside, hereinafter called "COUNTY", and SR Conestoga, 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 Tract No. 30322, located within the County of Riverside. DEVELOPER has submitted for approval Tract No. 30322 located in an unincorporated area of western Riverside County. As a condition of approval for Tract No. 30322, 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 Tract No. 30322 is provided in Exhibit "A" attached hereto and made a part hereof; and

C. The required flood control facilities and drainage improvements, all as shown on District Drawing No. 4-0898, include construction of (i) approximately 1,025 lineal feet of 10' by 5' reinforced concrete box, its associated outlet structure and a maintenance access road, hereinafter called "LINE 2", and (ii) approximately 77 lineal feet of 42-inch reinforced concrete pipe, hereinafter called "LATERAL". Together LINE 2 and LATERAL are hereinafter called "DISTRICT FACILITIES", as shown in concept in red on Exhibit "B", attached hereto and made a part hereof. At its upstream terminus LINE 2 will connect to COUNTY'S existing

1 storm drain facility. At its downstream terminus, LINE 2 will connect and drain into
2 DISTRICT'S Salt Creek Channel; and

3 D. Associated with the construction of DISTRICT FACILITIES is the
4 construction of certain catch basins, connector pipes, curbs and gutters and various lateral storm
5 drains that are thirty-six inches (36") or less in diameter that are located within COUNTY held
6 easements or rights of way, hereinafter called "APPURTENANCES"; and
7

8 E. Together, DISTRICT FACILITIES and APPURTENANCES are
9 hereinafter called "PROJECT"; and

10 F. All parties recognize and acknowledge that Winchester Hills Line 3, Stage
11 1 (Tract No. 31632) hereinafter called "PROPOSED LINE 3", which is to be constructed in
12 conjunction with PROJECT pursuant to a separate Cooperative Agreement between DISTRICT,
13 COUNTY and DEVELOPER. Said Cooperative Agreement, hereinafter called "LINE 3
14 AGREEMENT". DISTRICT FACILITIES will not be accepted for ownership, operation and
15 maintenance responsibilities by DISTRICT until PROPOSED LINE 3 to be constructed by
16 DEVELOPER, is completed and accepted by DISTRICT; and
17

18 G. DEVELOPER and COUNTY desire DISTRICT to ultimately accept
19 ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES.
20 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for
21 PROJECT and subsequently inspect the construction of DISTRICT FACILITIES; and
22

23 H. DEVELOPER and DISTRICT desire COUNTY to accept ownership and
24 responsibility for the operation and maintenance of APPURTENANCES. Therefore, COUNTY
25 must review and approve DEVELOPER'S plans and specifications for PROJECT and
26 subsequently inspect the construction of APPURTENANCES; and
27
28

1 I. DEVELOPER is willing to assume ownership, operation and maintenance
2 responsibilities of DISTRICT FACILITIES on an interim basis as set forth herein, with the
3 recognition and understanding that the actual acceptance of DISTRICT FACILITIES for
4 ownership, operation and maintenance responsibilities by DISTRICT is entirely dependent upon:
5 (i) the construction of PROPOSED LINE 3 being complete; (ii) DISTRICT acceptance of
6 ownership and responsibility for the operation and maintenance of PROPOSED LINE 3; (iii)
7 DISTRICT FACILITIES being constructed in accordance with plans and specifications approved
8 by DISTRICT and as set forth herein; (iv) DISTRICT'S sole determination that DISTRICT
9 FACILITIES are in a satisfactorily maintained condition, and (v) DISTRICT FACILITIES are
10 fully functioning as a flood control drainage system as solely determined by the DISTRICT; and
11

12 J. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
13 specifications for PROJECT, (ii) inspect the construction of DISTRICT FACILITIES, and (iii)
14 ultimately assume ownership and responsibility for the operation and maintenance of DISTRICT
15 FACILITIES, provided DEVELOPER (a) complies with this Agreement, (b) constructs
16 PROJECT in accordance with DISTRICT and COUNTY approved plans and specifications, (c)
17 obtains and conveys to DISTRICT all rights of way necessary for the inspection, operation and
18 maintenance of DISTRICT FACILITIES as set forth herein, and (d) accepts ownership and
19 responsibility for the operation and maintenance of PROJECT following completion of
20 PROJECT construction until such time as DISTRICT accepts ownership and responsibility for
21 the operation and maintenance of DISTRICT FACILITIES; and
22

23 K. COUNTY is willing to (i) review and approve DEVELOPER'S plans and
24 specifications for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold
25 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT
26 FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain DISTRICT
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1 FACILITIES within COUNTY rights of way, and (v) accept ownership and responsibility for
2 the operation and maintenance of APPURTENANCES, provided PROJECT is constructed in
3 accordance with plans and specifications approved by DISTRICT and COUNTY.

4
5 NOW, THEREFORE, the parties hereto mutually agree as follows:

6 SECTION I

7 DEVELOPER shall:

8 1. Prepare PROJECT plans and specifications, hereinafter called
9 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and COUNTY
10 standards, and submit to DISTRICT and COUNTY for their respective review and approval.

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

16 3. Deposit with DISTRICT (Attention: Business Office – Accounts
17 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
18 construction as set forth in Section I.8. herein, the estimated cost of providing construction
19 inspection for DISTRICT FACILITIES, in an amount as determined and approved by DISTRICT
20 in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any
21 amendments thereto, based upon the bonded value of DISTRICT FACILITIES. If at any time
22 the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit with
23 DISTRICT, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary
24 by DISTRICT to complete inspection of DISTRICT FACILITIES, within thirty (30) days after
25 receipt of billing from DISTRICT.
26
27
28

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

5 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
6 permits and rights of entry as may be needed for the construction, inspection, operation and
7 maintenance of DISTRICT FACILITIES. DEVELOPER shall furnish DISTRICT, at the time
8 of providing written notice to DISTRICT of the start of construction as set forth in Section I.8.,
9 or not less than twenty (20) days prior to recordation of the final map for Tract No. 30322 or any
10 phase thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured
11 such necessary licenses, agreements, permits and rights of entry, as determined and approved by
12 DISTRICT.
13
14

15 6. Prior to commencing construction, furnish DISTRICT with copies of all
16 permits, approvals or agreements required by any federal, state or local resource and/or
17 regulatory agency for the construction, operation and maintenance of DISTRICT FACILITIES.
18 Such documents include but are not limited to those issued by the U.S. Army Corps of Engineers,
19 California Regional Water Quality Control Board, California State Department of Fish and
20 Wildlife, State Water Resources Control Board, and Western Riverside County Regional
21 Conservation Authority.
22

23 7. Provide COUNTY, at the time of providing written notice to DISTRICT of
24 the start of construction as set forth in Section I.8. or not less than twenty (20) days prior to
25 recordation of the final map for Tract No. 30322 or any phase thereof, whichever occurs first,
26 with faithful performance and payment bonds, each in the amount of one hundred percent (100%)
27 of the estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT.
28

1 The surety, amount and form of the bonds, shall be subject to approval of DISTRICT and
2 COUNTY. The bonds shall remain in full force and effect until DISTRICT DRAINAGE
3 FACILITIES are accepted by DISTRICT as complete; at which time the bond amount may be
4 reduced to five percent (5%) for a period of one (1) year to guarantee against any defective work,
5 labor or materials.

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

12
13 9. Obtain and provide DISTRICT, at the time of providing written notice to
14 DISTRICT of the start of construction of PROJECT as set forth in Section I.8. or not less than
15 twenty (20) days prior to the recordation of the final map for Tract No. 30322 or any phase
16 thereof, whichever occurs first, with duly executed Irrevocable Offers(s) of Dedication to the
17 public for flood control and drainage purposes, including ingress and egress, for the rights of way
18 deemed necessary by DISTRICT for the construction, inspection, operation and maintenance of
19 DISTRICT FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved
20 by DISTRICT and shall be executed by all legal and equitable owners of the property described
21 in the offer(s).

22
23 10. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication
24 as set forth in Section I.9., with Preliminary Reports on Title dated not more than thirty (30) days
25 prior to date of submission of all the property described in the Irrevocable Offer(s) of Dedication.

26
27 11. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
28 the start of construction as set forth in Section I.8., with a complete list of all contractors and

1 subcontractors to be performing work on DISTRICT FACILITIES, including the corresponding
2 license number and license classification of each. At such time, DEVELOPER shall further
3 identify in writing its designated superintendent for PROJECT construction.

4
5 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
6 the start of construction as set forth in Section I.8., a construction schedule which shall show the
7 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry out the
8 various parts of work, including estimated start and completion dates. As construction of
9 DISTRICT FACILITIES progresses, DEVELOPER shall update said construction schedule as
10 requested by DISTRICT.

11
12 13. Furnish DISTRICT with final mylar PROJECT plans and assign their
13 ownership to DISTRICT prior to the start on any portion of PROJECT construction.

14
15 14. Not permit any change to or modification of DISTRICT and COUNTY
16 approved IMPROVEMENT PLANS without the prior written permission and consent of
DISTRICT and COUNTY.

17
18 15. Comply with all Cal/OSHA safety regulations including regulations
19 concerning confined space and maintain a safe working environment for DEVELOPER,
20 COUNTY and DISTRICT employees on the site.

21
22 16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
23 the start of construction as set forth in Section I.8., a confined space entry procedure specific to
24 PROJECT. The procedure shall comply with requirements contained in California Code of
25 Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit
26 Required Confined Space and District Confined Space Procedures, SOM-18. The procedure
27 shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed.
28

1 17. DEVELOPER shall not commence operations until DISTRICT has been
2 furnished with original certificate(s) of insurance and original certified copies of endorsements
3 and if requested, certified original policies of insurance including all endorsements and any and
4 all other attachments as required in this Section.

5 Without limiting or diminishing DEVELOPER'S obligation to indemnify or hold DISTRICT
6 harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost
7 and expense, the following insurance coverage's during the term of this Agreement:
8

9 A. Workers' Compensation:

10 If DEVELOPER has employees as defined by the State of California,
11 DEVELOPER shall maintain statutory Workers' Compensation
12 Insurance (Coverage A) as prescribed by the laws of the State of
13 California. Policy shall include Employers' Liability (Coverage B)
14 including Occupational Disease with limits not less than \$1,000,000 per
15 person per accident. Policy shall be endorsed to waive subrogation in
16 favor of DISTRICT and COUNTY, and, if applicable, to provide a
17 Borrowed Servant/Alternate Employer Endorsement.
18

19 B. Commercial General Liability:

20 Commercial General Liability insurance coverage, including but not
21 limited to, premises liability, unmodified contractual liability, products
22 and completed operations liability, personal and advertising injury, and
23 cross liability coverage, covering claims which may arise from or out
24 of DEVELOPER'S performance of its obligations hereunder. Policy
25 shall name the Riverside County Flood Control and Water
26 Conservation District and COUNTY, its agencies, districts, special
27
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1 districts, and departments, their respective directors, officers, Board of
2 Supervisors, employees, elected or appointed officials, agents or
3 representatives as additional insureds. Policy's limit of liability shall
4 not be less than \$2,000,000 per occurrence combined single limit. If
5 such insurance contains a general aggregate limit, it shall apply
6 separately to this Agreement or be no less than two (2) times the
7 occurrence limit.
8

9 C. Vehicle Liability:

10 If DEVELOPER'S vehicles or mobile equipment are used in the
11 performance of the obligations under this Agreement, then
12 DEVELOPER shall maintain liability insurance for all owned, non-
13 owned or hired vehicles so used in an amount not less than \$1,000,000
14 per occurrence combined single limit. If such insurance contains a
15 general aggregate limit, it shall apply separately to this Agreement or
16 be no less than two (2) times the occurrence limit. Policy shall name
17 the Riverside County Flood Control and Water Conservation District
18 and COUNTY, its agencies, districts, special districts, and departments,
19 their respective directors, officers, Board of Supervisors, employees,
20 elected or appointed officials, agents or representatives as additional
21 insureds.
22

23
24 D. Professional Liability:

25 DEVELOPER shall maintain Professional Liability Insurance
26 providing coverage for DEVELOPER'S performance of work included
27 within this Agreement, with a limit of liability of not less than
28

1 \$2,000,000 per occurrence and \$4,000,000 annual aggregate. If
2 DEVELOPER'S Professional Liability Insurance is written on a claims
3 made basis rather than an occurrence basis, such insurance shall
4 continue through the term of this Agreement and DEVELOPER shall
5 purchase at his sole expense either 1) an Extended Reporting
6 Endorsement (also known as Tail Coverage); or 2) Prior Dates
7 Coverage from a new insurer with a retroactive date back to the date of,
8 or prior to, the inception of this Agreement; or 3) demonstrate through
9 Certificates of Insurance that DEVELOPER has maintained continuous
10 coverage with the same or original insurer. Coverage provided under
11 items: 1), 2) or 3) will continue as long as the law allows.
12
13

14 E. General Insurance Provisions – All Lines:

- 15 i. Any insurance carrier providing insurance coverage hereunder
16 shall be admitted to the State of California and have an A.M. BEST
17 rating of not less than an A: VIII (A: 8) unless such requirements
18 are waived, in writing, by the County Risk Manager. If the County
19 Risk Manager waives a requirement for a particular insurer such
20 waiver is only valid for that specific insurer and only for one policy
21 term.
22
- 23 ii. The DEVELOPER must declare its insurance self-insured
24 retention for each coverage required herein. If any such self-
25 insured retention exceeds \$500,000 per occurrence each such
26 retention shall have the prior written consent of the County Risk
27 Manager before the commencement of operations under this
28

1 Agreement. Upon notification of self-insured retention deemed
2 unacceptable to the DISTRICT, and at the election of the County
3 Risk Manager, DEVELOPER'S carriers shall either: 1) reduce or
4 eliminate such self-insured retention with respect to this
5 Agreement with DISTRICT, or 2) procure a bond which
6 guarantees payment of losses and related investigations, claims
7 administration, and defense costs and expenses.
8

- 9 iii. DEVELOPER shall cause their insurance carrier(s) to furnish
10 DISTRICT with 1) a properly executed original certificate(s) of
11 insurance and certified original copies of endorsements effecting
12 coverage as required herein; and 2) if requested to do so orally or
13 in writing by the County Risk Manager, provide original certified
14 copies of policies including all endorsements and all attachments
15 thereto, showing such insurance is in full force and effect. Further,
16 said certificate(s) and policies of insurance shall contain the
17 covenant of the insurance carrier(s) that a minimum of sixty (60)
18 days written notice shall be given to the DISTRICT prior to any
19 material modification, cancellation, expiration or reduction in
20 coverage of such insurance. If DEVELOPER insurance carrier(s)
21 policies does not meet the minimum notice requirement found
22 herein, DEVELOPER shall cause DEVELOPER'S insurance
23 carrier(s) to furnish a 60 day Notice of Cancellation Endorsement.
24 In the event of a material modification, cancellation, expiration or
25 reduction in coverage, this Agreement shall terminate forthwith,
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27
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1 unless DISTRICT receives, prior to such effective date, another
2 properly executed original certificate of insurance and original
3 copies of endorsements or certified original policies, including all
4 endorsements and attachments thereto, evidencing coverages set
5 forth herein and the insurance required herein is in full force and
6 effect. An individual authorized by the insurance carrier to do so
7 on its behalf shall sign the original endorsements for each policy
8 and the certificate of insurance.
9

10 iv. It is understood and agreed by the parties hereto that
11 DEVELOPER'S insurance shall be construed as primary
12 insurance, and DISTRICT'S insurance and/or deductibles and/or
13 self-insured retentions or self-insured programs shall not be
14 construed as contributory.
15

16 v. If, during the term of this Agreement or any extension thereof,
17 there is a material change in the scope of services or there is a
18 material change in the equipment to be used in the performance of
19 the scope of work which will add additional exposures (such as the
20 use of aircraft, watercraft, cranes, etc.); or the term of this
21 Agreement, including any extensions thereof, exceeds five (5)
22 years, DISTRICT reserves the right to adjust the types of insurance
23 required under this Agreement and the monetary limits of liability
24 for the insurance coverages currently required herein, if, in the
25 County Risk Manager's reasonable judgment, the amount or type
26 of insurance carried by DEVELOPER has become inadequate.
27
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- 1 vi. DEVELOPER shall pass down the insurance obligations contained
2 herein to all tiers of subcontractors working under this Agreement.
3 vii. The insurance requirements contained in this Agreement may be
4 met with a program(s) of self-insurance acceptable to DISTRICT.
5 viii. DEVELOPER agrees to notify DISTRICT of any claim by a third
6 party or any incident or event that may give rise to a claim arising
7 from the performance of this Agreement.
8

9 Failure to maintain the insurance required by this paragraph shall be deemed
10 a material breach of this Agreement and shall authorize and constitute authority for DISTRICT,
11 at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to
12 perform its obligations hereunder, nor to accept responsibility for ownership, operation and
13 maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this
14 Agreement.
15

16 18. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole cost
17 and expense, in accordance with DISTRICT and COUNTY approved IMPROVEMENT
18 PLANS.
19

20 19. Within two (2) weeks of completing PROJECT construction, provide
21 DISTRICT (Attention: Development Review Section) and COUNTY with written notice that
22 PROJECT construction is substantially complete and requesting that DISTRICT conduct a final
23 inspection of DISTRICT FACILITIES and COUNTY conduct a final inspection of
24 APPURTENANCES. It is mutually understood that, prior to DISTRICT acceptance of
25 ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES,
26 DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined
27 by DISTRICT and construction of PROPOSED LINE 3 shall be complete.
28

1 20. Upon completion of PROJECT construction, and upon acceptance by
2 COUNTY of all rights of way deemed necessary by DISTRICT and COUNTY for the operation
3 and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT FACILITIES
4 for ownership, operation and maintenance, convey, or cause to be conveyed to DISTRICT, the
5 flood control easement(s) including ingress and egress, in a form approved by DISTRICT.
6

7 21. At the time of recordation of the conveyance document(s) as set forth in
8 Section I.20., furnish DISTRICT with policies of title insurance, each in the amount of not less
9 than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
10 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the
11 estimated value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT,
12 guaranteeing DISTRICT'S interest in said property as being free and clear of all liens,
13 encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except
14 those which, in the sole discretion of DISTRICT, are acceptable.
15

16 22. Accept ownership and sole responsibility for the operation and maintenance
17 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
18 and maintenance of DISTRICT FACILITIES and PROPOSED LINE 3 and COUNTY accepts
19 ownership and responsibility for operation and maintenance of APPURTENANCES.
20

21 23. Accept all liability whatsoever associated with the ownership, operation and
22 maintenance of DISTRICT FACILITIES until such time as DISTRICT FACILITIES are
23 formally accepted by DISTRICT for ownership, operation and maintenance.

24 24. Pay, if suit is brought upon this Cooperative Agreement or any bond
25 guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including
26 reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs,
27 expenses and fees shall be computed as costs and included in any judgment rendered.
28

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

DISTRICT shall:

- 15 -

5. Inspect DISTRICT FACILITIES construction.

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

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

8. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES from DEVELOPER upon (i) the completion of PROPOSED LINE 3 construction, (ii) DISTRICT acceptance of PROPOSED LINE 3 for ownership, operation and maintenance, (iii) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.19., (iv) DISTRICT acceptance of PROJECT construction as being complete, (v) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans, as set forth in Section I.25., (vi) recordation of all conveyance documents described in Section I.20., and (vii) DISTRICT'S sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.

9. Provide COUNTY with a reproducible duplicate copy of "record drawings" PROJECT plans upon DISTRICT acceptance of DISTRICT FACILITIES as being complete.

SECTION III

COUNTY shall:

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

1 2. Accept COUNTY and DISTRICT approved faithful performance and
2 payment bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as
3 provided herein.

4 3. Inspect PROJECT construction.

5 4. Consent, by execution of this Cooperative Agreement, to the recording of
6 any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Cooperative
7 Agreement.
8

9 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
10 as set forth herein, and any other outstanding offers of dedication necessary for the construction,
11 inspection, operation and maintenance of DISTRICT FACILITIES, and, convey sufficient rights
12 of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT
13 FACILITIES.
14

15 6. Grant DISTRICT, by execution of this Agreement, the right to construct,
16 inspect, operate and maintain DISTRICT FACILITIES within COUNTY rights of way.

17 7. Accept ownership and sole responsibility for the operation and maintenance
18 of APPURTENANCES upon DISTRICT acceptance of DISTRICT FACILITIES for ownership,
19 operation and maintenance.
20

21 8. Not grant any occupancy permits for any units within any portion of Tract
22 No. 30322, or any phase thereof, until construction of PROJECT is complete, unless otherwise
23 approved in writing by DISTRICT.

24 9. Upon DISTRICT acceptance of PROJECT construction as being complete,
25 accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located
26 within COUNTY rights of way which must be performed at such time(s) that the finished grade
27 along and above the underground portions of DISTRICT FACILITIES are improved, repaired,
28

1 replaced or changed. It being further understood and agreed that any such adjustments shall be
2 performed at no cost to DISTRICT.

3 SECTION IV

4 It is further mutually agreed:

5
6 1. All work involved with PROJECT shall be inspected by DISTRICT and
7 COUNTY but shall not be deemed complete until DISTRICT and COUNTY mutually agree in
8 writing that construction is completed in accordance with DISTRICT and COUNTY approved
9 IMPROVEMENT PLANS.

10 2. COUNTY and DEVELOPER personnel may observe and inspect all work
11 being done on DISTRICT FACILITIES, but shall provide any comments to DISTRICT
12 personnel who shall be solely responsible for all quality control communications with
13 DEVELOPER'S contractor(s) during the construction of PROJECT.

14
15 3. DISTRICT acceptance of ownership and responsibility for the operation and
16 maintenance of DISTRICT FACILITIES shall be in a satisfactorily maintained condition as
17 solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of
18 DISTRICT, DISTRICT FACILITIES are not in an acceptable condition, corrections shall be
19 made at sole expense of DEVELOPER.

20
21 4. DEVELOPER shall complete construction of PROJECT within twelve (12)
22 consecutive months after execution of this Cooperative Agreement and within one hundred
23 twenty (120) consecutive calendar days after commencing work on PROJECT. It is expressly
24 understood that since time is of the essence in this Cooperative Agreement, failure of
25 DEVELOPER to perform the work within the agreed upon time shall constitute authority for
26 DISTRICT to perform the remaining work and require DEVELOPER'S surety to pay to
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1 COUNTY the penal sum of any and all bonds. In which case, COUNTY shall subsequently
2 reimburse DISTRICT for DISTRICT costs incurred.

3 5. If DEVELOPER fails to commence construction of PROJECT within nine
4 (9) months after execution of this Cooperative Agreement, then DISTRICT reserves the right to
5 withhold issuance of the Notice to Proceed pending a review of the existing site conditions as
6 they exist at the time DEVELOPER provides written notification to DISTRICT of the start of
7 construction as set forth in Section I.8. In the event of a change in the existing site conditions
8 that materially affects PROJECT function or DISTRICT'S ability to operate and maintain
9 DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT
10 PLANS as deemed necessary by DISTRICT.

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

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

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

15 8. DEVELOPER shall indemnify and hold harmless DISTRICT and
16 COUNTY (including their agencies, districts, special districts and departments, their respective
17 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and
18 representatives) from any liability, claim, damage, proceeding or action, present or future, based
19 upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees,
20 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,
21 performance under this Agreement, or failure to comply with the requirements of this Agreement,
22 including but not limited to: (a) property damage; (b) bodily injury or death; (c) liability or
23 damage pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of
24 the United States Constitution or any other law, ordinance or regulation caused by the diversion
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1 of waters from the natural drainage patterns or the discharge of drainage within or from
2 PROJECT; or (d) any other element of any kind or nature whatsoever.

3 DEVELOPER shall defend, at its sole expense, including all costs and fees
4 (including but not limited to attorney fees, cost of investigation, defense and settlements or
5 awards), DISTRICT and COUNTY (including their agencies, districts, special districts and
6 departments, their respective directors, officers, Board of Supervisors, elected and appointed
7 officials, employees, agents and representatives) in any claim, proceeding or action for which
8 indemnification is required.
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10 With respect to any of DEVELOPER'S indemnification requirements,
11 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall
12 have the right to adjust, settle, compromise any such claim, proceeding or action without the prior
13 consent of DISTRICT and COUNTY; provided, however, that any such adjustment, settlement
14 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S
15 indemnification obligations to DISTRICT or COUNTY.
16

17 DEVELOPER'S indemnification obligations shall be satisfied when
18 DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal (or
19 similar document) relieving DISTRICT or COUNTY from any liability for the claim, proceeding
20 or action involved.
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22 The specified insurance limits required in this Cooperative Agreement shall
23 in no way limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless
24 DISTRICT and COUNTY from third party claims.

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

3 9. DEVELOPER for itself, its successors and assigns hereby releases
4 DISTRICT and COUNTY, their respective officers, agents, and employees from any and all
5 claims, demands, actions, or suits of any kind arising out of any liability, known or unknown,
6 present or future, including, but not limited to any claim or liability, based or asserted, pursuant
7 to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States
8 Constitution, or any other law or ordinance which seeks to impose any other liability or damage,
9 whatsoever, for damage caused by the discharge of drainage within or from PROJECT. Nothing
10 contained herein shall constitute a release by DEVELOPER of DISTRICT or COUNTY, their
11 officers, agents and employees from any and all claims, demands, actions or suits of any kind
12 arising out of any liability, known or unknown, present or future, for the negligent maintenance
13 of DISTRICT FACILITIES and APPURTENANCES, after the acceptance of DISTRICT
14 FACILITIES and APPURTENANCES by DISTRICT and COUNTY, respectively.
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17 10. Any waiver by DISTRICT or by COUNTY of any breach of any one or
18 more of the terms of this Cooperative Agreement shall not be construed to be a waiver of any
19 subsequent or other breach of the same or of any other term hereof. Failure on the part of
20 DISTRICT or COUNTY to require exact, full and complete compliance with any terms of this
21 Cooperative Agreement shall not be construed as in any manner changing the terms hereof, or
22 estopping DISTRICT or COUNTY from enforcement hereof.
23

24 11. Any and all notices sent or required to be sent to the parties of this
25 Cooperative Agreement will be mailed by first class mail, postage prepaid, to the following
26 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 Section

COUNTY OF RIVERSIDE
4080 Lemon Street, 8th Floor
Riverside, CA 92502-1090
Attn: Transportation Department
Plan Check Section
Alan French

6 SR CONESTOGA, LLC
7 41391 Kalmia Street, Suite 200
8 Murrieta, CA 92562
9 Attn: Jim Lytle

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

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

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

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

26 16. DEVELOPER shall not assign or otherwise transfer any of its rights, duties
27 or obligations hereunder to any person or entity without the written consent of the other parties
28 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER

1 expressly understands and agrees that it shall remain liable with respect to any and all of the
2 obligations and duties contained in this Cooperative Agreement.

3 17. The individual(s) executing this Cooperative Agreement on behalf of
4 DEVELOPER certify that they have the authority within their respective company(ies) to enter
5 into and execute this Cooperative Agreement, and have been authorized to do so by all boards of
6 directors, legal counsel, and / or any other board, committee or other entity within their respective
7 company(ies) which have the authority to authorize or deny entering into this Cooperative
8 Agreement.
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10 18. This Cooperative Agreement is intended by the parties hereto as a final
11 expression of their understanding with respect to the subject matter hereof and as a complete and
12 exclusive statement of the terms and conditions thereof and supersedes any and all prior and
13 contemporaneous agreements and understandings, oral or written, in connection therewith. This
14 Cooperative Agreement may be changed or modified only upon the written consent of the parties
15 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 _____
JASON UHLEY
Acting 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:
Winchester Hills Line 2, Stage 1 (Tract No. 30322)
Project No. 4-0-00576
AMR:blm
05/05/16

1 RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

2
3 By PATRICIA ROMO
Director of Transportation

By _____

JOHN J. BENOIT, Chairman
Board of Supervisors6
7 APPROVED AS TO FORM:

ATTEST:

8 GREGORY P. PRIAMOS
County CounselKECIA HARPER-IHEM
Clerk of the Board9
10 By  6/28/16MARSHA L. VICTOR
Principal Deputy County Counsel

By _____

Deputy

13 (SEAL)

22 Cooperative Agreement:
23 Winchester Hills Line 2, Stage 1 (Tract No. 30322)
24 Project No. 4-0-00576
AMR:blm
05/05/16

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SR CONESTOGA, LLC
a Delaware limited liability company

By: Conestoga Development LLC
a California limited liability company
Its Co-Managing Member

By _____
JEFF COMERCHERO
Authorized Signatory

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement:
Winchester Hills Line 2, Stage 1 (Tract No. 30322)
Project No. 4-0-00576
AMR:blm
05/05/16

Exhibit A

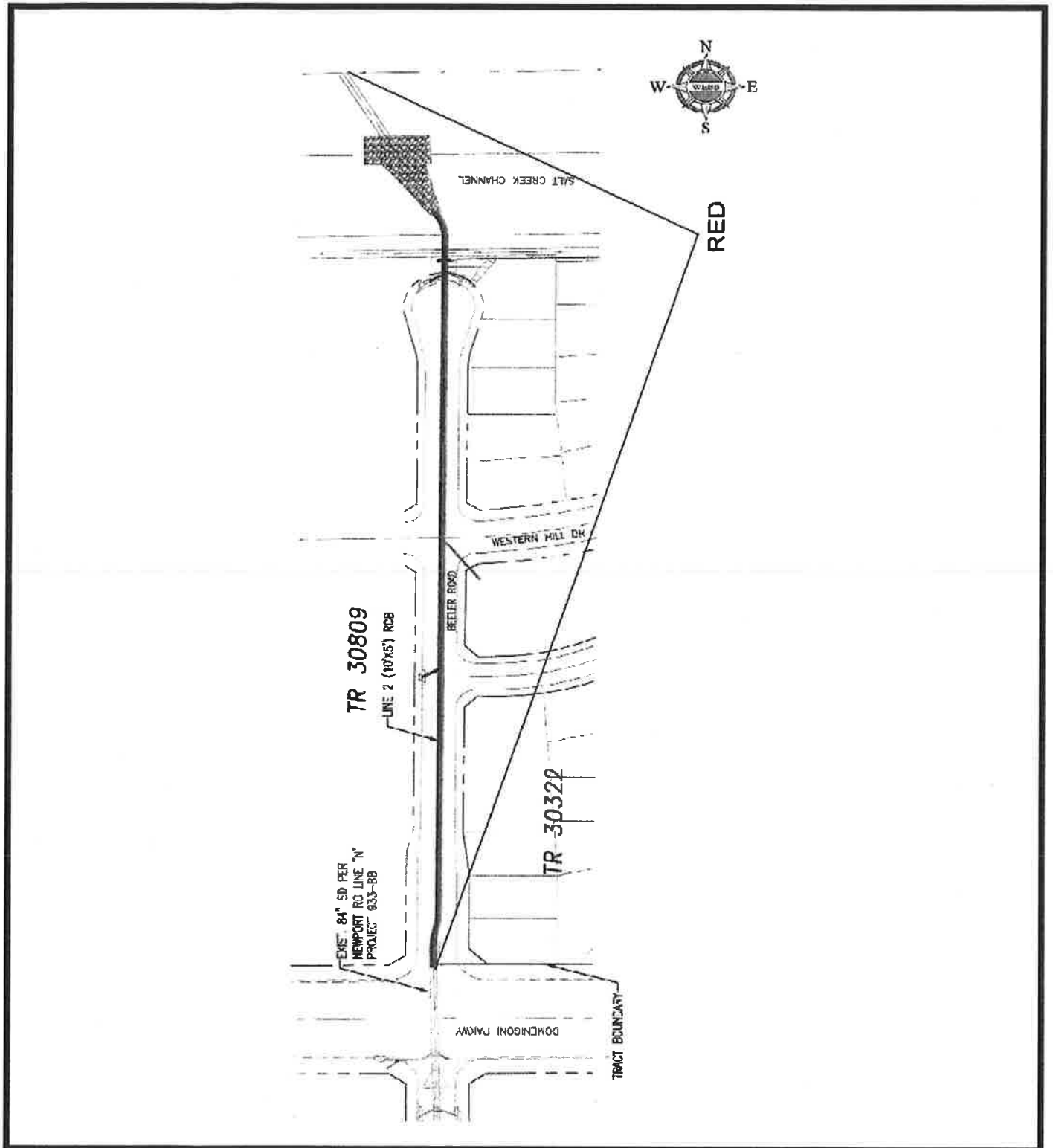
LEGAL DESCRIPTION

Real property in the Unincorporated Area, County of Riverside, State of California, described as follows:

PARCEL 2 OF PARCEL MAP NO. 31984, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 210 PAGES 54 AND 55 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 461-200-028-3

Exhibit B



COOPERATIVE AGREEMENT

Winchester Hills - Line 2, Stage 1

TR 30322

Project No. 4-0-00576

Page 1 of 1