

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



734B

**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**

MAY 18, 2010

**SUBJECT:** Central Riverside MDP Line C-4  
Project No. 1-0-00195  
MS 127 (Riverside)  
Cooperative Agreement

**RECOMMENDED MOTION:**

Approve the Cooperative Agreement between the District, the City of Riverside and Westminster Arlington LLC (Developer) and authorize the Chairman to execute the Agreement documents on behalf of the District.

**BACKGROUND:**

The Agreement sets forth the terms and conditions by which certain flood control facilities, required as a condition for approval of MS 127, are to be constructed by the Developer and inspected, operated and maintained by the District and City.

Continued on Page 2

**WARREN D. WILLIAMS**

General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

**SOURCE OF FUNDS:** N/A

Positions To Be Deleted Per A-30 ☐

Requires 4/5 Vote ☐

**C.E.O. RECOMMENDATION:**

APPROVE

BY: Alex Gann

**County Executive Office Signature**

**MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley

Nays: None

Absent: None

Date: May 18, 2010

xc: Flood

Kecia Harper-Ihem

Clerk of the Board

By: Deputy

Prev. Agn. Ref.:

District: 1<sup>st</sup>

Agenda Number:

**11.2**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

FORM APPROVED/COUNTY COUNSEL  
BY: NEAL R. KIPNIS  
DATE

Policy

☐

Consent

☐

Dep't Recomm.:

Policy

☐

Consent

☐

Per Exec. Ofc.:

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

**SUBJECT:** Central Riverside MDP Line C-4  
Project No. 1-0-00195  
MS 127 (Riverside)  
Cooperative Agreement

**SUBMITTAL DATE:** MAY 18, 2010

**Page 2**

**BACKGROUND (continued):**

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the referenced facilities associated with MS 127. Upon completion of the facilities' construction, the City will assume interim ownership, operation and maintenance of the mainline storm drain. The City will transfer ownership, operation and maintenance of the mainline storm drain to the District at some future date following completion of construction of additional downstream facilities by others and District acceptance of such downstream facilities for ownership, operation and maintenance.

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

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs will accrue to the District.

JPS:seb

COOPERATIVE AGREEMENT  
Central Riverside MDP Line C-4  
(Project No. 1-0-00195)  
(MS 127; APN 225-330-050)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF RIVERSIDE, hereinafter called "CITY", and WESTMINSTER ARLINGTON LLC, a California limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval MS 127 located at 3439 Arlington Avenue in the city of Riverside, commonly referred to as "Arlington Retail Center" and as a condition for approval DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The required flood control facilities, as shown on DISTRICT Drawing No. 1-679, include construction of approximately 250 lineal feet of underground storm drain system, hereinafter called "LINE C-4" and also called "DISTRICT DRAINAGE FACILITIES", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof. LINE C-4 is a recognized component of DISTRICT'S Central Riverside Master Drainage Plan. At its downstream terminus, LINE C-4 is proposed to connect to a future storm drain, hereinafter called "FUTURE DRAIN", to be constructed by the California Department of Transportation, hereinafter called "CALTRANS", which is to be constructed pursuant to a separate Cooperative Agreement, hereinafter called the "CALTRANS AGREEMENT", between DISTRICT, CALTRANS and possible additional parties yet to be identified; and

C. Construction of DISTRICT DRAINAGE FACILITIES has commenced prior to execution of this Agreement pursuant to the terms of a Right of Entry and Inspection

1 Agreement, hereinafter called "INSPECTION AGREEMENT", executed July 31, 2009,  
2 between DISTRICT and DEVELOPER; and

3 D. DEVELOPER and CITY desire DISTRICT to accept ownership and  
4 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.  
5 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for  
6 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;  
7 and  
8

9 E. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and  
10 specifications for DISTRICT DRAINAGE FACILITIES, (ii) inspect the construction of  
11 DISTRICT DRAINAGE FACILITIES, and (iii) accept ownership and responsibility for the  
12 operation and maintenance of DISTRICT DRAINAGE FACILITIES upon CALTRANS'  
13 completion and DISTRICT acceptance of FUTURE DRAIN pursuant to the terms of  
14 CALTRANS AGREEMENT, provided DEVELOPER (i) complies with this Agreement, (ii)  
15 pays DISTRICT the amounts specified herein to cover DISTRICT'S plan review and  
16 construction inspection costs, (iii) constructs DISTRICT DRAINAGE FACILITIES in  
17 accordance with plans and specifications approved by DISTRICT, (iv) obtains all necessary  
18 permits, regulatory permits, licenses and rights of entry as set forth herein, (v) accepts  
19 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE  
20 FACILITIES following completion of DISTRICT DRAINAGE FACILITIES construction until  
21 such time as CITY accepts interim ownership and responsibility for the operation and  
22 maintenance of DISTRICT DRAINAGE FACILITIES pending CALTRANS' completion and  
23 DISTRICT acceptance of FUTURE DRAIN pursuant to the terms of the future CALTRANS  
24 AGREEMENT, and (vi) obtains and conveys to CITY the necessary rights of way for the  
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1 interim inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES as set  
2 forth herein; and

3 F. CITY is willing to (i) accept and hold faithful performance and payment  
4 bonds submitted by DEVELOPER for DISTRICT DRAINAGE FACILITIES, (ii) grant  
5 DISTRICT the right to inspect, operate and maintain DISTRICT DRAINAGE FACILITIES  
6 within CITY rights of way, (iii) consent to the recordation and conveyance of Irrevocable  
7 Offer(s) of Dedication furnished by DEVELOPER as provided herein, (iv) provide DISTRICT  
8 with certification that development of MS 127 (Arlington Retail Center) is in compliance with  
9 the Western Riverside County Multiple Species Habitat Conservation Plan, and (v) accept  
10 interim ownership and responsibility for the operation and maintenance of DISTRICT  
11 DRAINAGE FACILITIES pending CALTRANS' completion and DISTRICT acceptance of  
12 FUTURE DRAIN pursuant to the terms of the future CALTRANS AGREEMENT, provided  
13 DISTRICT DRAINAGE FACILITIES are constructed in accordance with plans and  
14 specifications approved by DISTRICT, and (vi) convey ownership and responsibility for the  
15 operation and maintenance of DISTRICT DRAINAGE FACILITIES and the necessary rights of  
16 way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES to  
17 DISTRICT upon CALTRANS' completion of construction and DISTRICT acceptance of  
18 FUTURE DRAIN pursuant to the terms of the future CALTRANS AGREEMENT.  
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21 NOW, THEREFORE, the parties hereto mutually agree as follows:  
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### 23 SECTION I

24 DEVELOPER shall:

25 1. Prepare PROJECT plans and specifications, as shown on District Drawing  
26 No. 1-679, hereinafter called "IMPROVEMENT PLANS", in accordance with DISTRICT  
27 standards, and submit to DISTRICT for their review and approval.  
28

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

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

13           4. [This Section Intentionally Left Blank.]

14           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
15 permits and rights of entry as may be needed for the construction, inspection, operation and  
16 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish  
17 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as  
18 set forth in Section I.8., with sufficient evidence of DEVELOPER having secured such  
19 necessary licenses, agreements, permits and rights of entry, as determined and approved by  
20 DISTRICT.

21           6. Furnish DISTRICT with copies of all permits, approvals or agreements  
22 required by any Federal or State resource and/or regulatory agency for the construction,  
23 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include  
24 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional  
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1 Water Quality Control Board, California State Department of Fish and Game, and State Water  
2 Resources Control Board.

3           7. Provide CITY, at the time of providing written notice to DISTRICT of the  
4 start of construction as set forth in Section I.8., with faithful performance and payment bonds,  
5 each in the amount of 100% of the estimated cost for construction of DISTRICT DRAINAGE  
6 FACILITIES as determined by DISTRICT. The surety, amount and form of the bonds shall be  
7 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect  
8 until DISTRICT DRAINAGE FACILITIES are approved by DISTRICT as complete and  
9 accepted by CITY for interim ownership and maintenance responsibilities; at which time the  
10 bond amount may be reduced to 10% to guarantee against any defective work, labor or  
11 materials. The remaining bonds shall remain in full force and effect for a period of one (1) year  
12 following acceptance of DISTRICT DRAINAGE FACILITIES by CITY for interim ownership  
13 and maintenance as set forth herein.  
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16           8. Notify DISTRICT in writing (Attention: Administrative Services Section),  
17 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE  
18 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE  
19 FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written  
20 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT  
21 DRAINAGE FACILITIES.  
22

23           9. Grant DISTRICT, by execution of this Agreement, the right to enter upon  
24 DEVELOPER'S property where necessary and convenient for the purpose of gaining access to,  
25 and performing inspection service for, the construction of DISTRICT DRAINAGE  
26 FACILITIES as set forth herein.  
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1           10. Obtain and provide DISTRICT, at the time of providing written notice to  
2 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in  
3 Section I.8., with duly executed Irrevocable Offers(s) of Dedication to the public for flood  
4 control and drainage purposes, including ingress and egress, for the rights of way deemed  
5 necessary by DISTRICT for the construction, inspection, operation and maintenance of  
6 DISTRICT DRAINAGE FACILITIES, as shown in concept cross-hatched in blue, red or green  
7 on Exhibit "B" attached hereto and made a part hereof. The Irrevocable Offer(s) of Dedication  
8 shall be in a form approved by DISTRICT and shall be executed by all legal and equitable  
9 owners of the property described in the offer(s).  
10

11           11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of  
12 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than  
13 thirty (30) days prior to date of submission of all the property described in the Irrevocable  
14 Offer(s) of Dedication.  
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16           12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
17 the start of construction as set forth in Section I.8., with a complete list of all contractors and  
18 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the  
19 corresponding license number and license classification of each. At such time, DEVELOPER  
20 shall further identify in writing its designated superintendent for DISTRICT DRAINAGE  
21 FACILITIES construction.  
22

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

3 14. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign  
4 their ownership to DISTRICT at the time DISTRICT approves and signs said final mylar  
5 IMPROVEMENT PLANS, and prior to the start of DISTRICT DRAINAGE FACILITIES  
6 construction.

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

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

13 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
14 the start of construction as set forth in Section I.8., a confined space entry procedure specific to  
15 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements  
16 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space  
17 Operations, Section 5157, Permit Required Confined Space and DISTRICT Confined Space  
18 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the  
19 issuance of a Notice to Proceed.  
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21 18. During the construction period of DISTRICT DRAINAGE FACILITIES,  
22 provide Workers' Compensation Insurance in an amount required by law. A certificate of said  
23 insurance policy shall be provided to DISTRICT, the County of Riverside and CITY at the time  
24 of providing written notice pursuant to Section I.8.  
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1           19. Commencing on the date notice is given pursuant to Section I.8. and  
2 continuing until CITY accepts DISTRICT DRAINAGE FACILITIES for interim ownership,  
3 operation and maintenance:

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

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20           (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),  
21 who shall be authorized by the California Department of Insurance to  
22 transact the business of insurance in the State of California, to  
23 furnish DISTRICT, the County of Riverside and CITY at the time of  
24 providing written notice to DISTRICT of the start of construction as  
25 set forth in Section I.8., with certificate(s) of insurance and  
26 applicable policy endorsements showing that such insurance is in full  
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1 force and effect and that DISTRICT, the County of Riverside and  
2 CITY are named as additional insureds with respect to this  
3 Agreement and the obligations of DEVELOPER hereunder. Further,  
4 said certificate(s) shall state that the issuing company shall give  
5 DISTRICT, the County of Riverside and CITY sixty (60) days  
6 written notice in the event of any cancellation, termination, non-  
7 renewal or reduction in coverage of the policies evidenced by the  
8 certificate(s). In the event of any such cancellation, termination,  
9 non-renewal or reduction in coverage, DEVELOPER shall,  
10 forthwith, secure replacement insurance meeting the provisions of  
11 this paragraph.  
12

13 Failure to maintain the insurance required by this paragraph shall be  
14 deemed a material breach of this Agreement and shall authorize and constitute authority for  
15 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section  
16 IV.3.  
17

18 20. Construct or cause to be constructed, DISTRICT DRAINAGE  
19 FACILITIES at DEVELOPER'S sole cost and expense in accordance with DISTRICT approved  
20 IMPROVEMENT PLANS.  
21

22 21. Within two (2) weeks of completing DISTRICT DRAINAGE FACILITIES  
23 construction, provide DISTRICT with written notice (Attention: Contract Administration  
24 Section) that DISTRICT DRAINAGE FACILITIES construction is substantially complete and  
25 requesting that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES.  
26

27 22. Upon completion of DISTRICT DRAINAGE FACILITIES construction,  
28 and upon acceptance by CITY of all street rights of way deemed necessary by DISTRICT and

1 CITY for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, but prior to  
2 CITY acceptance of DISTRICT DRAINAGE FACILITIES for interim ownership, operation  
3 and maintenance, convey, or cause to be conveyed to CITY flood control easement(s), including  
4 ingress and egress, in a form approved by DISTRICT, for the rights of way as shown in concept  
5 cross-hatched in blue, red or green on Exhibit "B".

6  
7 23. At the time of recordation of the conveyance document(s) as set forth in  
8 Section I.22., furnish DISTRICT with policies of title insurance, each in the amount of not less  
9 than fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each  
10 easement parcel to be conveyed to CITY, guaranteeing CITY'S interest in said property as being  
11 free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or  
12 unrecorded), except those which, in the sole discretion of DISTRICT, are deemed acceptable.

13 24. [This Section Intentionally Left Blank.]

14  
15 25. Accept ownership and sole responsibility for the operation and maintenance  
16 of DISTRICT DRAINAGE FACILITIES until such time as CITY accepts interim ownership  
17 and responsibility for operation and maintenance of DISTRICT DRAINAGE FACILITIES.  
18 Further, it is mutually understood by the parties hereto that prior to CITY acceptance of interim  
19 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE  
20 FACILITIES, DISTRICT DRAINAGE FACILITIES shall be in a satisfactorily maintained  
21 condition as solely determined by DISTRICT.

22  
23 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
24 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and  
25 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all  
26 such costs, expenses and fees shall be computed as costs and included in any judgment  
27 rendered.

28. Ensure that all work performed pursuant to this 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.

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1. Review and approve IMPROVEMENT PLANS prior to the start of DISTRICT DRAINAGE FACILITIES construction.

3. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPER pursuant to Section I.10.

- 11 -

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

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

15           7.    Accept ownership and sole responsibility for the operation and maintenance  
16 of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of DISTRICT  
17 DRAINAGE FACILITIES construction as being complete, (ii) recordation of all conveyance  
18 documents described in Section I.22., (iii) acceptance by CITY of all necessary street rights of  
19 way as deemed necessary by DISTRICT and CITY for the operation and maintenance of  
20 PROJECT, (iv) conveyance by CITY to DISTRICT of all flood control and ingress/egress  
21 easements in a form approved by DISTRICT, for the rights of way as shown in concept cross-  
22 hatched in blue, red or green on Exhibit "B", (v) DISTRICT determination that DISTRICT  
23 DRAINAGE FACILITIES shall be in a satisfactorily maintained condition as solely determined  
24 by DISTRICT, (vi) DISTRICT determination that others have made any necessary grading and  
25 manhole adjustments within DISTRICT easements to meet DISTRICT standards, and (vii)  
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1 CALTRANS' completion and DISTRICT acceptance of FUTURE DRAIN pursuant to the terms  
2 of CALTRANS AGREEMENT.

3 8. Provide CITY with a reproducible duplicate copy of "RECORD  
4 DRAWING" IMPROVEMENT PLANS upon DISTRICT acceptance of DISTRICT  
5 DRAINAGE FACILITIES construction as being complete.  
6

7 SECTION III

8 CITY shall:

9 1. Accept CITY and DISTRICT approved faithful performance and payment  
10 bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as provided  
11 herein.

12 2. Provide DISTRICT with certification that development of MS 127  
13 (Arlington Retail Center) is in compliance with the Western Riverside County Multiple Species  
14 Habitat Conservation Plan.  
15

16 3. Consent, by execution of this Agreement, to the recording of any  
17 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

18 4. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication  
19 as set forth herein, and any other outstanding offers of dedication necessary for the construction,  
20 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and, prior to  
21 CITY'S conveyance of ownership of DISTRICT DRAINAGE FACILITIES to DISTRICT,  
22 convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate  
23 and maintain DISTRICT DRAINAGE FACILITIES.  
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25 5. Grant DISTRICT, by execution of this Agreement, the right to construct,  
26 inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.  
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8. Not grant any occupancy permits for any units within any portion of MS 127 (Arlington Retail Center), or any phase thereof, until (i) this Agreement has been executed by all parties and recorded by DISTRICT, (ii) construction of DISTRICT DRAINAGE FACILITIES is complete, (iii) DISTRICT has recorded all Irrevocable Offers of Dedication provided by DEVELOPER as set forth in Section I.10., and (iv) CITY has accepted all Irrevocable Offers of Dedication as requested by DISTRICT, unless otherwise approved in writing by DISTRICT.

It is further mutually agreed:

1. All work involved with DISTRICT DRAINAGE FACILITIES shall be inspected by DISTRICT and shall not be deemed complete until approved and accepted in writing as complete by DISTRICT.

- 14 -



1           3. DEVELOPER shall complete construction of DISTRICT DRAINAGE  
2 FACILITIES within twelve (12) consecutive months after execution of this Agreement and  
3 within sixty (60) consecutive calendar days after commencing work on DISTRICT DRAINAGE  
4 FACILITIES. It is expressly understood that since time is of the essence in this Agreement,  
5 failure of DEVELOPER to perform the work within the agreed upon time shall constitute  
6 authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to  
7 pay to CITY the penal sum of any and all bonds. In which case, CITY shall subsequently  
8 reimburse DISTRICT for DISTRICT costs incurred.  
9

10           4. DEVELOPER shall not request DISTRICT or CITY to accept any portion  
11 or portions of DISTRICT DRAINAGE FACILITIES prior to the completion of DISTRICT  
12 DRAINAGE FACILITIES construction.  
13

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

18           In the event DEVELOPER wishes to expedite issuance of a Notice to  
19 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
20 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation  
21 of the individual's credentials and experience to DISTRICT for review and, if appropriate,  
22 approval. DISTRICT shall review the individual's qualifications and experience and, upon  
23 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be  
24 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES  
25 construction and quality control matters. If DEVELOPER'S initial construction inspection  
26 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000.00), DISTRICT  
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1 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection  
2 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;  
3 however, a minimum balance of ten thousand dollars (\$10,000.00) shall be retained on account.

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

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

5 DEVELOPER shall defend, at its sole expense, including all costs and fees  
6 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
7 awards), DISTRICT and CITY (including their agencies, districts, special districts and  
8 departments, their respective directors, officers, Board of Supervisors, elected and appointed  
9 officials, employees, agents and representatives) in any claim, proceeding or action for which  
10 indemnification is required.  
11

12 With respect to any of DEVELOPER'S indemnification requirements,  
13 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall  
14 have the right to adjust, settle or compromise any such claim, proceeding or action without the  
15 prior consent of DISTRICT and CITY; provided, however, that any such adjustment, settlement  
16 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S  
17 indemnification obligations to DISTRICT or CITY.  
18

19 DEVELOPER'S indemnification obligations shall be satisfied when  
20 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal relieving  
21 DISTRICT or CITY from any liability for the claim, proceeding or action involved.  
22

23 The specified insurance limits required in this Agreement shall in no way  
24 limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT  
25 and CITY from third party claims.

26 In the event there is conflict between this section and California Civil Code  
27 Section 2782, this section shall be interpreted to comply with Civil Code 2782. Such  
28

1 interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT or CITY to the  
2 fullest extent allowed by law.

3 8. Any waiver by DISTRICT or by CITY of any breach of any one or more of  
4 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 as in any manner changing the terms hereof, or estopping DISTRICT or CITY from  
8 enforcement hereof.  
9

10 9. [This Section Intentionally Left Blank.]

11 10. This Agreement is to be construed in accordance with the laws of the State  
12 of California.

13 11. Any and all notices sent or required to be sent to the parties of this  
14 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:  
15

16 RIVERSIDE COUNTY FLOOD CONTROL  
17 AND WATER CONSERVATION DISTRICT  
18 1995 Market Street  
Riverside, CA 92501

CITY OF RIVERSIDE  
Public Works – 4<sup>th</sup> Floor  
3900 Main Street  
Riverside, CA 92522  
Attn: Siobhan Foster

19 WESTMINSTER ARLINGTON LLC  
20 270 Westminster Road, Suite 300  
Lake Forest, IL 60045  
21 Attn: Legal Department

22 12. Any action at law or in equity brought by any of the parties hereto for the  
23 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of  
24 competent jurisdiction in the County of Riverside, State of California, and the parties hereto  
25 waive all provisions of law providing for a change of venue in such proceedings to any other  
26 county.  
27  
28

1           13. This Agreement is the result of negotiations between the parties hereto, and  
2 the advice and assistance of their respective counsel. The fact that this Agreement was prepared  
3 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty  
4 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT  
5 prepared this Agreement in its final form.  
6

7           14. The rights and obligations of DEVELOPER shall inure to and be binding  
8 upon all heirs, successors and assignees.

9           15. DEVELOPER shall not assign or otherwise transfer any of its rights, duties  
10 or obligations hereunder to any person or entity without the written consent of the other parties  
11 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER  
12 expressly understands and agrees that it shall remain liable with respect to any and all of the  
13 obligations and duties contained in this Agreement.  
14

15           16. The individual(s) executing this Agreement on behalf of DEVELOPER  
16 hereby certify that they have the authority within their respective company(ies) to enter into and  
17 execute this Agreement, and have been authorized to do so by any and all boards of directors,  
18 legal counsel, and or any other board, committee or other entity within their respective  
19 company(ies) which have the authority to authorize or deny entering this Agreement.  
20

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

26 //

27 //


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


**MAY 18 2010**

(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

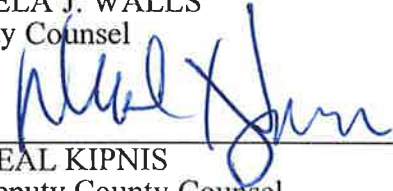
By   
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By   
NEAL KIPNIS  
Deputy County Counsel

By   
Deputy

(SEAL)

Cooperative Agreement: MS 127  
JPS  
8/19/09

## CITY OF RIVERSIDE

By Belinda J. Graham 4/28/2010  
(Print Name) Belinda J. Graham  
Title Assistant City Manager

## APPROVED AS TO FORM:

By Kristi J. Smith  
KRISTI J. SMITH  
Supervising Deputy City Attorney

## ATTEST:

By Colleen J. Nicol  
COLLEEN J. NICOL  
City Clerk

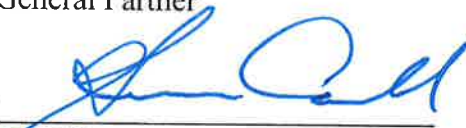
(SEAL)

Cooperative Agreement: MS 127  
JPS:blj  
8/19/09

1  
2 **WESTMINSTER ARLINGTON LLC,**  
3 a California limited liability company

4 By: WESTMINSTER FUND V L P ,  
5 an Illinois limited partnership  
6 Its Member

7 By: WESTMINSTER ADVISORS V LLC,  
8 an Illinois limited liability company  
9 Its General Partner

10 By   
11 **GEORGE W. CARROLL**  
12 Manager and Authorized Agent

13  
14  
15  
16  
17  
18  
19  
20  
21 (ATTACH NOTARY WITH  
22 CAPACITY STATEMENT)  
23  
24  
25  
26  
27  
28

Cooperative Agreement: MS 127  
JPS  
8/19/09



## ACKNOWLEDGMENT

State of California  
County of Riverside

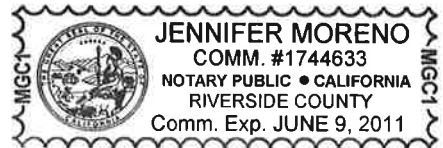
On November 6, 2009 before me, Jennifer Moreno, Notary Public  
(insert name and title of the officer)

personally appeared George W. Carroll  
who proved to me on the basis of satisfactory evidence to be the pers on(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 pers on(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.

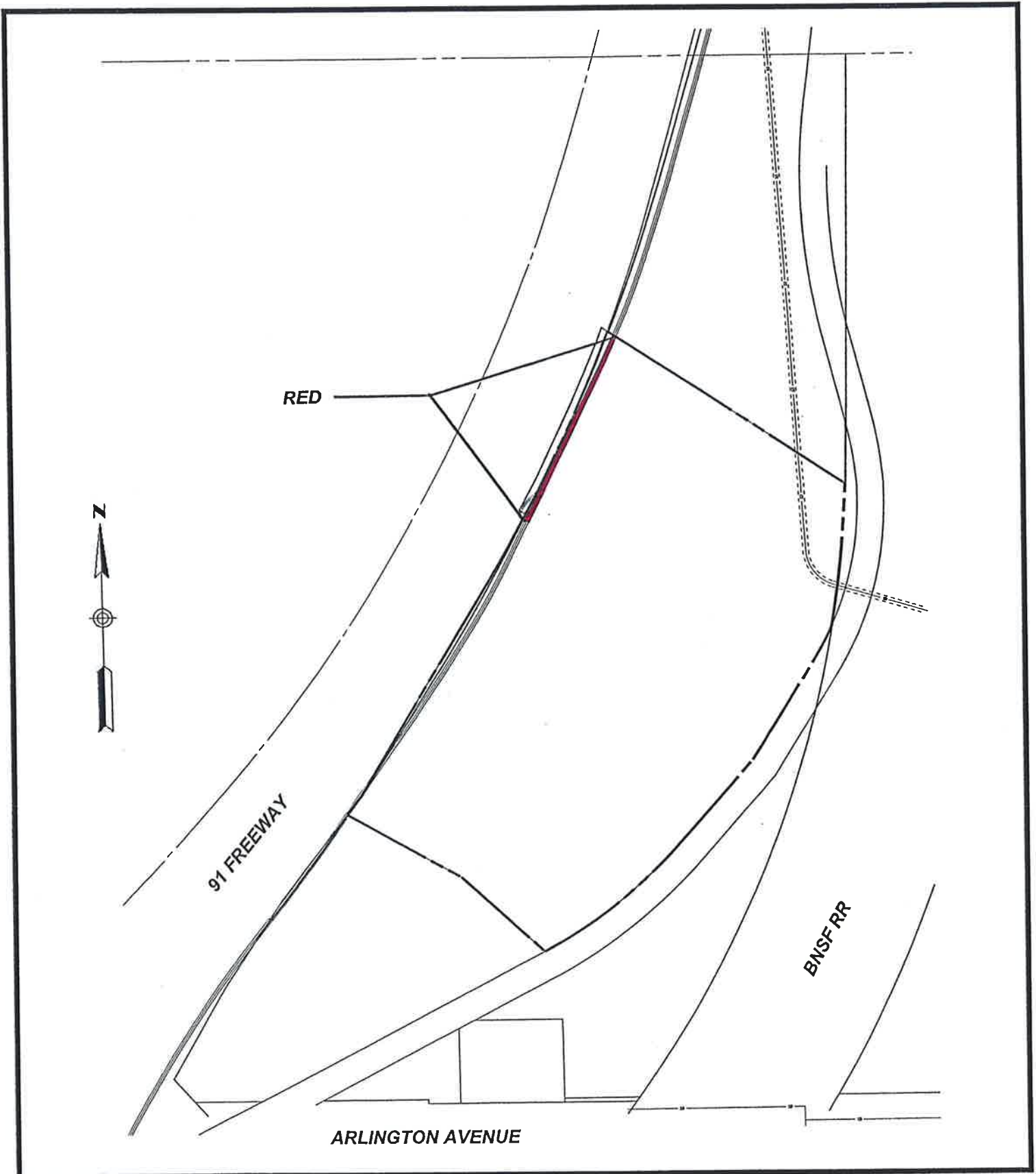
WITNESS my hand and official seal.

Signature  (Seal)

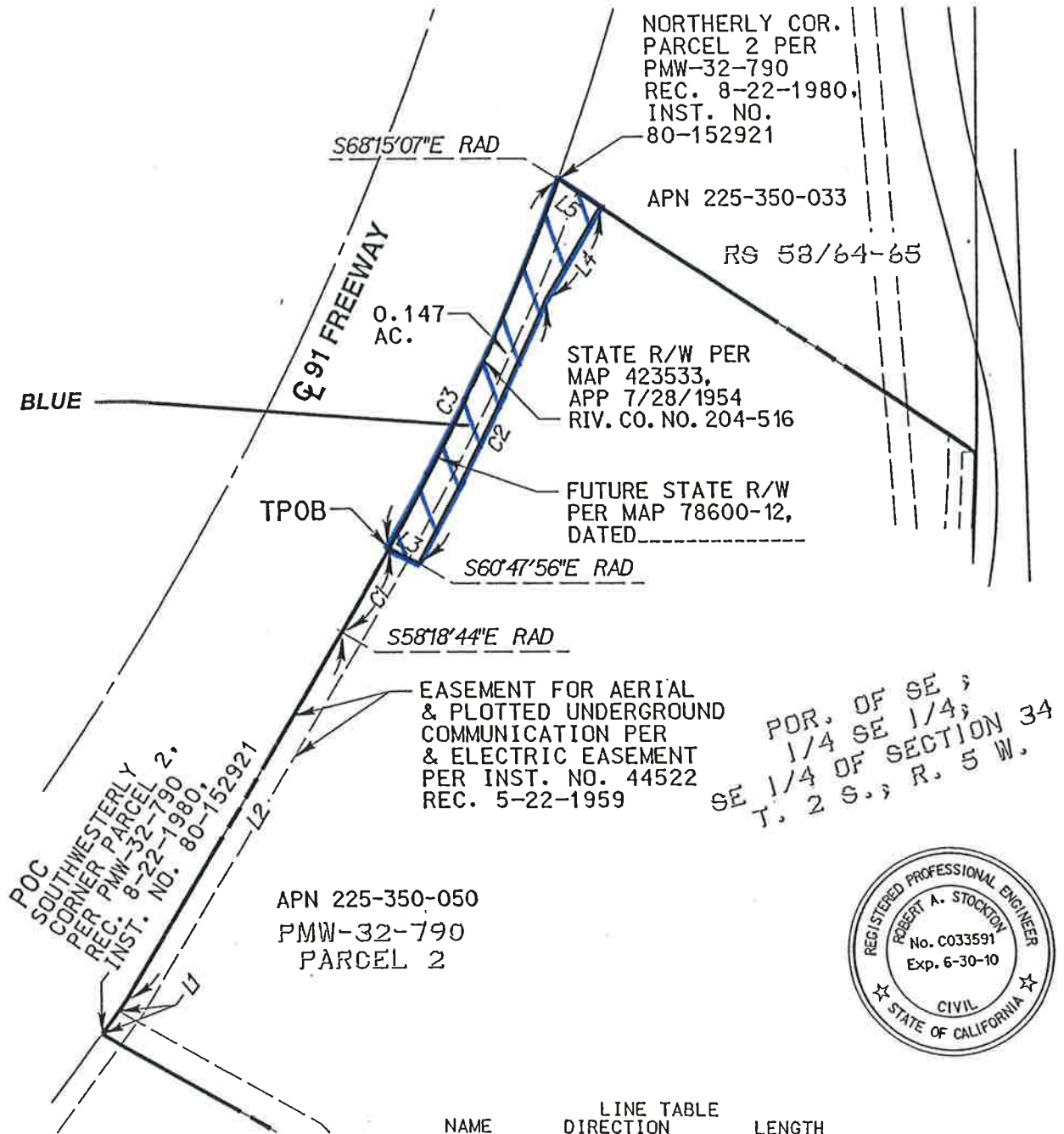


A vicinity map of the Naval Test Station (NTS) area. The map shows major roads including State Routes 60, 91, 15, 74, 79, 215, 10, 247, and 37. Key cities and towns are marked with circles: Norco, Corona, Riverside, Moreno Valley, Beaumont, Banning, Calimesa, Perris, San Jacinto, Hemet, Idyllwild, Elsinore, Lake Elsinore, Murrieta, Temecula, and Aguanga. Geographical features include Lake Matthews, Lake Perris, Lake Skinner, Eastside Reservoir, Hemet Reservoir, and Vail Lake. County boundaries for San Bernardino, Riverside, Orange, and San Diego are indicated with dashed lines. A north arrow is located in the bottom left corner. The title 'VICINITY MAP' is centered at the bottom, with 'NTS' below it.

Exhibit A



# Exhibit B



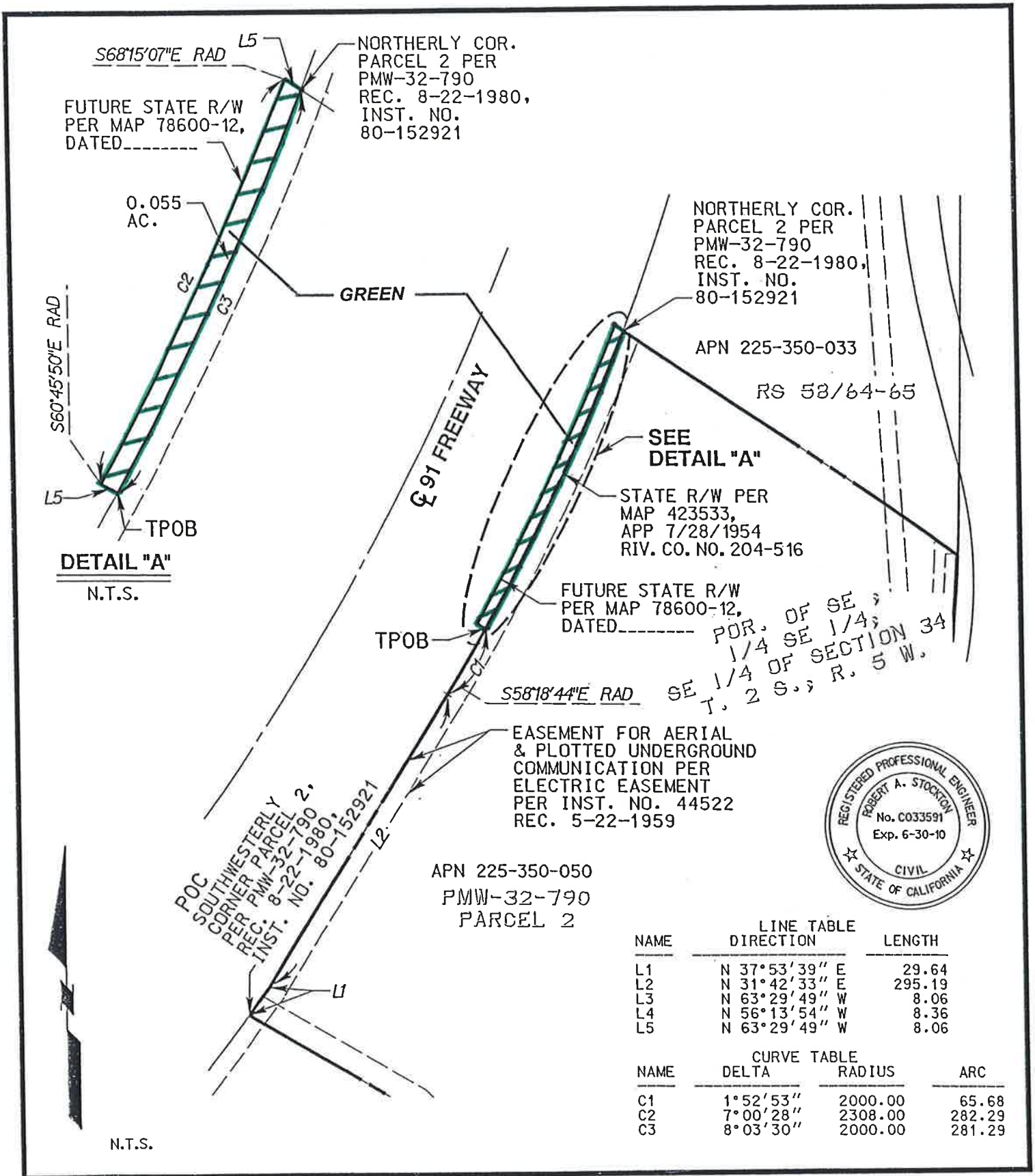
LINE TABLE			
NAME	DIRECTION		LENGTH
L1	N 37° 53' 39"	E	29.64
L2	N 31° 42' 33"	E	295.19
L3	N 63° 29' 49"	W	21.97
L4	N 31° 48' 20"	E	74.16
L5	N 56° 13' 54"	W	33.40

CURVE TABLE			
NAME	DELTA	RADIUS	ARC
C1	1° 52' 53"	2000.00	65.68
C2	4° 58' 32"	2338.00	203.04
C3	8° 03' 30"	2000.00	281.29

N.T.S.

# Exhibit B



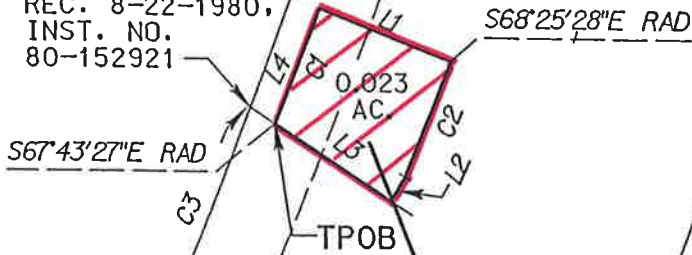
LINE TABLE			
NAME	DIRECTION		LENGTH
L1	N 37°53'39"	E	29.64
L2	N 31°42'33"	E	295.19
L3	N 63°29'49"	W	8.06
L4	N 56°13'54"	W	8.36
L5	N 63°29'49"	W	8.06

CURVE TABLE			
NAME	DELTA	RADIUS	ARC
C1	1°52'53"	2000.00	65.68
C2	7°00'28"	2308.00	282.29
C3	8°03'30"	2000.00	281.29

# Exhibit B

NORTHERLY COR.  
PARCEL 2 PER  
PMW-32-790  
REC. 8-22-1980,  
INST. NO.  
80-152921



**DETAIL "A"**  
N.T.S.

RED

SEE  
DETAIL "A"

APN 225-350-033

RS 58/64-65

STATE R/W PER  
MAP 423533,  
APP 7/28/1954  
RIV. CO. NO. 204-516

EASEMENT FOR AERIAL  
& PLOTTED UNDERGROUND  
COMMUNICATION  
& ELECTRIC EASEMENT  
PER INST. NO. 44522  
REC. 5-22-1959

POR. OF SE 1/4;  
1/4 SE 1/4;  
SE 1/4 OF SECTION 34  
T. 2 S., R. 5 W.

S58°18'44"E RAD

APN 225-350-050  
PMW-32-790  
PARCEL 2

POC  
SOUTHWESTERLY  
CORNER PARCEL 2,  
PER PMW-32-790,  
REC. 8-22-1980,  
INST. NO. 80-152921



LINE TABLE				
NAME	DIRECTION			LENGTH
L1	N	68°25'28"	W	32.00
L2	N	31°48'20"	E	6.50
L3	N	56°13'54"	W	31.56
L4	N	56°13'54"	W	1.84
L5	N	31°42'33"	E	295.19
L6	N	37°53'39"	E	29.64

CURVE TABLE			
NAME	DELTA	RADIUS	ARC
C1	0°42'11"	2318.00	28.45
C2	0°42'01"	2350.00	28.72
C3	9°56'23"	2000.00	346.96

N.T.S.