

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

713B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

November 8, 2011

SUBJECT: Day Creek MDP Line C, Stage 2
Project No. 1-0-00241-02; Parcel Map No. 29537, Parcel 4
Cooperative Agreement

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the City of Jurupa Valley, Jurupa Community Services District, and Westates Holdings, L.L.C. (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 for Parcel 4 of Parcel Map No. 29537, are to be constructed by the Developer and inspected, operated and maintained by the District and Jurupa Community Services District.

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	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	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: **Michael R. Shetler**

County Executive Office Signature

☐ Policy
☐ Policy
☐ Consent
☐ Consent

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Buster, Tavaglione, Stone and Ashley
Nays: None
Absent: Benoit
Date: November 8, 2011
xc: Flood

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

FORM APPROVED COUNTY COUNSEL
 BY:
 DATE: 11/8/11
 Departmental Concurrence

Dep't Recomm.:
 Per Exec. Ofc.:

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

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Page 2

BACKGROUND contd.:

The Agreement is necessary to provide for District construction inspection of the referenced drainage facilities. Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the mainline storm drain and one interim lateral storm drain facility. Jurupa Community Services District will assume ownership and maintenance of lateral storm drain facilities located within their property boundaries.

County Counsel has approved the Agreement as to legal form and the City of Jurupa Valley, Jurupa Community Services District and the Developer have executed the Agreement.

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs associated with the mainline and one interim lateral storm drain facility will accrue to the District.

CLC:blj
P8/140550

COOPERATIVE AGREEMENT

Day Creek MDP Line C, Stage 2

Project No. 1-0-00241-02

Parcel Map No. 29537, Parcel 4

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF JURUPA VALLEY, hereinafter called "CITY", JURUPA COMMUNITY SERVICES DISTRICT, hereinafter called "JCSO", and WESTATES HOLDINGS, L.L.C., a Delaware limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has plans to develop Parcel 4 of Parcel Map No. 29537 as part of Plot Plan No. 24596 in the City of Jurupa Valley and 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 include construction of (i.) approximately 150 lineal feet of underground storm drain system identified as "LINE C" on District Drawing No. 1-0667, as shown in concept in blue on Exhibit "A" attached hereto and made a part hereof; (ii.) approximately 16 lineal feet of underground lateral storm drain system identified as "LATERAL C-21" on District Drawing No. 1-0667, as shown in concept in purple on Exhibit "A"; (iii.) approximately 55 lineal feet of underground lateral storm drain system identified as "LATERAL C-20" on District Drawing No. 1-0667, as shown in concept in green on Exhibit "A"; and (iv.) approximately 82 lineal feet of interim underground lateral storm drain system identified as "LATERAL C-20-1" on District Drawing No. 1-0667, as shown in concept in red on Exhibit "A". Together, LINE C, LATERAL C-21, LATERAL C-20 and interim LATERAL C-20-1 are hereinafter called "PROJECT"; and

1 C. LINE C, interim LATERAL C-20-1, a segment of LATERAL C-21 and a
2 segment of LATERAL C-20, are hereinafter altogether called "DISTRICT DRAINAGE
3 FACILITIES", as shown in concept in green on Exhibit "B" attached hereto and made a part
4 hereof; and

5 D. The remainder segment of LATERAL C-20 is hereinafter called "JCSD
6 DRAINAGE FACILITIES", as shown in concept, in blue, on Exhibit "B" attached hereto; and

7 E. LATERAL C-20, interim LATERAL C-20-1 and LATERAL C-21 connect
8 to LINE C which drains into DISTRICT'S existing Day Creek MDP Line C, as shown in
9 District Drawing No. 1-0629; and

10 F. DEVELOPER and JCSD desire DISTRICT to accept ownership and
11 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
12 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for
13 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;
14 and
15

16 G. DEVELOPER desires JCSD to accept ownership and responsibility for the
17 operation and maintenance of JCSD DRAINAGE FACILITIES. Therefore, JCSD must review
18 and approve DEVELOPER'S plans and specifications for PROJECT and subsequently inspect
19 the construction of JCSD DRAINAGE FACILITIES; and
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21 H. CITY is willing to accept and hold faithful performance and payment bonds
22 submitted by DEVELOPER for DISTRICT DRAINAGE FACILITIES.

23 NOW, THEREFORE, the parties hereto mutually agree as follows:
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SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with DISTRICT standards, and submit to DISTRICT and JCSD for review and approval.

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

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

4. [THIS SECTION IS INTENTIONALLY LEFT BLANK.]

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

necessary licenses, agreements, permits and rights of entry, as determined and approved by DISTRICT.

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

7. Provide CITY, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with faithful performance and payment bonds, each in the amount of one hundred percent (100%) of the estimated cost for construction of DISTRICT DRAINAGE FACILITIES as determined by DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect until DISTRICT DRAINAGE FACILITIES and JCSD DRAINAGE FACILITIES are accepted by DISTRICT and JCSD as complete; at which time the bond amounts may be reduced to ten percent (10%) for a period of one year to guarantee against any defective work, labor or materials.

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

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

5 10. Obtain and provide DISTRICT, at the time of providing written notice to
6 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in
7 Section I.8., with duly executed Irrevocable Offers(s) of Dedication to the public for flood
8 control and drainage purposes, including ingress and egress, for the rights of way deemed
9 necessary by DISTRICT for the construction, inspection, operation and maintenance of
10 DISTRICT DRAINAGE FACILITIES, as shown in concept cross-hatched in blue and in green
11 on Exhibit "C" attached hereto and made a part hereof. The Irrevocable Offer(s) of Dedication
12 shall be in a form approved by DISTRICT and shall be executed by all legal and equitable
13 owners of the property described in the offer(s).
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15 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
16 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
17 thirty (30) days prior to date of submission of all the property described in the Irrevocable
18 Offer(s) of Dedication.
19

20 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
21 the start of construction as set forth in Section I.8., with a complete list of all contractors and
22 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the
23 corresponding license number and license classification of each. At such time, DEVELOPER
24 shall further identify in writing its designated superintendent for DISTRICT DRAINAGE
25 FACILITIES construction.
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13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., a construction schedule which shall show the order and dates in which the DEVELOPER or DEVELOPER'S contractor proposes to carry on the various parts of work, including estimated start and completion dates. As construction of DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction schedule as requested by DISTRICT.

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

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

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

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

18. During the construction period of DISTRICT DRAINAGE FACILITIES, provide Workers' Compensation Insurance in an amount required by law. A certificate of said

insurance policy shall be provided to DISTRICT and CITY at the time of providing written notice pursuant to Section I.8.

19. Commencing on the date notice is given pursuant to Section I.8. and continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and maintenance:

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

(b) Cause its insurance carrier(s) or its contractor's insurance carrier(s), who shall be authorized by the California Department of Insurance to transact the business of insurance in the State of California, to furnish DISTRICT and CITY at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with certificate(s) of insurance and applicable policy endorsements

1 showing that such insurance is in full force and effect and that
2 DISTRICT, County of Riverside and CITY are named as additional
3 insureds with respect to this Agreement and the obligations of
4 DEVELOPER hereunder. Further, said certificate(s) shall state that
5 the issuing company shall give DISTRICT 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 V.3.

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

19 21. Within two (2) weeks of completing PROJECT construction, provide
20 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
21 construction is substantially complete and requesting that DISTRICT conduct a final inspection
22 of DISTRICT DRAINAGE FACILITIES.
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24 22. Upon completion of PROJECT construction, but prior to DISTRICT
25 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
26 convey, or cause to be conveyed to DISTRICT flood control easement(s), including ingress and
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1 egress, in a form approved by DISTRICT, for the rights of way as shown in concept cross-
2 hatched in blue and in green on Exhibit "C".

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

10 24. [This Section Intentionally Left Blank.]
11

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

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

26 27. Upon completion of construction of PROJECT, but prior to DISTRICT
27 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
28

1 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered
2 in the State of California, shall provide DISTRICT a redlined "RECORD DRAWING" of
3 IMPROVEMENT PLANS. After DISTRICT approval of the redlined RECORD DRAWING,
4 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
5 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
6 stamp and sign the original IMPROVEMENT PLANS RECORD DRAWING.

7 28. Ensure that all work performed pursuant to this Agreement by
8 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
9 regulations, including but not limited to all applicable provisions of the Labor Code, Business
10 and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs
11 associated with compliance with applicable laws and regulations.
12

13 SECTION II

14 DISTRICT shall:

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

17 2. Upon execution of this Agreement, record or cause to be recorded, a copy
18 of this Agreement in the Official Records of the Riverside County Recorder.
19

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

22 4. Inspect DISTRICT DRAINAGE FACILITIES construction.

23 5. Keep an accurate accounting of all DISTRICT costs associated with the
24 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
25 conveyance documents, and the processing and administration of this Agreement.
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6. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE 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 DRAINAGE FACILITIES as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.

7. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT inspection of DISTRICT DRAINAGE FACILITIES in accordance with Section I.21, (ii) DISTRICT acceptance of PROJECT construction as being complete, (iii) recordation of all conveyance documents described in Section I.22, (iv) DISTRICT receipt of stamped and signed RECORD DRAWING of IMPROVEMENT PLANS as set forth in Section I.27, (v) JCSD acceptance of JCSD DRAINAGE FACILITIES for ownership, operation and maintenance, and (vi) DISTRICT'S sole determination that DISTRICT DRAINAGE FACILITIES are in a satisfactorily maintained condition.

8. Accept rights of way and operation and maintenance of interim LATERAL C-20-1, until such time as DEVELOPER has approved plans and has constructed a DISTRICT approved permanent facility in association with Plot Plan No. 24596, replacing interim LATERAL C-20-1 with a permanent flood protection and drainage facility.

SECTION III

CITY shall:

1. Accept the DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as provided herein.
2. [THIS SECTION IS INTENTIONALLY LEFT BLANK.]
3. [THIS SECTION IS INTENTIONALLY LEFT BLANK.]
4. Not grant any occupancy permits for any units within any portion of Parcel 4 of Parcel Map 29537 or any phase thereof, until construction of PROJECT is complete, unless otherwise approved in writing by DISTRICT.

SECTION IV

JCSD shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of JCSD DRAINAGE FACILITIES construction.
2. Inspect JCSD DRAINAGE FACILITIES construction.
3. Grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within JCSD rights of way.
4. Accept ownership and responsibility for the operation and maintenance of JCSD DRAINAGE FACILITIES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES construction as being complete.

SECTION V

1 It is further mutually agreed:

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

6 2. JCSD and DEVELOPER personnel may observe and inspect all work being
7 done on DISTRICT DRAINAGE FACILITIES, but shall provide any comments to DISTRICT
8 personnel who shall be solely responsible for all quality control communications with the
9 DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE FACILITIES.

10
11 3. DEVELOPER shall complete construction of PROJECT within twelve (12)
12 consecutive months after execution of this Agreement and within sixty (60) consecutive
13 calendar days after commencing work on PROJECT. It is expressly understood that since time
14 is of the essence in this Agreement, failure of DEVELOPER to perform the work within the
15 agreed upon time shall constitute authority for DISTRICT to perform the remaining work and
16 require DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In which
17 case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

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19 4. [This Section Intentionally Left Blank.]

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

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

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

7. DEVELOPER shall indemnify and hold harmless DISTRICT and CITY, (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based

1 upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees,
2 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,
3 performance under this Agreement, or failure to comply with the requirements of this
4 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
5 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth
6 Amendment of the United States Constitution or any other law, ordinance or regulation caused
7 by the diversion of waters from the natural drainage patterns or the discharge of drainage within
8 or from PROJECT; or (d) any other element of any kind or nature whatsoever.

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

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

23 DEVELOPER'S indemnification obligations shall be satisfied when
24 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal relieving
25 DISTRICT or CITY from any liability for the claim, proceeding or action involved.
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The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT and CITY from third party claims.

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

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

9. [This Section Intentionally Left Blank.]

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

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

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

CITY OF JURUPA VALLEY
8304 Limonite Avenue, Suite "M"
Jurupa Valley, CA 92509
Attn: Steve Harding

WESTATES HOLDINGS, LLC
C/O IDI
26632 Towne Centre Drive, Suite 320
Foothill Ranch, CA 92610
Attn: Jon Kelly/Andrea Arcilla

JURUPA COMMUNITY
SERVICES DISTRICT
11201 Harrel Street
Mira Loma, CA 91752
Attn: Eldon Horst

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

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

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

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

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

17. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive

statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

//

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


NOV 08 2011

(to be filled in by Clerk of the Board)

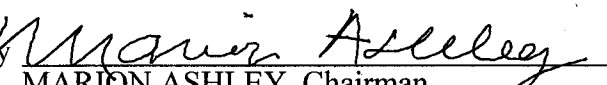
RECOMMENDED FOR APPROVAL:

**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:

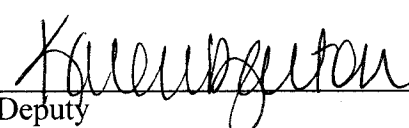
PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By


NEAL KIPNIS
Deputy County Counsel

By


Deputy

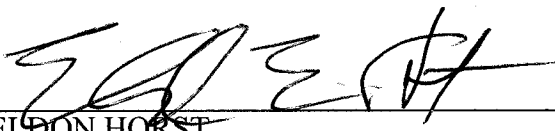
(SEAL)

Cooperative Agreement: PM 29537, Parcel 4
8/31/11
CLC:blj
P8/140565

CITY OF JURUPA VALLEY

By 
 STEPHEN G. HARDING
 City Manager

**JURUPA COMMUNITY
 SERVICES DISTRICT**
 a public agency

By 
 ELDON HORST
 General Manager

Cooperative Agreement: PM 29537, Parcel 4
 8/31/11
 CLC:blj
 P8/140565

WESTATES HOLDINGS, LLC
a Delaware limited liability corporation

By


SAM CHEBEIR
Managing Member

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: PM 29537, Parcel 4
8/31/11
CLC:blj
P8/140565

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Orange

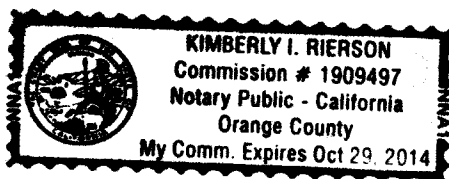
On Oct 16 2011 before me, Kimberly I. Rierson, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Jim Seiber

Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature: [Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Riverside County Flood Control - Water Conservation Dist Agent

Document Date: Sept 20 2011 Number of Pages: 27

Signer(s) Other Than Named Above: (7 copies) - 1 of 7

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☒ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Exhibit A

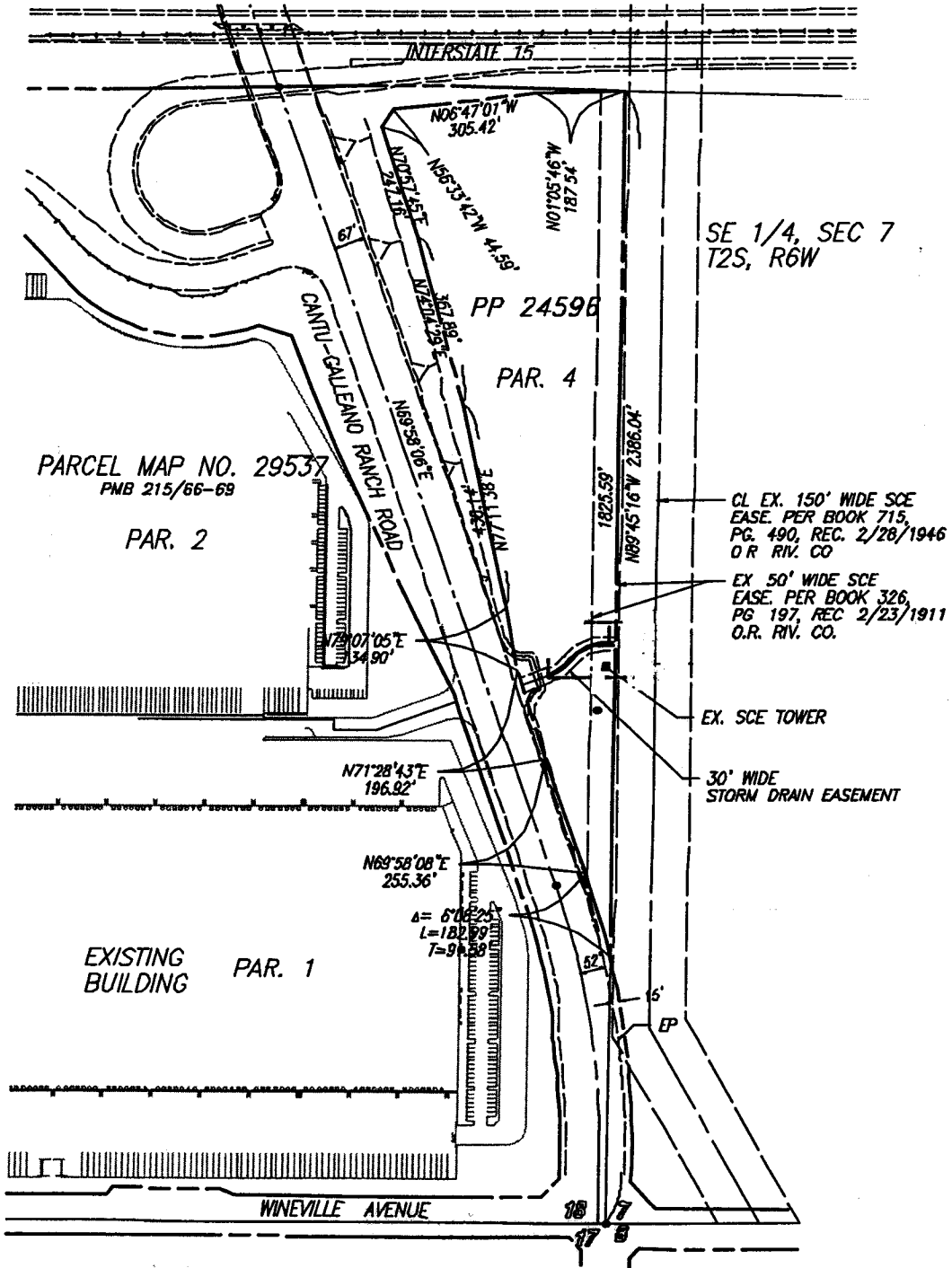
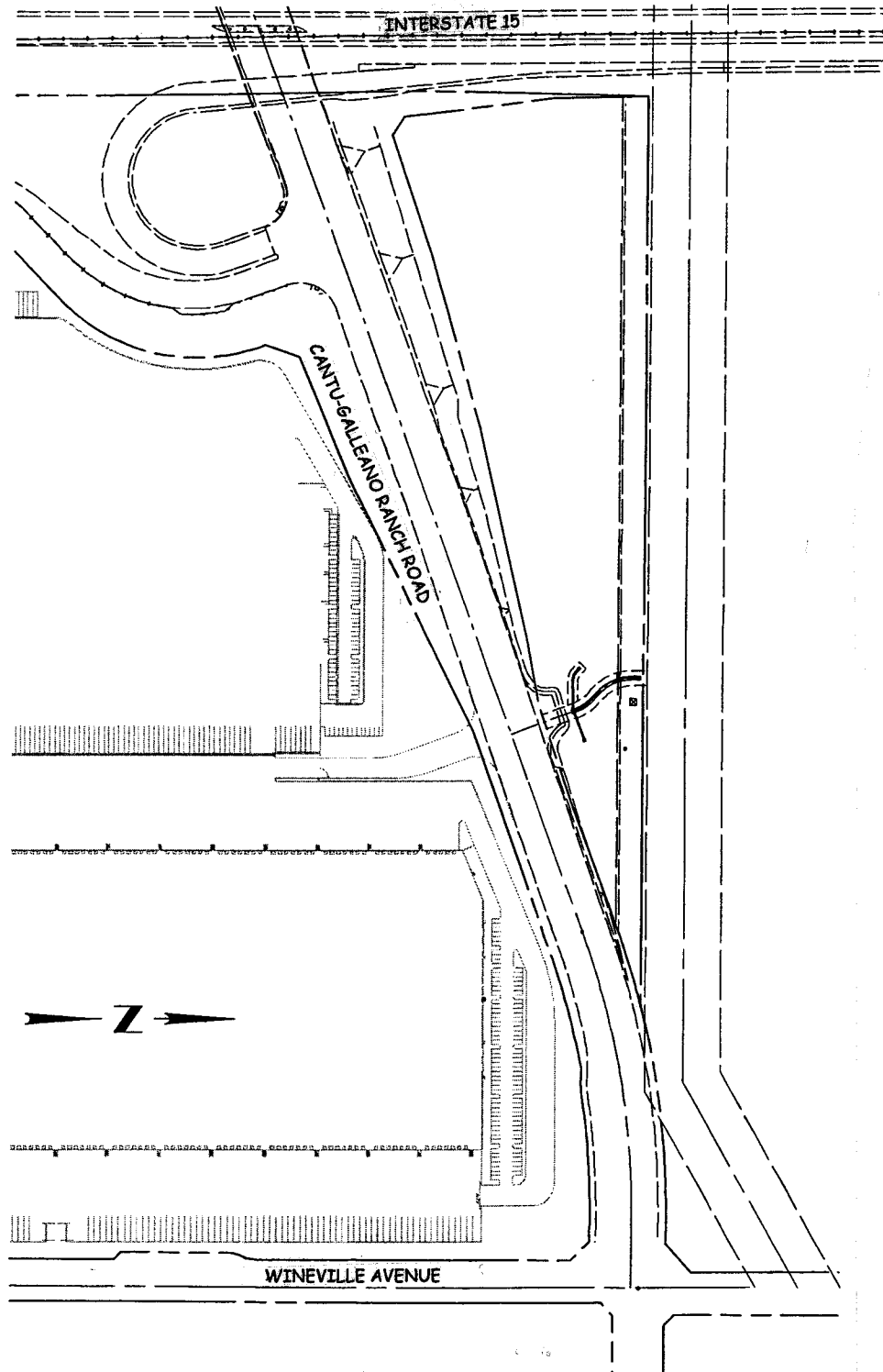


Exhibit A



Plan View

Exhibit A

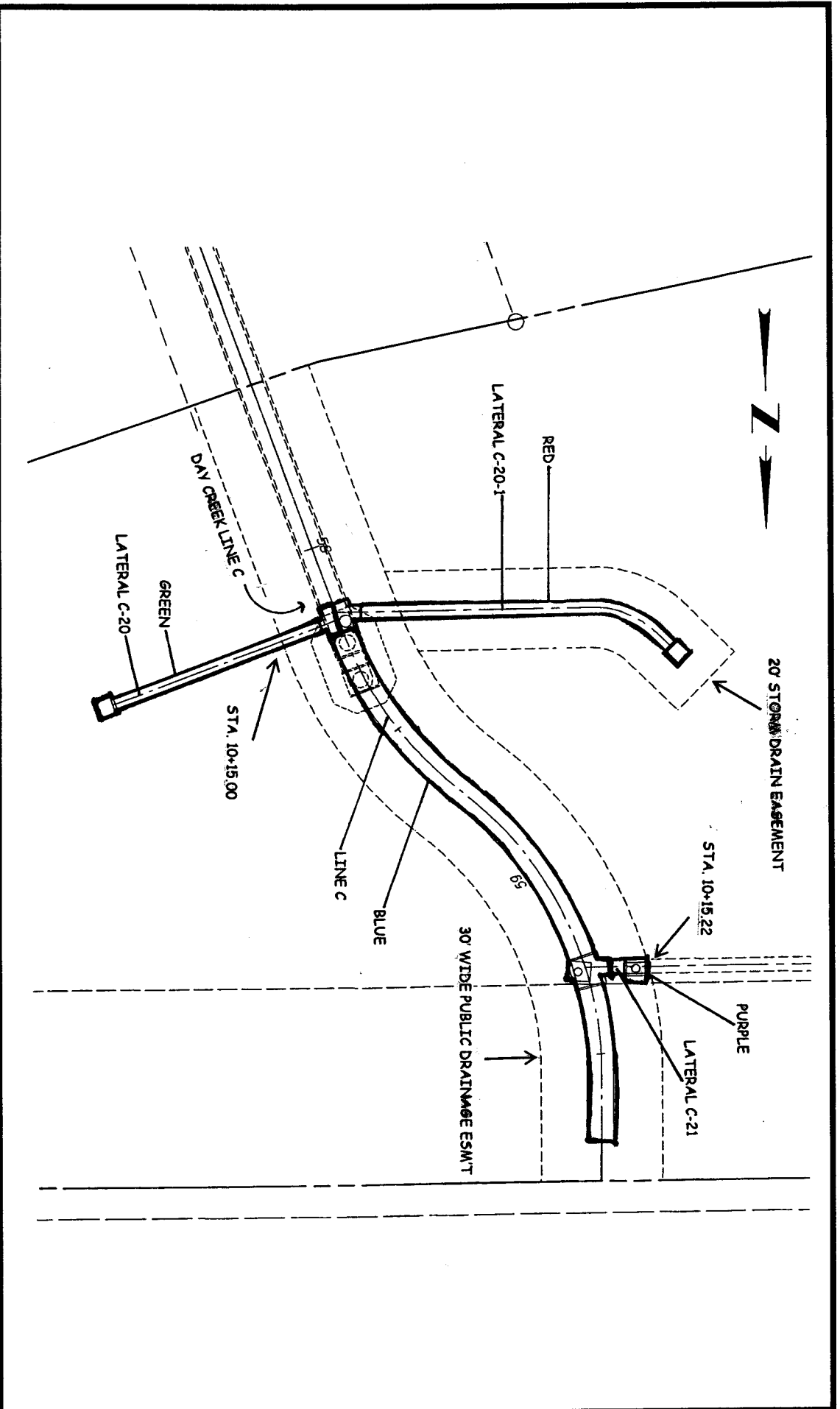
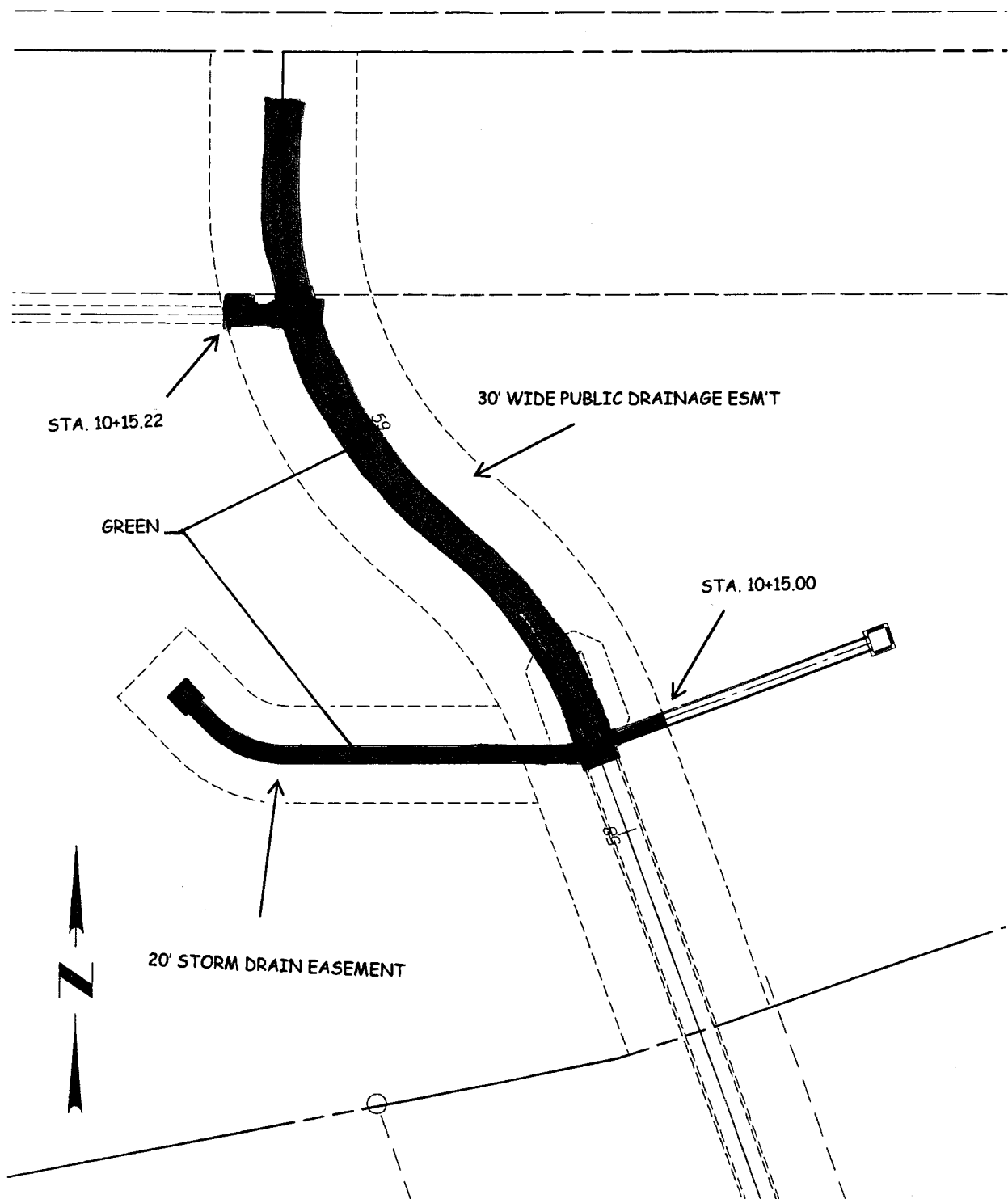


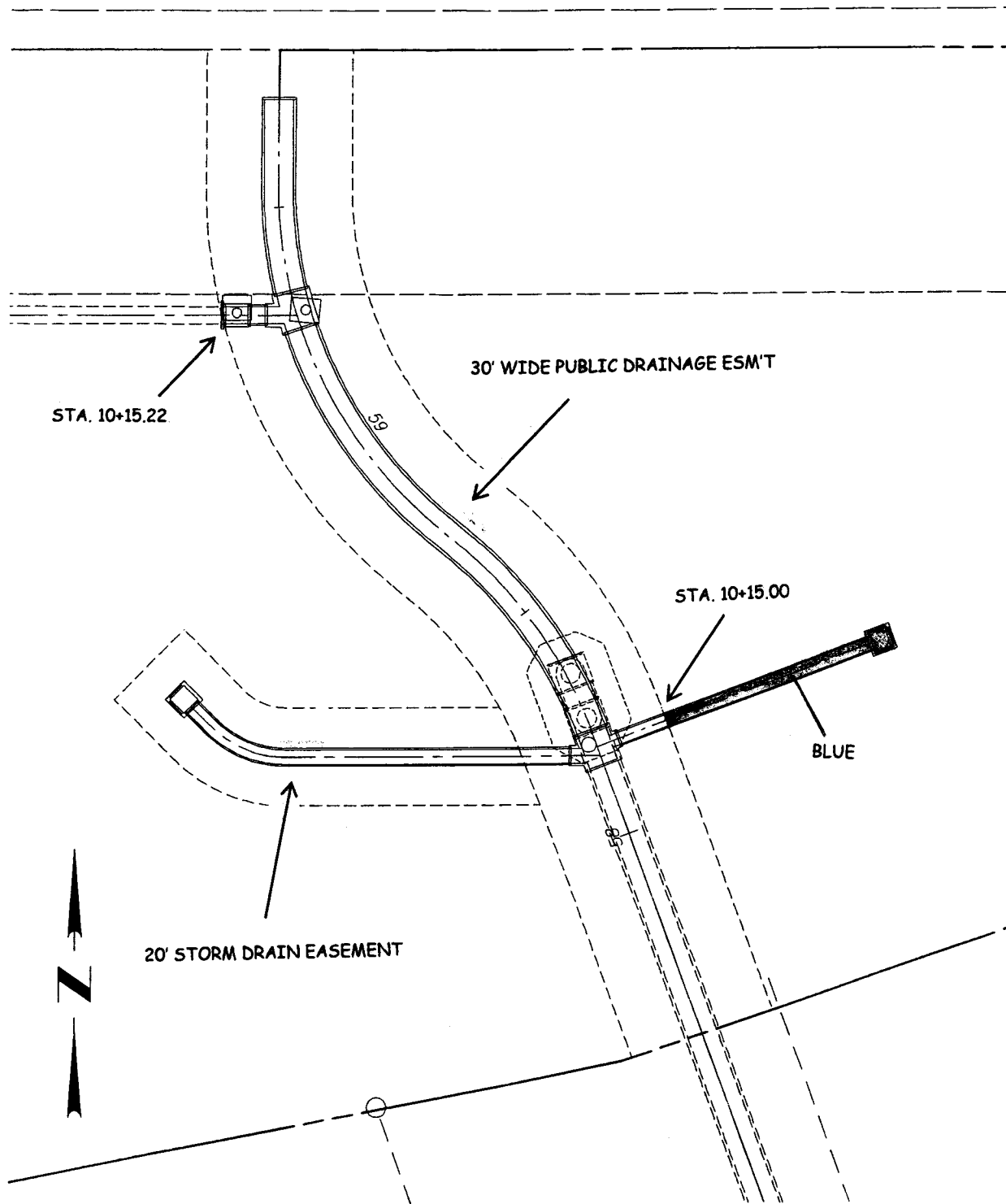
Exhibit B



DISTRICT DRAINAGE FACILITIES

Cooperative Agreement
Day Creek MDP Line C Stage 2
Project Number: 1-0-00241-02

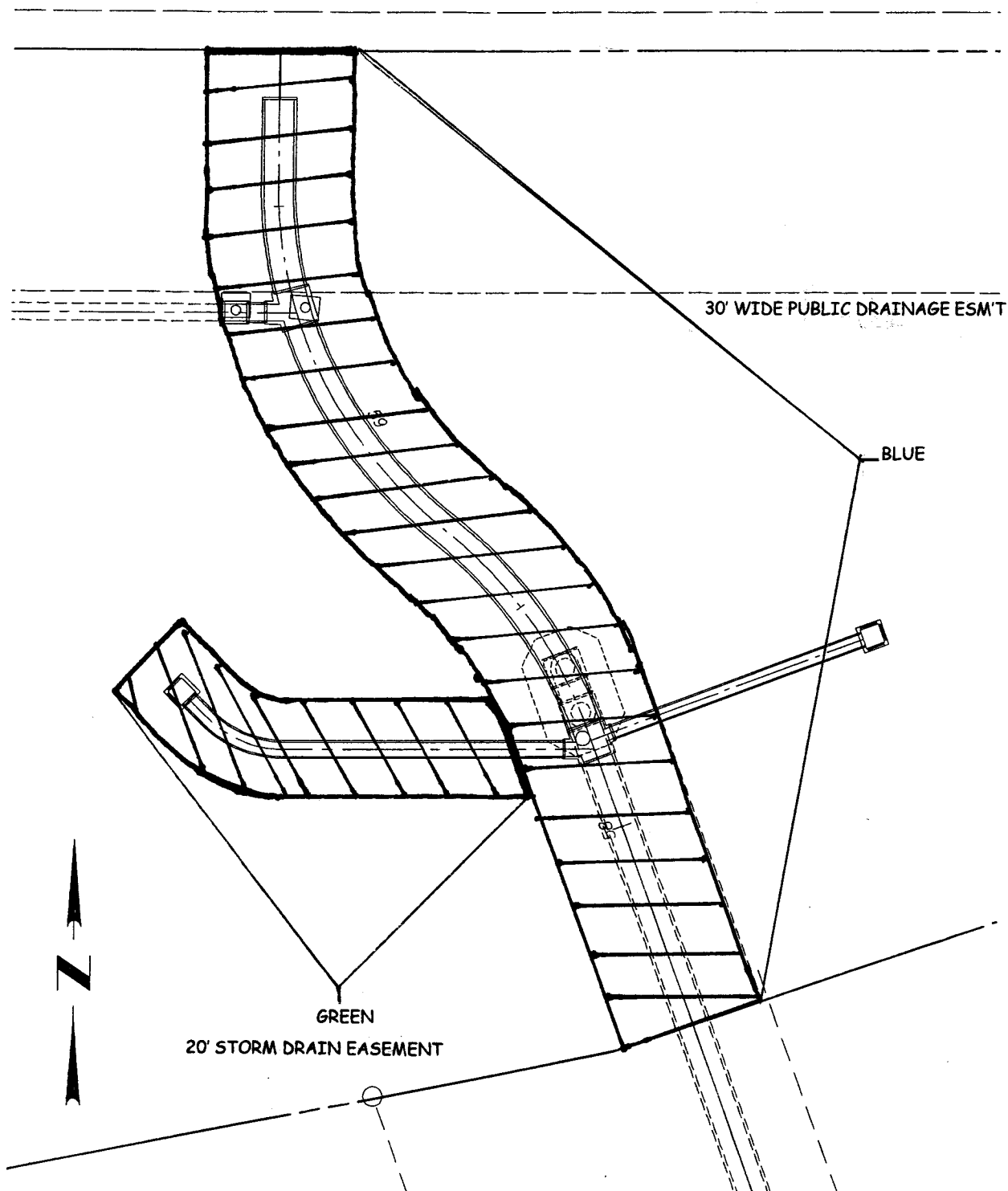
Exhibit B



AGENCY DRAINAGE FACILITIES

Cooperative Agreement
Day Creek MDP Line C Stage 2
Project Number: 1-0-00241-02
2/2

Exhibit C



Cooperative Agreement
Day Creek MDP Line C Stage 2
Project Number: 1-0-00241-02
1/1