

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

111B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
June 12, 2012

**SUBJECT:** Salt Creek – Audie Murphy Line M1 (Tract No. 31391-1)  
Project No. 4-0-00295  
Cooperative Agreement  
District 3/District 5

**RECOMMENDED MOTION:**

1. Approve the Cooperative Agreement (Agreement) between the District, the City of Menifee (City) and Sutter Mitland 01 LLC (Developer); and
2. 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 improvements, required as a condition for approval of Tract No. 31391-1, are to be constructed by the Developer. The Agreement is necessary to provide for District and City inspection of the flood control improvements.

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:
	Current F.Y. County Cost:	N/A	Budget Adjustment:
	Annual Net District Cost:	N/A	For Fiscal Year:

<b>SOURCE OF FUNDS:</b>	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

**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:** June 12, 2012  
**xc:** Flood

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

**Prev. Agn. Ref.:** | **District:** 3<sup>rd</sup>/5<sup>th</sup> | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**11.1**

FORM APPROVED COUNTY COUNSEL 1/12  
BY: NEAL R. KIPNIS DATE

Dept't Recomm.:  Consent  Policy   
Per Exec. Ofc.:  Consent  Policy

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

**SUBJECT:** Salt Creek – Audie Murphy Line M1 (Tract No. 31391-1)  
Project No. 4-0-00295  
Cooperative Agreement  
District 3/District 5

**SUBMITTAL DATE:** June 12, 2012  
**Page 2**

**BACKGROUND (continued):**

Upon completion of construction, the Developer will continue to own, operate and maintain said improvements until such time as District and City assume their respective ownership and responsibilities for operation and maintenance of improvements pursuant to the terms and conditions of the Agreement.

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

**FINANCIAL:**

The Developer is funding all costs associated with the construction and inspection of said improvements. Future operation and maintenance costs will accrue to the District.

TT:blj  
P8/145215

COOPERATIVE AGREEMENT  
Salt Creek – Audie Murphy Line M1  
(Tract No. 31391-1)  
Project No. 4-0-00295

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3           The RIVERSIDE COUNTY FLOOD CONTROL AND WATER  
4 CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE,  
5 hereinafter called "CITY", and SUTTER MITLAND 01 LLC, a Delaware limited liability  
6 company, hereinafter called "DEVELOPER", hereby agree as follows:  
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RECITALS

8  
9           A. DEVELOPER owns certain real property within tentative Tract No. 31391-  
10 1 located in the City of Menifee; and

11           B. Tract No. 31391-1 is an integral part of Tract Nos. 31391, 31391-2, 31391-  
12 3 and 31391-4. Together, Tract Nos. 31391, 31391-1, 31391-2, 31391-3 and 31391-4 are  
13 hereinafter called "PROPERTY". The initial processing of land-use entitlements and associated  
14 improvement plans for said PROPERTY commenced under the authority of the County of  
15 Riverside. Following CITY'S incorporation in October 2008, the processing of these land-use  
16 entitlements and associated improvement plans was assumed by CITY. Final subdivision maps  
17 for the subject PROPERTY were approved by CITY on or about June 8, 2011 and recorded by  
18 the Office of the Riverside County Clerk-Recorder on or about June 16, 2011; and  
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20  
21           C. Pursuant to the conditions for approval for the subdivision and subsequent  
22 development of PROPERTY, DEVELOPER and/or others have constructed or caused to be  
23 constructed certain improvements including flood control and drainage facilities without  
24 seeking DISTRICT inspection of such construction; and  
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1 D. Pursuant to the conditions for approval for Tract No. 31391-1,  
2 DEVELOPER must construct certain flood control facilities in order to provide flood protection  
3 and drainage for DEVELOPER'S planned development; and

4 E. The required flood control facilities include construction of (i)  
5 approximately 1,700 lineal feet of underground storm drain system, hereinafter called "LINE  
6 M1", as shown on District Drawing No. 4-0945 (Sheets 7-11; approved April 2007), and (ii)  
7 associated catch basins, laterals and connector pipes, hereinafter called "APPURTENANCES".  
8 Together LINE M1 and APPURTENANCES are hereinafter called "PROJECT"; and

9 F. DEVELOPER has proceeded with construction of a segment of LINE M1  
10 without entering into a cooperative agreement with DISTRICT and without seeking DISTRICT  
11 inspection of such construction. The constructed segment of LINE M1 is hereinafter called  
12 "LINE M1-STAGE 1"; and

14 G. It is the intent of DISTRICT, CITY and DEVELOPER that this Agreement  
15 shall principally address matters pertaining to the design, construction, inspection, and operation  
16 and maintenance of PROJECT only; and

18 H. DEVELOPER and DISTRICT desire CITY to accept ownership and  
19 responsibility for the operation and maintenance of APPURTENANCES and segments of LINE  
20 M1 that are 36-inch or smaller in diameter, hereinafter together called "CITY DRAINAGE  
21 FACILITIES"; and

22 I. DEVELOPER and CITY desire DISTRICT to accept ownership and  
23 responsibility for the operation and maintenance of segments of LINE M1 that are larger than  
24 36-inch in diameter, hereinafter called "DISTRICT DRAINAGE FACILITY"; and

26 J. DISTRICT is willing to (i) review and approve, if appropriate,  
27 DEVELOPER'S submittals required under the terms of this Agreement, (ii) inspect the  
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1 construction of PROJECT, (iii) inspect the constructed LINE M1-STAGE 1 to the extent  
2 possible under existing conditions, and (iv) accept ownership and responsibility for the  
3 operation and maintenance of DISTRICT DRAINAGE FACILITY in accordance with the  
4 provisions of this Agreement, provided DEVELOPER (i) complies with this Agreement, (ii)  
5 pays DISTRICT the amounts specified herein to cover DISTRICT'S review of all items required  
6 under the terms of this Agreement and construction inspection and administrative costs, (iii)  
7 satisfactorily submits all items required under the terms of this Agreement, (iv) constructs  
8 PROJECT in accordance with plans and specifications approved by DISTRICT and the  
9 Riverside County Transportation Department, (v) obtains all necessary permits, regulatory  
10 permits, licenses and rights of entry as set forth herein, and (vi) accepts ownership and  
11 responsibility for the operation and maintenance of PROJECT following completion of  
12 PROJECT construction until such time as (a) CITY accepts ownership and responsibility for the  
13 operation and maintenance of CITY DRAINAGE FACILITIES, (b) CITY obtains and conveys  
14 to DISTRICT the necessary rights of way for the inspection, operation and maintenance of  
15 DISTRICT DRAINAGE FACILITY as set forth herein, and (c) DISTRICT and CITY accept  
16 respective ownership and responsibility for the operation and maintenance of certain flood  
17 control and drainage facilities previously constructed by DEVELOPER and/or others in  
18 association with PROPERTY under the terms of a separate Cooperative Agreement; and  
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21 K. CITY is willing to (i) review and approve DEVELOPER'S submittals  
22 required under the terms of this Agreement, (ii) inspect PROJECT construction, (iii) accept and  
23 hold faithful performance and payment bonds submitted by DEVELOPER for PROJECT, (iv)  
24 accept the Irrevocable Offers furnished by DEVELOPER and, as requested by DISTRICT, grant  
25 DISTRICT all rights necessary to inspect, operate and maintain DISTRICT DRAINAGE  
26 FACILITY within CITY rights of way, and (v) accept ownership and responsibility for the  
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1 operation and maintenance of CITY DRAINAGE FACILITIES upon DISTRICT acceptance of  
2 DISTRICT DRAINAGE FACILITY, provided PROJECT is constructed in accordance with  
3 plans and specifications approved by DISTRICT and the Riverside County Transportation  
4 Department.

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

6 SECTION I

7 DEVELOPER shall:

8  
9 1. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic  
10 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by  
11 DISTRICT to cover DISTRICT'S costs associated with (i) the review and implementation of  
12 DEVELOPER'S submittals furnished pursuant to the terms of this Agreement, (ii) the review  
13 and approval of right of way and conveyance documents, and (iii) the processing and  
14 administration of this Agreement (the "Administrative Account").

15 2. Deposit with DISTRICT (Attention: Business Office - Accounts  
16 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT  
17 construction as set forth in Section I.6. herein, the estimated cost of providing construction  
18 inspection for PROJECT, in an amount as determined and approved by DISTRICT in  
19 accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any  
20 amendments thereto, based upon the bonded value of PROJECT. DISTRICT construction  
21 inspection services shall be performed on a fee for service basis. If at any time the cost of  
22 providing inspection services exceeds the deposit, or is anticipated by DISTRICT to exceed the  
23 amount deposited, DEVELOPER shall pay such additional amount(s), as deemed reasonably  
24 necessary by DISTRICT to complete inspection of PROJECT, within thirty (30) days after  
25 receipt of billing from DISTRICT.  
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1           3.    Secure, at their sole cost and expense, all necessary licenses, agreements,  
2 permits, rights of entry, easements and rights of way as may be needed for the construction,  
3 inspection, operation and maintenance of PROJECT. DEVELOPER shall furnish DISTRICT,  
4 at the time of providing written notice to DISTRICT of the start of construction as set forth in  
5 Section I.6. with sufficient evidence of DEVELOPER having secured such necessary licenses,  
6 agreements, permits, rights of entry, easements and rights of way, as determined and approved  
7 by DISTRICT.

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

13           5.    Provide CITY, at the time of providing written notice to DISTRICT of the  
14 start of construction as set forth in Section I.6., with faithful performance and payment bonds,  
15 each in the amount of one hundred percent (100%) of the estimated cost for construction of  
16 PROJECT as determined by DISTRICT. The surety, amount and form of the bonds shall be  
17 subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect  
18 until PROJECT is accepted by DISTRICT and CITY as complete; at which time the bond  
19 amount may be reduced to ten percent (10%) for a period of one year to guarantee against any  
20 defective work, labor or materials.

21           6.    Notify DISTRICT in writing (Attention: Administrative Services Section),  
22 at least twenty (20) days prior to the start of construction of PROJECT. Construction shall not  
23 begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has issued to  
24 DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence  
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1 construction of PROJECT. DEVELOPER'S failure to comply with this paragraph, shall be  
2 deemed a material breach of this Agreement and shall authorize and constitute authority for  
3 DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is  
4 unable to perform its obligations hereunder, nor to accept responsibility for ownership,  
5 operation and maintenance of DISTRICT DRAINAGE FACILITY due, either in whole or in  
6 part, to said breach of this Agreement.

7           7. Furnish all technical and construction related documentation including but  
8 not limited to contract documents, pipe certification reports, soil compaction reports,  
9 construction inspection records, and insurance documentation for LINE M1-STAGE 1 required  
10 under the terms of this Agreement and shall submit to DISTRICT for its review and approval.

11           8. Furnish DISTRICT, as early as possible but prior to requesting any final  
12 inspection of PROJECT, with a complete tabulation of all contractors and subcontractors  
13 (including the corresponding license number and license classification of each) who performed  
14 work on LINE M1-STAGE 1 and further identify any discrete LINE M1-STAGE 1 components  
15 which each contractor or subcontractor constructed.

16           9. Furnish DISTRICT, as early as possibly but prior to requesting any final  
17 inspection of PROJECT, a construction schedule which shall show the order and dates in which  
18 DEVELOPER'S contractor(s) constructed LINE M1-STAGE 1, including actual start and  
19 completion dates.

20           10. Grant DISTRICT, by execution of this Agreement, the right to enter upon  
21 DEVELOPER'S property where necessary and convenient for the purpose of gaining access to,  
22 and performing inspection service for, the construction of PROJECT.

23           11. Obtain and provide DISTRICT, at the time of providing written notice to  
24 DISTRICT of the start of construction of PROJECT as set forth in Section I.6., with duly  
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1 executed Irrevocable Offers(s) of Dedication to the public for flood control and drainage  
2 purposes, including ingress and egress, for the rights of way deemed necessary by DISTRICT  
3 for the construction, inspection, operation and maintenance of DISTRICT DRAINAGE  
4 FACILITY, as shown in concept on Exhibit "A" attached hereto and made a part hereof. The  
5 Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and CITY and  
6 shall be executed by all legal and equitable owners of the property described in the offer(s).

7           12.   Furnish DISTRICT and CITY, when submitting the Irrevocable Offer(s) of  
8 Dedication as set forth in Section I.11., with Preliminary Reports on Title dated not more than  
9 thirty (30) days prior to date of submission of all the property described in the Irrevocable  
10 Offer(s) of Dedication.

11           13.   Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
12 the start of construction as set forth in Section I.6., with a complete list of all contractors and  
13 subcontractors to be performing work on PROJECT, including the corresponding license  
14 number and license classification of each. At such time, DEVELOPER shall further identify in  
15 writing its designated superintendent for PROJECT construction.

16           14.   Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
17 the start of construction as set forth in Section I.6., a construction schedule which shall show the  
18 order and dates in which DEVELOPER'S contractor proposes to carry on the various parts of  
19 work, including estimated start and completion dates. As construction of PROJECT progresses,  
20 DEVELOPER shall update said construction schedule as requested by DISTRICT.

21           15.   [This Section Intentionally Left Blank].

22           16.   [This Section Intentionally Left Blank].  
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1 17. Comply with all Cal/OSHA safety regulations including regulations  
2 concerning confined space and maintain a safe working environment for DEVELOPER,  
3 DISTRICT and CITY employees on the site.

4 18. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
5 the start of construction as set forth in Section I.6., a confined space entry procedure specific to  
6 PROJECT. The procedure shall comply with requirements contained in California Code of  
7 Regulations, Title 8 Section 5158, Other Confined Space Operations, Section 5157, Permit  
8 Required Confined Space and District Confined Space Procedures, SOM-18. The procedure  
9 shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed.

10 19. Commencing on the date notice is given pursuant to Section I.6. and  
11 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITY and CITY accepts  
12 CITY DRAINAGE FACILITIES for ownership, operation and maintenance:  
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- 14 (a) Provide and maintain or cause its contractor(s) to provide and  
15 maintain comprehensive liability insurance coverage which shall  
16 protect DEVELOPER from claim for damages for personal injury,  
17 including accidental and wrongful death, as well as from claims for  
18 property damage which may arise from DEVELOPER'S construction  
19 of PROJECT or the performance of its obligations hereunder, whether  
20 such construction or performance be by DEVELOPER, by any of its  
21 contractors, subcontractors, or by anyone employed directly or  
22 indirectly by any of them. Such insurance shall name DISTRICT and  
23 CITY as additional insureds with respect to this Agreement and the  
24 obligations of DEVELOPER hereunder. Such insurance shall provide  
25 for limits of not less than two million dollars (\$2,000,000) per  
26 occurrence.  
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1 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),  
2 who shall be authorized by the California Department of Insurance to  
3 transact the business of insurance in the State of California, to furnish  
4 DISTRICT and CITY at the time of providing written notice to  
5 DISTRICT of the start of construction as set forth in Section I.6., with  
6 certificate(s) of insurance and applicable policy endorsements  
7 showing that such insurance is in full force and effect and that  
8 DISTRICT and CITY are named as additional insureds with respect  
9 to this Agreement and the obligations of DEVELOPER hereunder.  
10 Further, said certificate(s) shall state that the issuing company shall  
11 give DISTRICT and CITY sixty (60) days written notice in the event  
12 of any cancellation, termination, non-renewal or reduction in  
13 coverage of the policies evidenced by the certificate(s). In the event  
14 of any such cancellation, termination, non-renewal or reduction in  
15 coverage, DEVELOPER shall, forthwith, secure replacement  
16 insurance meeting the provisions of this paragraph.

17 Failure to maintain the insurance required by this paragraph shall be  
18 deemed a material breach of this Agreement and shall authorize and constitute authority for  
19 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section  
20 IV.4

21 20. [This Section Intentionally Left Blank.]

22 21. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole  
23 cost and expense in accordance with plans and specifications approved by DISTRICT and the  
24 Riverside County Transportation Department.

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

3 23. Accept ownership and sole responsibility for the operation and maintenance  
4 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation  
5 and maintenance of DISTRICT DRAINAGE FACILITY and CITY accepts ownership and  
6 responsibility for operation and maintenance of CITY DRAINAGE FACILITIES. Further, it is  
7 mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership and  
8 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY,  
9 PROJECT shall be in a satisfactorily maintained condition as mutually agreed by DISTRICT  
10 and CITY.  
11

12 24. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
13 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable  
14 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees  
15 shall be computed as costs and included in any judgment rendered.  
16

17 25. Upon completion of construction of PROJECT but prior to DISTRICT  
18 acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance,  
19 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered  
20 in the State of California, shall provide DISTRICT a redlined "RECORD DRAWING" copy of  
21 PROJECT plans. After DISTRICT approval of the redlined RECORD DRAWING,  
22 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes  
23 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,  
24 stamp and sign the original PROJECT plans "RECORD DRAWING".  
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26 26. Ensure that all work performed pursuant to this Agreement by  
27 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and  
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1 regulations, including but not limited to all applicable provisions of the Labor Code, Business  
2 and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs  
3 associated with compliance with applicable laws and regulations.

#### 4 SECTION II

5 DISTRICT shall:

6 1. Upon execution of this Agreement, record or cause to be recorded, a copy  
7 of this Agreement in the Official Records of the Riverside County Recorder.

8 2. Review and, as it deems appropriate, approve the submittals furnished by  
9 DEVELOPER pursuant to the terms of this Agreement prior to commencing any final  
10 inspection of LINE M1-STAGE 1.

11 3. Provide CITY an opportunity to review and, as appropriate, approve  
12 submittals furnished by DEVELOPER pursuant to the terms of this Agreement prior to  
13 DISTRICT'S final approval.

14 4. To the extent possible under the prevailing conditions, inspect LINE M1-  
15 STAGE 1 as deemed necessary and appropriate by DISTRICT.

16 5. Inspect DISTRICT DRAINAGE FACILITY construction.

17 6. Keep an accurate accounting of all DISTRICT costs associated with (i) the  
18 review and implementation of DEVELOPER'S submittals furnished pursuant to the terms of  
19 this Agreement, (ii) the review and approval of right of way and conveyance documents, and  
20 (iii) the processing and administration of this Agreement (the "Administrative Account").

21 7. Keep an accurate accounting of all DISTRICT construction inspection  
22 costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE  
23 FACILITY as being complete, submit a final cost statement to DEVELOPER. If the aggregate  
24 of DEVELOPER'S deposits submitted pursuant to Section I.2. of this Agreement exceeds such  
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1 costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after  
2 DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as being complete.

3 8. Accept ownership and sole responsibility for the operation and maintenance  
4 of DISTRICT DRAINAGE FACILITY upon (i) DISTRICT and CITY acceptance of PROJECT  
5 construction as being complete, (ii) DISTRICT determination, through its review of all  
6 submittals for LINE M1-STAGE 1 required under the terms of this Agreement and its  
7 inspection of LINE M1-STAGE 1 as appropriate, that LINE M1-STAGE 1 has been constructed  
8 in substantial conformance with the plans and specifications approved by DISTRICT and the  
9 Riverside County Transportation Department, (iii) DISTRICT determination that no defects in  
10 workmanship or materials are known to exist within LINE M1-STAGE 1 or that any known  
11 defects have been corrected at the sole cost and expense of DEVELOPER, (iv) DISTRICT  
12 receipt of stamped and signed RECORD DRAWING as set forth in Section I.25., (v)  
13 DISTRICT'S sole determination that DISTRICT DRAINAGE FACILITY is in a satisfactorily  
14 maintained condition, (vi) all rights of way and easements necessary for the operation and  
15 maintenance of DISTRICT DRAINAGE FACILITY are conveyed to DISTRICT, (vii) CITY  
16 acceptance of CITY DRAINAGE FACILITIES for ownership, operation and maintenance, and  
17 (viii) both DISTRICT and CITY acceptance of their respective ownership and responsibility for  
18 the operation and maintenance of certain flood control and drainage facilities previously  
19 constructed by DEVELOPER and/or others in association with PROPERTY under the terms of  
20 a separate Cooperative Agreement.  
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23 9. Provide CITY with a reproducible duplicate copy of RECORD DRAWING  
24 PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as being  
25 complete.  
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SECTION III

1 CITY shall:

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3 1. Review and, as appropriate, approve submittals furnished by DEVELOPER  
4 pursuant to the terms of this Agreement.

5 2. Accept the faithful performance and payment bonds submitted by  
6 DEVELOPER as set forth in Section I.5. of this Agreement and hold said bonds as provided  
7 therein.

8 3. Accept, as requested by DISTRICT, the Irrevocable Offers of Dedication  
9 furnished by DEVELOPER pursuant to this Agreement.

10 4. Grant DISTRICT, by execution of this Agreement, the necessary rights to  
11 operate and maintain DISTRICT DRAINAGE FACILITY within CITY held rights of way and  
12 easements.

13 5. Inspect construction of CITY DRAINAGE FACILITIES.

14 6. Accept ownership and sole responsibility for the operation and maintenance  
15 of CITY DRAINAGE FACILITIES upon (i) DISTRICT and CITY acceptance of PROJECT  
16 construction as being complete, (ii) DISTRICT acceptance of DISTRICT DRAINAGE  
17 FACILITY for ownership, operation and maintenance, and (iii) both DISTRICT and CITY  
18 acceptance of their respective ownership and responsibility for the operation and maintenance of  
19 certain flood control and drainage facilities previously constructed by DEVELOPER and/or  
20 others in association with PROPERTY under the terms of a separate Cooperative Agreement.

21 7. Not grant any occupancy permits for any units within any portion of Tract  
22 No. 31391-1, or any phase thereof, until construction of PROJECT is complete, unless  
23 otherwise approved in writing by DISTRICT.  
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1 8. Upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as  
2 being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings  
3 and covers located within CITY rights of way which must be performed at such time(s) that the  
4 finished grade along and above the underground portions of PROJECT are improved, repaired,  
5 replaced or changed. It being further understood and agreed that any such adjustments shall be  
6 performed at no cost to DISTRICT.

7 SECTION IV

8 It is further mutually agreed:

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

12 2. DEVELOPER shall not request DISTRICT to accept any portion or  
13 portions of DISTRICT DRAINAGE FACILITY prior to (i) the completion of PROJECT as  
14 solely determined by DISTRICT, and (ii) DISTRICT and CITY acceptance of their respective  
15 ownership and responsibility for the operation and maintenance of certain flood control and  
16 drainage facilities previously constructed by DEVELOPER and/or others in association with  
17 PROPERTY under the terms of a separate Cooperative Agreement.

18 3. CITY and DEVELOPER personnel may observe and inspect all work being  
19 done on DISTRICT DRAINAGE FACILITY but shall provide any comments to DISTRICT  
20 personnel who shall be solely responsible for all quality control communications with the  
21 DEVELOPER'S contractor(s) during the construction of PROJECT.

22 4. DEVELOPER shall complete construction of PROJECT within twelve (12)  
23 consecutive months after execution of this Agreement and within one hundred eighty (180)  
24 consecutive calendar days after commencing work on PROJECT. It is expressly understood  
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1 that since time is of the essence in this Agreement, failure of DEVELOPER to perform the work  
2 within the agreed upon time shall constitute authority for DISTRICT to perform the remaining  
3 work and require DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In  
4 which case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

5           5. Prior to DISTRICT acceptance of ownership and responsibility for the  
6 operation and maintenance of DISTRICT DRAINAGE FACILITY, DISTRICT DRAINAGE  
7 FACILITY shall be in a satisfactorily maintained condition as solely determined by DISTRICT.  
8 If, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITY is not in an  
9 acceptable condition, corrections will be made at sole expense of DEVELOPER.  
10

11           6. PROJECT construction work shall be on a five (5) day, forty (40) hour  
12 work week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless  
13 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work  
14 more than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a  
15 written request for permission from DISTRICT to work the additional hours. The request shall  
16 be submitted to DISTRICT at least seventy-two (72) hours prior to the requested additional  
17 work hours and state the reasons for the overtime and the specific time frames required. The  
18 decision of granting permission for overtime work shall be made by DISTRICT at its sole  
19 discretion and shall be final. If permission is granted by DISTRICT, DEVELOPER will be  
20 charged the cost incurred at the overtime rates for additional inspection time required in  
21 connection with the overtime work in accordance with Ordinance Nos. 671 and 749, including  
22 any amendments thereto, of the County of Riverside.  
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24           7. DEVELOPER shall indemnify and hold harmless DISTRICT and CITY  
25 (including their agencies, districts, special districts and departments, their respective directors,  
26 officers, Board of Supervisors, elected and appointed officials, employees, agents and  
27  
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1 representatives) from any liability, claim, damage, proceeding or action, present or future, based  
2 upon, arising out of or in any way relating to DEVELOPER'S (including their officers,  
3 employees, subcontractors and agents) actual or alleged acts or omissions related to this  
4 Agreement, performance under this Agreement, or failure to comply with the requirements of  
5 this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)  
6 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth  
7 Amendment of the United States Constitution or any other law, ordinance or regulation caused  
8 by the diversion of waters from the natural drainage patterns or the discharge of drainage within  
9 or from PROJECT; or (d) any other element of any kind or nature whatsoever.  
10

11 DEVELOPER shall defend, at its sole expense, including all costs and fees  
12 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
13 awards), DISTRICT and CITY (including their agencies, districts, special districts and  
14 departments, their respective directors, officers, Board of Supervisors, elected and appointed  
15 officials, employees, agents and representatives) in any claim, proceeding or action for which  
16 indemnification is required.  
17

18 With respect to any of DEVELOPER'S indemnification requirements,  
19 DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and shall  
20 have the right to adjust, settle or compromise any such claim, proceeding or action without the  
21 prior consent of DISTRICT or CITY; provided, however, that any such adjustment, settlement  
22 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S  
23 indemnification obligations to DISTRICT or CITY.  
24

25 DEVELOPER'S indemnification obligations shall be satisfied when  
26 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal (or  
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1 similar document) relieving DISTRICT or CITY from any liability for the claim, proceeding or  
 2 action involved.

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

6 In the event there is conflict between this section and California Civil Code  
 7 Section 2782, this section shall be interpreted to comply with California Civil Code Section  
 8 2782. Such interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT  
 9 and CITY to the fullest extent allowed by law.

10  
 11 8. Any waiver by DISTRICT or by CITY of any breach of any one or more of  
 12 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
 13 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
 14 require exact, full and complete compliance with any terms of this Agreement shall not be  
 15 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from  
 16 enforcement hereof.

17  
 18 9. This Agreement is to be construed in accordance with the laws of the State  
 19 of California.

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

22 RIVERSIDE COUNTY FLOOD CONTROL  
 23 AND WATER CONSERVATION DISTRICT  
 24 1995 Market Street  
 Riverside, CA 92501

CITY OF MENIFEE  
 29714 Haun Road  
 Menifee, CA 92586  
 Attn: City Engineer

25 SUTTER MITLAND 01, LLC  
 26 3090 Bristol Street, Suite 220  
 Costa Mesa, CA 92626  
 Attn: Dennis J. Chapman

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

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

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

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

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

23           16. This Agreement is intended by the parties hereto as a final expression of  
24 their understanding with respect to the subject matter hereof and as a complete and exclusive  
25

1 statement of the terms and conditions thereof and supersedes any and all prior and  
2 contemporaneous agreements and understandings, oral or written, in connection therewith. This  
3 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

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June 12, 2012

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By Warren D. Williams  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS  
County Counsel  
By Neal Kipnis  
NEAL KIPNIS  
Deputy County Counsel

KECIA HARPER-IHEM  
Clerk of the Board  
By Kecia Harper-Ihem  
Deputy

(SEAL)

Cooperative Agreement: TR 31391-1  
TT:blj  
3/6/12

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

By Don Allison  
DON ALLISON  
Director of Public Works

By John Denver  
JOHN DENVER  
Mayor

ATTEST:

KATHY BENNETT  
City Clerk

By Joe Fletcher  
JOE FLETCHER  
City Attorney

By Kenneth

(SEAL)

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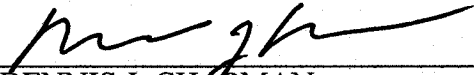
Cooperative Agreement: TR 31391-1  
TT:blj  
3/6/12

**SUTTER MITLAND 01 LLC,**  
a Delaware limited liability company

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By   
RICHARD T. WHITNEY  
President

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

By   
DENNIS J. CHAPMAN  
Vice President

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

Cooperative Agreement: TR 31391-1  
TT:blj  
3/6/12



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of ORANGE

On March 29, 2012 before me, Catherine L. Marsh, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Dennis J. Chapman and Rick T. Whitney  
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: [Handwritten 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: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**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: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

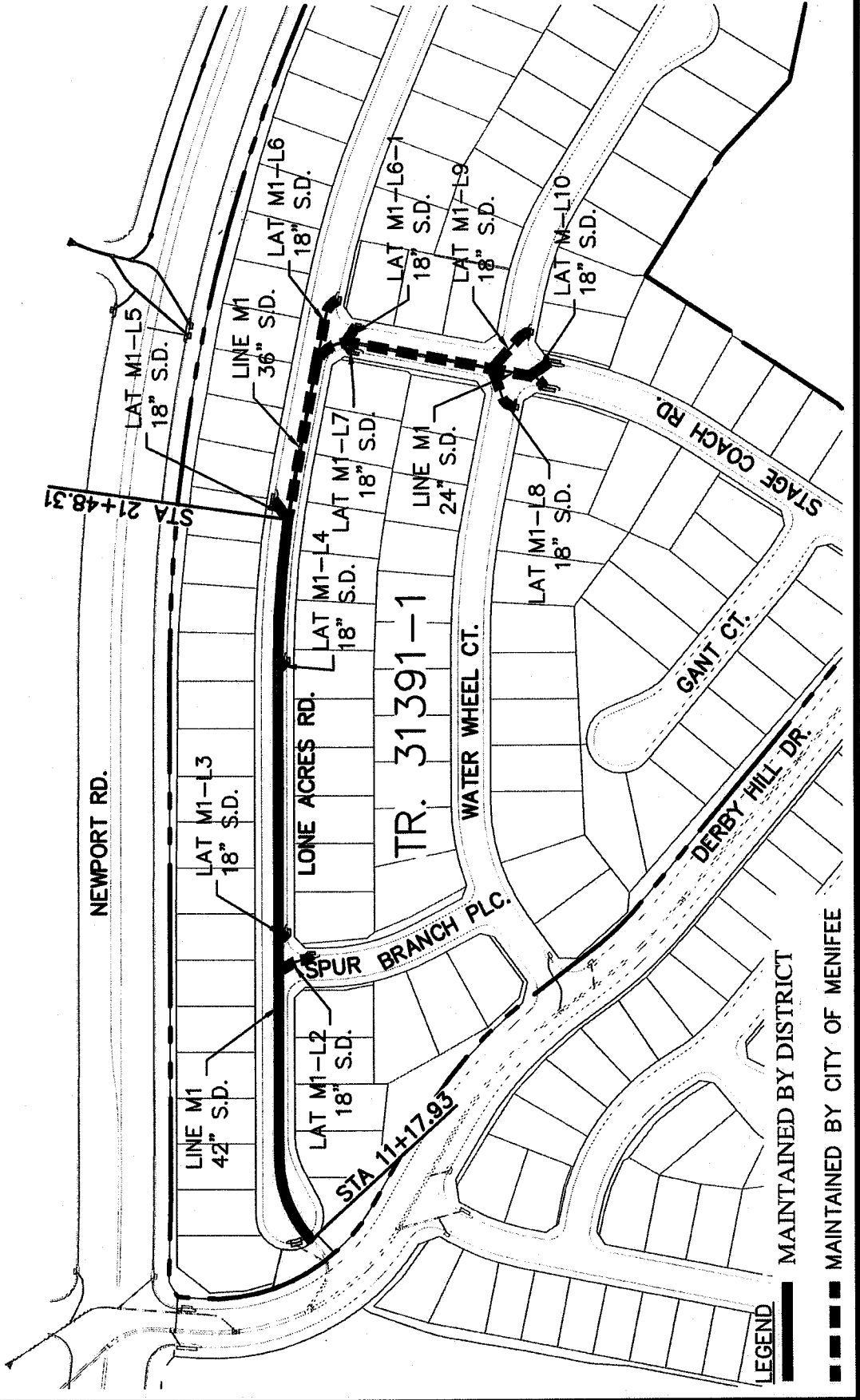
Signer's Name: \_\_\_\_\_

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

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

**EXHIBIT A**



LEGEND

MAINTAINED BY DISTRICT

MAINTAINED BY CITY OF MENIFEE