

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

210B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
October 2, 2012

**SUBJECT:** March Business Center Storm Drains and Detention Basins – Line FF Realignment, Stage 1  
Project No. 4-0-00530 (Tract No. 30857-1)  
Cooperative Agreement  
District One/District One

**RECOMMENDED MOTION:**

Approve the Cooperative Agreement between the District, March Joint Powers Authority (MJPA), and Sun Life Assurance Company of Canada (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 a portion of the District's Line FF, Stage 1 will be relocated by the Developer and inspected, operated and maintained by the District.

Continued on Page 2

TT:bjj

**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 |

|                             |   |                          |
|-----------------------------|---|--------------------------|
| <b>SOURCE OF FUNDS:</b> N/A | <b>Positions To Be Deleted Per A-30</b> | <input type="checkbox"/> |
|                             | <b>Requires 4/5 Vote</b>                | <input type="checkbox"/> |

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

APPROVE

BY: Michael R. Shetler  
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 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:** October 2, 2012  
**xc:** Flood

Kecia Harper-Ihem  
Clerk of the Board  
By: Kecia Harper-Ihem  
Deputy

11.1

Prev. Agn. Ref.:

District: 1st/1st

Agenda Number:

FORM APPROVED COUNTY COUNSEL  
BY: Neil R. Kipnis DATE: 10/3/12

Departmental Concurrence

ATTACHMENTS FURNISHED WITH THE CLERK OF THE BOARD

Per Exec. Ofc.:

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

**SUBJECT:** March Business Center Storm Drains and Detention Basins - Line FF Realignment, Stage 1  
Project No. 4-0-00530 (Tract No. 30857-1)  
Cooperative Agreement  
District One/District One

**SUBMITTAL DATE:** October 2, 2012

**Page 2**

**BACKGROUND (continued):**

The relocation is necessary to accommodate Developer's planned development. The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the referenced facility. Upon completion of the facility relocation and construction, the District will assume ownership, operation and maintenance of the mainline storm drain.

The Agreement is also necessary to formalize the transfer of ownership and responsibility of the soon-to-be abandoned portion of the District's existing Line FF that is located within the Developer's property MJPA's rights-of-way from the District to Developer and MJPA, respectively.

County Counsel has approved the Agreement as to legal form. The Developer and MJPA have executed the Agreement.

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

CLC:blj

COOPERATIVE AGREEMENT

March Business Center Storm Drains and Detention Basins - Line FF Realignment, Stage 1  
Project No. 4-0-00530  
(Tract No. 30857-1)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the MARCH JOINT POWERS AUTHORITY, hereinafter called "MJPA", and SUN LIFE ASSURANCE COMPANY OF CANADA, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DISTRICT, MJPA, and LNR RIVERSIDE, LLC, hereinafter called "PREVIOUS DEVELOPER", entered into that specific Cooperative Agreement dated November 16, 2004, hereinafter referred to as "PREVIOUS AGREEMENT", requiring PREVIOUS DEVELOPER, as a condition of approval for Tract No. 30857-1, to construct certain storm drain improvements as defined in PREVIOUS AGREEMENT; and

B. Pursuant to PREVIOUS AGREEMENT, PREVIOUS DEVELOPER constructed LINE FF consisting of approximately 1,540 lineal feet of underground storm drain, hereinafter called "CONSTRUCTED LINE FF"; and

C. PREVIOUS DEVELOPER has subsequently conveyed its ownership interest in fee for portions of the property that encompasses approximately 1,363 lineal feet of CONSTRUCTED LINE FF to DEVELOPER as shown in concept in red on Exhibit "A", attached hereto and made a part hereof; and

D. DEVELOPER now proposes to realign the portion of CONSTRUCTED LINE FF located within its property by (i) removing approximately 40 lineal feet of the CONSTRUCTED LINE FF (approximately Sta. 22+19.87 to Sta. 22+59.87 on Sheet 16 of District As-Built Drawing No. 4-821, (ii) constructing a concrete bulkhead at approximately Sta.

1 22+19.87 per District As-Built Drawing No. 4-821 and as shown on Sheet 4 of District Drawing  
2 No. 4-970, and (iii) constructing approximately 970 lineal feet of underground storm drain  
3 system at Sta. 22+59.87 per District As-Built Drawing No. 4-821, hereinafter called  
4 "DISTRICT DRAINAGE FACILITY" as shown on District Drawing Number 4-970; and

5 E. Associated with the construction of DISTRICT DRAINAGE FACILITY, is  
6 the construction of an access ramp and gates located within DEVELOPER held rights of way or  
7 easements hereinafter called "APPURTENANCES". Together, DISTRICT DRAINAGE  
8 FACILITY and APPURTENANCES are hereinafter called "PROJECT"; and

9 F. DEVELOPER and MJPA desire DISTRICT to accept ownership and  
10 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY.  
11 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for  
12 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITY;  
13 and  
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15 G. This Agreement has been entered into at the request of DEVELOPER.  
16 DISTRICT is willing to accept ownership and responsibility for the operation and maintenance  
17 of DISTRICT DRAINAGE FACILITY provided (i) DEVELOPER and MJPA strictly comply  
18 with the provisions of this Agreement, (ii) DEVELOPER is willing to assume ownership and  
19 responsibility for the portion of CONSTRUCTED LINE FF located within its property  
20 boundary as shown in concept in blue on Exhibit "B", attached hereto and made a part hereof,  
21 and (iii) MJPA is willing to assume ownership and responsibility for the portion of  
22 CONSTRUCTED LINE FF located within its property boundary as shown in concept in green  
23 on Exhibit "B".  
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26 NOW, THEREFORE, the parties hereto mutually agree as follows:  
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SECTION I

1  
2 DEVELOPER shall:

3 1. Prepare PROJECT plans and specifications, hereinafter called  
4 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and MJPA standards,  
5 and submit to DISTRICT and MJPA for their respective review and approval.

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

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

17 4. Secure, at its sole cost and expense, all necessary licenses, agreements,  
18 permits and rights of entry as may be needed for the construction, inspection, operation and  
19 maintenance of PROJECT. DEVELOPER shall furnish DISTRICT, at the time of providing  
20 written notice to DISTRICT of the start of construction as set forth in Section I.7., with  
21 sufficient evidence of DEVELOPER having secured such necessary licenses, agreements,  
22 permits and rights of entry, as determined and approved by DISTRICT.

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

4           6. Provide MJPA at the time of providing written notice to DISTRICT of the  
5 start of construction as set forth in Section I.7., with faithful performance and payment bonds,  
6 each in an amount of one hundred percent (100%) of the estimated cost for construction of  
7 PROJECT as determined by DISTRICT. The surety, the amount and form of the bonds shall be  
8 subject to approval of DISTRICT and MJPA. The bonds shall remain in full force and effect  
9 until DISTRICT DRAINAGE FACILITY is accepted by DISTRICT as complete; at which time  
10 the bond amount may be reduced to ten percent (10%) for a period of one year to guarantee  
11 against any defective work, labor or materials.  
12

13           7. Notify DISTRICT in writing (Attention: Administrative Services Section),  
14 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE  
15 FACILITY. Construction shall not begin on any element of DISTRICT DRAINAGE  
16 FACILITY, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written  
17 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT  
18 DRAINAGE FACILITY.  
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20           8. 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 DISTRICT DRAINAGE FACILITY  
23 as set forth herein.  
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25           9. Obtain and provide DISTRICT, at the time of providing written notice to  
26 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITY as set forth in  
27 Section I.7., with duly executed Irrevocable Offers(s) of Dedication to the public for flood  
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1 control and drainage purposes, including ingress and egress, for the rights of way deemed  
2 necessary by DISTRICT for the construction, inspection, operation and maintenance of  
3 DISTRICT DRAINAGE FACILITY as solely determined by the DISTRICT. The Irrevocable  
4 Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all  
5 legal and equitable owners of the property described in the offer(s).

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

10           11. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
11 the start of construction as set forth in Section I.7., with a complete list of all contractors and  
12 subcontractors to be performing work on DISTRICT DRAINAGE FACILITY, including the  
13 corresponding license number and license classification of each. At such time, DEVELOPER  
14 shall further identify in writing its designated superintendent for DISTRICT DRAINAGE  
15 FACILITY construction.

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.7., a construction schedule which shall show the  
18 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry on the  
19 various parts of work, including estimated start and completion dates. As construction of  
20 DISTRICT DRAINAGE FACILITY progresses, DEVELOPER shall update said construction  
21 schedule as requested by DISTRICT.

22           13. Furnish DISTRICT with final mylar PROJECT plans and assign their  
23 ownership to DISTRICT prior to the start of DISTRICT DRAINAGE FACILITY construction.  
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1 14. Not permit any change to or modification of DISTRICT approved  
2 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.

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

6 16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
7 the start of construction as set forth in Section I.7., a confined space entry procedure specific to  
8 DISTRICT DRAINAGE FACILITY. The procedure shall comply with requirements contained  
9 in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations,  
10 Section 5157, Permit Required Confined Space and District Confined Space Procedures, SOM-  
11 18. The procedure shall be reviewed and approved by DISTRICT prior to the issuance of a  
12 Notice to Proceed.  
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14 17. During the construction period of DISTRICT DRAINAGE FACILITY,  
15 provide Workers' Compensation Insurance in an amount required by law. A certificate of said  
16 insurance policy shall be provided to DISTRICT and MJPA at the time of providing written  
17 notice pursuant to Section I.7.  
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19 18. Commencing on the date notice is given pursuant to Section I.7., and  
20 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITY for operation and  
21 maintenance:

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

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9 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s), who  
10 shall be authorized by the California Department of Insurance to transact  
11 the business of insurance in the State of California, to furnish DISTRICT  
12 and MJPA at the time of providing written notice to DISTRICT of the start  
13 of construction as set forth in Section I.7., with certificate(s) of insurance  
14 and applicable policy endorsements showing that such insurance is in full  
15 force and effect and that DISTRICT, County of Riverside, and MJPA are  
16 named as additional insureds with respect to this Agreement and the  
17 obligations of DEVELOPER hereunder. Further, said certificate(s) shall  
18 state that the issuing company shall give DISTRICT and MJPA sixty (60)  
19 days written notice in the event of any cancellation, termination, non-  
20 renewal or reduction in coverage of the policies evidenced by the  
21 certificate(s). In the event cancellation, termination, non-renewal or  
22 reduction of coverage, DEVELOPER shall forthwith, secure replacement  
23 insurance meeting the provisions of this paragraph.  
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26 Failure to maintain the insurance required by this paragraph shall be deemed a  
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1 material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at  
2 its sole discretion, to proceed to perform the remaining work pursuant to Section IV.3.

3 19. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole  
4 cost and expense, in accordance with DISTRICT and MJPA approved IMPROVEMENT  
5 PLANS.

6 20. Within two (2) weeks of completing PROJECT construction, provide  
7 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT  
8 construction is substantially complete and requesting that DISTRICT conduct a final inspection  
9 of DISTRICT DRAINAGE FACILITY.  
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11 21. Upon completion of PROJECT construction, but prior to DISTRICT  
12 acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance,  
13 convey, or cause to be conveyed to DISTRICT flood control easement(s), including ingress and  
14 egress, in a form approved by DISTRICT, for the rights of way as deemed necessary solely by  
15 the DISTRICT.  
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17 22. At the time of recordation of the conveyance document(s) as set forth in  
18 Section I.21., furnish DISTRICT with policies of title insurance, each in the amount of not less  
19 than fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each  
20 easement parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said  
21 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and  
22 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are  
23 deemed acceptable.  
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25 23. Accept ownership and sole responsibility for the operation and maintenance  
26 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation  
27 and maintenance of (i) DISTRICT DRAINAGE FACILITY, and (ii) portion of  
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1 CONSTRUCTED LINE FF under the terms of PREVIOUS AGREEMENT. Further, it is  
2 mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership and  
3 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY,  
4 PROJECT shall be in a satisfactorily maintained condition as solely determined by DISTRICT.  
5 If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT  
6 DRAINAGE FACILITY is not in an acceptable condition, corrections will be made at the sole  
7 expense of DEVELOPER.

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

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

3 27. Upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY  
4 construction as being complete, accept sole responsibility for the adjustment of all PROJECT  
5 manhole rings and covers located within DEVELOPER rights of way which must be performed  
6 at such time(s) that the finished grade along and above the underground portions of DISTRICT  
7 DRAINAGE FACILITY are improved, repaired, replaced or changed. It being further  
8 understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.  
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10 28. By execution of this Agreement, accept sole ownership and responsibility  
11 for the portion of CONSTRUCTED LINE FF located within its property boundary as shown in  
12 concept in blue on Exhibit "B".

## 13 SECTION II

14 DISTRICT shall:

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

17 2. Provide MJPA an opportunity to review and approve IMPROVEMENT  
18 PLANS prior to DISTRICT'S final approval.

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

21 4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication  
22 provided by DEVELOPER pursuant to Section I.9.

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

14           8.    Accept ownership and sole responsibility for the operation and maintenance  
15 of DISTRICT DRAINAGE FACILITY upon (i) DISTRICT acceptance of PROJECT  
16 construction as being complete, (ii) DISTRICT receipt of stamped and signed RECORD  
17 DRAWING of PROJECT plans as set forth in Section I. 25., (iii) recordation of all conveyance  
18 documents described in Section I.21., (iv) MJPA acceptance of all necessary street rights of way  
19 as deemed necessary by DISTRICT and MJPA for the operation and maintenance of PROJECT,  
20 (v) DISTRICT'S sole determination that DISTRICT DRAINAGE FACILITY is in a  
21 satisfactorily maintained condition, and (vi) DISTRICT acceptance of ownership and  
22 responsibility for the operation and maintenance of applicable segment of CONSTRUCTED  
23 LINE FF under the terms of PREVIOUS AGREEMENT.  
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1 9. Provide MIPA with a reproducible duplicate copy of "RECORD  
2 DRAWING" PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE  
3 FACILITY as being complete.

4 SECTION III

5 MIPA shall:

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

8 2. Accept the MIPA and DISTRICT approved faithful performance and  
9 payment bonds submitted by DEVELOPER as set forth in Section I.6., and hold said bonds as  
10 provided herein.

11 3. Inspect construction of PROJECT.

12 4. Consent, by execution of this Agreement, to the recording of any  
13 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

14 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication  
15 as set forth herein, and any other outstanding offers of dedication necessary for the construction,  
16 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITY, and, convey  
17 sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and  
18 maintain DISTRICT DRAINAGE FACILITY.

19 6. Grant DISTRICT, by execution of this Agreement, the right to construct,  
20 inspect, operate and maintain DISTRICT DRAINAGE FACILITY within MIPA rights of way.

21 7. Not grant any occupancy permits for any units within any portion of Lots 5  
22 or 6 of Tract No. 30857-1, or any phase thereof, until construction of PROJECT is complete,  
23 unless otherwise approved in writing by DISTRICT.  
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8. By execution of this Agreement, accept sole ownership and responsibility for the portion of CONSTRUCTED LINE FF located within its property boundary as shown in concept in green on Exhibit "B".

SECTION IV

It is further mutually agreed:

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

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

3. DEVELOPER shall complete construction of DISTRICT DRAINAGE FACILITIES within sixty (60) consecutive days after execution of this Agreement and within ninety (90) consecutive calendar days after commencing work on DISTRICT DRAINAGE FACILITY. It is expressly understood that since time is of the essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to pay to MJPA the penal sum of any and all bonds. In which case, MJPA shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

4. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in

1 Section I.7.; however, DISTRICT'S construction inspection staff is limited and, therefore, the  
2 issuance of a Notice to Proceed is subject to staff availability.

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

16  
17 5. DISTRICT DRAINAGE FACILITIES construction work shall be on a  
18 five (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT  
19 designated legal holidays, unless otherwise approved in writing by DISTRICT. If  
20 DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or  
21 on holidays, DEVELOPER shall make a written request for permission from DISTRICT to  
22 work the additional hours. The request shall be submitted to DISTRICT at least seventy-two  
23 (72) hours prior to the requested additional work hours and state the reasons for the overtime  
24 and the specific time frames required. The decision of granting permission for overtime work  
25 shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by  
26 DISTRICT, DEVELOPER will be charged the cost incurred at the overtime rates for additional  
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1 inspection time required in connection with the overtime work in accordance with Ordinance  
2 Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

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

15  
16           DEVELOPER shall defend, at its sole expense, including all costs and fees  
17 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
18 awards), DISTRICT, County of Riverside, and MJPA (including their agencies, districts, special  
19 districts and departments, their respective directors, officers, Board of Supervisors, elected and  
20 appointed officials, employees, agents and representatives) in any claim proceeding or action for  
21 which indemnification is required.  
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23           With respect to any of DEVELOPER'S indemnification requirements,  
24 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall  
25 have the right to adjust, settle, compromise any such claim, proceeding or action without the  
26 prior consent of DISTRICT, County of Riverside, and MJPA; provided, however, that any such  
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1 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes  
2 DEVELOPER'S indemnification obligations to DISTRICT, County of Riverside or MJPA.

3 DEVELOPER'S indemnification obligations shall be satisfied when  
4 DEVELOPER has provided to DISTRICT, County of Riverside, and MJPA the appropriate  
5 form of dismissal (or similar document) relieving DISTRICT, County of Riverside or MJPA  
6 from any liability for the claim, proceeding or action involved.

7 The specified insurance limits required in this Agreement shall in no way  
8 limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT,  
9 County of Riverside, and MJPA from third party claims.

10 In the event there is conflict between this section and California Civil Code  
11 Section 2782, this section shall be interpreted to comply with California Civil Code Section  
12 2782. Such interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT,  
13 County of Riverside or MJPA to the fullest extent allowed by law.

14 7. DEVELOPER shall not request DISTRICT to accept any portion or  
15 portions of DISTRICT DRAINAGE FACILITY prior to (i) the completion of PROJECT  
16 construction as solely determined by DISTRICT, and (ii) DISTRICT acceptance of ownership  
17 and responsibility for the operation and maintenance of applicable segment of CONSTRUCTED  
18 LINE FF under the terms of PREVIOUS AGREEMENT.

19 8. Any waiver by DISTRICT or by MJPA of any breach of any one or more  
20 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
21 breach of the same or of any other term hereof. Failure on the part of DISTRICT or MJPA to  
22 require exact, full and complete compliance with any terms of this Agreement shall not be  
23 construed as in any manner changing the terms hereof, or estopping DISTRICT or MJPA from  
24 enforcement hereof.  
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1           9. If any provision in this Agreement is held by a court of competent  
2 jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full  
3 force and effect without being impaired or invalidated in any way.

4           10. In the event of any arbitration, action or suit brought by either  
5 DEVELOPER, DISTRICT or MJPA against the other party by reason of any breach on the part  
6 of the other party of any of the covenants and agreements set forth in this Agreement, or any  
7 other dispute between the DISTRICT, MJPA or DEVELOPER concerning this Agreement, the  
8 prevailing party in any such action or dispute, by a final judgment or arbitration award, shall be  
9 entitled to have and recover from the other party all costs and expenses or claims, including but  
10 not limited to, attorney's fees and expert witness fees. This section shall survive any termination  
11 of this Agreement.

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

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

18 RIVERSIDE COUNTY FLOOD CONTROL  
19 AND WATER CONSERVATION DISTRICT  
20 1995 Market Street  
21 Riverside, CA 92501

MARCH JOINT POWERS  
AUTHORITY  
23555 Meyer Drive  
Riverside, CA 92518  
Attn: Executive Director  
Lori Stone

22 SUN LIFE ASSURANCE COMPANY OF  
23 CANADA  
24 One Sun Life Executive Park  
25 Wellesley Hills, MA 02481  
26 Attn: John Mulvihill

27           13. Any action at law or in equity brought by any of the parties hereto for the  
28 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

1 waive all provisions of law providing for a change of venue in such proceedings to any other  
2 county.

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

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

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

15 17. The individual(s) executing this Agreement on behalf of DEVELOPER  
16 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 all boards of directors, legal  
18 counsel, and / or any other board, committee or other entity within their respective company(ies)  
19 which have the authority to authorize or deny entering into this Agreement.

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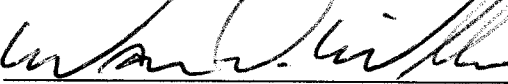
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

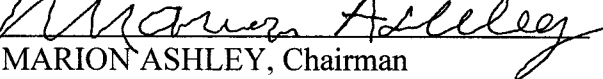
OCT 02 2012

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By   
WARREN D. WILLIAMS  
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 R. KIPNIS  
Deputy County Counsel

By   
Deputy

(SEAL)

Cooperative Agreement:  
Tract No. 30857-1  
Line FF Realignment, Stage 1  
9/13/12  
TT:blj

**MARCH JOINT POWERS AUTHORITY**

A joint powers authority

By Lori M. Stone  
LORI STONE, Executive Director

ATTEST:

Printed Name: Carey Allen

Title: Clerk, March JPA

(NOTARY)

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Cooperative Agreement:  
Tract No. 30857-1  
Line FF Realignment. Stage 1  
9/13/12  
TT:bjj

**NOTARY ACKNOWLEDGMENT**  
(California All-Purpose Acknowledgment)

STATE OF CALIFORNIA }

County of Riverside }

On September 17, 2012, before me, Cindy Camargo, Notary Public, personally appeared Lori M. Stone, 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.

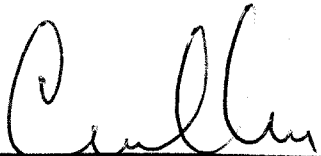
WITNESS my hand and official seal.



Cindy Camargo (Seal)  
Signature of Notary Public

SUN LIFE ASSURANCE COMPANY OF  
CANADA

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Charles S. Andes  
Authorized Signer

By



JOHN MULVIHILL  
Managing Director, Real Estate

**John Mulvihill**  
**Authorized Signer**

(NOTARY)

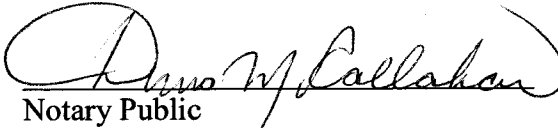
Cooperative Agreement:  
Tract No. 30857-1  
Line FF Realignment. Stage 1  
9/13/12  
TT:blj



COMMONWEALTH OF MASSACHUSETTS )  
 )SS.:  
COUNTY OF NORFOLK )

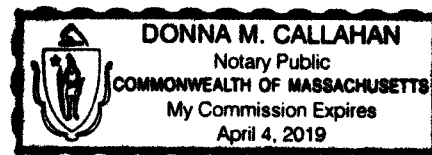
BEFORE ME, a Notary Public in and for said County and Commonwealth, personally appeared SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian corporation with its principal place of business in the United States being One Sun Life Executive Park, Norfolk County, Wellesley Hills, MA 02481, by **John Mulvihill**, its Authorized Signer, and **Charles S Andes**, its Authorized Signer, and who acknowledged that he/she did sign the foregoing instrument for and behalf of said SUN LIFE ASSURANCE COMPANY OF CANADA, and that the same is his/her free act and deed individually and as such officer and the free act and deed of said SUN LIFE ASSURANCE COMPANY OF CANADA.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Wellesley Hills, Norfolk County, Commonwealth of Massachusetts on September 14, 2012.

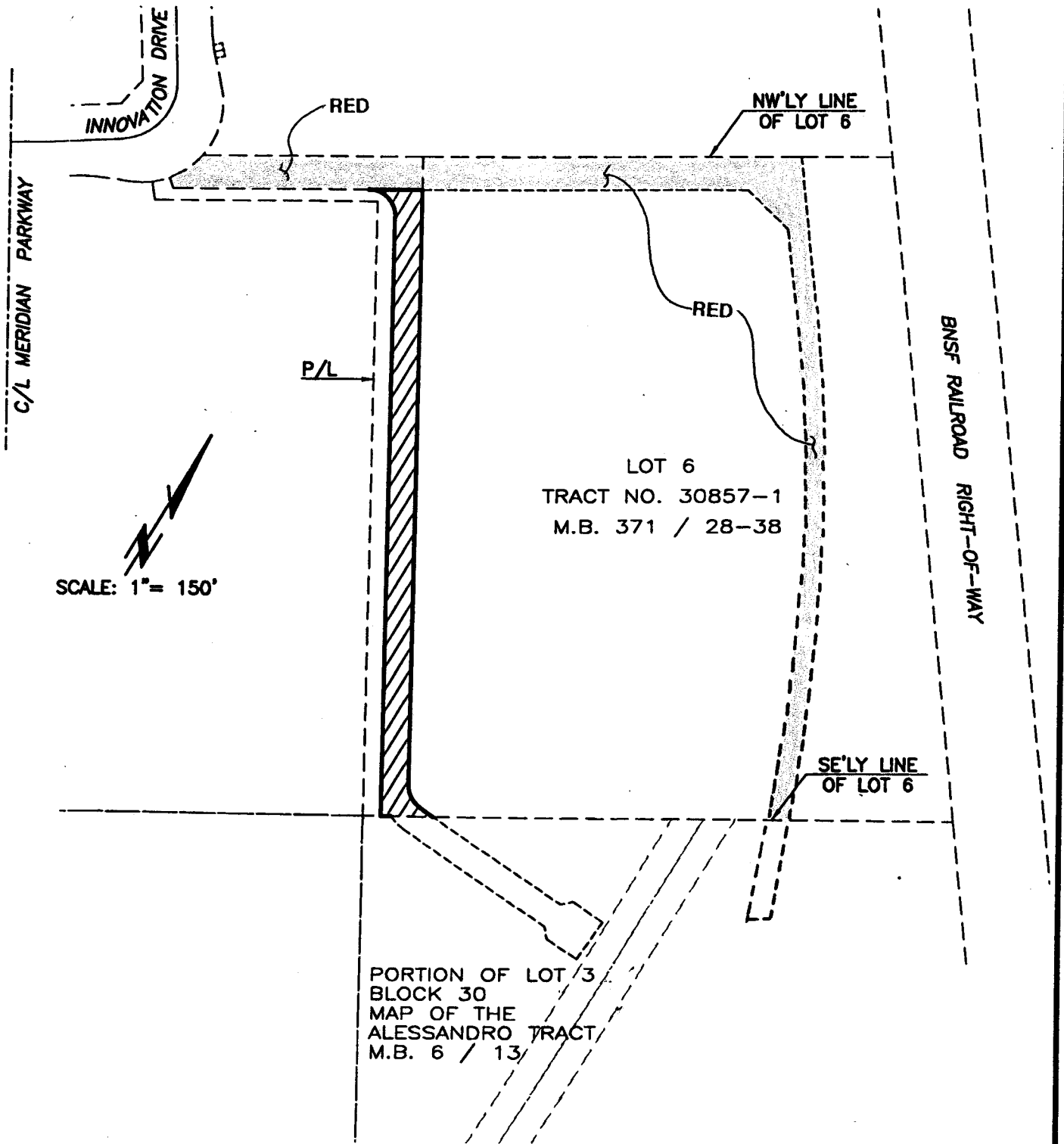


Notary Public  
Commonwealth of Massachusetts  
My Commission Expires: **April 4, 2019**

[ADD NOTARY STAMP OR SEAL]



# EXHIBIT "A"



# EXHIBIT "B"

