

FORM APPROVED COUNTY COUNSEL  
 BY: *Mike C. Williams*  
 DATE: 6-23-15  
 ANITA C. WILLIS

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

401B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
 July 7, 2015

**SUBJECT:** Approve Cooperative Agreements for Audie Murphy Ranch Drainage Facilities  
 Audie Murphy Ranch Channel, et al (Tract Nos. 31391, -1, -2, -3, and -4)  
 Project Nos. 4-0-00292, -00135, -00293 and -00295  
 District 5 [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District, the City of Menifee (City), Brookfield AMR/FR, LLC; Sutter Mitland 01, LLC; Woodside AMR 91, LLC; and Woodside AMR 107, LLC (Developers); and
2. Approve the Channel Maintenance Responsibilities Agreement between the District and City; and
3. Authorize the Chairman to execute the Agreement documents on behalf of the District.

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

MHW:blj  
 P8/170926

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	
<b>SOURCE OF FUNDS:</b> Developer is funding all construction and construction inspection costs.				<b>Budget Adjustment:</b> N/A	
				<b>For Fiscal Year:</b> N/A	

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

APPROVE  
 BY: *Steven C. Horn*  
 Steven C. Horn

County Executive Office Signature

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

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

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
 Nays: None  
 Absent: None  
 Date: July 7, 2015  
 xc: Flood

Kecia Harper-Ihem  
 Clerk of the Board  
 BY: *Kecia Harper-Ihem*  
 Deputy

Prev. Agn. Ref.: | District: 5<sup>th</sup> | Agenda Number: **11-1**

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

Departmental Concurrence

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

**FORM 11:** Approve Cooperative Agreements for Audie Murphy Ranch Drainage Facilities  
Audie Murphy Ranch Channel, et al (Tract Nos. 31391, -1, -2, -3, and -4)  
Project Nos. 4-0-00292, -00135, -00293 and -00295  
District 5 [\$0]

**DATE:** July 7, 2014

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary**

The Cooperative Agreement sets forth the terms and conditions by which certain flood control and drainage facilities that were constructed in conjunction with the development of certain subdivisions located within the Audie Murphy Ranch specific plan are to be inspected by the District and City and, subsequently, accepted for public operation and maintenance.

Currently, the subject flood control and drainage facilities are owned, operated and maintained by the Developers. The Cooperative Agreement establishes the terms and conditions whereby the District and City will accept responsibility for these facilities for ownership, operation and maintenance. As stipulated, the District will assume ownership, operation and maintenance of the storm drains that are greater than 36 inches in diameter while the City will assume ownership and maintenance of the smaller storm drains and associated appurtenances such as catch basins, connector pipes, etc.

The Channel Maintenance Responsibilities Agreement further describes how maintenance responsibilities for the Audie Murphy Ranch Channel are to be divided between the City and District.

County Counsel has approved the Agreement as to legal form, and the City and Developers have each executed their respective Agreements.

**Impact on Residents and Businesses**

The residents and businesses of Menifee will be the primary beneficiaries of the proposed public maintenance program.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

Future O&M costs associated with the Audie Murphy Ranch Channel and the mainline storm drains will accrue to the District. These costs will be paid from future Zone 4 ad valorem tax revenues.

**ATTACHMENT:**

Vicinity Map – Audie Murphy Ranch Drainage Facilities

MHW:bjj  
P8/170926

AGREEMENT

Salt Creek - Audie Murphy Ranch Channel  
Channel Maintenance Responsibilities

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The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF MENIFEE, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. WHEREAS, DISTRICT and CITY, together with BROOKFIELD AMR/FR LLC, a Delaware limited liability company, SUTTER MITLAND 01 LLC, a Delaware limited liability company, WOODSIDE AMR 91, LLC., a California limited liability company, and WOODSIDE AMR 107, INC., a California corporation, expect to enter into a certain Cooperative Agreement, hereinafter called the "COOPERATIVE AGREEMENT", pertaining to the design, construction, ownership, operation and maintenance of the Salt Creek - Audie Murphy Ranch Channel (Project No. 4-0-0292; District Drawing No. 4-0936), hereinafter called "CHANNEL", consisting of approximately 1,660 lineal feet of earthen channel and its associated maintenance access roads, rock riprap and drop structures extending from Newport Road southerly to Wild View Road and located within Lot Nos. 92 and 96 of Tract Map. No. 31391-4 in the City of Menifee; and

B. WHEREAS, CHANNEL'S principal purpose is to collect storm and flood waters emanating from the Audie Murphy Ranch Channel watershed and safely convey such waters to Salt Creek, a major watercourse that runs through CITY. Pursuant to the provisions of COOPERATIVE AGREEMENT, DISTRICT is to accept certain responsibilities for the operation and maintenance of CHANNEL upon completion of CHANNEL construction and transfer of the necessary rights of way to CITY; and

1 C. WHEREAS, CHANNEL is an essential and critical component of the  
2 proposed flood protection and drainage infrastructure for Tract Map. No. 31391-4 and  
3 surrounding developments; and

4 D. WHEREAS, the flood hazard associated with the Audie Murphy Ranch  
5 Channel watershed is sporadic in nature; thus, portions of CHANNEL right of way may be  
6 reasonably utilized for passive enjoyment and public recreation uses including walking,  
7 jogging, equestrian and bicycling; and  
8

9 E. WHEREAS, CITY wishes to enhance the aesthetic and recreational  
10 value of CHANNEL by placing certain amenities including landscaping, irrigation systems,  
11 decorative fencing, trash receptacles, and pedestrian benches, hereinafter called "CHANNEL  
12 AMENITIES", within CHANNEL right of way; and  
13

14 F. WHEREAS, DISTRICT and CITY wish to memorialize their respective  
15 roles and responsibilities pertaining to the operation and maintenance of CHANNEL and  
16 CHANNEL AMENITIES as set forth herein; and

17 G. WHEREAS, DISTRICT is willing to maintain CHANNEL lines and  
18 grades, drop structures and associated rock riprap in accordance with DISTRICT approved  
19 CHANNEL improvement plans (District Drawing No. 4-0936) provided CITY: i) holds title to  
20 CHANNEL right of way in fee; ii) assumes sole responsibility for maintenance of CHANNEL  
21 AMENITIES; iii) CITY'S construction, operation and maintenance of CHANNEL  
22 AMENITIES does not unduly interfere with DISTRICT'S ability to access CHANNEL and  
23 perform all necessary CHANNEL maintenance activities; and iv) is willing to indemnify and  
24 hold DISTRICT harmless from any claims arising from public's use of CHANNEL right of  
25 way; and  
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1 H. WHEREAS, CITY is willing to: i) accept sole ownership of CHANNEL  
2 right of way and utilize said right of way for flood conveyance, drainage, public open space and  
3 trail purposes; ii) grant DISTRICT the necessary rights to maintain CHANNEL lines, grades  
4 and associated rock riprap structures; iii) assume sole responsibility for maintenance of  
5 CHANNEL AMENITIES; and iv) indemnify and hold DISTRICT harmless against any claims  
6 resulting from the public's use of CHANNEL right of way or CITY'S responsibilities associated  
7 therewith or the condition thereof; and  
8

9 I. The foregoing Recitals are true and correct and it is in the public interest  
10 to proceed with this Agreement.

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

12 SECTION I

13 DISTRICT shall:

14 1. Assume sole responsibility for the maintenance of CHANNEL'S  
15 structural integrity, including design lines and grades and rockriprap structures, in accordance  
16 with DISTRICT'S approved engineering drawings. DISTRICT'S maintenance responsibility  
17 does not include any obligation to maintain or restore any CHANNEL AMENITIES  
18 constructed by CITY or by others.  
19

20 2. Except as set forth in Paragraph I.1., above, assume no further  
21 responsibility, obligation, or liability whatsoever, for the operation and maintenance of  
22 CHANNEL.  
23

24 SECTION II

25 CITY shall:

26 1. Prior to constructing, permitting or allowing any improvements or  
27 modifications within CHANNEL right of way, submit plans and specifications to DISTRICT  
28

1 for review and approval and pay DISTRICT for its cost of reviewing said plans and  
2 specifications.

3           2.       With regard to CHANNEL AMENITIES placed within CHANNEL right  
4 of way, CITY waives any claim it may have against DISTRICT for damages resulting from  
5 DISTRICT'S performance of routine CHANNEL maintenance activities within CHANNEL  
6 right of way save and except any damages caused by DISTRICT'S sole active negligence or  
7 willful misconduct.  
8

9           3.       Within CHANNEL right of way, assume sole responsibility for ensuring  
10 the public's safety and enjoyment thereof, including but not limited to (i) performing all trash  
11 removal, landscape irrigation, vegetation maintenance, trail maintenance, and graffiti removal,  
12 and (ii) assuming all liability associated with the public's use of CHANNEL right of way,  
13 including claims of third persons for injury or death or damage to property.  
14

15           4.       Within CHANNEL right of way, ensure the safety of the public who  
16 may utilize CHANNEL right of way by conducting periodic safety inspections and promptly  
17 making such repairs as are necessary to safeguard the public and its use thereof.

18           5.       Within CHANNEL right of way, or otherwise associated with this  
19 Agreement, indemnify and hold DISTRICT, its Board of Supervisors, officers, agents,  
20 employees and independent contractors free and harmless from any liability whatsoever, based  
21 or asserted upon any act or omission of CITY, its officers, agents, employees, subcontractors,  
22 independent contractors, guests and invitees for property damage, bodily injury or death (CITY  
23 employees included) or any other element of damage of any kind or nature, related to or in any  
24 manner connected with or arising from CITY'S use and responsibilities in connection therewith  
25 of the CHANNEL right of way or the condition thereof, and CITY shall defend, at its expense,  
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1 including attorneys' fees, DISTRICT, its Board of Supervisors, officers, agents, employees and  
2 independent contractors, in any legal action based upon such alleged acts or omissions.

3 SECTION III

4 It is further mutually agreed:

5 1. The provisions of this Agreement shall not become effective until such  
6 time as i) CITY and DISTRICT deem CHANNEL construction to be complete; ii) CITY has  
7 accepted ownership of CHANNEL right of way in accordance with the provisions of  
8 COOPERATIVE AGREEMENT; and iii) DISTRICT has determined that all regulatory  
9 permits necessary to conduct its future CHANNEL maintenance activities have been secured.

10 2. Each party, as to any claim or liability arising out of any act or omission  
11 with reference to any work to be performed by or authority delegated to such party as a result  
12 of this Agreement, shall save, defend, indemnify and hold harmless the other party, their  
13 respective officers and employees from all liability from death or injury to person, or damage to  
14 property, or claim therefor.

15 3. DISTRICT reserves the right to terminate its responsibilities under this  
16 Agreement for good cause in the event DISTRICT'S General Manager-Chief Engineer  
17 determines that i) any use of CHANNEL is in substantial conflict with CHANNEL'S principal  
18 function and purpose; ii) DISTRICT'S ability to access CHANNEL right of way for the  
19 purposes of performing CHANNEL maintenance activities is unreasonably impaired; iii) the  
20 construction of CHANNEL AMENITIES within CHANNEL right of way unduly interferes  
21 with DISTRICT'S ability to maintain CHANNEL lines and grades or structures; or iv) any  
22 material breach of the terms and conditions set forth in this Agreement or COOPERATIVE  
23 AGREEMENT. The foregoing notwithstanding, DISTRICT shall nevertheless provide CITY  
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1 no less than 90 days written notice of its intent to terminate this Agreement and the cause(s)  
 2 therefor and also provide CITY a reasonable opportunity to remedy such cause(s).

3           4. Any waiver by DISTRICT or by CITY of any breach of any one or more  
 4 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
 5 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
 6 require exact, full and complete compliance with any terms of this Agreement shall not be  
 7 construed in any manner as changing the terms hereof, or estopping DISTRICT or CITY from  
 8 enforcement hereof.  
 9

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

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

16           7. Any written notice, statement, demand, consent, approval, authorization,  
 17 offer, designation, request or other communication to be given hereunder shall be given to the  
 18 party entitled thereto at its address set forth below, or at such other address as such party may  
 19 provide to the other party in writing from time to time, namely:  
 20

21 RIVERSIDE COUNTY FLOOD CONTROL  
 22 AND WATER CONSERVATION DISTRICT  
 23 1995 Market Street  
 24 Riverside, CA 92501  
 Telephone: 951.955.1200  
 Fax: 951.788.9965

CITY OF MENIFEE  
 29714 Haun Road  
 Menifee, CA 92586  
 Telephone: 951.672.6777  
 Fax: 951.679.3843

25           8. Each such notice, statement, demand, consent, approval, authorization,  
 26 offer, designation, request or other communication hereunder shall be deemed delivered to the  
 27 party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given  
 28



1 by electronic communication, whether by telex, telegram or telecopier, upon the sender's  
2 receipt of a document confirming satisfactory transmission, (c) if given by registered or  
3 certified mail, return receipt requested, deposited with the United States mail postage prepaid,  
4 72 hours after such notice is deposited with the United States mail, (d) if given by overnight  
5 courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if  
6 given by any other means, upon delivery at the address specified in this Section.  
7

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

14           10.       Neither DISTRICT nor CITY shall assign its interest or its performance  
15 in this Agreement to any person or entity without first obtaining the other party's written  
16 consent.  
17

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

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

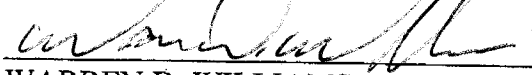
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

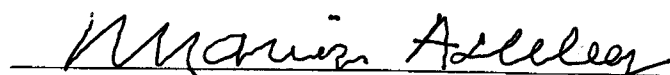
**JUL 07 2015**

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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





WARREN D. WILLIAMS  
General Manager-Chief Engineer

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

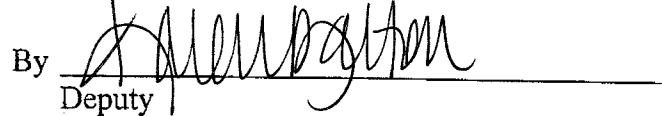
APPROVED AS TO FORM:

ATTEST:

PAMELA WALLS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By 

By 

NEAL R. KIPNIS  
Deputy County Counsel

Deputy

Dated \_\_\_\_\_

(SEAL)

RECOMMENDED FOR APPROVAL:

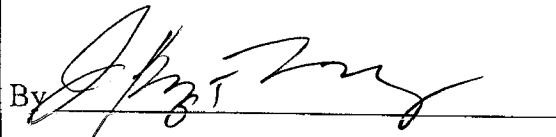
**CITY OF MENIFEE**

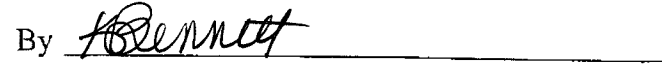
By   
JONATHAN G. SMITH  
Director of Public Works/Engineering

By   
SCOTT MANN  
Mayor

ATTEST:

KATHY BENNETT  
City Clerk

By 

By 

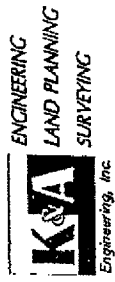
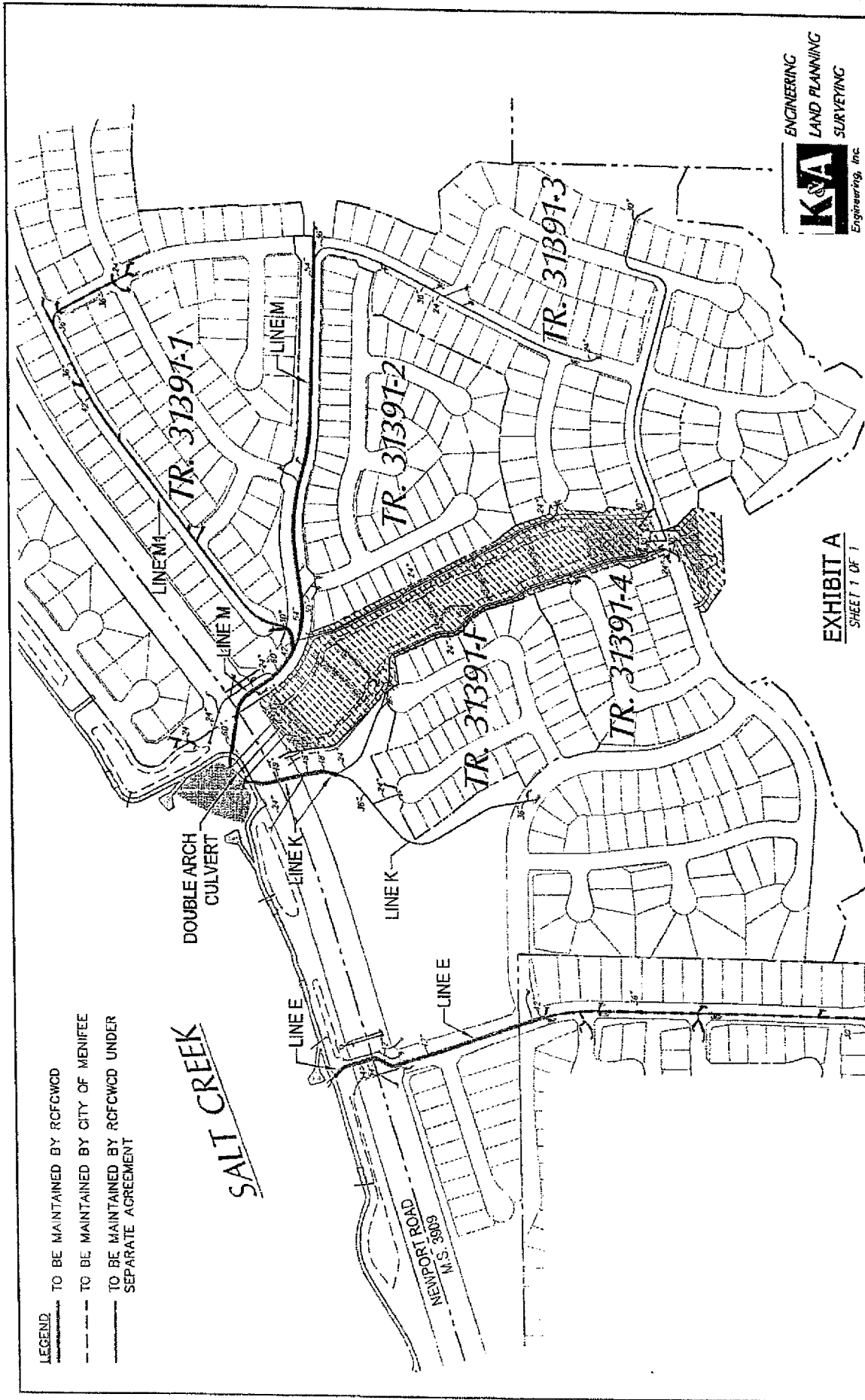
Jeffery T. Melching, City Attorney

(SEAL)

Agreement: Salt Creek – Audie Murphy Ranch Channel  
Channel Maintenance Responsibilities

MHW:blj

- LEGEND**
- TO BE MAINTAINED BY RCFCWCD
  - - - TO BE MAINTAINED BY CITY OF MENIFEE
  - TO BE MAINTAINED BY RCFCWCD UNDER SEPARATE AGREEMENT



**EXHIBIT A**  
SHEET 1 OF 1

1 COOPERATIVE AGREEMENT  
2 FOR ACCEPTANCE OF DRAINAGE FACILITIES

3 Salt Creek - Audie Murphy Ranch Channel;  
4 Salt Creek – Audie Murphy Ranch Line E and Laterals;  
5 Salt Creek – Audie Murphy Ranch Line K and Laterals; and  
6 Salt Creek – Audie Murphy Ranch Line M and Laterals  
7 (Project Nos. 4-0-00292; 4-0-00135, 4-0-00293 and 4-0-00295)  
8 (Tract Nos. 31391, 31391-1, 31391-2, 31391-3 and 31391-4)

9 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER  
10 CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE,  
11 hereinafter called "CITY", BROOKFIELD AMR/FR LLC, a Delaware limited liability  
12 company, hereinafter called "BROOKFIELD", SUTTER MITLAND 01 LLC, a Delaware  
13 limited liability company, hereinafter called "SM 01", WOODSIDE AMR 91, LLC., a  
14 California limited liability company, and WOODSIDE AMR 107, INC., a California  
15 corporation, hereby agree as follows:

16 RECITALS

17 A. BROOKFIELD, SM 01, WOODSIDE AMR 91, LLC, and WOODSIDE  
18 AMR 107, INC., hereinafter altogether called "DEVELOPERS", individually or collectively  
19 own certain real property located in the city of Menifee including but not limited to Tract Nos.  
20 31391, 31391-1, 31391-2, 31391-3, and 31391-4, hereinafter called the "PROPERTY"; and

21 B. The initial processing of land use entitlements and associated improvement  
22 plans for said PROPERTY commenced under the authority of the County of Riverside.  
23 Following CITY'S incorporation in October 2008, the processing of these land use entitlements  
24 and associated improvement plans was assumed by CITY. Final subdivision maps for the  
25 subject PROPERTY were approved by CITY on or about June 8, 2011 and recorded by the  
26 Office of the Riverside County Clerk-Recorder on or about June 16, 2011; and  
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1 C. Pursuant to the conditions for approval for the subdivision and subsequent  
2 development of PROPERTY, DEVELOPERS have constructed or caused to be constructed  
3 certain improvements including flood control, drainage and water quality facilities; and  
4

5 D. The principal flood control and drainage facilities associated with  
6 PROPERTY are as follows:

- 7 i. Salt Creek - Audie Murphy Ranch Channel, hereinafter called  
8 "CHANNEL", consisting of approximately 1,660 lineal feet of  
9 improved earthen channel together with appurtenant rock riprap and  
10 slope protection as shown on District Drawing No. 4-0936 (Sheets 1-  
11 11, Sta. 50+00 to Sta. 66+60; approved October 2007); and  
12  
13 ii. Salt Creek - Audie Murphy Ranch Line E, hereinafter called "LINE  
14 E", consisting of approximately 800 lineal feet of underground storm  
15 drain as shown on District Drawing No. 4-0945 (Sheets 24, 25 and 38,  
16 Sta. 10+00 to Sta. 18+00; approved April 2007); and  
17  
18 iii. Salt Creek - Audie Murphy Ranch Line K, hereinafter called "LINE  
19 K", consisting of approximately 324 lineal feet of underground storm  
20 drain as shown on District Drawing No. 4-0945; (Sheets 21 and 37,  
21 Sta. 9+88 to Sta. 13+12; approved April 2007); and  
22  
23 iv. Salt Creek - Audie Murphy Ranch Line M, hereinafter called "LINE  
24 M", consisting of approximately 1,920 lineal feet of underground  
25 storm drain as shown on District Drawing No. 4-0945 (Sheets 3-6 and  
26 36, Sta. 9+90 to Sta. 29+10; approved April 2007).  
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19 LINE E, LINE K and LINE M, hereinafter called "STORM DRAINS",  
20 convey flows northerly into the existing Salt Creek 100-year floodplain, as shown in red on  
21 Exhibit "A" attached hereto and made a part hereof. A rock riprap apron associated with  
22 CHANNEL, hereinafter called "APRON", was constructed by DEVELOPERS pursuant to a set  
23 of improvement plans entitled "Newport Road Master Plan - Storm Drain Plan (MS3909)"  
24 consisting of 41 sheets. The MS3909 plans were approved by the Riverside County  
25 Transportation Department, hereinafter called "TRANSPORTATION DEPARTMENT", on or  
26 about January 30, 2006. APRON is shown on Sheet 11 of the MS3909 plan set and is  
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1 referenced on Sheet 2 of District Drawing No. 4-936. Sheet 11 together with the above  
2 referenced District Drawings are hereinafter called "IMPROVEMENT PLANS"; and

3  
4 E. Together, STORM DRAINS and APRON are hereinafter called  
5 "DISTRICT DRAINAGE FACILITIES". Associated with the construction of DISTRICT  
6 DRAINAGE FACILITIES are the associated catch basins, connector pipes, laterals and  
7 "bifurcation pipes" located within CITY held easements or rights of way. These appurtenant  
8 drainage facilities, which are also shown on IMPROVEMENT PLANS, are hereinafter called  
9 "APPURTENANT DRAINAGE FACILITIES"; and

10 F. Also associated with the construction of CHANNEL, are two precast  
11 concrete arch culverts, located at Newport Road and Wild View Road, not respective to  
12 anything. The above referenced arch culverts, including their associated wingwalls, are  
13 hereinafter called "ARCH CULVERTS"; and

14 G. DISTRICT DRAINAGE FACILITIES outlet directly into the existing Salt  
15 Creek 100-year floodplain. Certain APPURTENANT DRAINAGE FACILITIES have been  
16 constructed so as to intercept low and dry-weather flows from DISTRICT DRAINAGE  
17 FACILITIES and deliver these flows to a series of water quality basins located between the  
18 southerly bank of Salt Creek and northerly right of way line of Newport Road. These water  
19 quality basins are hereinafter called "BASINS"; and

20 H. Most of APPURTENANT DRAINAGE FACILITIES are shown on  
21 IMPROVEMENT PLANS; however, certain APPURTENANT DRAINAGE FACILITIES are  
22 shown on CITY improvement plans, hereinafter called "CITY IMPROVEMENT PLANS", that  
23 were approved by CITY subsequent to the approval of IMPROVEMENT PLANS by  
24 DISTRICT and TRANSPORTATION DEPARTMENT; and  
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1 I. APPURTENANT DRAINAGE FACILITIES, ARCH CULVERTS,  
2 CHANNEL and BASINS, are hereinafter altogether called "CITY DRAINAGE FACILITIES".  
3 CITY DRAINAGE FACILITIES and DISTRICT DRAINAGE FACILITIES are hereinafter  
4 called "PROJECT"; and  
5

6 J. DEVELOPERS proceeded with construction of CHANNEL, LINE E,  
7 LINE K, and LINE M, prior to entering into a formal Agreement with DISTRICT providing for  
8 the necessary DISTRICT construction inspection and stipulating the terms and conditions by  
9 which DISTRICT would accept the subject facilities for ownership, operation and maintenance;  
10 and  
11

12 K. DEVELOPERS and CITY desire DISTRICT to accept ownership and  
13 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES; and

14 L. DISTRICT is willing to accept DISTRICT DRAINAGE FACILITIES  
15 provided (i) DEVELOPERS and CITY comply with the terms and conditions set forth in this  
16 Agreement, and (ii) DISTRICT'S General Manager-Chief Engineer determines that DISTRICT  
17 DRAINAGE FACILITIES have been constructed in substantial compliance with DISTRICT  
18 and TRANSPORTATION DEPARTMENT approved IMPROVEMENT PLANS and the  
19 applicable engineering specifications; and  
20

21 M. Pursuant to this Agreement, DEVELOPERS shall submit to DISTRICT (i)  
22 pipe certification reports documenting that all pipe used in the construction of DISTRICT  
23 DRAINAGE FACILITIES was manufactured and certified to be in compliance with  
24 IMPROVEMENT PLANS, (ii) soil compaction reports documenting that all soil compaction  
25 for DISTRICT DRAINAGE FACILITIES was accomplished in compliance with DISTRICT  
26 standards, (iii) copies of all daily and other inspection reports prepared by, or on behalf of,  
27 DEVELOPERS, DEVELOPERS' contractor(s), CITY or any other party(ies) having performed  
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1 inspections on any portion of DISTRICT DRAINAGE FACILITIES, (iv) documentation fully  
2 identifying all Commercial General Liability and Workers' Compensation insurance coverages  
3 applicable to PROJECT, including identification of all Additional Insureds named on such  
4 coverages, in force during the period PROJECT was constructed, (v) a one-time payment to the  
5 DISTRICT in the amount of fifty thousand dollars (\$50,000), and (vi) videotape or digital  
6 video files, in a format acceptable to CITY and DISTRICT, which document a complete video  
7 inspection of the inside of all pipes, manholes and other facilities installed in the construction  
8 of DISTRICT DRAINAGE FACILITIES; and

9  
10 N. DISTRICT is willing to (i) review all of DEVELOPERS' submittals  
11 furnished pursuant to this Agreement, (ii) inspect the constructed DISTRICT DRAINAGE  
12 FACILITIES to the extent possible under existing conditions, and (iii) accept ownership and  
13 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,  
14 provided DEVELOPERS (i) comply with this Agreement, (ii) pay DISTRICT the amounts  
15 specified herein to cover DISTRICT'S review of all items required under the terms of this  
16 Agreement and construction inspection costs, (iii) satisfactorily submit all items required under  
17 the terms of this Agreement, (iv) provide or secure all necessary rights of entry necessary to  
18 accomplish the inspection, operation and maintenance of DISTRICT DRAINAGE  
19 FACILITIES, (v) establish through their submittals under this Agreement that PROJECT was  
20 constructed in accordance with IMPROVEMENT PLANS and specifications approved by  
21 DISTRICT and TRANSPORTATION DEPARTMENT, (vi) provide copies of all necessary  
22 permits, regulatory permits, licenses and rights of entry as set forth herein, (vii) convey or  
23 cause to be conveyed acceptable title or easement interest for all rights of way deemed  
24 necessary for the operation and maintenance of DISTRICT DRAINAGE FACILITIES as  
25 determined by DISTRICT, and (viii) continue to accept ownership and responsibility for their  
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1 respective operation and maintenance of PROJECT until such time as DISTRICT accepts  
2 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE  
3 FACILITIES and CITY (i) accepts ownership and responsibility for the operation and  
4 maintenance of CITY DRAINAGE FACILITIES, (ii) secures all rights of way necessary for  
5 the operation and maintenance of PROJECT and (iii) grants DISTRICT all rights necessary to  
6 maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way; and  
7

8 O. CITY is willing to (i) review and approve DEVELOPERS' submittals  
9 required under the terms of this Agreement, (ii) hold faithful performance and payment bonds  
10 submitted by DEVELOPERS for PROJECT, (iii) accept the Irrevocable Offers furnished by  
11 DEVELOPERS and, as requested by DISTRICT, grant DISTRICT all rights necessary to  
12 maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way and (iv) accept  
13 ownership and responsibility for the operation and maintenance of CITY DRAINAGE  
14 FACILITIES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES, provided  
15 PROJECT has been constructed in accordance with plans and specifications approved by  
16 DISTRICT, TRANSPORTATION DEPARTMENT and CITY; and  
17

18 P. With regard to the ownership, operation and maintenance of ARCH  
19 CULVERTS, DISTRICT is willing to keep ARCH CULVERTS free and clear of sediment and  
20 debris provided CITY accepts ownership and responsibility for the structural integrity and  
21 maintenance of ARCH CULVERTS. CITY is willing to accept ownership and responsibility  
22 for the structural integrity and maintenance of ARCH CULVERTS provided DISTRICT keeps  
23 ARCH CULVERTS free and clear of sediment and debris.  
24

25 Q. With regard to the ownership, operation and maintenance of CHANNEL,  
26 DISTRICT and CITY wish to divide their responsibilities and obligations as follows. CITY  
27 wishes to secure fee title ownership of CHANNEL right of way and utilize said right of way for  
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1 flood conveyance, drainage, open space and trail purposes. CITY may further wish to  
 2 construct, operate and maintain certain amenities such as decorative fencing, bollards,  
 3 landscaping, irrigation systems, hereinafter called "CHANNEL AMENITIES" within  
 4 CHANNEL right of way. DISTRICT is willing to maintain CHANNEL lines and grades, drop  
 5 structures and associated riprap provided i) CITY grants DISTRICT all the necessary rights as  
 6 set forth herein, ii) CITY assumes sole responsibility for maintenance of CHANNEL  
 7 AMENITIES, iii) CITY'S construction, operation and maintenance of CHANNEL  
 8 AMENITIES does not unduly interfere with DISTRICT'S ability to access CHANNEL and  
 9 perform all necessary CHANNEL maintenance activities, and (iv) CITY is willing to  
 10 indemnify and hold DISTRICT harmless from any claims arising from public's use of  
 11 CHANNEL. The understandings and limitations pertaining to CHANNEL maintenance  
 12 responsibilities are further described in a separate agreement between DISTRICT and CITY  
 13 entitled "Salt Creek – Audie Murphy Ranch Channel Maintenance Responsibilities".  
 14

15  
 16 NOW, THEREFORE, the parties hereto mutually agree as follows:

17 SECTION I

18 DEVELOPERS shall:

19  
 20 1. Continue to pay DISTRICT, within thirty (30) days after receipt of  
 21 periodic billings from DISTRICT, any and all such amounts as are deemed reasonably  
 22 necessary by DISTRICT to cover DISTRICT'S costs associated with (i) the review and  
 23 implementation of DEVELOPERS' submittals furnished pursuant to the terms of this  
 24 Agreement, and (ii) the processing and administration of this Agreement (the "Administrative  
 25 Account").

26  
 27 2. As early as possible but no later than thirty (30) days following  
 28 DISTRICT'S execution of this Agreement, deposit with DISTRICT (Attention: Business Office

1 - Accounts Receivable) the sum of twenty-five thousand dollars (\$25,000) as an initial deposit  
2 for providing construction inspection services for DISTRICT DRAINAGE FACILITIES (the  
3 "Construction Inspection Account"). DISTRICT construction inspection services shall be  
4 performed on a fee for service basis. If at any time the cost of providing inspection services  
5 exceeds the deposit, or is anticipated by DISTRICT to exceed the amount deposited,  
6 DEVELOPERS shall pay such additional amount(s), as deemed reasonably necessary by  
7 DISTRICT to complete inspection of DISTRICT DRAINAGE FACILITIES, within thirty (30)  
8 days after receipt of billing from DISTRICT.  
9

10           3. As early as possible but no later than thirty (30) days following  
11 DISTRICT'S execution of this Agreement, deposit with DISTRICT (Attention: Business Office  
12 - Accounts Receivable), the sum of fifty thousand dollars (\$50,000) as a guarantee against  
13 potential defects in workmanship and materials in the construction of DISTRICT DRAINAGE  
14 FACILITIES. DEVELOPERS' failure to furnish the guarantee as stipulated in this paragraph,  
15 shall be deemed a material breach of this Agreement and shall authorize and constitute  
16 authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPERS and  
17 CITY that DISTRICT is unable to perform its obligations hereunder, or to accept responsibility  
18 for ownership, operation and maintenance of DISTRICT DRAINAGE FACILITIES due, either  
19 in whole or in part, to said breach of this Agreement.  
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22           4. Secure at its sole cost and expense, all necessary licenses, agreements,  
23 permits, rights of entry, easements and rights of way necessary for the construction, inspection,  
24 operation and maintenance of DISTRICT DRAINAGE FACILITIES, as determined and  
25 approved by DISTRICT.  
26

27           5. Provide DISTRICT with copies of all permits, approvals or agreements,  
28 and copies of all applications and materials submitted in connection therewith, required by any

1 Federal, State or local resource and/or regulatory agency authorizing the construction,  
2 operation and subsequent maintenance of DISTRICT DRAINAGE FACILITIES. Such  
3 documents, hereinafter called "REGULATORY PERMITS", include but are not limited to  
4 those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control  
5 Board, California State Department of Fish and Wildlife and State Water Resources Control  
6 Board and shall explicitly authorize DISTRICT'S CHANNEL maintenance activities, as  
7 described herein.

9           6.     Furnish CITY with faithful performance and payment bonds, in such  
10 amounts as CITY deems appropriate, for the completion of construction of PROJECT. The  
11 surety and form of the bonds shall be subject to the approval of CITY. The bonds shall remain  
12 in full force and effect until such time as PROJECT is accepted by DISTRICT and CITY as  
13 complete.

15           7.     Furnish all available contract documents, pipe certification reports, soil  
16 compaction reports, construction inspection records, and insurance documentation required  
17 under the terms of this Agreement and submit to DISTRICT for its review and approval.

18           8.     Furnish DISTRICT, as early as possible but prior to requesting any final  
19 inspection of DISTRICT DRAINAGE FACILITIES, with a complete tabulation of all  
20 contractors and subcontractors (including the corresponding license number and license  
21 classification of each) who performed work on DISTRICT DRAINAGE FACILITIES, or  
22 segments thereof, and further identify the discrete PROJECT components which each  
23 contractor or subcontractor constructed.

25           9.     Furnish DISTRICT, as early as possible but prior to requesting any final  
26 inspection of DISTRICT DRAINAGE FACILITIES, a construction schedule which shall show  
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1 the order and dates in which DEVELOPERS or DEVELOPERS' contractor(s) constructed each  
2 discrete segment of PROJECT, including actual start and completion dates.

3  
4 10. Furnish DISTRICT, as early as possible but prior to requesting any final  
5 inspection of DISTRICT DRAINAGE FACILITIES, documentation fully identifying all  
6 Commercial General Liability and Workers' Compensation insurance coverages applicable to  
7 PROJECT, including identification of Additional Insureds named on such coverages, in force  
8 during the period PROJECT was constructed.

9 11. [Intentionally Left Blank]

10 12. As early as possible but prior to requesting any final inspection of  
11 DISTRICT DRAINAGE FACILITIES, obtain and provide DISTRICT with duly executed  
12 Irrevocable Offers(s) of Dedication to the public for flood control and drainage purposes,  
13 including ingress and egress, for the rights of way deemed necessary by DISTRICT for the  
14 construction, inspection, operation and maintenance of i) CHANNEL, as shown in concept in  
15 blue cross-hatch on Exhibit "A" and per the CITY accepted drainage easement located within  
16 Lot 108 of Tract No. 31391-3; and ii) LINE M as shown in concept in red cross-hatch on  
17 Exhibit "B" attached hereto and made a part hereof. The Irrevocable Offer(s) of Dedication  
18 shall be in a form approved by CITY and DISTRICT and shall be executed by all legal and  
19 equitable owners of the property described in the offer(s).  
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22 13. As early as possible but prior to requesting any final inspection of  
23 DISTRICT DRAINAGE FACILITIES, obtain and provide CITY with duly executed  
24 Irrevocable Offers(s) of Dedication to the public for flood control and drainage purposes,  
25 including ingress and egress, for the rights of way deemed necessary by DISTRICT and CITY  
26 for the construction, inspection, operation and maintenance of CHANNEL as shown in concept  
27 in blue cross-hatch on Exhibit "A". The Irrevocable Offer(s) of Dedication shall be in a form  
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1 approved by CITY and DISTRICT and shall be executed by all legal and equitable owners of  
2 the property described in the offer(s).

3           14.    Furnish CITY and DISTRICT, when submitting the Irrevocable Offer(s) of  
4 Dedication as set forth in Sections I.12. and I.13., with Preliminary Reports on Title dated not  
5 more than thirty (30) days prior to date of submission of all the property described in the  
6 Irrevocable Offer(s) of Dedication.  
7

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

16           16.    At the time of recordation of the conveyance document(s) as set forth in  
17 Section I.13., furnish CITY with policies of title insurance, each in the amount of not less than  
18 one hundred percent (100%) of the estimated fee value, as determined by CITY, for each fee  
19 parcel to be conveyed to CITY, guaranteeing CITY'S interest in said property as being free and  
20 clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or  
21 unrecorded), except those which, in the sole discretion of CITY, are deemed acceptable.  
22

23           17.    As early as possible, but prior to CITY'S and DISTRICT'S execution of  
24 this Agreement, and continuing until DISTRICT accepts DISTRICT DRAINAGE  
25 FACILITIES and CITY accepts CITY DRAINAGE FACILITIES for operation and  
26 maintenance:  
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(a) Provide and maintain or cause its contractor(s) to provide and maintain comprehensive liability insurance coverage which shall protect DEVELOPERS from claim from damages for personal injury, including accidental and wrongful death, as well as from claims for property damage which may arise from DEVELOPERS' construction, ownership or maintenance of PROJECT or the performance of its obligations hereunder, whether such construction, ownership, maintenance or performance be by DEVELOPERS, by any of their contractors, subcontractors, or by anyone employed directly or indirectly by any of them. Such insurance shall name DISTRICT and CITY as additional insureds with respect to this Agreement and the obligations of DEVELOPERS 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 with certificate(s) of insurance and applicable policy endorsements showing that such insurance is in full force and effect and that DISTRICT and CITY are named as additional insureds with respect to this Agreement and the obligations of DEVELOPERS hereunder. Further, said certificate(s) shall state that the issuing company shall give DISTRICT and CITY sixty (60) days written notice in the event of any cancellation,

1 termination, non-renewal or reduction in coverage of the policies  
2 evidenced by the certificate(s). In the event of any such  
3 cancellation, termination, non-renewal or reduction in coverage,  
4 DEVELOPERS shall, forthwith, secure replacement insurance  
5 meeting the provisions of this paragraph.  
6

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

14 18. Provide or cause to be provided, all technical and construction related  
15 documentation required under the terms of this Agreement at DEVELOPERS' sole cost and  
16 expense.

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

26 20. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
27 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable  
28



1 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees  
2 shall be computed as costs and included in any judgment rendered.

3  
4 21. Prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES  
5 for ownership, operation and maintenance, DEVELOPERS' civil engineer of record or  
6 construction civil engineer of record, duly registered in the State of California, shall provide  
7 DISTRICT a redlined "RECORD DRAWING" copy of the engineering drawings that  
8 constitute the IMPROVEMENT PLANS. After DISTRICT approval of the redlined RECORD  
9 DRAWING, DEVELOPERS' engineer shall schedule with DISTRICT a time to transfer the  
10 redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the  
11 engineer shall review, stamp and sign the original IMPROVEMENT PLANS "RECORD  
12 DRAWING".  
13

14 22. Ensure that all work performed pursuant to this Agreement by  
15 DEVELOPERS, their agents or contractors is done in accordance with all applicable laws and  
16 regulations, including but not limited to all applicable provisions of the Labor Code, Business  
17 and Professions Code, and Water Code. DEVELOPERS shall be solely responsible for all  
18 costs associated with compliance with applicable laws and regulations.  
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SECTION II

DISTRICT shall:

1. Review and, as it deems appropriate, approve the submittals furnished by DEVELOPERS pursuant to the terms of this Agreement prior to commencing any final inspection of DISTRICT DRAINAGE FACILITIES.

2. Provide CITY an opportunity to review and, as appropriate, approve submittals furnished by DEVELOPERS pursuant to the terms of this Agreement prior to DISTRICT'S final approval.

3. To the extent possible under the prevailing conditions, inspect DISTRICT DRAINAGE FACILITIES as deemed necessary and appropriate by DISTRICT.

4. Keep an accurate accounting of all DISTRICT costs associated with the (i) review and, as appropriate, approval of DEVELOPERS' submittals furnished pursuant to this Agreement and (ii) the processing and administration of this Agreement (the "Administrative Account").

5. 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 DEVELOPERS (the "Construction Inspection Account"). If the aggregate of DEVELOPERS' deposits submitted pursuant to Section I.2., of this Agreement exceeds such costs; DISTRICT shall reimburse DEVELOPERS the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete.

6. Accept DEVELOPERS' deposit, as set forth in Section I.3. herein, as a guarantee against potential defects in workmanship and materials in the construction of DISTRICT DRAINAGE FACILITIES.

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7. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT and CITY acceptance of PROJECT construction as being complete, (ii) DISTRICT determination that DEVELOPERS' submittals are complete and meet all requirements set forth in this Agreement, (iii) DISTRICT determination, through its review of all submittals required under the terms of this Agreement and its inspection of DISTRICT DRAINAGE FACILITIES and CHANNEL, that DISTRICT DRAINAGE FACILITIES and CHANNEL have been constructed in substantial conformance with the IMPROVEMENT PLANS and applicable specifications, (iv) DISTRICT determination that no defects in workmanship or materials are known to exist within PROJECT or that any known defects have been corrected, (v) all rights of way and easements necessary for the operation and maintenance of DISTRICT DRAINAGE FACILITIES are conveyed to DISTRICT, and (vi) DISTRICT DRAINAGE FACILITIES are found to be in a satisfactorily maintained condition as solely determined by DISTRICT.

8. Keep ARCH CULVERTS free and clear of sediment and debris.

9. Accept responsibility for maintaining CHANNEL lines, grades and stormwater conveyance upon i) completion of CHANNEL construction; ii) CITY and DISTRICT acceptance of CHANNEL right of way as provided herein; and iii) receipt of all necessary REGULATORY PERMITS, as determined by DISTRICT.

SECTION III

CITY shall:

1. Hold the faithful performance and payment bonds submitted by DEVELOPERS as set forth in Section I.6. of this Agreement and hold said bonds as provided therein.

1           2. As requested by DISTRICT, accept the Irrevocable Offers of Dedication  
2 furnished by DEVELOPERS pursuant to this agreement.

3           3. By execution of this Agreement, grant District the necessary rights to  
4 operate and maintain DISTRICT DRAINAGE FACILITIES within CITY held rights of way  
5 and easements.

6           4. Accept ownership and sole responsibility for the operation and  
7 maintenance of CITY DRAINAGE FACILITIES upon DISTRICT acceptance of DISTRICT  
8 DRAINAGE FACILITIES as being complete.

9           5. Accept sole ownership and responsibility for the structural integrity and  
10 maintenance of ARCH CULVERTS.

11           6. Upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as  
12 being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings  
13 and covers located within CITY rights of way which must be performed at such time(s) that the  
14 finished grade along and above the underground portions of PROJECT are improved, repaired,  
15 replaced or changed. It being further understood and agreed that any such adjustments shall be  
16 performed at no cost to DISTRICT.

17           7. Recognize that CHANNEL is an active watercourse and, hence,  
18 CHANNEL right of way will be subject to periodic flooding and possible flood damage.

19           8. Within CHANNEL right of way, assume all obligations to maintain  
20 CHANNEL AMENITIES, including but not limited to, repairing and/or replacing pathways,  
21 access roads, irrigation systems, landscaping of CHANNEL sideslopes and the routine removal  
22 of accumulated litter, trash and debris associated with CITY'S or public's use of CHANNEL  
23 right of way.  
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1 9. Assume all liability in conjunction with the anticipated recreational use  
2 within CHANNEL right of way including claims of third persons for injury or death or damage  
3 to property.

4 10. Assume sole responsibility for providing security and safety for the public  
5 in the public's use of CHANNEL right of way.

6  
7 11. Ensure the safety of the public who may use CHANNEL right of way, by  
8 conducting periodic safety inspections and promptly repairing any surface cracking and  
9 damage to CHANNEL AMENITIES as necessary to safeguard public health and safety.

10 12. Operate and maintain CHANNEL AMENITIES in a manner that does not  
11 unreasonably interfere with DISTRICT'S ability to maintain CHANNEL'S lines, grades and  
12 conveyance of stormwater.

13 SECTION IV

14  
15 It is further mutually agreed:

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

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

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

17 DEVELOPERS' indemnification obligations shall be satisfied when  
18 DEVELOPERS have provided to DISTRICT and CITY the appropriate form of dismissal  
19 relieving DISTRICT or CITY from any liability for the claim, proceeding or action involved.  
20

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

24 In the event there is conflict between this section and California Civil  
25 Code Section 2782, this section shall be interpreted to comply with Civil Code Section 2782.  
26 Such interpretation shall not relieve DEVELOPERS from indemnifying DISTRICT or CITY to  
27 the fullest extent allowed by law.  
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1           2. DEVELOPERS shall not request DISTRICT to accept any portion or  
2 portions of DISTRICT DRAINAGE FACILITIES prior to the completion of PROJECT as  
3 solely determined by DISTRICT.

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

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

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

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

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

18 BROOKFIELD AMR/FR, LLC  
19 12865 Pointe Del Mar Way, Ste 200  
20 Del Mar, CA 92014  
Attn: Adrian Peters

SUTTER MITLAND 01, LLC  
12865 Pointe Del Mar Way, Suite 200  
Del Mar, CA 92014  
Attn: Adrian Peters

21 WOODSIDE AMR 91, LLC  
22 11870 Pierce Street Suite 250  
23 Riverside, CA 92505  
Attn: Tim McGinnis

WOODSIDE AMR 107, INC.,  
11870 Pierce Street Suite 250  
Riverside, CA 92505  
Attn: Tim McGinnis

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

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

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

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

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

23           11. 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 statement of the terms and conditions thereof. This Agreement may be changed or modified  
26 only upon the written consent of the parties hereto.

27 //  
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

JUL 07 2015

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

By 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

KECIA HARPER-IHEM  
Clerk of the Board

By Neal Kipnis  
NEAL KIPNIS  
Deputy County Counsel

By Kecia Harper-Ihem  
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

**CITY OF MENIFEE**

By Jonathan G. Smith  
JONATHAN G. SMITH  
Director of Public Works/Engineering

By Scott Mann  
SCOTT MANN  
Mayor

ATTEST:

KATHY BENNETT  
City Clerk

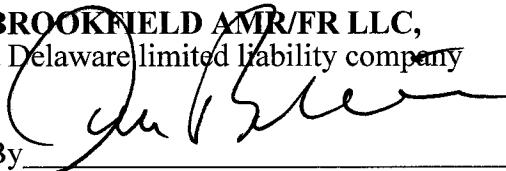
By Julie Biggs  
~~JULIE BIGGS~~ Jeffrey T. Melching  
City Attorney

By Kathy Bennett

(SEAL)

Cooperative Agreement: Tracts 31391, -1, -2, -3 and -4  
MHW:bjj  
11/26/2013

**BROOKFIELD AMR/FR LLC,**  
a Delaware limited liability company

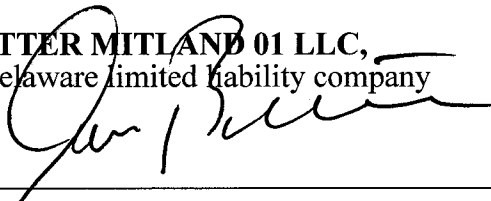
By 

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

By 

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

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

By 

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

By 

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

[Signatures continued next page.]

Cooperative Agreement: Tracts 31391,-1,-2,-3 and -4

MHW:blj

11/26/2013

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Orange }

On October 20, 2014 before me, Ann L. McGee  
Date Here Insert Name and Title of the Officer

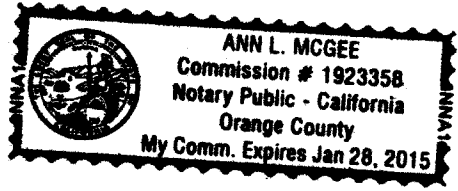
personally appeared William B. Smith  
Name(s) of Signer(s)

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: Ann L. McGee  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Cooperative Agreement Document Date: \_\_\_\_\_

Number of Pages: 32 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

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

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

Signer Is Representing: Brookfield  
AMR/FR LLC

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

AMY L. MOORE  
Commission # 195328  
Notary Public - California  
Orange County  
My Comm. Expires Jan 28, 2015



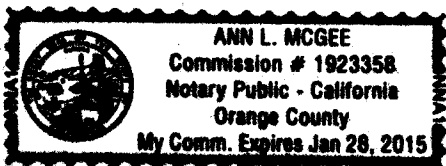
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT  
CIVIL CODE § 1189**

State of California

County of Orange

On October 20, 2014 before me, Ann L. McGee,  
Date Here Insert Name and Title of the Officer

personally appeared William B. Seith  
Name(s) of Signer(s)



Place Notary Seal Above

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: Ann L. McGee  
Signature of Notary Public

**OPTIONAL**

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Number of Pages: 32 Signer(s) Other Than Named Above: \_\_\_\_\_

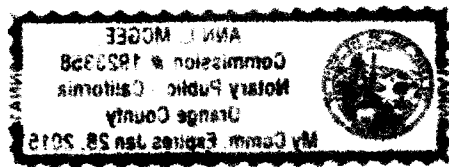
**Capacity(ies) Claimed by Signer(s)**

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

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

Signer Is Representing: Sutter Midland  
01 LLC

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



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of Orange

On 11/7/14 before me, Monika Rothenburger, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Dave Bartlett  
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: Monika Rothenburger  
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: \_\_\_\_\_

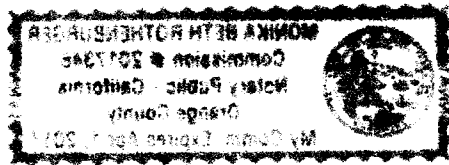
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

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

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

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





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

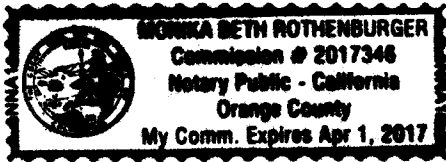
State of California

County of Orange

On 1/7/14 before me, Monika Rothenburger, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Dave Bartlett  
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: Monika Rothenburger  
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: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_  Corporate Officer – Title(s): \_\_\_\_\_

Individual  Individual

Partner –  Limited  General  Partner –  Limited  General

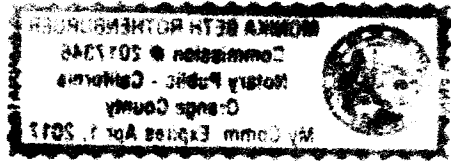
Attorney in Fact  Attorney in Fact

Trustee  Trustee

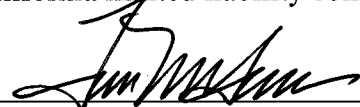
Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

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




**WOODSIDE AMR 91 LLC,**  
a California limited liability company

By   
\_\_\_\_\_  
TIM MCGINNIS  
President

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

**WOODSIDE AMR 107 INC.,**  
a California corporation

By   
\_\_\_\_\_  
TIM MCGINNIS  
President

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

Cooperative Agreement: Tracts 31391,-1,-2,-3 and -4  
MHW:blj  
11/26/2013

**ACKNOWLEDGMENT**

State of California  
County of Riverside )

On November 17, 2014 before me, Rochelle M Sromalla, Notary Public  
(insert name and title of the officer)

personally appeared Tim McGinnis,  
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 *Rochelle M Sromalla* (Seal)



**ACKNOWLEDGMENT**

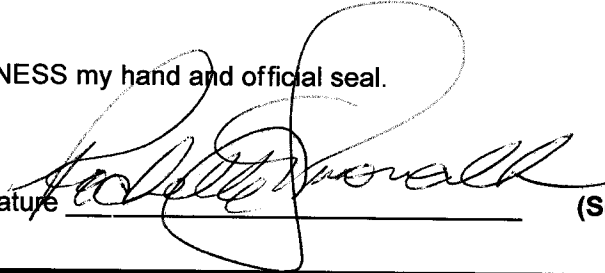
State of California  
County of  Riverside )

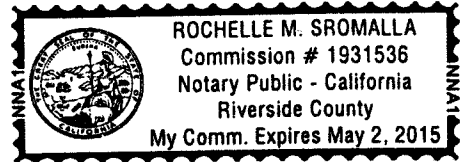
On  November 17, 2014  before me,  Rochelle M Sromalla, Notary Public   
(insert name and title of the officer)

personally appeared  Tim McGinnis ,  
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.

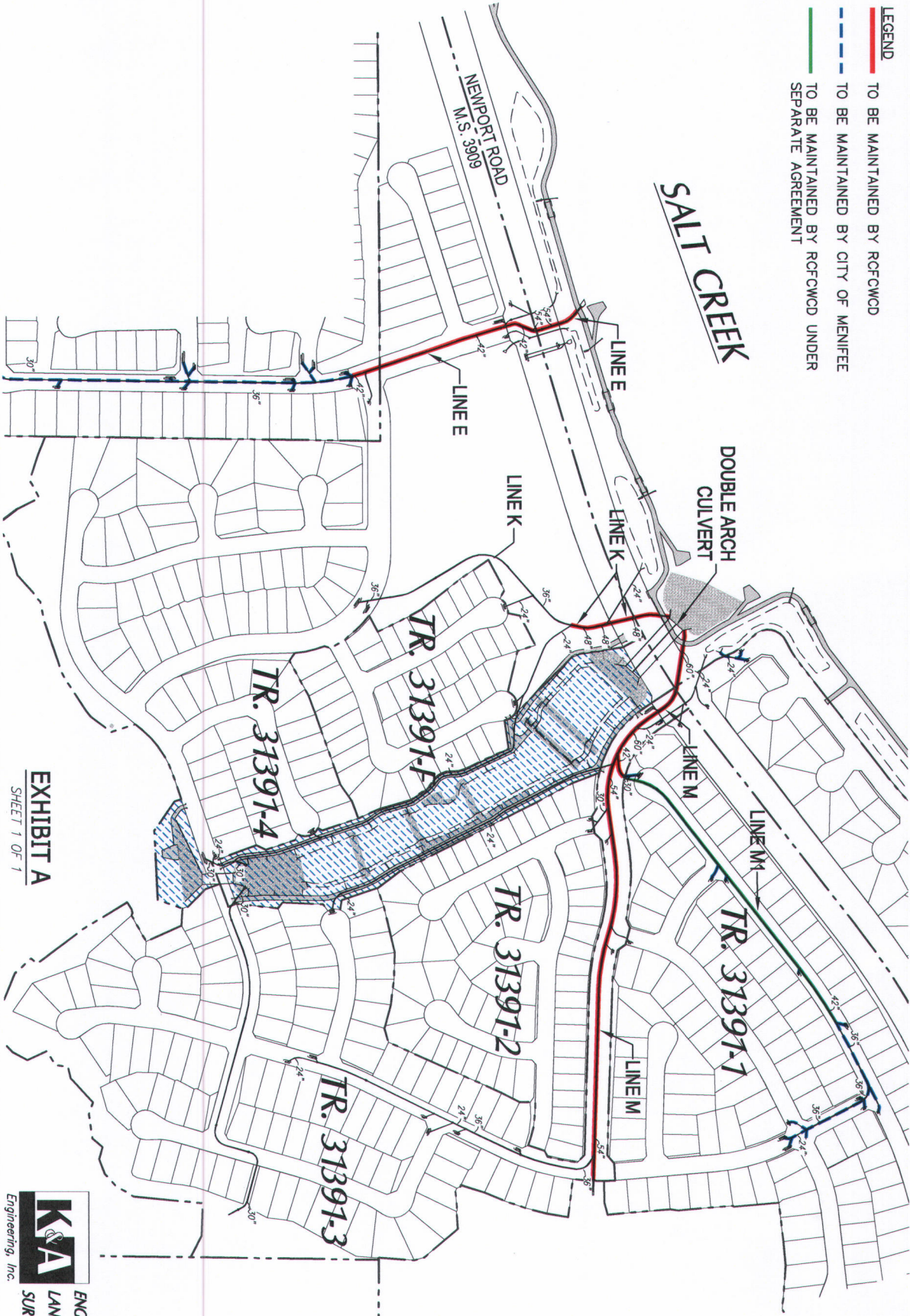
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

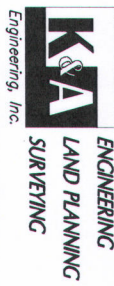
Signature    (Seal)



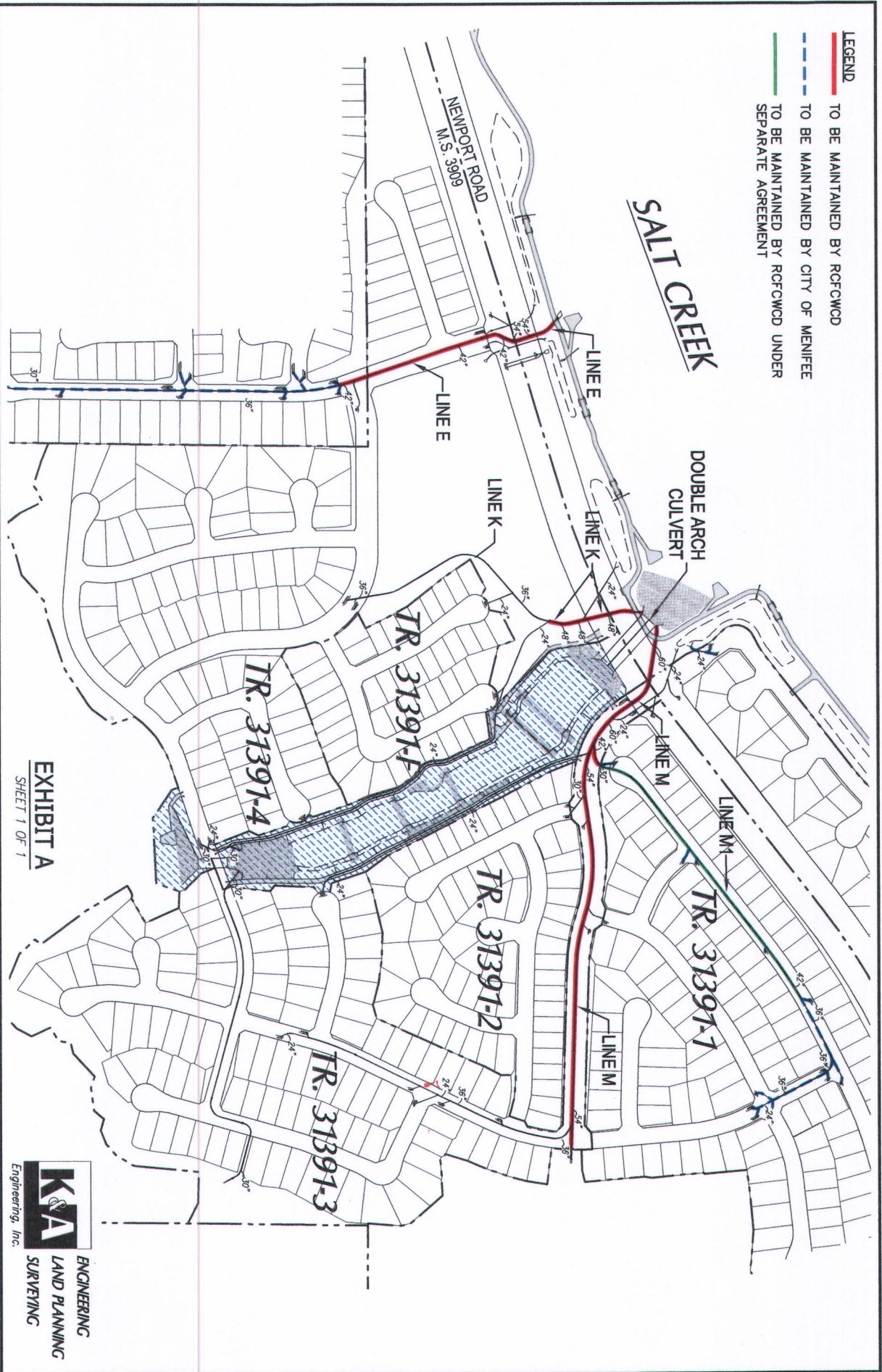
- LEGEND**
- TO BE MAINTAINED BY RGCWCWD
  - - - TO BE MAINTAINED BY CITY OF MENIFEE
  - TO BE MAINTAINED BY RGCWCWD UNDER SEPARATE AGREEMENT



**EXHIBIT A**  
SHEET 1 OF 1

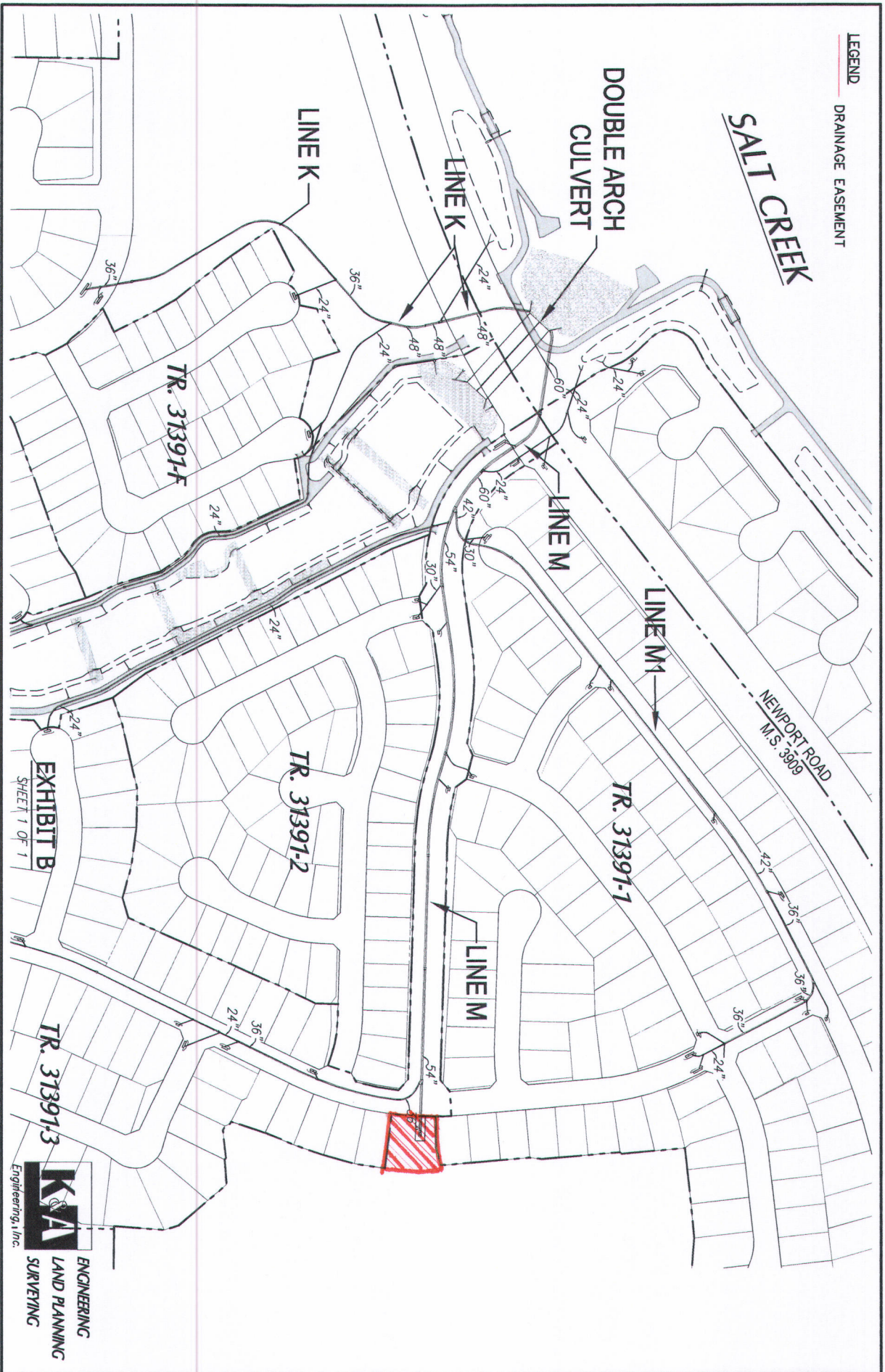


# EXHIBIT "A"



Drawing: R:\17121\Exhibit\Drainage\Map\Facilities\Agreement\171 - EXH - Flood\EXHIBIT A-2.dwg    Layout: 11x17 L (2)    Saved: 10/17/2013 3:40 PM    Plotted: 11/15/2013 10:15 AM    Plot Scale: 1:1    By: Bryan Clark

# EXHIBIT "B"



Drawing: R:\121271\Exhibit\Drawings\Modl - Facilities Agreement\217 - EXH - Road EXHIBIT B.dwg    Layout: 11/17/12    Sheet: 11/20/2013 1:08 PM    Plotter: 11/25/2013 9:04 AM    Plot Scale: 1" = 80' Bryan Clark