

913 B



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

FORM APPROVED COUNTY COUNSEL
BY: [Signature] DATE
GREGORY P. PRIAMOS

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

June 21, 2016

SUBJECT: Approve Cooperative Agreement for Perris Valley Master Drainage Plan-Lateral B-1, Stage 3 (MS 157), Project No. 4-0-00486, District 5 [N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the District, the City of Moreno Valley (City) and First Industrial, L.P. (Developer); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

Summary

The Cooperative Agreement (Agreement) sets forth the terms and conditions by which certain flood control facilities, required as a condition of approval for MS 157, are to be constructed by Developer and inspected, operated and maintained by the District, City, and Developer.

P8\205028
AMR:rlp

[Signature]

JASON E. UHLEY
General Manager-Chief Engineer

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	

SOURCE OF FUNDS:

Budget Adjustment: No
For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE
[Signature]
BY: Steven C. Horn

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Jeffries, Tavaglione, Benoit and Ashley
Nays: None
Absent: Washington
Date: June 21, 2016
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: [Signature]
Deputy

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

Prev. Agn. Ref.: | District: 5th | Agenda Number:

11-3

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

FORM 11: Approve Cooperative Agreement for Perris Valley Master Drainage Plan-Lateral B-1,
Stage 3 (MS 157), Project No. 4-0-00486, District 5 [N/A]

DATE: June 21, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection, and subsequent operation and maintenance of the referenced storm drain facilities within the Perris Valley Master Drainage Plan.

Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain system. The City will assume ownership and responsibility for the projects associated catch basins, inlets, connector pipes and laterals that are 36 inches or less in diameter located within City rights of way.

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

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of MS 157. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to citizens who will utilize the tract's roadways.

SUPPLEMENTAL:

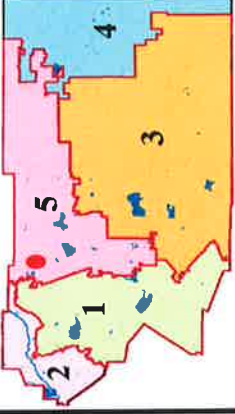
Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of the District maintained storm drain facilities will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

AMR:rlp



Supervisor Districts

LEGEND:

- Project Vicinity
- Supervisorial District

DESCRIPTION:

Perris Valley MDP-Lateral B-1,
Stage 3 (MS 157)



COOPERATIVE AGREEMENT

Perris Valley Master Drainage Plan (MDP) Lateral B-1, Stage 3
Project No. 4-0-00486
(MS 157)

WHEN DOCUMENT IS FULLY EXECUTED RETURN
CLERK'S COPY
to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", the City of Moreno Valley, hereinafter called "CITY", and First Industrial, L.P., a Delaware limited partnership, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the County of Riverside. DEVELOPER has submitted for approval MS 157 located in the city of Moreno Valley. As a condition of approval, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The legal description of MS 157 is provided in Exhibit "A" attached hereto and made a part hereof; and

C. The required flood control facilities, all as shown in District Drawing No. 4-1094, include construction of a segment of DISTRICT'S Perris Valley MDP Lateral B-1, Stage 3 consisting of approximately 1,236 lineal feet of a reinforced concrete pipe, hereinafter called "DISTRICT DRAINAGE FACILITY", as shown in concept in blue on Exhibit "B" attached hereto and made a part hereof. At its downstream terminus, DISTRICT DRAINAGE FACILITY shall connect to DISTRICT'S Perris Valley MDP Lateral B-1, Stage 2 facility. At its upstream terminus, DISTRICT DRAINAGE FACILITY terminates with a concrete bulkhead for future extension; and

D. Associated with the construction of DISTRICT DRAINAGE FACILITY is the construction of certain catch basins, inlets, connector pipes, and various lateral storm drains that are thirty-six inches (36") or less in diameter that are located within CITY held easements or rights of way, hereinafter called "APPURTENANCES". Together, DISTRICT DRAINAGE FACILITY and APPURTENANCES are hereinafter called "PROJECT"; and

JUN 21 2016 11-3

1 E. CITY and DEVELOPER desire DISTRICT to ultimately accept
2 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE
3 FACILITY. Therefore, DISTRICT must review and approve DEVELOPER'S plans and
4 specifications for DISTRICT DRAINAGE FACILITY and subsequently inspect the construction
5 of DISTRICT DRAINAGE FACILITY; and

6 F. DISTRICT and DEVELOPER desire CITY to accept ownership and
7 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY must
8 review and approve DEVELOPER'S plans and specifications for PROJECT and subsequently
9 inspect the construction of PROJECT; and

10 G. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
11 specifications for DISTRICT DRAINAGE FACILITY, (ii) inspect the construction of
12 DISTRICT DRAINAGE FACILITY, and (iii) accept ownership and responsibility for the
13 operation and maintenance of DISTRICT DRAINAGE FACILITY, provided that DEVELOPER
14 (i) complies with this Agreement, (ii) constructs PROJECT in accordance with DISTRICT and
15 CITY approved plans and specifications, (iii) obtains and conveys to DISTRICT and the
16 necessary rights of way for the inspection, operation and maintenance of DISTRICT
17 DRAINAGE FACILITY; and (iv) accepts ownership and responsibility for the operation and
18 maintenance of PROJECT following completion of PROJECT construction until such time as
19 DISTRICT accepts ownership and responsibility for the operation and maintenance of
20 DISTRICT DRAINAGE FACILITY; and

21 H. CITY is willing to (i) review and approve PROJECT plans and
22 specifications, (ii) inspect the construction of PROJECT, (iii) accept and hold faithful
23 performance and payment bonds submitted by DEVELOPER for DISTRICT DRAINAGE
24 FACILITY, (iv) grant DISTRICT the right to inspect, operate and maintain portions of
25 DISTRICT DRAINAGE FACILITY located within CITY rights of way, (v) accept ownership
26 and responsibility for the operation and maintenance of APPURTENANCES, provided
27 PROJECT is constructed in accordance with plans and specifications approved by DISTRICT
28 and CITY.

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

2 SECTION I

3 DEVELOPER shall:

4 1. Prepare PROJECT plans and specifications, hereinafter called
5 "IMPROVEMENT PLANS", including separate plans and specifications for DISTRICT
6 DRAINAGE FACILITY, in accordance with applicable DISTRICT and CITY standards, and
7 submit to DISTRICT and CITY for their respective review and approval.

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

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

20 4. Secure, at its sole cost and expense, all necessary licenses, agreements,
21 permits, approvals, rights of way, rights of entry and temporary construction easements as may
22 be needed for the construction, inspection, operation and maintenance of PROJECT.
23 DEVELOPER shall furnish DISTRICT, at the time of providing written notice to DISTRICT of
24 the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
25 recordation of the final map for MS 157 or any phase thereof, whichever occurs first, with
26 sufficient evidence of DEVELOPER having secured such necessary licenses, agreements,
27 permits, approvals, rights of way, rights of entry and temporary construction easements as
28 determined and approved by DISTRICT and CITY.

1 5. Prior to commencing construction, furnish DISTRICT and CITY with
2 copies of all permits, approvals or agreements required by any federal, state or local resource
3 and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such
4 documents include but are not limited to those issued by the U.S. Army Corps of Engineers,
5 California Regional Water Quality Control Board, California State Department of Fish and
6 Wildlife, State Water Resources Control Board and Western Riverside County Regional
7 Conservation Authority.

8 6. Grant DISTRICT and CITY, by execution of this Agreement, the right to
9 enter upon DEVELOPER'S property where necessary and convenient for the purpose of gaining
10 access to and performing inspection service for the construction of PROJECT as set forth herein.

11 7. Provide CITY, at the time of providing written notice to DISTRICT of the
12 start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
13 recordation of the final map for MS 157 or any phase thereof, whichever occurs first, with faithful
14 performance and payment bonds, each in the amount of one hundred percent (100%) of the
15 estimated cost for construction of DISTRICT DRAINAGE FACILITY as determined by
16 DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of
17 DISTRICT and CITY. The bonds shall remain in full force and effect until DISTRICT
18 DRAINAGE FACILITY are accepted by DISTRICT and CITY as complete; at which time the
19 bond amount may be reduced to five percent (5%) for a period of one (1) year to guarantee against
20 any defective work, labor or materials.

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

26 9. Obtain and provide DISTRICT (Attention: Right of Way Acquisition
27 Section), at the time of providing written notice to DISTRICT of the start of construction as set
28 forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final map for

1 MS 157 or any phase thereof, whichever occurs first, with duly executed Irrevocable Offer(s) of
2 Dedication to the public for flood control and drainage purposes, including ingress and egress,
3 for the rights of way deemed necessary by DISTRICT for the construction, inspection, operation
4 and maintenance of DISTRICT DRAINAGE FACILITY, as shown in concept in blue on Exhibit
5 "B" attached hereto and made a part hereof. The Irrevocable Offer(s) of Dedication shall be in a
6 form approved by DISTRICT and shall be executed by all legal and equitable owners of the
7 property described in the offer(s).

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

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

22 13. Furnish DISTRICT with final mylar PROJECT plans and assign their
23 ownership to DISTRICT prior to the start on any portion of PROJECT construction.

24 14. Not permit any change to, or modification of, DISTRICT and CITY
25 approved IMPROVEMENT PLANS without the prior written permission and consent of
26 DISTRICT and CITY.

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

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

11 17. DEVELOPER shall not commence operations until DISTRICT and CITY
12 have been furnished with original certificate(s) of insurance and original certified copies of
13 endorsements and if requested, certified original policies of insurance including all endorsements
14 and any and all other attachments as required in this Section. Without limiting or diminishing
15 DEVELOPER'S obligation to indemnify or hold DISTRICT or CITY harmless, DEVELOPER
16 shall procure and maintain or cause to be maintained, at its sole cost and expense, the following
17 insurance coverage's during the term of this Agreement:

18 A. Workers' Compensation:

19 If DEVELOPER has employees as defined by the State of California,
20 DEVELOPER shall maintain statutory Workers' Compensation
21 Insurance (Coverage A) as prescribed by the laws of the State of
22 California. Policy shall include Employers' Liability (Coverage B)
23 including Occupational Disease with limits not less than \$1,000,000
24 per person per accident. Policy shall be endorsed to waive subrogation
25 in favor of DISTRICT and CITY, and, if applicable, to provide a
26 Borrowed Servant/Alternate Employer Endorsement.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER'S performance of its obligations hereunder. Policy shall name the DISTRICT and CITY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If DEVELOPER'S vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT and CITY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds.

1 D. Professional Liability:

2 DEVELOPER shall maintain Professional Liability Insurance
3 providing coverage for DEVELOPER'S performance of work
4 included within this Agreement, with a limit of liability of not less than
5 \$2,000,000 per occurrence and \$4,000,000 annual aggregate. If
6 DEVELOPER'S Professional Liability Insurance is written on a claims
7 made basis rather than an occurrence basis, such insurance shall
8 continue through the term of this Agreement and DEVELOPER shall
9 purchase at his sole expense either 1) An Extended Reporting
10 Endorsement (also known as Tail Coverage); or 2) Prior Dates
11 Coverage from a new insurer with a retroactive date back to the date
12 of, or prior to, the inception of this Agreement; or 3) Demonstrate
13 through Certificates of Insurance that DEVELOPER has maintained
14 continuous coverage with the same or original insurer. Coverage
15 provided under items: 1), 2) or 3) will continue as long as the law
16 allows.

17 E. General Insurance Provisions – All Lines:

- 18 i. Any insurance carrier providing insurance coverage hereunder
19 shall be admitted to the State of California and have an A.M.
20 BEST rating of not less than an A: VIII (A: 8) unless such
21 requirements are waived, in writing, by the County Risk
22 Manager. If the County Risk Manager waives a requirement for
23 a particular insurer such waiver is only valid for that specific
24 insurer and only for one policy term.
- 25 ii. The DEVELOPER must declare its insurance self-insured
26 retention for each coverage required herein. If any such self-
27 insured retention exceeds \$500,000 per occurrence each such
28 retention shall have the prior written consent of the County Risk

1 Manager before the commencement of operations under this
2 Agreement. Upon notification of self-insured retention deemed
3 unacceptable to the DISTRICT, and at the election of the County
4 Risk Manager, DEVELOPER'S carriers shall either: 1) reduce or
5 eliminate such self-insured retention with respect to this
6 Agreement with DISTRICT, or 2) procure a bond which
7 guarantees payment of losses and related investigations, claims
8 administration, and defense costs and expenses.

- 9
10 iii. DEVELOPER shall cause their insurance carrier(s) to furnish
11 DISTRICT and CITY with 1) a properly executed original
12 certificate(s) of insurance and certified original copies of
13 endorsements effecting coverage as required herein; and 2) if
14 requested to do so orally or in writing by the County Risk
15 Manager, provide original certified copies of policies including
16 all endorsements and all attachments thereto, showing such
17 insurance is in full force and effect. Further, said certificate(s)
18 and policies of insurance shall contain the covenant of the
19 insurance carrier(s) that a minimum of sixty (60) days written
20 notice shall be given to the DISTRICT and CITY prior to any
21 material modification, cancellation, expiration or reduction in
22 coverage of such insurance. If DEVELOPER insurance
23 carrier(s) policies does not meet the minimum notice
24 requirement found herein, DEVELOPER shall cause
25 DEVELOPER'S insurance carrier(s) to furnish a 60 day Notice
26 of Cancellation Endorsement. In the event of a material
27 modification, cancellation, expiration or reduction in coverage,
28 this Agreement shall terminate forthwith, unless DISTRICT and
CITY receives, prior to such effective date, another properly

1 executed original certificate of insurance and original copies of
2 endorsements or certified original policies, including all
3 endorsements and attachments thereto, evidencing coverages set
4 forth herein and the insurance required herein is in full force and
5 effect. An individual authorized by the insurance carrier to do
6 so on its behalf shall sign the original endorsements for each
7 policy and the certificate of insurance.

8 iv. It is understood and agreed by the parties hereto that
9 DEVELOPER'S insurance shall be construed as primary
10 insurance, and DISTRICT'S or CITY'S insurance and/or
11 deductibles and/or self-insured retentions or self-insured
12 programs shall not be construed as contributory.

13 v. If, during the term of this Agreement or any extension thereof,
14 there is a material change in the scope of services or there is a
15 material change in the equipment to be used in the performance
16 of the scope of work which will add additional exposures (such
17 as the use of aircraft, watercraft, cranes, etc.); or the term of this
18 Agreement, including any extensions thereof, exceeds five (5)
19 years, DISTRICT and CITY reserves the right to adjust the types
20 of insurance required under this Agreement and the monetary
21 limits of liability for the insurance coverages currently required
22 herein, if, in the County Risk Manager's reasonable judgment,
23 the amount or type of insurance carried by DEVELOPER has
24 become inadequate.

25 vi. DEVELOPER shall pass down the insurance obligations
26 contained herein to all tiers of subcontractors working under this
27 Agreement.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT and CITY.

viii. DEVELOPER agrees to notify DISTRICT and CITY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

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

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

19. Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Development Review Section) and CITY with written notice that PROJECT construction is substantially complete and request that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITY and CITY conduct a final inspection of PROJECT.

20. Upon completion of PROJECT construction, and upon acceptance by CITY of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT, but prior to CITY acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance, convey, or cause to be conveyed to CITY the flood control easement(s) or grant deed(s) of fee title where appropriate. The easement(s) or grant deed(s) shall be in a form approved by both DISTRICT and CITY and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

21. At the time of recordation of the conveyance document(s) as set forth in Section I.20., furnish DISTRICT with policies of title insurance, each in the amount of not less

1 than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
2 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the
3 estimated value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT,
4 guaranteeing DISTRICT'S interest in said property as being free and clear of all liens,
5 encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except
6 those which, in the sole discretion of DISTRICT, are acceptable.

7 22. Accept ownership and sole responsibility for the operation and maintenance
8 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
9 and maintenance of DISTRICT DRAINAGE FACILITY and CITY accepts ownership and
10 responsibility for the operation and maintenance of APPURTENANCES.

11 23. Accept all liability whatsoever associated with the ownership, operation and
12 maintenance of DISTRICT DRAINAGE FACILITY until such time as DISTRICT DRAINAGE
13 FACILITY are formally accepted by DISTRICT for ownership, operation and maintenance

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

18 25. Upon completion of PROJECT construction, but prior to DISTRICT
19 acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance,
20 provide or cause its civil engineer of record or construction civil engineer of record, duly
21 registered in the State of California, to provide DISTRICT with a redlined "record drawings"
22 copy of PROJECT plans. After DISTRICT approval of the redlined "record drawings",
23 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
24 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
25 stamp and sign the original PROJECT engineering plans "record drawings".

26 26. Ensure that all work performed pursuant to this Agreement by
27 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
28 regulations, including but not limited to all applicable provisions of the Labor Code, Business

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 SECTION II

4 DISTRICT shall:

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

7 2. Provide CITY an opportunity to review and approve IMPROVEMENT
8 PLANS prior to DISTRICT'S final approval.

9 3. Upon execution of this Cooperative Agreement, record or cause to be
10 recorded, a copy of this Cooperative Agreement in the Official Records of the Riverside County
11 Recorder.

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

14 5. Inspect DISTRICT DRAINAGE FACILITY construction.

15 6. Keep an accurate accounting of all DISTRICT costs associated with the
16 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
17 conveyance documents, and the processing and administration of this Cooperative Agreement.

18 7. Keep an accurate accounting of all DISTRICT construction inspection costs,
19 and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE
20 FACILITY as being complete, submit a final cost statement to DEVELOPER. If the deposit, as
21 set forth in Section I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess
22 amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE
23 FACILITY as being complete. If at any time the costs exceed the deposit or are anticipated by
24 DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed
25 reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE
26 FACILITY, within thirty (30) days after receipt of billing from DISTRICT.

27 8. Accept ownership and sole responsibility for the operation and maintenance
28 of DISTRICT DRAINAGE FACILITY upon (i) DISTRICT inspection of DISTRICT

1 DRAINAGE FACILITY in accordance with Section I.19., (ii) DISTRICT acceptance of
 2 PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "record
 3 drawings" of PROJECT plans, as set forth in Section I.25., (iv) recordation of all conveyance
 4 documents described in Section I.21., (v) CITY acceptance of APPURTENANCES for
 5 ownership, operation, and maintenance, and (vi) DISTRICT'S sole determination that DISTRICT
 6 DRAINAGE FACILITY are in a satisfactorily maintained condition.

7 9. Provide CITY with a reproducible duplicate copy of "record drawings"
 8 PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as being
 9 complete.

10 SECTION III

11 CITY shall:

12 1. Review and approve IMPROVEMENT PLANS prior to the start of
 13 PROJECT construction.

14 2. Accept CITY and DISTRICT approved faithful performance and payment
 15 bonds submitted by DEVELOPER, as set forth in Section I.7., and hold said bonds as provided
 16 herein.

17 3. Inspect PROJECT construction.

18 4. Consent, by execution of this Cooperative Agreement, to the recording of
 19 any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Cooperative
 20 Agreement.

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

26 6. Grant DISTRICT, by execution of this Agreement, the right to construct,
 27 inspect, operate and maintain DISTRICT DRAINAGE FACILITY within CITY rights of way.

28

1 7. Accept ownership and sole responsibility for the operation and maintenance
2 of APPURTENANCES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY for
3 ownership, operation and maintenance.

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

10 SECTION IV

11 It is further mutually agreed:

12 1. All work involved with PROJECT shall be inspected by DISTRICT and
13 CITY but shall not be deemed complete until DISTRICT and CITY mutually agree in writing
14 that construction is completed in accordance with DISTRICT and CITY approved
15 IMPROVEMENT PLANS.

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

20 3. DISTRICT acceptance of ownership and responsibility for the operation and
21 maintenance of DISTRICT DRAINAGE FACILITY shall be in a satisfactorily maintained
22 condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole
23 discretion of DISTRICT, DISTRICT DRAINAGE FACILITY are not in an acceptable condition,
24 corrections shall be made at sole expense of DEVELOPER.

25 4. DEVELOPER shall complete construction of PROJECT within twelve (12)
26 consecutive months after execution of this Agreement and within one hundred twenty (120)
27 consecutive calendar days after commencing work on PROJECT. It is expressly understood that
28 since time is of the essence in this Agreement, failure of DEVELOPER to perform the work

1 within the agreed upon time shall constitute authority for DISTRICT to perform the remaining
2 work and require DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In
3 which case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

4 5. If DEVELOPER fails to commence construction of PROJECT within eight
5 (8) months after execution of this Agreement, then DISTRICT reserves the right to withhold
6 issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at
7 the time DEVELOPER provides written notification to DISTRICT of the start of construction as
8 set forth in Section I.8. In the event of a change in the existing site conditions that materially
9 affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT
10 DRAINAGE FACILITY, DISTRICT may require DEVELOPER to modify IMPROVEMENT
11 PLANS as deemed necessary by DISTRICT. In the event of a change in the existing site
12 conditions that materially affects PROJECT function or CITY'S ability to operate and maintain
13 APPURTENANCES, CITY may require DEVELOPER to modify IMPROVEMENTS as
14 deemed necessary by CITY.

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

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

1 forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum
2 balance of ten thousand dollars (\$10,000) shall be retained on account.

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

15 8. DEVELOPER for itself, its successors and assigns hereby releases
16 DISTRICT and County of Riverside (including their agencies, districts, special districts and
17 departments, their respective directors, officer, Board of Supervisors, elected and appointed
18 officials, employees, agents and representatives) from any and all claims, demands, actions, or
19 suits of any kind arising out of any liability, known or unknown, present or future, including but
20 not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the
21 California Constitution, the Fifth Amendment of the United States Constitution, or any other law
22 or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused
23 by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute
24 a release by DEVELOPER of DISTRICT, its officers, agents and employees from any and all
25 claims, demands, actions or suits of any kind arising out of any liability, known or unknown,
26 present or future, for the negligent maintenance of DISTRICT DRAINAGE FACILITY, after
27 the acceptance of ownership, operation and maintenance of DISTRICT DRAINAGE FACILITY
28 by DISTRICT.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

CITY OF MORENO VALLEY
14177 Frederick Street
Moreno Valley, CA 92552
Attn: Michael Lloyd, Interim Engineering
Division Manager

FIRST INDUSTRIAL, L.P.
898 N. Sepulveda Blvd., Ste. 175
El Segundo, CA 90245
Attn: Larry Cochrun

12. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

13. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto

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 hereby certify that they have the authority within their company to enter into and execute this
17 Agreement, and have been authorized to do so by any and all boards of directors, legal counsel,
18 and/or any other board, committee or other entity within their company which have the authority
19 to authorize or deny entering 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 matters 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.

25 //

26 //


27
28

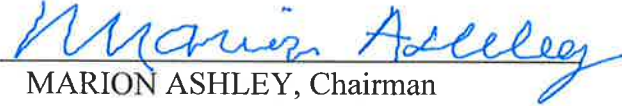
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative

Agreement on JUN 21 2016
(to be filled in by Clerk of the Board)

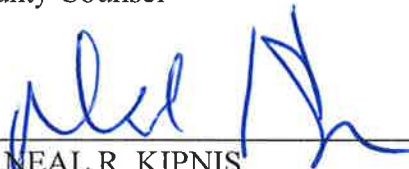
RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION ISTRICT**

By 
JASON E. UHLEY
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By 
NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By 
Deputy


(SEAL)

Cooperative Agreement w/ City of Perris and First Industrial, L.P.:
Perris Valley MDP Lateral B-1, Stage 3
Project No. 4-0-00486
(MS 157)
05/25/2016
AMR:rlp

1 RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY


2
3 By 
4 AHMAD R. ANSARI
5 Public Works Director/City Engineer

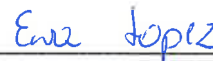
6
7 By 
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
City Manager

8 APPROVED AS TO FORM:

ATTEST:

9 STEVEN B. QUINTANILLA
10 Interim City Attorney

11
12 By 
13 PAUL EARLY
14 Assistant City Attorney

15 By 
16 ~~LESLIE KEANE~~
17 *Acting* Interim City Clerk
18 (SEAL)

24 Cooperative Agreement w/ City of Perris and First Industrial, L.P.:
25 Perris Valley MDP Lateral B-1, Stage 3
26 Project No. 4-0-00486
27 (MS 157)
28 05/25/2016
AMR:rlp

FIRST INDUSTRIAL, L.P.
a Delaware limited partnership

By: **FIRST INDUSTRIAL REALTY TRUST INC.**,
a Maryland corporation, its sole General Partner

By: 

LARRY COCHRUN
Director of Development

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cooperative Agreement w/ City of Perris and First Industrial, L.P.:
Perris Valley MDP Lateral B-1, Stage 3
Project No. 4-0-00486
(MS 157)
05/25/2016
AMR:rlp

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On June 1, 2016 before me, Jacqueline Ventura-Notary
(insert name and title of the officer)

personally appeared Larry Cochrun
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 Jacqueline Ventura (Seal)



Exhibit A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

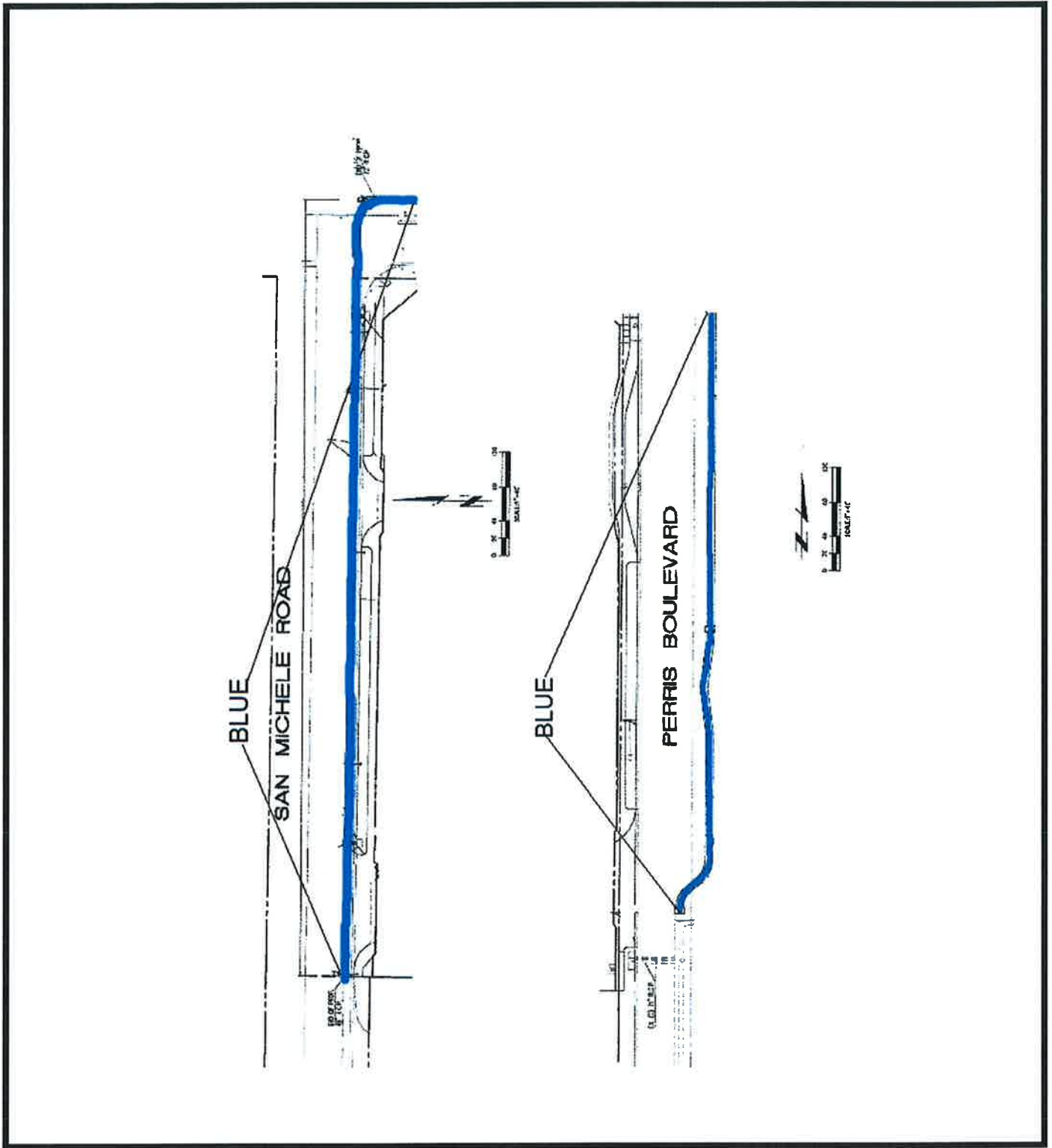
PARCEL 1 OF LOT LINE ADJUSTMENT NO. 1031/CERTIFICATE OF COMPLIANCE, RECORDED ON DECEMBER 3, 2015 AS DOCUMENT NO. 2015-0527474, OF OFFICIAL RECORDS OF THE COUNTY OF RIVERSIDE, BEING MORE PARTICULARLY DESCRIBED AS:

PARCEL 4 AS SHOWN ON PARCEL MAP NO. 12367 RECORDED NOVEMBER 7, 1978 IN BOOK 56, PAGE 84 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH,

PARCEL 3 AND PARCEL 4 OF PARCEL MAP NO. 17644, AS PER MAP FILED IN BOOK 113, PAGE 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN(S): 316-200-019; 015 & 001

Exhibit B



COOPERATIVE AGREEMENT

Perris Valley MDP Lateral B-1, Stage 3

Project No. 4-0-00486

MS 157

Page 1 of 1