

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



ITEM  
11.1  
(ID # 1944)

**MEETING DATE:**  
Tuesday, November 15, 2016

**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approval of Cooperative Agreement for Murrieta - Keller Road Storm Drain, Stage 1 (MS 161); Project No. 4-0-00298; 3rd District [\$0]

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

1. Approve the Cooperative Agreement between the District, the City of Murrieta (City) and Kaiser Foundation Hospitals (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 161, are to be constructed by Developer and inspected, operated and maintained by the District and Developer.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET DISTRICT COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b>			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	N/A

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

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

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

**Ayes:** Jeffries, Benoit and Ashley  
**Nays:** None  
**Absent:** Tavaglione and Washington  
**Date:** November 15, 2016  
**xc:** Flood

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

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

**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.

Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain system. The Developer will assume ownership and responsibility for the operation and maintenance of an interim drainage channel, maintenance access road, basin and maintenance of the project's associated lateral that is 36 inches or less in diameter located within privately held 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 161. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

**SUPPLEMENTAL:**

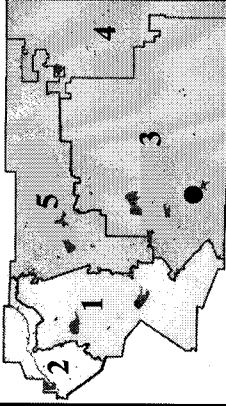
**Additional Fiscal Information**

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:blm  
P8/207673



Supervisor Districts

**LEGEND:**

-  Project Vicinity
-  Supervisorial District

**DESCRIPTION:**

Murrieta - Keller Road Storm Drain,  
Stage 1 (MS 161)



Attachment 1



1 COOPERATIVE AGREEMENT  
2 Murrieta – Keller Road Storm Drain, Stage 1  
3 Project No. 4-0-00298  
4 MS 161

5 The Riverside County Flood Control and Water Conservation District (the  
6 "DISTRICT"), the City of Murrieta (the "CITY") and Kaiser Foundation Hospitals, a California  
7 nonprofit public benefit corporation (the "DEVELOPER") hereby agree as follows:

8 RECITALS

9 A. DEVELOPER is the legal owner of record of certain real property, including  
10 MS 161, located within the County of Riverside. DEVELOPER has submitted for approval MS  
11 161 located in the City of Murrieta. As a condition of approval for MS 161, DEVELOPER must  
12 construct certain flood control facilities in order to provide flood protection and drainage for  
13 DEVELOPER'S planned development; and

14 B. The legal description of MS 161 is provided in Exhibit "A" attached hereto  
15 and made a part hereof; and

16 C. The required flood control facilities and drainage improvements, all as  
17 shown on District Drawing No. 4-1096, include construction of approximately (i) 40 lineal feet  
18 of 10' x 5' reinforced concrete box; and (ii) 470 lineal feet of 72-inch reinforced concrete pipe,  
19 (the "DISTRICT FACILITIES"), as shown in concept on Exhibit "B", attached hereto and made  
20 a part hereof. At its upstream terminus, DISTRICT FACILITIES will connect to a privately  
21 owned facility. At its downstream terminus, DISTRICT FACILITIES will connect to CITY'S  
22 existing facility; and

23 D. Associated with the construction of DISTRICT FACILITIES is the  
24 construction of an interim drainage channel, maintenance access road, concrete headwall, basin  
25 and a lateral storm drain that is thirty-six inches (36") or less in diameter that are located within  
26 DEVELOPER held easements or rights of way or easements, (the "DEVELOPER  
27  
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1 FACILITIES"). DEVELOPER FACILITIES is to be initially owned and maintained by  
2 DEVELOPER, and subsequently owned and maintained by the Private Property Owners for MS  
3 161; and

4 F. Together, DISTRICT FACILITIES and DEVELOPER FACILITIES are  
5 hereinafter called "PROJECT"; and

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

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

20 I. CITY is willing to (i) review and approve DEVELOPER'S plans and  
21 specifications for PROJECT, and (ii) accept and hold faithful performance and payment bonds  
22 submitted by DEVELOPER for DISTRICT FACILITIES, provided PROJECT is constructed in  
23 accordance with plans and specifications approved by DISTRICT and CITY.

24 NOW, THEREFORE, the parties hereto mutually agree as follows:  
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1           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
2 permits and rights of entry as may be needed for the construction, inspection, operation and  
3 maintenance of DISTRICT FACILITIES. DEVELOPER shall furnish DISTRICT, at the time  
4 of providing written notice to DISTRICT of the start of construction as set forth in Section I.8.,  
5 or not less than twenty (20) days prior to recordation of the final map for MS 161 or any phase  
6 thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured such  
7 necessary licenses, agreements, permits and rights of entry, as determined and approved by  
8 DISTRICT.  
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10           6. Prior to commencing construction, furnish DISTRICT with copies of all  
11 permits, approvals or agreements required by any federal, state or local resource and/or  
12 regulatory agency for the construction, operation and maintenance of DISTRICT FACILITIES.  
13 Such documents include but are not limited to those issued by the U.S. Army Corps of Engineers,  
14 California Regional Water Quality Control Board, California State Department of Fish and  
15 Wildlife, State Water Resources Control Board, and Western Riverside County Regional  
16 Conservation Authority.  
17

18           7. Provide CITY, at the time of providing written notice to DISTRICT of the  
19 start of construction as set forth in Section I.8. or not less than twenty (20) days prior to  
20 recordation of the final map for MS 161 or any phase thereof, whichever occurs first, with faithful  
21 performance and payment bonds, each in the amount of one hundred percent (100%) of the  
22 estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT. The  
23 surety, amount and form of the bonds, shall be subject to approval of DISTRICT and CITY. The  
24 bonds shall remain in full force and effect until DISTRICT FACILITIES are accepted by  
25 DISTRICT as complete; at which time the bond amount may be reduced to five percent (5%) for  
26 a period of one (1) year to guarantee against any defective work, labor or materials.  
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1           8.    Notify DISTRICT in writing (Attention: Administrative Services Section)  
2 and CITY, at least twenty (20) days prior to the start of construction of PROJECT. Construction  
3 shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has  
4 issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence  
5 construction of PROJECT.  
6

7           9.    Obtain and provide DISTRICT, at the time of providing written notice to  
8 DISTRICT of the start of construction of PROJECT as set forth in Section I.8. or not less than  
9 twenty (20) days prior to the recordation of the final map for MS 161 or any phase thereof,  
10 whichever occurs first, with duly executed Irrevocable Offer(s) of Dedication to the public for  
11 flood control and drainage purposes, including ingress and egress, for the rights of way deemed  
12 necessary by DISTRICT for the construction, inspection, operation and maintenance of  
13 DISTRICT FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved  
14 by DISTRICT and shall be executed by all legal and equitable owners of the property described  
15 in the offer(s).  
16

17           10.   Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication  
18 as set forth in Section I.9., with Preliminary Reports on Title dated not more than thirty (30) days  
19 prior to date of submission of all the property described in the Irrevocable Offer(s) of Dedication.  
20

21           11.   Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
22 the start of construction as set forth in Section I.8., with a complete list of all contractors and  
23 subcontractors to be performing work on DISTRICT FACILITIES, including the corresponding  
24 license number and license classification of each. At such time, DEVELOPER shall further  
25 identify in writing its designated superintendent for PROJECT construction.  
26

27           12.   Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
28 the start of construction as set forth in Section I.8., a construction schedule which shall show the



1 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry out the  
2 various parts of work, including estimated start and completion dates. As construction of  
3 DISTRICT FACILITIES progresses, DEVELOPER shall update said construction schedule as  
4 requested by DISTRICT.  
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6 13. Furnish DISTRICT with final mylar PROJECT plans and assign their  
7 ownership to DISTRICT prior to the start on any portion of PROJECT construction.

8 14. Not permit any change to or modification of DISTRICT and CITY approved  
9 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT and  
10 CITY.

11 15. Comply with all Cal/OSHA safety regulations including regulations  
12 concerning confined space and maintain a safe working environment for DEVELOPER, and  
13 DISTRICT employees on the site.  
14

15 16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
16 the start of construction as set forth in Section I.8., a confined space entry procedure specific to  
17 PROJECT. The procedure shall comply with requirements contained in California Code of  
18 Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit  
19 Required Confined Space and District Confined Space Procedures, SOM-18. The procedure  
20 shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed.  
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22 17. DEVELOPER shall not commence operations until DISTRICT has been  
23 furnished with original certificate(s) of insurance and original certified copies of endorsements  
24 and if requested, certified original policies of insurance including all endorsements and any and  
25 all other attachments as required in this Section.  
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1 Without limiting or diminishing DEVELOPER'S obligation to indemnify or hold DISTRICT  
2 harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost  
3 and expense, the following insurance coverage's during the term of this Agreement:

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5 A. Workers' Compensation:

6 If DEVELOPER has employees as defined by the State of California,  
7 DEVELOPER shall maintain statutory Workers' Compensation  
8 Insurance (Coverage A) as prescribed by the laws of the State of  
9 California. Policy shall include Employers' Liability (Coverage B)  
10 including Occupational Disease with limits not less than \$1,000,000 per  
11 person per accident. Policy shall be endorsed to waive subrogation in  
12 favor of DISTRICT, and, if applicable, to provide a Borrowed  
13 Servant/Alternate Employer Endorsement.  
14

15 B. Commercial General Liability:

16 Commercial General Liability insurance coverage, including but not  
17 limited to, premises liability, unmodified contractual liability, products  
18 and completed operations liability, personal and advertising injury, and  
19 cross liability coverage, covering claims which may arise from or out  
20 of DEVELOPER'S performance of its obligations hereunder. Policy  
21 shall name the DISTRICT, its agencies, districts, special districts, and  
22 departments, their respective directors, officers, Board of Supervisors,  
23 employees, elected or appointed officials, agents or representatives as  
24 additional insureds. Policy's limit of liability shall not be less than  
25 \$2,000,000 per occurrence combined single limit. If such insurance  
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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, 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.

D. Professional Liability:

DEVELOPER shall maintain Professional Liability Insurance providing coverage for DEVELOPER'S performance of work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. If DEVELOPER'S Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and DEVELOPER shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates

1 Coverage from a new insurer with a retroactive date back to the date of,  
2 or prior to, the inception of this Agreement; or 3) demonstrate through  
3 Certificates of Insurance that DEVELOPER has maintained continuous  
4 coverage with the same or original insurer. Coverage provided under  
5 items: 1), 2) or 3) will continue as long as the law allows.  
6

7 E. General Insurance Provisions – All Lines:

- 8 i. Any insurance carrier providing insurance coverage hereunder  
9 shall be admitted to the State of California and have an A.M. BEST  
10 rating of not less than an A: VIII (A: 8) unless such requirements  
11 are waived, in writing, by the County Risk Manager. If the County  
12 Risk Manager waives a requirement for a particular insurer such  
13 waiver is only valid for that specific insurer and only for one policy  
14 term.  
15
- 16 ii. The DEVELOPER must declare its insurance self-insured  
17 retention for each coverage required herein. If any such self-  
18 insured retention exceeds \$500,000 per occurrence each such  
19 retention shall have the prior written consent of the County Risk  
20 Manager before the commencement of operations under this  
21 Agreement. Upon notification of self-insured retention deemed  
22 unacceptable to the DISTRICT, and at the election of the County  
23 Risk Manager, DEVELOPER'S carriers shall either: 1) reduce or  
24 eliminate such self-insured retention with respect to this  
25 Agreement with DISTRICT, or 2) procure a bond which  
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1 guarantees payment of losses and related investigations, claims  
2 administration, and defense costs and expenses.

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4 iii. DEVELOPER shall cause their insurance carrier(s) to furnish  
5 DISTRICT with 1) a properly executed original certificate(s) of  
6 insurance and certified original copies of endorsements effecting  
7 coverage as required herein; and 2) if requested to do so orally or  
8 in writing by the County Risk Manager, provide original certified  
9 copies of policies including all endorsements and all attachments  
10 thereto, showing such insurance is in full force and effect. Further,  
11 said certificate(s) and policies of insurance shall contain the  
12 covenant of the insurance carrier(s) that a minimum of sixty (60)  
13 days written notice shall be given to the DISTRICT prior to any  
14 material modification, cancellation, expiration or reduction in  
15 coverage of such insurance. If DEVELOPER insurance carrier(s)  
16 policies does not meet the minimum notice requirement found  
17 herein, DEVELOPER shall cause DEVELOPER'S insurance  
18 carrier(s) to furnish a 60 day Notice of Cancellation Endorsement.  
19  
20 In the event of a material modification, cancellation, expiration or  
21 reduction in coverage, this Agreement shall terminate forthwith,  
22 unless DISTRICT receives, prior to such effective date, another  
23 properly executed original certificate of insurance and original  
24 copies of endorsements or certified original policies, including all  
25 endorsements and attachments thereto, evidencing coverages set  
26 forth herein and the insurance required herein is in full force and  
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1 effect. An individual authorized by the insurance carrier to do so  
2 on its behalf shall sign the original endorsements for each policy  
3 and the certificate of insurance.  
4

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

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

21 vi. DEVELOPER shall pass down the insurance obligations contained  
22 herein to all tiers of subcontractors working under this Agreement.

23 vii. The insurance requirements contained in this Agreement may be  
24 met with a program(s) of self-insurance acceptable to DISTRICT.  
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1                   viii. DEVELOPER agrees to notify DISTRICT of any claim by a third  
2                   party or any incident or event that may give rise to a claim arising  
3                   from the performance of this Agreement.  
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5                   Failure to maintain the insurance required by this paragraph shall be deemed  
6 a material breach of this Agreement and shall authorize and constitute authority for DISTRICT,  
7 at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to  
8 perform its obligations hereunder, nor to accept responsibility for ownership, operation and  
9 maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this  
10 Agreement.

11                   18. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole cost  
12 and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.  
13

14                   19. Within two (2) weeks of completing PROJECT construction, provide  
15 DISTRICT (Attention: Development Review Section) and CITY with written notice that  
16 PROJECT construction is substantially complete and requesting that DISTRICT conduct a final  
17 inspection of DISTRICT FACILITIES.

18                   20. Upon completion of PROJECT construction, and upon acceptance by CITY  
19 of all rights of way deemed necessary by DISTRICT, but prior to DISTRICT acceptance of  
20 DISTRICT FACILITIES for ownership, operation and maintenance, convey, or cause to be  
21 conveyed to DISTRICT (i) the flood control easement(s) including ingress and egress, in a form  
22 approved by DISTRICT, to the rights of way as shown in concept hatched in blue on Exhibit  
23 "C", attached hereto and made a part hereof.  
24

25                   21. At the time of recordation of the conveyance document(s) as set forth in  
26 Section I.20., furnish DISTRICT with policies of title insurance, each in the amount of not less  
27 than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each  
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1 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the  
2 estimated value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT,  
3 guaranteeing DISTRICT'S interest in said property as being free and clear of all liens,  
4 encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except  
5 those which, in the sole discretion of DISTRICT, are acceptable.  
6

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 FACILITIES, and the Private Property Owners' for MS 161  
10 accepts ownership and responsibility for operation and maintenance of DEVELOPER  
11 FACILITIES.  
12

13           23. Accept all liability whatsoever associated with the ownership, operation and  
14 maintenance of DISTRICT FACILITIES until such time as DISTRICT FACILITIES are  
15 formally accepted by DISTRICT for ownership, operation and maintenance.  
16

17           24. Pay, if suit is brought upon this Cooperative Agreement or any bond  
18 guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including  
19 reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs,  
20 expenses and fees shall be computed as costs and included in any judgment rendered.  
21

22           25. Upon completion of PROJECT construction, but prior to DISTRICT  
23 acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or  
24 cause its civil engineer of record or construction civil engineer of record, duly registered in the  
25 State of California, to provide DISTRICT with a redlined "record drawings" copy of PROJECT  
26 plans. After DISTRICT approval of the redlined "record drawings", DEVELOPER'S engineer  
27 shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S original  
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1 complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section  
2 I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within  
3 sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.  
4

5 8. Accept ownership and sole responsibility for the operation and maintenance  
6 of DISTRICT FACILITIES upon (i) DISTRICT inspection of DISTRICT FACILITIES in  
7 accordance with Section I.19., (ii) DISTRICT acceptance of PROJECT construction as being  
8 complete, (iii) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans,  
9 as set forth in Section I.25., (iv) recordation of all conveyance documents described in Section  
10 I.21., and (v) DISTRICT'S sole determination that DISTRICT FACILITIES are in a satisfactorily  
11 maintained condition.  
12

13 9. Provide CITY with a reproducible duplicate copy of "record drawings"  
14 PROJECT plans upon DISTRICT acceptance of DISTRICT FACILITIES as being complete.  
15

### 16 SECTION III

17 CITY shall:

18 1. Review and approve IMPROVEMENT PLANS prior to the start of  
19 PROJECT construction.

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

23 3. Consent, by execution of this Cooperative Agreement, to the recording of  
24 any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Cooperative  
25 Agreement.

26 4. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication  
27 as set forth herein, and any other outstanding offers of dedication necessary for the construction,  
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1 inspection, operation and maintenance of DISTRICT FACILITIES, and, convey sufficient rights  
2 of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT  
3 FACILITIES.

4  
5 5. Not grant any occupancy permits for any units within any portion of MS  
6 161, or any phase thereof, until construction of PROJECT is deemed substantially complete,  
7 unless otherwise approved in writing by DISTRICT.

8 SECTION IV

9 It is further mutually agreed:

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

13  
14 2. DEVELOPER personnel may observe and inspect all work being done on  
15 DISTRICT FACILITIES, but shall provide any comments to DISTRICT personnel who shall be  
16 solely responsible for all quality control communications with DEVELOPER'S contractor(s)  
17 during the construction of PROJECT.

18  
19 3. DISTRICT acceptance of ownership and responsibility for the operation and  
20 maintenance of DISTRICT FACILITIES shall be in a satisfactorily maintained condition as  
21 solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of  
22 DISTRICT, DISTRICT FACILITIES are not in an acceptable condition, corrections shall be  
23 made at sole expense of DEVELOPER.

24  
25 4. DEVELOPER shall complete construction of PROJECT within twelve (12)  
26 consecutive months after execution of this Cooperative Agreement and within one hundred  
27 twenty (120) consecutive calendar days after commencing work on PROJECT. It is expressly  
28 understood that since time is of the essence in this Cooperative Agreement, failure of

1 DEVELOPER to perform the work within the agreed upon time shall constitute authority for  
2 DISTRICT to perform the remaining work and require DEVELOPER'S surety to pay to CITY  
3 the penal sum of any and all bonds. In which case, CITY shall subsequently reimburse  
4 DISTRICT for DISTRICT costs incurred.  
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6           5. If DEVELOPER fails to commence construction of PROJECT within nine  
7 (9) months after execution of this Cooperative Agreement, then DISTRICT reserves the right to  
8 withhold issuance of the Notice to Proceed pending a review of the existing site conditions as  
9 they exist at the time DEVELOPER provides written notification to DISTRICT of the start of  
10 construction as set forth in Section I.8. In the event of a change in the existing site conditions  
11 that materially affects PROJECT function or DISTRICT'S ability to operate and maintain  
12 DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT  
13 PLANS as deemed necessary by DISTRICT.  
14

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

20           In the event DEVELOPER wishes to expedite issuance of a Notice to  
21 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
22 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation  
23 of the individual's credentials and experience to DISTRICT for review and, if appropriate,  
24 approval. DISTRICT shall review the individual's qualifications and experience, upon approval  
25 thereof, said individual, (the "DEPUTY INSPECTOR"), shall be authorized to act on  
26 DISTRICT'S behalf on all DISTRICT FACILITIES construction and quality control matters. If  
27 DEVELOPER'S initial construction inspection deposit furnished pursuant to Section I.3. exceeds  
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1 ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to eighty percent  
2 (80%) of DEVELOPER'S initial inspection deposit within forty-five (45) days of DISTRICT'S  
3 approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand dollars  
4 (\$10,000) shall be retained on account.  
5

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

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

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

13 With respect to any of DEVELOPER'S indemnification requirements,  
14 DEVELOPER shall, at its sole cost, pay the fees of counsel selected by DISTRICT and CITY.  
15 DISTRICT and CITY shall have the right to review and approve any adjustment, settlement or  
16 compromise of any claim, proceeding or action; provided, however, that any such adjustment,  
17 settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S  
18 indemnification obligations to DISTRICT or CITY.  
19

20 DEVELOPER'S indemnification obligations shall be satisfied when  
21 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal (or  
22 similar document) relieving DISTRICT or CITY from any liability for the claim, proceeding or  
23 action involved.  
24

25 The specified insurance limits required in this Cooperative Agreement shall  
26 in no way limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless  
27 DISTRICT and CITY from third party claims.  
28

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

5           9.     DEVELOPER for itself, its successors and assigns hereby releases  
6 DISTRICT and CITY, their respective officers, agents, and employees from any and all claims,  
7 demands, actions, or suits of any kind arising out of any liability, known or unknown, present or  
8 future, including, but not limited to any claim or liability, based or asserted, pursuant to Article  
9 I, Section 19 of the California Constitution, the Fifth Amendment of the United States  
10 Constitution, or any other law or ordinance which seeks to impose any other liability or damage,  
11 whatsoever, for damage caused by the discharge of drainage within or from PROJECT. Nothing  
12 contained herein shall constitute a release by DEVELOPER of DISTRICT or CITY, their  
13 officers, agents and employees from any and all claims, demands, actions or suits of any kind  
14 arising out of any liability, known or unknown, present or future, for the negligent maintenance  
15 of DISTRICT FACILITIES, after the acceptance of DISTRICT FACILITIES by DISTRICT.

16           10.    Any waiver by DISTRICT or by CITY of any breach of any one or more of  
17 the terms of this Cooperative Agreement shall not be construed to be a waiver of any subsequent  
18 or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or  
19 CITY to require exact, full and complete compliance with any terms of this Cooperative  
20 Agreement shall not be construed as in any manner changing the terms hereof, or estopping  
21 DISTRICT or CITY from enforcement hereof.  
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1           11. Any and all notices sent or required to be sent to the parties of this  
2 Cooperative Agreement will be mailed by first class mail, postage prepaid, to the following  
3 addresses:

4 RIVERSIDE COUNTY FLOOD CONTROL  
5 AND WATER CONSERVATION DISTRICT  
6 1995 Market Street  
7 Riverside, CA 92501  
8 Attn: Administrative Services Section

CITY OF MURRIETA  
1 Town Square  
Murrieta, CA 92562  
Attn: Bob Moehling  
City Engineer

9 KAISER FOUNDATION HOSPITALS  
10 181 Granite Street #6  
11 Corona, CA 92879  
12 Attn: Scott L. Drane

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

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

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

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



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

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

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

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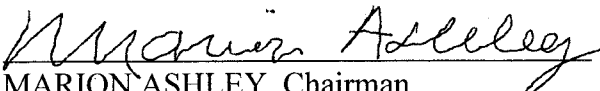
IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on

NOV 15 2016  
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By   
JASON E. UHLEY  
General Manager-Chief Engineer

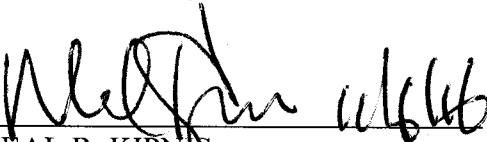
By   
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

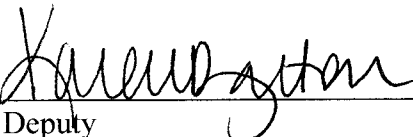
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By   
NEAL R. KIPNIS  
Deputy County Counsel

By   
Deputy

(SEAL)

Cooperative Agreement:  
Murrieta – Keller Road Storm Drain, Stage 1  
Project No. 4-0-00298  
MS 161  
AMR:blm  
09/28/16

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**CITY OF MURRIETA**

By *R. Dudley*  
RICK DUDLEY  
City Manager

APPROVED AS TO FORM:

ATTEST:

By *Leslie Devaney*  
LESLIE DEVANEY  
City Attorney

By *Jane Halstead*  
JANE HALSTEAD  
City Clerk

(SEAL)

Cooperative Agreement:  
Murrieta – Keller Road Storm Drain, Stage 1  
Project No. 4-0-00298  
MS 161  
AMR:blm  
09/28/16

**KAISER FOUNDATION HOSPITALS**  
a California nonprofit public benefit corporation

By Ronald C. Smith  
RONALD C. SMITH  
Vice President, National Facilities Services

(ATTACH NOTARY WITH CAPACITY  
STATEMENT)

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Cooperative Agreement:  
Murrieta – Keller Road Storm Drain, Stage 1  
Project No. 4-0-00298  
MS 161  
AMR:blm  
09/28/16

# California All-Purpose Certificate of Acknowledgement

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.

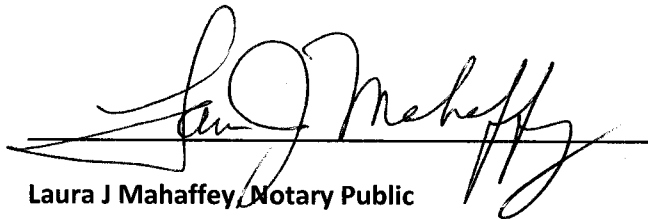
State of California

County of Los Angeles

On this 17<sup>th</sup> day of October, 2016, before me, Laura J Mahaffey, a Notary Public, personally appeared RONALD C. SMITH, who proved to me on the basis of satisfactory evidence to be the person, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

  
Laura J Mahaffey, Notary Public

TITLE OF THE DOCUMENT: Cooperative Agreement  
Project # 4-0-00298

DATE OF DOCUMENT: 9/28/16 NUMBER OF PAGES: 25

## Exhibit A

### LEGAL DESCRIPTION

Real property in the City of Murrieta, County of Riverside, State of California, described as follows:

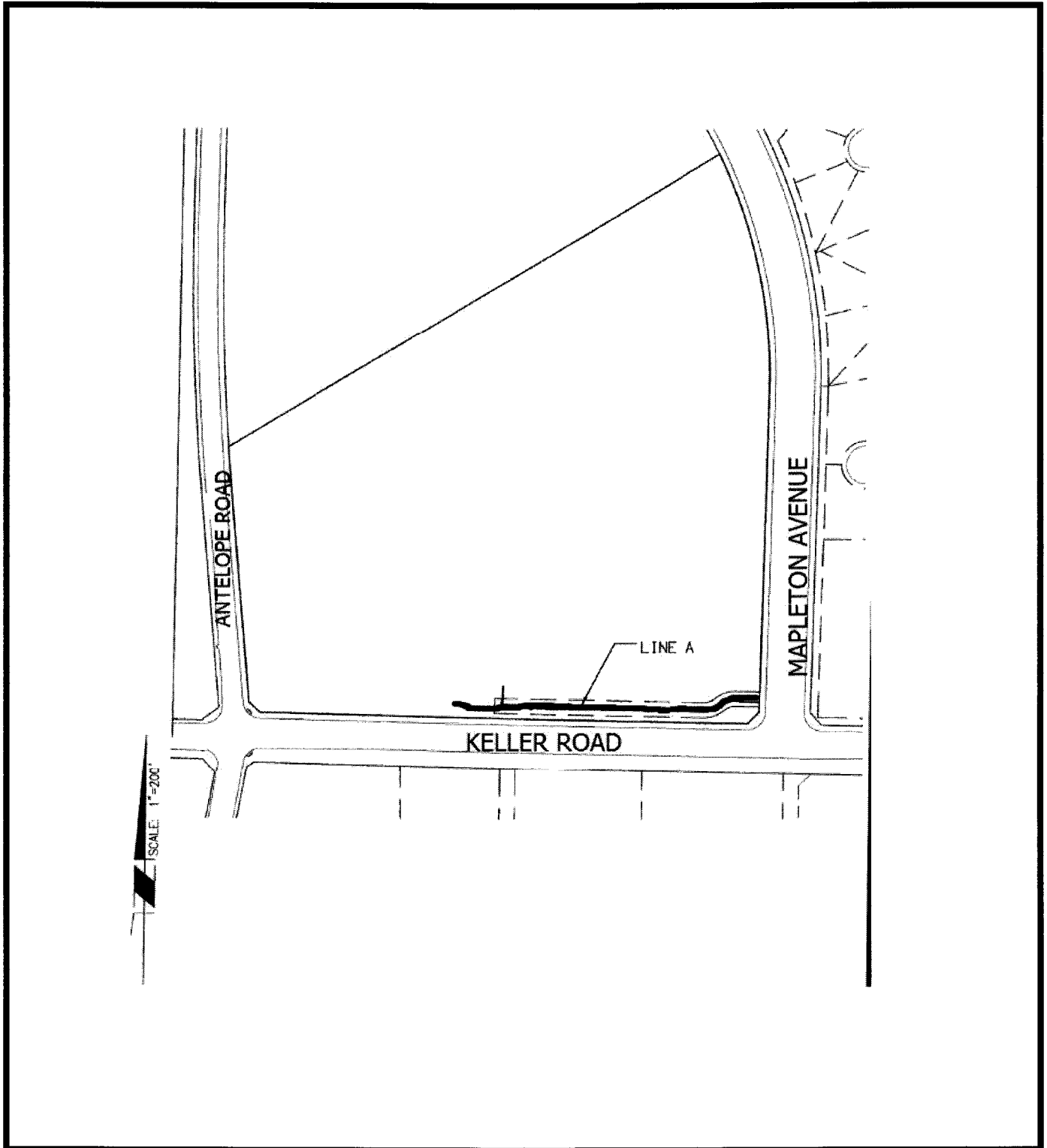
PARCELS 3 AND 4 OF PARCEL MAP 30775, IN THE CITY OF MURRIETA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 204, PAGES 8 AND 9 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:

388-120-002-6(Affects Parcel 3)

388-120-003-7(Affects Parcel 4)

# Exhibit B

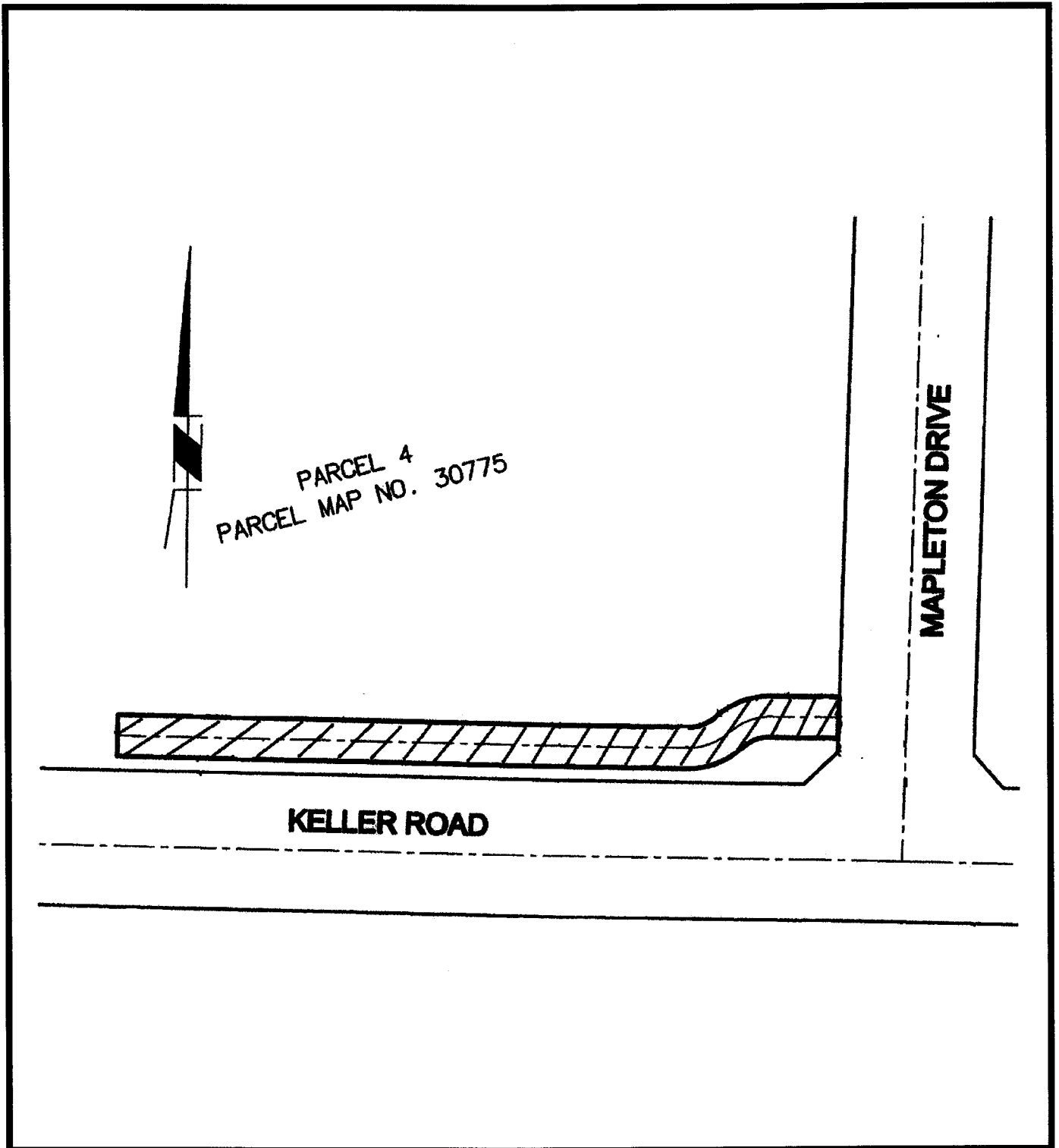


## COOPERATIVE AGREEMENT

Murrieta – Keller Road Storm Drain, Stage 1

MS 161  
Project No. 4-0-00298  
Page 1 of 1

Exhibit C



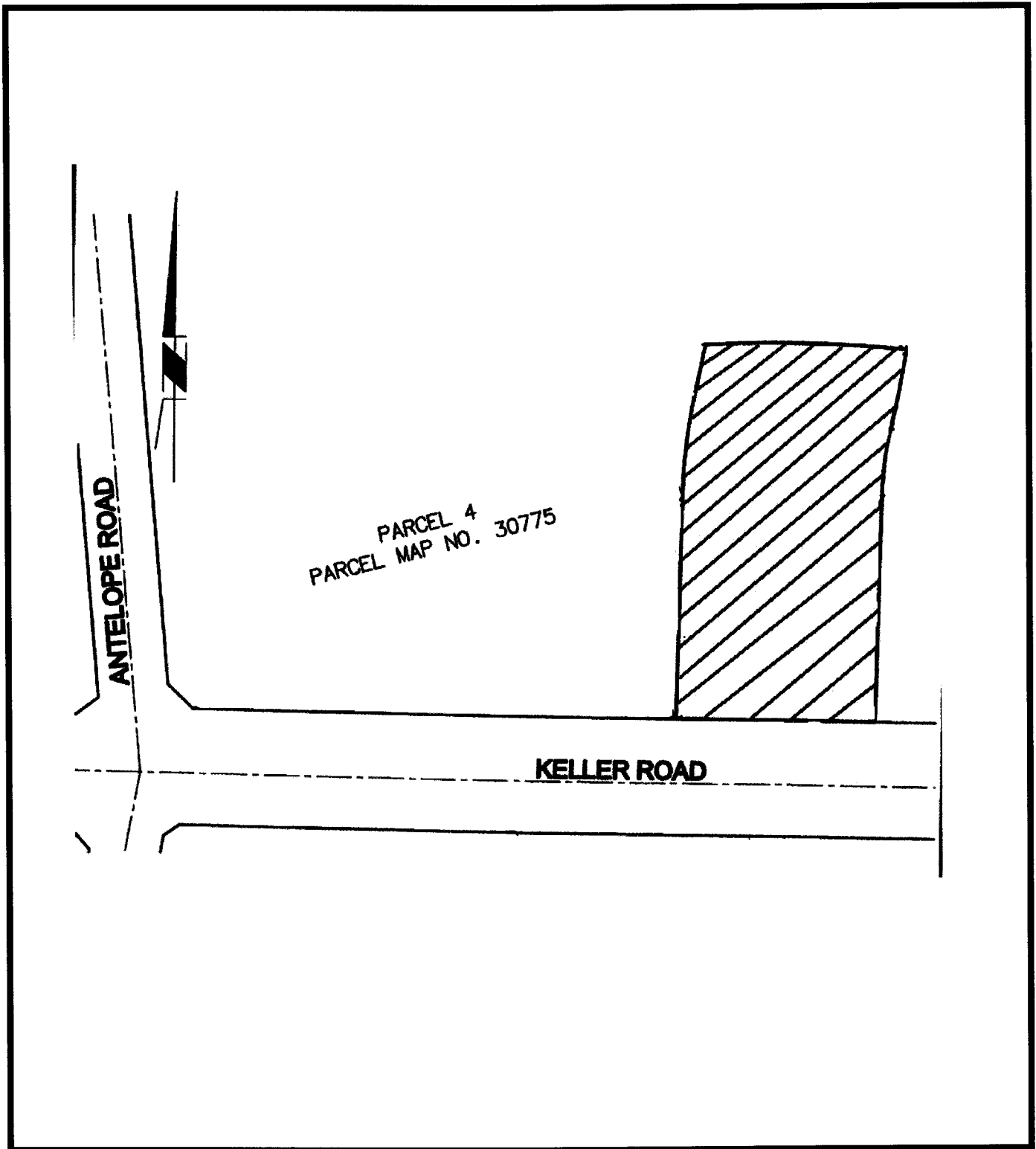
COOPERATIVE AGREEMENT

Murrieta - Keller Road Storm Drain, Stage 1

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Exhibit C



COOPERATIVE AGREEMENT

Murrieta - Keller Road Storm Drain, Stage 1

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Page 2 of 2